PROFESSIONAL PROGRAMME

GROUP 2
ELECTIVE PAPER 7.2

GOODS AND SERVICES TAX (GST) & CORPORATE TAX PLANNING

PART I – GOODS AND SERVICES TAX (GST)

PART II – CORPORATE TAX PLANNING

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

STUDY MATERIAL

PROFESSIONAL PROGRAMME

GOODS AND SERVICES TAX (GST) & CORPORATE TAX PLANNING

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PROFESSIONAL PROGRAMME

GOODS AND SERVICES TAX (GST) & CORPORATE TAX PLANNING

The roles & duties of Company Secretary are very important in a business origination. In the Context of GST & Corporate tax planning, a Company Secretary is responsible for ensuring that a company meets its all legal and statutory requirements regularly, such as filing or managing tax returns timely, maintaining records and relevant documents related thereto. A Company Secretary can substantially contribute in GST & Corporate Tax Planning. A corporate tax planning for a company can be done by arranging it's financial affairs in such a way that the benefit of all deductions, exemptions, rebates and relief can be enjoyed by abiding of tax laws or without violating the provisions of tax laws with focusing on spirit of law.

Keeping in mind the versatile role of Company Secretary in present era, the faculty of the Directorate of Academics publish this study material to aid the students in preparing for the Goods & Services Tax & Corporate Tax Planning paper of the CS Professional Programme. It is part of the educational kit and takes the students step by step through each phase of preparation stressing key concepts, pointers and procedures. Company Secretaryship being a professional course, the examination standards are set very high, with emphasis on knowledge of concepts, applications, procedures and case laws, for which sole reliance on the contents of this study material may not be enough. Besides, as per the Company Secretaries Regulations, 1982, students are expected to be conversant with the amendments to the laws applicable for relevant examination. The material may, therefore, be regarded as the basic material and must be read along with the original Bare Acts, Rules, Orders, Case Laws, Student Company Secretary e-bulletin published and supplied to the students by the Institute every month as well as recommended readings given with each study lesson.

The subject of Goods & Services Tax 'GST' & Corporate Tax Planning is inherently dynamic and is subjected to constant refinement through new primary legislations, rules and regulations made thereunder and court decisions on specific legal issues. It therefore becomes necessary for every student to constantly update himself with the various changes made as well as judicial pronouncements rendered from time to time by referring to the Institutes journal 'Chartered Secretary' and 'Student Company Secretary e-bulletin' as well as other law/professional journals on tax laws. The purpose of this study material is to impart conceptual understanding to the students of the provisions of the GST and Corporate Tax Planning covered in the Syllabus.

The legislative changes made upto May 31, 2023 have been incorporated in the study material. In addition to Study Material students are advised to refer to the updations at the Regulator's website, supplements relevant for the subject issued by ICSI and ICSI Journal Chartered Secretary and other publications. Specifically, **students are advised to read "Student Company Secretary" e-Journal which covers regulatory and other relevant developments relating to the subject,** which is available at academic portal *https://www.icsi.edu/student-n/academic-portal/*. In the event of any doubt, students may contact the Directorate of Academics at academics@icsi.edu.

The amendments to law made upto 31st May of the Calendar Year for December Examinations and upto 30th November of the previous Calendar Year for June Examinations shall be applicable.

Although due care has been taken in publishing this study material, the possibility of errors, missions and /or discrepancies cannot be rules out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

The subject of Goods and Services Tax 'GST' & Corporate Tax Planning is divided into two parts:

Part I: Goods and Services Tax 'GST' for 70 marks, the students may update themselves of the latest developments, notifications and circulars on Indirect Tax from *cbic.gov.in* & *https://www.gst.gov.in/*

Part II: Corporate Tax Planning for 30 marks is based on Finance Act, 2023 applicable for Assessment Year 2024-25 and is useful for students appearing in June, 2024 session onwards. Besides, as per the Company Secretaries Regulation, 1982, students are expected to be conversant with the amendments to the laws applicable for respective exam. The students may update themselves of the latest developments, notifications and circulars on Direct Tax from *incometaxindia.gov.in*

PROFESSIONAL PROGRAMME

Group 2

Elective Paper 7.2

GOODS AND SERVICES TAX (GST) & CORPORATE TAX PLANNING

SYLLABUS

OBJECTIVES

Part I: To provide expert knowledge of Goods & Service Tax.

Part II: To provide expert knowledge on Corporate Tax Planning conforming to the Legal Obligations and requirements of the Income Tax Laws.

Level of knowledge : Expert Knowledge

PART I: GOODS & SERVICES TAX 'GST' (70 MARKS)

1. **Overview on Goods and Services Tax 'GST':** Introduction ● Constitutional Aspects & Administration ● GST Models ● Basics about CGST, SGST, IGST, UTGST and GST Compensation to States ● Exemptions from GST
2. **Supply under GST:** Levy and Collection of CGST and IGST ● Deemed Supply ● Composite and Mixed Supply ● Inter-State Supply ● Intra-State Supply and Supplies in Territorial Waters ● Composition Scheme ● Pure Agent ● Forward Charge Mechanism and Reverse Charge Mechanism
3. **Time of Supply:** Classification of Goods and Services under GST ● Rules of Interpretation ● Time of Supply of Goods ● Time of Supply of Services
4. **Value of Supply:** Rules for Determination of Value of Supply ● Applicability of Valuation Rules ● Import and Export of Goods and Services under GST ● Zero Rated Supply ● Difference between Exempt Supply and Zero Rated Supply
5. **Input Tax Credit & Computation of GST Liability:** Input tax credit ● Job Work ● Job Work Procedure ● Computation of GST liability
6. **Procedural Compliance under GST:** Registration ● Tax Invoice, Debit & Credit Notes ● Accounts and Records ● Electronic Way Bill ● Electronic Invoicing ● Payment of Tax ● TDS ● TCS ● Returns & Refund ● Valuation
7. **Assessment, Audit, Scrutiny, Demand and Recovery, Advance Ruling, Appeals and Revision:** Assessment ● Audit by Registered Dealer ● Audit by Tax Authorities ● Special Audit ● Demand and Recovery ● Time Limit for Issue of Notice ● General Provisions Relating to Determination of Tax ● Recovery of Tax ● Advance Ruling ● Appeals and Revision
8. **Inspection, Search, Seizure, Offences & Penalties:** Inspection, Search, Seizure & Arrest ● Power of

Inspection, Search and Seizure ● Inspection of Goods in Movement ● Arrest Provision under GST ● Particulars of Search Authorization (Warrant)● Period for Retention of Documents or Books ● Procedure for Releasing the Seized Goods ● Seizure of Perishable and Hazardous Nature Goods

9. **Compliance Rating, Anti-Profiteering, GST Practitioners, Authorised Representative:** GST Compliance Rating ● National Anti-Profiteering Authority ● GST practitioners ● Functions of GST Practitioners ● Appearance by the Authorized Representative

PART II: CORPORATE TAX PLANNING (30 MARKS)

10. **Corporate Tax Planning:** An Introduction ● Concepts & Objectives ● Types of Tax Planning ● Corporate Tax Planning ● Tax Avoidance ● Tax Evasion ● Tax Management

11. **Tax Planning and Nature of Business:** Deductions in respect of Investment in Specified Business ● Deduction in respect of profits and Gains of enterprise engaged in Specified Business ● Tax incentives for start-ups ● Tax Incentives to Exporters

12. **Tax Planning and Location of Business:** Tax Provisions in respect of Free Trade Zone / Special Economic Zone ● Tax Provisions in respect of Infrastructure Development ● Tax Provisions in respect of Investment in notified Backward Areas

13. **Tax Planning and Managerial Decisions:** Tax Planning with respect to own or Lease Decision ● Make or Buy Decisions, Shut-down or Continue Decision ● Sale of Assets used for Scientific Research ● Capital Structure & Dividend Policy ● Inter-Corporate Dividends and Bonus Shares

14. **Tax Planning and Business Restructuring:** Amalgamation ● Foreign Collaboration ● Demerger including Slump Sale

ARRANGEMENT OF STUDY LESSONS

GOODS AND SERVICES TAX (GST) & CORPORATE TAX PLANNING

GROUP 2 • ELECTIVE PAPER 7.2

PART I: GOODS & SERVICES TAX 'GST' (70 MARKS)

Sl. No.	Lesson Title
1.	Overview on Goods and Services Tax 'GST'
2.	Supply under GST
3.	Time of Supply
4.	Value of Supply
5.	Input Tax Credit & Computation of GST Liability
6.	Procedural Compliance under GST
7.	Assessment, Audit, Scrutiny, Demand and Recovery, Advance Ruling, Appeals and Revision
8.	Inspection, Search, Seizure, Offences & Penalties
9.	Compliance Rating, Anti-Profiteering, GST Practitioners, Authorised Representative

PART II: CORPORATE TAX PLANNING (30 MARKS)

10.	Corporate Tax Planning
11.	Tax Planning and Nature of Business
12.	Tax Planning and Location of Business
13.	Tax Planning and Managerial Decisions
14.	Tax Planning and Business Restructuring

PROFESSIONAL PROGRAMME

GOODS AND SERVICES TAX (GST) & CORPORATE TAX PLANNING

The subject of Goods and Services Tax (GST) & Corporate Tax Planning at CS Professional Level is divided into two parts:

Part I – Goods & Services Tax 'GST' (70 Marks)

Part II – Corporate Tax Planning (30 Marks)

PART I – GOODS & SERVICES TAX 'GST' (70 MARKS)

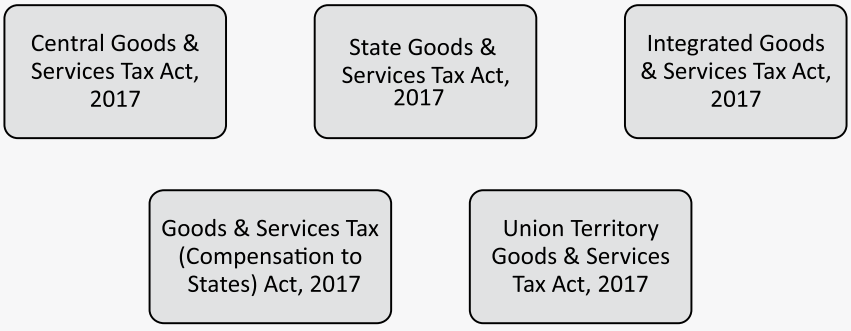
Goods & Services Tax (GST) is the tax levied on goods and services. This is an indirect tax as the burden of tax is passed on to the consumer unlike direct taxes which are supposed to be borne by the persons on whom these taxes are levied.

GST is the most historic indirect tax reform in India since Independence, which aims at creating a single, unified Indian market throughout the Nation. It is a comprehensive destination based indirect tax levy on goods as well as services at the national level. Its main objective is to consolidate multiple indirect tax levies into a single tax thus subsuming number of tax levies, overcoming the limitations of previous indirect tax structure, and creating efficiencies in tax administration and converted the nation into one market.

GST is a consumption based tax which is levied on the basis of "Destination principle." The concept relates to taxing the supply of goods or services at the point of consumption. It is a comprehensive tax regime covering both goods and services, and is collected on value-added at each stage of the supply chain. Further, GST paid on the procurement of goods and services can be set off against that payable on the supply of goods or services. The essence of GST is in removing the cascading effects i.e., tax on tax of both Central and State taxes by allowing setting-off of taxes throughout the value chain, right from the original producer and service provider's point up to the consumer level.

In the earlier indirect tax era, there were many indirect taxes levied by both State and Centre. Excise duty was leviable by Centre on the goods manufactured in India and Service Tax on services provided in India. States were collecting Value Added Tax (VAT) on sale of goods. Every State had a separate set of Act & Rules. Central Sales Tax (CST) was applicable on interstate sale of goods and was taxed by Centre and collected by State. Apart from these, there were numerous indirect taxes that were levied by State and Centre. GST consolidated multiple indirect tax levies into a single tax thus subsuming an array of tax levies. However, Basic Customs Duty continues to be levied on imports.

GST consists of the following Acts:



The study material broadly covers an overview of the GST Acts focusing upon the following key topics- an overview of GST, registration, concept of Supply, input tax credit, computation of GST liability, procedural compliances and other aspects of GST. The purpose of this study material is to impart conceptual understanding to the students of the provisions of the GST law along with an overview of provisions of Corporate Tax Planning.

The **Part I** of the study material comprises of Total 9 lessons. The broad coverage of the lessons is summarized in the below chart:

Overview on Goods and Services Tax 'GST' (Lesson 1)

Supply under GST (Lesson 2)

Time of Supply (Lesson 3)

Value of Supply (Lesson 4)

Input Tax Credit & Computation of GST Liability (Lesson 5)

Procedural Compliance under GST (Lesson 6)

Assessment, Audit, Scrutiny, Demand and Recovery, Advance Ruling, Appeals and Revision (Lesson 7)

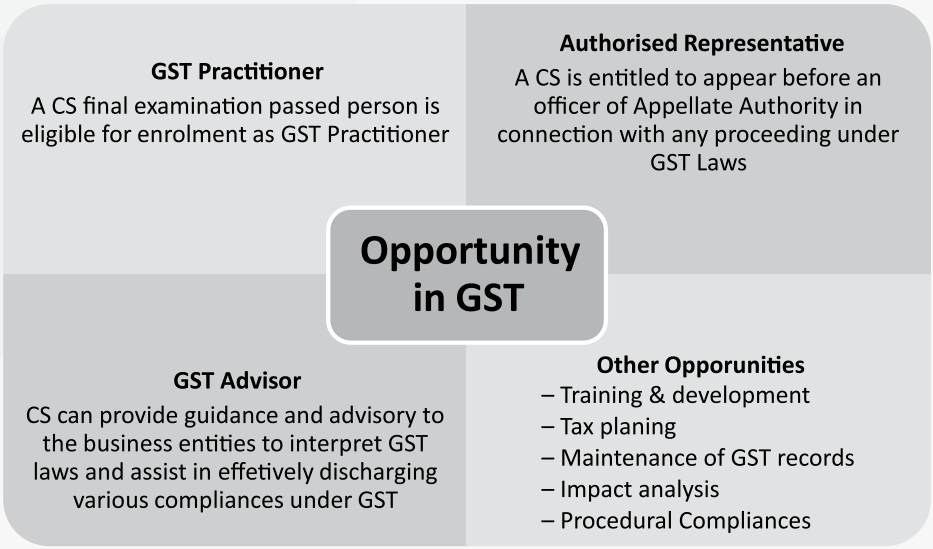
Inspection, Search, Seizure, Offences & Penalties (Lesson 8)

Compliance Rating, Anti-Profiteering, GST Practitioners, Authorised Representative (Lesson 9)

Opportunities for Company Secretaries under GST

For better administration of new tax regime in the country, it is important to have more competent and skilled professionals to facilitate regulators to ensure effective compliance of GST. The Company Secretaries are experts in interpreting laws and possess required skill-set to handle the regulatory compliances under GST.

The Company Secretaries are rendering value added services to the trade and industry and acting as extended arms of the regulatory mechanism. There are ample opportunities available for Company Secretaries in GST regime viz. compliances, advisory, consultancy, tax planning etc. as they are well versed in understanding the nuances of laws & taxation system.



The Company Secretaries can avail the opportunities available under GST and expand their areas of practice and benefit the profession.

GST and Governance Professionals-in-Making

The students are expected to gear up to enhance their perceptive knowledge and involve in capacity building initiatives. They must make the best use of this opportunity to augment their professional ambit in future under indirect taxes. GST is subject to constant refinement through new rules and updated Notifications as well as Circulars. It is thus expected of the student to be regularly updated about the developments taking place under the Law.

PART II – CORPORATE TAX PLANNING (30 MARKS)

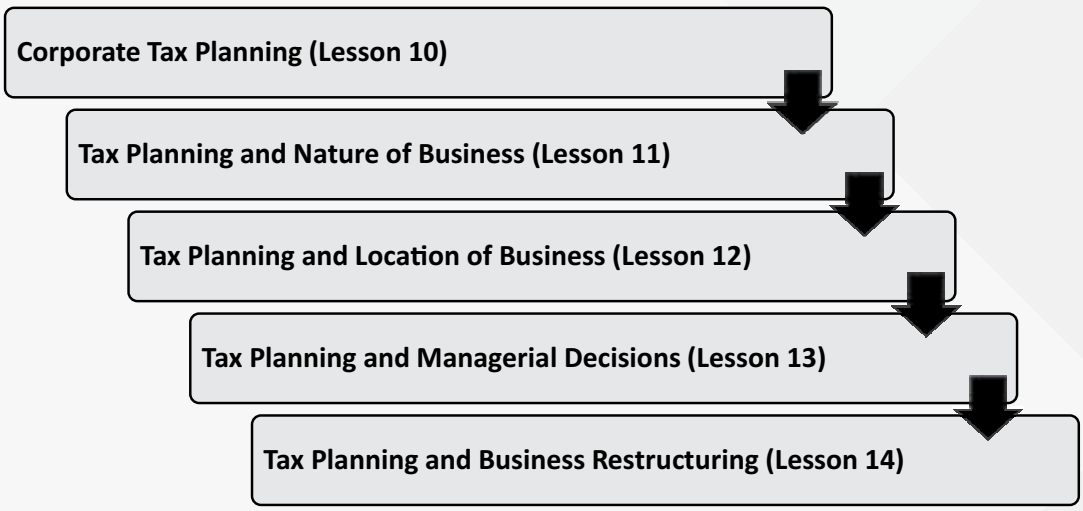
Every good citizen is selfish in respect of the payment of taxes as his hard-earned money should not be taken away by others forcibly. It is the duty of every citizen to pay taxes in a legal manner and also save taxes in a legal manner. Since the introduction of Income tax, there is a conflict between the taxpayer and the collector. Tax collector wants to collect more taxes from the taxpayer on the other hand taxpayer wants to pay the minimum tax.

Tax Planning is an essential part of financial and economic planning. Due to effective tax planning, all elements of financial planning are performed in the most effective manner. Tax planning leads to the direction of taxable income from various investment areas, relieving the tax liability of the assessee.

Corporate tax-making plans are the arrangement of financial sports in this type of way that the maximum tax blessings are loved through making use of all useful provisions inside the tax laws. Corporate tax planning presents strategies that are extensive in minimizing taxes. It entitles the company assessee to avail of positive exemptions, deductions, rebates and remedies so that you can minimize the tax liability.

Finally, we will see that the simple reason for corporate tax planning is to lessen or postpone the liability of tax beyond, present and foreseeable destiny thru the intelligent application of the concepts, practices, approaches, guidelines and law under the availability of the tax law to real conditions and via deriving optimum gain of all tax exemptions, deductions, allowances, rebates and reliefs by guiding the management rules & decisions referring to monetary to monetary affairs knowing nicely earlier their tax results. It leads to a reduction of liability to direct taxes.

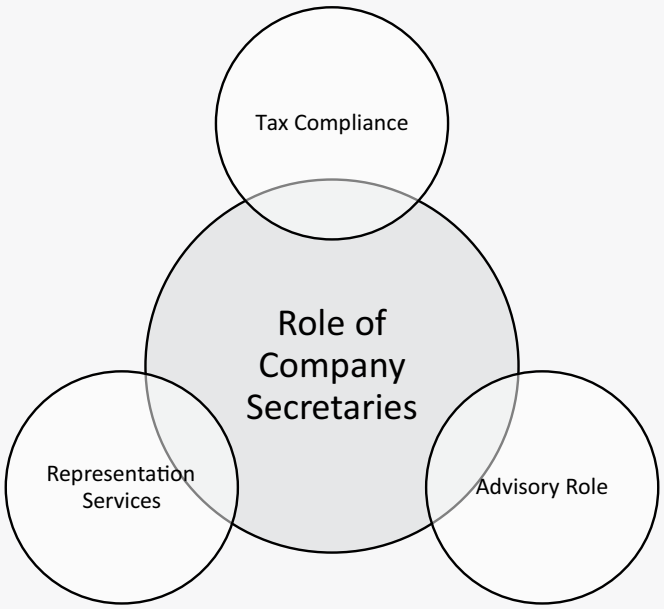
The **Part II** of the study material is related to Corporate Tax Planning and comprises of Total 5 lessons. The broad coverage of the lessons is summarized in the below chart:



ROLE OF COMPANY SECRETARIES IN CORPORATE TAX PLANNING

The Company Secretaries as experienced tax professionals can assist in resolving various challenges such as keeping abreast with tax regulations, efficiently manage compliances, address uncertain tax positions, among many others. The Company Secretaries can provide with an insight into how to best work to meet the business needs.

The following are the key important areas under the GST and Corporate Tax regime where a Company Secretary can play a vital role.



Tax Compliance: As the complexities of businesses increase, the amount of time spent by professionals in cracking up the law codes increases. However, tax and regulatory systems of even the most developed countries cannot keep pace with the developments across each industry as businesses emerge day by day. These also bring out the requirements for new compliances and the challenges of meeting them every single

day. More detailed Goods & Service Tax Return forms including disclosures on tax Liability, Input tax credit and timely filing of Returns non-disclosures require for businesses to gear up for efficient tax compliance. Following are the areas or avenues where company secretaries can assist client:

- Assist in obtaining Goods & Services Tax Number i.e. 'GSTN.'
- Filling of GST Returns timely.
- Filling of e-WAY Bills.
- To maintain the Systematic records of tax invoices, Input tax credit of goods & Services and other records.
- An arrangement of financial affairs by taking all advantages like deductions, exemptions, rebates and relief without violating the provisions of the Income Tax and focusing on the spirit behind the law.

Advisory: Corporate tax planning is an essential aspect of doing business in India and its importance cannot be undermined. The Company Secretaries can provide advisory services in the corporate tax planning because they are well versed with the interpretation of law, act, statues, and various legislations in India in GST & other Tax laws and good communication skills in the following areas:

- To arrangement of business affairs in such a way so as to minimize tax liability.
- Planning a heavy capital outlay in the existing business.
- Addressing concerns about cash flow and examining tax inefficiencies.
- Ensuring that the tax function is aligned with the business plan.

Assessing the impact of any tax and regulatory changes/ amendments

Representation Services: The Appellate hierarchy in India consists of assessing officer, first appellate authority, Appellate Tribunal, High Court and Supreme Court. The Company Secretaries can provide the following range of services comprise of:

- Assisting in filing appeals before the appellate authorities and complying with appellate requirements and procedure;
- Determining the appeal strategy and approach and drafting of legal submissions;
- In-house service of the expert counsel with experience in representation before appellate authorities;
- Advising on the course of action to be adopted before revenue authorities to mitigate the risk of penal consequences;
- Reviewing pending litigation and other uncertain tax positions, to comment on adequacy of defense, probability of success and prevention of recurrence;
- Assisting the external legal counsel in preparing or representing for appeals, writ petition and special leave petition before the Supreme Court and court subordinate to it (High Court).

LESSON WISE SUMMARY

GOODS AND SERVICES TAX (GST) & CORPORATE TAX PLANNING

PART I - GOODS AND SERVICES TAX 'GST'

Lesson 1 – Overview on Goods and Services Tax 'GST'

Introduction of GST in India is one of the biggest tax reforms in the field of indirect taxation. GST is an indirect tax levied on supply of goods or services. GST has made this fact true ONE COUNTRY ONE TAX i.e., all over the country irrespective of any state rate of GST on any particular goods or service is uniform.

Since, India is a federal country so we have adopted dual model of GST (CGST and SGST). However, in case of supply from one state to another only IGST is applicable.

The coverage of the lesson would include:

- Constitutional background of GST;
- Models of GST, how and when CGST and SGST and IGST will be levied and collected;
- Basics about CGST, SGST, IGST, UTGST and GST Compensation to States;
- Exemption from GST.

Lesson 2 – Supply under GST

To understand the concepts of levy and collection under goods and service tax, we need to understand the concept of Supply. What is Supply? Supply includes - All forms of supply of goods and/or services and includes agreeing to supply when the supply is for a consideration and in the course or furtherance of business (as defined under Section 7 of the Act). It specifically provides for the inclusion of the following classes of transactions like sale, transfer, exchange, barter, license, rental, lease and disposal. The definition of supply is inclusive in nature which encompasses various forms of supply. Significantly, transfer of goods between two divisions of the same person or enterprise is also a 'supply' and leviable to tax.

Under this lesson students will learn the concepts of Levy and Collection of CGST and IGST, Deemed Supply, Composite and Mixed Supply, Inter-State Supply, Intra-State Supply and Supplies in Territorial Waters, Composition Scheme, Pure Agent, Forward Charge Mechanism and Reverse Charge Mechanism.

Lesson 3 – Time of Supply

The time of supply fixes the point when the liability to charge GST arises. It also indicates when a supply is deemed to have been made. The liability to pay CGST / SGST will arise at the time of supply as determined for goods and services. There are separate provisions for time of supply for goods and time of supply for services. Section 12 CGST Act prescribes the rules to determine the time of supply for goods and section 13 of the Act prescribes rules for services. The time of supply of goods shall be the earlier of the following dates, namely:-(a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or (b) the date on which the supplier receives the payment with respect to the supply.

Lesson 4 – Value of Supply

Value of supply determines value on which GST is payable. Valuation includes determining the value on which GST is payable by following the Valuation Rules and principles, contained in the GST law.

The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. In this lesson students will understand the Principles /Rules for Determination of Value of Supply and will come across the concept of Zero Rated Supply and Exempt Supply.

Lesson 5 – Input Tax Credit & Computation of GST Liability

Integrated GST, Central GST, State GST or Union Territory GST paid on inward supply of inputs, capital goods and services are called input taxes and its credit is Input Tax Credit (ITC). Company which distributes the input tax credit to various units on the basis of their previous year turnover is called input service distributor. There is no offset of ITC available between the CGST and the SGST.

GST is a consumption based tax levied on the basis of the "Destination principle." It is an inclusive tax regime covering both goods and services, to be collected on value-added at each stage of the supply chain. Provisions related to input tax credit, ITC where goods are sent on job-work, distribution of ITC by ISD, computation of GST & matters incidental thereto have been discussed in this lesson.

Lesson 6 – Procedural Compliance under GST

Procedural Compliances include the terms for eligibility of compulsory and voluntary registration and the persons exempt from registration and procedure thereby. The lesson explains the concept of TDS/TCS, Tax Invoices, and Debit & Credit Note including cases where Delivery Challan or Bill of Supply is needed instead.

The Act prescribes the Accounts and Records that an assessee should maintain. Electronic way Bills have been introduced under the GST Law for movement of goods. Under GST, various monthly, quarterly and annual returns are filed. Payment can be made via NEFT, RTGS, net banking, debit /credit card. Payment of tax and Refund Procedures are also contained in the given lesson.

Lesson 7 – Assessment, Audit, Scrutiny, Demand and Recovery, Advance Ruling, Appeals and Revision

This lesson consists of matters related to Assessment, Audit and Scrutiny Demand and Recovery, Advance Ruling, Appeals and Revision. "Assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

In the GST regime, the onus to declare and pay tax lies with the Tax Payer. It is in majority a process of self-declaration & self-assessment mechanism. However, there are many situations which detects wrong classification of supply, taxes collected but not paid, taxes short paid, wrong availment and utilisation of Input Tax Credits & the like. The process of levy, administration and collection of tax is completed through the Demand and Recovery process initiated by the Revenue Authorities.

Under the GST Act, taxpayers have been provided with a mechanism to get clarification or answers to the questions related to any specified matter or any matter related to the supply of goods and services. To get the clarification, a taxpayer can approach a body called AAR or Authority for Advance Ruling which then gives a decision in the form of Advance Ruling over the matter.

In cases where either the proper officer passes an order which is prejudicial to the interest of the taxpayer, the tax payer deserves the right to make an appeal against such orders passed, provided the grounds of appeal

are logical and legitimate & stands merit of law. The GST Act also provides for the mechanism of revision, by the Revisional Authority, of the orders passed by his subordinate officers.

Lesson 8 – Inspection, Search, Seizure, Offences & Penalties

This lesson consists the matters relating to inspection, search and seizure have been discussed. This part focuses on how the inspection of goods in motion may be made and how the power of arrest is exercised by the Revenue Authorities in the GST Regime. It lists out the offences which attracts penalties. Further what information are required to be submitted to the Revenue Authorities and failure of the same also attracts the penal provisions. It also discussed the circumstances under which the power to waive the penalty may be exercised and how the detention, seizure and release of goods and conveyance in transit are to be dealt with.

Lesson 9 – Compliance Rating, Anti-Profiteering, GST Practitioners, Authorised Representative

This lesson deals with Regulatory Framework for GST Compliance Rating, Concept of National Anti-Profiteering Authority & GST practitioners. Compliance Rating in GST seeks to bring transparency to the entire GST compliances and administration by way of assigning compliance ratings. In general, the concept of GST compliance rating is akin to a performance ranking / scale for all registered taxable persons based on their record of compliance with the provisions of the GST Act which tells how compliant they are with respect to the GST provisions.

After reading of this lesson, the students will be able to understand: Who can be GST Practitioner, Functions of GST Practitioners and who can be the authorized representative before the assessing authority in relation to the assessment and hearing and the students, being the future Company Secretaries, will be able to understand the concept.

PART II: CORPORATE TAX PLANNING

Lesson 10 – Corporate Tax Planning

Tax planning is an exercise undertaken to minimize tax liability through the best use of all available allowances, deductions, exemptions etc. The tax management involves the compliances of law regularly and timely as well as all arrangement of the affairs of the business in such manner that it reduces the tax liability. This lesson covers Concept & objects of Types of Tax Planning, Corporate Tax Planning, Tax management, Tax Avoidance and Tax Evasion.

Lesson 11 – Tax Planning and Nature of Business

Tax planning is also relevant at the time of deciding the nature of business. At the time of commencement of the new undertaking, the assessee has to think about which types of business must be started so that the assessee can plan the tax and save the tax. Under this lesson students will learn the concepts of Tax incentives for start-ups, Tax Incentives to Exporters and Deductions in respect of Investment in Specified Business, Deduction in respect of profits and Gains of enterprise engaged in Specified Business etc.

Lesson 12 – Tax Planning and Location of Business

The location of business undertaking plays a very important role in tax planning, where the business undertaking should be located is very important decision in tax planning. In this lesson students will come to know the Tax Provisions in respect of Free Trade Zone / Special Economic Zone and Tax Provisions in respect of Infrastructure Development & Investment in notified Backward Areas.

Lesson 13 – Tax Planning and Managerial Decisions

Tax planning is very important in relation to all of these management decisions and specific management decisions on various issues such as decisions to own or lease, make or buy, Shut-down or continue, Sale of Assets used for Scientific Research. There are so many tax provisions which affect the financial management decisions like Capital Structure & Dividend Policy, Inter-Corporate Dividends and Bonus Shares etc. This lesson covers Tax Planning with respect to own or Lease Decision, Make or Buy Decisions, Shut Down or Continue Decision, Capital structure & Dividend policy & Inter-Corporate Dividends and Bonus Shares.

Lesson 14 – Tax Planning and Business Restructuring

In the context of tax planning, restructuring of business is a process under which business entities re-arrange its business affairs in such a way so that tax liabilities reduce to minimize by taking legitimate benefits of all tax deductions rebates, allowances and exemptions. Business restructuring is the corporate governance term for the act of reorganizing the legal, ownership, operational or other structure of a business with the aim of making it more profitable or better organized to meet its current needs. Under this lesson tax planning in Business restructuring means planning in respect of Amalgamation, Mergers, Demerger, Foreign Collaboration & Slump Sale etc.

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LESSON 4

VALUE OF SUPPLY

LESSON 6

PROCEDURAL COMPLIANCE UNDER GST

LESSON 7

ASSESSMENT, AUDIT, SCRUTINY, DEMAND AND RECOVERY, ADVANCE RULING, APPEALS AND REVISION

PART II: CORPORATE TAX PLANNING

LESSON 10

CORPORATE TAX PLANNING

LESSON 11

TAX PLANNING AND NATURE OF BUSINESS

LESSON 13

TAX PLANNING AND MANAGERIAL DECISIONS

LESSON 14

TAX PLANNING AND BUSINESS RESTRUCTURING

PART I

GOODS & SERVICES TAX 'GST'

Overview on Goods and Services Tax 'GST'

Lesson 1

KEY CONCEPTS

■ GST ■ Indirect Tax ■ CGST ■ IGST ■ UTGST ■ SGST

Learning Objectives

To understand:

- History of Indirect Tax
- Need for adopting GST
- Dual GST
- Journey of GST
- Legislative framework of GST
- Provisions under the Indian Constitution
- Concept of GST

Lesson Outline

- Introduction
- Constitutional Aspects & Administration
- GST Models
- Basics about CGST, SGST, IGST, UTGST and GST Compensation to States
- Exemptions from GST
- Lesson Round-Up
- Test Yourself
- Other References

INTRODUCTION

The major source of revenue for the government is Indirect Taxes. The Central Board of Indirect Taxes & Customs ("CBIC") (erstwhile Central Board of Excise & Customs) is the apex regulatory body that supervises the levy and administration of Indirect Taxes in India. CBIC is a part of the Department of Revenue under the Ministry of Finance, Government of India. It deals with the tasks of formulation of policy concerning levy and collection of Customs, Central Excise duties, Central Goods & Services Tax and IGST, prevention of smuggling and administration of matters relating to Customs, Central Excise, Central Goods & Services Tax (CGST), IGST and Narcotics to the extent under CBIC's purview. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise and Central GST Commissionerates and the Central Revenues Control Laboratory. In the recent years, the Indian government has undertaken significant reforms under indirect taxation system. This includes the implementation of Goods and Services Tax (GST).

Goods and Services Tax (GST) is an Indirect Tax which has replaced many Indirect Taxes in India. The Goods and Service Tax Act was passed in the Parliament on March 29, 2017. The Act came into effect on July 01, 2017. GST is a destination based tax on consumption of goods and services. It is levied at all stages right from manufacture to final consumption with credit of taxes paid at previous stages available as set-off. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer.

Destination based tax on consumption means the tax would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply.

GST has removed the cascading effect of taxes. The cascading effect implies charging tax on tax. In other words, at the time of levy of tax, the total value is considered which is inclusive of all taxes paid up to that point. In this manner, if the tax is always charged on the selling price of the product, the burden of tax keeps on increasing at each point of sales. In this process, the effect of taxation magnifies as at each level tax is calculated on value, which includes taxes already levied and paid. The charging of tax on tax is called as 'Cascading Effect of Tax'.

The structure of Indirect Taxes in India upto June 30, 2017 was based on the Seventh Schedule of the Constitution of India. The Seventh Schedule has three lists, i.e., Union list, in which the Central Government is empowered to make laws, State list, in which the concerned State Governments only can make laws and third one is the Concurrent list, in which the Central as well as State Governments can make the laws. Each State was having its own tax laws on sale/purchase of goods. After the enactment of the Goods and Services Tax Act, 2017, which came into force with effect from 1st of July 2017, there is uniformity in collection of tax throughout the country.

Pre-GST, there were number of indirect taxes (at centre and state-level) being levied on goods and services. Because of this there were multiplicities of taxes being levied on same goods or services. Further rate of taxes were different in different states on the same goods. Further same goods were bearing taxes from the side of centre and state. As the taxes were being levied by different governments, the businesses were not allowed to take the benefit of taxes (paid at the time of purchase) against their tax liability.

Example-1: Before GST if a business manufactures goods then in general it has to pay, two taxes: Excise Duty (being levied by Central Government) and VAT (being levied by the concerned State Government where sale has been affected. Further a business is not allowed to take the benefit of Excise Duty paid to pay off VAT liability.

Example-2: If a dealer who is engaged in wholesale trade of goods, avails of some services for carrying out her/his businesses (services were subject to Service Tax being levied by Central Government), then such dealer was not allowed to take benefit of service tax paid to set off her/his VAT liability.

Thus, in pre-GST regime chain of Input Tax Credit (ITC) was not seamless. That is, from manufacturing to ultimate sale there were stages when credit of earlier tax paid was not available. As a result, there were instances of taxes were being levied on taxes (known as cascading effect). So there was a need to carry out some reform in this area of ITC and this problem has paved way to GST.

GST	=	A solution to all the deficiencies/ shortcomings present in the vat system

Some goods face tax at central level as well as at state level; this is because the before amendment in the Constitution, Central Government did not have right to levy tax on sale of goods within the state and states did not have right to levy tax on manufacturing of goods and also on services. So there was a need to amend the Constitution [Constitution (101st Amendment) Act, 2016] to empower both Governments to levy taxes on both goods and services and on both manufacture and sale.

GST Journey

The Kelkar Task Force on Fiscal Responsibility and Budget Management (FRBM) in 2005 recommended the introduction of a comprehensive tax on all goods and services replacing the Central-level VAT and State-level VATs.

It recommended replacing all indirect taxes except the customs duty with value added tax on all goods and services with complete set-off in all stages of a product making.

In the budget of 2006-07 the then Union Finance Minister announced that GST would be introduced with effect from April 1, 2010.

The implementation of GST was assigned to the Empowered Committee of State Finance Ministers (EC). In April, 2008, the EC submitted a report, titled "A Model and Road map for Goods and Services Tax (GST) in India" containing broad recommendations about the structure and design of the GST.

GST was launched on July 1, 2017

A dual GST model for the country had been proposed by the EC. This dual GST model had been accepted by centre. Under this model GST had two components viz., Central GST to be levied and collected by the Centre and the State GST to be levied and collected by the respective States. Central Excise duty, Additional Excise duty, Service Tax, and Additional duty of Customs (equivalent to Excise), State VAT, Entertainment Tax, Taxes on lotteries, Betting and Gambling and Entry tax (not levied by local bodies) would be subsumed within GST.

GST Journey started with GSTR 1, GSTR 2 and GSTR 3. GSTR 3 was replaced by a composite return GSTR 3B. GSTR 2 and GSTR 3 were suspended.

In 2018 E-way bill was introduced. The E-way Bill System was introduced nation-wide for Inter-State movement of goods with effect from April 1, 2018 while the States were given the option to choose any date till June 3, 2018 for the introduction of the E-way bill system for Intra-State supplies. Consequently, all the States had notified the E-way bill system for Intra-State supplies, the last being the National Capital Territory of Delhi which introduced it with effect from June 16, 2018.

Lots of reforms were announced in year 2019. Threshold limit was increased. An Integrated GST Refunds System was introduced for filing refund applications which increased transparency and ensured faster disposal of refunds.

Lot of extensions and reduction in Interest rate were given in 2020 owing to the COVID 19 pandemic. Recently, the e-invoicing system has been launched on a trial basis starting from January 2020 and applicable from October 2020. This system requires large businesses with an annual aggregate turnover of more than Rs.100 crore to comply with some requirements. They must obtain a unique invoice reference number for every business-to-business invoice by uploading on the GSTN's portal known as the invoice registration portal. The portal verifies

the correctness and genuineness of the invoice. Thereafter, it authorises using the digital signature along with a QR code.

E-Invoicing allows interoperability of invoices and helps reduce data entry errors. It is designed to pass the invoice information directly from the IRP to the GST portal and the e-way bill portal. It will, therefore, eliminate the requirement for manual data entry while filing ANX-1/GST returns and for the generation of part-A of the e-way bills.

CONSTITUTIONAL ASPECTS & ADMINISTRATION

The mother of every law in India is the Constitution. Therefore, to understand the GST it is necessary to understand the constitutional provisions behind the GST law.

In India has a three-tier federal structure, comprising the Union Government, the State Governments and the Local Government. The power to levy taxes and duties is distributed among the three tiers of Governments, in accordance with the provisions of the Indian Constitution.

The Constitution (One Hundred and First Amendment) Bill, 2014 has been passed by Lok Sabha on May 6, 2015. It has been passed by Rajya Sabha on August 03, 2016 after making certain amendments. These amendments have been approved by Lok Sabha. The Bill was ratified by 17 States. It received President assent on September 8, 2016 and became the Constitution (101st Amendment) Act, 2016, which paved the way for introduction of GST in India.

The Constitution of India is the supreme law of India. It consists of a Preamble, 25 parts containing 448 Articles and 12 Schedules.

- **Article 265:** Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that "no tax shall be levied or collected except by authority of law". The term "authority of law" means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.
- **Article 245:** Part XI of the Constitution deals with relationship between the Union and States. The power for enacting the laws is conferred on the Parliament and on the Legislature of a State by Article 245 of the Constitution.
- **Article 246:** It gives the respective authority to Union and State Governments for levying tax. Whereas Parliament may make laws for the whole of India or any part of the territory of India, the State Legislature may make laws for whole or part of the State.
- **Article 246A:** Power to make laws with respect to Goods and Services Tax.

Newly Inserted Article 246A

(1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, of services, or both takes place in the course of Inter-State trade or commerce.

Explanation: The provisions of this article, shall, with respect to goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

- Article 248 amended : Residuary powers of legislation amended.

  Article 248 grants the residuary powers to Parliament to make laws with respect to any matter not enumerated in the Concurrent List or State List.

Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists. This article has been amended. Now, this power has been subjected to Article 246A, namely the power to make laws with respect to Goods and Services Tax to be imposed by the Centre and States.

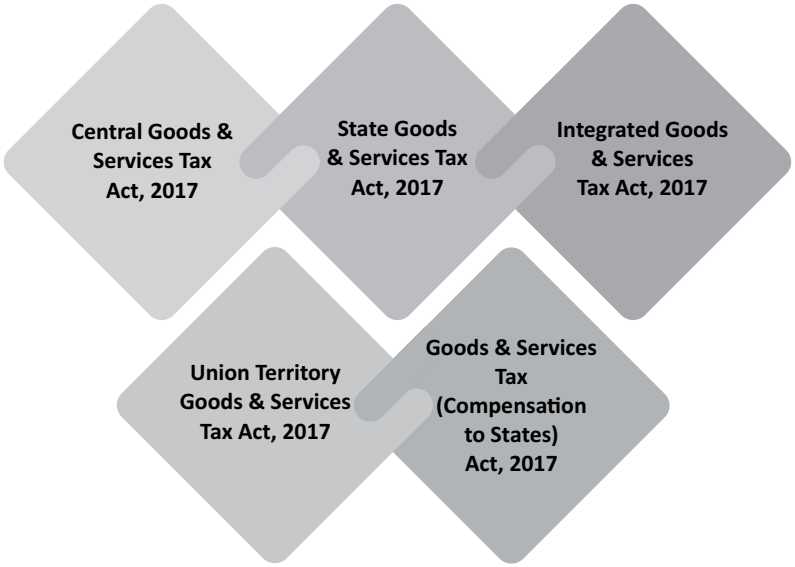
As provided for in Article 279A of the Constitution, the Goods and Services Tax Council (GST Council) was notified with effect from September 12, 2016.

Article 366(12A) of the Constitution as amended by 101st Constitutional Amendment Act, 2016 defines the GST as a tax on supply of goods or services or both, except supply of alcoholic liquor for human consumption. Five petroleum products viz., petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel have temporarily been kept out and GST Council shall decide the date from which they shall be included in GST. Furthermore, electricity has been kept out of GST.

GST MODELS

The Dual GST Model refers to a concept where both the Centre and States simultaneously levy taxes on the supply of goods and services while the administration is run separately. India has adopted a dual GST model, i.e., where the tax is imposed concurrently by the Centre and the States. For an intra-State sale, the GST is equally divided between the Centre and the State (CGST + SGST), and for inter-State sales, the GST is collected by the Centre (IGST). Sections 7 and 8 of the IGST Act deal with the criteria for determining whether a supply is inter-State or intra-State in nature.

GST consists of the following Acts:



BASICS ABOUT CGST, SGST, IGST, UTGST AND GST COMPENSATION TO STATES

Following are the Acts under GST which were passed and received the President's assent on April 12, 2017 and became effective from July 1, 2017:

(1) The Central Goods and Services Tax Act, 2017 (CGST),

(2) The Integrated Goods and Services Tax Act, 2017 (IGST),

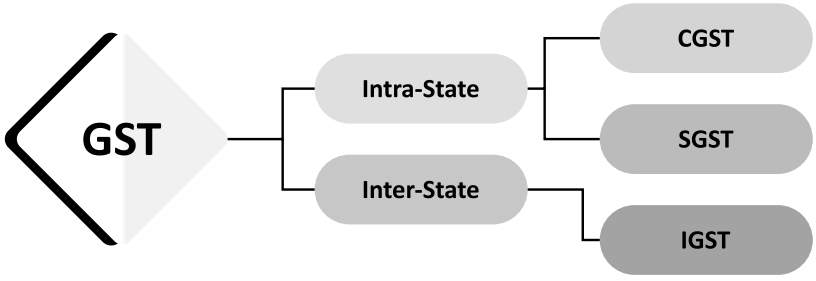
(3) The Union Territory Goods and Services Tax Act, 2017 (UTGST),

(4) The Goods and Services Tax (Compensation to States) Act, 2017 (Compensation Cess).

The Central and State governments have simultaneous powers to levy the GST on intra-State supply. However, the Parliament alone has exclusive power to make laws with respect to levy of goods and services tax on inter-State supply.

- GST is a destination-based tax applicable on all taxable events, involving supply of goods or services or both. **Central Goods & Services Tax (CGST)**, levied by the Central Government and **State Goods and Services Tax (SGST)**, levied by the State Government.
- **Union Territory Goods and Services Tax (UTGST)** levied by Union Territories, on intra-State supplies of taxable goods or services or both.

Inter-State supplies of taxable goods/services are subject to Integrated Goods & Services Tax (IGST), which is levied by the Central Government.



CGST: Central Goods and Services Tax

It is levied & collected under the authority of CGST Act, 2017 passed by the Parliament. It is a tax levied on intra-State Supplies of both goods and services by the Central Government and is governed by the CGST Act, 2017.

SGST: State Goods and Services Tax

It is levied & collected under the authority of SGST Act, 2017 passed by respective State. It is a tax levied on intra-State Supplies of both goods and services by the State Government and is governed by the SGST Act, 2017.

IGST: Integrated Goods and Services Tax

The Integrated Goods and Services Tax Act, 2017 passed by the Parliament for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

The Union Government presented the Integrated Goods and Service Tax Bill, 2017 in Lok Sabha and it was passed by the same on 29th March, 2017. The Rajya Sabha passed the bill on 6th April, 2017 and was assented to by the President on 12th April, 2017.

IGST is levied and collected by the Centre on inter-State supply of goods and/or services. As per Article 269A of the Constitution, Goods and services tax on supplies in the course of inter-state trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. IGST paid is available as credit to set off against the payment of IGST, CGST and SGST on output supplies.

The IGST mechanism ensures that the tax money goes to the state where consumption takes place. IGST can be viewed as a smart-accounting mechanism serving a clearing house function in inter-state supplies to ensure that the tax money goes to the correct state.

IGST (Integrated Goods & Services Tax) Act, 2017 deals with supplies interstate, import into India and supplies made outside India. The following table illustrates the same.

SUPPLY	*TAX / TAXES*
intra-State	CGST+ SGST
intra-Union Territory	CGST+ UTGST
inter-State/ import/ SEZ	IGST

IGST is applicable all over India including the state of Jammu & Kashmir vide The Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017 w.e.f. July 08, 2017.

IGST is a mechanism to monitor the inter- State trade of goods and services and ensure that the SGST component accrues to the consumer State. It maintains the integrity of ITC chain in inter-State supplies. The IGST rate is broadly equal to CGST rate plus SGST rate. IGST would be levied by the Central Government on all inter-State transactions of taxable goods or services.

IGST rate= CGST rate + SGST rate

Cross-utilisation of credit requires the transfer of funds between respective accounts. The utilisation of credit of CGST & SGST for payment of IGST would require the transfer of funds to IGST accounts. Similarly, the utilisation of IGST credit for payment of CGST & SGST would necessitate the transfer of funds from IGST account.

The IGST payment can be done by utilising the ITC. The amount of ITC on account of IGST is allowed to be utilised towards the payment of IGST, CGST and SGST/UTGST.

UTGST: Union Territory Goods and Services Tax

It is levied & collected under the authority of UTGST Act, 2017 passed by the Parliament. This is applicable to Union Territories. UTGST applicable territories as mentioned in Section 2 of UTGST Act, 2017 are Andaman and Nicobar Islands; Lakshadweep; Dadra & Nagar Haveli; Daman and Diu; Chandigarh and Other territories.

GST Compensation to States

One of the biggest challenges while introducing GST in India was that states were opposing GST, because of their fear of losing revenue after introduction of GST. The fear was more pronounced in case of manufacturing/ supplier states since the GST was to accrue to the state(s) where the actual consumption of goods takes place as **GST is a destination-based tax.**

In order to assure steady flow of revenues to the states by way of compensating the loss, if it arises, Clause 18 of the Constitution (One Hundred And First Amendment) Act, 2016 specifically provided that the Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

In line with the Constitutional amendment, the Government enacted the legislation known as, **the Goods and Services Tax (Compensation To States) Act, 2017** for providing compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force (01/07/2017), for a period of five years or for such period as may be prescribed on the recommendations of the GST Council.

Compensation Cess is levied as per section 8(1) of the Goods and Service Tax (Compensation to States) Act, 2017. As per this section, Compensation Cess is levied on notified supply of goods or services or both for the purpose of providing compensation to the States for loss of revenue for 5 years or for such period as may be prescribed.

(a) Projected Growth Rate: Section 3 of the Goods and Service Tax (Compensation to States) Act, 2017 provides that the projected nominal growth rate of revenue subsumed for a State during the transition period shall be fourteen per cent (14%) per annum.

(b) **Base Year:** Section 4 of the Goods and Service Tax (Compensation to States) Act, 2017provides that for the purpose of calculating the compensation amount payable in any financial year during the transition period, the financial year ending 31st March, 2016, shall be taken as the base year. Thus base year for this purpose is 2015-16.

(c) **Projected Revenue:** Section 6 of the Goods and Service Tax (Compensation to States) Act, 2017 provides that "The projected revenue for any year in a State shall be calculated by applying the projected growth rate over the base year revenue of that State.

Illustration – If the base year revenue for 2015-16 for a concerned State, calculated as per section 5 is one hundred rupees, then the projected revenue for financial year 2018-19 shall be as follows – Projected Revenue for 2018-19=100 (1+14/100)3 = 148.15

EXEMPTIONS FROM GST

The Central or State Government are empowered to grant exemption to the Goods or Services from tax either absolute or conditional, which should be in the public interest on recommendation from the council by way of issue of notification. Government offers exemptions which are based on goods and services consumed by low income people, people living in disadvantaged regions and so on. Central Government has the power to grant exemption on goods and / or services in the public interest generally or by special order.

General exemption is granted by **notification** and is available to all persons. It may be absolute or conditional. Such exemption may be total or partial.

Specific, also known as *ad hoc* exemption is granted to persons under circumstances of an exceptional nature by a **special order** communicated to the party seeking exemption. Example: charitable, educational, scientific, research, defence purpose etc.

Central Government also has the power to interpret by an explanation the provisions of the notification or order at a later date but within one year which has retrospective effect.

Meaning of exempt Supply:

Section 2(47) of CGST Act, 2017 provides that "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 of Central Goods and Services Tax Act, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Thus, Exempt supply includes the supply of following type of goods and services:

(a) Supply attracting nil rate of tax; e.g., Jaggery, Salt, Tender Coconut Water, Cereals etc.

(b) Supplies wholly exempt from tax;

(c) Non-taxable supply.

Section 11 of CGST Act, 2017- Power to Grant Exemption from Tax

(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification exempt generally, either absolutely or subject to such conditions as may be

specified therein, goods or services or both of any specific description from the whole or any part of the tax that can be levied thereon with **effect** from such date as may be **specified** in such notifications.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

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

Section 6 of IGST Act, 2017-Power to Grant Exemption from IGST

(1) Where the Government is satisfied that it is necessary in public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an Explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such Explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

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

Distinctions between General Exemption and Specific (Special Order) Exemption

General Exemption [Section 11(1) of CGST Act, 2017]	***Exemption By Special Order [Section 11(2) of CGST Act, 2017]***
This is granted by a notification	This is granted by a special order
This is goods/ services specific. Any supplier supplying these notified goods or services can enjoy the exemption	This is person specific and purpose specific. The goods are generally chargeable but exempted in special circumstances and hence not available to all persons generally

It may be absolute or conditional. If absolute, the supplier has to avail it and he can collect tax only at effective rates.	No such distinction
It may be partial or total	It is always total

Both the exemptions are granted in the public interest and both can be explained within one year of issue by the government. All the exemptions are based on the recommendations of the GST Council.

Goods exempt from Tax [Notification No. 2/2017- Central Tax (Rate) dated June 28, 2017]*

Essential goods that have been exempted under GST, some of the key ones are:

(a) Unbranded atta / besan / maida
(b) Unpacked food grains
(c) Fresh Milk
(d) Eggs
(e) Curd
(f) Fresh vegetables
(g) Salt
(h) Plastic Bangles
(i) Live Fish
(j) Indian National Flag

Zero Rated Supply

Section 16 (1) IGST Act provides that "Zero Rated Supply" means any of the following supplies of goods or services or both, namely:–

- Export of goods or services or both; or
- Supply of goods or services or both for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit.

Section 16(2) of the IGST Act, 2017 provides that subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, 2017, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

It means that even though one is not required to pay output tax on zero rated supply, the supplier is eligible to avail input tax credit in respect of such supply. Section 16(3) provides that a registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

However, a condition has been imposed that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management act, 1999 for receipt of foreign exchange remittances.

**https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification-for-CGST-exemption.pdf*

Students may note that hitherto, the person making zero rated supplies was permitted to charge output tax on such supplies and later claim refund of such tax under section 54 of the CGST Act. However, in the Finance Act, 2021, the legislature has withdrawn such general provision and delegated powers to the Government to grant such facility to specific class of persons or specific class of goods or services based on the recommendation of GST Council. Section 16(4) inserted in the IGST Act, 2017 thus reads as below:

The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Thus, any export of goods or services and supply to SEZ developer or unit for authorized operations is termed as zero-rated supply. The supplier is eligible to avail input tax credit in relation to such supply. The input tax credit so availed can be utilized towards payment of output tax against other taxable supplies or can be claimed as refund subject to the condition that the export proceeds are realized within the time line permissible under FEMA.

CASE LAWS

In Re. Carnation Hotels Private Limited (2019) - GST AAR Karnataka

Accommodation services provided to SEZ units are to be treated as zero rated supplies.

The applicant having registered office in New Delhi proposed to operate hotels and rent out the rooms to the employees of SEZ units sought advance ruling whether such accommodation services rendered by the applicant to SEZ units can be treated as 'zero rated supplies' under GST.

Under GST, Supply of goods/services or both to a SEZ Developer/Unit are treated as 'Zero Rated Supplies'. Supply to SEZ developer/units shall be treated as such only if those are used towards authorized operations by SEZ.

GST AAR Karnataka held that if the hotel or accommodation services received by SEZ developer/ unit for authorized operations, as endorsed by the specified officer of the zone, the benefit of zero rated supply shall be available to the supplier. Therefore, accommodation services supplied by the applicant to SEZ units are to be treated as 'zero rated supplies'.

Difference between Nil Rated, Exempt, Zero Rated and Non-GST Supplies

Supply Name	*Description*
Zero Rated	Exports Supplies made to SEZ or SEZ Developers. ITC can be availed.
Nil Rated	Supplies that have a declared rate of 0% GST. ITC cannot be availed. *Example*: Salt, grains, jaggery etc.
Exempt	Supply which attracts Nil rate of tax or which are specifically exempt from GST through government notification and includes non-taxable supply. ITC cannot be availed. *Example*: Fresh milk, Fresh fruits, Curd, Bread etc.
Non-GST	These supplies do not come under the purview of GST law. ITC cannot be availed. *Example*: Alcohol for human consumption, Petrol etc.

Services Exempt from Tax [Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017]

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
1.	Services by an entity registered under section 12AA and 12AB of the Income-tax Act, 1961 by way of charitable activities.
2.	Services by way of transfer of a going concern, as a whole or an independent part thereof.
3.	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to- ➢ the Central Government, ➢ State Government, or ➢ Union territory, or ➢ local authority, or by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.
3A.	**Composite Supply** of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
4.	Services **by** Governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution.
5.	Services **by** ➢ a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.
6.	Services **by** the **Central Government, State Government, Union Territory or Local Authority** excluding the following services - (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any services, other than services covered under entries (a) to (c) above, provided to business entities.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
7.	Services provided **by** ➢ The Central Government, ➢ State Government, ➢ Union territory, or ➢ Local authority to a business entity with an aggregate turnover of to **such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017**. Explanation: For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to – (a) services, – (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers; and (b) services by way of renting of immovable property.
8.	Services provided **by** – ➢ The Central Government, ➢ State Government, ➢ Union Territory, or ➢ Local Authority to another Central Government, State Government, Union territory or local authority: **Provided** that nothing contained in this entry shall apply to services - (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
9.	Services provided **by** ➢ Central Government, ➢ State Government, ➢ Union Territory, or ➢ A Local Authority where the consideration for such services does not exceed five thousand rupees (Rs.5000): **Provided** that nothing contained in this entry shall apply to - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers: **Provided further** that in case where continuous supply of service, as defined in sub-section **(33)** of section 2 of the Central Goods and Services Tax Act, **2017,** is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed five thousand rupees (Rs.5000) in a financial year.
9A	Services provided by and to Federation Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India. **Provided** that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 World Cup 2017.
9AA	Services provided by and to Federation Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India (whenever rescheduled). **Provided** that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 Women's **World Cup 2020**.
9AB	Services provided by and to Asian Football Confederation (AFC) and its subsidiaries directly or indirectly related to any of the events under AFC Women's Asia Cup 2022 to be hosted in India.
9B	Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).
9C	Supply of service by a Government Entity to Central Government, State Government, Union Territory, Local Authority or any person specified by Central Government, State Government, Union Territory or Local Authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
9D	Services by an old age home run by Central Government, State Government or by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 to its residents (aged 60 years or more) against consideration upto twenty five thousand rupees (Rs. 25,000) per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.
10	Services provided **by** way of ➢ pure labour contracts of ➢ construction, ➢ erection, ➢ commissioning, ➢ installation, ➢ completion, ➢ fitting out, ➢ repair, ➢ maintenance, ➢ renovation, ➢ or alteration of a civil structure or any other original works pertaining to the Beneficiary-led individual house construction or enhancement under the Housing for **All (Urban) Mission** or Pradhan Mantri Awas Yojana.
10A	Services supplied **by** electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use.
11.	Services **by** way of pure labour contracts of ➢ construction, ➢ erection, ➢ commissioning, or ➢ installation of original works pertaining to a **single residential unit** otherwise than as a part of a residential complex.
11A	Service provided **by** Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin.
12.	Services by way of renting of residential dwelling for use as residence.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
13.	Services **by** a person by way of - (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned or managed by ➢ an entity registered as a charitable or religious trust under section 12AA or 12 AB of the Income- tax Act, 1961 (hereinafter referred to as the Income-tax Act), or ➢ a trust or an institution registered under sub-clause (v) of clause (23Q of section 10 of the Income-tax Act, or a body or an authority covered under clause (23BBA) of section 10 of the Income-tax Act: **Provided** that nothing contained in entry (b) of this exemption shall apply to,- (i) renting of rooms where charges are Rs. 1000 or more per day; (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are Rs. 10,000 or more per day; (iii) renting of shops or other spaces for business or commerce where charges are Rs. 10,000 or more per month.
14.	Services **by** a ➢ hotel, inn, guest house, club or campsite, by whatever name called, ➢ for residential or lodging purposes, ➢ having value of supply of a unit of accommodation below or equal one thousand rupees per day or equivalent.
15.	Transport of passengers, with or without accompanied belongings**, by** (a) air, embarking from or terminating in an airport located in the state of ➢ Arunachal Pradesh, ➢ Assam, ➢ Manipur, ➢ Meghalaya, ➢ Mizoram, ➢ Nagaland, ➢ Sikkim, ➢ Tripura, or ➢ at Bagdogra located in West Bengal. (b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than air-conditioned stage carriage.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
	However, nothing contained in items (b) and (c) above shall apply to services supplied through an Electronic Commerce Operator (ECO), and notified under section 9(5) of the CGST Act, 2017.
16.	Services provided ➢ to the Central Government, ➢ by way of transport of passengers with or without accompanied belongings, ➢ by air, ➢ embarking from or terminating at a regional connectivity scheme airport, ➢ against consideration in the form of viability gap funding: **Provided** that nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.
17.	Service of transportation of passengers, with or without accompanied belongings, **by-** (i) railways in a class other than- (A) first class; or (B) an air-conditioned coach; (ii) metro, monorail or tramway; (iii) inland waterways; (iv) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (v) metered cabs or auto rickshaws (including e-rickshaws). However, nothing contained in item (v) above shall apply to services supplied through an (ECO), and notified under section 9(5) of the CGST Act, 2017.
18.	Services **by** way of transportation of goods (a) by road except the services of- (A) a goods transportation agency; or (B) a courier agency. (b) by inland waterways.
19.	Services **by** way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.
19A.	Services **by** way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India. Nothing contained in this serial number shall apply after the 30th day of September, 2022.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
19B.	Services **by** way of transportation of goods by a vessel from customs station of clearance in India to a place outside India. Nothing contained in this serial number shall apply after the 30th day of September, 2022.
19C.	Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited.
20.	Services **by** way of transportation by **rail or a vessel** from one place in India to another of the following goods- (i) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (ii) defence or military equipments; (iii) newspaper or magazines registered with the Registrar of Newspapers; (iv) railway equipments or materials; (v) agricultural produce; (vi) milk, salt and food-grain including flours, pulses and rice; and (vii) organic manure.
21.	Services provided **by** a **goods transport** agency, by way of transport in a goods carriage of,- (a) agricultural produce; (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees; (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty; (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (h) defence or military equipments.
21A.	Services provided **by** a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely :- (a) any factory registered under or governed by the factories Act, 1948 (63 of 1948); or (b) any Society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any Co-operative Society established by or under any law for the time being in force; or

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
	(d) any body corporate established, by or under any law for the time being in force; or (e) any partnership firm whether registered or not under any law including association of persons; (f) any casual taxable person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.
21B.	Services provided **by** a goods transport agency, by way of transport of goods in a goods carriage, to, - (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services.
22.	Services **by** way of giving on hire - (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically operated vehicle meant to carry more than twelve passengers; or ***Explanation.*** - For the purposes of this entry, "Electrically operated vehicle" means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle. (b) to a goods transport agency, a means of transportation of goods; (c) motor vehicle for transport of students, faculty and staff to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.
23.	Service **by** way of access to a road or a bridge on payment of toll charges.
23A.	Service **by** way of access to a road or a bridge on payment of annuity.
24.	Services **by** way of loading, unloading, packing, storage or warehousing of rice.
24A.	Services **by** way of warehousing of minor forest produce.
24B.	Services **by** way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea.
25.	Transmission or distribution of electricity by an electricity transmission or distribution utility.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
26.	Services **by** the **Reserve Bank of India**.
27.	Services **by** way of- (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) *inter se* sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers.
27A.	Services provided **by** a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
28.	Services of life insurance business provided **by** way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).
29.	Services of life insurance business provided or agreed to be provided ➢ **by** the Army, Naval and Air Force Group Insurance Funds; ➢ **to** members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
29A.	Services of life insurance provided or agreed to be provided **by** the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.
29B.	Services of life insurance provided or agreed to be provided **by** the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.
30.	Services **by Employees' State Insurance Corporation** to persons governed under the Employees' Insurance Act, 1948.
31.	Services provided **by Employees Provident Fund Organisation** to persons governed under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.
31A.	Services **by** Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.
31B.	Services **by** National Pension System (NPS) Trust to its members against consideration in the form of administrative fee.
32.	Services provided **by** Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999.
33.	Services provided **by** the ➢ Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 ; ➢ by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
34.	Services **by** an acquiring bank, ➢ to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service. ***Explanation*** - For the purposes of this entry, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.
34A.	Services supplied **by** Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.
35.	Services of **General Insurance business** provided under following schemes- (a) Hut Insurance Scheme; (b) Cattle Insurance under Swamajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) Premia collected on export credit insurance; (h) Restructured Weather Based Crop Insurance Scheme (RWCIS) approved by the Government of India and implemented by the Ministry of Agriculture; (i) An Arogya Bima Policy; (j) Pradhan Mantri Fasal Bima Yojna (PMFBY); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; or (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha Bima Yojna; (q) Niramaya Health Insurance Scheme implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 ; or (r) Bangla Shasya Bima.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
36.	Services of Life Insurance business provided under following schemes- (i) Janashree Bima Yojana; or (ii) Aam Aadmi Bima Yojana; (iii) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of two lakh rupees; (iv) Varishtha Pension Bima Yojana; (v) Pradhan Mantri Jeevan Jyoti Bima Yojana; (vi) Pradhan Mantri Jan Dhan Yojana; (vii) Pradhan Mantri Vaya Vandan Yojana.
36A.	Services **by** way of reinsurance of the insurance schemes specified in serial number 35 or 36 or 40.
37.	Services **by** way of collection of contribution under Atal Pension Yojana.
38.	Services **by** way of collection of contribution under any **pension scheme** of the State Governments.
39.	Services **by** the following persons in respective capacities- (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch; (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in clause (a); or (c) business facilitator or a business correspondent to an insurance company in a rural area.
39A.	Services **by** an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR). ***Explanation.*** - For the purposes of this entry, the intermediary of financial services in IFSC is a person,- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.
40.	Services provided **to** the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, and Union Territory.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
41.	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent, or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area. ***Explanation.*** - For the purpose of this exemption, the Central Government, State Government or Union territory shall have 50 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union Territory. **Provided** that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area : **Provided further** that the State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard: **Provided also** that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty : **Provided also** that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub-lessee, **as well as** any subsequent lease **or** sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.
41A.	Service **by** way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under : [GST payable on TDR or FSI (including additional FSI) or both for construction of the project] × (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project) **Provided** that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate or first occupation of the project, as the case may be, in the following manner- [GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein] × (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project).

Sr. No.	Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017
	Provided further that tax payable in terms of the first proviso hereinabove shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation. The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier. Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 1-4- 2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] × (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).
41B.	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 1-4-2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under: [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] × (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)]. **Provided** that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner - [GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] × (carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project).

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
	Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation. The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.
42.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union territory, ➢ a local authority, ➢ by way of allowing a business entity to operate, ➢ as a telecom service provider, or ➢ use radio frequency spectrum. during the period prior to 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be.
44.	Services provided **by** an incubate **upto a total turnover of fifty lakh rupees** in a financial year subject to the following conditions, namely:- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubate.
45.	Services provided **by-** (a) an arbitral tribunal to- (i) any person other than a business entity; or (ii) a business entity with a turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017); (iii) the Central Government, State Government, Union Territory, Local Authority, Governmental Authority or Governmental Entity. (b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to- (i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or

Sr. No.	Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017
	(iii) a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017); or (iv) the Central Government, State Government, Union Territory, Local Authority, Governmental Authority or Governmental Entity. (c) a senior advocate by way of legal services to- (i) any person other than a business entity; (ii) a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 (12 of 2017); or (iii) the Central Government, State Government, Union Territory, Local Authority, Governmental Authority or Governmental Entity.
46.	Services **by** a veterinary clinic in relation to health care of animals or birds.
47.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union territory, or ➢ a local authority by way of- (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.
47A.	Services **by** way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.
48.	Taxable Services, provided or to be provided, ➢ **by** a Technology Business Incubator, ➢ a Science and Technology Entrepreneurship Park recognized by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India; ➢ bio-incubators recognized by the Biotechnology Industry Research Assistance Council, under Department of Biotechnology, Government of India.
49.	Services **by** way of ➢ collecting or providing news by ➢ an independent journalist, ➢ Press Trust of India, or ➢ United News of India.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
50.	Services of **public libraries by** way of lending of ➢ books, ➢ publications, or ➢ any other knowledge-enhancing content or material.
51.	Services provided **by** the Goods and Services Tax Network to the Central Government or State Governments or Union Territories for implementation of Goods and Services Tax.
52.	Services **by** an **organiser** ➢ to any person in respect of a business exhibition, ➢ held outside India.
53.	Services **by** way of sponsorship of sporting events organised,- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country; (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympics Committee of India or Special Olympics Bharat; (c) by Central Civil Services Cultural and Sports Board; (d) as part of national games, by Indian Olympic Association; or (e) under Panchayat Yuva Kreeda Aur Khel Abhivaan Scheme.
53A.	Services **by** way of fumigation in a warehouse of agricultural produce.
54.	Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce **by** way of- (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; or (ii) supply of farm labour; (iii) processes earned out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; (v) loading, unloading, packing, storage or warehousing of agricultural produce; (vi) agricultural extension services; (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce; (viii) services by way of fumigation in a warehouse of agricultural produce.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
55.	Carrying out an **intermediate production process as job work** in relation to ➢ cultivation of plants, ➢ rearing of all life forms of animals, except, ➢ the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.
55A.	Services **by** way of artificial insemination of livestock (other than horses).
56.	Services **by** way of slaughtering of animals.
57.	Services **by** way of ➢ pre-conditioning, ➢ pre-cooling, ➢ ripening, ➢ waxing, ➢ retail packing, ➢ labeling. of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.
58.	Services provided **by** ➢ National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation; and ➢ Farmer's Welfare by way of cold chain knowledge dissemination.
59.	Services **by** a foreign diplomatic mission located in India.
60.	Services **by** a specified organization in respect of a **religious pilgrimage** facilitated by the Government of India, under bilateral arrangement.
61.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union territory, or ➢ a local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.
61A	Services **by** way of granting National Permit to a goods carriage to operate through-out India/ contiguous States.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
62.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union territory, or ➢ a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.
63.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union territory, or ➢ a local authority. by way of assignment of right to use natural resources to ➢ an individual farmer for, ➢ cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fiber, fuel, raw material or other similar products.
64.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union territory, or ➢ a local authority. by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016: **Provided** that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.
65.	Services provided **by** ➢ the Central Government, ➢ State Government, ➢ Union territory, or by way of deputing officers after office hours or on holidays ➢ for inspection, ➢ or container stuffing, or ➢ such other duties in relation to import export cargo on payment of Merchant Overtime Charges (MOT).

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
65A.	Services **by** way of providing information under the Right to Information Act, 2005 (22 of 2005).
65B.	Services supplied **by** a State Government to Excess Royalty Collection contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders. ***Explanation -*** "mining lease holder" means a person who has been granted mining lease, quarry lease or license or other mineral concession under the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the rules made thereunder or the rules made by a State Government under sub- section (1) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. **Provided** that at the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of goods and services tax deposited by mining lease holders on royalty is more than the goods and services tax exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and where such amount of goods and services tax paid by mining lease holders is less than the amount of goods and services tax exempted, the exemption shall be restricted to such amount as is equal to the amount of goods and services tax paid by the mining lease holders and the ERCC shall pay the difference between goods and services tax exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and goods and services tax paid by the mining lease holders on royalty.
66.	Services provided - (a) **by** an educational institution to its students, faculty and staff; (aa) **by** an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee. (b) to an educational institution, by way of,- (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or housekeeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution; (v) supply of online educational journals or periodicals. **Provided** that nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent. **Provided** further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of, - (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
67.	Omitted w.e.f. 01.01.2019
68.	Services provided to a recognized sports body **by** (a) an individual as ➢ a player, ➢ referee, ➢ umpire, ➢ coach, or ➢ team manager for participation in a sporting event organized by a recognized sports body; (b) another recognized sports body.
69.	Any services provided **by,-** (i) the National Skill Development Corporation set up by the Government of India; (ii) a Sector Skill Council approved by the National Skill Development Corporation; (iii) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation; (iv) a training partner approved by the National Skill Development Corporation or the Sector Skill Council in relation to (a) the National Skill Development Programme implemented by the National Skill Development Corporation; or (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (c) any other Scheme implemented by the National Skill Development Corporation.
70.	Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under **Skill Development Initiative Scheme**.
71.	Services provided **by** training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by National Council for Vocational Training.
72.	Services provided **to** the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration.
73.	Services provided **by** cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
74.	Services **by** way of- (a) Health care services by a clinical establishment, an authorised medical practitioner or para-medics; (b) Services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
74A.	Services provided **by** rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA of the Income-tax Act, 1961.
75.	Services provided **by** operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.
76.	Services **by** way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.
77.	Service **by** an unincorporated body or a non-profit entity registered under any law for the time being in force, to **its own members** by way of reimbursement of charges or share of contribution- (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or (c) up to an amount of seven thousand five hundred rupees (Rs. 7500/-) per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.
77A.	Services provided **by** an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in, - (i) Activities relating to the welfare of industrial or agricultural labour or farmers; or (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of one thousand rupees (Rs 1000/-) per member per year.
78.	Services **by** an artist by way of a performance in folk or classical art forms of: (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is **not more than one lakh and fifty thousand rupees**: **Provided** that the **exemption shall not apply** to service provided by such artist as a brand ambassador.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
79.	Services **by** way of admission to - ➢ a museum, ➢ national park, ➢ wildlife sanctuary, ➢ tiger reserve, or ➢ zoo.
79A.	Services **by** way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any of the State Acts, for the time being in force.
80.	Services **by** way of training or coaching in recreational activities relating to arts or culture, or sports by charitable entities registered under section 12AA of Income-tax Act, 1963.
81.	Services **by** way of right to admission to- (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; (c) recognised sporting event; (d) planetarium, where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than Rs. 500/- per person.
81A.	Services **by** way of right to admission to the events organised under FIFA U-17 World Cup 2017.
82.	Services **provided** to the United Nations or a specified international organization is exempt by way of refund.
82A.	Services **by** way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020.
82B	Services **by** way of right to admission to the events organised under AFC Women's Asia Cup 2022.
Description of services which are exempt under IGST only	
83.	Services **provided** to a foreign diplomatic mission or consular post in India or for personal use or for the use of the family members of diplomatic agents or career consular officers posed therein, is exempt by way of refund.
84.	Services **by** the Central Government or State Government or any local authority by way of any activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution is neither a supply of goods nor a supply of service.

Sr. No.	*Description of Services exempted both under the CGST Act, 2017 and IGST Act, 2017*
85.	Services **received** from a provider of service located in a non-taxable territory by (a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities; or (ba) way of supply of online education journals or periodicals to an educational institution other than an institution providing services by way of- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) educational as a part of an approval vocational education course. (c) a person located in a non-taxable territory: **Provided** that the exemption shall not apply to - (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.
86.	Services **received by** the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves.
87.	Services **provided by** a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.

LESSON ROUND-UP

- GST is one of the most demanding reforms in the field of indirect taxation. GST is an indirect tax which has replaced many indirect taxes like excise duty, service tax, VAT, CST and many other central and state level taxes.
- The Dual GST Model refers to a concept where both the Centre and States simultaneously levy taxes on the supply of goods and services while the administration is run separately. India has adopted a dual GST model, i.e., where the tax is imposed concurrently by the Centre and the States. For an intra-State sale, the GST is equally divided between the Centre and the State (CGST + SGST), and for inter-State sales, the GST is collected by the Centre (IGST). Sections 7 and 8 of the IGST Act deal with the criteria for determining whether a supply is inter-State or intra-State in nature.
- CGST: Central Goods and Services Tax is levied & collected under the authority of CGST Act, 2017 passed by the Parliament. It is a tax levied on intra- State Supplies of both goods and services by the Central Government and is governed by the CGST Act, 2017.
- SGST: State Goods and Services Tax is levied & collected under the authority of SGST Act, 2017 passed by respective State. It is a tax levied on intra- State Supplies of both goods and services by the State Government and is governed by the SGST Act, 2017.

- IGST: Integrated Goods and Services Tax

  The Integrated Goods and Services Tax Act, 2017 passed by the Parliament for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and for matters connected therewith or incidental thereto.

- UTGST: Union Territory Goods and Services Tax

  It is levied & collected under the authority of UTGST Act, 2017 passed by the Parliament. This is applicable to Union Territories. UTGST applicable territories as mentioned in Section 2 of UTGST Act, 2017 are Andaman and Nicobar Islands; Lakshadweep; Dadra & Nagar Haveli; Daman and Diu; Chandigarh and Other territories.

- GST Compensation to States

  In line with the Constitutional amendment, the Government enacted the legislation known as, the Goods and Services Tax (Compensation To States) Act, 2017 for providing compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force (01/07/2017), for a period of five years or for such period as may be prescribed on the recommendations of the GST Council.

- Zero Rated Supply

  Section 16 (1) IGST Act provides that "zero rated supply" means any of the following supplies of goods or services or both, namely: -

  - Export of goods or services or both; or
  - Supply of goods or services or both for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Explain Constitutional amendments made to implement GST.
2. "GST is One Nation One Tax" Explain the Concept.
3. Explain 'GST is not only Tax reform but one of the biggest Business Reform'.
4. How is GST responsible for reduction in price of basic commoditites?

OTHER REFERENCES

- https://www.cbic.gov.in/resources//htdocs-cbec/gst/CGST-Act-Updated-01.01.2021.pdf
- https://www.cbic.gov.in/resources//htdocs-cbec/gst/IGST-Act-Updated.pdf
- https://www.cbic.gov.in/
- https://www.gst.gov.in/
- https://www.cbic.gov.in/resources//htdocs-cbec/gst/Notification12-CGST.pdf

Supply under GST

Lesson 2

KEY CONCEPTS

■ Levy ■ Supply ■ Composite Supply ■ Mixed Supply ■ Place of Supply ■ Levy of Tax ■ Composition Scheme ■ Pure Agent

Learning Objectives

To understand:

- Determining Taxability of Goods and Services
- Determining the Nature of Supply
- Composite Supply and Mixed Supply
- Forward Charge and Reverse Charge
- Contours of Composition Scheme
- Concept of Pure Agent

Lesson Outline

- Levy and Collection of CGST and IGST
- Deemed Supply
- Composite and Mixed Supply
- Inter-State Supply
- Intra-State Supply & Supplies in Territorial Waters
- Composition Scheme
- Pure Agent
- Forward Charge Mechanism and Reverse Charge Mechanism
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings

REGULATORY FRAMEWORK

1. Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 7	Scope of Supply
Schedule I	Activities to be treated as Supply even if made without Consideration
Schedule II	Activities to be treated as Supply of Goods or Supply of Services
Schedule III	Activities or transactions which shall be treated neither as a Supply of Goods nor a Supply of Services
Section 8	Tax Liability on Composite and Mixed Supplies
Section 9	Levy and Collection of GST
Section 10	Composition Scheme

2. Integrated Goods and Services Tax Act, 2017

Section	*Deals with*
Section 5	Levy and Collection
Section 7	Inter-state Supply
Section 8	Intra-state Supply
Section 9	Supply in Territorial Waters
Section 10	Place of Supply of Goods made other than in the course of import or Export
Section 11	Place of Supply of Goods in the course of Import or Export
Section 12	Place of Supply of Services where both Supplier and Recipient are located in India
Section 13	Place of Supply of Services where either Supplier and Recipient are located outside India

LEVY AND COLLECTION OF CGST, IGST AND UTGST

The word “Levy” means charge or imposition or collection of tax by authority. Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that “no tax shall be levied or collected except by authority of law”. The term “authority of law” means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax. Pre GST era, taxable event and point of time for payment of tax were two different aspects under indirect tax law. Taxable event under GST is supply of goods and/or services.

Under GST Regime subject of levy of GST is dealt in-

Section 9 of the Central Goods and Services Tax Act (CGST Act) State Goods and Services Tax Act (SGST) and Section 5 of the Integrated Goods and Services Tax Act, 2017 (IGST Act).

Section 9 of CGST Act/SGST Act, Section 5 of IGST Act and Section 7 of UTGST Act are the Charging Sections for the purposes of levy of GST. The provisions under Section 5 of IGST Act and Section 7 of UTGST Act are similar to Section 9 of CGST Act except CGST has been substituted by ICSGT and UGST under IGST Act and UTGST Act respectively.

CONCEPT OF SUPPLY

To understand the concepts of levy and collection under goods and service tax, we need to understand the concept of Supply. Every tax statute provides an incidence for the levy of tax thereunder. The Central Excise Act, 1944 mandates manufacture of goods as an incidence for levy of central excise duty. The Customs Act, 1965 mandates import or export of goods for the levy of customs duty. The Finance Act, 1994 provided 'provisioning of service' as an incidence for the levy of service tax. On a similar note, State Value Added Tax laws provided for 'sale of goods' as an incidence for levy of VAT.

In this perspective, students may note that the goods and service tax law provides for 'Supply' as an incidence for the levy of goods and services tax. Thus, for any transaction to be eligible to goods and services tax, it has to fall within the purview of the definition of 'supply'. Fortunately, the CGST Act, 2017 has an inclusive definition of 'Supply', which we shall read and analyse in the following table.

Meaning and Scope of Supply

<table>
<tr><th>Heading</th><th>Provisions and Analysis</th></tr>
<tr><td>General meaning [Section 7(1)(a)]</td><td>Supply includes -

All forms of supply of goods and/or services and includes agreeing to supply when the supply is for a consideration and in the course or furtherance of business (as defined under Section 7 of the Act). It specifically provides for the inclusion of the following 8 classes of transactions:

(i) sale,
(ii) transfer,
(iii) barter,
(iv) exchange,
(v) license,
(vi) rental,
(vii) lease, or
(viii) disposal.

1. Supply should be of goods and / or services.
2. Supply should be for consideration.
3. Supply should be in the course or furtherance of business.

Analysis:

The definition of supply is inclusive in nature which encompasses various forms of supply like sale, barter, etc. Significantly, transfer of goods between two divisions of the same person or enterprise is also a 'supply' and leviable to tax. Further, the services in the nature of renting, leasing, etc. are also included within the scope of 'supply'.

However, to constitute an activity as 'supply', the common conditions are that the activity must be for a consideration and it should be in the course or furtherance of business, except in certain situations.</td></tr>
<tr><td>Section 7(1)(aa)</td><td>Supply includes the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.</td></tr>
</table>

Heading	*Provisions and Analysis*
	Explanation - For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another. **Analysis:** The aforesaid provision was inserted through Finance Act, 2021 and has been given retrospective effect from 1.7.2017. The purpose of such insertion is to constitute activities or transactions between an association, club or similar entities and its members or constituents as 'supply'. For the purpose of taxability, the members and the entity shall be deemed to be two distinct persons.
Import of services [Section 7(1)(b)]	Import of services for a consideration whether or not in the course or furtherance of business. **Analysis:** Here, the business test is not relevant. The import of service may or may not be in the course or furtherance of business and still continue to fall within the scope of 'supply'. Thus, even the import of services by individuals for personal use is considered as supply and chargeable to tax in India. The transaction, however, should conform to the definition of 'import of service' as per Section 2(11) of the IGST Act, 2017 which provides that "import of service" means the supply of any service, where - (i) the supplier of service is located outside India; (ii) the recipient of service is located in India; and (iii) the place of supply of service is in India; Among other conditions, Place of Supply should be in India, which can be ascertained by referring to Section 13 of the IGST Act. Tax in such cases is payable under reverse charge by the recipient located in the taxable territory. However, section 14 of the IGST Act, 2017 provides that in respect of import of service by way of online information and database access or retrieval services by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.
Supply without consideration [Section 7(1)(c)]	The activities specified in **Schedule I**, made or agreed to be made without a consideration. Thus, the activities listed in **Schedule I** shall be treated as supply even if made without consideration.
Deeming certain activities as either supply of goods or supply of services [Section 7(1A)]	Where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in **Schedule II.** This provision was inserted in place of erstwhile Section 7(1)(d) vide the Central Goods and Services Tax (Amendment) Act, 2018 retrospectively from 1.7.2017. The effect of the amendment is that the activities listed in Schedule II shall be treated either as supply of goods or supply of services provided the basic conditions for an activity to be construed as supply as laid down in Section 7(1) are fulfilled.

Heading	*Provisions and Analysis*
Neither a Supply of goods or services [Section 7(2)]	Notwithstanding anything contained in sub-section (1) (a) Activities or transactions specified in **Schedule III**; or (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services. *Vide Notification No. 25/2019-C.T. (Rate), dated 30-9-2019, the Central Government has exercised powers under Section 7(2) of the CGST act and notified that the activity or transaction by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called, undertaken by the State Governments shall be treated neither as a supply of goods nor a supply of service.*
Issue of Notification by Government [Section 7(3)]	Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as - (a) a supply of goods and not as a supply of services; or (b) a supply of services and not as a supply of goods.

DEEMED SUPPLY

Schedule I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION [SECTION 7(1)(c)]

- Permanent transfer or disposal of business assets where input tax credit has been availed on such assets
- Supply of goods/services/ both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business
- Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal
- Supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal
- Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business

S. No.	Title	Provision	Analysis
1.	**Permanent transfer or disposal of business assets**	Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.	1. Typically, donation of business assets or scrapping or disposal in any other manner (other than as a sale - i.e., without a consideration) would qualify as 'supply' under this clause, where input tax credit has been claimed on the same. 2. In case of cars purchased by the company for use by directors would not qualify for input tax credit and such input tax credit would therefore, not have been claimed. Say, after a few years, the same car is transferred to such director on a free of cost basis. In normal course, it is a disposal of business assets. However, this would not be treated as a supply for Schedule I as no input tax credit was availed on such car.
2.	**Goods or Services or both transferred between related persons or between distinct persons**	• Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business. • Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.	Transactions between distinct persons or between related persons have been considered as supply even if made without consideration. 'Distinct person' has been defined in Section 25 of the CGST Act, to mean a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

2. A persons shall be deemed to be "related persons" if –

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty- five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

S. No.	Title	Provision	Analysis
			Example: NT Limited has a factory located in Nashik, Maharashtra. It also has depot located in Ludhiana, Panjab and Jabalpur, Madhya Pradesh whereto the factory transfer goods for further sale. The transfer of goods to depots is made at cost basis and no recoveries are made by the factory from its depots. The factory has obtained a Registration in the States of Maharashtra, Panjab and Madhya Pradesh. In such cases, factory and depots are treated as distinct persons and accordingly the transfer of goods to depots would be considered as supply even though the transaction does not involve any consideration. ● The amount paid by employer to employee in lieu of services rendered by the employee and which is mentioned in the offer letter or agreement is exempted from the levy of tax. ● Moreover, certain supplies are not agreed upon formally; say Diwali gifts, gifts by organization on achieving targets or gifts given casually will be taxable provided value of gifts exceeds Rs. 50,000. ● Gifts upto Rs. 50,000 to employees are exempted. However, input tax credit, if availed on purchase of such Gifts shall not be available to the employer.
3.	**Supply of goods by a principal to his agent or vice versa**	Supply of goods - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.	Clearance of goods to a consignment agent/ clearing agent and forwarding agent, even if such agents are located in the same State would attract GST. ***CASE LAW - RE: TATA Coffee Limited 2020 (37) G.S.T.L. 97 (App. A.A.R. - GST - Kar.)*** Tata Coffee is engaged in activity of felling timber trees. As per the statute, Tata Coffee is mandated to transfer fallen timber to the nominated Govt. Depot (GTD) who sell such timber in the open market and remit sale proceeds to Tata Coffee.

S. No.	Title	Provision	Analysis
			Held, GTD Acts as an agent of Tata Coffee The transaction of depositing of timber by Tata Coffee in the GTD amounts to a supply in terms of clause 3 of Schedule-I to Central Goods and Services Tax Act, 2017.
4.	**Import of Service by a taxable person from related person**	Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.	Interior design service received by a branch in India from its Head office, located in Singapore, for its new office building, without consideration. The interior service is taxable and liable for GST on reverse charge.

Schedule II

ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

S. No.	Provision	Whether goods or service	Analysis
1(a)	Any transfer of the title in goods	Supply of goods	***Example:*** When the goods are stolen, title of goods shall pass to insurance company. It would be treated as supply of goods even when there is no physical movement of goods from the insured to the insurer.
1(b)	Any transfer of right in goods or of **undivided share** in goods without the transfer of title thereof	Supply of Service	Transfer of right to use goods without transfer of title is **supply of service.** **Case Law:** **In Re: Famous Studios Ltd.** The applicant Company was a registered taxable person under the GST Act carrying on the business of Studio services such as Production of advertisement films and post-production services as Video Editing, Sound recording, Animation, VFX, etc. and also renting out some of the premises to his tenants. One of the tenants has surrendered his "Tenancy Rights" in favour of the applicant vide agreement dated 31-8-2017 for a consideration of Rs. 54,00,000/- (Rupees fifty-four lakhs only). The applicant has discharged his liability of Registration Fees and Stamp Duty as per the relevant laws in Maharashtra. It was observed that the applicant has received the tenancy rights from an unregistered person. The Transfer of tenancy rights in goods or of undivided share in goods without the transfer of titles thereof is treated as supply of services under clause (b) of Para 1 of Schedule II of CGST Act, 2017.

S. No.	Provision	Whether goods or service	Analysis
1(c)	**Any transfer of title in goods** under an agreement which stipulates that property in goods shall pass **at a future date** upon payment of full consideration	Supply of goods	***Example:*** Financial lease / Hire purchase transaction would amount to supply of goods under the GST.
2(a)	**Any lease**, tenancy, easement, license to **occupy land** *Note: For clarification by CBIC on issues related to taxability of 'tenancy rights' under GST students may refer Circular No. 44/18/2018-CGST, dated 2-5-2018.*	Supply of Service	***Example:*** Land used for circus, entertainment and parking purposes.
2(b)	Any lease or letting out of the **building** including a commercial, industrial or residential complex for business or commerce, either wholly or partly	Supply of Service	***Example*:** Leasing of shop in multiplex shall amount to supply of service.
3	Any treatment or process which is applied to **another person's goods**	Supply of Service	***Example:*** Job work shall be treated as supply of service.
4(a)	**Part of the assets of a business** are transferred or disposed of by or under the direction of the person carrying on the business so as no longer to the form part of those assets	Supply of Goods	***Example:*** Mr. Abhi is carrying on the business of consumer durable products. He disposed of a defective refrigerator for 15,000 to Ms. Geeta whereas its normal price is 80,000. Aforesaid disposal shall be considered as supply of goods by Mr. Abhi.

S. No.	Provision	Whether goods or service	Analysis
4(b)	Change of use of goods from business to **personal use**	Supply of Service	***Example:*** A computer, company car, when put to non-business use would be covered.
4(c)	Where any **person ceases** to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to have been disposed by him immediately preceding the ceasing of such business, it shall be treated as supply of goods **unless** (a) the business is transferred as a going concern to another person; or (b) the business is carried on by a personal representative who is deemed to be a taxable person.	Supply of goods	***Example*:** Say a person runs a shop of refrigerators. On a particular day, he decides to shut his shop permanently. On such day, he is having a stock of refrigerators. In such situation, it shall be deemed that he has disposed of such stock of refrigerators immediately before shutting down his shop and such disposal shall be considered as supply of goods.
5(a)	Renting of **immovable property**	Supply of Service	***Example:*** Renting of shop for a consideration.
5(b)	Construction of a complex, building, civil structure or a part thereof, including a complex or building **intended for sale to a buyer**, wholly or partly,	Supply of Service	***Example*:** Real estate companies generally open booking of flats even before the construction is started and allow customers to pay the price in instalments spread over a number of years until the possession of flat is granted. Such modality of selling flats is considered as supply of service even though the underlying property being transferred is made up of goods.

S. No.	Provision	Whether goods or service	Analysis
	except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier		
5(c)	Temporary transfer or **permitting the use** or enjoyment of any intellectual property right	Supply of Service	***Example:*** Permitting the use of patent, copyright, trademark shall amount to supply of service.
5(d)	**Development,** design, programming, customization, adaptation, upgradation, enhancement, implementation of **information technology software**	Supply of Service	***Example:*** As such software per se has been considered as goods, the stated activities if undertaken in respect of **information technology software** have been considered as supply of service.
5(e)	Agreeing to the obligation to **refrain** from an Act, or to **tolerate** an act or a situation, or to do an Act	Supply of Service	***Example:*** Mr. Ram request to Mr. Shyam not to teach a particular subject in particular area for 5 years. Shyam agrees with the terms and condition against a consideration of Rs. 5,00,000. The same would amount to supply of service by Shyam and would attract GST.
5(f)	Transfer of the **right to use any goods** for any purpose	Supply of Service	Renting of goods, i.e., movable property shall amount to supply of service. ***Example:*** Renting of coffee machine, generator etc.
6	The following **composite supplies** shall be treated as a supply of services, namely:-	Supply of Service	***Example:*** Works contracts involving transfer of property is service under the GST law.

S. No.	Provision	Whether goods or service	Analysis
	(a) works contract as defined in clause (119) of section 2; and		***Example:*** Restaurant and outdoor catering are service under GST law even though food, being goods, is supplied in the course of such activities.
	(b) supply, by way of or as part of, or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.		***Example:*** Setting up of sewage treatment plant where the contract remains responsible for bringing required material and labour shall be considered as works contract.

The activities listed in **Schedule II** shall be treated either as supply of goods or supply of services provided the basic conditions for an activity to be construed as supply as laid down in Section 7(1) are fulfilled.

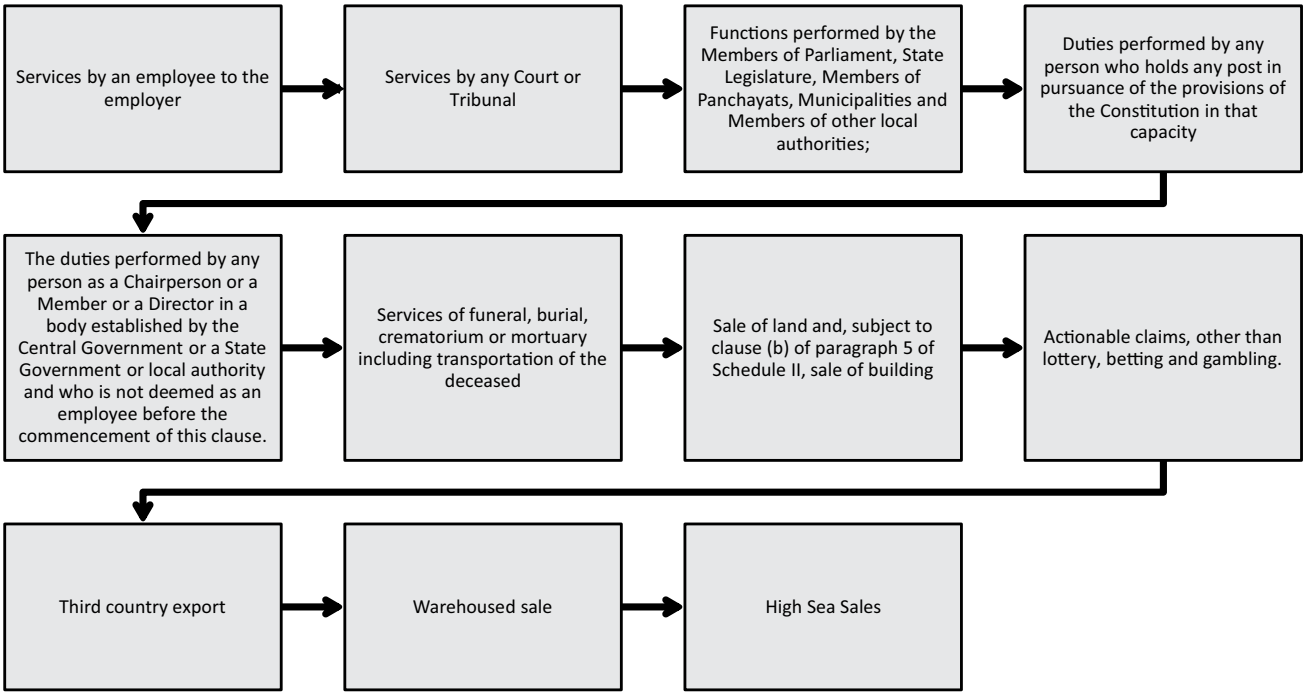
*[**Note 1:** As per Section 20 of IGST, application of provision of CGST Act, 2017, in relating to "Scope of Supply" shall, mutatis mutandis, apply, as so far as may be, in relation to Integrated Tax (IGST) as they apply in relation to Central Tax (CGST).]*

*[**Note 2:** clarification issued by CBIC on GST applicability on Liquidated Damages, Compensation and Penalty arising out of Breach of Contract or other provisions of law, students may refer circular no. 178/10/2022-gst [f. no. 190354/176/2022-tru], dated 3-8-2022 or https://taxinformation.cbic.gov.in/view-pdf/1003115/ENG/Circulars]*

Schedule III

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

Schedule III to CGST Act, 2017 lists down the following activities which shall be treated neither as supply of goods nor supply of services.



S. No.	*Provision*	*Analysis with examples*
1	Services by an **employee to the employer** in the course of or in **relation to his employment.** ***Note:*** *For clarification on the taxability of perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST students may refer Circular No. 172/04/2022-GST- 6th July, 2022 or https://taxinformation.cbic.gov.in/view-pdf/1003104/ENG/Circulars*	It is important to note that only such services are covered in this entry which are provided in the course of or in relation to employment. **Example:** If, an employee provides some services beyond his/her official functions, it will not be covered in this entry.
2	Services by any **court or Tribunal** established under any law for the time being in force. ***Explanation.–*** For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.	**Example:** Legal/ Filing fee taken by courts from petitioners in lieu of its services is not considered as supply.

S. No.	Provision	Analysis with examples
3	(a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities; (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.	***Example:*** Judge of Supreme Court of India is a constitutional post, remuneration received by them shall not be subject to GST. ***Example:*** CBDT is a body established by the Central Government. Chairman / Member / Director (who are not employees) of these body shall be out of GST.
4	Services of **funeral**, burial, crematorium or mortuary including transportation of the deceased.	Not liable for tax.
5	**Sale of land** and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	It is subject to stamp duty.
6	Actionable claims, other than lottery, betting and gambling. **Actionable claim [Section 2(1)]** shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882.	Lottery, betting and gambling are subject to GST.
7	Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.	Commonly called as 'third country exports', this category of transaction has been specially included in Schedule III w.e.f. 1.2.2019. The effect is that the supply of goods consigned directly from a place in the non-taxable territory to a place in the non-taxable territory without such goods touching the Indian shores shall not be treated as 'supply', thus not leviable to tax.
8(a)	Supply of warehoused goods to any person before clearance for home consumption; ***Explanation*** - For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.	Supply of goods lying in a customs bonded warehouse has been treated as neither supply of goods nor supply of service. This entry has been inserted in Schedule III w.e.f. 1.2.2019. However, IGST shall continue to be leviable at the time of clearance of goods from the warehouse for home consumption.

S. No.	Provision	Analysis with examples
		Example: Lydo Limited imported Chocolates and fill into bond bill of entry for storage of chocolates in customs bonded warehouse. While the goods were still in warehouse, Lydo Ltd. sold such chocolates to Mydo Ltd. Finally, Mydo Ltd. fill ex-bond bill of entry and cleared such chocolates for home consumption. In this situation, the sale transaction between Lydo Ltd. and Mydo Ltd. is not treated as a supply thus not liable to GST.
8(b)	Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.	This entry has been inserted in Schedule III w.e.f. 1.2.2018 to take High Sea Sale transaction out of the purview of 'supply' as per Section 7 CGST Act. **Example:** Lor Ltd. Imported a consignment of Lipsticks from Italy. Before the clearance of such consignment for home consumption, Lor Ltd. sold the imported Lipsticks to L Mart Ltd. by endorsing the Bill of Lading. The sale transaction between Lor Ltd. and L Mart Ltd. shall not be considered as 'supply', thus not chargeable to tax.

Illustration :

Mr. Akshay a dealer sells a washing machine for Rs. 30,000 to earn a profit. Does it qualify as a supply?

Solution:

Yes, it qualifies as supply because as per Section 7(1)(a) of CGST Act, 2017, Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Hence, in the above case it will be treated as supply and liable to GST.

Illustration :

Mr. Ram (an unregistered person) wants to do MBA abroad. He takes Education consultancy services from a UK based consultant for Rs. 10,000. Does it qualify as a supply?

Solution:

Yes, it qualifies as supply, because as per Section 7(1)(b) of CGST Act, 2017, Supply includes import of services for a consideration whether or not in the course or furtherance of business. Hence, in the above case it will be treated as supply.

Illustration :

ABC Ltd. a manufacturing company scraps old plant and machinery due to renovation of manufacturing facility. The company has taken input tax credit on plant and machinery so scrapped without consideration. Does it qualify as a supply?

Solution:

As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Permanent transfer or disposal of business assets where input tax credit has been availed shall be treated as supply even made without consideration. Hence scrapping of old plant and machinery without consideration shall qualify as supply since input tax credit has been availed by XYZ & Co.

Illustration :

Big Ltd. provides management technical services without consideration to Small Ltd. in which Big Ltd. has controlling rights. These technical services have been provided for benefit of entire group. Does it qualify as a supply?

Solution:

As per Section 7(1) (c) read with Schedule I of CGST Act, 2017, Supply of goods or services between related persons is treated as supply even if it is without consideration. As per Explanation to Section 15 of CGST Act, 2017, persons shall be deemed to be "related persons" if "one of them directly or indirectly controls the other". Since Big Ltd. has controlling rights of Small Ltd., they will be treated as related person and the said transaction will qualify as supply.

Illustration :

American Express Pvt. Ltd. makes gifts to an employee worth Rs. 75,000 during the year. Do such gifts qualify as a supply? Would your answer be different if gifts of Rs. 45,000 have been given to employee?

Solution:

As per Section 7(1) (c) read with Schedule I of CGST Act, 2017, supply of goods or services between related persons is treated as supply even if it is without consideration. As per Explanation to Section 15 of CGST Act, 2017, persons shall be deemed to be "related persons" if such persons are employer and employee. Thus, gifts to employee worth Rs. 75,000 will qualify as supply and such supply would be leviable to GST.

If gifts of Rs. 45,000 are given instead of Rs. 75,000, the same will not qualify as supply since it has been specifically provided that gifts not exceeding Rs. 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

Illustration :

Honda Motors Ltd. engages DD Motors as an agent to sell motorcycle on its behalf. For the purpose, Honda Motors Ltd. has supplied 500 cars to the showroom of DD Motors located in Punjab. Does it qualify as supply?

Solution:

As per Section 7(1) (c) read with Schedule I of CGST Act, 2017, Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal shall be treated as supply even if made without consideration. In view of the same Supply of motorcycles by Honda Motors Ltd. to DD Motors will qualify as supply.

Illustration :

Raheja Builders (a registered taxable person) receives architectural design supplied by a foreign architect to design a residential complex to be built in Faridabad for a consideration of Rs. 1 crore. Does it qualify as supply?

Solution:

As per Section 7(1) (b) of CGST Act, 2017, Importation of services for a consideration whether or not in the course or furtherance of business is covered under supply. In the above case it will be treated as supply and will be liable to GST.

CASE LAWS

- ***IN Re : IIT Madras Alumni Association [2020 (42) G.S.T.L. 564 (A.A.R. - GST - T.N.)]***

  The applicant sought Advance Ruling on the following question:

  Whether collecting money by IITMAA from its members and receiving donations/grants/subsidies/ budgetary support from IIT, Madras to defray expenses incurred towards administering the association and other expenses related to its engagement activities initiated by members themselves amounts to supply or not. Consequently, whether there is any liability to comply with GST law including registration and payment of tax.

  Held: In order to tax, the activity must be a supply of either goods or service, the supply is to be for a consideration to a person in the course of furtherance of business, i.e., there should be a supply of goods or service, recipient, provider, consideration, in the course or for furtherance of business. In the instant case it is evident from the Bye-laws/MOA submitted by the applicant that the mission of IITMAA is to provide a forum for its members and to facilitate professional networking among alumni, students, faculty for mutual benefit in academic, professional, and business areas and to facilitate alumni to contribute to IIT Madras by raising funds, sharing knowledge/expertise, research, academic support, technical collaboration etc. the objectives also include helping alumni families and needy alumni and mobilize funds to manage the association affairs. The applicant collects membership fee from the members and also collects charges for various events, activities which include conducting seminars, holding meetings, organizing events, publishing magazines and newsletters, maintaining websites, and technology infrastructure for the benefit of its members. **Thus, the supply of the services of these activities by the applicant to its members for consideration either in form of membership fee or additional charges collected for specific activities constitute a 'supply of service' under Section 7(l)(a) of CGST/TNGST Act as it is in the course of furtherance of business of the applicant as per Section 2(17) of the Act.**

- ***IN Re : B.R. Sridhar [2021 (44) G.S.T.L. 211 (A.A.R. - GST - Kar.)]***

  The Applicant, being the owner of an immovable property bearing Sy. No. 4, measuring 1 acre 2 guntas, situated at Bikasipura Village, Uttarahalli Hobli, Bangalore has entered into a Joint Development Agreement dated 19-5-2016 with M/s. Suprabhat Constructions, a partnership firm, authorizing them to construct residential flats by incurring the necessary cost together with certain common amenities and upon the development of the said property, the applicant gets 40% share of undivided right, title and interest in the land proportionate to super built up area and 40% of car parking spaces. In view of this, the applicant has sought Advance Ruling in respect of the following question.

Whether the total amounts received by the Owner towards the advances or sale consideration of the flats fallen to his share of 40% in terms of the Joint Development Agreement dated 19-5-2016 and the subsequent Area Sharing Agreement dated 3-1-2018, are not amenable for payment of GST, since Applicant has sold or agreed to sell or gifted, the flats after obtaining Occupancy Certificate dated 26-8-2019 and that Applicant has not received any part of the sale consideration prior to the said date of Occupancy Certificate, thus falling under Entry No. 5 of Schedule III of CGST Act read with Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 and the corresponding provisions of SGST Act.

Held: The amounts received by the applicant, either by himself or through his agents, towards sale of their share of flats are not exigible to GST, if and only if the entire consideration related to such sale of flats is received after the issuance of Completion Certificate dated 26-8-2019, as the said activities are treated neither supply of goods nor supply of service in terms of Schedule-III of the CGST Act, 2017 subject to Clause 5(b) of the Schedule-II of the CGST Act, 2017.

- ***IN Re : Morigeri Traders Commission Agents***

  The Applicant is a commission agent involved in the business of receipt of dry chillies from the farmers (principals) and supply of the same to the buyers/traders, on behalf of farmers in the Byadgi A.P.M.C. Market, Karnataka. They are registered under the APMC Act & also under the GST Act. They sell goods (dry chillies) on behalf of principals to the traders, issue invoices to the traders/buyers as prescribed under the APMC Act and also issue sale patties to the principals. They collect commission, on the services provided to the principals, from the purchasers/buyers and the same is also shown in the invoice issued to the purchasers.

  Held: Applicant is an agent under Schedule-I to Central Goods and Services Tax Act, 2017 liable to be registered with regard to supply of goods to the buyer on behalf of principal.

- ***IN Re : Coperion Ideal Pvt. Ltd. (2023) 3 Centax 36 (App. A.A.R. - GST - U.P.)***

  Appellant-assessee is engaged in designing, conveying, fabrication and supply of Pneumatic Conveying System(PCS) along with its parts and components which are sold both within and outside India – As regards to imported components, appellant-assessee supplies imported components to customers in India on High Seas Sale basis under High Sea Sales Contract – Appellant-assessee sought advance ruling before AAR on whether supply of components of Pneumatic Conveying System supplied by appellant-assessee to its customers on High Seas Sales will be treated neither as supply of goods nor as supply of service by virtue of Entry 8 to Schedule III of CGST Act – AAR ruled that question of taxability of supply of goods on High Sea Sales does not come within purview of Section 97 of CGST Act and falls within purview of Circular No.33/2017-Cus dated 1-8-2017.

  Held: Further number of activities taken by appellant-assessee under contract includes both supply of goods and supply of services – From entry No.8 of Schedule III of Central Goods and Services Tax Act,2017, components needed for Pneumatic Conveying System made by appellant-assessee to its customers on High Sea Sales will not be treated as supply of 'goods' and they will not be liable for imposition of tax – However, components that are regarded as 'services' shall fall within purview of 'supply of services', further fall under purview of 'supply' as defined under Section 7 of Central Goods and Services Tax Act, 2017.

DETERMINATION OF THE NATURE OF SUPPLY

The levy and collection of tax under the GST laws necessitates determination of the nature of supply i.e., whether the supply is in the nature of 'inter-state supply' or intra-state supply. Where the supply is determined as 'inter-state supply', IGST is leviable under the IGST Act, 2017. Whether the supply is determined as 'intra-state supply, CGST and SGST under the CGST Act, 2017 and State GST Act would be leviable. Instead of CGST

Act, UTGST Act would come into play where the supply is within a union territory. We will also understand the nature of supply where the supply is made in the territorial eaters of India. Let us understand the provisions to determine each category of supply.

INTER-STATE SUPPLY [SECTION 7 OF IGST ACT, 2017]

Supply of goods

- where the location of the supplier and the place of supply are in—
  (a) two different States;
  (b) two different Union territories; or
  (c) a State and a Union territory,

  the transaction shall be treated as a supply of goods in the course of inter-State trade or commerce.
- Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

Supply of Services

- where the location of the supplier and the place of supply are in—
  (a) two different States;
  (b) two different Union territories; or
  (c) a State and a Union territory,

  shall be treated as a supply of services in the course of inter-State trade or commerce.
- Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

Supply of goods or services or both

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

INTRA-STATE SUPPLY [SECTION 8 OF IGST ACT, 2017]

- **Supply of Goods**

  Where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

  However, the following supply of goods shall not be treated as intra-State supply, namely:—
  (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
  (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
  (iii) supplies made to a tourist referred to in section 15.

- **Supply of Services**

  Where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

However, the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1 - For the purposes of this Act, where a person has,—

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

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

SUPPLIES IN TERRITORIAL WATERS [SECTION 9 OF IGST ACT, 2017]

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

COMPOSITE AND MIXED SUPPLY [SECTION 8]

Meaning of Composite Supply [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**; **Analysis:** This means that the goods and services are bundled owing to natural necessities. ***Examples:*** 1. When a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary. 2. Package of accommodation facilities and breakfast are naturally bundled, thus a composite supply.
Meaning of Mixed Supply [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. **Analysis:** The combination of goods and/or services is **not bundled due to natural necessities**, and they can be supplied individually in the ordinary course of business. ***Example:*** A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold separately.

Tax liability on a Composite Supply [Section 8(a)]	A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of **such principal supply**. ***Example:*** Suppose a dealer sells Laptop along with bags. The rate of GST on Laptop and bag are different. Since the Laptop is a principal supply, the rate of Laptop shall be applicable on such composite supply.
Tax liability on a Mixed Supply [Section 8(b)]	A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which **attracts the highest rate of tax.** ***Example:*** M/s Cadburry sold gift packets of chocolate and fresh Juices. The GST rate of chocolate is 28% & fresh juice liable to GST at 12%. This is the example of mixed supply & would be liable to GST at 28% (higher of 12% or 28% applicable).

Guiding principles for determining whether a supply is a composite supply or mixed supply: While there are no infallible tests for such determination, the following guiding principles could be adopted to determine as to whether it would be a composite supply or a mixed supply. However, every supply should be independently analyzed.

Description	***Composite Supply***	***Mixed Supply***
Naturally bundled	Yes	No
Supplied together	Yes	Yes
Can be supplied separately	No	Yes
One is predominant supply for recipient	Yes	No
Other supply is not 'aim in itself of recipient	Yes	No
Each supply priced separately	No	No
All supplies are goods	Yes	Yes
All supplies are services	Yes	Yes
One supply is goods and other supply is services	Yes	Yes

CASE LAWS

- ***In Re: Aquaa Care (Surat) Ro Technologies Private Limited, (2019)- Aar Gujarat***

  Where company is selling water in containers whether selling of container and water is composite supply? Water cannot be sold standalone without filling in containers and thus the supply is naturally bundled and supplied in conjunction with each other in the ordinary course of business - Selling of water in container is composite supply where selling of purified water is the principal supply.

- ***In Re : Mfar Hotels & Resorts Pvt. Ltd. [2020 (42) G.S.T.L. 470 (A.A.R. - GST - T.N.)]***

  The applicant sought ruling on the following query:

  What is the rate of tax applicable on the supply of Tobacco (Smokes) when these items are supplied independently and not as composite supply in the restaurant? In other words what is the rate of GST if these items alone are supplied and not along with food as Composite supply to the guest?

  Held: The applicant supplies cigarettes as a separate supply in the restaurant to a casual guest who do not avail of any other services offered by the applicant other than buying cigarettes at the restaurant. The applicant in the menu for restaurant has various cigarette products, i.e., any guest who comes to the restaurant can have cigarettes alone also as these are in the menu of the restaurant. When a guest (resident or non-resident) comes to the restaurant and orders from the menu tobacco products, it involves supply of goods (cigarettes) and supply of services by the restaurant. In this case both the supplies are taxable. The serving of any items by a restaurant involves the supply of the items along with the use of the facilities/staff of the restaurant. However, in this case the sale of cigarette products are not naturally bundled together with the restaurant services as the services of the restaurant involve serving of food and beverages alone in the normal course. Hence is not a composite supply as per Section 2(30) of the Act. However, when such cigarettes products are supplied by the restaurant, a single price is charged as seen in the invoices submitted by the applicant.

  Section 2(74) of CGST/TNGST Act states:

  "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.

  In the instant case, supply of tobacco products by the restaurant is not a composite supply but involves supply of two individual supplies of goods (tobacco products) and supply of services of serving by the restaurant. Such a supply is a mixed supply.

- ***In Re : Doms Industries Pvt. Ltd. (2023) 2 Centax 59 (A.A.R. - GST - Guj.)***

  Applicant is manufacturer and suppliers of stationery items - Applicant supplies different products in single box/pack for single price - One kit contains pencils, eraser and sharpner - Second one contains colouring books, pencils, colour pencil, oil pastels, wax crayons, eraser, scale and sharpner and third one contains pencil, eraser, scale and sharpner.

  Held: In order to qualify any supply under mixed supply following conditions are to be satisfied viz (i) there should be two or more individual supplies of goods or services or in any combination thereof, (ii) such supply should be made in conjunction with each other for a single price and (iii) such supply does not constitute a composite supply - In instant case, supply of different products in single box/pack and in single price made by applicant satisfies all three conditions of mixed supply; therefore, said supply is covered under category of mixed supply under section 2(74) and supply which attracts higher rate of tax among all taxable supplies containing in pack/box shall be applicable rate of tax for said mixed supply.

- ***In Re : Eden Real Estates Pvt. Ltd. (2023) 2 Centax 287 (A.A.R. - GST - W.B.)***

  Applicant-assessee is developing a residential housing project and supplying construction services to recipients for possession of dwelling units - In addition to construction services, applicant-assessee provides services towards right to use of car parking space to prospective buyers who opt for same for which they are additionally charged by applicant-assessee during sale of apartment– Applicant-assessee seeks advance ruling on whether amounts charged by applicant-assessee for right to use of car/two wheeler vehicle

parking space along with sale of under constructed apartments to its prospective buyers is to be treated as a composite supply of construction of residential apartment services or same is a distinct supply under section 7 of CGST/WBGST Act, 2017 – Further, If same is not to be treated as a composite supply, then rate of tax applicable on such charges collected by applicant-assessee from its prospective customers.

Held: Aforesaid fact delineates that such supply is altogether a separate service and it cannot be treated as naturally bundled with construction services – Hence, supply of services for right to use of car parking space is a separate supply and not to be construed as a composite supply of construction of residential apartment services – Further, supply of services for right to use of car parking space would be taxable at 18 percent.

PLACE OF SUPPLY (CHAPTER V OF IGST, ACT, 2017)

From the aforesaid provisions, we have observed that the key elements to determine the nature of supply are 'place of supply' and the 'location of supplier'. Let us first understand the provisions relating to place of supply in the following paragraphs.

Place of supply of goods other than supply of goods imported into, or exported from India [Section 10 IGST Act, 2017]

The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—

	Scenario	*Place of Supply*	*Comments*
(a)	where the supply involves movement of goods, whether by the supplier or the recipient or by any other person,	the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;	It covers where the supply involves movement. The movement can be caused by the recipient or the supplier. ***Example:*** L Ltd. located in Chandigarh supplies goods to D Ltd. Located in Nashik, Maharashtra. The goods were asked by D Ltd. To be consigned to Nashik through a transportation organized by D Ltd. In this case, the place of supply is Nashik, Maharashta as the movement of goods is getting terminated in another state and it would be in the nature of Inter-state Supply.
(b)	where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise,	Place of Supply of such goods shall be the principal place of business of such person;	This provision caters to 'bill to ship to' category of transactions. There are three parties involved. Supplier, Buyer and consignee. Though the goods are directly received by consignee but the buyer shall be deemed to have received the goods and his principal place of business shall be considered as place of supply.

(c)	where the supply does not involve movement of goods, whether by the supplier or the recipient,	Place of Supply shall be the location of such goods at the time of the delivery to the recipient;	A located in Chennai, Tamilnadu allows B located Kochin, Kerela to take portion of sand stack lying in his yard at Chennai. There is no mention of movement of sand in the contract between the parties. Place of supply is Chennai, Tamilnadu.
(d)	where the goods are assembled or installed at site,	Place of supply shall be the place of such installation or assembly;	***Illustration:*** H Ltd. Of Hyderabad, Telengana Orders C Ltd. Located in Delhi to supply and install machinery to its factory in Bidar, Telengana. Place of supply shall be Telengana.
(e)	where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle.	Place of supply shall be the location at which such goods are taken on board.	Indigo flight taken off from Jaipur, Rajasthan destined to Dubai supplied foods items on board to its passengers. The foods items were taken by Indigo at Jaipur Airport. Place of supply shall be Jaipur, Rajasthan.

Place of supply of goods imported into, or exported from India [Section 11 of IGST Act, 2017]

The place of supply of goods, –

	Scenario	*Place of Supply*	*Comments*
(a)	Goods imported into India	Location of the importer	G Ltd. having its premises at Kanchipuram, Tamilnadu imported goods via Chennai Port from L Inc of Singapore. Place of supply shall be Tamilnadu.
(b)	Goods exported from India	Location outside India.	R Ltd. having its factory in Bhopal, Madhya Pradesh exported goods to Ruffi Traders of Bangladesh. Place of supply shall be Bangladesh.

Place of supply of services where location of supplier and recipient is in India [Section 12 of IGST Act, 2017]

1. General Principle [Section 12(2)]

Except the services specified in sub-sections (3) to (14) of the said section, the place of supply of services,—

(a) made to a registered person shall be the location of such person;

(b) made to any person other than a registered person shall be,—

(i) the location of the recipient where the address on record exists;

(ii) the location of the supplier of services in other cases.

2. Services in relation to an immovable property [Section 12(3)]

S. No.	*Scenario*	*Place of Supply*
a.	Service directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work	Location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.
b.	Service by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel	
c.	Service by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property	
d.	any services ancillary to the services referred to in clauses (a), (b) and (c)	
Provided if the location of the immovable property or boat or vessel is located or intended to be located outside India		Location of the recipient.

Explanation:

Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

3. For restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery – Place of Supply shall be the location where the services are actually performed [Section 12(4)].

4. Services in relation to training and performance appraisal [Section 12(5)]

(a)	To a registered person.	Location of such person.
(b)	To a person other than a registered person.	Location where the services are actually performed.

5. For services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, the place of supply shall be the place where the event is actually held or where the park or such other place is located. [Section 12(6)]

6. Event based services [Section 12(7)]

Service	***Provided to***	***Place of Supply***
(a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or (b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,—	to a registered person	Location of such person.
	to a person other than a registered person	The place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.
Explanation **:** Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.		

7. Services by way of transportation of goods, including by mail or courier [Section 12(8)]

Scenario	***Place of Supply***
a registered person	Location of such person.
a person other than a registered person	Location at which such goods are handed over for their transportation.
where the transportation of goods is to a place outside India	The place of destination of such goods.

8. Passenger transportation service [Section 12(9)]

Scenario	***Place of Supply***
Service provided to a registered person	The location of such person.
Service provided to a person other than a registered person	The place where the passenger embarks on the conveyance for a continuous journey.
where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage	Location of recipient.
For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.	

9. Services on-board the conveyances [Section 12(10)]

The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

10. Supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services [Section 12(11)]

	Scenario	***Place of Supply***
(a)	in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna	be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
	Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit	the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed;
(b)	in case of mobile connection for telecommunication and internet services provided on post-paid basis	be the location of billing address of the recipient of services on the record of the supplier of services;
(c)	in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,–	
	through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher	the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply;
	by any person to the final subscriber	the location where such pre-payment is received or such vouchers are sold;
	if pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment	the location of the recipient of services on the record of the supplier of services;
	where the address of the recipient as per the records of the supplier of services is not available	location of the supplier of services;
(d)	in other cases	the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services.

11. Banking and other financial services, including stock broking services [Section 12(12)]

Scenario	*Place of Supply*
if the location of recipient of services is on the records of the supplier	location of the recipient of services.
if the location of recipient of services is not on the records of the supplier	location of the supplier of services.

12. Insurance Services [Section 12(13)]

Scenario	*Place of Supply*
Service provided to a registered person	location of the recipient of services.
if the location of recipient of services is not on the records of the supplier	location of the supplier of services.

13. Supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority [Section 12(14)]

The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

A. Where location of supplier or location of recipient is outside India.

1. General Principle [Section 13(2)]

Except the services specified in sub-sections (3) to (13) of section 13, the place of supply of services shall be the location of a recipient of service.

However, where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

2. Services in relation to goods / persons [Section 13(3)]

	Scenario	*Place of Supply*
(a)	services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:	location where the services are actually performed.
	when above said services are provided from a remote location by way of electronic means,	location where goods are situated at the time of supply of services.

	The above clause shall not be applicable in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.	
(b)	services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.	location where the services are actually performed.
(c)	Where the above listed services at (a) and (b) is supplied at more than one location, including a location in the taxable territory.	the location in the taxable territory [Section 13(6)].
(d)	Where the above listed services at (a) and (b) are supplied in more than one State or Union territory.	the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed. [Section 13(6)].

3. Services in relation to immovable property [Section 13(4)]

Scenario	***Place of Supply***
services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators.	the place where the immovable property is located or intended to be located.
Where the above listed service is supplied at more than one location, including a location in the taxable territory.	the location in the taxable territory.

Where the above services are supplied in more than one State or Union territory.	the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

4. **Admission to an event [Section 13(5)]**

Scenario	***Place of Supply***
services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation.	the place where the event is actually held.
Where the above listed service is supplied at more than one location, including a location in the taxable territory.	the location in the taxable territory.
Where the above services are supplied in more than one State or Union territory.	the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

5. The place of supply of the following services shall be the location of the supplier of services, namely:—

(a)	services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
(b)	intermediary services;
(c)	services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation.— For the purposes of this sub-section, the expression,—

(a)	"account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
(b)	"banking company" shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);
(c)	"financial institution" shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
(d)	"non-banking financial company" means,— (i) a financial institution which is a company; (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

6. Transportation of Goods [Section 13(9)]

The place of supply of services of transportation of goods, other than by way of mail or courier, shall be **the place of destination of such goods.**

7. Passenger transportation Services [Section 13(10)]

The place of supply in respect of passenger transportation services shall be **the place where the passenger embarks on the conveyance for a continuous journey.**

8. Services provided onboard the conveyance [Section 13(11)]

The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be **the first scheduled point of departure of that conveyance for the journey.**

9. Online information and database access or retrieval services [Section 13(12)]

The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation.– For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:—

(a)	the location of address presented by the recipient of services through internet is in the taxable territory;
(b)	the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
(c)	the billing address of the recipient of services is in the taxable territory;

(d)	the internet protocol address of the device used by the recipient of services is in the taxable territory;
(e)	the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
(f)	the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
(g)	the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

10. Prevention of Double Taxation [Section 13(13)]

In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Location of the supplier of services and the recipient of services

In order to determine the nature of supply, apart from the 'Place of Supply', we also need to under the location of supplier in certain cases.

Section 2(14)	"location of the recipient of services" means,— (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business; (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment; (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and (d) in absence of such places, the location of the usual place of residence of the recipient.
Section 2(15)	"location of the supplier of services" means,— (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business; (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment; (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and (d) in absence of such places, the location of the usual place of residence of the supplier.

COMPOSITION SCHEME [SECTION 10 OF CGST ACT, 2017]

Composition scheme in GST provides an alternative method of tax payment small and medium taxpayers whose turnover is not exceeding the prescribed threshold. The tax rates under this scheme have been kept at minimal but at the same time a person opting to pay tax under composition levy scheme can neither take input tax credit nor it can collect any tax from the recipient. It is a voluntary and optional scheme.

Who can opt for Composition Scheme?

Notwithstanding anything to the contrary contained in this act but subject to the provisions of sub-sections (3) and (4) of section 9,

- a registered person,
- whose aggregate turnover in the preceding financial year,
- did not exceed fifty lakh rupees,
- may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9,
- an amount of tax calculated at the rates as prescribed under Rule 7 of the CGST Rules, 2017 but not exceeding,-

  (a) one percent of the turnover in State or turnover in Union territory in case of a manufacturer,

  (b) two and a half percent of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and

  (c) half percent of the turnover in State or turnover in Union territory in case of other suppliers,

  subject to such conditions and restrictions as may be prescribed:

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

Section 2(6) defines “aggregate turnover” as the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and Inter-State supplies of persons having the same Permanent Account Number, is to be computed on all India basis but excludes Central tax, State tax, Union territory tax, integrated tax and cess.

Optees of composition scheme allowed to provide limited quantum of service -

A person who opts to pay tax under composition scheme may supply services (other than restaurant service) of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.

For the above purpose, the value of supply of services provided 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 for determining the value of turnover in a State or Union territory.

Tax rates applicable for composite suppliers

Presently, following rates have been prescribed under Rule 7.

Sl. No.	*Category of registered persons*	*Rate of CGST*	*Rate of SGST*	*Total tax*
1.	Manufacturers, other than manufacturers of such goods as may be notified by the Government. Presently, the Government has notified Pan Masala, Ice Cream and other edible ice, whether or not containing cocoa, Tobacco and manufactured tobacco substitutes as the goods not eligible for composition levy.	half per cent. of the turnover in the State or Union territory	half per cent. of the turnover in the State or Union territory	One per cent. of the turnover in the State or Union territory
2.	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II [i.e., supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration] [mainly Restaurant Service].	two and a half per cent. of the turnover in the State or Union territory	two and a half per cent. of the turnover in the State or Union territory	Five per cent. of the turnover in the State or Union territory
3.	Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter [mainly traders].	half per cent. of the turnover of taxable supplies of Goods and Services in the State or Union territory	half per cent. of the turnover of taxable supplies of Goods and Services in the State or Union territory	One per cent. of the turnover of taxable supplies of Goods and Services in the State or Union territory
4	Registered persons not eligible under the composition levy under subsections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10.	three per cent. of the turnover of supplies of goods and services in the State or Union territory.	three per cent. of the turnover of supplies of goods and services in the State or Union territory.	Six per cent. of the turnover of supplies of goods and services in the State or Union territory.

The composition levy under section 10 of the CGST act is mainly available to the manufacturers and traders of goods and to service providers engaged in restaurant business. However, considering that persons engaged in the manufacture and/ or supply of goods may have to engage themselves in the supply of service to some extent as a business necessity, the amendment is carried out in Section 10 w.e.f. 1.2.2019 so as to provide that the suppliers otherwise eligible for composition levy may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II i.e., restaurant service), of value **not exceeding ten per cent**. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.

ELIGIBILITY TO OPT UNDER COMPOSITION SCHEME

Section 10(2)

The registered person shall be eligible to opt under sub-section (1), if: -

(a) save as provided in sub-section (1) he is not engaged in the supply of services;

(b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;

(c) he is not engaged in making any Inter-State outward supplies of goods or services;

(d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; and

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council;

(f) he is neither a casual taxable person nor a non-resident taxable person.

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

Section 10(2A)

Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not-

(a) engaged in making any supply of goods or services which are not leviable to tax under this Act;

(b) engaged in making any inter-State outward supplies of goods or services;

(c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;

(d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and

(e) a casual taxable person or a non-resident taxable person:

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all registered persons opt to pay tax under this sub-section.

When Option Will Lapse [Section 10(3)]

The option availed of by a registered person under sub-section (1) or subsection (2A), as the case may be, shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) or sub-section (2A), as the case may be.

Restriction on Collection of Tax [Section 10(4)]

A taxable person to whom the provisions of sub-section (1) or, as the case may be, sub-section (2A) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

In effect, the taxable person opting composition scheme shall consider tax payable under such scheme as its cost and factor in the price itself. It will not collect such tax as tax separately in the invoices issued to the recipient. Neither, it can avail input tax credit charged by its suppliers.

What If A Person Not Eligible Under Composition Scheme Makes Payment Of Tax [Section 10 (5)]

If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis,* apply for determination of tax and penalty.

Computation of Aggregate Turnover and 'turnover in State or turnover in Union territory'

For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely:—

(i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and

(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]

Illustration :

Mr. A, a retailer, presents the following information for the year -

Purchases of goods: Rs. 30,00,000., out of which goods worth Rs. 2,00,000 purchased from unregistered dealer. Sale of Goods: Rs. 49,00,000. He has opted the composition scheme. Show the treatment in GST, assuming that rate under GST are 0.5% CGST and 0.5% (composition scheme) and 9% CGST and 9% SGST (Regular scheme).

Solution:

Tax payable under Composition Scheme:

CGST payable= 49, 00,000 × 0.5% = 24,500

SGST payable=49, 00,000 × 0.5% = 24,500

Tax payable under reverse charge:

No tax is payable under revere charge as Mr. A is not a notified person under Section 9(4) CGST Act, 2017.

Illustration :

A person availing composition scheme during a financial year crosses the turnover of Rs. 150 Lakhs (Rs. 75 lakhs in specified States) during the course of the year, i.e., say he crosses the turnover in December? Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e., till 31st March?

Solution:

No. The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds Rs. 100 Lakhs (Rs. 75 lakhs in specified States).

Illustration :

Delite Brothers, engaged in the sale of spare parts of motor vehicles, have opted for composition. During the year, apart from the sale of spare parts for Rs. 1.2 Cr, they also provided maintenance service to their few customers for which they earned revenue of Rs.8 Lakhs. Please advise the eligibility of Delite Brothers of composition levy under Section 10 of the CGST Act.

Solution:

Under Section 10 of the CGST Act, the registered person opting to pay tax under composition levy can apart from manufacture / supply of goods, provide service not exceeding 10% of their turnover or Rs. 5 lakhs whichever is higher. In this case, the turnover representing service comes to Rs.8 lakhs which is less than 10% of their total turnover. Thus, Delite brother shall be eligible for composition levy in that financial year.

PROCEDURAL ASPECTS OF COMPOSITION SCHEME

Intimation for Composition levy [Rule 3]

Intimation to opt composition levy [Rule 3(1)]	Any person who has been **granted registration on a provisional basis** under clause (b) of sub-rule (1) of rule 24 and who opts to pay tax under section 10, shall electronically file an intimation in **FORM GST CMP-01**, duly signed, or verified through electronic verification code on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, **prior to the appointed day, but not later than thirty days after the said day**, or such further period as may be extended by the Commissioner in this behalf: **Provided** that where the intimation in **FORM GST CMP-01** is filed after the appointed day, the registered person shall **not collect any tax from the appointed day** but shall **issue bill of supply** for supplies made after the said day.
Mention in registration form [Rule 3(2)]	Any person who applies for registration under sub-rule **(1)** of rule 8 may give an **option to pay tax under section 10 in Part B** of **FORM GST REG-01**, which shall be considered as an intimation to pay tax under the said section.
Intimation to opt composition levy before commencement of F.Y. [Rule 3(3)]	Any registered person who opts to pay tax under section 10 shall electronically file an intimation in **FORM GST CMP-02**, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notification by the Commissioner **prior to the commencement of the financial year** for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in **FORM GST ITC-03 i.e., ITC reversal on stock**, in accordance with the provisions of sub-rule **(4)** of rule **44 within a period of sixty days** from the commencement of the relevant financial year. **Provided** that any registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in **FORM GST CMP-02,** duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, on or before 30th day of June, 2020 and shall furnish the statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (4) of Rule 44 upto the 31st day of July, 2020.

Rule 3(A)	As a business facilitation measure, the Government has inserted sub-rule (3A) of Rule 3 to provide that notwithstanding anything contained in sub-rules (1), (2) and (3), a person who has been granted registration on a provisional basis under rule 24 or who has been granted certificate of registration under sub-rule (1) of rule 10 may opt to pay tax under section 10 with effect from the first day of the month immediately succeeding the month in which he files an intimation in **FORM GST CMP-02**, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the 31st day of March, 2018, and shall furnish the statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (4) of rule 44 within a period of one hundred and eighty days from the day on which such person commences to pay tax under section 10. **Provided** that the said persons shall not be allowed to furnish the declaration in **FORM GST TRAN-**1 after the statement in **FORM GST ITC-03** has been furnished.
Furnish details of stock [Rule 3(4)]	Any person who files an intimation under sub-rule (1) to pay tax under section 10 shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in FORM GST CMP-03, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, **within a period of sixty days from the date on which the option for composition levy is exercised** or within such further period as may be extended by the Commissioner in this behalf.
One intimation is deemed intimation for all other places Rule 3(5)]	Any intimation under sub-rule (1) or sub-rule (3) or sub-rule (3A) in respect of any place of business in any State or Union territory shall be **deemed to be an intimation in respect of all other places** of business registered on the same Permanent Account Number.

EFFECTIVE DATE FOR COMPOSITION LEVY [RULE 4]

effective date for composition levy [Rule 4(1)]	The option to pay tax under section 10 shall be effective from the **beginning of the financial year**, where the intimation is filed under sub-rule (3) of rule 3 and the **appointed day** where the intimation is filed under sub-rule (1) of the said rule.
effective date [Rule 4(2)]	The intimation under sub-rule (2) of rule 3 shall be considered only after the grant of registration to the applicant and his option to pay tax under section 10 shall be effective from the date fixed under sub-rule (2) or (3) of rule 10.

CONDITIONS AND RESTRICTIONS FOR COMPOSITION LEVY [RULE 5]

Conditions to opt composition levy [Rule 5(1)]	The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely: - (i) he is neither a casual taxable person nor a non-resident taxable person;

	(ii) 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 sub-rule (1) of Rule 3; (iii) 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; (iv) he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both; (v) 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; (vi) 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; (vii) 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.
No requirement to file a fresh intimation every year	The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the act and these rules. [Rule 5(2)]

VALIDITY OF COMPOSITION LEVY [RULE 6]

validity of composition scheme [Rule 6(1)]	The option exercised by a registered person to pay tax under section 10 shall remain valid so long as **he satisfies all the conditions** mentioned in the said section and under these rules.
liable to pay tax under regular Scheme [Rule 6(2)]	The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day **he ceases to satisfy any of the conditions** mentioned in section 10 or the provision of this chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an **intimation** for withdrawal from the scheme in **FORM GST CMP-04** within **seven days** of the occurrence of such event.
File application for withdrawal of scheme [Rule 6(3)]	The registered person who **intends to withdraw from the composition scheme** shall, before the date of such withdrawal, file an application in **FORM GST CMP-04**, duly signed or verified through electronic verification code, electronically on the common portal.

Issue show cause notice for contravention of provision [Rule 6(4)]	Where the proper officer has reasons to believe that the registered person was **not eligible** to pay tax under section 10 or has contravened the provisions of the act or provision of this chapter, he may issue a notice to such person in **FORM GST CMP-05** to show cause **within fifteen days** of the receipt of such notice as to why option to pay tax under section 10 shall not be denied.
Reply of show cause notice and order by proper officer [Rule 6(5)]	Upon receipt of the reply to the show-cause notice issued under sub-rule **(4)** from the registered person in **FORM GST CMP-06**, the proper officer shall issue an order in **FORM GST CMP-07** within a period of thirty days of the receipt of such reply, **either accepting the reply, or denying** the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.
Furnish detail of stock [Rule 6(6)]	Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in **FORM GST CMP-07** under sub- rule (5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in **FORM GST ITC- 01 containing details of the stock** of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, **within a period of thirty days, from the date from which the option is withdrawn** or from the date of the order passed in **FORM GST CMP-07**, as the case may be.
Any intimation applicable to all other places also [Rule 6(7)]	Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax u/s 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, **shall be deemed to be an intimation in respect of all other places** of business registered on the same Permanent Account Number.

Important Clarification by CBIC

Subject: Denial of composition option by tax authorities and effective date thereof.

1. Rule 6 of the CGST Rules, 2017 deals with the validity of the composition levy. As per the said rule, the option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies the conditions mentioned in section 10 of the CGST Act, 2017 and the CGST Rules. The rule lays down the procedure for withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme and also the procedure for denial of option to the taxpayer to pay tax under the said scheme where he has contravened the provisions of the CGST Act or the CGST Rules.
2. In this connection, doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw. Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer. Further, clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues raised as below.

3. Sub-rule (2) of rule 6 of the CGST Rules provides that the composition taxpayer shall pay tax under sub- section (1) of section 9 of the CGST Act as a normal taxpayer from the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter. Sub-rule (3) of rule 6 of the CGST Rules provides that the registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in **FORM GST CMP-04** on the common portal. He shall file intimation for withdrawal from the scheme in **FORM GST CMP-04** within seven days of the occurrence of such event.

4. As per sub-rule (4) of rule 6 of the CGST Rules, where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 of the CGST Act or has contravened the provisions of the CGST Act or the CGST Rules, he may issue a notice to such person in **FORM GST CMP-05** to show cause as to why the option to pay tax under section 10 of the CGST Act shall not be denied. Upon receipt of the reply to the show cause notice from the registered person in **FORM GST CMP-06**, the proper officer shall, in accordance with the provisions of sub-rule (5) of rule 6 of the CGST Rules, issue an order in **FORM GST CMP-07** within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 of the CGST Act from the date of the option or from the date of the event concerning such contravention, as the case may be.

5. It is clarified that in a case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in **FORM GST CMP-04** but such date may not be prior to the commencement of the financial year in which such intimation/ application for withdrawal is being filed. If at any stage it is found that he has contravened any of the provisions of the CGST Act or the CGST Rules, action may be initiated for recovery of tax, interest and penalty. In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the CGST Act or the CGST Rules. In such cases, as provided under sub-section (5) of section 10 of the CGST Act, the

6. Proceedings would have to be initiated under the provisions of section 73 or section 74 of the CGST Act for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in **FORM GST CMP-07**. It is also clarified that the registered person shall be liable to pay tax under section 9 of the CGST Act from the date of issue of the order in **FORM GST CMP-07**. Provisions of section 18(1)(c) of the CGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

[Circular No. 77/51/2018-GST, dated 31-12-2018]

Analysis of Composition Scheme as prescribed under Section 10(1) of CGST Act:

- The composition scheme is optional.
- The Composition scheme is not available to supplier of services except restaurant service.
- However, the supplier of goods shall be allowed to make supply of services other than restaurant service not exceeding 10% of their turnover within the state or union territory or Rs. 5 lakhs whichever is higher.
- Taxable person whose all supplies of goods and services are within the state only are eligible.
- Taxable person who opts for this scheme will not be allowed to charge GST in their invoice. They will issue a bill of supply instead of Tax invoice. They are also not entitled to take input tax credit.

- The scheme lapses on the day his aggregate turnover exceeds the specified aggregate turnover limit.
- A registered taxable person having same PAN and multiple registrations in different states have to opt for the composition scheme for all states. If one registered person opts for normal scheme, others become ineligible for composition scheme.
- Composition scheme is not applicable for tax payment under reverse charge mechanism.
- Customer cannot claim ITC in respect of purchases from person covered by composition scheme.
- A customer who buys goods from registered person who is under composition scheme will not be able to avail input tax credit because a composition scheme supplier cannot issue a tax invoice.
- A manufacturer can opt for composition scheme generally. However, a manufacturer of goods, which would be notified on the recommendations of the GST Council, cannot opt for this scheme. This scheme is not available for services sector, except restaurants. However, the goods manufacturers/suppliers can provide services other than restaurant service to the extent of 10% of their turnover.
- Composition tax payers do not need to file any statement of outward or inward supplies. They have to file a quarterly return in Form GSTR-4 by the 18th of the month after the end of the quarter. Since they are not eligible for any input tax credit, there is no relevance of GSTR-2 for them and since the credit of tax paid under Composition Levy is not eligible, there is no relevance of GSTR-1 for them. In their return, they have to declare summary details of their outward supplies along with the details of tax payment. They also have to give details of their purchases in their quarterly return itself, most of which will be auto populated.

List of Forms

Form No.	*Description*
GST CMP-01	Intimation to pay tax under section 10 (composition levy) (Only for persons registered under the existing law migrating on the appointed day)
GST CMP-02	Intimation to pay tax under section 10 (composition levy) (For persons registered under the Act)
GST CMP-03	Intimation of details of stock on date of opting for composition levy (Only for persons registered under the existing law migrating on the appointed day)
GST CMP-04	Intimation / Application for withdrawal from composition Levy
GST CMP-05	Notice for denial of option to pay tax under section 10
GST CMP-06	Reply to the notice to show cause
GST CMP-07	Order for acceptance/rejection of reply to show cause notice.

Illustrations :

Eligibility under composition scheme: A Ltd. is a manufacturing concern in Pune. In Financial Year 2020-21 total value of supplies including inward supplies taxed under reverse charge basis are Rs.1,02,60,000. The break up of supplies is as follows -

	Particulars	*Rs.*
(1)	Intra State Supplies made under forward charge	25,00,000
(2)	Intra State Supplies made which are chargeable to GST at Nil rate	25,00,000
(3)	Intra state Supplies which are wholly exempt under section 11 of CGST Act, 2017	50,00,000
(4)	Value of inward supplies on which tax payable under RCM	2,60,000

Briefly explain whether A Ltd. is eligible to opt for Composition scheme in Financial Year 2020-21. Also demonstrate the calculation of his aggregate turnover.

Solution:

A registered person, whose aggregate turnover in the preceding financial year did not exceed Rs. 150,00,000, may opt for payment of tax under Composition scheme.

As per Section 2(6) of the CGST Act, 2017, "Aggregate turnover" means the aggregate value of -

- all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),
- exempt supplies,
- exports of goods or services or both, and
- Inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis, **but excludes** -
  - ✓ Central tax,
  - ✓ State tax,
  - ✓ Union territory tax,
  - ✓ Integrated tax, and
  - ✓ Cess.

Further, ***Explanation 1 to Section 10 CGST Act provides that***, "For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include :

– the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act,

– but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount".

Thus, aggregate turnover shall be computed as under:

Computation of Aggregate Turnover:

	Particulars	***Rs.***
(1)	Supplies made under forward charge	25,00,000
(2)	Supplies made which are chargeable to GST at Nil rate (covered under exempt supply)	25,00,000
(3)	Supplies which are wholly exempt under section 11 of CGST Act, 2017	50,00,000
(4)	Value of inward supplies on which tax payable under RCM (specifically excluded)	NIL
	Total	1,00,00,000

Since, Aggregate turnover does not exceed Rs. 1,50,00,000 during the Financial Year 2018-19, So, A Ltd. is entitled for Composition Scheme for Financial Year 2019-20.

Illustration :

Computation of composition tax liability: A Ltd. a manufacturing concern in Rajasthan has opted for composition scheme furnishes you with the following information for Financial Year 2020-21. It requires you to determine its composition tax liability and total tax liability. In Financial Year 2019-20 total value of supplies including inward supplies taxed under reverse charge basis are Rs. 68,00,000. The breakup of supplies for financial year 2020-21 is as follows -

	Particulars	***Rs.***
(1)	Intra State Supplies of Goods × chargeable @5% GST	30,00,000
(2)	Intra State Supplies made which are which are chargeable to GST at Nil rate	18,00,000
(3)	Intra state supplies which are wholly exempt under Section 11 of CGST Act, 2017	2,40,000
(4)	Value of inward supplies on which tax payable under RCM (GST Rate 5%)	5,00,000
(5)	Value of supplies representing interest in loans and advances extended by A. Ltd	80,00,000
(6)	Intra State Supplies of Goods Y chargeable @18% GST	30,00,000

Solution:

The composite tax liability of A ltd. shall be as under :

(1) Computation of taxable turnover and tax payable

	Particulars	***Rs.***
(1)	Supplies made under forward charge	30,00,000
(2)	Supplies made which are chargeable to GST at Nil rate	-(not to be included)
(3)	Supplies which are wholly exempt under Section 11 of CGST Act, 2017	-(not to be included)

(4)	Value of supplies representing interest in loans and advances extended by A. Ltd.	-(not to be included)
(5)	Value of inward supplies on which tax payable under RCM in terms of Section 9(3) CGST act (GST Rate 5%) (not to be included)	NIL
(6)	Intra State Supplies of Goods Y chargeable @ 18% GST	30,00,000
	Taxable turnover	60,00,000
	Rate of composite tax	CGST @ 0.5% SGST @ 0.5%
	Total Composite tax	**60,000**

(2) Tax payable under reverse charge basis :

Particulars	***Rs.***
Value of inward supplies on which tax payable under RCM	5,00,000
Rate of GST	5%
Tax payable under RCM	25,000
Total Tax liability	85,000

Illustration :

Option for composition scheme: XYZ Ltd., a manufacturing concern had effected Intra-State taxable supply of Rs. 20,00,000 and interstate taxable supply of Rs. 25,00,000 in Financial year 2017-18. The company wants to opt for composition scheme under Section 10 of CGST Act, 2017. As a GST consultant advise XYZ Ltd. whether it can opt for composition scheme.

Solution:

As per provisions of Section 10 of CGST Act, 2017, a manufacturer can opt for composition scheme if he is not engaged in making any Inter-State outward supplies of goods. In this case since XYZ Ltd. has effected interstate taxable supply of goods, hence it cannot opt for composition scheme.

Illustration :

Normal Taxation v. Composition Scheme: Mr. A, a retailer who keeps no inventories, presents the following expected information for the year -

(1) Purchases of goods: Rs. 50 lakhs (GST @5% extra)

(2) Sales (at fixed selling price inclusive of all taxes): Rs. 60 lakhs (GST rate on such goods as per Customs Tariff is @5%). Discuss whether he should opt for composition scheme if composite tax is 1% of turnover. Expenses of keeping detailed statutory records required under the GST Laws will be Rs. 1,20,000 p.a., which shall get reduced to Rs. 50,000 if composition scheme is opted for. Other expenses are Rs. 3,00,000 p.a.

Solution:

The cost to the ultimate consumer under two schemes is as under -

	Normal GST scheme	***Composition Scheme***
Cost of goods sold (*No credit under composition scheme, hence, cost of goods sold will be higher)	50,00,000	52,50,000
Add: Costs of maintaining records	1,20,000	50,000
Add: Normal Expenses	3,00,000	3,00,000
Total Costs	54,20,000	56,00,000
Sales (inclusive of all taxes)	60,00,000	60,00,000
Less: Tax (GST = Rs. 60 lakh × 5 / 105); (Composite Tax = Rs. 60 lakh × 1%)	2,85,714	60,000
Sales (net of taxes)	**57,14,286**	**59,40,000**
Profit of the dealer (Sales, (net of taxes - Total Costs)	**2,94,286**	**3,40,000**

Conclusion: It is apparent that while cost to ultimate consumer, in both the cases remains same, the profit of the dealer is higher if the dealer opts for composition scheme. Hence, composition scheme should be opted.

Illustration :

Applicability of composition scheme: XYZ Ltd. is having two factories. One factory is located in Rajasthan is manufacturing readymade garments and another factory located in Gujarat is engaged in manufacture of auto components. The turnover details of Financial Year 2017-18 are as under:

	Particulars	***Rs.***
(1)	Intra-State supply of readymade garments in Rajasthan	28,00,000
(2)	Intra-State supply of auto- components in Gujarat	18,00,000
	Total Value of taxable supplies	46,00,000

The company wants to opt for composition scheme for factory in Rajasthan and tax at normal rates in Gujarat. Advise.

Solution:

According to Section 10(2) of CGST Act, 2017, All Registered person having same PAN have to opt for Composition Scheme. If one opts for regular levy for one registered place, others become ineligible for composition levy. Thus, XYZ Ltd. cannot opt for composition scheme in Rajasthan and pay normal tax in Gujarat.

SPECIAL COMPOSITION SCHEME-SECTION 10(2A) [W.E.F 1.4.2019]

As we have seen in the previous paragraphs that the composition scheme under section 10(1) of the CGST act is available mainly to the traders and manufacturers of goods or for restaurant business. The service sector was

ineligible to avail such scheme. In order to extend the benefits of composition scheme to small service suppliers, on the recommendations of the GST Council, the CGST act was amended through the Finance Act, 2019 by inserting Section 10(2A) therein. The new section 10(2A) provides as below:

In line with the legislative intent, the Central Government issues Notification No. 2/2019-CT (Rate) dated 7.3.2019 to provide the details and procedure for the above said special composition. Following are the ingredients of the special composition scheme:

1. Threshold

- First supplies of goods or services or both upto an aggregate turnover **of fifty lakh rupees made on** or after the 1st day of April in any financial year, by a registered person.
- The expression "first supplies of goods" shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.
- In computing aggregate turnover, value of supply 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.

Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub- section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not -

(a) engaged in making any supply of goods or services which are not leviable to tax under this Act;

(b) engaged in making any Inter-State outward supplies of goods or services;

(c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;

(d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and

(e) a casual taxable person or a non- resident taxable person :

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961), the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.

2. Pre-requisites for a person to avail composition scheme:

(i) who is not eligible to pay tax under composition scheme prescribed under sub-section (1) of section 10 of the CGST Act;

(ii) who is not engaged in making any supply which is not leviable to tax under the said Act;

(iii) who is not engaged in making any Inter-State outward supply;

(iv) who is neither a casual taxable person nor a non-resident taxable person;

(v) who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and

(vi) who is not engaged in making supplies of the following goods.

Annexure		
Sl. No.	***Tariff item, sub-heading, heading or Chapter***	***Description***
(1)	(2)	(3)
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2	2106 90 20	Pan Masala
2A	2202 10 10	Aerated Waters
3	24	All goods, i.e., Tobacco and manufactured tobacco substitutes
4	6815	Fly ask bricks or Fly ash aggregate, Fly ash blocks
5	6901 0010	Bricks or fossil meals or similar siliceous earths
6	6904 10 00	Building bricks
7	6905 10 00	Earthen or roofing titles

3. Rate of Tax

3% CGST and 3% SGST.

4. Other conditions:

- Where more than one registered persons are having the same Permanent Account Number, issued under the Income Tax Act, 1961, tax on supplies by all such registered persons is paid at the rate prescribed under this scheme.

  The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be eligible to any credit of input tax.

- The registered person shall issue, instead of tax invoice, a bill of supply.

- The registered person shall mention the following words at the top of the bill of supply, namely :- 'taxable person paying tax in terms of notification No. 2/2019-Central Tax (Rate), dated 7-3-2019, not eligible to collect tax on supplies'.

- The registered person opting to pay tax under this scheme shall be liable to pay central tax and state tax on inward supplies under reverse charge [as per Section 9(3) and Section 9(4) CGST Act, 2017] at the applicable rates.

- Where any registered person who has availed of input tax credit opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this scheme attracts the provisions of section 18(4) of the said Act and the rules made thereunder and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

5. Procedure

The procedural compliances as prescribed under CGST Rules, 2017 for composition levy under Section 10(1) of the CGST Act, 2017 shall *mutatis mutandis* apply to the new composition scheme as well.

CASE LAW

In Re: Ghalib Iqbal Sheriff 2020 (36) G.S.T.L. 398 (A.A.R. - GST - Kar.)

The applicant is a proprietary concern registered under the provisions of the Goods and Services [Tax] Act, 2017. The applicant states that he is engaged in the business of supplying goods under the trade name "Empathic Trading Centre" and is also a supplier of service of renting of immovable property. He states that there is no connection whatsoever between the two lines of business and they are two separate and distinct business activities. He also states that he is currently under composition scheme, having migrated to the composition scheme with effect from 1-4-2019 by virtue of Notification No. 2/2019-Central Tax (Rate), dated 7-3-2019 as his aggregate turnover is much less than Rs. 50,00,000-00 per annum.

The applicant has sought advance ruling in respect of the following questions :

(1) Whether he is eligible to be in the composition scheme as his aggregate turnover is much less than Rs. 50,00,000-00?

(2) Whether the rate of composition tax applicable is 1% for the turnover of goods (sales) and 6% for the turnover of service (rent). The two separate taxes amounts to be totalled and paid or is it 6% as a whole for the aggregate turnover of goods and service turnover that is to be paid?

Held:

On perusal of the above conditions, an applicant shall be eligible to pay tax under the said notification, only if the applicant is not eligible to pay tax under Section 10(1) of the CGST Act and the applicant does not satisfy the above condition as he is registered under Section 10 of CGST Act, 2017. Regarding the other condition, the applicant has admitted that his aggregate turnover is less than Rs. 50 Lakhs and hence he satisfies this condition and other conditions are not applicable to him. Hence the applicant is not eligible to pay tax under the Notification on the entire aggregate turnover as long as he continues to be registered as Composition Taxpayer. If the applicant opts out of the Composition levy and he obtains separate registrations for the two lines of business, as per second condition, he shall be liable to pay tax at 3% CGST and 3% SGST on the each of the turnovers of the registrations. The tax is on the entire aggregate turnover i.e. all the "first supplies of goods or services or both upto an aggregate turnover of Rs. 50 Lakhs". Hence the applicant is liable to pay tax under CGST Act at 3% and at 3% under KGST Act, if he opts to pay tax under the said Notification after opting out of Composition levy on the entire value of supplies made and he cannot apply different schemes for different types of transactions.

PURE AGENT

Concept

The GST law makes a special exception to the levy of tax in cases where the registered person while making the supply act as a pure agent. In effect, where the registered person supplies certain goods or services on behalf of another person, he is not mandated to include the value of such supplies for the purpose of discharging the tax.

Rule 33 of the CGST Rules, 2017 provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply subject to the following conditions.

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

For the sake of clarity, Rule 33 has defined the expression "pure agent" means a person who—

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Example:

Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

CASE LAWS

- ***Sundaram Finance Ltd.* In Re *(2022) 1 Centax 164 (A.A.R. - GST - T.N.)***

  Assessee is engaged in leasing of 'vehicle' under 'operational lease'. It calculated base price of vehicle of leased vehicle by adding cost of registration and road tax also known as 'on road component services'. Such cost is capitalized in books of account of assessee.

  It sought ruling on the question i.e. Whether the portion of the certain additional services *viz.*, payment of road tax/registration fees, insurance premium, *etc.*, rendered by the applicant in the course of its Leasing of the vehicle/s to the Lessee falls under the category of "services of a pure agent".

  Held : Since 'on road component' services are procured on account of assessee which enables vehicle to be used on road and subsequent lease, they are in nature of incidental expenses in relation to leasing of vehicles which cannot be considered as procured in capacity of 'pure agent' by assessee - Therefore, impugned services do not fall under category of 'services of pure agent'.

- ***In Re : Bhadreshkumar Rameshchandra Dave 2021 (48) G.S.T.L. 380 (A.A.R. - GST - Guj.)[14-10-2020]***

  An applicant is a service provider and intends to work as a Pure Agent for a company which will be the recipient of the labour supply services satisfying below listed conditions :

(i) the applicant intend to work as a pure agent of the company that will be the recipient of the labour supply service, they will make the payment to the third parties (labour) for the labour supply service procured, as the contract for labour service made by the third parties is between third party and the company that will receive the service;

(ii) the company that will receive labour supply service uses the services so procured by the applicant in their capacity as a pure agent of the company receiving the supply;

(iii) the company receiving labour supply service is liable to make payment to third parties (labour);

(iv) the company authorizes the applicant (pure agent) to make payment on their behalf;

(v) the company which is recipient of supply knows that the labour services for which payment has been made by the applicant shall be provided by the third parties (labour);

(vi) the payment made by the applicant on behalf of the Company which is recipient of labour supply services has been separately indicated in the invoice issued by the applicant to the recipient of the service; applicant will issue two separate invoices as under :

(a) *Invoice No. 1 :* with description "Bill for reimbursement of Salary payment made on behalf of company to the third parties (labour) for the month as per attached list".

(b) *Invoice No. 2 :* with description "Bill for service and consultation for the month".

(vii) the applicant recovers from the company which is recipient of labour supply service only such amount that has been paid by them to the third parties (labour); and

(viii) the labour service procured by applicant from the third parties as a pure agent of the company which is recipient of labour supply service are in addition to the services applicant provide on their own account.

The applicant sought advance ruling on the question that what will be the applicable GST rate for the activity carried out by the applicant.

Discussions: On going through the said terms and conditions of the agreement, the authority observed that the applicant has entered into an agreement with the company for supply of labour and in the clause "Description of Work" of the agreement, it is clearly mentioned that, *contractor shall supply labour* in each *shift (All the three) as per the requirement of the organization; contractor shall be paid at 17000.00 on the total bill raised by him for each worker supplied by him per day and the labour employed by the contractor shall follow the safety norms strictly including prohibiting smoking inside the premises.* These terms and conditions clearly indicate that the applicant is engaged in the service of supply of labour. The agreement also provides that the contractor engages all persons in all respects and assumes responsibilities under various Acts, viz. the Factories Act, 1948, The Workmen's Compensation Act, 1923, Contract Labour (Regulation and Abolition) Act, 1970, Employees State Insurance Act and Employees Provident Funds Act, 1952 etc. Further, it also provides that the contractor has indemnified the recipient against all claims and that in the event of the recipient having to pay any amount due to non-observation of the various provisions under the Act, the contractor shall be liable to reimburse the aforesaid amount to the company.

Held: The applicant does not satisfy any one of the conditions mentioned in Rule 33 of CGST Rules, 2017 which are required for acting as a "pure agent". Hence we conclude that the applicant cannot be categorized as a "pure agent" as such he is engaged in the supply of labour service. The supply of labour service is taxable under GST Act/Rules, therefore applicant is liable to pay Goods and Services Tax on the supply of said service provided.

Forward Charge Mechanism & Reverse Charge Mechanism & Leave And Collection [Section 9 of CGST Act, 2017]

In the Goods and Services Tax law, the seller of goods or services or both collects/received tax from buyer of goods or service or both and pay to the Revenue. And the ultimately responsibility for payment of GST is lies upon end user and this system/mechanism is known as forward charge. However, in some cases due to administrative difficulties i.e. difficult to reach out to the labile person/supplier, Department of Revenue impose the responsibility on recipient of goods or services or both to pay GST liability by himself directly to the Revenue, not by supplier, so this mechanism is known as reverse charge or referred as Reverse Charge Mechanism (RCM). Under the mechanism of forward charge supplier was paying tax but RCM has cast responsibility on recipient to make payment of GST directly to the Government though recipient will eligible to claim ITC on such tax payment.

General [Section 9(1)] **Forward Charge**	Subject to the provisions of sub-section (2), • there shall be levied a tax called the CGST, • on all Intra-State supplies, • of goods or services or both, • except on the supply of alcoholic liquor for human consumption, • on the value determined under section 15, • at such rates, **not exceeding twenty percent**, and • as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. ***Note:*** Supply of alcoholic liquor for human consumption is specifically excluded and continue to be subject to state excise and VAT State levy.
Meaning of Forward Charge	It means the liability to pay the tax is on the supplier of goods and / or service. This is a general principal and remains applicable until the specific provision provides for levy of tax under reverse charge.
Tax on petroleum etc. [Section 9(2)]	The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be **notified by the Government** on the recommendations of the Council. **Analysis:** Alcoholic liquor for human consumption is currently outside the ambit of GST. Further petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel is also kept outside GST for the time being, but can be brought under it's regime from such date as may be notified by the GST Council.
Reverse charge on notified services [Section 9(3)]	The Government may, on the recommendations of the Council, **by notification**, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Note : *The provisions under section 5 of IGST Act and section 7 of UTGST Act, are similar to section 9 of CGST Except:*

i. The word CGST has been substituted by IGST & UTGST under respective Acts.

ii. Under IGST, Act, tax called integrated tax is to be levied on all inter-state supplies and on goods imported into India and under UTGST Act, tax called UT tax is levied on all intra-state supplies.

iii. Maximum rate under IGST is 40%(20% CGST + 20% UTGST) and under UTGST it is 20%.

Meaning of Reverse Charge	It means the liability to pay tax is on the recipient of supply of goods and services instead of the supplier of such goods or services in respect of notified categories of supply In this respect, the Government has issued Notification No.10/2017-IT, dated 28-Jun-2017 to list down the services which are under reverse charge. Similarly, Notification: 4/2017-Central Tax (Rate) dated 28-Jun-2017 has been issued to list down various goods which are under reverse charge.
Reverse Charge in case of specified category of supplies received from unregistered persons as may be notified by the Government. [Section 9(4)]	The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both. The above noted provision was substituted w.e.f. 01.02.2018 in place of Section 9(4) as originally introduced. By way of this amendment, the reverse charge on supplies received from unregistered person shall require notification from the Government.
	Under the substituted provision, Notification No. 7/2019-Central Tax (Rate), dated 29- 03-2019 has been issued by the Government to prescribe payment of tax under reverse charge by the promotors of real estate project in respect of purchase of materials, cement and capital goods from unregistered persons in certain scenarios. Hitherto, Section 9(4) was generally requiring payment of tax under reverse charge on supplies received from unregistered persons. Although, the said provision was suspended until 30.9.2019 and finally it ceased to have an effect w.e.f. 31.1.2019.
Tax on Electronic Commerce Operator [Section 9(5)]	The Government may, on the recommendations of the Council, by notification, **specify categories of services** the tax on Intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services: ● **Provided** that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

	• **Provided further** that where an electronic commerce operator does not have a physical presence in the taxable territory and he also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.
	Vide Notification No.17/2017-Central Tax (Rate), dated 28th June, 2017 as amended from time to time, the following services have been notified under Section 9(5) of the CGST Act, 2017 Central Government hereby notifies that in case of the following categories of services, the tax on Intra-State supplies shall be paid by the electronic commerce operator - (a) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, omnibus or any other motor vehicle; (b) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act, 2017. (c) Services by way of house-keeping, such as plumbing, carpentering etc., except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act. (d) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises. ***Explanation-*** For the purposes of this notification - (a) **"Radio taxi"** means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS); (b) **"Maxicab", "Motorcab" "Motor Cycle,** motor vehicle and omnibus**"** shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988); (c) specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.

Goods Notified under Reverse Charge under Section 9(3) by Notification No. 4/2017-Central Tax (Rate)

Sl. No.	*Tariff item, sub-heading, heading or Chapter*	*Description of supply of Goods*	*Supplier of goods*	*Recipient of supply*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
1.	0801	Cashewnuts,not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person
3A.	33012400, 33012510, 33012520, 33012530, 33012540	Following essential oils other than those of citrus fruit namely: — (a) Of peppermint (Mentha piperita); (b) Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate).	Any Unregistered Person	Any Unregistered Person
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A.	5201	Raw cotton	Agriculturist	Any registered person”
5.		Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent. *Explanation*- For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of sub-section 1 of section 11 of the Lotteries (Regulations) Act, 1998 (17 of 1998).

6.	Any Chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a local authority	Any registered person
7.	Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person

Explanation:-

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

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

Service notified under Reverse Charge as per Notification No. 10/2017 IT (Rate) dated 28.6.2017, as amended from time to time

Sl. No.	***Category of Supply of Services***	***Supplier of service***	***Recipient of Service***
(1)	***(2)***	***(3)***	***(4)***
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.
2	Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road to - (a) any factory registered under or governed by the factories Act, 1948 (63 of 1948); or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services	Goods Transport Agency (GTA)	(a) Any factory registered under or governed by the factories Act, 1948(63 of 1948); or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
	Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or (e) anybody corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person. **Provided** that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, - (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services. **Provided further** *that nothing contained in this entry shall apply where, -* i. *the supplier has taken registration under the CGST Act, 2017 read with clause (v) of section 20 of the IGST Act, 2017 and exercised*		(e) anybody corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person; located in the taxable territory.

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
	the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and ii. *the supplier has issued a tax invoice to the recipient charging Integrated Tax at the applicable rates and has made a declaration as prescribed in Annexure III on such invoice issued by him*.		
3	"Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly. ***Explanation.*** - "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority".	An individual advocate including a senior advocate or Firm of advocates	Any business entity located in the taxable territory.
4	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal	Any business entity located in the taxable territory.
5	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
6	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding- (1) renting of immovable property, and (2) services specified below - (i) services by the Department of Posts;	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
	(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.		
6A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).	Central Government, State Government, Union Territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017 read with clause (v) of section 20 of Integrated Goods and Services Tax Act, 2017.
6AA	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered person.
6B	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter.
6C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any person	Promoter.
7	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
8	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
9	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
10	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.
11	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.
11A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory: Provided that nothing contained in this entry shall apply where, - (i) the author has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017), and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST commissioner, as the case may be, that he exercises the option to pay integrated tax on the service specified in column (2), under forward charge in accordance with Section 5 (1) of the Integrated Goods and Service Tax Act, 2017 under forward charge, and to comply with all the provisions of Integrated Goods and Service Tax Act, 2017 (13 of 2017) as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
			(ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST INV-I to the publisher.
12	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.
13	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs)	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm	A banking company or a non-banking financial company, located in the taxable territory.
14.	Services provided by Business Facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory.
15.	Services provided by an agent of Business Correspondent (BC) to Business Correspondent (BC)	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.
16.	Security services (services provided by way of supply of security personnel) provided to a registered person	Any person other than a body corporate	A registered person, located in the taxable territory.
17.	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging integrated tax at the rate of 12 per cent. to the service recipient	Any body corporate located in the taxable territory.

Sl. No.	*Category of Supply of Services*	*Supplier of service*	*Recipient of Service*
18.	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended	Lender, i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower, i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI".

Explanation- For purpose of this notification-

(a) The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

(b) "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

(c) The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.

(d) The words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.

(e) A "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 (6 of 2009) shall also be considered as a partnership firm or a firm.

(i) Provisions of this notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures.

(j) The term "apartment" shall have the same meaning as assigned to it in clause (e) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

(k) The term "promoter" shall have the same meaning as assigned to it in clause (zk) under section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

(l) The term "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP).

(m) "The term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

(n) The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP.

(o) "Floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built".

Goods and Services falling under Reverse Charge in terms of Section 9(4) CGST Act, 2017

Notification No. 07/2019- Central Tax (Rate) w.e.f. 1/4/2019

Sl. No.	*Category of supply of goods and services*	*Recipient of goods and services*
(1)	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or final occupation, whichever is earlier) as prescribed in notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table.	Promoter
(2)	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975).	Promoter
(3)	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017.	Promoter

***Explanation.* -** For the purpose of this notification, -

(i) the term "promoter" shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(ii) "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iv) "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

(v) the term "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

LESSON ROUND-UP

- The incidence of GST is Supply, is defined under section 7 of the CGST Act, 2017. Consideration and business test are key to the definition of Supply. The exceptions are import of services and transactions with related and distinct parties where exception of business test and consideration respectively have been taken. Supply of course includes sale, transfer, barter, lease, etc.
- The concepts of mixed supply and composite supply which deal with the situations where multiple supplies are made at the same time.
- In composite supply, the rate of tax as applicable to principal supply applies to the other ancillary supplies whereas in case of mixed supply, the highest tax rate as applicable to any individual supply shall remain applicable to all the other supplies.
- Section 9 CGST Act provides for the levy of tax in case of intra-state trade and Section 5 of the IGST Act provides for levy of tax in case of intra-state trade.
- The general principal is forward charge where the supplier is mandated to collect and pay the tax to the Government. In certain situations, the liability to pay tax to the Government is entrusted to the recipient.
- Section 9(4) provides another specie of reverse charge where the recipient is mandated to pay tax on procurement of notified supplies received from unregistered persons.
- Under section 9(5) CGST Act, the supplies made through e-commerce operators have been notified under Reverse Charge.

GLOSSARY

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

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

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

"Location of the recipient of services" means,-

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient;

"**Place of supply"** means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act.

TEST YOURSELF

(These are meant for recapitulation only. Answers to this questions are not to be submitted for evaluation.)

1. Describe with illustrations the various forms of Supply in terms of section 7 of the CGST Act, 2017.
2. "Consideration is not always the condition to deem a transaction as Supply". Elucidate the statement with examples.
3. Differentiate the concepts of mixed supply and composite supply.
4. "Pure Agent is exempted from payment of tax subject to certain conditions." Discuss the conditions.
5. Discuss the exclusion which are permissible for calculating aggregate turnover for a composition dealer.
6. Discuss the conditions for availing special composition scheme by the service provider.
7. "Purchases for unregistered persons are subject to tax under reverse charge". Critically examine the statement in terms of section 9(4) CGST Act.
8. Discuss the provisions relating to supplies made within territorial waters of India.

LIST OF FURTHER READINGS

- GST Ready Reckoner - Taxmann - V.S. Datey
- GST Manual with GST Law Guide & GST Practice Referencer - Taxmann
- GST Acts with Rules & Forms – Taxmann
- GST - Law, Practice & Procedures - Bharat Publications Vineet Gupta & N.K. Gupta

Further, Students should visit https://www.cbic.gov.in/ to have access of bare GST law, notifications and circulars as issued by the CBIC from time to time.

Time of Supply

Lesson 3

KEY CONCEPTS

■ Time of Supply ■ Interpretative Rules ■ Classification scheme under GST ■ Forward Charges

Learning Objectives

To understand:

- Time of supply for goods
- Time of supply for services
- Time of supply for continuous supply of goods and services
- Time of supply for vouchers
- How to determine tax rate for goods and services
- How to classify the goods and services under HSN and SAC

Lesson Outline

- Time of Supply of Goods
- Time of Supply of Services
- Classification of Goods and Services under GST
- Rules of Interpretation
- Lesson Round-Up
- Test Yourself
- List of Further Readings

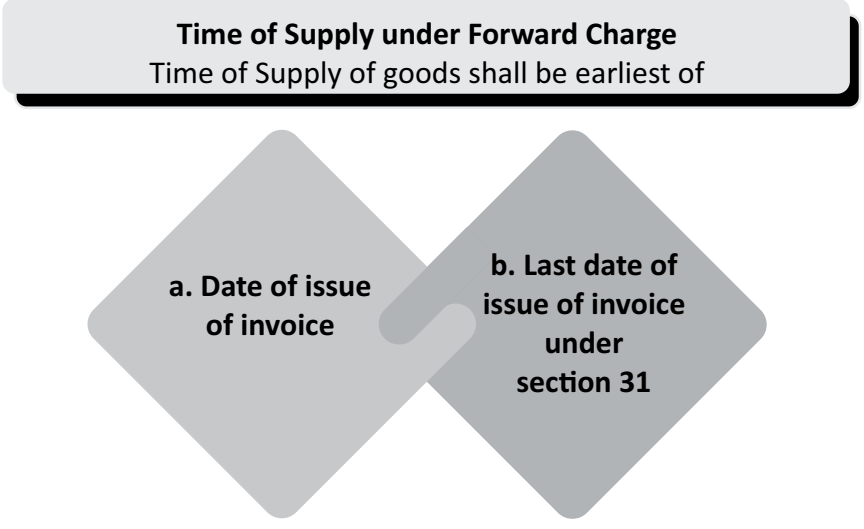
REGULATORY FRAMEWORK

Central Goods and Services Tax Act, 2017

Section & Rules	*Deals with*
Section 12	Time of Supply of Goods
Section 13	Time of Supply of Services
Section 14	Change in rate of tax in respect of supply of goods or services
Section 31	Timelines for issuance of tax invoice
Rule 34	Rate of exchange of currency, other than Indian rupees, for determination of value
Customs Act	Interpretative Rules

TIME OF SUPPLY

The time of supply fixes the point when the liability to charge GST arises. It also indicates when a supply is deemed to have been made. The CGST/SGST act provides separate time of supply for goods and services. Section 12 of CGST Act, 2017 prescribes the rules to determine the time of supply for goods and section 13 of the Act prescribes rules for services.



TIME OF SUPPLY OF GOODS [SECTION 12]

Time of supply [Section 12(1)]	The **liability to pay tax on goods shall arise at the time of supply**, as determined in accordance with the provisions of this section.
When invoice is issued within prescribed period under section 31(1) [Section 12(2)]	The time of **supply** of goods shall be the earlier of the following dates, namely:- (a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or (b) the date on which the supplier receives the payment with respect to the supply.

	Provided that where the supplier of taxable goods receives an amount **up to one thousand rupees in excess** of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount. ***Explanation 1***- For the purposes of clauses (a) and (b), **"supply"** shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. ***Explanation 2***- For the purposes of clause (b), **"the date on which the supplier receives the payment"** shall be the date on which the payment is entered in his **books of account or the date on which the payment is credited to his bank account, whichever is earlier**.
	However, vide ***Notification No. 66/2017 CT dated 15.11.2017*** *the Government has notified that the registered person who did not opt for the composition levy under section 10 of the said act as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said act including in the situations attracting the provisions of section 14 of the said Act.*
	The effect of the above notification is that the time of supply in respect of supply of goods shall be the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice. In effect, the advance received in respect of supply of goods is not liable to be taxed at the time of receipt. Therefore, ***the date of payment in respect of supply of goods shall not be relevant for determining the time of supply****.* **invoice date as per section 31(1)** A registered person supplying taxable goods shall, before or at the time of,- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or (b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed. **Invoice Due date in case of Continuous supply of goods [Section 31(4)]** In case of continuous supply of **goods**, where successive **statements of accounts** or successive **payments** are involved, the **invoice** shall be issued before or at the time each such statement is **issued** or, as the case may be, each **such payment** is received. ***Example:*** Supply of filter water canes in office daily but billed on 10th of every month. Invoice due date as per Goods sent on approval for sale or return [Section 31 (7)] Where the goods being sent or **taken on approval** for sale or return are removed before the supply takes place, the invoice shall be issued before or at the **time of supply** or six months from the date of removal, whichever is **earlier**.

Explanation: *For the purposes of this section, the expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier.*

Advance upto Rs. 1,000

Where the supplier of taxable goods receives an amount up to **one thousand rupees** in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the **option** of the said supplier, be the **date of issue of invoice** in respect of such excess amount.

Analysis

Under the exiting legal position, the time of supply of goods shall be the date of invoice or last date when the invoice is required to be issued in terms of Section 31 of the CGST Act, 2017.

***Example 1*:** Where supply involves movement or making available

Case No.	*Date of removal of goods/ make available*	*Date of invoice*	*Date of receipt of payment*	*Time of supply of goods*
1	01/11/2022	20/10/2022	28/07/2022	20/10/2022
2	25/11/2022	2/12/2022	6/9/2022	25/11/2022
3	25/11/2022	2/12/2022	Recipient has gone bankrupt, no payment received yet	25/11/2022
4	25/11/2022	2/12/2022	20/11/2022	25/11/2022
5	25/11/2022	2/12/2022	Bank credit: 22/11 /2022 Books: 24/11/2022	25/11/2022
6	25/11/2022	23/11/2022	Bank credit: 24/11/2022 Books: 20/11/2022	23/11/2022

***Note*:** GST is not applicable on receipt of advance against supply of goods. GST on Advance is payable at the time of issue of the invoice.

***Example 2*:** Continuous supply of goods

Case No.	*Date of removal of goods*	*Date of Statement of Account*	*Date of Invoice*	*Date of payment*	*Time of supply of goods*
1	10/11/2022	4/12/2022	6/12/2022	8/12/2022	4/12/2022
	20/11/2022				
	30/11/2022				

***Example 3*:** Sale on approval basis

Case No.	*Date of removal of goods*	*Date of Acceptance by the buyer*	*Date of Invoice*	*Date of payment*	*Time of supply of goods*
1	10/11/2022	4/12/2022	6/12/2022	8/12/2022	4/12/2022
2	12/10/2022	2/5/2023	1/10/2022	28/04/2021	12/04/2023 (6 Months from date of removal or date of supply whichever is earlier)

Time of supply in case of reverse charge [Section12(3)}

In case of supply of goods in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the **earliest** of the following dates, namely:-

(a) the date of the receipt of goods; or

(b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his hank account, whichever is earlier; or

(c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of accounts of the recipient of supply.

w.e.f. 15.11.2017 'Date of Payment' is not applicable for goods and applies only to services.

Notification No. 66/2017 - Central Tax

Example: Reverse charge

Case no.	*Date of the receipt of goods*	*Date of invoice*	*Date of payment*	*Time of supply of goods*
1	25/11/2022	20/10/2022	28/11/2022	20/11/2022 (30 days from DOI)
2	25/11/2022	02/12/2022	6/12/2022	25/11/2022

Time of Supply in case of voucher [Section12(4)]

In case of supply of vouchers by a supplier, the time of supply shall be-

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

	Example: Big bazaar issues a voucher for Rs. 5,000 for purchase of any item from Big bazaar. It is an unidentifiable voucher; the time of supply shall be the date of redemption of voucher. If Big bazaar issues voucher only to buy juicer, now it is an identifiable voucher, the time of supply shall be date of issue of voucher.
Residual [Section12(5)]	Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or (b) in any other case, be the date on which the tax is paid.
Value addition after sale, i.e., interest, late fees, penalty [Section12(6)]	The time of supply to the extent it relates to an addition in the value of supply by way of **interest, late fee or penalty** for delayed payment of any consideration shall be the date on which the **supplier receives such addition in value**.

Rule 34 of CGST Rules

Rate of exchange of currency, other than Indian rupees, for determination of value

(1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Central Board of Indirect Taxes and Customs under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.

(2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.

TIME OF SUPPLY OF SERVICE [SECTION 13 OF CGST ACT, 2017]

Liability to pay tax [Section 13(1)]	The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.
When invoice is issued within the prescribed period u/s 31(2) [Section 13(2)(a)]	The time of supply of services shall be the earliest of the following dates, namely: - (a) The date of issue of invoice by the supplier, Or (b) The date of receipt of payment, whichever is **earlier**. **Timeline for issuance of invoice [Section 31 of CGST Act read with Rule 47 of CGST Rules]** ● The invoice in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service

	• Where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of the supply of service. • In case an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made. **Timeline for issuance of invoice in case of Continuous supply of services [Section 31(5)]** (a) Where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment; (b) Where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment; (c) Where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.
When invoice is not issued within the prescribed period u/s 31(2) [Section 13(2) (b)]	(a) The date of provision of service, or (b) The date of receipt of payment, whichever is earlier.
Where above provisions are not applicable [Section 13(2)(c)]	The date on which the **recipient shows the receipt of services in his books of account**, in a case where the provisions of clause (a) or clause (b) do not apply.

Advance up to Rs. 1000

Provided that where the supplier of taxable service receives an amount up to **one thousand rupees** in excess of the amount indicated in the tax invoice, the time of supply to the extent of such the **date of issue of invoice** relating to such excess amount.

Explanation- For the purposes of clauses (a) and (b)-

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

***Example: 1*: Time of Supply of Service**

Case No.	*Completion of service*	*Date of invoice*	*Date of payment*	*Time of supply of service*
1	25/11/2022	20/10/2022	29/11/2022	20/10/2022
2	25/11/2022	2/12/2022	6/12/2022	2/12/2022
3	25/11/2022	30/12/2022	27/12/2022	25/11/2022

***Example 2*: Continuous supply of services**

Case No.	*Due date of payment*	*Date of invoice*	*Date of payment*	*Time of supply of service*
1	17/10/2022	20/10/2022	28/11/2022	17/10/2022
2	3/12/2022	2/11/2022	10/11/2022	2/11/2022

***Example 3*: Advance upto Rs. 1000**

Telecommunication Company 'Bharti Airtel Ltd.' issued an invoice for Rs. 4,537 on 'B' on 07.05.20XX for the month of April 'XX. Thereafter, Bharti Airtel receives payment amounting to Rs. 5000 from B on 20.05.20XX, Le. Rs. 463 received in excess of amount indicated on invoice. Bharti Airtel is required to pay tax in respect of invoice issued for 4537 while discharging the liability for the month of MAY'XX. Bharti Airtel is not required to pay tax receipt of excess amount). On 07.06.20XX, Bharti Airtel issues an invoice for Rs. 5787 on B for the month of May 'XX. Now 21.06.20XX, B makes payment of 5,324 after adjustment of Rs. 463 already paid in excess. Bharti Airtel shall pay tax in respect of Rs. 5,787 while discharging tax liability for the month of June 'XX on invoice basis.

Reverse charge [Section 13(3)]	In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier: **Provided** that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply: **Example:** Reverse charge

	<table><tr><th>Case No.</th><th>Date of invoice</th><th>DOP in books of A/c</th><th>Date of payment in bank A/c</th><th>Time of supply of service</th></tr><tr><td>1.</td><td>14/10/2022</td><td>20/10/2022</td><td>21/10/2022</td><td>20/10/2022</td></tr><tr><td>2.</td><td>04/09/2022</td><td>30/11/2022</td><td>28/11/2022</td><td>3/11/2022 (60 days from DOT)</td></tr></table>
Associated enterprises [Section 2(12)] **Shall have the same meaning as assigned to it in section 92A of the Income- tax Act, 1961;**	Time of supply where the supplier is an associates enterprise. It shall be the **date of entry in the books of account of the recipient** of supply or the **date of payment**, whichever is **earlier**.
***Illustration*:** (Associated Enterprises) Soha Pvt. Ltd. is an Indian Company. It has received taxable supply of services from a UK based company John Ltd. On 1.1.2022. John Ltd. raised on Soha Pvt. Ltd. an invoice of € 55,000 on 10.2.2022. John Ltd. debited its books of account on 25.2.2022 and made the payment on 25.3.2018. John Ltd. and Soha Pvt. Ltd. are associated enterprises. Determine the time of supply using aforesaid details. **Solution:** In case of "associated enterprises", where the person providing the service is located outside India, the Time of supply of service shall be:- (a) the date of debit in the books of account of the person receiving the service; or (b) date of making the payment Whichever is earlier. Hence, in the given case, the time of supply shall be earlier of the following two dates:- (a) the date of debit in the books of account of Soha Pvt., Ltd. i.e., 25.2.2022; or (b) date of making the payment i.e., 25.3.2022. Thus, the time of supply of service is 25.2.2022.	
In case of voucher [Section 13(4)]	In case of supply of vouchers by a supplier, the time of supply shall be- (a) the date of issue of voucher, if the supply is identifiable at that point; or (b) the date of redemption of voucher, in all other cases.
Residual [Section 13(5)]	Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or (b) in any other case, be the date on which the tax is paid.

Value addition after sale i.e., interest, late fees, penalty [Section 13(6)]	The time of supply to the extent it relates to an addition in the value of supply by way of **interest, late fee or penalty** for delayed payment of any consideration shall be the date on which the **supplier receives** such addition in value.

***Example 3*:**

Bharti Airtel charges Rs. 100 as late fees from the customer on account of non-payment of bill on due date for the month of Feb 2022.The customer paid such late fee on 5.4.2022. The time of supply of such late fees will be the date on which Bharti Airtel receives the amount of late fees from the customer which is 5.4.2022.

Rate of exchange of currency, other than Indian rupees, for determination of value

The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act. **(Rule 34 of CGST Rules, 2017)**

***Example 4*:**

S. No.	*Date of completion*	*Date of Invoice*	*Date on which payment is received*	*Time of supply*
1.	16.07.20XX	11.08.20XX	26.08.20XX	11.08.20XX
2.	16.07.20XX	11.08.20XX	01.08.20XX	01.08.20XX
3.	16.07.20XX	11.08.20XX	Part payment on 01.08.20XX and remaining on 26.08.20XX	01.08.20XX for the part payment and 11.08.20XX for the remaining amount
4.	16.07.20XX	11.08.20XX	Part payment on 12.07.20XX and remaining on15.07.20XX	12.07.20XX for the part payment and15.07.20XX for the remaining amount

Supplied before the change in rate [Section 14(a)]	(i) Invoice issued and payment received after change: Date of invoice or payment whichever is earlier. (ii) Invoice before change but payment received after change: Date of invoice. (iii) Payment received before change but invoice after change: Date of Payment.
Supplied after the change in rate [Section 14(b)]	In case the goods or services or both have been supplied after the change in rate of tax,- (i) Invoice before change but payment received after change: Date of Payment. (ii) Invoice issued and Payment received before change: Date of invoice or payment whichever is earlier. (iii) Payment received before change but invoice after change: Date of invoice.

Supplied before the change in rate [Section 14(a)]	(i) Invoice issued and payment received after change: Date of invoice or payment whichever is earlier. (ii) Invoice before change but payment received after change: Date of invoice. (iii) Payment received before change but invoice after change: Date of Payment.
Supplied after the change in rate [Section 14(b)]	In case the goods or services or both have been supplied after the change in rate of tax,- (i) Invoice before change but payment received after change: Date of Payment. (ii) Invoice issued and Payment received before change: Date of invoice or payment whichever is earlier. (iii) Payment received before change but invoice after change: Date of invoice.

Illustration: Determine the time of supply of service in the following cases :-

1. Mugdha Private Limited is engaged in supply of services. It receives advances of Rs. 1,00,000 from clients on 23rd June, 20XX for the service to be rendered in the month of July, 20XX.
2. Rohan Ltd. provided management consultancy services to M/s. Bhatia & Sons on 5th June, 20XX and billed it for Rs. 1,20,000 on 10th July, 20XX. It received the payment for the same on 14th July, 20XX.

Solution:

1. As per section 13(2) advances received are taxable at the time when such advances are received. Thus, time of supply of service is 23rd June, 20XX.
2. As per section 13(2) read with section 31(2) and rule thereof, in case invoice has not been issued within 30 days of completion of service, time of supply of service is date of completion of service or date of receipt of payment, whichever is earlier. Thus, Time of supply of service is 5th June, 20XX.

TIME OF SUPPLY WHEN CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF GOODS AND SERVICES [SECTION 14]

Supplied before the change in rate [Section 14(a)]	(i) Invoice issued and payment received after change: Date of invoice or payment whichever is earlier. (ii) Invoice before change but payment received after change: Date of invoice. (iii) Payment received before change but invoice after change: Date of Payment.
Supplied after the change in rate [Section 14(b)]	In case the goods or services or both have been supplied after the change in rate of tax,- (i) Invoice before change but payment received after change: Date of Payment. (ii) Invoice issued and Payment received before change: Date of invoice or payment whichever is earlier. (iii) Payment received before change but invoice after change: Date of invoice. **Provided** that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

	Explanation- For the purposes of this section, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

***Example 5*:**

Determine the Time of supply and rate of tax in the following cases. Assume Rate of GST (CGST and SGST) is 18% while that on or after 1.6.20XX is 12%.

Bill No.	*Date of actual provision of service*	*Date of issue of invoice*	*Date of receipt of payment*	*Time of supply*	*Applicable Rate*
1	01.04.20XX	12.04.20XX	0l.06.20XX	12.04.20XX	18%
2	31.05.20XX	14.06.20XX	24.06.20XX	14.06.20XX	12%
3	30.05.20XX	13.06.20XX	31.05.20XX	31.05.20XX	18%
4	01.06.20XX	30.05.20XX	31.05.20XX	30.05.20XX	18%
5	09.06.20XX	31.05.20XX	10.06.20XX	10.06.20XX	12%
6	18.06.20XX	19.06.20XX	31.05.20XX	19.06.20XX	12%

Question:

Let's say there was decrease in tax rate from 18% to 12% w.e.f. 1.6.2022. What is the tax rate applicable when services provided and invoice issued before change in rate in April 2022, but payment received after change in rate in June 2022?

Answer:

The old rate of 18% shall be applicable as services are provided prior to 1.6.2022.

Question:

Let's say there was decrease in tax rate from 18% to 12% w.e.f. 1.6.2022. What is the tax rate applicable when goods are supplied and invoice issued after change in rate in June 2022, but full advance payment was already received in April 2022?

Answer:

The new rate of 12% shall be applicable as goods are supplied and invoice issued after 1.6.2022.

Question:

Varun ltd. provided business support services to Teena on 10th August, 20xx for Rs. 50,000. The invoice for the same was issued on 20th August, 20xx. Varun ltd. received the payment against the said invoice on 15th August, 20xx vide cheque dated 12th August, 20xx. The entry for the receipt of payment was made in the books of account on 15th August, 20xx itself. However, the amount was credited in the bank A/c on 25th August, 20xx. Determine the time of supply in the given case.

Answer:

In the given case, since the invoice is issued within the prescribed period of 30 days from the date of completion of provision of service, the time of supply, shall be the:

- Date of invoice (i.e., 20.08.20XX); or
- Date of receipt of payment (i.e., 15.08.20XX) [Refer note below] whichever is earlier, i.e., 15.08.20XX.

***Note*:** Date of payment is:-

1. date on which the payment is entered in the books of account (i.e.. 15.08.20XX); or
2. date on which the payment is credited to the bank account of the person liable to pay tax (i.e., 25.08.20XX) whichever is earlier, i.e., 15.08.20XX.

CASE LAWS

● ***In Re: Karnataka State Electronics Development Corpn. Ltd., 2020 (42) G.S.T.L. 284 (App. A.A.R. - GST - Kar.)***

Facts: The appellant, a Karnataka State Government Entity, is engaged into providing street lighting services, under the Energy Performance contract (ESCO contract) to the Thane Municipal Corporation (TMC), Thane for a period of 7 years. The ESCO contract is on shared saving model and is to reduce the overall consumption of electricity in street lighting. The appellant has to operate and maintain 12,000 street lighting fixtures & respective feeder panels, i.e., installation of LED fixtures, smart electric panels for automation, metering & comprehensive maintenance. The role of the appellant is as under:

(a) Removal of the existing street lights and handing over the same to TMC.

(b) Installation of LED street lights on existing street light poles.

(c) Installation of new smart feeder electrical panels compatible with LED fixtures at its own cost.

(d) Operation and maintenance of the said LED street lights during the tenure of the contract.

Question asked by the applicant - If the transaction is treated as supply of services, what is the time of supply of such services? Whether KEONICS is liable to tax only once the energy saved is certified by the energy auditor? Whether amount credited in joint ESCROW account can be termed as 'receipt' especially because the said amount is not under control of KEONICS until the conditions are met?

Held: In this case, it is seen from the contract that the appellant shall raise monthly invoices against the energy savings achieved during the month along with the energy savings calculation. These invoices should be for the same billing period as that followed by DISCOM and should be submitted within eight days of receipt of the electricity bills from DISCOM. TMC will release the payment to the appellant only after the energy savings report is submitted to TMC along with the invoice and the third-party auditor has verified and approved the same. This payment will be made to the ESCROW account. Therefore, the time of supply in this case will, in terms of Section 13 of the CGST Act, be the earliest of the following dates:

(a) Date of issue of the invoice to TMC along with the energy savings report; or

(b) Date on which the payment is entered in the books of account of the supplier; or

(c) Date on which the payment is credited to his bank account.

● ***In Re : Continental Engineering Corporation 2021 (55) G.S.T.L. 476 (A.A.R. - GST - Telangana)***

Facts of the case: The applicant M/s. Continental Engineering Corporation has executed works contract for M/s. Hyderabad Growth Corridor Ltd. (HGCL). The work was completed in pre-GST era and the applicant raised certain claims regarding compensation for delay in execution, payment of difference in rates and other contractual breaches which was referred to a dispute resolution board on 16-6-2017. The applicant after notifying to contractee on 25-9-2017, approached an arbitration Tribunal which initiated proceedings on 20-11-2017 and passed an order on 9-5-2019 for Rs. 169,58,22,197/- to be paid to the applicant under heads as per table below.

Clarification Sought :

Based on the facts mentioned hereinafter, the applicant sought Advance Ruling on the following issues :

(a) Whether GST is applicable on the proposed receipt of money in case of Arbitration claims awarded for works contract completed in the Pre-GST regime?

(b) If the answer to the above question is Yes then under what HSN Code and GST rate the liability is to be discharged by the applicant?

Discussions and Ruling

S. No.	*Category*	Discussions and Ruling
1	**Unpaid Amounts for the work executed including escalation**	The liability to tax under CGST/SGST Acts for works contracts is determined by the time of supply of services in Section 13 read with Section 31 i.e., the provisions pertaining to tax invoice. The time of supply of service according to Section 13(2) is the earliest of the date on which invoice is issued or date of provision of service or date of receipt of payment or date on which recipient shows the receipt of services in his books. As seen from the averments of the applicant the supply was made prior to introduction of GST. Therefore it is not covered by Section 13(2) of the CGST/SGST Acts. Hence the amounts claimed pertaining to the works executed earlier to introduction of GST are not taxable under CGST/SGST Acts.
2	**Refund of excess deductions**	The refund of excess deductions both statutory and non-statutory made against the bills raised for the works completed in pre-GST period do not constitute consideration for supplies made under GST period. Therefore these amounts are not taxable under CGST/SGST Acts.
3	**Interest on bills**	As seen from the averments of the applicant the interest is claimed on delayed payments on the works executed and payment certificates received in pre-GST period. In light of Section 13(2) of the CSGT Act the time of supply is not in GST period, hence these amounts are not liable to tax under CGST/SGST Acts.

4	**Arbitration Cost**	The consideration received by arbitral tribunal is taxable on reverse charge basis under CGST & SGST Act @ 9% each. The service Tariff Code is 998215. In the present case, Arbitration as service was supplied independently after the introduction of GST i.e., the tribunal was constituted conclusively on 20-11-2017 and rendered its orders on 9-5-2019 and therefore this supply is liable to tax on reverse charge basis under GST.
5	**Damages claimed**	These damages are claimed by the applicant from the contractee due to the delays in making available possession of site, drawings & other schedules by the contractee beyond the milestones fixed for completion of project. These damages are consideration for tolerating an act or a situation arising out of the contractual obligation. The entry in 5(e) of Schedule II to the CGST Act classifies this act of forbearance as follows : 5(e): Agreeing to the obligation to refrain from an act, or tolerate an act, or a situation, or to do an act. Further Section 2(31)(b) of the CGST Act mentions that consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance. Therefore such a toleration of an act or a situation under an agreement constitutes supply of service and the consideration or monetary value is exigible to tax. The arbitration award speaks of many clauses in the agreement regarding certain milestones to be met and the cost to be paid to the applicant wherever such cost need to be paid according to the estimation made by the contractee. As per the issues mentioned in the arbitration award, clauses 6.4 and 42.2 of the General Conditions of Contract (GCC) specifically state that in case of any delay in issuance of drawings or failure to give possession of site the engineer shall determine the extension of time and amount of cost that the contractor may suffer due to such delays in consultation with the employer and the contractor. Therefore the time of supply of the service of tolerance is the time when such determination takes place. However, the contractee/employer has not determined the cost of delay prior to arbitration award. It was determined only by arbitration award on 9-5-2019. Therefore the time of supply of this service as per Section 13 of the CGST Act is 9-5-2019. The Consideration received for such forbearance is taxable under CGST and SGST @ 9%. each under the Chapter Head 9997 at Serial No. 35 of Notification No. 11/2017-Central/State Tax (Rate).
6	**Interest on arbitration amount**	The applicant is claiming interest on the amounts determined by the arbitrary Tribunal under various heads. Under Section 15(2)(d) of the CGST/SGST Acts interest for delayed payment against a supply is consideration which is taxable under CGST/SGST Acts. Therefore the interest on amounts exigible to tax under CGST/SGST forms part of value of taxable supply.

CLASSIFICATION OF GOODS AND SERVICES UNDER GST

GST law has adopted the universally adopted HSN mechanism to classify various goods and services. For goods, HSN is an 8-digit code where first 2 digits represents a Chapter. There are over 98 chapters and each chapter represent a unique commodity. Like, Chapter 87 is meant for motor vehicles and Chapter 72 is meant for Iron and Steel.

For services, HSN [or we call it SAC] is a 6-digit code where first 2 digits i.e. 99 represent Chapter for services, 3rd digit represent section for a particular service and first 4 digits represent 5th and 6th digits represent sub-service under main Heading. 9954 represents construction services. The scheme of classification under 9954 is as follows:

S. No.	***Chapter, Section or Heading***	***Description of Service***	***Rate (per cent.)***	***Condition***
(1)	***(2)***	***(3)***	***(4)***	***(5)***
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	

Based on the aforesaid classification scheme, the Government has issued rate notifications separately for goods and services where the rate of tax against each item / HSN/SAC is notified.

Notification No. 1/2017-Central Tax (Rate) dated 28-6-2017 is meant to prescribe tax rate for goods. It is divided into six schedules where each schedule contains a group of goods which are charged to a single rate of tax as below.

(i) 2.5 per cent. in respect of goods specified in Schedule I,

(ii) 6 per cent. in respect of goods specified in Schedule II,

(iii) 9 per cent. in respect of goods specified in Schedule III,

(iv) 14 per cent. in respect of goods specified in Schedule IV,

(v) 1.5 per cent. in respect of goods specified in Schedule V, and

(vi) 0.125 per cent. in respect of goods specified in Schedule VI

Similarly, Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 prescribed tax rate for various services.

Students may refer such notification on gst.gov.in for detailed study.

Based on the issues received from trade and industry on classification of certain goods and services, CBIC has released the following FAQs vide Circular F. No. 332/2/2017-TRU, dated December, 2017.

S. No.	*Queries*	*Replies*
1.	**What is the HSN code and rates for Mutton leg?**	• Meat of sheep or goats (including mutton leg), fresh, chilled or frozen [other than frozen and put up in unit container] falling under heading 0204 is exempt from GST. • However, meat of sheep or goats (including mutton leg), frozen and put up in unit container, falling under heading 0204 attracts 5% GST. [Notification No. 41/2017-Central Tax (Rate)]
2.	**What is the GST rate and HSN code of Khoya / Mawa?**	• Khoya / mawa being concentrated milk falls under 0402 and attracts 5% GST.
3.	**What is the HS code for Sal Leaves which is used for making plates and its GST rate?**	• Sal leaves are classifiable under heading 0604 and attract Nil GST.
4.	**What is the HS code and GST rate for Chilli soaked in butter milk with salt (mor milagai in tamil)?**	• Vegetables provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption are classifiable under heading 0711 and attract 5% GST. • Thus, chilli soaked in butter milk with salt (mor milagai in Tamil) falls under 0711 and attracts 5% GST.
5.	**What is HS code and GST rate of Sangari?**	• Sangari is dried vegetable and fall under HS code 0712. It attracts Nil GST.
6.	**What will be the GST rate for Arecanut / Betel nut?**	• Fresh areca nut/betel nuts fall under heading 0802 and attract Nil GST. • Dried areca nut/betel nuts fall under heading 0802 and attract 5% GST.
7.	**What is the GST rate and HSN code of Wet Dates?**	• Wet dates fall under heading 0804 and attract 12% GST.
8.	**What is the HS code and GST rate for tamarind?**	• Tamarind [fresh] falls under 0810 and attract Nil GST. • Tamarind [dry] falls under 0813. • Prior to 22-9-2017 tamarind [dry] attracted 12% GST. • With effect from 22-9-2017, tamarind dry attracts 5% GST. [Notification No. 27/2017-Central Tax (Rate)]

S. No.	Queries	Replies
9.	**What is HS code and GST rate of Methi Patha (dry) and Dhaniya Patha (dry)?**	• Methi Patha (dry) i.e., dry fenugreek leaves and Dhaniya Patha (dry) i.e., dry coriander leaves are spices falling under HS code 0910 and attract 5% GST.
10.	**What is the HS Code and GST rate on Turmeric?**	• Fresh turmeric, other than in processed form, falls under 0910 and attracts Nil GST. • Turmeric dried or ground attracts 5% GST.
11.	**What is the HS code for Maize Seeds and its GST rate?**	• Maize [of seed quality] falls under heading 1005 and attract Nil GST.
12.	**What is the GST rate on seeds of wheat, paddy for sowing purpose?**	• The GST rate on seeds of wheat, paddy for sowing purpose is Nil.
13.	**What is HS code and GST rate of copra and dried coconut?**	• Coconuts, fresh or dried, whether or not shelled or peeled fall under heading 0801 and attract Nil GST. As per the HSN Explanatory Notes, the heading excludes copra, the dried flesh of coconut used for the expression of coconut oil (1203). • Copra falls under heading 1203 and attracts 5% GST.
14.	**What is the HS code and GST rate for tamarind kernel?**	• Tamarind kernel of seed quality attracts Nil GST, whereas • Tamarind kernel of other than seed quality attracts 5% GST.
15.	**What is the HS code and the GST rate for Isabgol seeds?**	• Isabgol seeds fall under heading 1211. • Fresh Isabgol seeds attract Nil GST. • Dried or frozen Isabgol seeds attract 5% GST.
16.	**What is the HS code and the GST rate for Isabgol husk?**	• Isabgol husk falls under 1211 and attracts 5% GST.
17.	**What is the HS code for Mahua Flower and its GST rate?**	• Mahua flowers fall under heading 1212 and attract 5% GST.
18.	**What is the GST rate on sugar cane seeds and sugar cane as such?**	• Sugar cane, fresh or chilled including that for sowing, falls under HS code 1212, and attract Nil rate of GST.
19.	**What is the HS Code and GST rate on Paddy Husk and is it different from Rice bran?**	• Cereal straw and husks, including rice husks or rice hulls, unprepared, whether or not chopped, ground, pressed or in the form of pellets fall under HS code 1213 and attract Nil GST. • Rice bran falls under HS code 2302 and attracts Nil GST if supplied as cattle feed or 5% if supplied for other purposes.

S. No.	Queries	Replies
20.	**What is the HS code and GST rate for tamarind kernel powder?**	• Tamarind kernel powder falls under heading 1302, and attracts 18% GST.
21.	**What is the HS code for Sabai Grass (a kind of grass used for making of rope, baskets, etc.) and its GST rate?**	• Sabai grass is used as plaiting material and is classifiable under heading 1401 and attracts 5% GST.
22.	**What is the HSN code and rates for Sausages?**	• Sausages and similar products, of meat, meat offal or blood; food preparations based on these products fall under heading 1601 and attract 12% GST.
23.	**What is the HS Code and GST rate on Peanut Chikki, Rajgira Chikki, Sesame Chikki, and shakkarpara?**	• As per HS explanatory notes, HS code 1704 covers most of the sugar preparations which are marketed in a solid or semi- solid form, generally suitable for immediate consumption and collectively referred to as sweetmeats, confectionery or candies. • Prior to 15-11-2017, Peanut Chikki, Rajgira Chikki, Sesame Chikki and shakkarpara attracted 18% GST. • With effect from 15-11-2017, Peanut Chikki, Rajgira Chikki, Sesame Chikki and shakkarpara attract 5% GST. [Notification No. 41/2017-Central Tax (Rate)]
24.	**What is the GST rate on chocolate 'sandesh' Bengali misti?**	• Sandesh, whether or not containing chocolate, attract 5% GST.
25.	**What is HS code and GST rate for Khari and hard Butters?**	• Khari and hard butters fall under heading 1905 and attract 18% GST.
26.	**What is the HSN code and rates for Coffee?**	• Instant Coffee falls under heading 2101 and attracts 18% GST. [Notification No. 41/2017-Central Tax (Rate)]
27.	**What is the HS code and GST rate for kulfi?**	• Kulfi is classifiable under heading 2105 and attracts 18% GST.
28.	**What is the HS code for Idli Dosa Batter (Wet Flour) and its GST rate?**	• Idli Dosa Batter (Wet Flour) [as food mixes] falls under heading 2106. • Prior to 15-11-2017, Idli Dosa Batter attracted 12% GST. • With effect from 15-11-2017, Idli Dosa Batter attracts 5% GST. [Notification No. 41/2017-Central Tax (Rate)]

S. No.	Queries	Replies
29.	**What is the HS Code and GST rate on Nutritious diet (Pushtaahar) being distributed under the Integrated Child Development Scheme?**	• Since, Pushtaahar, distributed under the Integrated Child Development Scheme, is a mixture of proteins, various grains, wheat flour, sugar etc., it is covered under HS Code 2106 and not 1901. • Prior to 13-10-2017, Pushtaahar attracted 18% GST. • With effect from 13-10-2017, food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government [including Pushtaahar] falling under chapters 19 or 21 attract 5% GST, subject to specified conditions. [Notification No. 39/2017-Central Tax (Rate)]
30.	**What is the HS Code and GST rate on chena products, halwa, barfi (i.e., khoa product), laddu?**	• Products like halwa, barfi (i.e., khoa product), laddus falling under HS code 2106, are sweetmeats and attract 5% GST.
31.	**What is the HS Code and GST rate on sharbat?**	• Sharbat falls under HS code 2106 and attracts 18% GST.
32.	**What is the GST rate on 'Khakhra' (traditional food)?**	• Khakhra falls under "Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form" classifiable under 2106 90. • Prior to 13-10-2017, khakhra attracted 12% GST. • With effect from 13-10-2017 khakhra attracts 5% GST. [Notification No. 34/2017-Central Tax (Rate)]
33.	**What is the GST rate and HSN code of roasted grams?**	• Roasted grams fall under 2106 90. • Prior to 22-9-2017 roasted grams attracted 12% GST. • With effect from 22-9-2017, roasted grams attracted 5% GST. [Notification No. 27/2017-Central Tax (Rate)]
34.	**What is the HSN code and rates for Soft drinks i.e., aerated drinks?**	• All goods [including aerated waters], containing added sugar or other sweetening matter or flavored falling under 2202 10 attract 28% GST and 12% Compensation Cess.
35.	**What is the GST rate for rice bran?**	• Rice bran falls under HS code 2302. • Rice bran for use as aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed attracts Nil GST. • Rice bran for other uses attracts 5% GST.

S. No.	Queries	Replies
36.	**What is the GST rate on "De- oiled rice bran" produced during extraction of vegetable oil from 'Rice Bran'?**	• HS code 2306 includes de-oiled rice bran obtained as a residue after the extraction of oil from rice bran. • De-oiled bran supplied for use as cattle feed attracts Nil GST. • De-oiled rice bran for other uses attracts 5% GST.
37.	**What is the HS code and GST rates for Cotton Seed oil cake?**	• Cotton seed oil cakes fall under HS Code 2306. • Prior to 22-9-2017, (i) Cotton seed oil cakes for use as aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed attract Nil GST; and (ii) Cotton seed oil cakes for other uses attract 5% GST. • With effect from 22-9-2017 cotton seed oil cakes attract Nil GST. [Notification No. 28/2017-Central Tax (Rate)]
38.	**What is the HS code and GST rate for Pet Food?**	• Dog or cat foods fall under heading 2309 and attracts 18% GST under the residual entry S. No. 453 of Schedule IV.
39.	**What is the GST Compensation Cess rate on imported Coal?**	• Imported coal will attract GST compensation cess @ Rs. 400 per tonne.
40.	**What is the GST rate on Hand Made Branded Biri?**	• All biris attract 28% GST. • In addition, handmade biris attract National Calamity Contingent Duty (NCCD) of Re. 1 per thousand and machine made biris attract NCCD of Rs. 2 per thousand.
41.	**Is National Calamity Contingent Duty (NCCD) leviable on tobacco products from 1st July, 2017? What will be the method of valuation for levy of NCCD?**	• NCCD shall continue to be levied on tobacco and tobacco products at the rates as applicable prior to 1st July, 2017. • Since NCCD is a duty of excise, valuation for the purposes of charging NCCD shall be as per the Central Excise Law read with the Valuation Rules under Central Excise Law.
42.	**Tobacco leaves falling under heading 2401 attracts 5% GST on reverse charge basis in respect of supply by an agriculturist. What is the meaning of tobacco leaves?**	• For GST rate of 5%, tobacco leaves means, leaves of tobacco as such or broken tobacco leaves or tobacco leaves stems.

S. No.	Queries	Replies
43.	**Can sterilization pouches be treated as aseptic packaging paper? What is the GST rate on sterilization pouches?**	• Sterilisation pouches are different from aseptic packaging paper. • Sterilisation pouches fall under heading 3005 and attract 12% GST.
44.	**What is the GST rate on Nail Polish?**	• Nail Polish [whether in large quantities say 50 to 100 litres or in retail packs] falls under heading 3304. • Prior to 15-11-2017, Nail Polish attracted 28% GST. • With effect from 15-11-2017, Nail Polish attracts 18% GST. [Notification No. 41/2017-Central Tax (Rate)]
45.	**What is the GST rate on Lobhan?**	• Lobhan is classified under HS code 3307 41 00. • Prior to 22-9-2017, lobhan attracted 12% GST. • With effect from 22-9-2017, lobhan attracts 5% GST. [Notification No. 27/2017-Central Tax (Rate)]
46.	**What is the HS code and GST rate for Wipes for babies?**	• Baby wipes are classified on the basis of material and impregnating materials as: (i) Prior to 15-11-2017, Baby wipes consisting of Paper wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent, whether or not perfumed or put up for retail sale, falls under HS code 3401 and attracts 28% GST. With effect from 15-11-2017 it attracts 18% GST. [Notification No. 41/2017-Central Tax (Rate)] (ii) And those consisting of, wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics fall under HS code 3307 and attract 18% GST. [Notification No. 41/2017-Central Tax (Rate)]
47.	**What is the HS code for Organic Surface-active Agents and its GST rate?**	• Organic surface-Active products or preparations or agents fall under heading 3401 or 3402. • Soaps; organic surface-Active products and preparations for use and soaps, in form of bars, cakes, moulded pieces or shapes falling under heading 3401 [except 3401 30] and attract 18% GST. • Prior to 15-11-2017, Other organic surface-Active products and preparations falling under sub-heading 3401 30 and organic surface-Active agents and preparations falling under heading 3402 attracted 28% GST.

S. No.	Queries	Replies
		• With effect from 15-11-2017, Other organic surface-active products and preparations falling under sub-heading 3401 30 and organic surface-Active agents and preparations falling under heading 3402 attract 18% GST rate. [Notification No. 41/2017-Central Tax (Rate)]
48.	**What is HS code and GST rate for resin coated sand?**	• HS code 3824 covers prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products). • Thus, resin coated sand falls under HS code 3824 and attracts 18% GST.
49.	**What is the classification and GST rate for stick file of plastic, documents bag of plastic and certificate bag of plastic?**	• These items are classified under HS code 3926. • Prior to 15-11-2017, stick file of plastic, documents bag of plastic and certificate bag of plastic attracted 28% GST. • With effect from 15-11-2017, stick file of plastic, documents bag of plastic and certificate bag of plastic attract 18% GST. [Notification No. 41/2017-Central Tax (Rate)]
50.	**What is GST rate for bangles?**	• Plastic bangles falling under heading 3926 are exempted from GST. • Glass bangles (except those made from precious metals) falling under heading 7018 are exempt from GST. • Lac or shellac bangles are classifiable under heading 7117 and attracts Nil GST. • Bangles of base metal, whether or not plated with precious metals, falls under tariff item 7117 19 10 and attract 3% GST.
51.	**What is the GST rate on Hair Rubber Bands?**	• Hair rubber bands fall under heading 4016. • Prior to 22-9-2017, rubber bands attracted 28% GST. • With effect from 22-9-2017, rubber bands attract 12% GST. [Notification No. 27/2017-Central Tax (Rate)]

S. No.	Queries	Replies
52.	**What is the HS code of Jute and Khadi bags for use in schools or offices?**	• Jute bags fall under HS Code 4202 22 30 and Khadi/ cotton bags fall under HS Code 4202 22 20. • Prior to 15-11-2017, Jute bags and Khadi/ cotton bags attracted 18% GST. • With effect from 15-11-2017, Jute bags and Khadi/ cotton bags attract GST rate of 12%. [Notification No. 41/2017-Central Tax (Rate)]
53.	**What is the GST rate and HSN code of Raw and processed wood of Malaysia saal and marandi wood?**	• Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, is classifiable under heading 4403 and attracts 18% GST.
54.	**What is the GST tax rate on "stitched Sal Leaf plate" used as plate for eating?**	• Articles of plaiting material including stitched Sal leaf plates fall under HS Code 4602. • Prior to 22-9-2017, sal leaf plates attracted 12% GST. • With effect from 22-9-2017, sal leaf plates attract 5% GST. [Notification No. 27/2017-Central Tax (Rate)]
55.	**What is the GST tax rate on ropes/ baskets made up of Sabai Grass?**	• Articles of plaiting material, including baskets, fall under HS code 4602. • Prior to 22-9-2017, plaiting material, including baskets attracted 12% GST. • With effect from 22-9-2017, plaiting material, including baskets attract 5% GST. [Notification No. 27/2017-Central Tax (Rate)]
56.	**What will be the GST rate for printed paperboard mono carton/ Dabbi of a pharmaceutical company and what will be the GST rate for a non-corrugated carton and corrugated carton?**	• Cartons, boxes and cases of corrugated paper or paperboard, fall under heading 4819 and attract 12% GST. • Prior to 15-11-2017, Folding cartons, boxes and cases, of non- corrugated paper and paperboard, falling under heading 4819 attract 18% GST under the residual entry S. No. 453. • With effect from 15-11-2017, Folding cartons, boxes and cases, of non-corrugated paper and paperboard, falling under heading 4819 and attract GST rate of 18% under entry 153A of schedule-III. [Notification No. 41/2017-Central Tax (Rate)]

S. No.	Queries	Replies
57.	**What is the classification and GST rate for sale of Export Incentives Licences like MEIS, SEIS and IEIS?**	• Duty Credit Scrip [MEIS etc.] fall under heading 4907. • Prior to 22-9-2017, Duty Credit Scrip [MEIS etc.] attracted 12% GST. • With effect from 22-9-2017, Duty Credit Scrip [MEIS etc.] attracted 5% GST. [Notification No. 27/2017-Central Tax (Rate)] • With effect from 13-10-2017, Duty Credit Scrip [MEIS etc.] attract Nil GST. [Notification No. 35/2017-Central Tax (Rate)]
58.	**What is the classification and GST for posters with photo- graphs/images etc. printed on it using Digital Offset Press/Digital printers on coated/ uncoated paper?**	• These items fall under HS code 4911 and attract 12% GST.
59.	**What is the classification and GST for posters with photo-graphs/ images etc. printed on Digital Printers on coated cotton/mix canvas media or other synthetic media?**	• These items fall under HS code 4911 and attract 12% GST.
60.	**What is the classification and GST for photographs printed using digital offset press/ digital printers on coated printing paper, sold in sheet or roll form.**	• These items are covered under HS code 4911 and attract 12% GST.
61.	**What is the classification and GST for printed menu cards single sheet, folded or laminated or Multi sheet hard bonded like a book with or without covers which are used by hospitality industry?**	• These items fall under HS code 4911 and attract 12% GST.
62.	**What is the classification and GST rate for photo books printed using digital Offset printing press on printing paper [other than photo albums] and thereafter manually bound?**	• These items fall under HS code 4911 and attract 12% GST.

<table>
<tr><th>S. No.</th><th>Queries</th><th>Replies</th></tr>
<tr><td>63.</td><td>What is the HS code for Saree and dhoti and its GST rate?</td><td>

Sarees and dhoti are classifiable under different headings depending on their constituents and attract GST rate as under :
However, GST rate on sarees woven of metal thread or metallized yarn under HS code 5809 is 12%.

<table>
<tr><th>Constituent fibre</th><th>Description</th><th>HS code</th><th>GST Rate</th></tr>
<tr><td>Silk</td><td>Woven fabrics of silk - sarees</td><td>5007</td><td>5%</td></tr>
<tr><td rowspan="2">Cotton</td><td>Of not more than 200 gsm</td><td>5208</td><td>5%</td></tr>
<tr><td>Of more than 200 gsm</td><td>5209</td><td>5%</td></tr>
<tr><td>Man-made filaments yarn</td><td>Of any gsm</td><td>5407 or 5408</td><td>5%</td></tr>
</table>
</td></tr>
<tr><td>64.</td><td>What will be the GST rate on embroidered sarees, sarees with chikan work, Banarasi sarees and other sarees?</td><td>

The GST rate on all sarees of silk, cotton or man-made fabrics [whether or not with embroidery or chikan work] is 5%.
However, GST rate on sarees woven of metal thread or metallized yarn under HS code 5809 is 12%.

</td></tr>
<tr><td>65.</td><td>For cotton ginning business, will the 5% GST on raw cotton be paid directly by factories on reverse charge basis or it is paid to the agent and later claimed? (Agent being the mediator between unregistered farmer and the factories).</td><td>

If the sale of raw cotton is supplied by an agriculturist to a registered person (say a manufacturer or dealer), then such registered person is liable to pay GST on reverse charge basis. In other cases, GST is to be paid by the supplier of raw cotton.

</td></tr>
<tr><td>66.</td><td>Will 5% GST on raw cotton be paid directly by factories on reverse charge basis and who will pay it?</td><td>

Where the supply of raw cotton is by an agriculturist [as defined under section 2(7) of the Central Goods and Services Tax Act, 2017] to a registered person, GST will have to be paid by such registered person on reverse charge basis.

</td></tr>
<tr><td>67.</td><td>What is the HSN Code and GST rate for a Fabric 1.2 MT cut for pant and 2.5 MT cut for a shirt?</td><td>

Specified fabrics attract 5% GST, whether or not in form of cut pieces.

</td></tr>
</table>

S. No.	Queries	Replies
68.	**What is the GST rate on Jute yarn and jute twine? What is GST rate on jute bags and jute cloth?**	• As per the HSN Explanatory Notes, goods of jute fibres measuring 20,000 decitex or less are classifiable under heading 5307 as yarn and attract 5% GST. • Goods of jute fibres measuring more than 20,000 decitex are classifiable under heading 5607 as twine and attract 12% GST. • Sacks and bags, of a kind used for the packing of goods are classifiable under heading 6305 and attract 5%/12% GST, depending on their sale value not exceeding or exceeding Rs. 1000 per piece. • Woven fabrics of jute are classifiable under heading 5310 and attract 5% GST, with no refund of unutilised ITC.
69.	**What is the classification and GST rate for manmade fishnet twine?**	• As per the HSN Explanatory Notes, goods of man-made fibres (including those yarns of two or more monofilaments of Chapter 54) measuring 10,000 decitex or less are classifiable under Chapter 54 or 55 as yarn. Prior to 13- 10-2017, yarn falling under these attracted 18% GST. With effect from 13-10-2017, the rate on these has been reduced to 12%. • Goods of manmade fibres (including those yarns of two or more monofilaments of Chapter 54) measuring more than 10,000 decitex are classifiable under heading 5607 as twine and attract 5% GST.
70.	**What is the HS code and GST rate on : (a) embroidery or chikan work in strips, piece or motifs; (b) fabrics with embroidery or chikan work; (c) garments or made up articles of textiles with embroidery or chikan work?**	• The HS code of embroidery, including chikan work in strips, piece or motifs, is 5810 and it attracts 12% GST. • Fabrics with embroidery or chikan work fall under Chapters 50 to 55 and attract 5% GST. • Garments or made up articles of textiles with embroidery or chikan work fall under Chapters 61 to 63. Garments or made up articles, of sale value not exceeding Rs. 1000 per piece, attract 5% GST. Garments or made up articles of sale value exceeding Rs. 1000 per piece attract 12% GST.
71.	**Readymade garments of sale value not exceeding Rs. 1000 per piece attract 5% GST. Readymade garments of sale value exceeding Rs. 1000 per piece attract 12% GST. How does a supplier determine what rate to charge on readymade garments?**	• The sale value referred to in the relevant entries refers to the transaction value and not the retail sale price of such readymade garments. • Therefore, if a wholesaler supplies readymade garments for a transaction value of Rs. 950 per piece to a retailer, the GST chargeable on such readymade garments will be 5%.

S. No.	Queries	Replies
		• However, if the retailer sells such readymade garments for Rs. 1100 per piece, the GST chargeable on such readymade garment will be 12%.
72.	**Footwear having a retail sale price not exceeding Rs. 500 per pair [provided that such retail sale price is indelibly marked or embossed on the footwear itself] attracts 5% GST. Does the retail sale price referred to above include the GST?**	• As per the Legal Metrology (Packaged Commodities) Rules, 2011, retail sale price [RSP] means the maximum price at which the commodity in packaged form may be sold to the consumer and is inclusive of all taxes. • Thus, retail sale price declared on the package is inclusive of GST. • GST for footwear will be 5% if the RSP does not exceed Rs. 500 per pair. The GST rate will be 18% if the RSP exceeds Rs. 500 per pair. • GST, however, will be payable on the transaction value.
73.	**What is the classification of Hand Decorative Figurines and Hand Decorative Artefacts made of marble powder, stone and unsaturated resin?**	• Hand Decorative Figurines and Hand Decorative Artifact's made of marble powder, stone and unsaturated resin falls under heading 6802. • Prior to 22-9-2017, Hand Decorative Figurines and Hand Decorative Artifact's made of marble powder, stone and unsaturated resin attracted 28% GST. • With effect from 22-9-2017, these goods attract 12% GST. [Notification No. 27/2017-Central Tax (Rate)]
74.	**What is the HS code and GST rate for lac or shellac bangles?**	• Lac or shellac bangles are classifiable under heading 7117. • Prior to 15-11-2017, Lac or shellac bangles attracted 3% GST. • With effect from 15-11-2017, Lac or shellac bangles attract Nil GST. [Notification No. 41/2017-Central Tax (Rate)]
75.	**What is the HS code for Solar Panel Mounting Structure and its GST rate?**	• Structures of iron or steel fall under heading 7308 and structures of aluminium fall under heading 7610 and attract 18% GST. • Solar Panel Mounting Structure, depending on the metal they are made of, fall under 7308 or 7610 and attract 18% GST.

S. No.	Queries	Replies
76.	**What will be classification of two wheelers chain and applicable GST rate**	• As per the HS explanatory notes, HS code 7315 includes: (a) Transmission chains for cycles, automobiles or machinery. (b) Anchor or mooring chains; lifting, haulage or towing chains; automobile skid chains. (c) Mattress chains, chains for sink stoppers, lavatory cisterns, etc. (d) All these chains may be fitted with terminal parts or accessories (e.g., hooks, spring hooks, swivels, shackles, sockets, rings and split rings and tee pieces). (e) They may or may not be cut to length, or obviously intended for particular uses. • Thus, two-wheeler chains fall under HS code 7315 and attracts 18% GST.
77.	**Chain and parts thereof, of iron or steel falling under 7315 20, 7315 81, 7315, 82, 7315 89, 7315 90 [HS code 7315] attract 18% GST. What is GST rate on Chain and parts thereof, of iron or steel falling under 7315 11 00, 7315 20 and 7315 19 00?**	• Chain and parts thereof, of iron or steel falling under 7315 11 00, 7315 20 and 7315 19 00 attract 18% GST under the residual entry S. No. 453 of Schedule III of the Notification prescribing GST rates.
78.	**What is the GST rate on Agriculture Hoe?**	• These are agricultural hand tools. • Agricultural hand tools fall under 8201 and attract Nil GST.
79.	**What is the HS code and GST rate for Filters or Water Purifiers?**	• Filters or Water Purifiers fall under heading 8421 and attract 18% GST.
80.	**What is the HS code and GST rate of parts of machines falling under HS code 8432, 8433, 8434 and 8436?**	• Machines falling under HS codes 8432, 8433, 8434 and 8436 attract 12% GST. • However, parts of such machines falling under HS code 8432, 8433, 8434 and 8436 attract 18% under the residual entry S. No. 453 of Schedule III of the notification prescribing GST rates.
81.	**What is the HS code of chaff cutter?**	• The HS code of Chaff cutter is 8436 10 00 and it attracts a GST rate of 12%.
82.	**What is the HS code and GST rate of parts of sewing machine?**	• HS code for sewing machine is 8452 and it attracts 12% GST.

S. No.	Queries	Replies
		• Parts of sewing machine falling under HS code 8452 attract 12% GST. [Notification No. 41/2017-Central Tax (Rate)]
83.	**What is the HS code and GST rate for metal air cooler?**	• Metal Air Coolers fall under HS code 8479 and attract 18% GST.
84.	**What is the HSN code and GST rates for Battery for mobile handsets?**	• Battery for mobile handsets falls under heading 8506. • Prior to 15-11-2017, these goods attracted 28% GST. • With effect from 15-11-2017, these goods attract 18% GST. [Notification No. 41/2017-Central Tax (Rate)]
85.	**What is the GST rate on Electric accumulators?**	• Electric accumulators, including separators therefor, whether or not rectangular (including square) fall under heading 8507 and attract 28% GST.
86.	**What is the GST rate for Walkie Talkie Sets/Radio Trunking Terminal?**	• Walkie Talkie Sets/Radio Trunking Terminals fall under HS code 8525 60. • Prior to 15-11-2017, these goods attracted 28% GST. • With effect from 15-11-2017, these goods attract 18% GST. [Notification No. 41/2017-Central Tax (Rate)] • However, two-way radio (Walkie talkie) falling under HS code 8525 60 used by defence, police and paramilitary forces attract 12% GST.
87.	**What is the GST rate on used Rail Wagons?**	• Railway wagons are classifiable under heading 8606 and attract 5% GST, with no refund of unutilised ITC. • Therefore, used railway wagons also attract 5% GST.
88.	**Whether, motor vehicles cleared as ambulances duly fitted with all the fitments, furniture and accessories necessary for an ambulance from the factory manufacturing such motor vehicles will be exempted from Compensation cess irrespective of place of supply**	• HS code 8703 covers specialised vehicles, which includes ambulances. • Motor vehicles cleared as ambulances duly fitted with all the fitments, furniture and accessories necessary for an ambulance from the factory manufacturing such motor vehicles are exempt from compensation cess, irrespective of place supply. • For being eligible to exemption from compensation cess, only condition is that ambulance should be duly fitted with all the fitments, furniture and accessories necessary for an ambulance in the factory manufacturing such motor vehicles and not elsewhere.

S. No.	Queries	Replies
89.	**What is the GST rate for goods falling under HS code 9021 40 to 9021 90?**	• All goods of HS code 9021 attract 12% GST. • However, assistive devices specified in List 3 appended to Schedule I of the notifications relating to CGST/IGST/ SGST rates attract 5% GST. • Hearing aids falling under HS code 9021 attract Nil GST.
90.	**What is the HS code for Office revolving chairs?**	• Office revolving chairs falling under HS code 9403. • Prior to 15-11-2017, these goods attracted 28% GST. • With effect from 15-11-2017, these goods attract 18% GST. [Notification No. 41/2017-Central Tax (Rate)]
91.	**What is the GST rate for Portable and Mobile Toilets?**	• Prefabricated buildings, including portable and mobile toilets, fall under heading 9406 and attract 18% GST.
92.	**What is the GST rate on Rakhi?**	• Puja samagri, including kalava (raksha sutra) attracts Nil GST. • Rakhi, which is in form of kalava [raksha sutra] will thus attract Nil GST. • Any other rakhi would be classified as per its constituent materials and attract GST accordingly.

OTHER FACTORS FOR DETERMINING CLASSIFICATION OF GOODS

Raw materials classifications and rates: It is essential to know the classification of raw materials and percentage of credit available and taken. When there is doubt on applicability of lower vs higher tax rate, advisable to pay at higher tax rate especially when the tax paid on inputs/raw materials is high leading to credit accumulation. The credit can be used to pay the output tax at higher rate.

Customer usage and credit whether available: It is important to know what percentage of customer taking the credit. When there is doubt on applicability of lower vs higher tax rate, then could err on side of caution and pay at higher rate especially when customer being B2B is in position to avail credit.

New technology products may require understanding the technological advances.

Services, classification could involve the following:

Terms of agreement: The terms of agreement could be critical to find out what is the nature of the service.

Classification of independent service: When service is independent service, then same to be classified in specific category. Example: outsourced advertising, market survey and other pre-sale services to be classified as business support service.

Bifurcation of combined service: Examine whether the combined service can be bifurcated as per agreement/ contract of service. Example: Exempted residential dwelling combined with taxable coaching class. When there

is separate consideration for each service, could claim exemption for value of residential dwelling and tax to be paid on coaching class.

Essential character: When combined service cannot be broken up, then classify based on essential character. Example: When some incidental logistics support service, such as post shipment tracking from US to India is done by commission agent engaged in enabling sale of goods of principal to Indian customers, the essential character is that of intermediary service, whose place of supply is India and liable to tax.

Care to be taken by professionals while classifying goods and services and claiming exemptions:-

- Entry has to be read in plain and simple terms. Do not make any assumptions and presumptions.
- The coverage of an entry has to be construed strictly.
- Even when the client claims coverage in any concessional rate of tax/exemption, the professional has to have skeptical view that the benefit may not be available. Then come to conclusion by following principles as set out above.
- For availing benefits under an exemption notification, the conditions have to be strictly complied with and met.
- Exemption Notification should be read literally and the same to be construed liberally if once it is found that notification is applicable to the assessee.
- When more than one exemption is available, assessee can opt for that notification which is more beneficial.

CASE LAWS

- ***In Re Sadguru Seva Paridhan Pvt. Ltd. (2020) - GST A.A.R. West Bengal***

  Fusible interlining cloth is not a woven fabric, 12% GST applicable

  The product manufactured by the appellant is fusible interlining cloth. Before 1989, the item used to be classified under Chapters 52 to 55, as clarified under Circular No. 5/89 dated 15/06/1989. In the Union Budget of 1989- 90, a new chapter note 2(c) was introduced in Chapter 59 of the Tariff, which led to inclusion of textile fabrics, partially or discretely coated with plastic by dot printing process under heading 5903. Subsequently, in the Union Budget of 1995, the said chapter note 2(c) was omitted with effect from 16/03/1995. It is the claim of the appellant that after removal of the said chapter note, the item cannot be classified under Heading 5903.

  The Appellate Authority of Advance Ruling (AAR), West Bengal ruled that fusible interlining cloth is not a woven fabric and falls under HSN 5903, so 12% Goods and Service Tax (GST) is applicable.

- ***In re Jay Jalaram Enterprises (2020) - GST A.A.R. Gujarat***

  GST Rate on Popcorn

  The applicant claimed that its products fell under 'Entry 50, tariff item 1005 of Schedule 1 of Notification 1/ 2017'. To translate it into GST classification terms: 'It was maize (corn) put up in a unit container and bearing a registered brand name'. Thus, the GST should be 5%, it stated. It submitted to the AAR that the Supreme Court, in another judgment, had held 'Atukulu', or parched rice, to be the same as 'Muramaralu', or puffed rice. The same logic should also extend to its product - which was nothing but puffed corn.

However, given the process of manufacture involved, which entailed heating of corn kernels, and later addition of oil and seasonings, the AAR held that the product "does not remain grain".

The Gujarat Authority of Advance Ruling (AAR) ruled that product namely J.J.'s Popcorn of M/s Jay Jalaram Enterprises manufactured from raw corn/maize grains, by heating turn into puffed corns/popcorns. Further other ingredients like salt and turmeric powder along with oil added to make them palatable. There is no separate heading is given for puffed popcorn but puffed popcorn fits in the description of 'Prepared foods obtained by the roasting of cereal'. Hence the said product falls under entry at Sr. No. 15 of Schedule III of Notification No.1/2017 CENTRAL TAX (Rate) Dated 28-6-2017 and attracts 9% CGST and 9% SGST or 18% IGST.

- ***In re ID Fresh Food (India) Pvt. Ltd. (2020) - GST A.A.R. Karnataka***

  Frozen parota is not roti, will be taxed 18% GST

  ID Fresh Food, a manufacturer of ready-to-cook food products, had demanded a ruling on whether its products such as Malabar parathas and whole-wheat parathas fall under the same category as roti, which draws a GST rate of 5 per cent.

  The company supplies the two products - which have a shelf life of 3-7 days - to distributors, retailers and other operators in the food services segment within the country as well as overseas. It contends that its products should be treated in the same way as khakhra, plain chapati or roti under the law.

  The Authority for Advance Rulings (Karnataka bench) has said that parathas must attract 18% GST, while roti is taxed at the concessional GST tax slab rate of 5%.The Karnataka government has ruled differentiating paratha or parota from roti, which are essentially two types of Indian breads, and has clarified that paratha must be taxed at more than triple the GST tax rate on roti.

- ***In Re Tool & Gage Co., 2020 (43) G.S.T.L. 119 (A.A.R. - GST - U.P.)***

  As per the application for advance ruling filed by the applicant, they have taken registration as a regular manufacturer and dealer under the Goods and Services Tax and manufacturing locomotive and coach (Rolling stock) parts as per railway drawings approved either by RDSO or DLW, Varanasi. Now the applicant wants to do coach work such as fabrication of seats and berths as per the Indian Railways/ RDSO approved rules of in drawings of ICF, MCF, RCF, (Manufacturing of Seats & Berth). As per the applicant, these seats and berths will be manufactured/fabricated as per the drawings and specification of Railways and will be solely used in coaches and nowhere else. Accordingly, the following questions have been posted by the applicant, in its application dated 16-8-2019 (received by the Authority on 19-8-2019), before the Authority :-

  The correct Classification of Seats & Berth for the Railways Running Stock - the Coaches be given, in order to avoid any dispute in future.

  The advance Ruling on question posed before the Authority is answered as under :

  The classification of the seats and berth, manufactured as per the specific design and layout provided by the Railways and supplied to the Railways only and no-where else, falls under Chapter 86.07 of the GST Tariff.

IMPORTANT CLARIFICATIONS BY THE CBIC ON CLASSIFICATION OF VARIOUS GOODS [Circular No. 113/32/2019-GST, dated 11-10-2019]		
1	**Classification of leguminous vegetables such as grams when subjected to mild heat treatment**	Dried leguminous vegetables are classified under HS code 0713. As per the explanatory memorandum to the HS 2017, the heading 0713 covers leguminous vegetables of heading 0708 which have been dried, and shelled, of a kind used for human or animal consumption (e.g., peas, chickpeas etc.). They may have undergone moderate heat treatment designed mainly to ensure better preservation by inactivating the enzymes (the peroxidases in particular) and eliminating part of the moisture. Thus, it is clarified that such leguminous vegetables which are subjected to mere heat treatment for removing moisture, or for softening and puffing or removing the skin, and not subjecting to any other processing or addition of any other ingredients such as salt and oil, would be classified under HS code 0713. Such goods if branded and packed in a unit container would attract GST at the rate of 5% [S. No. 25 of notification No. 1/2017-Central Tax (Rate), dated 28-6-2017]. In all other cases such goods would be exempted from GST [S. No. 45 of notification No. 2/2017-Central Tax (Rate), dated 28-6-2017]. However, if the above dried leguminous vegetable is mixed with other ingredients (such as oil, salt etc.) or sold as namkeens then the same would be classified under Sub-heading 2106 90 as namkeens, bhujia, chabena and similar edible preparations and attract applicable GST rate.
2	**Classification and applicable GST rate on Almond Milk**	Whether “almond milk” would be classified as “Fruit Pulp or fruit juice-based drinks” and attract 12% GST under tariff item 2202 99 20. Almond Milk is made by pulverizing almonds in a blender with water and is then strained. As such almond milk neither constitutes any fruit pulp or fruit juice. Therefore, it is not classifiable under tariff item 2202 99 20. Almond milk is classified under the residual entry in the tariff item 2202 99 90 and attract GST rate of 18%.
3	**Applicable GST rate on parts for the manufacture of solar water heater and system**	While 5% GST rate applies to parts used in manufacture of Solar Power based devices (S. No. 234 of Notification No. 1/2017-Central tax (Rate), dated 28-6-2017), doubts have been raised in respect of parts of Solar water heaters on the ground that Solar Based Devices are being considered only as devices which run on Solar Electricity. As per entry No. 232, solar water heater and system attracts 5% GST. Further, as per S. No. 234 of the notification No. 1/2017-Central Tax (Rate), dated 28- 6-2017, solar power-based devices and parts for their manufacture falling under chapter 84, 85 and 94 attract 5% concessional GST. Solar Power based devices function on the energy derived from Sun (in form of electricity or heat). Thus, solar water heater and system would also be covered under S. No. 234 as solar power device. Thus, Solar Evacuated Tubes which falls under Chapter 84 and other parts falling under chapter 84, 85 and 94, used in manufacture of solar water heater and system would be eligible for 5% GST under S. No. 234.

		Accordingly, it is clarified that parts including Solar Evacuated Tube falling under chapter 84, 85 and 94 for the manufacture of solar water heater and system will attract 5% GST.

CBIC Clarifications on Classification of Various Goods

Circular No. 179/11/2022-GST, dated 3-8-2022

1. Electric vehicles whether or not fitted with a battery pack, attract GST rate of 5% :

1.1 The explanation of 'Electrically operated vehicles' in Entry 242A of Schedule I of Notification No. 1/2017-Central Tax (Rate) reads as : 'Electrically operated vehicles which run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.'

1.2 As is evident from the explanation above, electrically operated vehicle including three wheeled electric vehicle means vehicle that runs solely on electrical energy derived from an external source or from electrical batteries. Therefore, the fitting of batteries cannot be considered as a concomitant factor for defining a vehicle as an electrically operated electric vehicle.

1.3 It is also pertinent to state that the WCO's HSN Explanatory notes have also not considered batteries to be a component, whose absence changes the essential character of an incomplete, unfinished or unassembled vehicle.

1.4 Also, the HSN explanatory notes for Chapter 87 have clearly stated that Motor Chassis fitted with cabs i.e. the chassis fitted with cabin body falls under 87.02 to 87.04 and not in Heading 87.06.

1.5 In view of the above, it is clarified that electrically operated vehicle is to be classified under HSN 8703 even if the battery is not fitted to such vehicle at the time of supply and thereby attract GST at the rate of 5% in terms of entry 242A of Schedule I of Notification No. 1/2017-Central Tax (Rate).

2. Stones otherwise covered in S. No. 123 of Schedule-I (such as Napa stones), which are not mirror polished, are eligible for concessional rate under said entry :

2.1 Napa Stone is a variety of dimensional limestone, which is a brittle stone and cannot be subject to extensive mirror polishing. Currently, S. No. 123 of Schedule-I prescribes GST rate of 5% for 'Ecaussine and other calcareous monumental or building stone; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use.' However, being brittle in nature, stones like Napa Stone, even though ready for use, are not subject to extensive polishing. Therefore, such minor polished stones do not qualify as mirror polished stones.

2.2 Therefore, it is clarified that S. No. 123 in Schedule-I to the Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 covers minor polished stones.

3. Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes, attract GST at 12% rate :

3.1 Representations have been received seeking clarification regarding the applicable GST rate on different forms of Mangoes including Mango Pulp.

3.2 On the basis of the recommendation of the GST Council in its 22nd Meeting, the GST rate on 'Mangoes sliced, dried', falling under Heading 0804, was reduced from 12% to 5% [S. No. 30A of Schedule I of Notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017]. However, the GST rate on all forms of dried mangoes (other than sliced and dried mangoes), falling under Heading 0804, including mango pulp, was always meant to be at the rate of 12%.

3.3 Accordingly, it is hereby clarified that mangoes, fresh falling under Heading 0804 are exempt; Mangoes, sliced and dried, falling under 0804 are chargeable to a concessional rate of 5%; while all other forms of dried mango, including Mango pulp, attract GST at the rate of 12%. To bring absolute clarity, the relevant Entry at S. No. 16 of Schedule-II of Notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017, has been amended vide Notification No. 6/2022-Central Tax (Rate), dated the 13th July, 2022.

3.4 Fresh mangoes, falling under heading 0804, continue to remain exempt from GST [S. No. 51 of Notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017].

4. Treated sewage water attracts Nil rate of GST :

4.1 In general, Water, falling under Heading 2201, with certain specified exclusions, is exempt from GST vide entry at S. No. 99 of Notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017.

4.2 Accordingly, it is hereby clarified that supply of treated sewage water, falling under heading 2201, is exempt under GST. Further, to clarify the issue, the word 'purified' is being omitted from the abovementioned Entry vide Notification No. 7/2022-Central Tax (Rate), dated the 13th July, 2022.

5. Nicotine Polacrilex Gum attracts a GST rate of 18% :

5.1 The WCO 2022 HS Codes has inter alia introduced a new Entry 2404 91 00 comprising of products for oral application containing nicotine and intended to assist tobacco use cessation with effect from 1-1-2022. Accordingly, a technical change, without any consequential rate change, has been made vide Notification No. 18/2021-Central Tax (Rate), dated the 28th December, 2021, wherein S. No. 26B in Schedule III of Notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017, has been inserted to include products for oral application containing nicotine and intended to assist in cessation of use of tobacco, and falling under Tariff Item 2404 91 00. The same is supplemented by the HS Explanatory notes 2022 which states that Heading 2404 includes nicotine containing products for recreational use, as well as nicotine replacement therapy (NRT) products intended to assist tobacco use cessation, which are taken as part of a nicotine intake reduction programme in order to lessen the human body's dependence on this substance.

5.2 Accordingly, it is hereby clarified that the Nicotine Polacrilex gum which is commonly applied orally and is intended to assist tobacco use cessation is appropriately classifiable under Tariff Item No. 2404 91 00 with applicable GST rate of 18% [Sl. No. 26B in Schedule III of Notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017].

6. Fly ash bricks and aggregate - condition of 90% fly ash content applied only to fly ash aggregate, and not fly ash bricks :

6.1 Hitherto, as per entry at S. No. 176B of the Schedule II the items of description "Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash blocks" attracts a GST rate of 12%. Confusion has arisen about the applicability of 90 per cent. condition on fly ash aggregates and fly ash bricks. As per the recommendations of the GST Council in the 23rd Meeting, the condition of 90% or more fly ash content was applicable only for fly ash aggregate.

6.2 Therefore, it is clarified that the condition of 90 per cent or more fly ash content applied only to Fly ash Aggregates and not to fly ash bricks and fly ash blocks. Further, with effect from 18th July, 2022 the condition is omitted from the description.

7. Applicability of GST on by-products of milling of Dal/Pulses such as Chilka, Khanda and Churi :

7.1 The by-products of milling of pulses/dal such as Chilka, Khanda and Churi are appropriately classifiable under Heading 2302 that consists of goods having description as bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.

7.2 The applicable GST rate on goods falling under Heading 2302 is detailed in the Table below :

Entry and Notification No.	***Description***	***GST Rate***
S. No. 102 of Notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake[other than rice bran]	Nil
S. No. 103A of Schedule-I of notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed, including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake]	5%
S. No. 103B of Schedule-I of Notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017	Rice bran (other than de-oiled rice bran)	5%

7.3 The dispute in applicable GST rate revolves around the central argument as to whether the abovementioned by-products are meant for direct consumption as cattle feed and therefore attract exemption under S. No. 102 of Notification No. 2/2017-Central Tax (Rate), dated 28th June, 2017 or are otherwise not meant for direct consumption and thus covered under S. No. 103A of Notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017 attracting a GST rate of 5%.

7.4 While milling of pulses/dal, a wide range of by-products such as chilka, khanda, churi, among others, are obtained which are preferred as cattle feed by dairy industry for better palatability and higher nutritive value. The mentioned by-products are required to go through varying degrees of processing in order to customize the color, size, aroma, nutrition, purity, etc., of the cattle feed so produced, depending upon the dietary and nutritional requirement of the cattle and the budget availability of the customer(s). Further, as per the Indian Standards 2052 : 2009 -Compounded Feeds for Cattle — Specification, issued by the Bureau of Indian Standards, Ministry of Consumer Affairs, Food & Public Distribution, Government of India, grain by-products have been categorized as one of the ingredients of the compounded cattle feed.

7.5 The GST Council examined the issue and recommended that a clarification be issued in this regard. It also recommended that in view of the prevailing multiple interpretations and genuine doubts regarding the applicability of GST, the issue for past periods may be regularized on as is basis.

7.6 Accordingly, it is hereby clarified that the subject goods which inter alia is used as cattle feed ingredient are appropriately classifiable under heading 2302 and attract GST at the rate of 5% vide S. No. 103A of Schedule-I of Notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 and that for the past, the matter would be regularized on as is basis as mentioned in para 8.6.

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CBIC Clarifications on Classification of Various Goods

Circular No. 163/19/2021-GST, dated 6-10-2021

1. Applicability of GST on fresh and dried fruits and nuts :

1.1 At present, fresh nuts (almond, walnut, hazelnut, pistachio etc.) falling under headings 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5%/12%. The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried).Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts. Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note 3 to Chapter 8, dried fruits, even if partially re-hydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts.

1.2 Therefore, exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. Supply of dried fruits and nuts, falling under headings 0801 and 0802 attract GST at the rate of 5%/12% as specified in the respective rate Schedules.

2. Applicability of GST on tamarind seeds :

2.1 As per general Explanatory Notes to HS 2017, heading 1209, covering seeds, fruit and spores, of a kind used for sowing, covers tamarind seeds. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species Vicia faba) or of lupines are to be regarded as "seeds of a kind used for sowing". Thus, tamarind seeds, even if used for any purpose other than sowing, is liable to be classified under heading 1209 and hitherto attracted nil GST rate, irrespective of its use (for the period 1-7-2017 to 30-9-2021).

2.2 The GST council in its 45th meeting recommended GST rate on seeds, falling under heading 1209, meant for any use other than sowing to 5% (S. No. 71A of schedule I of notification No. 1/2017-Central Tax (Rate), dated 28-6-2017) and Nil rate would apply only to seeds for this heading if used for sowing purposes (S. No. 86 of schedule of notification No. 2/2017-Central Tax (Rate), dated 28-6-2017). Hence, with effect from 1-10-2021, tamarind and other seeds falling under heading 1209, (i.e. including tamarind seeds), if not supplied as seed for sowing, would attract GST at the rate of 5%.

3. Clarification of definition of Copra :

3.1 As per Explanatory Notes to HS (2017 edition) to heading 1203, Copra is dried flesh of coconut generally used for the extraction of coconut oil. Coconut kernel turns into copra, when it separates from the shell skin, while still being inside the shell. The whole unbroken kernel could be taken out of shell only when it converts to copra. Once taken out of shell, copra could be supplied either whole or broken.

3.2 As per the Explanatory Notes to HS, the heading 0801 covers coconut fresh or dried but excludes Copra. Thus, exemption available to Coconut, fresh or dried, whether or not shelled or peeled, vide entry at S. No. 47 of notification No. 2/2017-Central Tax (Rate), dated 28-6-2017, is not available to Copra. Accordingly, Copra, classified under heading 1203, attracts GST rate of 5% vide entry at S. No. 66 of Schedule I of 1/2017-Central Taxes (Rate), dated 28-6-2017, irrespective of use.

4. Applicability of GST on pure henna powder and leaves :

4.1 As per the Explanatory Notes to HS 2017, heading 1404 is vegetable products not elsewhere specified or included. Further, as per the said Explanatory Notes, heading 1404 includes raw vegetable materials of a kind used primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).

4.2 Accordingly, it is clarified that pure henna powder and henna leaves, having no additives, is classifiable under tariff item 1404 90 90 and shall attract GST rate of 5% (S. No. 78 of schedule I of notification No. 1/2017-Central Tax (Rate), dated 28-6-2017).

4.3 Further, the GST rate on mehndi paste in cones falling under headings 1404 and 3305 shall be 5% (S. No. 78A of schedule I of notification No. 1/2017-Central Tax (Rate), dated 28-6-2017).

5. Applicability of GST on scented sweet supari & flavoured and coated illaichi :

5.1 Scented sweet supari falls under tariff item 2106 90 30 as "Betel nut product" known as "Supari" and attracts GST rate of 18% vide entry at S. No. 23 of Schedule III of notification No. 1/2017-Central Tax (Rate), dated 28-6-2017.

5.2 Flavoured and coated illaichi generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from illaichi or cardamom (which falls under heading 0908). It is clarified that flavored and coated illaichi is a value added product and falls under sub-heading 2106. It accordingly attract GST at the rate of 18% (S. No. 23 of schedule III of notification No. 1/2017-Central Tax (Rate), dated 28-6-2017).

6. Applicability of GST on Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues :

6.1 As per the Explanatory Notes to the HSN, heading 2303 includes residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.); beet-pulp; bagasse; other waste products of sugar manufacture; brewing or distilling dregs and waste, which comprises in particular - dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; malts sprouts separated from the malted grain during the kilning process; spent hops; Dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc.; beet pulp wash (residues from the distillation of beet molasses). All these products remain classified in the heading whether presented in wet or dry.

6.2 Thus, Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST at the rate of 5% (S. No. 104 of schedule I of notification No. 1/2017-Central Tax (Rate), dated 28-6-2017).

7. Scope of GST rate on all pharmaceutical goods falling under heading 3006.

7.1 Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate), dated 28-6-2017, reads as "Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or dental adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]"

7.2 S. No. 65 of Second Schedule of Notification 1/2017-Central Tax (Rate), dated 28-6-2017 refers to the note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975 while mentioning an illustrative list. Certain representations were received seeking clarification on the applicable rate of goods falling under heading 3006 that are not specifically mentioned in the Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate), dated 28-6-2017.

7.3 Note 4 to Chapter 30 of the First schedule of the Custom Tariff Act, 1975 reads as follows :

"(a) sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure;

(b) sterile laminaria and sterile laminaria tents;

(c) sterile absorbable surgical or dental hemostatic sterile surgical or dental adhesion barriers, whether or not absorbable;

(d) pacifying preparations for X-ray examinations and diagnostic reagents designed to be administered to the patient, being unmixed products put up in measured doses or products consisting of two or more ingredients which have been mixed together for such uses;

(e) blood-grouping reagents;

(f) dental cements and other dental fillings; bone reconstruction cements;

(g) first-aid boxes and kits;

(h) chemical contraceptive preparations based on hormones, on other products of heading 2937 or on spermicides;

(i) gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments; and

(j) waste pharmaceuticals, that is, pharmaceutical products which are unfit for their original intended purpose due to, for example, expiry of shelf-life.

(k) appliances identifiable for ostomy use, that is colostomy, ileostomy and urostomy pouches cut to shape and their adhesive wafers or faceplates."

7.4 Thus, it is clarified that said entry 65 covers all goods as specified in Chapter Note 4 and Chapter Note 4 in turn covers all goods covered under Heading 3006. Therefore, said entry 65 covers all goods falling under heading 3006, irrespective of the fact that such goods are specifically mentioned in said entry. Therefore, all goods falling under heading 3006 attract GST rate of 12% under entry 65 in the 12% rate schedule.

8. All laboratory reagents and other goods falling under heading 3822 :

8.1 Entry at S. No. 80 of Schedule II of notification No. 1/2017-Integrated Tax (Rate), dated 28-6-2017 prescribes GST rate of 12% for "All diagnostic kits and reagents".

8.2 Representations have been received whether the benefit of concessional rate of 12% would be available to laboratory agents and other goods falling under heading 3822.

8.3 Heading 3822 covers "Diagnostic or Laboratory Reagents, Certified Reference Materials etc.".

8.4 The issue was placed before the GST Council and on its recommendations, it is clarified that the intention of this entry was to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory regents, falling under heading 3822.

8.5 It is accordingly clarified that concessional GST rate of 12% is applicable on all goods falling under heading 3822, vide Entry at S. No. 80 of Schedule II of notification No. 1/2017-Integrated Tax (Rate), dated 28-6-2017.

9. Requirement of Original/import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations

9.1 Notification No. 3/2017-Central Tax (Rate) prescribes concessional rate of 5% for specified goods which are used in connection with specified petroleum operations. Condition 1(d) in notification No. 3/2017-Central Tax, dated 28-6-2017 prescribes that "whenever goods so supplied are transferred to other licensee or sub-contractor a certificate from Directorate General of Hydrocarbons (DGH) is to be proceed that the goods may be transferred to the transferee".

9.2 As per Section 7 read with Schedule I of the CGST Act 2017, inter-state stock transfer between distinct persons (establishment of same person located in two different states) is considered as 'supply' of goods.

9.3 Representations have been received seeking clarification whether the original/import Essentiality certificate can be used for such inter-State stock transfers or a fresh Essentiality certificate would be required for each inter-State stock transfer as it is being treated as supply subject to IGST.

9.4 GST Council deliberated upon this issue and a decision was taken that the original/import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) is sufficient and there is no need for taking a certificate every time on inter-State movement of goods within the same company/ stock transfer so long as the goods are the same as those imported by the company at concessional rate.

9.5 The importer is required to maintain records and should be able to establish nexus between the stock transfer of goods and the description in the essentiality certificate.

10. GST rates applicable on External batteries sold along with UPS Systems/Inverter

10.1 References have been received seeking clarification about whether, 'UPS Systems/inverter sold along with batteries as integral part' are classified under heading 8507 at 28% GST or under heading 8504 at 18% GST.

10.2 The matter has been examined and it is observed that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice. Therefore, it is clarified that in such supplies, UPS/inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery).

11. Applicability of GST rates on Solar PV Power Projects

11.1 Representations have been received seeking clarification regarding the GST rates applicable on Solar PV Power Projects on or before 1st January, 2019. The issue seems to have arisen in the context of Notification No. 24/2018-Central Tax (Rate), dated 31st December, 2018. An explanation was inserted vide the said notification that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January, 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1-1-2019.

11.2 As per this explanation, if the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent of the gross consideration charged for all such supplies, and the remaining thirty per cent of the gross consideration charged shall be deemed as value of the said taxable service. This mechanism for valuation of supply was recommended by the Council considering that it adequately represented the value of goods and services involved in the supply.

11.3 The GST Council has now decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1st July, 2017 to 31st December, 2018, in the same manner as has been prescribed for the period on or after 1st January, 2019, as per the explanation in the Notification No. 24/2018, dated 31st December, 2018. However, it is specified that, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.

12. Applicability of GST rates on Fibre Drums, whether corrugated or non-corrugated

12.1 Hitherto, corrugated boxes and cartons, falling under heading 4819 attracted GST at the rate of 12% (entry 122 of 12% rate schedule), while other cartons falling under this heading attracted GST at the rate of 18%. Disputes have arisen as regards applicable GST on fibre drums, which is partially corrugated (as to whether it is be treated as corrugated or otherwise). This dispute gets resolved on account of the recommendation of the GST Council, in its 45th meeting, to prescribe a uniform GST rate of 18% on all goods classifiable under heading 4819 (with effect from 1st October, 2021 under S. No. 153A of Schedule III of notification No. 1/2017-Central Tax (Rate), dated 28-6-2017).

12.2 For the period prior to 1-10-2021, the Council upon taking note of the fact that there was an ambiguity regarding the GST rates applicable on a Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1-7-2017 to 30-9-2021), would be treated as fully GST-paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, as detailed in para 14.1, no refund of GST already paid shall be allowed if already paid at 18%.

RULE OF INTERPRETATION AS APPLICABLE IN CUSTOMS [EQUALLY APPLICABLE FOR GST]

Rule 1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

Rule 2.

(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

Rule 3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be affected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Rule 4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

Rule 5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(b) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(c) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

Rule 6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

LESSON ROUND-UP

- Time of supply is key to ensure timely discharge of tax liabilities and penal consequences.
- Section 12 provides the time of supply for goods which largely relegates us to the time of issuing invoice as per section 31.
- The invoice is required to be issued on or before the removal of goods or on or before the goods are made available to the recipient. In short, the time of supply for goods is on or before the removal of goods or the time when the goods are made available to the recipient. The receipt of payment is not a criterion to determine time of supply for goods.
- Section 13 CGST Act provides time of supply for services. On a similar note, the time of supply of services is the date of issue of invoice or the receipts of payment whichever is earlier. However, this formula hold goods where the invoice is issued within 30 days from the date of completion of service. Where the invoice is not issued within 30 days from the date of completion of service, the time of supply shall be the date of completion of service or the receipt of payment whichever is earlier.
- Section 12 and section 13 also provides the mechanism to determine time of supply for other categories of transactions such as reverse charge, continuous supply of goods and services, vouchers, goods sent on approval basis. Particularly in case of reverse charge for supply of services, the time of supply shall be the date of payment to the supplier or the date expiring 60 days from the date of invoice. However, in case the services are received from the associated person located outside the taxable territory, the time of supply shall be the date of entry of such transaction in the books of accounts by the recipient or the 60th day from the date of invoice whichever is earlier. Similarly, for goods sent on an approval basis, the time of supply shall be the date of supply or the date after 6 months from the date of dispatch of goods. In the case of vouchers, where the supply is identified at the time of issue of voucher, the time of supply shall be the date of issue of voucher. Where the supply is not identified at the time of issue of voucher then the time of supply shall be the date of redemption of voucher.

- The rule of interpretation determine the tax rate under GST. Basically, the interpretative rules as applicable for Customs are applicable for GST as well. The Government has issued notifications to prescribe tax rate for various services and good and have powers to amend such notifications to increase or decrease such rates.
- Students may note that the rules for the interpretation of Customs tariff have been made applicable to GST tariff. Explanation (iv) to the GST rate notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 provides that the rules of interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of said notification.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. "Time of Supply is a point in time when the liability discharge tax arises". Discuss this statement.
2. "Time of Supply" is not "Payment of Tax". Critically examine this statement.
3. Discuss the time of supply provisions for services under reverse charge.
4. Time of Supply for vouchers is the date when voucher is redeemed. Critically examine this statement.
5. Discuss the time of supply for services where the registered person fails to issue invoice within the time provided under section 31 CGST Act.
7. Discuss the classification and tax rate for "Electric vehicles whether or not fitted with a battery pack" in the light of clarifications issued by the Government.
8. Discuss the classification of Copra in the light of recent clarifications by the Government.
9. Discuss the classification of "Mangoes under CTH 0804 including mango pulp, but other than fresh mangoes and sliced, dried mangoes" in the light of recent clarifications by the Government.
10. Discuss the rules of interpretation when the goods are classifiable under two or more headings.

LIST OF FURTHER READINGS

- GST Ready Reckoner - Taxmann - V.S. Datey
- GST Manual with GST Law Guide & GST Practice Referencer - Taxmann
- GST Acts with Rules & Forms - Taxmann
- GST - Law, Practice & Procedures - Bharat Publications Vineet Gupta & N.K. Gupta

Value of Supply

Lesson 4

KEY CONCEPTS

■ Transaction Value ■ Discounts Valuation ■ Distinct Persons ■ Zero rated Supply ■ Exempt Supplies ■ Letter of Undertaking

Learning Objectives

To understand:

- Principles for determination of Value of supply
- Taxation of exports and imports under GST
- Refunds in case of zero rated supply
- Deemed Exports
- Export of Goods under Bond or LOU

Lesson Outline

- Rules for Determination of Value of Supply
- Applicability of Valuation Rules
- Import and Export of Goods and Services under GST
- Zero Rated Supply
- Difference between Exempt Supply and Zero Rated Supply
- Lesson Round-Up
- Test Yourself
- List of Further Readings

REGULATORY FRAMEWORK

Central Goods and Services Tax Act, 2017	
Section	***Deals with***
Section 15	Valuation of Supply
Section 54	Refunds under zero rated supply
Integrated Goods and Service Tax Act, 2017	
Section 16	Zero rated supply
Central Goods and Services Tax Rules, 2017	
Rule 27	Value where consideration is not in money
Rule 28	Value of supply where transaction is between related or distinct person other than through agents.
Rule 29	Value of supply where supply is through an agent
Rule 30	Value of supply based on cost
Rule 31	Residual Method
Rule 31A	Supply in case of lottery, betting, gambling and Horse Racing
Rule 32	Supply in certain situations
Rule 32A	Value in case of Kerala Flood Cess
Rule 33	Value in case of Pure Agent
Rule 34	Applicable Foreign currency rate
Rule 35	Value of supply inclusive of all taxes
Rule 89(4)	Application for refund of tax, interest, penalty, fees or any other amount
Rule 96A	Export of goods or services under bond or Letter of Undertaking.
Rule 96B	Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised

INTRODUCTION

We have understood in the previous lessons the meaning of the term supply. We have also understood the time when tax becomes payable on taxable supply. However, the calculation of tax requires a value on which tax rate is to be applied. Thus, the concept of valuation is always of paramount importance in any tax legislation. In the erstwhile central excise law, wholesale price concept ruled several decades until the start of 21st century when the concept of 'transaction value' was brought in place of 'wholesale price'. 'Transaction Value' strengthened its position not only in central excise but also in customs and service tax and finally transitioned to the GST law as time tested valuation principle. Let us now understand the nuances of valuation in the perspective of GST law.

RELEVANT DEFINITIONS

Consideration [Section 2(31)]

Consideration in relation to the supply of goods or services or both includes -

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

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

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

Related Person [Explanation to Section 15]

For the purposes of this Act,

(a) persons shall be deemed to be "related persons" if —

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

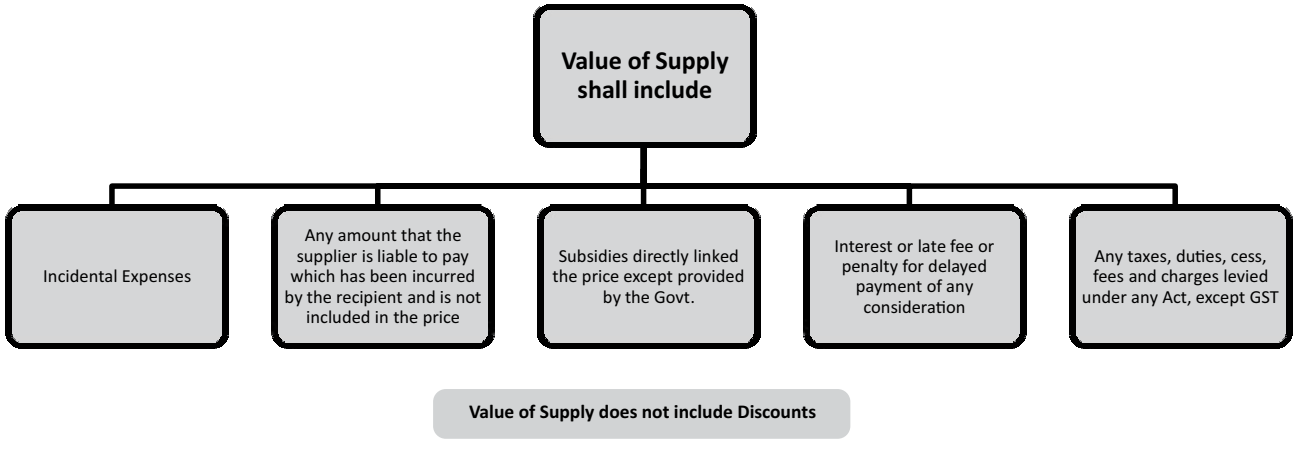
(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.



Value of Taxable Supply [Section 15]

Transaction value [Section 15(1)]	The value of a supply of goods or services or both 1) shall be the transaction value, 2) which is the price actually paid or payable for the said supply of goods or services or both 3) where the supplier and the recipient of the supply are not related, and 4) the price is the sole consideration for the supply. **Illustration.** *Mr. Kohli residing in Noida, purchase 20,000 Markers @ Rs. 20 each from Ankita & Stationary, wholesalers at Delhi. Mr. Kohli's sister is working as Manager in Ankita & Stationary. Open Market Value of Marker is Rs. 23.* **Solution:** Mr. Kohli and Ankita & Stationary Wholesaler are not related persons as Kohli's sister and Ankita & Stationary are not to be considered as related persons. Therefore, the transaction value i.e3, Rs. 20 x 20,000 = Rs. 4,00,000 to taken as value of supply.
Items included in value [Section 15(2)]	The value of supply shall include- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier; ***Example: -*** If Taxi owner charge Toll Tax in bill, GST will be charged on the value including Toll Tax. ***Example: -*** If a contractor charges Building and Other Construction Workers Cess in his bill to the customer, such cess is liable to be included in the value for the purpose of GST. (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both; ***Example :-*** L Ltd was mandated to supply goods for Rs. 2000 for delivery at the premises of M LTD. L Ltd. could not organize transport which was eventually organized by M Ltd. For Rs. 200. Finally, L Ltd charged Rs. 1800 for the goods and charged GST thereon. Such value is incorrect as L Td. Was liable to include Rs. 200 in the value for the purpose of calculating GST. (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services; ***Example :-*** Tinu agrees to supply goods to Meenu for Rs. 1000 and separately charge Rs. 200 for transportation. Tinu is liable to charge GST on Rs. 1200. (d) interest or late fee or penalty for delayed payment of any consideration for any supply; ***Example :-*** Bharti Airtel charges Rs. 100 as late payment fees. GST will be charged on such fees,

	(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. ***Explanation-*** *For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy*. ***Example :-*** Central Government has provided subsidy to Adnani Ltd. In the nature of Productivity Linked Incentive for solar panel production. The price of manufacturing solar panel without such subsidy comes to Rs. 2,00,000 but after getting such subsidy it comes to Rs. 1,50,000. In this case, the value for the purpose of GST shall be Rs. 1,50,000 as the subsidy not liable to be included because it is provided by the Central Government.
Discount before or at or after the time of supply [Section 15(3)]	The value of the supply shall not include any discount which is given- (a) **before or at the time** of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and (b) **after the supply** has been affected, if- (i) such discount is established in **terms of an agreement** entered into at or before the time of such supply and **specifically linked** to relevant invoices; and (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply. **Note:** Trade discount, cash discount, quantity discount, discount on meeting target if entered into the terms of agreement then it shall be deducted from value. ***Example:*** *Ultratech Cement permits 10% discount to its customers if they purchase minimum of 1000 metric tons of cement in a year. The agreement is entered beforehand and the discount is allowed after the buyer achieves the targeted supplies. Such discount is allowed as the agreement is entered on or before the supplies are made.* ***Example:*** *Cash back by PAYTM, shall not be reduced from value because it is pass to buyer by third party.* ***Example:*** *Free service of car under warranty by dealer, billed to car manufacturer shall "amount to supply" to manufacturer.*
Residual [Section 15(4)]	Where the value of the supply of goods or services or both cannot be determined under sub- section (1), the same shall be determined in such manner as may be prescribed. Rule 27 to Rule 32A of the CGST Rules, 2017 deals with various scenarios for computation of value.
Value of supply notified by Govt. [Section 15(5)]	Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Illustration:

Mr. Ramesh a manufacturer furnished the following particular:

	Rs.
Basic Price of the machine	1,00,000
Additional charges:	
Packing charges	10,000
Designing charges	20,000
Transit insurance	1,000
Freight outward	8,000
Cash discount to customer [applicable only on basic price]	2%

Also, assume that the buyer has paid cash and availed cash discount. Compute the value of machine when Ramesh has to deliver machine to factory of recipient.

Solution:

	Rs.
Price of the machine	1,00,000
Add : Packing charges	10,000
Add : Designing charges	20,000
Add : Transit insurance	1000
Add : Freight outward	8000
Less [Cash discount to customer 1,00,000* 2%]	(2780)
Total Value	1,36,220

Illustration:

Computation of value of taxable supply: From the following information determine the value of taxable supply as per provisions of Section 15 of the CGST Act, 2017?

	Particulars	***Rs.***
Contracted value of supply of goods (including GST @ 18%)		11,00,000
The contracted value of supply includes the following:		
(1)	Cost of primary packing	25,000
(2)	Cost of protective packing at recipient's request for safe transportation	15,000
(3)	Design and engineering charges	85,000
Other information:		
(i)	Commission paid to agent by recipient on instruction of supplier	5,000
(ii)	Freight and insurance charges paid by recipient on behalf of supplier	75,000

Give reasons with suitable assumptions where necessary.

Solution:

Computation of value of taxable supply of goods:

Particulars			***Rs.***	***Rs.***
Contracted Value of Supply of Goods				11,00,000
(1)	Cost of primary packing	[WN-1]	–	–
(2)	Cost of protective packing at transportation recipient's request for safe	[WN-1]	–	–
(3)	Design and engineering charges	[WN-2]	–	–
Add: Commission paid to agent by recipient on instruction of supplier		[WN-3]	5,000	
Freight and insurance charges paid by recipient on behalf of supplier		[WN-3]	75,000	80,000
Cum Tax Value				11,80,000
Less: GST @ 18% [Rs. 11,80,000 × 18 / 118]		[WN-4]		1,80,000
Value of Taxable Supply				10,00,000

Working Notes:

For the purpose of determining the value of taxable supply, the following adjustments shall be made-

(1) As per Section 15(2)(c) of CGST Act, 2017, cost of primary packing and protective packing at recipient's request for safe transportation charged by supplier from the recipient shall be included for determining the value of taxable supply. Since it is already included in the value, no treatment is required.

(2) As per Section 15(2)(c) of CGST Act, 2017, any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of taxable supply. Hence design and engineering charges shall also be included in the value of taxable supply. Since it is already included in the value, no treatment is required.

(3) As per Section 15(2)(b) of the CGST Act, 2017, any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply. Thus, commission paid to agent by recipient on instruction of supplier and freight and insurance charges incurred by recipient on behalf of supplier shall form part of value of taxable supply.

(4) As per Section 15(2) (a) of the CGST Act, 2017, value of supply shall not include any taxes or cesses levied under CGST Act, SGST Act, UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier.

IMPORTANT CLARIFICATION OF CBIC ON TREATMENT OF SALES PROMOTION SCHEMES UNDER GST

A. Free samples and gifts:

Question 1:

Whether free samples and gifts such as drug samples provided by companies to their stockiests, dealers, medical practitioners, etc. without charging any consideration constitutes supply.

Answer:

The goods or services or both which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in Schedule I of the said act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as 'supply' under GST, except where the activity falls within the ambit of Schedule I of the said act.

Question 2:

Whether input tax credit shall be available on inputs or input services in respect of manufacture and / or supply of free samples and gifts.

Answer:

Clause (h) of sub-section (5) of section 17 of the said act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of 'supply' on account of the provisions contained in Schedule I of the said act, the supplier would be eligible to avail of the ITC.

B. Buy one get one free offer:

Question 3:

Whether goods supplied free of cost under offers like 'Buy One, Get One free' constitute supply. For example, 'buy one soap and get one soap free' or 'Get one tooth brush free along with the purchase of tooth paste'. What shall be the status of input tax credit of inputs, input services and capital goods used in relation to such free of cost supplies?

Answer:

As per sub-clause (a) of sub-section (1) of section 7 of the said act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in Schedule I of the said act). It may appear at first glance that in case of off like 'Buy One, Get One Free', one item is being 'supplied free of cost' without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said act.

ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. Discounts including 'Buy more, save more' offers:

Question 4:

How the discount provided by the supplier in below mentioned situations shall be dealt in terms of Section 15(3) of the CGST Act?

- Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example - Get 10% discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-. Such discounts are shown on the invoice itself.
- Some suppliers also offer periodic/year ending discounts to their stockists, etc. For example - Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been affected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

Answer:

Discounts offered by the suppliers to customers (including staggered discount under 'Buy more, save more' scheme and post-supply/volume discounts established before or at the time of supply) shall be included to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document(s) issued by the supplier.

It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

D. Secondary Discounts

Question 5:

These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s. A supplies 10000 packets of biscuits to M/s. B at Rs. 10/- per packet. Afterwards M/s. A re-values it at Rs. 9/- per packet. Subsequently, M/s. A issues credit note to M/s. B for Rs. 1/- per packet. How to deal with such category of discounts? What shall the impact of such discounts on input tax credit?

Answer:

It is clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the said act are not satisfied. In other words, value of supply shall not include any discount by way of issuance of credit note(s) except in cases where the provisions contained in clause (b) of sub- section (3) of section 15 of the said act are satisfied.

There is no impact on availability or otherwise of ITC in the hands of supplier in this case. [C.B.I. & C. Circular No. 92/11/2019-GST, dated 7-3-2019]

CBIC CLARIFICATION IN RESPECT OF INCLUDIBILITY OF TCS IN THE VALUE OF SUPPLY

Question 1:

What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?

Answer:

Section 15(2) of CGST act specifies that the value of supply shall include "any taxes, duties cesses, fees and charges levied under any law for the time being in force other than this act, the SGST act, the UTGST act and the GST (Compensation to States) act, if charged separately by the supplier. For the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

Question 2:

Computation of value of taxable supply: From the following information determine the value of taxable supply as per provisions of section 15 of the CGST Act, 2017?

Particulars		***Rs.***
Value of machine (including GST @ 12%)		15,00,000
The invoice value includes the following		
(1)	Taxes (other than CGST /SGST /IGST) charged separately by the supplier	15,000
(2)	Weighment and loading charges	25,000
(3)	Consultancy Charges in relation to pre-installation planning	10,000
(4)	Testing Charges	2,000
(5)	Inspection Charges	4,500
Other information:		
(i)	Subsidy received from Central government for setting up factory in backward region	51,000
(ii)	Subsidy received from third party for timely supply of machine to recipient	50,000
(iii)	Trade discount actually allowed shown separately in invoice	24,000

Give reasons with suitable assumptions where necessary.

Answer:

Computation of Value of taxable supply of Goods:

Particulars		***Rs.***	***Rs.***
Contracted value of supply of goods			11,00,000
Value of machine			15,00,000
Less:			

(1)	Taxes other than CGST /SGST/IGST charged separately by the supplier	[WN-1]	–	
(2)	Weighment and loading charges	[WN-2]	–	
(3)	Consultancy Charges in relation to pre-installation planning	[WN-2]	–	
(4)	Testing Charges	[WN-2]	–	
(5)	Inspection Charges charged before supply	[WN-2]	–	
(6)	Trade discount actually allowed shown separately in invoice	[WN-4]	24,000	-24,000
Add: Subsidy received from third party for timely supply of machine to recipient		[WN-3]		50,000
Cum tax value			15,26,000	
Less: GST @ 12% [Rs. 15,26,000 × 12 / 112]		[WN-5]		1,63,500
Value of taxable supply				**13,62,500**

Working Notes:

In the given question, for the purpose of determining the assessable value of the supply of goods-

(1) As per Section 15(2)(a) of CGST Act, 2017, any duty, taxes, cesses, fees and other charges, charged separately by supplier are to be included in value of taxable supply.

(2) As per Section 15(2)(c) of CGST Act, 2017, any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of taxable supply. Hence, weighment and loading charges, consultancy charges, testing charges and inspection charges shall also be included in the value of taxable supply.

(3) As per Section 15(2)(e), the value of supply shall include subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Hence, subsidy received from third party for timely supply of machine to recipient will be included in the value of taxable supply whereas subsidy received from Central government for setting up factory in backward region shall not be included in value of taxable supply.

(4) As per Section 15(3)(a), the value of the supply shall not include any discount which is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply. Hence, the same is deductible to arrive at value of taxable supply.

(5) As per Section 15(2)(a) of the CGST Act, 2017, value of supply shall not include any taxes or cesses levied under CGST Act, SGST Act, UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier.

Question 3:

Value of taxable supply - Section 15: Comfort footwear, a registered supplier of Agra, has a non- moving stock worth Rs. 8,00,000 of a particular variety of shoes that are out of fashion. It has not been able to find market in-spite of huge discounts offered. Subsequently, it was able to sell this stock at a very low price of Rs. 5,00,000 to a retailer in Madhya Pradesh with a condition that the retailer would display hoardings of Comfort Footwear in all their retail outlets in the State. Determine the value of supply.

Answer:

In this case the supplier and recipient are not related persons. However, a condition is imposed on the recipient that he would display hoardings in all its outlets. Effectively, the recipient is engaged to publicise the product of the supplier. It is an additional consideration and therefore the conditions of 'transaction value' under section 15 are not met. In this case, Comfort footwear shall have to quantify the value of supply by resorting to Rule 27 of the CGST Rules, 2017 which provides the following;

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall-

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

In the above case, the open market value of a particular variety of shoes is not available as the supplier could not find any buyer of such shoes other than a retailer in Madhya Pradesh.

Thus, the supplier should find the money value of publicising activity assigned to the recipient and add such amount in consideration in money in terms of Rule 27(b).

In case, the supplier fails to follow Rule 27(b) and Rule 27(c), it shall have to resort to Rule 27(d) which relegates it to Rule 30 providing for arriving the value of supply at cost + 10%.

Question 4:

Computation of value of taxable supply and tax payable:

Determine the value of taxable supply as per Section 15 of the CGST Act, 2017 and the Rules thereof:

Particulars		***Rs.***
Contracted sale price of goods (including CGST and SGST @5%)		10,56,000
The contracted sale price includes the following elements of cost:		
(i)	Cost of drawings and design	5,000
(ii)	Cost of primary packing	2,000
(iii)	Cost of packing at buyer's request	4,000
(iv)	Fright and insurance from 'place of removal' to buyer's premises	43,000

A discount of Rs. 6,000 was given by the supplier at the time of supply of goods. CGST and SGST is levied @5%.

Answer:

Computation of Assessable value

Particulars		***Rs.***	***Rs.***
Contracted sale price of goods			10,56,000
Discount	[WN-3]	6,000	6,000
Cum tax value			10,50,000
Less: GST @ 5% [Rs. 10,50,000 × 5 -105]	[WN-2]		50,000
Value of taxable supply			**10,00,000**

Working Notes:

(1) As per Section 15(2) (c) of CGST Act, 2017, any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of taxable supply. Hence drawing and design charges, cost of packing (even at buyer's request) shall form a part of the transaction value of the supply. Since these are already included in the value of the goods, hence, separate treatment is not required.

(2) The value of supply shall include any taxes, duties, cess, fees and charges levied under any law for the time being in force other than the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier. [Section 15(2)(a) of CGST Act, 2017]

(3) The value of supply shall not include any discount which is given before or at the time of supply. [Section 15(3)(a) of CGST Act, 2017]

Question 5:

Value of taxable supply - Section 15: Mr. X located in Jaipur purchases 2,000 drawing boxes for Rs. 2,00,000 from M/s. Stationers ltd. (wholesalers) located in Delhi. Mr. X's son is an employee in M/s. Stationers ltd. The price of each drawing box in the open market is Rs. 120. The supplier additionally charges Rs. 5,000 for delivering the goods to the recipient's place of business.

Answer:

Mr. X and M/s. Stationers Ltd. would not be treated as related persons merely because the son of the recipient is an employee of the supplier, although such son and the supplier would be treated as related persons. (As they fall under deemed relationship of employer and employee).

Therefore, the transaction value will be accepted as the value of the supply. The transaction value includes incidental expenses incurred by the supplier in respect of the supply up to the time of delivery of goods to the recipient. This means, the transaction value will be: Rs. 2,00,000 + Rs. 5,000 i.e., Rs. 2,05,000. [Section 15(1) read with Section 15(2)]

IMPORTANT CLARIFICATION - GST APPLICABILITY ON ADDITIONAL/PENAL INTEREST

1. Doubts were raised regarding the applicability of GST on additional/penal interest on the overdue loan, i.e., whether it would be exempt from GST in terms of Sl. No. 27 of notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 or such penal interest would be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017, i.e., "agreeing to the obligation to refrain from an Act, or to tolerate an Act or a situation, or to do an Act"]. In order to ensure uniformity in the implementation of the provisions of the law, the Board has issued following clarification.
2. Generally, following two transaction options involving EMI are prevalent in the trade:-
   - **Case - 1:** X sells a mobile phone to Y. The cost of mobile phone is Rs. 40,000/-. However, X gives Y an option to pay in installments, Rs. 11,000/- every month before 10th day of the following month, over the next four months (Rs. 11,000/- *4 = Rs. 44,000/-). Further, as per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to Rs. 500/- per month for the delay. In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/penal interest amounting to Rs. 500/- per month for each delay in payment.
   - **Case - 2:** X sells a mobile phone to Y. The cost of mobile phone is Rs. 40,000/-. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/penal interest @ 1.25% per month for any delay in payment.
3. As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the value of supply shall include *"interest or late fee or penalty for delayed payment of any consideration for any supply"*. Further in terms of Sl. No. 27 of notification No. 12/2017-Central Tax (Rate), dated the 28-6-2017 *"services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services)"* is exempted. Further, as per clause 2(zk) of the notification No. 12/2017-Central Tax (Rate), dated the 28th June, 2017, *"'interest' means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised"*.
4. Accordingly, based on the above provisions, the applicability of GST in both cases listed in para 3 above would be as follows:
   - **Case 1:** As per the provisions of sub-clause (d) of sub-section (2) of section 15 of the CGST Act, the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods, i.e., mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.
   - **Case 2:** The additional/penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under Sl. No. 27 of notification No. 12/2017-Central Tax (Rate), dated 28- 6-2017. Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST, as the same would not be covered under notification No. 12/2017-Central Tax (Rate), dated 28-6-2017. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST

5. It is further clarified that the transaction of levy of additional/penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act i.e., "agreeing to the obligation to refrain from an Act, or to tolerate an Act or a situation, or to do an Act", as this levy of additional/penal interest satisfies the definition of "interest" as contained in notification No. 12/2017-Central Tax (Rate), dated 28-6-2017. It is further clarified that any service fee/charge or any other charges that are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, and accordingly will not be exempt.

CASE LAWS

IN Re: MIDCON POLYMERS PVT. LTD., 2020 (41) G.S.T.L. 403 (A.A.R. - GST - Kar.)

Facts: The Applicant proposed/planned for engaging in the business of renting of commercial property on monthly rents and allied business. They intend to enter in to a contractual agreement of renting of immovable property with an Educational Institution in Bangalore. The contract is on the basis of the reserved monthly rent of Rs. 1.50 lakhs or Annual Rent of Rs. 18.00 Lakhs and also refundable caution deposit of Rs. 500 Lakhs, which shall be returned without interest on the termination of the tenancy. Further, since the applicant is required as per law to refund the advance caution deposit, the same does not in any way determine the quantum of rent.

The Applicant discharge the statutory taxes levied by the BBMP (Bruhut Bengaluru Mahanagar Palike) and also deposits, which is as per the contract. These taxes being paid on the property and such deductions are legal in respect of valuing the actual receipt of rent under the contract.

Questions asked by the applicant

The applicant sought for advance ruling inter alia in respect of the following questions :

(i) For the purpose of arriving at the value of rental income, whether the applicant can seek deduction of property taxes and other statutory levies.

(ii) For the purposes of arriving at total income from rental, whether notional interest on the security deposit should be taken into consideration.

Held:

A. The first question is whether the property tax & other statutory levies paid/payable by the applicant be deducted from the rental income for the purpose of arriving at the value of rental income. Section 15(2) of the CGST Act, 2017 is relevant to the instant issue and is as appended below :

The value of supply shall include -

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.

It could easily be inferred from Section 15(2) supra that any taxes, duties, cesses, fees and charges, levied under any law for the time being in force, shall include in the value of taxable supply. In the instant case the property tax is levied, under the Karnataka Municipalities Act, 1964, by the BBMP in Bangalore. Further the only exclusions from the value of the taxable supply are the taxes, duties, cesses, fees and charges levied under the CGST Act, 2017, SGST (KGST) Act, 2017, UTGST Act, 2017 & GST (Compensation to States) Act, subject to the condition that they are charged separately by the supplier.

Further Section 15(1) of the CGST Act, 2017, with regard to value of the supply, stipulates as under :

"the value of supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration of the supply".

It is observed that in the instant case, the supplier (applicant) and the recipient are not related; price is the sole consideration of the supply and monthly rent is the price payable. Thus the monthly rent is the transaction value and the same would be the value of supply of the impugned service of RIS.

In view of the above, it was concluded that the property tax is not deductable from the value of taxable supply of "Renting of Immovable Property" service.

B. The second question is whether notional interest on the security deposit should be taken into consideration for the purposes of arriving at total income from rental. In this regard we examine relevant clauses of the draft rental agreement furnished by the applicant, which are as under :

The lessee shall pay a monthly rent of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) plus applicable taxes, subject to deduction of tax as may be applicable.

The lessee shall pay to the lessor, an interest free refundable security deposit of Rs. 5,00,00,000/- (Rupees Five Crore Only) which will be returned to lessee upon vacation of scheduled property.

The lessor shall bear and pay the property taxes and cess as applicable to the concerned authorities in regard to the scheduled property.

The question involves two parts, one being whether the security deposit so collected need to be considered as consideration towards supply of the service and the other being whether the notional interest earned on such security deposit becomes part of value of supply or not.

The security deposit so collected by the applicant shall not be considered as payment made for supply of RIS service unless the applicant applies such deposit as consideration for the said supply, in terms of proviso to Section 2(31)(b) of the CGST Act, 2017. In the instant case the security deposit, is taken as a guarantee against damage to property, is an interest free refundable deposit which will be returned to the lessee at the expiration of the lease period and hence shall not be considered as consideration for the supply of RIS service. However, at the expiry of the lease tenure, if the entire deposit or part of it is withheld and not paid back, as a charge against damages etc., then at that stage such amounts not refunded will be liable to GST.

The second issue is the notional interest earned out of security deposit. In the instant case, the applicant proposed to collect security deposit of Rs. 5 Crore. It is an undisputed fact that the applicant gets interest out of the security deposit. The applicant relied upon certain case laws which are relevant to the Finance Act, 1994 and also the ruling of the Authority for Advance Ruling, Maharashtra, in respect of M/s. E-square Leisure Pvt. Ltd., wherein it is held that GST is not applicable on security deposit and hence not answered the instant issue of notional interest.

We observe that in addition to the case laws relied upon by the applicant there are several other orders of CESTAT on the issue of notional interest.

(i) *M/s. K. Raheja Corp. Ltd. v. CCE, Pune-III* [2015-TIOL-100-CESTAT-MUM]

(ii) *M/s. Pheonix International Ltd. [Final Order No. 72654/2018, dated 20-11-2018]* [Tri.-Allahabad]

(iii) *M/s. Murli Realtors Pvt. Ltd. [2015 (37) S.T.R. 618* (Tri. - Mumbai)].

It is observed, on examination of the case laws supra, that the order of Hon'ble Supreme Court in the case of *Commissioner v. I.S.P.L. Industries Ltd.* - 2003 (154) E.L.T. 3 (S.C.) has been followed in all the cases. The Apex Court in the said case, which is a similar case & is related to notional interest on security deposits in relation to goods, held that *notional interest on advances taken by the assessee from the buyers cannot be added to the assessable value of the goods cleared, unless there is evidence to show that the interest free deposit taken has influenced the price*. Therefore to decide the instant issue two things are required to be considered, i.e., whether the notional interest on security deposit is in relation to the supply of RIS and whether the said notional interest influences the value of the supply, i.e., the monthly rent.

The security deposit is taken invariably in all cases and it is a general practice that wherever the quantum of deposit is higher the rent charged is less and vice versa. The applicant is collecting the security deposit as their property is being leased. Had the property not been leased, the applicant would not have collected the security deposit. Thus there is a nexus between security deposit taken and the rent charged beyond doubt.

The security deposit is collected normally equivalent to 6 months or 12 months rent. Also it is a known fact that the higher the security deposit lower the monthly rent amount. In the instant case, an amount of Rs. 5 Crore is proposed to be collected as security deposit and a monthly rent of Rs. 1.5 Lacs. However the applicant has not furnished adequate date/information so as to decide whether actually the notional interest influences the monthly rental amount or not.

Section 2(31)(b) of the CGST Act, 2017 stipulates that "consideration" in relation to supply of goods or services or both includes the monetary value of an 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. In the instant case the notional interest that the applicant earns is in respect of supply of RIS service, though is not by the recipient of the service but from other person.

In view of the above, it was concluded that the notional interest has to be considered as part of value of supply of service, if and only if the said notional interest influences the value of supply, i.e., value of RIS service/monthly rent and is leviable to GST along with monthly rent at the rate applicable to monthly rent.

RULES FOR DETERMINATION OF VALUE OF SUPPLY

Applicability of Valuation Rules

Valuation Rules are applicable when:

(i) consideration either wholly or in part not in money terms;

(ii) parties are related or supply by any specific category of supplier and transaction value is not reliable.

Consideration is not wholly in money **[Rule 27 of CGST Rules, 2017]**	Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall, (a) be the open market value of such supply; (b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money if such amount is known at the time of supply; (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

	(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order. ***Illustration:*** 1. Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees. 2. Where a laptop is supplied for forty thousand rupees along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of laptop is forty four thousand rupees.
Explanation. For the purposes of the provisions of this Chapter, the expressions- "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. (a) "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.	
Supply between distinct or related persons **[Rule 28 of CGST Rules, 2017]**	The value of the supply of goods or services or both between distinct persons as specified in sub-sections (4) and (5) of section 25 or where the supplier and recipient are related, **other than** where the **supply is made through an agent**, shall,- (a) be the open market value of such supply; (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality; (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order: **Provided** that where the goods **are intended** for further supply **as such** by the recipient, the value shall, at the **option** of the supplier, be an amount equivalent to **ninety per cent** of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person: **Provided further** that where the **recipient is eligible for full input tax credit**, the value declared in the invoice shall be deemed to be the open market value of the goods or services:

	Illustration: *M/s. Showmakerz an event management Co. for creation of large scale events & Occasions, owned by Mr. Shipu Kingdom of Dreams in Gurugram contracts with Showmakerz Company to arrange a celebrity concerts charging Rs. 8,00,000. The company sub-contract the same work to Aura Mgt. Company which were also controlled and managed by Mr. Shipu for Rs. 6,00,000. M/s. Aura Mgt. Co. charges Rs. 6,20,000 from market for the same work.* ***Answer:*** M/s Showmakerz and M/s. Aura Mgt. Company are managed and controlled by Mr. Shipu so both the businesses will be considered as related persons. The value of service will be the open Market Value being Rs. 6,20,000 rather than sub-contract price of Rs. 6,00,000.
Supply through an agent **[Rule 29 of CGST Rules, 2017]**	The value of supply of goods between the principal and his agent shall,- (a) be the **open market value** of the goods being supplied, **or at the option** of the supplier, be **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 by the said recipient;
	Illustration: *A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of Rs. 5,000 per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of Rs. 4,550 per quintal. The value of the supply made by the principal shall be Rs. 4,550 per quintal or where he exercises the option the value shall be 9096 of the Rs. 5,000, i.e., is Rs. 4500 per quintal.* (b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.
Value based on cost [Rule 30 of CGST Rules, 2017]	Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this chapter, the value shall be 110% of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services. ***Note:*** *Cost Accounting standard may be follow to calculate cost under this rule.*
Residual method **[Rule 31 of CGST Rules, 2017]**	Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using **reasonable means** consistent with the principles and the general provisions of section 15 and the provisions of this chapter: **Provided** that in the case of **supply of services**, the supplier **may opt** for this rule, ignoring rule 30.
Value of supply in case of lottery, betting, gambling and horse racing **[Rule 31A of CGST Rules, 2017]**	• Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter. • The value of supply of lottery shall be deemed to be ***100/128*** **of the face value of ticket or of the price as notified** in the Official Gazette by the Organising State, **whichever is higher.**

	Explanation :- For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010. • The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be **100% of the face value** of the bet or the amount paid into the totalisator.

CASE LAWS

In Re: B.G. Shirke Construction Technology Pvt. Ltd. [2021 (55) G.S.T.L. 174 (A.A.R. - GST - Mah.)

Question 1. Whether the managerial and leadership services provided by the Registered/Corporate Office to its Group Companies can be considered as "supply of service", in terms of Section 7 of CGST Act, 2017?

Answer :- Answered in the affirmative.

Question 2. Whether the lump sum amount charged by the Registered/Corporate Office on its Group Companies would be liable to GST under Section 8 of CGST Act, 2017?

Answer :- Answered in the affirmative.

Question 3. If the aforesaid activities are treated as "supply of service" between distinct and related persons and GST thereon is held to be payable, whether the applicant can continue to charge certain lump sum amount, as has been done in the past, in terms of second proviso to Rule 28 of CGST Rules, 2017, as most of the recipients of such services are eligible for full credit, barring one or two related persons, who would comply with the provisions of Section 17 of CGST Act, 2017, at their respective ends?

Answer :- Answered in the affirmative.

Question 4. If the aforesaid method of charging certain lump sum amount is not permissible, whether the applicant can adopt the valuation in terms of the provisions of Rule 31 of CGST Rules, 2017, by arriving at a proportional ratio, based on the total expenses incurred by Registered/Corporate Office for supplying the aforesaid services and turnover of each of the distinct and related persons?

Answer :- Not answered in view of the discussions made above.

Question 5. If the aforesaid method of valuation under Rule 31 of CGST Rules is also not permissible, whether the applicant can adopt valuation in terms of Rule 30 of CGST Rules, 2017, by allocating related expenses at the Registered/Corporate Office in a reasonable proportion to the distinct and related persons considering turnover of each of them and adding ten per cent, which would be at par with 110% of cost of provision of such services?

Answer :- Not answered in view of the discussions made above.

Question 6. If any of the aforesaid method of valuation suggested by the applicant is not acceptable, what alternative feasible workable method of valuation that can be suggested by the Advance Ruling Authority considering the nature of industry in which the applicant is engaged in.

Answer :- Not answered in view of the discussions made above.

Question 7. Whether input tax credit of GST paid by the applicant is admissible to each of the distinct and related person, in a case where their supply of goods or service or both are taxable under GST law?

Answer :- Not answered in view of the discussions made above.

Determination of Value in Respect of Certain Supplies [Rule 32 of CGST Rules, 2017]

Notwithstanding anything contained in the provision of this chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter. [Rule 32(1)]

Purchase or Sale of Foreign Currency, Including Money Changing [Rule 32(2)(a) of CGST Rules, 2017]

The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:

Where the RBI reference rate for a currency is available. [Rule 32(2)(a)]	For a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the **difference in the buying rate or the selling rate**, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency: ***Example:*** INR 70,000 is changed into Great Britain Pound (GBP) and the exchange rate offered is Rs. 70, thereby giving GBP 1000. RBI reference rate for that day for GBP is Rs. 69. The taxable value shall be = (70-69) * 1000, i.e., Rs. 1,000.
Where the RBI reference rate for a currency is not available	**Provided** that in case where the Reserve Bank of India reference rate for a currency is **not available**, the value shall be **1% of the gross amount of Indian Rupees** provided or received by the person changing the money.
Where neither of the currencies exchanged is Indian Rupee	**Provided further** that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to **1% of the lesser** of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.
Another Option for supplier	**Provided also** that a person **supplying the services** may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

Another option [Rule 32(2)(b) of CGST Rules, 2017]

At the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be;

(i) **one per cent** of the gross amount of currency exchanged for an amount up to **one lakh rupees**, subject to a minimum amount of **two hundred and fifty rupees;**	Up to 1,00,000: 1% of the gross amount of currency exchanged or Rs. 250 whichever is **higher**
(ii) **one thousand rupees and half of a per cent** of the gross amount of currency exchanged for an amount **exceeding one lakh rupees and up to ten lakh rupees;** And	exceeding Rs. 1,00,000 and up to Rs. 10,00,000: Rs. 1,000 + 0.5 % of the gross amount of currency exchanged

(iii) **five thousand and five hundred rupees and one tenth of a per cent** of the gross amount of currency exchanged for an amount **exceeding ten lakh rupees**, subject to maximum amount of sixty thousand rupees.	Above Rs. 10,00,000: **Rs. 5,500** + 0.1 **%** of the gross amount of currency exchanged or **Rs. 60,000** whichever is **lower**

Illustration :

(i) Kite Ltd. exported some goods to H Corporation of USA. It received US $10,000 as consideration for the same and sold it @ Rs. 69 per US dollar. Compute the value of taxable supply

(a) RBI reference rate for US dollar at that time is Rs. 70 per US dollar

(b) RBI reference rate for US dollars is not available.

(ii) What would be the value of taxable supply if US $ 9,000 are converted into UK £6,200. RBI reference rate at that time for US$ is Rs. 70 per US dollar and for UK £ is Rs. 100 per UK Pound.

Solution:

(i) (a) Valuation = (70-69) × 10,000 =10,000

If the RBI reference rate for a currency is not available: The value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money. Hence, in the given case, value of taxable supply would be as follows: - 1% of Rs. (69 × 10,000) = Rs. 6,900

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

Hence, in the given case, value of taxable supply would be 1% of the lower of the following:-

(a) U S dollar converted into Indian rupees = $ 9,000 × Rs.70 = Rs.6,3 0,000

(b) UK pound converted into Indian rupees = £ 6,200 × Rs. 100 = Rs. 6,20,000 Value of taxable supply = 1% of Rs. 6, 20,000 = Rs. 6,200

Illustration:

Mr. Bunty is a dealer and engaged in sale & purchase of foreign currency. AVP ltd. requires 10000 US Dollar to make foreign payment. Mr. Bunty quotes Rs. 69 per US Dollar and RBI reference rate is Rs. 68 per dollar. Compute value under different options:

Solution:

Option 1	
Rs. 10,000 (69-68)	10,000
Option 2	
Gross Amount Charged 69 × 10,000	6,90,000
Valuation shall be	
Up to 1,00,000: 1,00,000 × 1%	1,000
Next 5,90,000: 5,90,000 × 0.5%	2,950
Total	3,950

Value of Supply of Services in Relation to Air Travel Agent [Rule 32(3) of CGST Rules, 2017]

Domestic booking value= Basic fare × 5%	The value of the supply of services **in** relation to booking of tickets for travel by air provided by an air travel agent, shall be deemed to be an amount calculated at the rate of **5% of the basic fare** in the case of domestic bookings.
International Booking (value= Basic fare × 10%)	And at the **rate of 10% of the basic fare** in the case of international bookings of passage for travel by air.

Explanation- For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

Value of Supply of Services in Relation to Life Insurance Business [Rule 32(4) Of CGST Rules, 2017]

Risk cover + Investment policy (if such amt. is intimated) (value= Gross amt.-investment)	the **gross premium** charged from a policy holder reduced by the amount **allocated for investment**, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;
Single premium policy value= Single premium × 10%	in case of single premium annuity policies other than (a), **ten per cent of single premium** charged from the policy holder; or
Other Policy value = First year premium × 25% or value = Subsequent year premium × 12.5%	in all other cases, **twenty five per cent of the premium** charged from the policy holder in the first year and twelve and a half per cent of the premium charged from the policy holder in subsequent years.
Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only **towards the risk cover** in life insurance.	

Value of Second Hand Goods [Rule 32(5) of CGST Rules, 2017]

Value of second hand goods **Value = Sale price- purchase price**	Where a taxable supply is provided by a person dealing in buying and selling of second hand goods, i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative it shall be ignored.
	Value of Goods Repossessed Provided that the purchase value of **goods repossessed** from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by 5%for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession. **Analysis:** Value can be done under this rule when:- (i) Goods are sold as such (ii) no input tax credit is taken

Value of a Token, or a Voucher, or a Coupon, or a Stamp [Rule 32(6) Of CGST Rules, 2017]

Value of voucher, token etc. **Value= Money value of goods or value of services**	The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money **value of the goods or services** or both redeemable against such token, voucher, coupon, or stamp. ***Question:-Mr. & Mrs. Tiwari availed the membership of Crowne Plaza at Okhla. Hotel provide 20 vouchers of Aroma body massage & hair spa services costing Rs. 2500 each and 5 gift vouchers for Rs. 800 each. Compute the value of voucher***.
	Solution: Value of Voucher = 20*2500 + 800*5 = Rs. 54,000

The Value of Taxable Services between Distinct Persons [Rule 32(7) of CGST Rules, 2017]

value of taxable services between distinct persons	The value of taxable services provided by such class of service providers as may be **notified by the Government** on the recommendations of the Council as referred to in Paragraph 2 of Schedule I of the said act between distinct persons as referred to in section 25, **where input tax credit is available**, shall be **deemed to be Nil**.

Value of Supply in Cases where Kerala Flood Cess is applicable [Rule 32A of the CGST Rules]

The value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the act, but shall not include the said cess.

Value of Supply of Services in Case of Pure Agent [Rule 33 of CGST Rules, 2017]

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, **if all the following conditions are satisfied**, namely:-

Act as pure agent	(i)	the supplier Acts as a pure agent of the recipient of the supply, when **he makes the payment to the third party** on authorization by such recipient. ***Example:*** CA pays tax on behalf of his client; Acts as pure agent of his client.
Separately indicated in the invoice	(ii)	the payment made by the pure agent on behalf of the recipient of supply has been **separately indicated** in the invoice issued by the pure agent to the recipient of service; and ***Example*:** When CA issues invoice for consultancy and taxes paid by him on behalf of client then he should separately show consultancy charges and taxes paid by him in invoice.
Services supplies on his own account are in addition to Pure agent service	(iii)	the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

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

(a) enters into a contractual agreement with the recipient of supply to Act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supply as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration:

Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. 'A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

CASE LAWS

- ***In Re: Asiatic Clinical Research Pvt. Ltd. (2019) A.A.R Karnataka***

  Whether the applicant acts as a 'Pure Agent' while receiving amounts from the foreign clients and passing it on to the Local Research Institutions?

  Applicant supplying clinical trial management services to foreign entity by getting clinical trials done through mutually approved and ratified Principal Investigators (PIs) under a Tripartite agreement. All three parties are independent entities and applicant is not an employee of foreign entity. Scope of services includes responsibility of tax liability and drug accountability on use by PIs. Applicant in addition to getting his consideration for services, also receiving payments in advance for passing on same to PIs. Amount so received by applicant is kept with himself and payment to PIs are made work progress-wise only after quality of work is approved by foreign entity.

  Held: Although in terms of definition, a pure agent is first required to incur expenditure himself and then get it reimbursed from principal, aforesaid arrangement of payment does not change nature of a pure agent as amount received is completely passed on to PIs known to foreign entity as actually supplier of services - Other conditions of pure agent also satisfied by applicant - Accordingly, applicant's plea to be a pure agent acceptable

  Amount received for further transfer to PIs not includible in value of consideration charged by applicant.

- ***In Re : Antara Purukul Senior Living Ltd.***

  The applicant has developed a residential community providing services of residential apartments, maintenance and other common facilities to the residents of senior living community by entering into a lease agreement and the maintenance and facilities agreement and collects maintenance and facilities (hereinafter referred to as the *"Antara Comprehensive Benefits"* or "ACB" charges on recurring basis from the residents under the following heads.

  (1) ACB Charges - ACB contributions from its residents is calculated on the basis of certain apportion of yearly proposed budget of expenses of super built area by the number of residents.

  (2) Asset Replacement Deposits.

Under ACB charges: Electricity charges are also recovered. The invoice is raised by the UPCL (Electricity Supply Authority) for electricity charges in the name of the applicant and is liable to pay the total amount of electricity charges on behalf of the residents and common area electricity consumption shared by the residents and the applicant. Hence, the applicant has divided electricity charges under the following heads :-

(1) Utility residential charges (recovered from residents)

(2) Common Area Electricity Charges

(i) ACB Common Area Electricity Charges (recovered from residents)

(ii) Non-ACB Common Electricity Charges (treated as expenses of Antara).

For the same the applicant has installed sub-meters on the apartments of the residents to record their consumption of electricity and recovers electricity charges from the residents on actual, cost incurred. These charges are recorded separately under head Utility residential charges.

The remaining amount of electricity charges is treated as common area electricity charges for which the applicant and the residents have mutually agreed to pay common area electricity charges on proportionate basis. The Electricity charges are calculated on estimated consumption of electricity for common area from the yearly proposed budget of expenses. Wherein, the amount is recovered from the residents in accordance to the built area by the number of residents of the agreed proportion of electricity charges. The applicant calculates the total expenses actual incurred for electricity consumption at year end and raise debit notes to the residents if there is short or excess in amount collected from residents as per estimated consumption electricity charges than actual consumption of electricity charges.

Asset Replacement Deposit - In order to meet any planned or unplanned capital outlay in future, the applicant recovers such amount at INR 4.41 of super area in accordance to mutual agreement between them and residents. The Asset Replacement Deposits are non-refundable deposits and any short in deposits for capital outlay would be filled by them (as service provider and owner of the properties). The accounts of such deposit are separately maintained and separate debit notes are raised to the residents. These deposits would be used for the said purpose and not towards regular Antara Comprehensive Benefits.

In view of the above facts the applicant has sought advance ruling on the following questions :

(1) Whether the electricity charges paid to UPCL for the power consumed by residents in their residential apartments and recovered from them on actual cost basis liable to GST?

(2) Whether the electricity charges paid to UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis are liable to GST?

(3) Whether Asset Replacement Deposits collected from residents are liable to GST?

Ruling

(1) *The electricity charges paid to UPCL for the power consumed by residents in their residential apartments and recovered from them on actual cost basis is liable to GST.*

(2) *The electricity charges paid to UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis is liable to GST.*

(3) *The amounts collected towards Asset Replacement Deposits, amounts to advancement for future supply of services to residents, are taxable, in terms of Section 13(2)(a) of the CGST Act, 2017.*

VALUE INCLUSIVE OF INTEGRATED TAX, CENTRAL TAX, STATE TAX, UNION TERRITORY TAX [RULE 35 OF CGST RULES, 2017]

Where the value of supply is inclusive of integrated tax or, as the case may be, Central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-

Tax amount= (Value inclusive of taxes × tax rate in %) / (100+ sum of tax rates, in %)

Illustration:

Liril Ltd. has been awarded a contract for the supply of Hand sanitizers at a rate of Rs. 100 per pack inclusive of all taxes. Tax rate applicable on Hand sanitizer is 18%. Calculate the taxable value and tax payable.

Taxable value shall be 100*100/118 = Rs.84.75 Tax payable = 18% of Rs. 84.75 = Rs.15.75

IMPORT AND EXPORT OF GOODS AND SERVICES UNDER GST

Imports under GST

Article 269A of the Constitution of India states that the supply of commodities or services or both, if imported into India, will be considered as supply under Inter-State commerce or trade and will attract integrated tax.

Thus, in terms of the Constitutional mandate, the IGST Act, 2017 defines the import of goods as bringing commodities from overseas into India. As such, all imports are considered as Inter-State supplies. IGST will be applicable to all imported goods along with custom duties as applicable.

As for the import of services, the IGST Act, 2017, defines it as the supply of a service by a supplier who is based outside the country, but the recipient of the services is based in India, and the place at which the service is supplied is also within the geographical boundaries of the country.

Import of Goods

Following the implementation of GST, the import of commodities are not charged with countervailing duty (CVD) as the same is subsumed in GST. Instead of CVD, IGST is charged on all import of goods. However, the duties such as safeguard duty, education cess, [social welfare cess], basic customs duty, anti-dumping duty, etc. continue to be charged.

For instance, if the assessable value of a commodity imported into the country is Rs.500, basic customs duty is 10%, Social Welfare Cess is 10% of basic customs duty and the integrated tax rate levied is 18%, the taxes shall be computed in the following manner:

Assessable Value = Rs. 500 × Basic Customs Duty = Rs.50 Social Welfare Cess = Rs. 5 [10% of Rs. 50]

Value for the levy of integrated tax = Rs.500 + Rs.50 + Rs. 5= Rs.555 Integrated Tax= 18% of Rs.555= Rs.100 Overall Taxes = Rs.50 + Rs. 5 + Rs.100 = Rs.155

Over and above these taxes, commodities may also attract compensation cess under the GST regime. This cess shall be collected on the value chosen for the levy of integrated tax. In the aforementioned example, the cess will be levied on Rs.555.

Import of Services

The import of services is defined as the supply of a service by a supplier who is based outside the country, but the recipient of the services is based in India, and the place at which the service is supplied is also within the geographical boundaries of the country.

The provisions present in Section 7(1)(b) of the Central Goods and Services Tax Act, 2017, mention that when services are imported with consideration, it will be deemed as a supply, regardless of whether it is utilised in the continuance or course of business. When services are imported without consideration, they will not be deemed as supply.

However, the provisions present in Schedule I of the Central Goods and Services Tax Act, 2017, services imported from related persons or distinct persons in the course or furtherance of business will be considered as supply regardless of whether or not it has been made without consideration.

Further note that tax on import of service is payable under reverse charge mechanism by the recipient.

Input Tax Credit on Imports

Under the GST regime, an importer who is registered can avail the credit of IGST levied while importing goods or services subject to the conditions as listed in Section 16 of the CGST Act. During the outward supply of goods or services by the importer, the input tax credit could be used to pay taxes such as CGST / SGST / IGST. The importer can also avail credit of GST Compensation Cess if paid on the specified goods. The importer, however, will not be able to avail the credit of basic customs duty and other duties of customs and social welfare cess.

Similarly, the input tax credit shall be available on IGST paid on import of service.

Calculation of GST on Import of Goods

In case a commodity attracts IGST, but does not attract any Countervailing Duty, if the Assessable Value of the commodity inclusive of landing charges is Rs.500, IGST is levied at 12%, Basic Customs Duty is levied at 10%, Social Security Cess (SCC) is levied at 10%, the calculation of duty / tax will be:

Assessable Value = Rs. 500 BCD @ 10% of Rs. 500 = Rs. 50 SWCC @ 10% shall be Rs. 5

IGST shall be 12% of [Rs. 500 + Rs. 50 +Rs. 5] = Rs. 66.60

In case a commodity also attracts Compensation Cess, the calculation of duty/ tax will be: Assessable Value = Rs. 500

BCD @ 10% of Rs. 500 = Rs. 50

SCC @ 10% shall be Rs. 5

IGST shall be 12% of [Rs. 500 + Rs. 50 +Rs. 5] = Rs. 66.60

Compensation Cess @ 10% [Rs. 555] = Rs. 55.50

In case a commodity attracts Countervailing Duty, IGST and compensation cess, if the Assessable Value of the commodity inclusive of landing charges is Rs.500, IGST is levied at 28%, Basic Customs Duty is levied at 10%, Countervailing Duty [say anti-dumping duty] is levied at 12%, SCC is levied at 10%, the calculation of duty will be:

Assessable Value = Rs. 500 BCD @ 10% of Rs. 500 = Rs. 50

Countervailing Duty @ 12% of [Rs. 500 + Rs. 50] = Rs. 66

SWCC @ 10% of [Rs. 50 + Rs. 66] shall be Rs. 11.6

IGST shall be 28% of [Rs. 500 + Rs. 50 + Rs. 66+ Rs. 11.6] = Rs. 75.31

Compensation Cess @ 10% [Rs. 627.6] = Rs. 62.76

Supplies in the course of Import

Schedule III of the CGST Act lists the following transactions which are neither treated as supply of goods nor supply of services.

a) Supply of warehoused goods to any person before clearance for home consumption

In the above-mentioned transaction, the goods lying in customs bonded warehouse are sold by the original importer to another person before such goods are cleared for home consumption. The goods are finally cleared for home consumption by the buyer. The sale transaction between the original importer who has transferred the goods to the warehouse and the buyer of goods who will eventually file bill of entry for home consumption shall not be charged to GST. However, the buyer shall be liable to discharge all duties including customs duty and IGST for clearing such goods for home consumption.

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

The above-mentioned transaction is also called as High Sea Sale transaction where the original importer sells the goods to another buyer in India before the good are entered for home consumption or warehousing. The eventual buyer of goods files bill of entry discharges applicable duties and IGST. The sale of goods on High Seas are not charged to GST.

Exports under GST

Exports have been the area of focus in all policy initiatives of the Government for more than 30 years. Now with the Make in India initiative, exports continue to enjoy this special treatment because exports should not be burdened with domestic taxes. On the other hand, GST demands that the input-output chain should not be broken and exemptions have a tendency to break this chain. Zero-rated supply is the method by which the Government has approached to address all these important considerations.

Export of Goods under GST

As per IGST Act, Section 2(5), Export of goods with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India. Infact, export means supplying of goods and services outside the territory of a country.

Export of Services under GST

As per IGST Act, Section 2(6), “Export of services” means the supply of any service when, -

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person.

Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees is exempted even if the payment is received in Indian Currency looking at the business practices and trends.

Treatment of exports under GST

Under the GST Law, export of goods or services has been treated as:

- Inter-State supply in terms of section (7(5) IGST Act.
- Further, it is considered as 'zero rated supply' under Section 16 (1) IGST Act, i.e., the goods or services exported

shall be relieved of GST levied upon them both at the input stage and output stage.

ZERO RATED SUPPLY

Section 16 (1) IGST Act provides that "zero rated supply" means any of the following supplies of goods or services or both, namely: -

- Export of goods or services or both; or
- Supply of goods or services or both for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit.

Section 16(2) of the IGST Act, 2017 provides that subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, 2017, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. It means that even though one is not required to pay output tax on zero rated supply, the supplier is eligible to avail input tax credit in respect of such supply.

Section 16(3) provides that a registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

However, a condition has been imposed that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax act **within thirty days** after the expiry of the time limit prescribed under the Foreign Exchange Management act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

Students may note that hitherto, the person making zero rated supplies was permitted to charge output tax on such supplies and later claim refund of such tax under section 54 of the CGST Act. However, in the Finance Act, 2021, the legislature has withdrawn such general provision and delegated powers to the Government to grant such facility to specific class of persons or specific class of goods or services based on the recommendation of GST Council. Section 16(4) inserted in the IGST Act, 2017 thus reads as below.

The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Thus, any export of goods or services and supply to SEZ developer or unit for authorized operations is termed as zero-rated supply. The supplier is eligible to avail input tax credit in relation to such supply. The input

tax credit so availed can be utilized towards payment of output tax against other taxable supplies or can be claimed as refund subject to the condition that the export proceeds are realized within the time line permissible under FEMA.

CASE LAWS

In re Carnation Hotels Private Limited (2019) - GST AAR Karnataka

Accommodation services provided to SEZ units are to be treated as zero rated supplies.

The applicant having registered office in New Delhi proposed to operate hotels and rent out the rooms to the employees of SEZ units sought advance ruling whether such accommodation services rendered by the applicant to SEZ units can be treated as 'zero rated supplies' under GST.

Under GST, Supply of goods/services or both to a SEZ Developer/Unit are treated as 'Zero Rated Supplies'. Supply to SEZ developer/units shall be treated as such only if those are used towards authorized operations by SEZ.

GST AAR Karnataka held that if the hotel or accommodation services received by SEZ developer/ unit for authorized operations, as endorsed by the specified officer of the zone, the benefit of zero rated supply shall be available to the supplier. Therefore, accommodation services supplied by the applicant to SEZ units are to be treated as 'zero rated supplies'.

Procedure for export of Goods under Bond or letter of Undertaking

Rule 96A of the CGST Rules provides the procedure for making exports under bond or letter of undertaking.

1. Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in **FORM GST RFD-11** to the jurisdictional Commissioner.
2. In the letter of undertaking, he shall bind himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of -
   (a) **fifteen days after the expiry of three months,** or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or
   (b) **fifteen days after the expiry of one year**, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.
3. Where the goods are not exported within the time specified and the registered person fails to pay the amount, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.
4. The export as allowed under bond or Letter of Undertaking withdrawn shall be restored immediately when the registered person pays the amount due.
5. The aforesaid provision shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.

Letter of Undertaking (LUT) Summarised

Format of letter of Undertaking : FORM GST RFD-11 (as per Rule 96A CGST Rule)

Submission to : The jurisdictional Commissioner,

Validity Period : Financial Year

How : On letter head of the registered person

Executed by : Working partner, Managing Director or the Company Secretary, Proprietor, A person duly authorized by such working partner or Board of Directors of such company or proprietor.

Refund of input tax credit in relation to zero rated goods or services [Rule 89(4)]

In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking, refund of input tax credit shall be granted as per the following formula -

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷ Adjusted Total Turnover

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero- rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero- rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "Adjusted Total Turnover" means the sum total of the value of -

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding -

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

(F) "Relevant period" means the period for which the claim has been filed.

Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realized [Rule 96B]

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest **within thirty days** of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation **within a period of three months** from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

Analysis

Vide Notification No. 16/2020-C.T., dated 23-3-2020, the Government has inserted Rule 96B in the CGST Rules, 2017 to make it mandatory for the exporter of goods to realize export proceeds within the timeline provided under FEMA or as extended by the RBI. Hitherto, such a condition was in place for exporter of services only.

Option to pay tax @ 0.1% on penultimate supply of goods meant for export

vide Notification No. 41/2017-Integrated Tax (Rate) 23rd October 2017, The Government has permitted payment of tax @ 0.1% on the Inter-State supply of taxable goods by a registered supplier to a registered recipient for export. subject to fulfilment of following conditions, namely -

(i) The registered supplier shall supply the goods to the registered recipient on a tax invoice;

(ii) The registered recipient shall export the said goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier;

(iii) The registered recipient shall indicate the Goods and Services Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be.

Deemed Exports

Under section 147 CGST Act, the Government has powers to notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

In terms of the aforesaid provision, following supplies have been notified as deemed exports vide Notification No. 48/2017-Central Tax.

1.	**Supply of goods by a registered person against Advance Authorization** Provided that goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply: Provided further that no such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods."
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization.
3.	Supply of goods by a registered person to Export Oriented Unit.
4.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorization.

Explanation -

For the purposes of above notification, -

1. "Advance Authorisation" means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs for physical exports.
2. Export Promotion Capital Goods Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015-20 for import of capital goods for physical exports.
3. "Export Oriented Unit" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy, 2015-20.

Clarification on refund claimed by the recipients of supplies regarded as deemed export. C.B.I. & C. Circular No. 172/04/2022-GST, dated 6-7-2022

S. No.	***Issue***	***Clarification***
1.	Whether the Input Tax Credit (ITC) availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017.	The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST, dated 12-3-2021 [2021 (46) G.S.T.L. C27] only for enabling them to claim such refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.

2.	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89(5) of the CGST Rules, 2017.	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

CLASSIFICATION OF GOODS AND SERVICES UNDER GST

Introduction: The activity of classifying goods and services is of utmost importance to ascertain the correct rate of tax. The GST law has adopted Harmonized System of Nomenclature [HSN] for classification of various goods and services. Notification No. 1/2017-CT(Rate) dated 28.6.2017 has indicated Chapter / Heading / Sub- heading / Tariff Item for each category/ type of goods. The classification runs from Chapter 1 to Chapter 98.

Explanation (iii) of the said notification provides that "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Thus, the GST tariff structure is based on the time-tested tariff structure in place for Customs.

On a similar note, Notification No. 11/2017-CT(Rate) dated 28.6.2017 details the tariff for services. Chapter 99 has been specially earmarked for services. It runs from 9954 to 9999 covering all possible categories of services.

Importance of Correct Classification:

Correct classification assumes great importance as tax liability essentially depends on effective rate of duty. An improper classification could have serious effect on business and relation with customer. Some of the possible ill effects are as under: There could be additional liability at later stage after correctly classifying and the taxable person could be saddled with huge demand from department and customer not willing to pay. Missed out correct exemptions which were available if correct classification was done. transaction cost added by litigation.

GST Interpretative Rules for Classification

Explanation (iv) of Notification No. 1/2017-CE(Rate) *provides that the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification. In other words, the existing rule of interpretation as applicable to the Customs Tariff shall continue to be applicable for classification in GST*.

DIFFERENCE BETWEEN EXEMPT SUPPLY AND ZERO RATED SUPPLY

We have understood in the forgoing paragraphs the meaning and extent of the expression 'zero rate supply'. Basically, both output tax as well as input tax remains exempted in such category of supply. While, the input tax can either be used as credit for payment of other taxable supplies or claimed as refund, the output tax can either be not paid by furnishing LUT or it can be paid and thereafter claimed as refund. It's a special benefit granted to exports for the sake of foreign exchange realization and overall economic growth.

Whereas, the term exempted supply is defined under section 2(47) of the CGST Act, 2017 as supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply. Thus,

the exempt supplies are either exempt from tax through notification or charged to Nil rate of tax as per rate schedule or such supplies which are not levied to GST i.e. petroleum, electricity, etc.

The basic difference between 'zero rated supply' and 'exempt supply' is that where in case of zero rated supply both input tax and output tax are exempted, in case of exempt supply only output tax is exempted. In other words, the supplier of zero rated supply is entitled to avail input tax credit whereas the supplier of exempt supply is not entitled to do so.

Comparison between Zero Rated & Exempt Supply

S. No.	***Zero Rated Supply***	***Exempt Supply***
1	"Zero rated supply" means supplies of goods or services or both, namely: - (a) export of goods or services or both; or (b) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.	"Exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax
2	Credit of input tax may be availed	Credit of input tax is not available
3	A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both	Refund is Not applicable in case of exempt supply
4	Under Zero rated supply the Supply good or services without payment of GST using Letter of Under Taking (LUT) and claim a refund of unutilised GST and also in case of IGST, claim a refund of such IGST paid.	Provision of GST is NOT applicable

LESSON ROUND-UP

- Value of taxable supply: The value of taxable supply of goods and services shall ordinarily be 'the transaction value' which is the price paid or payable, when the parties are not related and price is the sole consideration. Section 15 of the CGST/SGST Act further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include refundable deposit, discount allowed subject to certain conditions before or at the time of supply.
- The value of taxable supply where the conditions of Section 15 are not fulfilled is determined in terms of the principles specified in Central Goods and Services Rules, 2017. Where the supplies are Rule 27 provides that where the supply is between related or distinct persons, the value shall be open market value,
- Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner. In the letter of undertaking, he shall bind himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of -
  - fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

- fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Distinguish between Exempt Supply and Zero Rated Supply by giving suitable examples.
2. Write short notes on the following:
   a. Transaction Value
   b. Deemed exports
3. In the context of GST, describe the Procedure for Export of Goods under Bond or letter of Undertaking.
4. As per Schedule III of the CGST Act, list out the transactions which are neither treated as supply of goods nor supply of services.
5. Describe the value of supply of services in relation to the purchase or sale of the foreign currency including money changing.
6. In accordance with this chapter describe the "open market value" & "supply of goods and services or both of like kind and quality".
7. Sky ltd. provides you the following particulars relating to goods supplied by it to Earth Ltd.

Particular	***Rs.***
List price of goods(without tax and discount)	1,00,000
Special packing at the request of the buyer to be charged by him	10,000
Duty Levied on sale	5,000
CGST & SGST	18,000
Subsidy received by Govt.	10,000

Sky Ltd. offers 4 % of discount of the list price and same is considered in invoice of goods. Calculate the value of taxable supply by Sky ltd. Explain the meaning of "Net value of taxable supplies".

LIST OF FURTHER READINGS

- GST Ready Reckoner - Taxmann - V.S. Datey
- GST Manual with GST Law Guide & GST Practice Referencer - Taxmann
- GST Acts with Rules & Forms - Taxmann
- GST - Law, Practice & Procedures - Bharat Publications Vineet Gupta & N.K. Gupta

Input Tax Credit and Computation of GST Liability

Lesson 5

KEY CONCEPTS

■ ITC ■ Common Credits ■ Ineligible Credits ■ Job Work ■ Input Service Distributor

Learning Objectives

To understand:

- Concept of Input Tax Credit
- Eligibility and Conditions for availing Input Tax Credit
- Ensure Optimization of ITC in their Work Environment
- Understand the procedure to avail ITC in Special Circumstances
- Order of Utilisation of ITC
- Implement procedure to avail ITC where goods are sent on Job Work
- Effect Distribution of ITC by ISD
- Importance of Provisions of Job Work
- Computation of Goods and Services Tax Liability

Lesson Outline

REGULATORY FRAMEWORK

1. Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 2(59)	Input
Section 2(19)	Capital Goods
Section 2(60)	Input Service
Section 2(62)	Input Tax
Section 2(63)	Input Tax Credit
Section 16	Eligibility and Conditions for taking ITC
Section 17	Apportionment of Credit and Blocked Credits
Section 18	Availability of Credit in Special Circumstances
Section 19	Taking Input Tax Credit in respect of Inputs and Capital Goods sent for Job Work
Section 20	Manner of Distribution of Credit by Input Service Distributor
Section 21	Manner of Recovery of Credit Distributed in Excess
Section 41	Claim of Input Tax Credit and Provisional Acceptance thereof
Section 42	Matching, Reversal and Reclaim of Input Tax Credit
Section 49	Payment of Tax, Interest, Penalty and Other Amounts
Section 49A	Utilisation of Input Tax Credit Subject to Certain Conditions
Section 49B	Order of Utilisation of Input Tax Credit

2. Similar Provisions

Section	*Deals with*	*Act*
Section 20	Application of Provisions of CGST Act	IGST
Section 18	Transfer of Input Tax Credit	IGST
Section 9	Payment of Tax	UTGST

INPUT TAX CREDIT (ITC)

Input Tax Credit (ITC) is designed to avoid cascading effect of taxes. Cascading effect of taxes is also termed as "tax on tax". This effect occurs when a good is taxed on every stage of supply.

Taxes paid on inward supply of inputs, capital goods and services are called as input taxes. Such taxes take the shape of Integrated GST, Central GST, State GST or Union Territory GST depending on the nature of underlying transaction. It helps in making GST a destination based tax.

It also includes tax paid on reverse charge basis including taxes paid by the importer of goods and services. However, tax paid under composition levy in terms of Section 10 of CGST Act, 2017 is not available as credit.

The credit of the above taxes is called input tax credit, that is, input taxes are available as a set off against the taxes payable on outward taxable supplies. ITC refers to the tax already paid by a registered person at time of purchase of goods and/or services, which is available as deduction from tax payable.

CGST Act, 2017 contains the provisions relating to the eligibility of Input Tax Credit, its availment, utilization and conditions and restrictions attached therewith.

Definitions

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;

Section 2(19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

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(62) "input tax" in relation to a registered person, means the Central tax, State tax, Integrated tax or Union Territory tax charged on any supply of goods or services or both made to him and includes -

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy.

Section 2(63) "input tax credit" means the credit of input tax;

Section 2(67) "inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;

Chapter V of CGST Act, 2017, consisting of section 16 to 21 and Rules 36 to 45 of CGST Rules, 2017 deals with the Input tax Credit.

Eligibility and Conditions for taking Input Tax Credit [Section 16 of CGST, Act]

(1) Every **registered person** shall, subject to such conditions and restrictions as may be prescribed and, in the manner, as specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are **used or intended to be used in the course or furtherance of his business** and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;.

(b) he has received the goods or services or both.

Explanation. - For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services -

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(c) subject to the provisions of section 41 , the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment.

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(1) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

This Section is further amended by Union Budget 2023 to state that buyers who fail to pay their supplier the invoice value, including the GST amount, within 180 days from the date of issue of the invoice, must pay an amount equal to the ITC claimed along with interest under Section 50, in such a manner as may be prescribed.

Documentary Requirements and Conditions for Claiming Input Tax Credit [Rule 36 of the CGST Rules]

One of the key features of GST in India is its uninterrupted and continuous chain of ITC. In order to give effect to the conditions prescribed under Section 16 (2) of the CGST Act, Rule 36 of the CGST Rules lists down the various invoices and other documents which are considered as valid documents for availing input service tax. Besides, it provides a mechanism to operationalize other requirements of Section 16.

Rule 36 (1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or Rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-Rule (1) of Rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document:

Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of Inter-State supply, input tax credit may be availed by such registered person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.

(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-

(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and

(b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-Rule (7) of Rule 60.

CGST Rule 36(4) is further amended to remove 5% additional ITC over and above ITC appearing in GSTR-2B. From January 01, 2022, businesses can avail ITC only if it is reported by the supplier in GSTR-1/ IFF and it appears in their GSTR-2B.

Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso of section 12(8) of the IGST Act, 2017

Circular No. 184/16/2022-GST, dated December 27, 2022

Sr. No.	*Issue*	*Clarification*
1	In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services?	The place of supply of services by way of transportation of goods, including by mail or courier, where both the supplier and the recipient are located in India, is determined in terms of sub-section (8) of section 12 of the IGST Act which reads as follows: *"(8) The place of supply of services by way of transportation of goods, including by mail or courier to,* *(a) a registered person, shall be the location of such person;* *(b) a person other than a registered person , shall be the location at which such goods are handed over for their transportation:* ***Provided** that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods"* Hence, in case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of supply is the concerned foreign destination where the goods are being transported, in accordance with the proviso to the sub-section (8) of section 12 of IGST Act, which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.
2	In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, section 17 of the CGST Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.

Clarification by CBIC on the operation of Rule 36(4) of the CGST Rules, 2017 Circular No. 123/42/2019-GST, dated 11-11-2019

Sl. No.	*Issue*	*Clarification*
1.	What are the invoices/ debit notes on which the restriction under Rule 36(4) of the CGST Rules shall apply?	The restriction of availment of ITC is imposed only in respect of those invoices/ debit notes, details of which are required to be uploaded by the suppliers under sub-section (1) of section 37 and which have not been uploaded. Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same. The restriction of 36(4) will be applicable only on the invoices/ debit notes on which credit is availed after 9-10-2019.
2.	Whether the said restriction is to be calculated supplier wise or on consolidated basis?	The restriction imposed is not supplier wise. The credit available under sub- Rule (4) of Rule 36 is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers. Further, the calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 20 per cent. of the eligible credit available.
3.	**FORM GSTR-2A** being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices/debit notes whose details have not been uploaded by the suppliers?	The amount of input tax credit in respect of the invoices/debit notes whose details have not been uploaded by the suppliers **shall not exceed 20% of the eligible input tax credit** available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub- section (1) of section 37 **as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period.** The taxpayer may have to ascertain the same from his auto populated **FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.**
4.	How much ITC a registered tax payer can avail in his FORM GSTR- 3B in a month in case the details of some of the invoices have not been uploaded by the suppliers under subsection (1) of section 37.	Sub-Rule (4) of Rule 36 prescribes that the ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37. The eligible ITC that can be availed is explained by way of illustrations, in a tabulated form, below. In the illustrations, say a taxpayer "R" receives 100 invoices (for inward supply of goods or services) involving ITC of Rs. 10 lakhs, from various suppliers during the month of Oct., 2019 and has to claim ITC in his **FORM GSTR-3B** of October, to be filed by 20th Nov., 2019.

		Details of suppliers' invoices for which recipient is eligible to take ITC	20% of eligible credit where invoices are uploaded	*eligible ITC to be taken in GSTR-3B to be filed by 20th Nov.*
	Case 1	Suppliers have furnished in **FORM GSTR-1** 80 invoices involving ITC of Rs. 6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 1,20,000/-	Rs. 6,00,000 (i.e., amount of eligible ITC available, as per details uploaded by the suppliers) + Rs. 1,20,000 (i.e., 20% of amount of eligible ITC available, as per details uploaded by the suppliers) = Rs. 7,20,000/-
	Case 2	Suppliers have furnished in **FORM GSTR-1** 80 invoices involving ITC of Rs. 7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 1,40,000/-	Rs. 7,00,000 + Rs. 1,40,000 = Rs. 8,40,000/-
	Case 3	Suppliers have furnished in **FORM GSTR-1** 75 invoices having ITC of Rs. 8.5 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 1,70,000/-	Rs. 8,50,000/- + Rs. 1,50,000/-* = Rs. 10,00,000 * The additional amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC.

5.	When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of Rule 36(4)?	The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers. He can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded (under sub-section (1) of section 37) remains under 20 per cent of the eligible input tax credit, the details of which are uploaded by the suppliers. Full ITC of balance amount may be availed, in present illustration by "R", in case total ITC pertaining to invoices the details of which have been uploaded reaches Rs. 8.3 lakhs (Rs. 10 lakhs/1.20). In other words, taxpayer may avail full ITC in respect of a tax period, as and when the invoices are uploaded by the suppliers to the extent Eligible ITC/1.2. The same is explained for Case No. 1 and 2 of the illustrations provided at Sl. No. 3 above as under :	
		Case 1	"R" may avail balance ITC of Rs. 2.8 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of Rs. 2.3 lakhs out of invoices involving ITC of Rs. 4 lakhs details of which had not been uploaded by the suppliers. [Rs. 6 lakhs + Rs. 2.3 lakhs = Rs. 8.3 lakhs]
		Case 2	"R" may avail balance ITC of Rs. 1.6 lakhs in case suppliers upload details of some of the invoices involving ITC of Rs. 1.3 lakhs out of outstanding invoices involving Rs. 3 lakhs. [Rs. 7 lakhs + Rs. 1.3 lakhs = Rs. 8.3 lakhs]

Further, upon the insertion of Proviso to Rule 36(4) prescribing cumulative calculation of eligible ITC for the months of February, March, April, May, June, July and August, 2020, the CBIC has further explained such cumulative calculation of eligible ITC vide Circular No. Circular No. 142/12/2020-GST, dated 9-10-2020 as below:

Tax period	***eligible ITC as per the provisions of Chapter v of the CGST Act and the Rules made thereunder, except Rule 36(4)***	***ITC availed by the taxpayer (recipient) in GSTR-3B of the respective months***	***Invoices on which ITC is eligible and uploaded by the suppliers till due date of FORM GSTR-1 for the tax period of September, 2020***	***effect of cumulative application of Rule 36(4) on availability of ITC***
February, 2020	300	300	270	
March, 2020	400	400	380	
April, 2020	500	500	450	

May, 2020	350	350	320	Maximum eligible ITC in terms of Rule 36(4) is 2450 + [10% of 2450] = 2695. Taxpayer had availed ITC of 2750. Therefore, ITC of 55 [2750-2695] would be required to be reversed.
June, 2020	450	450	400	
July, 2020	550	550	480	
August, 2020	200	200	150	
TOTAL	2750	2750	2450	
ITC Reversal required to the extent of 55				
September, 2020	500	385	350	10% Rule shall apply independently for September, 2020.
In the FORM GSTR-3B for the month of September, 2020, the tax payer shall avail ITC of 385 under Table 4(A) and would reverse ITC of 55 under Table 4(B)(2)				

Note: Students may note that the CGST Rule 36(4) is further amended to remove 5% additional ITC over and above ITC appearing in GSTR-2B. From January 01, 2022, businesses can avail ITC only if it is reported by the supplier in GSTR-1/ IFF and it appears in their GSTR-2B.

Reversal of input tax credit in the case of non-payment of consideration [Rule 37 of the CGST Rules, 2017]

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply whether wholly or partly, along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay or reverse an amount equal to the input tax credit availed in respect of such supply, proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16 :

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16 .

(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-Rule (1).

(3) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof [Rule 37A of the CGST Rules]

Rule 37A of CGST was inserted to the CGST Rules on December 26, 2022 vide the CBIC notification 26/2022. It shall apply for invoices or debit notes raised on or after December 27, 2022,

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year:

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.

Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.

Analysis

I. Eligibility for Taking ITC [Section 16(1)]

(1) Section 16 (1) defines the basis criteria for availing input tax credit, i.e., the underlying goods or services or both are used or intended to be used in the course of or in furtherance of business. Thus, business test is essential. If goods or services are intended to be used for personal use, input tax credit is not available.

The relation of inputs and input services with business can be direct or indirect. 'Intention to use' implies that ITC can be availed as soon as inputs or input services are received, though the same may be utilised later. However, if finally, the input goods or services are not utilised for intended purpose, ITC is disallowed, as provided in section 17(5) of CGST Act. The tax paid on goods and/or services which are used or intended to be used for non-business purposes cannot be availed as credit.

(2) Only a registered person will be allowed to take input tax credit. If a person is liable to register but did not register himself under the GST law, input tax credit will not be allowed to such person.

II. Conditions for Taking ITC [Section 16(2)]

For claiming ITC following conditions are required to be fulfilled by a registered taxable person:

(1) The person should be in possession of tax invoice or debit note or such other taxpaying documents as may be prescribed [Section 16(2)(a) read with Rule 36 of the CGST Rules]

The documents prescribed are as below:

i) Invoice issued by a supplier of goods and/or services

ii) Invoice issued by the recipient on receipt of goods and / or services chargeable to tax under Reverse Charge Mechanism

iii) A debit note issued by the supplier against tax invoice issued in the past

iv) Bill of entry or similar document prescribed under Customs Act, 1962, filed for import of goods

v) Revised or supplementary invoice

vi) Document issued by Input Service Distributor for distribution of tax to its branches/ factories. The documents listed herein above should contain the relevant particulars as prescribed in Rule 46 of the CGST Rules.

(2) Invoice or debit note should have been reported by the supplier in its outward return [Section 16(2)(aa)]

Further, w.e.f. 1.4.2021, the legislature has provided that the reporting of underlying invoice by the supplier in its outward return or Invoice Furnishing Facility (IFF) and visibility of such details are to the recipient through common portal is a mandatory condition for availing ITC. The recipient gets to know the reporting status of underlying invoice or debit note through GSTR-2A made available thereto on the common portal.

(3) The person should have received the goods or services or both [Section 16(2)(b)]

The person taking the ITC must have received the goods and / or services. Where the goods are supplied under "Bill to Ship to" Model, the registered person on whose direction the goods are consigned directly by the supplier to the third party shall be deemed to have been received the goods for the purpose of availing ITC.

Similar is the position where the services are provided by the supplier to any person on the direction of and on account of such registered person. The registered person shall be deemed to have received such services.

(4) The supplier should have actually paid the tax charged in respect of the supply to the government [Section 16(2)(c)]

Tax should actually have been paid, by cash or through utilization of ITC, on the goods and / or services for which ITC is being taken. Availability of ITC to recipient has been made dependent on payment of tax by supplier. Thus, even if the receiver has paid the amount of tax to the supplier and the goods and/ or services so procured are eligible for ITC, no credit would be available, till the time, tax so collected by the supplier, is deposited to the Government.

However, the above condition is subject to the provision contained section 41 of the Act which provides that every registered person shall subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(5) The person should have furnished the return under section 39 [Section 16(2)(d)]

The registered person taking the ITC must have filed his return under section 39.

III. First proviso to section 16(2)

In case the goods covered under an invoice are not received in a single consignment but are received in lots/ instalments, the ITC can be taken only upon receipt of the last lot/instalment.

Illustration:

Mr. Aman orders 30,000 tonnes of goods which are to be delivered by the supplier via 3 lots of 10,000 each. The lots are sent under a single invoice with the first lot and the payment is made by the recipient for Value of Supply plus GST and the supplier has also deposited the tax with the Government.

The 3 lots are supplied in May, June and July 2023. The ITC is available to Mr. Aman only after the receipt of the 3rd lot. The reason is simple; one of the conditions to avail ITC is the receipt of goods which is completed only after the last lot is delivered.

IV. Second proviso to section 16(2) read with Rule 37 of CGST Rules

The registered person must pay the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice. In the event of failure to do so, the details of such supplies and corresponding credits thereon must be furnished in the GSTR 2/ GSTR-3B of the month immediately following such 180 days. Such credits availed by the registered person would be added to his output tax liability of the month in which the details are furnished, with interest.

V. If depreciation claimed on tax component, ITC not allowed [Section 16(3)]

Depreciation under Section 32 of the Income Tax Act shall not be claimed on the tax portion on which ITC has been claimed. Either depreciation on the tax component can be claimed under Income Tax Act or ITC of such tax paid can be availed under GST laws, i.e., dual benefit can't be claimed.

VI. Time limit for availing ITC[Section 16(4) read with Rule 37 of the CGST Rules]

ITC on invoices or debit notes pertaining to a financial year can be availed any time after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Apportionment of credit and blocked credits [Section 17]

We have observed that Section 16 of the CGST Act deals with the eligibility of input tax credit and prescribe various conditions for a registered person to avail such credit. However, the Government does not intend to allow unconstrained availability of input tax credit and continuing with legacy norms, it has provided certain situations in Section 17 CGST Act where credit remains blocked or unavailable.

If goods or services or both are used by the registered person partly for the purpose of business and partly for other purposes	the amount of credit shall be restricted to su much of the input tax as is attributable to the purpose of his business
If goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act and partly for	the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies
A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances	shall have the option to either comply with the provisions of above clause, or avail or, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.

Section 17 (1), (2) (3) and (4) provides for curtailing the input tax credit for situations like credit pertains to non-business purpose, exempted goods and / or services. It also prescribed special regime for banking companies given their peculiar transaction flow. Then, Section 17(5) lists down various goods and/ or services whereof credit remains ineligible even if used for business purpose or taxable goods and/ or services. CGST Rules prescribe mechanism to differentiate / segregate ineligible credit.

Statutory Provisions

Section 17(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

Section 17(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Section 17(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Explanation. - For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.

Analysis

(1) We have seen above that input tax credit shall be eligible for so much of credit which is attributable for business purpose.

(2) We have also seen that input tax credit shall not be eligible for goods and / or services meant for exempt supplies. Exempt supplies include supplies which are Nil rated or wholly exempted under notification issued by the Government. However, zero rated supplies [i.e., exports or to SEZ developers and units] have been considered as taxable supplies even though no tax is payable thereon.

(3) Section 17(3) clarifies that exempt supplies include supplies which are under reverse charge and also include transactions in securities and sale of land subject to clause (b) of paragraph 5of Schedule II, sale of building.

(4) For ready reference, Clause (b) of paragraph 5 of Schedule II deems construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier, as supply of service.

(5) Section 17(3) further takes us to CGST Rules to determine the value of supplies, which are reproduced herein below:

Common Credit

Businesses often use the same assets and inputs for both business & personal use. A business may have an inward supply of input goods, input services and capital goods. Further, the inward goods and services may be used for a personal purpose or business purpose. The total Input Tax Credit available on all such purchases is called Common Credit under GST. The taxpayer cannot claim the credit on the

inputs used for personal purposes. Thus, the common credit should be utilized proportionately while making payment of output tax liability.

RULE 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof.

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub- section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as 'T';

(b) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as 'T1';

(c) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T2';

(d) the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T3';

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C1' and calculated as-

C1 = T – (T1 + T2 + T3);

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T4';

[*Explanation* : For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) 'T_1', 'T_2', 'T_3' and 'T_4' shall be determined and declared by the registered person at summary level in **FORM GSTR-3B**.

(h) input tax credit left after attribution of input tax credit under clause (f) shall be called common credit, be denoted as 'C2' and calculated as-

C2 = C1 – T4

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D1' and calculated as-

D1 = (E ÷ F) × C2

where,

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period:

Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of

the Act, the value of E/F for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1 **:** In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2 **:** Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section

(i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended :

Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

> ***Explanation*****:** For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2', and shall be equal to five per cent. of C2; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C3', where,-

C3 = C2 – (D1 + D2)

(l) the amount 'C3', 'D1' and 'D2' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B** or through **FORM GST DRC- 03**;

(m) the amount equal to aggregate of 'D1' and 'D2' shall be reversed by the registered person in **FORM GSTR- 3B** or through **FORM GST DRC-03:**

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and

segregated at the invoice level by the registered person, the same shall be included in 'T1' and 'T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T4'.

(2) Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit determined under sub-Rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-Rule and-

a. where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-Rule (1) in respect of 'D1' and 'D2', such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

b. where the aggregate of the amounts determined under sub-Rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

(3) In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-Rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-Rule, with the modification that value of E/F shall be calculated taking value of E and F as under:

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F = aggregate carpet area of the apartments in the project; and,-

(a) where the aggregate of the amounts calculated finally in respect of D1 and D2 exceeds the aggregate of the amounts determined under sub-Rule (1) in respect of D1 and D2, such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-Rule (1) in respect of D1 and D2 exceeds the aggregate of the amounts calculated finally in respect of D1' and D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than

the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(4) In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-Rule (1) shall be calculated finally, for commercial portion in each project, other than residential real estate project (RREP), which underwent transition of input tax credit consequent to change of rates of tax on the 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner.

(a) The aggregate amount of common credit on commercial portion in the project (C3aggregate_comm) shall be calculated as under,

$C3_{aggregate\_comm}$ = [aggregate of amounts of C3 determined under sub-Rule (1) for the tax periods starting from 1st July, 2017 to 31st March, 2019, x × (AC / AT)] + [aggregate of amounts of C3 determined under sub- Rule (1)for the tax periods starting from 1st April, 2019 to the date of completion or first occupation of the project, whichever is earlier]

Where, -

AC = total carpet area of the commercial apartments in the project AT = total carpet area of all apartments in the project.

(b) The amount of final eligible common credit on commercial portion in the project (C3final_comm) shall be calculated as under

$$\mathbf{C3_{aggregate\_comm} = C3_{aggregate\_comm} \times (e/\ F)}$$

Where, -

E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F = AC = total carpet area of the commercial apartments in the project.

(c) where, $C3_{aggregate\_comm}$ exceeds $C3_{final\_comm}$, such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03*** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the day of April of the succeeding financial year till the date of payment.

(d) where, C3final_comm exceeds C3aggregate_comm, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion is issued or first occupation takes place of the project.

(5) Input tax determined under sub- Rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended.

(6) Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-Rule (3).

Rule 43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases

(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non- business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in **FORM GSTR-3B** and shall not be credited to his electronic credit ledger;

b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be indicated in **FORM GSTR-3B** and shall be credited to the electronic credit ledger;

[***Explanation :*** For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;

***Explanation*. -** An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.]

(d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'Tc', shall be the common credit in respect of capital goods for a tax period:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'Tc';]

(e) the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'Tm' and calculated as -

tm = Tc ÷ 60

(f) [***]

(g) the amount of common credit attributable towards exempted supplies, be denoted as 'Te', and calculated as -

te = (e ÷ F) × Tr

where,

'E' is the aggregate value of exempt supplies, made, during the tax period, and 'F' is the total turnover of the registered person during the tax period:

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i) dated 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended.]

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of E/F for a tax period shall be calculated for each project separately, taking value of E and F as under:

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

[Provided further] in the State that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation.- For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

(h) the amount Te along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

(i) The amount Te shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B.**]

(2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (Tefinal) shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or

first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under:

Te^{final}= [(e1 + e2 + e3) /F] × Tc^{final}

Where,-

E1 = aggregate carpet area of the apartments, construction of which is exempt from tax

E2 = aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under, -

E2 = [Carpet area of such apartments] × [V1/ (V1+V2)]

Where,-

V1 is the total value of supply of such apartments which was exempt from tax; and V2 is the total value of supply of such apartments which was taxable

E3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project;

Tc^{final} = aggregate of A^{final} in respect of all capital goods used in the project and A^{final} for each capital goods shall be calculated as under,

A^{final}= A × (number of months for which capital goods is used for the project/ 60) and,-

(a) where value of Te^{final} exceeds the aggregate of amounts of Te determined for each tax period under sub- Rule (1), such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where aggregate of amounts of Te determined for each tax period under sub-Rule (1) exceeds Tefinal, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

Explanation.- For the purpose of calculation of Tc^{final}, part of the month shall be treated as one complete month.

(3) The amount Te^{final} and Tc^{final} shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-Rule (2).

(5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used.

[***Explanation 1***] - For the purposes of Rule 42 and this Rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a) ***(Omitted vide Notification No. 03/2019-CT dated. 29.01.2019 w.e.f. 01.02.2019)

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate) , dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017.

[***Explanation 2*:** For the purposes of Rule 42 and this Rule,-

(i) the term "apartment" shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(ii) the term "project" shall mean a real estate project or a residential real estate project;

(iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iv) the term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

(v) the term "promoter" shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(vi) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;

(vii) "Commercial apartment" shall mean an apartment other than a residential apartment;

(viii) the term "competent authority" as mentioned in definition of "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(ix) the term "Real Estate Regulatory Authority" shall mean the Authority established under sub-section (1) of section 20(1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government;

(x) the term "carpet area" shall have the same meaning assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(xi) "an apartment booked on or before the date of issuance of completion certificate or first occupation of the project" shall mean an apartment which meets all the following three conditions, namely-

(a) part of supply of construction of the apartment service has time of supply on or before the said date; and

(b) consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(xii) the term "ongoing project" shall have the same meaning as assigned to it in notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E), dated the 28th June, 2017, as amended;

(xiii) the term "project which commences on or after 1st April, 2019" shall have the same meaning as assigned to it in notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E), dated the 28th June, 2017, as amended.]

Illustration

Input X issued to produce and supply out put Y which is exempt. No ITC is available on input X because it was used for exempt supply. In the above example if the output Y is exported or supplied to an SEZ unit, ITC is available on Input X as the outward supply is zero rated.

SPECIAL REGIME FOR BANKING COMPANIES OR FINANCIAL INSTITUTIONS [SECTION 17(4) AND RULE 38]

Section 17(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

Rule 38. A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely, -

(a) the said company or institution shall not avail the credit of, -

(i) the tax paid on inputs and input services that are used for non-business purposes; and

(ii) the credit attributable to the supplies specified in sub-section (5) of section 17.

(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);

(c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and the balance amount of input tax credit shall be reversed in FORM GSTR-3B.

ITC NOT ELIGIBLE ON SPECIFIED GOODS AND/ OR SERVICES [SECTION17(5)]

(1) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

(a) motor vehicles 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; or

(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 , vessels or aircraft insured by him.

(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 the same to its employees under any law for the time being in force."

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

***Explanation.* -** For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10.

(f) goods or services or both received by a non-resident taxable person except on goods imported by him.

(g) goods or services or both used for personal consumption.

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

***Explanation.* -** For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes -

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

Analysis:

Thus, ITC is not available in some cases as mentioned in section 17(5) of CGST Act, 2017. :

(a) Motor vehicles and other conveyances, having seating capacity of more than 13 persons (including driver), except under specified circumstances.

> **For example**, Input Tax Credit shall not be available on the purchase of INNOVA car [having capacity of less than 13 seaters] even if it is meant for business use.

(b) Aircraft and vessel except under specified circumstances.

(c) Services of general insurance, servicing, repair and maintenance insofar as they related to motor vehicles, vessels or aircraft referred herein above.

(d) Goods and/or services provided in relation to:

(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 hereinabove except when used for the purposes specified therein, life insurance and health insurance. However, input tax credit in respect of aforesaid mentioned goods or services or both shall be available wherein inward supply of such goods or services or both issued by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

(ii) membership of a club, health and fitness centre.

(iii) travel benefits extended to employees on vacation such as leave or home travel concession.

The input tax credit in relation to the above mentioned goods and/ or services shall be available where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

For example: Where the labour laws mandate providing of food to the workers during factory hours, the input tax credit on food purchased by the employer shall remain available.

(d) Works contract services when supplied for construction of immovable property, other than plant & machinery, except where it is an input service for further supply of works contract.

(e) Goods or services received by a taxable person for construction of immovable property on his own account, other than plant & machinery, even when used in course or furtherance of business.

For example: Input tax credit shall not be available for office building constructed for own use.

(f) Goods and/or services on which tax has been paid under composition scheme.

(g) Goods and/or services used for private or personal consumption, to the extent they are so consumed.

(h) Goods lost, stolen, destroyed, written off, gifted, or free samples.

(i) Any tax paid due to short payment on account of fraud, suppression, mis-declaration, seizure, detention.

The Finance Bill, 2023 has proposed to amend section 17(5) of the CGST Act, 2017 to restrict ITC on goods and/or services received by a table person used for Corporate Social Responsibility (CSR) expenditure as per Section 135 of Companies Act, 2013.

Illustration

ABC Ltd. is engaged in the manufacture of electrical appliances and following details are available, advice ITC eligibility of the following :

Item	*GST Paid*
Electrical Transformers utilized in the manufacturing process	INR 2,50,000
Trucks used for transporting materials	INR 1,25,000
Cakes and Pastries for consumption within factory	INR 12,500

Solution

(1) The ITC on electrical transformers would be fully available as these are used in the course of business/ furtherance of business.

(2) Although the ITC on Motor Vehicles is not allowable (blocked credit), yet one of the exceptions is that if these vehicles are used for transportation of goods, these are allowable, hence entire ITC would be available.

(3) ITC on food and beverages is a blocked credit unless the inward taxable supplies are consumed to make outward taxable supplies in the same category whereas the above is for consumption and hence disallowed.

Illustration

Mr. X has procured a machinery for INR 25,00,000 and paid GST of INR 4,50,000 (18% GST). He has capitalized the invoice value and will claim depreciation of the entire Invoice Value. Please advise on the availability of ITC.

Solution

If the depreciation is claimed on the ITC component, ITC cannot be availed and hence Mr. X will not be able to avail ITC in this case.

Illustration

Mr. B procured stocks worth INR 50,00,000 inclusive of GST but these goods were lost to dacoity, however, he now wants to avail ITC as he has anyways paid the entire Invoice.

Solution

ITC can only be availed if the goods / services so availed are consumed to make outward taxable supplies or if they are required during the course of business / furtherance of business. In this case, the goods were lost and hence no ITC can be availed.

CASE LAWS

In Re : Wework India Management Pvt. Ltd. 2020 (37) G.S.T.L. 136 (App. A.A.R. - GST - Kar.)

Facts: Assessee in business of supplying shared workspace/office space for various companies and individuals. Detachable glass partitions fixed to ground with help of nuts and bolts to create office space.

Ruling Sought:

(a) Whether input GST credit can be availed by the applicant on the detachable 14 mm Engineered Wood with Oak top Wooden Flooring which is movable in nature and capitalized as "furniture and fixture", and is not capitalized as "immovable property"?

(b) Whether input GST credit can be availed by the applicant on the detachable sliding and stacking glass partition which is movable in nature and capitalized as "furniture and fixture", and is not capitalizes as an immovable property?

Held: Addition of glass partitions qualifies as 'construction' under Explanation to Section 17(5) of Central Goods and Services Tax Act, 2017. Such construction done by assessee on his own account. Glass partitions not permanent and not embedded to earth. Partitions can be dismantled and moved according to requirements of clients. Even though fixed to earth with nuts and bolts, partitions can be dismantled without demolishing civil structure. Detachable sliding and stackable glass partitions do not qualify as immovable property. Such glass partitions accounted in books of account as fixed assets under head "furniture and fixtures" and not capitalised as immovable property but rather as movable assets.

Thus, Input tax credit can be availed by assessee on detachable sliding and stackable glass partitions which are movable in nature.

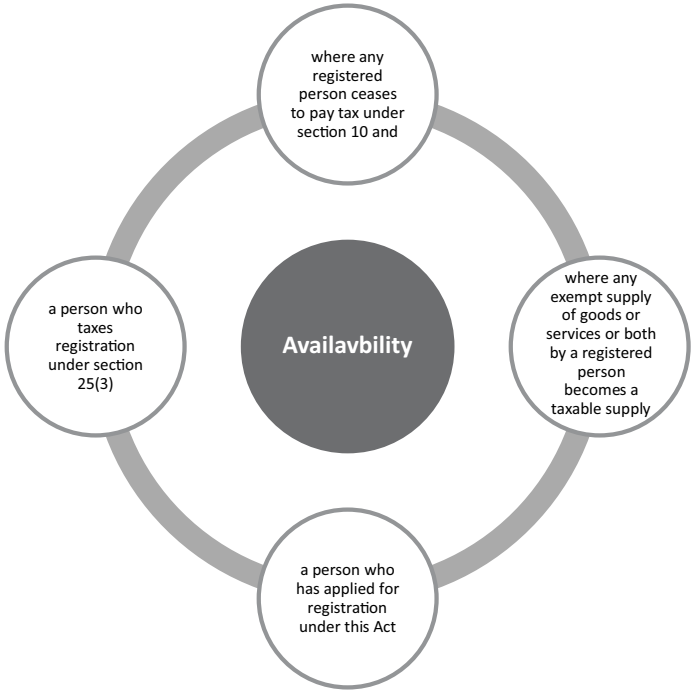
In Re : Moksh Agarbatti Co. 2020 (36) G.S.T.L. 135 (A.A.R. - GST - Guj.)

Question	*Ruling Sought*	*Answer as per Section 17(5)(a) of the Central Goods & Services Tax Act, 2017*
1	The taxpayer offers one unit of Dhoop with a pack of Agarbatti (consisting of 10 pieces of Agarbatti). Can the taxpayer claim credit of taxes paid on (a) inputs used for manufacture of Dhoop? (b) Purchase of dhoop from a third party vendor?	Not available
2	As part of the Sales Promotion campaign, the taxpayer offers their distributors target based monetary and non-monetary incentives. Can they avail credit on the non-monetary incentives like say Pressure Cooker on purchase of 100,000 Agarbatti Packets? Can this qualify as supply of goods to the distributor?	Not available

3	The taxpayer offers one unit of Agarbatti free on purchase of 1 Carton Box full of Agarbatti. Can credit of the Agarbatti given free of cost be availed as credit by the taxpayer?	Not available

ITC UNDER SPECIAL CIRCUMSTANCES

Section 18 deals with the situations where either a person was earlier not entitled to avail input tax credit but for change of status, becomes entitled thereto or was earlier entitled to input tax credit but for change of status becomes disentitled thereto. It also provides a mechanism to deal with input tax credit in case of transfer, etc. of existing business. It further provides a legal position for payment of tax on supply of capital goods as such or after use. The accompanying Rules 40, 41, 41A and 44 of the CGST Rules provide for the procedure to give effect to the statutory provisions.



Section 18(1) Subject to such conditions and restrictions as may be prescribed -

a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

Section 18(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

MANNER OF CLAIMING CREDIT IN SPECIAL CIRCUMSTANCES [RULE 40 OF THE CGST RULES]

The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely,-

(a) the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

(b) *the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in* ***FORM GST ITC-01*** *to the effect that he is eligible to avail the input tax credit as aforesaid:*

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(c) the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods-

(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18;

(ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;

(iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;

(iv) on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18.

(d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees.

(e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in **FORM GSTR-1** or as the case may be, in **FORM GSTR-4**, on the common portal.

Analysis:

The table below summarizes the entitlement of Input Tax Credit (ITC) under section 18(1):

Case	*Persons eligible*	*Goods entitled as on*	*Conditions*
1.	Person who has applied for registration within 30 days from the date on which he becomes liable to registration, and has been granted such registration	He can claim the ITC on inputs held in the form of Raw Materials / WIP / Finished Goods as on the day immediately preceding the date from which he becomes liable to pay tax	ITC must be availed within 1 year from the date of issue of tax invoice by the supplier
2.	Person who isn't liable to register per se, but obtains voluntary registration	He can claim the ITC on inputs held in the form of Raw Materials/ WIP/ Finished Goods as on the day immediately preceding the date of registration	ITC must be availed within 1 year from the date of issue of tax invoice by the supplier
3.	Registered person who ceases to be under composition levy and switches to the regular scheme	He can claim the ITC on inputs held in the form of Raw Materials/ WIP / Finished Goods & Capital Goods as on the day immediately preceding the date from which he becomes liable to pay tax under the regular scheme	ITC on Capital Goods will be reduced by 5% per quarter of year / part thereof of usage from the date of invoice.
4.	Registered person whose exempt supplies become taxable	He can claim the ITC on inputs held in the form of Raw Materials/WIP/ Finished Goods & Capital Goods relatable to such exempt supply as on the day immediately preceding the date from which the supply becomes taxable	ITC on Capital Goods will be reduced by 5% per quarter of year / part thereof of usage from the date of invoice.

Example:

Mr. B becomes liable to pay tax on 1st August and has obtained registration on 17th August.

He will hence be entitled to take ITC effective 31st July on inputs (Raw Materials/Finished Goods & Capital Work in Process); except on Capital Goods.

It must be noted that if the application is not made within 30 days, then he will be able to claim ITC effective the date of grant of such registration.

Example:

Mr. Z applies for voluntary registration on 1st September and is granted such registration on 9th September. He will hence be entitled to take ITC effective 8th September on inputs (Raw Material/Work in Process / Finished Goods); except on Capital Goods.

Treatment of Input Tax Credit in the event of Transfer of Business, etc. [Section 18(3)]

Section 18(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

Transfer of Credit on Sale, Merger, Amalgamation, Lease or Transfer of a Business [Rule 41]

(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

Explanation:- For the purpose of this sub-Rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

Transfer of Credit on Obtaining Separate Registration for Multiple Places of Business within a State or Union territory [Rule 41A]

(1) A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of Rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in **FORM GST ITC-02A** electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner:

Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

Explanation.- For the purposes of this sub-Rule, it is hereby clarified that the value of assets means the value of the entire assets of the business whether or not input tax credit has been availed thereon.

(2) The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.

Clarification of CBIC in respect of apportionment of Input Tax Credit (ITC) in cases of business reorganization under section 18(3) of CGST Act read with Rule 41(1) of CGST Rules

[C.B.I. & C. Circular No. 133/03/2020-GST, dated 23-3-2020]

S. No.	*Issue/Question*	*Clarification*
a.	(i) In case of demerger, proviso to Rule 41(1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all India level.	Proviso to sub-Rule (1) of Rule 41 of the CGST Rules provides for apportionment of the input tax credit in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, the explanation to sub-Rule (1) of Rule 41 of the CGST Rules states that "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. Under the provisions of the CGST Act, a person/company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger under sub-Rule (1) of Rule 41 of the CGST Rules, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level.
	(ii) Is the transferor required to file FORM GST ITC-02 in all States where it is registered?	**E.g.** A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth Rs. 100 crore, while its assets in State of M.P. and U.P. are Rs. 60 crore and Rs. 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs. 30 Crore are transferred to company ABC in State of M.P., while assets amounting to Rs. 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to Rs. 40 crore at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e., 30/60 = 0.5 and not on the basis of all-India ratio of value of assets, i.e., 40/100 = 0.4. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P., i.e., 10/40 = 0.25. No. The transferor is required to file **FORM GST ITC-02** only in those States where both transferor and transferee are registered.
b.	The proviso to Rule 41(1) of the CGST Rules explicitly mentions 'demerger'. Other forms of business reorganization where part of business is hived off or business in transferred as a going concern etc. have not been covered in the said Rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to Rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC?	Yes, the formula for apportionment of ITC, as prescribed under proviso to sub- Rule (1) of Rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.

c.	(i) Whether the ratio of value of assets, as prescribed under proviso to Rule 41(1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess?	No, the ratio of value of assets, as prescribed under proviso to sub-Rule (1) of Rule 41 of the CGST Rules, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor, i.e., sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/ SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.
		E.g. : The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e., 12 lakh.
	(ii) How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/ CGST/ SGST) while filing of FORM GST ITC-02 by the transferor?	The total amount of ITC to be transferred to the transferee (i.e., sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under sub-Rule (1) of Rule 41 of the CGST Rules [refer 3(c)(i) above]. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.
		This is shown in the illustration below :

(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
State	***Asset ratio of Transferee***	***Tax Heads***	***ITC balance of Transferor (preapportionment) as on the date of filing FORM GST ITC02)***	***Total amount of ITC transferred to the Transferee under forM gSt ITC02***	***itc balance of Transferor (post apportion ment) after filing of forM gSt ITC02) [Col (4) Col (5)]***
Delhi	70%	CGST	10,00,000	10,00,000	0
		GST	10,00,000	10,00,000	0
		igSt	30,00,000	15,00,000	15,00,000
		Total	50,00,000	35,00,000	15,00,000
Haryana	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000
		IGST	20,00,000	20,00,000	0
		Total	70,00,000	28,00,000	42,00,000

d.	(i) In order to calculate the amount of trans-ferable ITC, the apportionment formula under proviso to Rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.	According to sub-section (3) of section 18 of the CGST Act, "Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed." Further, sub-Rule (1) of Rule 41 of the CGST Rules prescribes that the registered person shall file the details in FORM GST ITC-02 for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.
		A conjoint reading of sub-section (3) of section 18 of the CGST Act along with sub- Rule (1) of Rule 41 of the CGST Rules would imply that the apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC-02 by the transferor.
	(ii) Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to Rule 41(1) of the CGST Rules, 2017?	According to **section 232(6) of the Companies Act, 2013,** *"The scheme under this section shall clearly indicate an* ***appointed date*** *from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date".* The said legal provision appears to indicate that the **"appointed date of demerger"** is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under Rule sub-Rule (1) of Rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the **"appointed date of demerger"**. In other words, for the purpose of apportionment of ITC under sub-Rule (1) of Rule 41 of the CGST Rules, while the ratio of the value of assets should be taken as on the "appointed date of demerger", the said ratio is to be applied on the ITC balance of the transferor on the date of filing **FORM GST ITC-02** to calculate the amount to transferable ITC.

Clarification of CBIC in respect of transfer of ITC in case of death of sole proprietor

[Circular No.96/15/2019GST dated 28.03.2019]

Doubts have been raised whether sub-section (3) of section 18 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST Act') provides for transfer of input tax credit which remains unutilized to the transferee in case of death of the sole proprietor. As per sub-Rule (1) of Rule 41 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'CGST Rules'), the registered person (transferor of business) can file **FORM GST ITC-02** electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. Further, clarification has also been sought regarding procedure of filing of **FORM GST ITC-02** in case of death of the sole proprietor. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues raised as below.

2. Clause (a) of sub-section (1) of section 29 of the CGST Act provides that reason of transfer of business includes "death of the proprietor". Similarly, for uniformity and for the purpose of sub-section (3) of section 18, sub-section (3) of section 22, sub-section (1) of section 85 of the CGST Act and sub-Rule (1) of Rule 41 of the CGST Rules, it is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

3. In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee as per provisions and in the manner stated below -

a. ***Registration liability of the transferee / successor:*** As per provisions of sub-section (3) of section 22 of the CGST Act, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession, where a business is transferred to another person for any reasons including death of the proprietor. While filing application in **FORM GST REG- 01** electronically in the common portal the applicant is required to mention the reason to obtain registration as "death of the proprietor".

b. ***Cancellation of registration on account of death of the proprietor:*** Clause (a) of sub-section (1) of section 29 of the CGST Act, allows the legal heirs in case of death of sole proprietor of a business, to file application for cancellation of registration in **FORM GST REG-16** electronically on common portal on account of transfer of business for any reason including death of the proprietor. In **FORM GST REG-16**, reason for cancellation is required to be mentioned as "death of sole proprietor". The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.

c. ***Transfer of input tax credit and liability:*** In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. Sub-section (3) of section 18 of the CGST Act, allows the registered person to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee in the manner prescribed in Rule 41 of the CGST Rules, where there is specific provision for transfer of liabilities. As per sub-section (1) of section 85 of the CGST Act, the transferor and the transferee/successor shall jointly and severally be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business "in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever". Furthermore, sub-section (1) of section 93 of the CGST Act provides that where a person, liable to pay tax, interest or penalty under the CGST Act, dies, then the person who continues business after his death, shall be liable to pay tax, interest or penalty due from such person under this act. It is therefore clarified that the transferee/successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

d. ***Manner of transfer of credit:*** As per sub-Rule (1) of Rule 41 of the CGST Rules, a registered person shall file **FORM GST ITC-02** electronically on the common portal with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee, in the event of sale, merger, de-merger, amalgamation, lease or *transfer or change in the ownership of business for any reason.* In case of transfer of business on account of death of sole proprietor, the transferee/ successor shall file **FORM GST ITC-02** in respect of the registration which is required to be cancelled on account of death of the sole proprietor. **FORM GST ITC-02** is required to be filed by the transferee/ successor before filing the application for cancellation of such registration. Upon acceptance by the transferee/ successor, the un-utilized input tax credit specified in **FORM GST ITC-02** shall be credited to his electronic credit ledger.

REVERSAL OF CREDIT UNDER SPECIAL CIRCUMSTANCES [SECTION 18(4) AND RULE 44]

Section 18(4) deals with situations where a person was entitled to input tax credit but due to change in status becomes disentitled thereto.

Section 18(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

Rule 44.

(1) The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely,-

(a) for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;

(b) for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.

Example:

Capital goods with useful life of 5 years, have been in use for 4 years, 6 month and 15 days. The useful remaining life in months = 5 months ignoring a part of the month.

Input tax credit taken on such capital goods = C

Input tax credit attributable to remaining useful life = C multiplied by 5/60

- The amount, shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.
- Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount based on the prevailing market price of the goods on the effective date of the occurrence of any of the events or, as the case may be.
- The amount determined shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in **FORM GST ITC-03**, where such amount relates to any event of section 18 and in **FORM GSTR-10**, where such amount relates to the cancellation of registration.
- The details furnished shall be duly certified by a practicing chartered accountant or cost accountant.

Treatment of ITC on Supply of Capital Goods or Plant and Machinery [Section 18(6) and Rule 44(6)

Section 18(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, **whichever is higher:**

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

JOB WORK

Section 2(68) of the CGST Act, 2017 defines Job-work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;

Taking ITC in respect of inputs and capital goods sent for job work [section 19 and Rule 45]

Under Section 16(2) CGST Act, one of the conditions to avail input tax credit is to physically receive goods. However, Section 143 of CGST Act permits sending of inputs and capital goods for job work outside the premises of the registered person. It also permits direct delivery of inputs and capital goods to the premises of a job worker. In the light of possible clash between the provisions of section 16(2) and section 143 while dealing with input tax credit in respect of inputs and capital goods sent outside the premises of the registered person, the legislature has enacted Section 19, as below.

Section 19(1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

(2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

(4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

(6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation. - For the purpose of this section, "principal" means the person referred to in section 143.

Conditions and restrictions in respect of inputs and capital goods sent to the job worker. [Rule 45 of the CGST Rules]

(1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker, and where the goods

are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.

(2) The challan issued by the principal to the job worker shall contain the details specified in Rule 55.

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker during the specified period shall be included in **FORM GST ITC-04** furnished for that period on or before the twenty-fifth day of the month succeeding the said period or within such further period as may be extended by the Commissioner by a notification in this behalf:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Explanation . - For the purposes of this sub-Rule, the expression "specified period" shall mean. -

(a) the period of six consecutive moths commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and

(b) a financial year in any other case.

(4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143,it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

Explanation.- For the purposes of this Chapter,-

(1) the expressions - "capital goods" shall include - "plant and machinery" as defined in the Explanation to section 17;

(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-

(a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and

(b) the value of security shall be taken as 1% of the sale value of such security.

JOB WORK PROCEDURE [SECTION 143]

(1) A registered person (hereafter in this section referred to as the " principal ") may under intimation and subject to such conditions as may be prescribed , send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,-

(a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

(b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and

dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

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

(i) where the job worker is registered under section 25 ; or

(ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner:

Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.

(2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

(4) Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

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

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

Analysis:

Goods Sent to Job Worker

A large number of industries depend upon outside support for completing manufacturing activity.

Section 2(68): "Job Work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly.

The person who undertakes the job of treatment or process for another person is called job worker. The owner of the goods who engages the job worker is called Principal. Inputs and capital goods can be sent to a job worker and the Principal can avail ITC on them. The goods can be sent directly from the job worker's place without bringing them to the premises of the Principal.

Inputs should be brought back to the Principal OR alternatively sold from the job worker's premises on behalf of the Principal:

- within one year in case of normal goods,
- and within 3 years in case of capital goods.

If the goods are not sold / brought back within the stipulated time, the supply between the Principal and the job worker is treated as "deemed supply" and tax is payable thereon by the Principal.

Example :

ABC Ltd., sends T Shirts to it's job workers for fixing the collar, in batches and a batch was sent on 14th July, 2017. The collars were fixed and the T-shirts were sent back to the Principal on 31st October, 2018.

In this case, since the goods were not returned to the Principal by the job worker after completion of the work within one year of it being sent back, the supply between the principal and the job worker would be a deemed supply, and hence tax would be need to be paid along with applicable interest.

Also, in such a case, when the goods are returned by the job worker to the Principal, that again would be construed as a separate supply.

Moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work need not be brought within 3 years' time (Capital Goods excludes moulds and dies, jigs and fixtures, or tools.)

Section 143 of CGST Act, 2017 states that a Principal under intimation and subject to such conditions as may be prescribed can send inputs or capital goods to a job worker without payment of tax for further process or treatment and from there subsequently to another job worker(s) and shall either bring back such inputs/capital goods after completion of job work or otherwise, within 1 year/3 years of their being sent out, or supply such inputs/capital goods after completion of job work or otherwise within 1 year / 3 years of their being sent out, from the place of business of a job worker on payment of tax within India or with or without payment of tax for export.

Further, a Principal can supply goods from the place of business of job worker if the Principal declares the place of business of the job worker as his additional place of business, except in following two conditions:

- where the job worker is registered under section 25; or
- where the Principal is engaged in the supply of such goods as may be notified by the Commissioner.

The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the Principal.

Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the Principal, if the job worker is not registered.

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

Taking ITC in respect of inputs and capital goods sent for job work [Section 19]

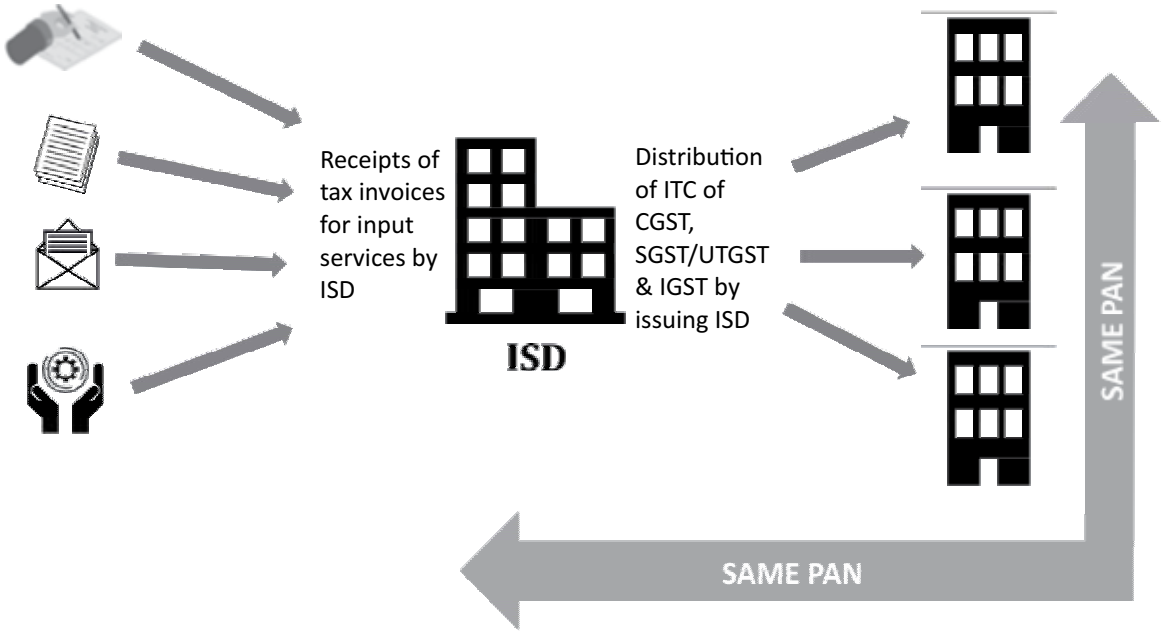
Essentially, it's imperative to note that the Principal can claim Input Tax Credit in Inputs / Capital Goods and can send these to the Job Worker for further processing without payment of GST under the cover of a delivery challan but where these are not either sold by the job worker OR returned by the job worker within one year to three years as the case may be, then the transaction between them is deemed to be construed as Supply and tax with interest has to be discharged by the supplier from the date of sending such inputs and capital goods to the job worker or receipt thereof at the premises of the job worker where such inputs and capital goods are delivery directly.

INPUT SERVICE DISTRIBUTOR [SECTION 20 AND RULE 39]

The concept of Input Service Distributor is not new in taxation law. It was existing under the erstwhile service tax law which was brought to cater the situations where a registered person receives goods and services at its head offices, branch offices which are not providing any output service or goods directly but does through its factories or other premises located elsewhere. In order to avoid loss of input tax credit, the concept of input

service distributor was established wherein such Head Office, etc. as permitted to take registration as Input Service Distributor and avail and distribute input tax credit to its taxable units for utilizing such credit.

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



Manner of Distribution of Credit by Input Service Distributor [Section 20]

(1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely: -

(a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a

State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

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

(a) the "relevant period" shall be -

(i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(b) the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(c) the term ''turnover'', in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

Manner of Recovery of Credit Distributed in excess [Section 21]

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Analysis:

Role of an Input Service Distributor (ISD)

Companies may have their Head Office at one place and units at other places which may be registered separately. The Head Office would be procuring certain services which would be for common utilization of all units across the country. The bills for such expenses would be raised on the Head Office but the Head Office itself would not be providing any output supply so as to utilize the credit which gets accumulated on account of such input services.

ISD Mechanism is meant only for distributing the credit on common invoices pertaining to INPUT SERVICES and not on goods (Input Goods or Capital Goods).

Since the common expenditure is meant for the business of all units, it is but natural that the credit of input services in respect of such common invoices should be apportioned between all the consuming units. ISD mechanism enables proportionate distribution of credit of input services amongst all the consuming units. The concept of ISD under GST is a legacy carried over from the service tax regime.

Thus, the concept of ISD is a facility made available to business having a large share of common expenditure and where billing/payment is done from a centralized location. The mechanism is meant to simplify the credit taking process for entities and the facility is meant to strengthen the seamless flow of credit under GST.

Separate Registration for an ISD

An ISD is compulsorily required to obtain a separate registration as an ISD even though it may be separately registered. There is no threshold limit for registration for an ISD. The other locations may be registered separately. Since the services relate to other locations the corresponding credit should be transferred to such locations (having separate registrations) as the output services are being provided there.

Note: It is mandatory that the Input Service Distributor and the recipient of credit are persons having the same PAN, whether or not they are located in the same State.

Integrated tax, central tax and state tax is to be distributed by an ISD as follows:

(a) Integrated tax as integrated tax.

(b) Central tax as central tax (if the recipient and ISD are located in the same State) and as integrated tax (if the recipient and ISD are not located in the same State).

(c) State tax as state tax (if the recipient and ISD are located in the same State) and as integrated tax (if the recipient and ISD are not located in the same State).

In case of distribution of central/ state tax as integrated tax, it should be ensured that the amount distributed equals the amount of credit of central and state tax put together.

Note: CGST can't be distributed as SGST and SGST can't be distributed as CGST.

Input Service Distributor can distribute the credit subject to the following conditions:

- The credit can be distributed to recipient against a document containing such details as given in Rule 54(1) of the CGST Rules, 2017;
- The amount of credit distributed shall not exceed the amount of credit available for distribution;
- The credit of tax paid on input service attributable to a recipient of credit shall be distributed only to that recipient;
- If credit is attributable to more than one recipient, then it shall be distributed among such recipient(s) to whom the input service is attributable on pro rata basis of the turnover in a State of such recipient during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service Is attributable.
- If credit is attributable to all recipients, the above method of allocation on pro rata may be applied with reference to all recipients, which are operational in current year.

Input tax credit can be availed by a registered person in relation to documents subject to the following conditions:

- All the applicable particulars prescribed in the Chapter VI [which contains Rule 46 to Rule 55] of the CGST Rules, 2017 are contained in the document; and
- The relevant information contained in the document is furnished in **FORM GSTR-2** (Details of inward supply) by the recipient.

Further, in terms of Rule 36(3), Input tax credit cannot be availed on the tax paid in pursuance of any order where the demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.

Manner of determination of the eligible amount to be distributed

In terms of the Rule 39(1) (d) of the CGST Rules, 2017, the eligible amount to be distributed in relation to a recipient is to be calculated in the following way:

$$C1 = (t1/T) \times c$$

Where

Important Points:

- ITC available for distribution by an ISD should be distributed to the recipients in the same month itself and the details should be furnished in Form GSTR-6.
- ISD is required to distribute the eligible and in-eligible credit separately to a recipient. Further, the integrated tax, central tax and state tax should also be distributed separately.

  C1 = Amount distributed to a recipient C = Amount of credit to be distributed t1 = Turnover of the recipient during the relevant period

  T = Aggregate of the turnover of all the recipients during the relevant period
- An ISD is required to issue an ISD invoice as prescribed in Rule 54(1) clearly indicating that the invoice is issued only for distribution of ITC.
- An ISD is required to issue a credit note as prescribed in Rule 54(1) for reduction of credit (if already distributed).
- The credit reduced by issuance of an ISD credit note will be apportioned to each recipient in the same ratio in which the credit of the original invoice was distributed.

Illustration

ABC Ltd. registered as ISD has paid taxes on inputs amounting to Rs.21 lakh for two products which are manufactured at separate locations in Delhi and Haryana only. The company had a total turnover of Rs. 112 crores in the previous financial year. The turnover of Delhi and Haryana units was Rs. 5 crores and Rs. 10 crores respectively. Discuss how ITC will be distributed.

Solution:

ITC is to be distributed between Delhi and Haryana units in the ratio 5:10 that is, 1:2. Therefore, Delhi unit will be given ITC of Rs. 7 lakhs, and Haryana unit will be given ITC of Rs. 14 lakhs from the advertising bills.

Claim of Input Tax Credit and Provisional Acceptance thereof [Section 41]

Section 16(2) mandates payment of tax by the suppler as a condition for the recipient to avail input tax credit.

However, said provision is subject to Section 41 which provides as below:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

Payment of Tax, Interest, Penalty and Other Amounts [Section 49]

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41 , to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and restrictions and within such time as may be prescribed.

(4) The amount of input tax credit available in the electronic credit ledger of the registered person on account of-

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

Utilisation of Input Tax Credit Subject to Certain Conditions [Section 49A]

Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

Order of Utilisation of Input Tax Credit [Section 49B]

Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

Rule 88A

ITC of IGST should first be utilized towards payment of IGST.

Remaining ITC of IGST, if any, can be utilized towards the payment of CGST and SGST/UTGST in any order, i.e., ITC of IGST can be first utilized either against CGST or SGST.

ITC of CGST, SGST/UTGST can be utilized towards payment of IGST, CGST SGST/UTGST only after the ITC of IGST has first been utilized fully.

[*Inserted by Notification No. 16/2019 CT dated 29.03.2019 read with Circular No. 98/17/2019 GST dated 23.04.2019*]

Analysis:

Utilization of ITC

Input Tax Credit (ITC) is credited to a person's electronic credit ledger. The person may use this to its output tax liability.

Input tax credit on account of	***Output liability on account of Integrated tax***	***Output liability on account of Central tax***	***Output liability on account of State tax/ Union Territory tax***
Integrated tax	(I)	(II) - In any order and in any proportion	
(III) Input tax credit on account of Integrated tax to be completed exhausted mandatorily			
Central tax	(V)	(IV)	Not permitted
State tax/Union Territory tax	(VII)	Not permitted	(VI)

There is no offset available between the CGST and the SGST/ UTGST.

In other words, first fully exhaust ITC on IGST towards output liability of IGST and CGST/SGST/UTGST. CGST/ SGST/ UTGST output liability payment can be in any order or ratio. Later, utilize ITC on CGST to pay output liability of CGST and balance of IGST, if any. Further, utilize ITC on SGST/UTGST to pay output liability of SGST/ UTGST and balance of IGST, if any.

Illustration:

Mr. Z, a supplier of goods, pays GST under regular scheme. Mr. Z is an Inter-State supplier and hence is not eligible to any threshold exemptions. He has made the following taxable supplies:

Outward Taxable Supplies	
Intra State	12,00,000
Inter State	4,50,000

He has also furnished the following details about his purchases:

Outward Taxable Supplies	
Intra State	4,50,000
Inter State	75,000

He has opening balances of ITC as under : CGST INR 45,000 SGST INR 45,000

IGST INR 105,000

If the supplies are exclusive of taxes (18% GST), compute his tax liability.

Solution:

The following represents his tax liability with respect to Outward Taxable Supplies:

Tax liability		
CGST	**SGST**	**IGST**
1,08,000	1,08,000	81,000

The following statement explains his ITC situation:

	IGST	***CGST***	***SGST***
Opening balance	1,05,000	45,000	45,000
New ITC on purchases	13,500	40,500	40,500
Total	1,18,500	85,500	85,500

	IGST	***CGST***	***SGST***
Output	81,000	1,08,000	1,08,000
Less :			
IGST : 1,18,500	81,000	37,500	–
CGST : 85,500	–	70,500	–
SGST : 85,500	–	–	85,500
Payable	NIL	NIL	22,500

Illustration:

The following table represents tax liability with respect to Outward Taxable Supplies:

Tax liability		
CGST	***SGST***	***IGST***
7,000	8,500	7,500

The following table represents ITC situation:

	IGST	***CGST***	***SGST***
Total	6,000	8,000	7,500

Explain utilization of ITC.

Solution:

The information given is as under :

Tax	***Input tax credit***	***Output liability***
IGST	6,000	7,500
CGST	8,000	7,000
SGST	7,500	8,500

Step 1: First fully exhaust ITC on IGST towards output liability of IGST.No more ITC on IGST is available. The balances are:

Tax	*Input tax credit*	*Output liability*
IGST	–	1500
CGST	8,000	7,000
SGST	7,500	8,500

Step 2: Later, utilize ITC on CGST to pay output liability of CGST and balance of IGST. The balances are:

Tax	*Input tax credit*	*Output liability*
IGST	–	500
CGST	–	–
SGST	7,500	8,500

Step 3: Further, utilize ITC on SGST to pay output liability of SGST.

Tax	*Input tax credit*	*Output liability*
IGST	–	500
CGST	–	–
SGST	–	1,000

The balance IGST Rs. 500 and SGST Rs. 1,000 to be paid in cash.

Illustration:

The following table represents tax liability with respect to Outward Taxable Supplies:

Tax liability		
IGST	*CGST*	*SGST*
3,00,000	2,00,000	2,00,000

The following table represents ITC situation:

	IGST	*CGST*	*SGST*
Total	4,00,000	3,50,000	1,50,000

Discuss utilization of ITC.

Solution:

The information given is as under :

Tax	*Input tax credit*	*Output liability*
IGST	4,00,000	3,00,000
CGST	3,50,000	2,00,000
SGST	1,50,000	2,00,000

Step 1: First fully exhaust ITC on IGST towards output liability of IGST and CGST/SGST/UTGST. CGST / SGST / UTGST output liability payment can be in any order or ratio. Suppose, available balance of Rs. 1,00,000 is utilized towards CGST, the balances are:

Tax	*Input tax credit*	*Output liability*
IGST	–	–
CGST	3,50,000	1,00,000
SGST	1,50,000	2,00,000

Step 2: Later, utilize ITC on CGST to pay output liability of CGST. The balances are:

Tax	*Input tax credit*	*Output liability*
IGST	–	–
CGST	2,50,000	–
SGST	1,50,000	2,00,000

Step 3: Further, utilize ITC on SGST to pay output liability of SGST.

Tax	*Input tax credit*	*Output liability*
IGST	–	–
CGST	2,50,000	–
SGST	–	50,000

The balance ITC on CGST Rs. 2,50,000 to be carried forward (unutilized) and SGST Rs. 50,000 to be paid in cash.

POWER TO BLOCK UTILIZATION OF CREDIT AVAILABLE IN ELECTRONIC CREDIT LEDGER [RULE 88A W.E.F. 26.12.2019]

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as -

(a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under Rule 36 -

(i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(ii) without receipt of goods or services or both; or

(b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under Rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

(c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under Rule 36, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-Rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

Restrictions on Certain Persons to Use Amount Available in electronic Credit ledger [Rule 86B] w.e.f. 1.1.2021

Notwithstanding anything contained in these Rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent, of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees :

Provided that the said restriction shall not apply where-

(a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961 (43 of 1961) in each of the last two financial years for which the time limit to file return of income under sub-section (1) of section 139 of the said Act has expired; or

(b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or

(c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or

(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

(e) the registered person is -

(i) Government Department; or

(ii) a Public Sector Undertaking; or

(iii) a local authority; or

(iv) a statutory body :

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.

Various Forms used under ITC

1. **Form GST ITC - 01** *[See Rule - 40(1)]*

   Declaration for claim of input tax credit under sub-section (1) of section 18.

2. **Form GST ITC -02** *[See Rule - 41(1)]*

   Declaration for transfer of ITC in case of sale, merger, demerger, amalgamation, lease or transfer of a business under sub-section (3) of section 18.

3. **Form GST ITC -03** *[See Rule - 44(4)]*

   Declaration for intimation of ITC reversal/payment of tax on inputs held in stock, inputs contained in semi-finished and finished goods held in stock and capital goods under sub-section (4) of section 18.

4. **Form GST ITC-04** *[See Rule - 45(3)]*

   Details of goods/capital goods sent to job worker and received back.

Some important points with respect to the ITC:

ITC with respect of goods or services used for construction of a building for business purposes: ITC on goods or services by a person for construction of immovable property, other than plant and machinery, is not allowed. Plant and machinery cover only apparatus, equipment, and machinery fixed to earth by foundation or structural support, and excludes land and building, among other things.

ITC entitlement of a newly registered person: A person applying for registration can take input tax credit of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration. If the person was liable to take registration and he has applied for registration within thirty days from the date on which he became liable to registration, then input tax credit of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date on which he became liable to pay tax can be taken.

Eligibility of input tax credit on inputs in stock for a person who obtains voluntary registration: The person who obtains voluntary registration is entitled to take the input tax credit of input tax on inputs in stock, inputs in semi- finished goods and finished goods in stock, held on the day immediately preceding the date of registration.

ITC eligibility in cases where there is a change in the constitution of a registered person: The registered person shall be allowed to transfer the input tax credit that remains unutilized in its electronic credit ledger to the new entity, provided that there is a specific provision for transfer of liabilities.

Position where goods or services or both received by a taxable person are used for effcting both taxable and non-taxable supplies: The input tax credit of goods or services or both attributable only to taxable supplies can be taken by registered person. The manner of calculation of eligible credit is provided in the CGST Rules.

The input tax credit of goods or services or both attributable only to the purpose of business can be taken by registered person.

A banking company or a financial institution including a non-banking financial company engaged in supply of specified services would either avail proportionate credit or avail 50% of the eligible input tax credit.

COMPUTATION OF GST LIABILITY

For Computation of GST Liability a taxpayer has to take everything in to consideration. They have to determine the value of taxable supplies. Find the applicable GST Rate and HSN Code. Calculate the CGST, SGST and IGST whichever is applicable. Find the type of supply whether it is inter-State or intra-state Supply. They also have to take in consideration whether the registered person has opted for GST Composition Scheme or QRMP Scheme. ITC plays a major role in correct determination of GST Liability.

Illustration:

Raman Academy organizes parents meeting and provides meal during meeting to students and their parents. The supplier of food charged Rs. 72,500 plus GST 18%, under the category of outdoor catering. Explain Raman Academy being provider of taxable supply of services namely commercial training and coaching services is eligible to avail the credit of GST paid on outdoor catering service.

Solution:

GST paid on outdoor catering is not allowed as ITC even though such services are used for business purpose. Since, it is specifically mentioned under Section 17(5)(b)(i) of the CGST Act, 2017 where credit is not allowed.

Example:

Mrs. Alia is a registered wholesaler in Mumbai. She purchased goods worth Rs. 5,00,000 from Mumbai and paid GST @ 12%. After value addition and profit margin, Mrs. Alia sold these goods to Mrs. Bani (a registered dealer in Maharashtra state) for Rs. 9,00,000 and charged GST @ 12% on it. Now,

	GST paid on Inward Supply	GST collected on Outward Supply
CGST	6% of Rs. 5,00,000 = Rs. 30,000	6% of Rs. 9,00,000 = Rs. 54,000
SGST	6% of Rs. 5,00,000 = Rs. 30,000	6% of Rs. 9,00,000 = Rs. 54,000

Mrs. Alia has ITC of CGST and SGST for Rs. 30,000 each. Now, Mrs. Alia will pay Rs. 24,000 each as net GST. This amount has been arrived at after deducting Rs. 30,000 already paid at the time of purchase of goods. This benefit or system of adjustment of "GST paid on nward supplies" towards "GST on outward supplies" is called as ITC.

Illustration:

M/s. Naaz Ltd. supplied taxable goods from the factory after manufacture in the month of October 2017 for sale to a distributor for Rs. 18,00,000. M/s Naaz Ltd has suppressed this transaction. However, she deposited the GST @12% on these goods on January 19, 2018 against show cause notice issued under Section 74 (when there is fraud) of the CGST Act, 2017 by the Central Tax Officer and passed the order accordingly. M/s. Naaz Ltd. supplied taxable goods from the factory after manufacture in the month of October 2017 for sale to a distributor for Rs. 18,00,000. M/s X Ltd has suppressed this transaction. However, she deposited the GST @12% on these goods on January 19, 2018 against show cause notice issued under Section 74 (when there is fraud) of the CGSTAct, 2017 by the Central Tax Officer and passed the order accordingly.

Whether distributor namely recipient of these goods is eligible to take Input Tax Credit.

Solution:

ITC is not allowed.

As per Rule 36(3) of the CGST Rules, 2017, No credit on payment of tax due to fraud, wilful-misstatement or suppression of fact etc. shall be allowed.

In the given case no input tax credit was available to registered person if the supplier has paid tax in pursuance of order where any demand has been confirmed on account of any fraud, wilful-misstatement or suppression of facts and so on under Section 74 of the CGST Act, 2017.

Illustration :

SV Ltd., having its head office at Mumbai, is registered as Input Service Distributor (ISD). It has three units in different cities situated in 'Mumbai', 'Jabalpur' and 'Delhi' which are operational in the current year. SV Ltd. furnishes the following information for the month of July 2022:

CGST paid on services used only for Mumbai Unit :Rs. 3,00,000

IGST, CGST & SGST paid on services used for all Units : Rs. 12,00,000

Total turnover of the units for the previous financial year is as follows :

Unit	*Turnover (Rs.)*
Total Turnover of three units	Rs. 10,00,00,000
Turnover of Mumbai unit	Rs. 5,00,00,000
Turnover of Jabalpur unit	Rs. 3,00,00,000

Determine the credit to be distributed by SV Ltd. to each of its three units.

Solution:

Section 20 of the CGST Act, 2017 provides mechanism for the distribution of input tax credit by the Input tax distributor (ISD).

Input Tax Credit to be distributed by SV Ltd. a registered ISD on different Units for July, 2022 is detailed as below:

Particulars	*Total Credit*	*Credit to be distributed (Amount in Rs.)*		
		Mumbai	*Jabalpur*	*Delhi*
CGST paid on the services used for Mumbai office Only	300000	300000	-	-
IGST, CGST and SGST paid on the services used for all units in operation during the year (see note)	1200000	600000	360000	240000
Total	1500000	900000	360000	240000

Note : The input-tax credit has been distributed on all the units on the pro-rata basis of the turnover of each of the Units in the ratio of 5:3:2.

CASE LAWS

- ***The South Indian Bank Limited vs. Union of India (2019) - Kerala High Court***

Enable assessee to file rectified Form GST TRAN-1

On a consideration of the facts and circumstances of the case as also the submissions made across, it was found that it is not in dispute that the input tax credit accumulated in the account of the South Indian Bank Limited was validly taken during the pre-GST period. The returns filed during the relevant period have all been accepted by the revenue authorities and, in the absence of a requirement to migrate to the GST regime, South Indian Bank Limited would have been able to distribute the credit to its various branches through the input service distribution mechanism that was in place prior to the introduction of the GST Act.

Although South Indian Bank Limited has since obtained a registration as an input service distributor under the GST Act, the non-availability of the details of the purchase invoices, on the strength of which the input credit was availed, virtually prevents from pursuing the Form GST TRAN -1 already filed by it before the Principal Nodal Officer, Joint Commissioner (Tech).

Held, if South Indian Bank Limited is permitted to file individual Form GST TRAN-1 in respect of each of the recipient branches, then the accumulated credit could be distributed to its various branches without having to furnish details of the invoices, on the strength of which the credit was taken during the relevant time before the introduction of GST. In effect, this procedure would facilitate the transfer of credit in a situation where the accumulation of credit as also the entitlement of South Indian Bank Limited to distribute the credit to its various branches is not in dispute.

Further, taking note of the decision of the Delhi High Court in Blue Bird Pure Pvt. Ltd. V. Union of India and Others [(2019) 68 GSTR 340(Delhi)], where, it was observed that the Department should either open the online portal so as to enable the assessee to file rectified TRAN -1 Form electronically or accept manually filed TRAN- 1 Form with correction before a specified date so as to render justice to the assessees.

In the instant case, the availment of credit by South Indian Bank Limited, and its entitlement to distribute the credit to its various branches was not disputed. The Principal Nodal Officer, Joint Commissioner (Tech). should either permit South Indian Bank Limited to file a rectified TRAN-1 Form electronically in favour of each of its branches in the country, or accept manually filed TRAN -1 Form with the appropriate corrections.

● ***Jay Bee Industries vs. Union of India (2019) - Himachal Pradesh High Court Input Tax Credit (ITC) cannot be denied on procedural grounds***

The Appellant was unable to upload Form TRANS-I due to technical glitches. They were unable to get the benefits of transitional Input Tax Credit (ITC). The GST Laws contemplate seamless flow of tax credits on all eligible inputs on every sale and purchase occasion and resulting in a progressive system of taxation at eveyr occasion. Input tax credits (ITC) in TRAN-1 are the credits legitimately accrued in the GST transition. Due date contemplated under the laws to claim the transitional credit is procedural in nature.

Himachal Pradesh High Court held that the Union of India are directed to provisionally allow the petitioner to upload the Trans-I return by opening a window by whatever mode - it is clarified that the return filed, if any, shall be subject to the outcome of the present petition.

● ***IN Re : LAS PALMAS CO-OPERATIVE HOUSING SOCIETY LIMITED, 2020 (34) G.S.T.L. 293 (A.A.R. - GST- Mah.)***

In the above referred matter, the applicant sought advance ruling in respect of the following questions.

Whether the Applicant - a Co-operative Housing Society paying Goods and Services Tax (GST) on Maintenance Charges collected from its Members, shall be entitled to claim Input Tax Credit of GST paid on replacement of existing lift/elevator at its own premises to the vendor registered under the Goods and Services Tax Act for manufacture, supply, installation and commissioning of lift/elevator? and

(1) Whether the Input Tax credit, if available; is not covered under blocked credits under the Goods and Services Tax Act?

The authority held as below

Explanation to Section 17(5) is very clear. ITC is available for “plant and machinery”. Plant and machinery means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes - *Land, building or any other civil structures.*

The lift, after erection and installation is an immovable property because it becomes a part of an immovable property i.e., a building. In other words it is to be considered as an integral part of the building itself. It is not a separate part of the building. When any person speaks of such a building, he also includes the lifts as an integral part of the building, like storage water tanks, etc.

To summarize, Manufacture, Supply, Installation and Commissioning of Lifts/Elevators is in the nature of Works contract activity which results in creation of an immovable property. Hence in view of the above discussions and Explanation to Section 17 of the CGST Act, we are of the opinion that the applicant is not entitled to ITC of GST paid on replacement of existing Lift/Elevator, in its premises.

- ***IN Re : Tata Motors ltd. 2020 (41) G.S.T.l. 35 (A.A.R. - GST - Mah.)***

The applicant sought an advance ruling in respect of the following questions.

(1) Whether Input Tax Credit (ITC) available to applicant on GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen persons for transportation of employees to and from workplace?

(2) Whether GST is applicable on nominal amount recovered by applicants from employees for usage of employee bus transportation facility in non-air conditioned bus?

(3) If ITC is available as per Question No. (1) above, whether it will be restricted to the extent of cost borne by the applicant (employer)?

The authority held as below:

It is clear and apparent that Section 17(5) had clearly debarred Input Tax Credit on motor vehicles or conveyances used in transport of passengers till the date of the amendment, i.e., 1-12-2019. However with effect from 1-12-2019, Input Tax Credit has been allowed on leasing, renting or hiring of motor vehicles, for transportation of persons, having approved seating capacity of more than thirteen persons (including the driver).

Therefore in the subject case, since the applicant has specifically submitted and as agreed by the jurisdictional officer, that they are using motor vehicles having approved seating capacity of more than thirteen persons (including the driver), the applicant shall be eligible for Input Tax Credit in this case. However we would like to make it very clear that if the motor vehicle hired by them does not have an approved seating capacity of more than thirteen persons (including the driver), then in that case the applicant will not be eligible for Input Tax Credit.

The second question raised by the applicant is whether GST is applicable on nominal amount recovered by applicants from their employees for usage of employee bus transportation facility in non-air conditioned bus.

To answer the second question we now refer to Schedule-III to the CGST Act which lists activities which shall be treated neither as a supply of goods nor a supply of services. As per clause 1 of the said Schedule- III, *Services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor a supply of services.*

Since the applicant is not supplying any services to its employees, in view of Schedule-III mentioned above, we are of the opinion that GST is not applicable on the nominal amounts recovered by applicants from their employees in the subject case.

The last question raised by the applicant is if ITC is available to them, whether it will be restricted to the extent of cost borne by the applicant.

The applicant, citing the decision of the Hon'ble High Court of Bombay in the case of *CCE, Nagpur v. Ultratech Cements Ltd.* as reported in 2010 (260) E.L.T. 369 (Bom.) has submitted that ITC is not admissible to applicant on part of cost borne by employee and thus ITC will be restricted to the extent of cost borne by the applicant.

The jurisdictional officer has also endorsed the view of the applicant and we have no reason to deviate from the view expressed by both, the applicant as well as the jurisdictional officer.

For reasons as discussed in the body of the order, the questions are answered thus -

Question 1 : *Whether Input Tax Credit (ITC) is available to applicant on GST charged by service provider on hiring of bus/motor vehicle having seating capacity of more than thirteen persons for transportation of employees to and from workplace?*

Answer : *ITC is available to the applicant but only after 1-2-2019.*

Question 2 : *Whether GST is applicable on nominal amount recovered by applicants from employees for usage of employee bus transportation facility in non-air conditioned bus?*

Answer : *Answered in the negative.*

Question 3 : *If ITC is available as per Question No. (1) above, whether it will be restricted to the extent of cost borne by the applicant (employer)?*

Answer : *Answered in the affirmative.*

- ***M/s. Ram Auto (Appellant) vs. Commissioner of Central Taxes & Central excise (2021)- Madras High court***

Benefit of Input Tax Credit (ITC) cannot be denied on account of having entered details in the wrong column.

Facts of the case:

The Appellant was a dealer in two-wheelers. The Assessee was registered under Tamil Nadu Value Added Tax Act, 2006. The Appellant was having ITC to the tune of Rs. 4,85,684/-. Following the introduction of the GST regime, transition and migrations from the earlier system had to be made under which the appellant was required to file the necessary Form GST TRAN-1. While filing the said Form, instead of entering the details under column 7(a), the petitioner erroneously entered the details against column 7(d). The column 7(d) would apply only in cases of stock of goods not supported by invoices/documents evidencing payment of tax.

While the appellant was very much having the necessary invoices/documents evidencing payment of tax, since the appellant did not enter the details correctly, the consequential credit under the new GST regime was not given. The appellant submitted a request wherein it pointed out that the mistake committed by them was purely inadvertent. As a result, the appellant was not able to adjust the claimed credit amount against their present liability.

Decision:

The Madras High Court held that the benefit of input tax credit (ITC) cannot be denied for having entered the details in the wrong column.

- ***CIAl Duty Free and Retail Services Ltd. (CDRSl) vs. Union of India and others (2020)- Kerala High court***

Refund should be claimed only after paying GST on Input services Facts of the case:

In writ petition, a declaration had been sought to the effect that the CGST Act, 2017, the IGST Act, 2017, and the Kerala SGST Act, 2017 and the Rules thereunder do not apply to the supply of goods and services effected by the Appellant in the arrival and departure Duty-Free Shops (DFS) at Calicut International Airport in terms of the Concession Agreement with a further prayer of issuance of direction to the respondents not to apply the aforementioned Acts to the DFS operated by the Appellant and to quash notices and invoices to the extent of levying CGST and IGST on the revenue sharing in terms of the Concession Agreement. The Appellant contended that refund of ITC pursuant to sale of duty free goods from Duty Free Shops at the departure area of airport, had been declined and GST towards the minimum guaranteed fees/concession fees for grant of rights and use of licensed premises of duty free in the departure or arrival area of international airport had been made accessible by the Bombay High Court.

Decision:

The Kerala High Court ordered the Appellant to pay the GST on input services including Concession Fee to Respondent and claim Input Tax Credit (ITC) of the entire tax amount and thereafter claim refund of the same by following the procedure.

- ***In re enfield Apparels ltd. (2020)- West Bengal AAR***

Taxability of Assignment of leasehold right on immovable property and admissibility of ITC Facts of the case:

The National Company Law Tribunal (NCLT), Kolkata Bench, initiated the corporate insolvency resolution process (CIRP), admitting Enfield Apparels Ltd. as the corporate debtor, and appointed an Interim Resolution Professional (IRP). The Appellant one of the assets under liquidation was the leasehold factory unit along with car parking space. The West Bengal Industrial Development Corporation Ltd. granted the appellant possession of the Demised Premises for 99 years. Another condition of lease was that it can be sub-leased after five years from the date of signing of deed. The Liquidator sought advance ruling on the issue whether GST is payable on the consideration receivable on such assignment. If yes, then what will be rate and whether ITC can be claimed or not.

Decision:

West Bengal AAR held that activity of assignment of asset - leasehold factory unit with car parking space leased by West Bengal Development Corporation (sub-lessor to corporate debtor) - is a service taxable as 'Other Miscellaneous Service' and therefore GST to be levied at 18 per cent. It observed that the sub-lessor has allowed possession of the demised premises for manufacture of garments and textiles.

According to AAR, activity of assignment is in the nature of agreeing to transfer one's leasehold rights which does not amount to further sub-leasing. "Neither does it create fresh benefit from land other than the leasehold right. It is like a compensation for agreeing to do the transfer of rights in favour of the assignee," it said.

- ***VKC Footsteps India (P) ltd. (Appellant) vs. Union of India (2020)- Gujarat High Court***

Companies can claim refund using unutilized Input Tax Credit arising from input services under inverted duty structure

Facts of the case:

The Appellant was engaged in the business of manufacture and supply of footwear which attracts GST at the rate of 5%. The Appellant procures input services such as job work service, goods transport agency service etc. and inputs such as synthetic leather, PU Polyol, etc., on payment of applicable GST for use in the course of business and avails ITC of the GST paid thereon. Majority of the inputs and input services attract GST at the rate of 12% or 18%. Thus, GST rate paid by the Appellant on procurement of input is higher than the rate of tax payable on their outward supply of footwear. As a result, in spite of utilization of credit for payment of GST on outward supply, there is accumulation of unutilized credit in electronic credit ledger of the Appellant. Respondents were allowing refund of accumulated ITC of tax paid on inputs such as synthetic leather, PU Polyol, etc. However, refund of accumulated credit of tax paid on procurement of input services such as job work service, goods transport agency service, etc. is being denied. The Appellant had therefore challenged validity of amended Rule 89(5) of the CGST Rule, 2017 to the extent it denies refund of ITC relatable to input services. As per Section 54(3) of the CGST Act, 2017, a registered person may claim refund of unutilized ITC at the end of any tax period. As the law includes the tax on goods as well as services within the definition of ITC, Rule 89 cannot make a contrary differentiation as it is subordinate to the Act. The amendment results in a 'perpetual retention' or appropriation of tax credit by the government which is contrary to the legislative intent.

Decision:

Gujarat High Court observed that disallowing refund of the tax paid on input services is contrary to the CGST Act. The respondents were, therefore, directed to allow the claim of the refund made by the appellant considering the unutilized ITC of "input services" as part of the "net input tax credit"(Net ITC) for the purpose of calculation of the refund of the claim as per Rule 89(5) of the CGST Rules,2017 for claiming refund under Sub-section 3 of Section 54 CGST Act,2017. Businesses must be allowed to factor in the tax paid on input services for calculating the claim of refund under the inverted duty structure. The Court declared Rule 89(5) of CGST Rules ultra vires to the provisions of Section 54(3) of CGST Act. The definition of ITC includes credit in respect of both inputs and input services. The intent of the law is not to deny the refund of GST paid on input services as a part of accumulated ITC.

- ***Uma Shankar Aggarwal (Appellant) vs. Union of India (2020)- Rajasthan High Court Fraudulent claim of Input Tax Credit (ITC) and rejection of bail application***

Facts of the case:

The Appellant had filed an application for bail under section 439 of The Code of Criminal Procedure, 1973 against the registration of case for alleged offence under section 132 of CGST Act, 2017. Allegedly, the appellant had claimed ITC to the tune of Rs. 11.6 Crores without there being any transaction. The maximum sentence under the Act is five years. The Appellant had already been in custody for five months. The Authority contended that the vehicles in which products stated to have been send to the appellant are pick-up, scooty and motorcycle etc. which clearly goes to show that fake bill entries were manipulated to claim ITC.

Decision:

Rajasthan High Court observed that claim of input tax credit without there being any transaction directly affects the economy of the country, Appellant had claimed ITC to the tune of Rs.11.6 crores, hence, the bail application can not be entertained.

- ***In Re GRB Dairy Foods (P) Ltd. (2022) – Tamilnadu AAAR***

ITC is not available on input or input services procured for promotional schemes

The Appellant was engaged in the business of manufacture and supply of ghee and other products and sold products through various retail stores across the country. With the objective of expanding the market share, the appellant had launched a sales promotional offer to enhance sales of its products. It filed an application for advance ruling to determine whether ITC would be eligible on inputs/input services procured to implement promotional scheme.

The Appellate Authority for Advance Ruling Ruled that inputs or input services procured for a promotional scheme of products are not qualified for ITC. Goods and services distributed under promotional scheme were without consideration and those goods and services were not for further supply but for consumption by retailers under scheme. Moreover, the inputs and input services procured by appellant were for his buyers provided as rewards and not for his own activity such as advertising product. Since, the rewards extended to retailers/stockist under scheme were not in nature of discount, Therefore, Input Tax Credit of GST paid on such inputs/input services procured would not be available.

LESSON ROUND-UP

- Under GST, a seamless flow of credit throughout the value chain is available removing the cascading effect of taxes.
- The office of the company which distributes the credit to the beneficiary units is called input service distributor.
- Input tax credit (ITC) is a provision of reducing the tax already paid on inputs, to avoid the cascading effect of taxes.
- There are few goods and services whereon input tax credit is ineligible.
- Certain conditions need to be fulfilled in order to avail the Input Tax Credit.
- Basic condition for availing Input Tax Credit amounts is the receipt of goods and / or services.
- Powers have been given to the Commissioner to block the amount lying in electronic credit ledger in certain situations.
- When another person (job worker) undertakes the work of a manufacturer, to whom the goods belong (Principal), is known as job work.
- GST law lays down the conditions for availing ITC in the case of a job worker.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Mr. Raj buy a passenger car worth Rs. 3,00,000 with GST Rs. 80000. He deals in electronic goods and uses the car to travel to his showroom. Is Mr. Raj is eligible for ITC?
2. JP Medical Hospital is a clinical establishment. It purchased 7 ambulances for Rs. 80 Lakhs plus 18% GST. Find the ITC available to JP Medical Hospital?
3. Discuss the order of utilizing ITC of IGST, SGST and CGST.
4. Discuss any five goods and / or services which are barred for the purpose of availing input tax credit.
5. Discuss the treatment to be given to the balance lying in electronic credit ledger where the goods manufactured by the person are notified as exempt.
6. Discuss the treatment to be given to input tax credit if inputs are delivered directly at the job worker's premises.

LIST OF FURTHER READINGS

- GST Ready Reckoner - Taxmann - V.S. Datey
- GST Manual with GST Law Guide & GST Practice Referencer - Taxmann
- GST Acts with Rules & Forms - Taxmann
- GST - Law, Practice & Procedures - Bharat Publications Vineet Gupta & N.K. Gupta

OTHER REFERENCES
• https://www.cbic.gov.in/ • https://www.gst.gov.in/

Procedural Compliance under GST

Lesson 6

KEY CONCEPTS

■ Registration ■ GST Return ■ E–way Bill ■ Tax Invoice ■ Bill of Entry ■ Refund

Learning Objectives

To understand:

- Registration under GST
- Procedure of Registration
- Regulatory Provisions related to amendment/cancellation of Registration
- Persons not liable for Registration
- Computation of Aggregate Turnover
- Companies under IBC and GST Compliance
- GST on Director's Remuneration
- Tax Invoices
- Time Limit for issue of Tax Invoices, Debit Note and Credit Note
- Concept of E-Invoicing
- Concept of TDS and TCS
- E-Way bill in details
- Annual Return
- Ledgers under GST
- Provisions related to Refund

Lesson Outline

REGULATORY FRAMEWORK

1. Central Goods and Services Act, 2017

Section	*Deals with*
Section 22	Persons Liable for registration
Section 23	Persons not Liable for registration
Section 24	Compulsory registration in certain cases
Section 25	Procedure for registration
Section 26	Deemed registration
Section 27	Special provisions relating to casual taxable person and non-resident taxable person
Section 28	Amendment of Registration
Section 29	Cancellation of Registration
Section 30	Revocation of cancellation of registration
Section 31	Tax Invoice
Section 31A	Facility of digital payment to recipient
Section 32	Prohibition of unauthorised collection of tax
Section 33	Amount of tax to be indicated in tax invoice and other documents
Section 34	Credit and Debit Notes
Section 35	Accounts and other records
Section 36	Period of retention of accounts
Section 37	Furnishing details of outward supplies
Section 38	Furnishing details of inward supplies
Section 39	Furnishing of returns
Section 40	First Return
Section 41	Claim of input tax credit and provisional acceptance thereof
Section 42	Matching, reversal and reclaim of input tax credit
Section 43	Matching, Reversal and Reclaim of Reduction in Output Tax Liability
Section 44	Annual Return
Section 45	Final Return
Section 46	Notice to Return Defaulters
Section 47	Levy of the Fee
Section 50	Interest on delayed payment of tax
Section 51	Tax Deducted at Source (TDS)
Section 52	Collection of Tax at Source (TCS)

Section	*Deals with*
Section 53	Transfer of Input Tax Credit
Section 54	Refund of Tax
Section 55	Refund in certain cases
Section 56	Interest on delayed refunds
Section 57	Consumer Welfare Fund
Section 58	Utilisation of Fund
Section 68	Electronic Way Bill
Section 143	Job work Procedure
Section 146	Common Portal
Section 149	Goods and Services Tax Compliance Rating
Section 171	Anti-Profiteering Measure

2. Companies Act, 2013

Section	*Deals with*
Section 2(45)	Government Company
Section 2(94)	Whole Time Director
Section 149	Company to have Board of Directors

3. Income Tax Act, 1961

Section	*Deals with*
Section 192	TDS on Salary
Section 194J	Fees for Professional or Technical Services

REGISTRATION

Statutory provisions under the act relating to Registration: Chapter VI of the Central Goods and Services Tax Act, 2017 (No. 12 of 2017) (In Short CGST Act) comprising of section 22 to 30 deals with the provisions relating to the registration. Further the Rules relating to the registration are contained in Chapter III of the Central Goods and Services Tax (CGST) Rules, 2017 (In Short CGST Rules) comprising of Rules 8 to 26.

Persons Liable for Registration

Section 22 of the CGST Act provides that:

(1) Every supplier shall be liable to be registered under this act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his **aggregate turnover** in a financial year **exceeds twenty lakh rupees:**

Provided that where such person makes taxable supplies of goods or services or both from any of the special category:

States, he shall be liable to be registered if his aggregate turnover in a financial **year exceeds ten lakh rupees.**

Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified:

Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount **not exceeding forty lakh rupees** in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.

Explanation: For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Enhanced threshold for supplier of goods *[Notification No. 10/2019-CT dated 7.3.2019]*

In line with the amendments made in Section 22 CGST Act, the Government issued notification effective, 1.4.2019 wherein it increased threshold for taking registration for person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does **not exceed forty lakh rupees,** except, -

(a) persons required to take compulsory registration under section 24 of the said act;

(b) persons engaged in making the following supplies:

- Ice cream and other edible ice, whether or not containing cocoa falling under tariff 21050000,
- Pan masala falling under tariff 21069020,
- All goods, i.e., Tobacco and manufactured tobacco substitutes falling under Chapter 24,
- Fly ash bricks,
- Bricks of fossil meals or similar siliceous earths,
- Building bricks,
- Earthen or roofing tiles.

(c) persons engaged in making Intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and

(d) persons who opt to take registration voluntarily by exercising option under the provisions of sub-section (3) of section 25, or such registered persons who intend to continue with their registration under the said Act.

Special Category States: Article 279A (4) (g) of the Constitution of India specifies the name of 11 States which have been put under the 'special category States'. The name of these States are: Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

Relevant Definitions

Person: In terms of section 2(84) of the CGST Act, the word, "person" includes -

a. an individual;

b. a Hindu Undivided Family;

c. a company;

d. a firm;

e. a Limited Liability Partnership;

f. an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

g. any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

h. any body corporate incorporated by or under the laws of a country outside India;

i. a co-operative society registered under any law relating to co-operative societies;

j. a local authority;

k. Central Government or a State Government;

l. society as defined under the Societies Registration Act, 1860;

m. trust; and

n. every artificial juridical person, not falling within any of the above.

Location of the supplier of services: Section 2(71) of the CGST Act defines location of the supplier of services, which means:

a. where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

b. where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

c. where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and

d. in absence of such places, the location of the usual place of residence of the supplier.

Who is Agent: In terms of Section 2(5) of the CGST Act, "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

What is Place of Business: In terms of Section 2(85) of the CGST Act, "place of business" includes -

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called.

What is Aggregate Turnover: Aggregate turnover has been defined under section 2(6) of CGST Act: It means the aggregate value of:

- all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),
- all exempt supplies,
- exports of goods or services or both, and
- Inter-State supplies of persons

having the **same Permanent Account Number**, to be computed **on all India basis** but **excludes central tax, State tax, Union territory tax, integrated tax and cess.**

Aggregate Turnover:

- **What it includes:** It is to be noted that aggregate turnover shall include all supplies made by the Taxable person, whether on his own account or made on behalf of all his principals.
- **What it excludes:**
  - Aggregate turnover does not include value of inward supplies on which tax is levied on **reverse charge basis.**
  - **Job work case:** The value of goods after completion of job work is not includible in the turnover of the job-worker. It will be treated as supply of goods by the principal and will accordingly be includible in the turnover of the Principal.

Explanation. - For the purposes of this section, -

i. the expression **"aggregate turnover" shall include all supplies made by the taxable person**, whether on his own account or made on behalf of all his principals;

ii. the supply of goods, **after completion of job work**, by a registered job worker shall be treated as the **supply of goods by the principal** referred to in section 143, and **the value of such goods shall not be included in the aggregate turnover of the registered job worker;**

iii. the expression '**Special Category States'** shall mean the states as specified in sub-clause (g) of clause (4) of article 279A of the Constitution.

Illustration: Zebra & Co., Chennai is a manufacturer and is a registered supplier (under regular scheme). It furnishes the Following details for the tax period ended on 31st March, 2022:

(i)	Intra-State supply of goods (includes GST @ 18%)	Rs. 59,00,000
(ii)	Goods exported (GST Nil)	Rs. 30,00,000
(iii)	Inward supplies liable for reverse charge	Rs. 7,00,000
(iv)	Transfer of goods to branch at Delhi (excluding GST)	Rs. 50,00,000

Compute the aggregate turnover' under section 2(6) of the CGST Act, 2017?

Answer: Computation of 'Aggregate turnover':

Particulars	***Turnover (Rs.)***
Intra-State supply of goods Rs.59,00,000 × 100 /118 Excludes CGST, SGST, IGST	50,00,000
Export Supplies [considered as equivalent to taxable supplies]	30,00,000
Inward supplies under reverse charge [not to be included]	Nil
Transfer of goods to branch / distinct person is categorized as supply under section 7 of the CGST Act. [No adjustment needed as GST is already excluded]	50,00,000
Aggregate turnover	1,30,00,000

CASE LAWS

In Re : Anil Kumar Agrawal, 2020 (36) G.S.T.L. 596 (A.A.R. - GST - Kar.)

Facts: The Applicant is an unregistered person and is in receipt of various types of income/revenue, mentioned as under :

(a) Partner's salary as partner from my partnership firm,

(b) Salary as director from Private Limited company,

(c) Interest income on partners fixed capital credited to partner's capital account,

(d) Interest income on partners variable capital credited to partner's capital account,

(e) Interest received on loan given,

(f) Interest received on advance given,

(g) Interest accumulated along with deposit/fixed deposit,

(h) Interest income received on deposit/fixed deposit,

(i) Interest received on Debentures,

(j) Interest accumulated on debentures,

(k) Interest on Post office deposits,

(l) Interest income on National Savings certificate (NSCs),

(m) Interest income credited on PF account,

(n) Accumulated Interest (along with principal) received on closure of PF account,

(o) Interest income on PPF,

(p) Interest income on National Pension Scheme (NPS),

(q) Receipt of maturity proceeds of life insurance policies,

(r) Dividend on shares,

(s) Rent on Commercial Property,

(t) Residential Rent,

(u) Capital gain/loss on sale of shares.

Ruling Sought:

(i) Out of the given sources of Income/Revenue which all revenue income shall be considered for Aggregate Turnover for registration?

(ii) Out of given nature of income/revenue, when the supply, even if exempted, need to be considered?

Held:

- The incomes received towards (i) salary/remuneration as a Non-Executive Director of a private limited company, (ii) renting of commercial property, (iii) renting of residential property, and (iv) the values of amounts extended as deposits/loans/advances out of which interest is being received are to be included in the aggregate turnover, for registration.
- The income received from renting of residential property is to be included in the aggregate turnover, though it is an exempted supply.

Business Operating from different States with same PAN Number

1. In such case, PAN holder is liable to take a registration separately for each of the states where he has a business operation and is liable to pay GST in terms of sub-section (1) of section 22 of the CGST/ SGST Act.
2. Where a person having multiple places of business in a single State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed [Section 25(2)].

Important Points in relation to Registration:

- Registration under GST is to be taken State wise meaning there by that there should be a separate registration in each state from where the person intends to make a supply.
- There is single registration whether it be CGST / IGST/ SGST/ UTGST. There is no need to have separate registration for each of the acts.
- Unlike erstwhile service tax regime there is no provision of pan India registration under GST.

Registration in case of Persons Migrated from the Legacy Tax Regime [Section 22(2)]

Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this act with effect from the appointed day.

Appointed day: In terms of Section 2(10) of the CGST Act, "appointed day" means the date on which the provisions of this act shall come into force.

For this purpose appointed day is considered as 1.7.2017 when CGST Act, 2017 came into operation.

Procedure for Migration of persons registered under the existing law [CGST Rules].

Rule 24 of the CGST Rules, provides that:

(1) (a) Every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account Number issued under the provisions of the Income-tax Act, 1961 (Act 43 of 1961) shall enroll on the **common portal (www.gst.gov.in)** by validating his e-mail address and mobile number, either directly or through a Facilitation Centre notified by the Commissioner.

(b) Upon enrolment under clause (a), the said person shall be granted registration on a provisional basis and a certificate of registration in **FORM GST REG-25**, incorporating the Goods and Services Tax Identification Number therein, shall be made available to him on the common portal:

Provided that a taxable person who has been granted multiple registrations under the existing law on the basis of a single Permanent Account Number shall be granted only one provisional registration under the act.

(2) (a) Every person who has been granted a provisional registration under sub-Rule (1) shall submit an application electronically in **FORM GST REG-26**, duly signed or verified through electronic verification code, along with the information and documents specified in the said application, on the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(b) The information asked for in clause (a) shall be furnished within a period of three months or within such further period as may be extended by the Commissioner in this behalf.

(c) If the information and the particulars furnished in the application are found, by the proper officer, to be correct and complete, a certificate of registration in **FORM GST REG-06** shall be made available to the registered person electronically on the common portal.

(3) Where the particulars or information specified in sub-Rule (2) have either not been furnished or not found to be correct or complete, the proper officer shall, after serving a notice to show cause in **FORM GST REG-27** and after affording the person concerned a reasonable opportunity of being heard, cancel the provisional registration granted under sub-Rule (1) and issue an order in **FORM GST REG-28:**

Provided that the show cause notice issued in **FORM GST REG-27** can be withdrawn by issuing an order in **FORM GST REG-20**, if it is found, after affording the person an opportunity of being heard, that no such cause exists for which the notice was issued.

[(3A) Where a certificate of registration has not been made available to the applicant on the common portal within a period of fifteen days from the date of the furnishing of information and particulars referred to in clause (c) of sub-Rule (2) and no notice has been issued under sub-Rule (3) within the said period, the registration shall be deemed to have been granted and the said certificate of registration, duly signed or verified through electronic verification code, shall be made available to the registered person on the common portal.]

(4) Every person registered under any of the existing laws, who is not liable to be registered under the act may, on or before 31st March, 2018, at his option, submit an application electronically in **FORM GST REG-29** at the common portal for the cancellation of registration granted to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration.

Registration in case of Transfer of Business [Section 22(3) and Section 22(4)]

Transfer of business: Where a business carried on by a taxable person registered under this act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

Transfer of business pursuant to any scheme: Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal Persons liable for registration.

Separate registration for multiple places of business within a State or a Union Territory – Rule 11

(1) Any person having multiple places of business within a State or a Union territory, requiring a separate registration for any such place of business under sub-section (2) of section 25 shall be granted separate registration in respect of each such place of business subject to the following conditions, namely:-

(a) such person has more than one place of business as defined in clause (85) of section 2;

(b) such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business;

(c) all separately registered places of business of such person shall pay tax under the act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

Explanation: For the purposes of clause (b), it is hereby clarified that where any place of business of a registered person that has been granted a separate registration becomes ineligible to pay tax under section 10, all other registered places of business of the said person shall become ineligible to pay tax under the said section.

(2) A registered person opting to obtain separate registration for a place of business shall submit a separate application in **FORM GST REG-01** in respect of such place of business.

(3) The provisions of Rule 9 and Rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this Rule.

<table>
<tr><th colspan="2">Clarification by CBIC on registration requirements of Resident Welfare Associations
Circular No. 109/28/2019-GST, dated 22-7-2019</th></tr>
<tr><td>A RWA has aggregate turnover of Rs. 20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500/- per month per member?</td><td>No. If aggregate turnover of an RWA does not exceed Rs. 20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member.

RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more.</td></tr>
</table>

Annual turnover of RWA	*Monthly maintenance charge*	*Whether exempt?*
More than Rs. 20 lakhs	More than Rs. 7500/-	No
	Rs. 7500/- or less	Yes
Rs. 20 lakhs or less	More than Rs. 7500/-	Yes
	Rs. 7500/- or less	Yes

Question:

State with brief reason, whether following supplies of taxable goods are required to register under the GST Law:

Mr. G of Rajasthan is engaged in trading of taxable goods on his own account and also acting as an agent of Mr. H of Delhi. His turnover in the financial year 21-22 is of Rs.32 lakhs on his own account and Rs. 9 lakhs on behalf of principal. Both turnovers are Intra-State supply.

Answer:

As per section 22, every supplier of goods shall be liable to be registered if his aggregate turnover in a financial year exceeds Rs. 40,00,000.

Aggregate turnover shall include all supplies made by the taxable person whether on his own or on behalf of his principals. In the given case, aggregate turnover of Mr. G is exceeding Rs. 40,00,000 (i.e. 32,00,000+9,00,000) hence GST registration is compulsory.

Persons Not Liable for Registration

Section 23(1) of the CGST Act states that the following persons shall not be liable to registration, namely: -

a. any person engaged **exclusively** in the business of supplying goods or services or both that are **not liable to tax or wholly exempt from tax** under this act or under the Integrated Goods and Services Tax Act (In short IGST Act).

b. **an agriculturist**, to the extent of **supply of produce out of cultivation of land.**

The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this act.

CASE LAW

AUTHORITY FOR Advance Rulings, Kolkata, Joint Plant Committee, In re. CASE NO. 02 OF 2018, March 21, 2018, it was opined that an applicant engaged exclusively in supplying goods and services that are wholly exempt from tax is not required to be registered under GST Act if he is not otherwise liable to pay tax under reverse charge under section 9(3) of GST Act or section 5(3) of IGST Act.

Example: A, a farmer produces goods through cultivation from his own land and supplies the same to traders. The goods so supplied during the whole of the year aggregates to Rs. 50 lacs. He is not liable to get the registration in terms of Section 23(1)(b) of the CGST Act.

Compulsory Registration in Certain Cases

Section 24 of the CGST Act states that notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this act, -

i. Persons making any Inter-State taxable supply;

ii. Casual taxable persons making taxable supply;

iii. persons who are required to pay tax under reverse charge;

iv. person who are required to pay tax under sub-section (5) of section 9;

v. non-resident taxable persons making taxable supply;

vi. persons who are required to deduct tax under section 51, whether or not separately registered under this act;

vii. persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

viii. Input Service Distributor, whether or not separately registered under this act;

ix. persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

x. every electronic commerce operator who is required to collect tax at source under section 52;

xi. every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person.

In addition to above, the Government may notify other person or class of persons, on the recommendations of the Council, who shall be required to be registered mandatorily.

CASE LAW

In Re : Habufa Meubelen B.V. 2018 (14) G.S.T.L. 596 (A.A.R. - GST)

(A) ***Facts -*** M/s. Habufa Meubelen B.V. (hereby referred to as HO), is a company originally incorporated in Netherlands. The applicant is the Indian Office of M/s. Habufa Meubelen B.V. (HO) which is established as a Liaison Office at C-36, Raghu Marg, Main Hanuman Nagar, Vaishali Nagar, Jaipur (Raj.) w.e.f. 18-12- 2007,

with the prior permission of RBI subject to various conditions. The liaison office does not have any independent revenue or clients. The office has been established for the purpose of liasoning with the suppliers with regard to quality control of goods. The purchase order or contracts are entered with the clients with the HO and liaison office does not enter into any contract with the clients. Payments for the supplies are made by HO directly to the account of supplier and all the expenses incurred by liaison office is claimed from HO as per clear instructions of RBI. There is no amount charged by liaison office from HO for any services. It seeks only reimbursement of salary and expenses incurred by it from HO. HO is also responsible for payment of gratuity and other benefits of employees, etc.

(B) ***Issue for Determination***

The questions/issues before the Authority for Advance Ruling (AAR) for determination are :

1. Whether the reimbursement of expenses and salary paid by M/s. Habufa Meubelen B.V. (HO) to the liaison office established in India is liable to GST as supply of service, especially when no consideration for any services is charged/paid.
2. Whether the applicant, i.e., the Liaison Office is required to get registered under GST?
3. If it is assumed that the reimbursement of expenses and salary claimed by liaison office is a consideration towards a service, then what will be the place of supply of such service?

(C) ***Findings***

1. As submitted by the applicant, they are working as the Indian Office of M/s. Habufa Meubelen.

   B.V. which is established as a Liaison Office with the prior permission of RBI. Except proposed liaison work, this office in India would not undertake any activity of trading, commercial or industrial nature nor would they enter into any business contracts in its own name without RBIs prior permission. There is no commission/fees being charged or any other remuneration being received/income being earned by the office in India for the liaison activities/services rendered by it.

2. The HO, Netherlands reimburses the expenses incurred by the applicant for their operations in India which are in the nature of salary, rent, security, electricity, travelling etc. The applicant does not have any other source of income and it is solely dependent on the HO for all the expenses incurred by the applicant, which are subsequently reimbursed by the HO. Therefore the HO and Liaison Office cannot be treated as separate persons. Since, HO and Liaison Office cannot be treated as separate persons, there cannot be any fl of services between them as one cannot provide service to self and therefore, the reimbursement of expenses made by the HO cannot be treated as a consideration towards any service.

3. The amount received from HO are the funds for payment of salary, reimbursement of expenses like rent, security, electricity, travelling, etc. No consideration is being charged by the applicant from the HO for such services.

4. Further the liaison office is strictly prohibited to undertake any activity of trading, commercial or industrial nature or entering into any business contracts in its own name. Also the reimbursement claimed by them from their HO is also falling out of the purview of supply of service. As there are no taxable supplies made by the Liaison office, they are not required to get registered.

5. In view of the submissions made by the applicant and as discussed in above paras, when the applicant/ liaison office is working as per the terms and conditions as mentioned under Para 1.1 to 1.5 above, the reimbursement of expenses and salary paid by M/s. Habufa Meubelen B.V. to the liaison office, is not liable to GST, as no consideration for any services is being charged by the liaison office. Further, the kind of reimbursement claimed by them from their HO is also falling out of the

purview of supply of service and as there are no such taxable supplies made by the Liaison office, they are not required to get themselves registered under GST.

(D) ***Ruling***

If the liaison office in India does not render any consultancy or other services directly/in directly, with or without any consideration and the liaison office does not have significant commitment powers, except those which are required for normal functioning of the office on behalf of Head Office then the reimbursement of expenses and salary paid by M/s. Habufa Meubelen B.V. (HO) to the Liaison Office established in India, is not liable to GST and the applicant, i.e., M/s. Habufa Meubelen B.V. Jaipur, is not required to get itself registered under GST.

Question:

State with brief reason, whether following supply of taxable goods are required to register under the GST Law:

Mr. Hari is engaged in wholesale cum retail trading of medicines in the State of Assam. His aggregate turnover during the financial year is Rs.9,00,000 which consists of Rs. 8,00,000 as Intra-State supply and Rs.1,00,000 as Inter-State supply.

Answer:

As per section 24, if any person making interstate supply of goods then registration is compulsory irrespective of turnover. In the given case, Mr. Hari is supplying interstate hence registration is compulsory irrespective of turnover.

Procedure for Registration – Statutory Registration

Section 25 of the CGST states that:

(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005 (28 of 2005), in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.

Explanation*:* Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this act shall be granted a single registration in a State or Union territory:

Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of **each such registration, be treated as distinct persons** for the purposes of this act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this act.

(6) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 in order to be eligible for grant of registration:

Provided that **a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number** issued under the said act in order to be eligible for grant of registration.

(6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this act shall apply as if such person does not have a registration.

(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6C) On and from the date of notification every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification.

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Explanation: For the purposes of this section, the expression "Aadhaar number" shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016."

Vide **Notification No. 3/2021-C.T., dated 23-2-2021,** the Central Government has notified that the provisions of sub-section (6B) or sub-section (6C) of Section 25 of the CGST Act shall not apply to a person:

(a) who is not a citizen of India

(b) a department or establishment of a Central Government or a State Government

(c) a local authority

(d) a statutory body

(e) a Public Sector Undertaking

(f) a person applying for registration under the provisions of Section 25(9) of the CGST Act.

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

Entity Code: It is the alpha-numeric (1-9 and then A-Z) and is assigned based on the number of registrations a legal entity (having the same PAN) has within one State.

Example: A legal entity with single registration within a State would have number 1 as 13th digit of the GSTIN. If the same legal entity goes for a second registration for a second business vertical in the same State, the 13th digit of GSTIN assigned to this second entity would be 2. Hence, a legal entity can register upto 35 business verticals within a State.

(8) Where a person who is liable to be registered under this act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1), -

a. any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

b. any other person or class of persons, as may be notified by the Commissioner, shall be granted a **Unique Identity Number** in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

Assignment of Unique Identity Number to certain special entities: Rule 17 of the CGST Rules provides that:

(1) Every person required to be granted a Unique Identity Number in accordance with the provisions of sub- section (9) of section 25 may submit an application electronically in **FORM GST REG-13**, duly signed or verified through electronic verification code, in the manner specified in Rule 8 at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(1A) The Unique Identity Number granted under sub-Rule (1) to a person under clause (a) of sub-section (9) of section 25 shall be applicable to the territory of India.

(2) The proper officer may, upon submission of an application in **FORM GST REG-13** or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a Unique Identity Number to the said person and issue a certificate in **FORM GST REG-06** within a period of **three working days** from the date of the submission of the application.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a **Unique Identity Number** shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.

State Code		***PAN***										***Entity Code***		***Check Digit***
1	***2***	***3***	***4***	***5***	***6***	***7***	***8***	***9***	***10***	***11***	***12***	***13***	***14***	***15***

Procedure for Registration under CGST Rules

Rule 8. Application for registration. -

(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant") shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of **FORM GST REG-01** on the common portal, either directly or through a Facilitation Centre notified by the Commissioner :

Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

(2) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes and shall also be verified through a separate one-time password sent to the said mobile number; and the e-mail address linked to the Permanent Account Number.

(3) On successful verification of the Permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

(4) Using the reference number generated under sub-Rule (3), the applicant shall electronically submit an application in **Part B of FORM GST REG-01,** duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

New Sub-Rule (4A) & (4B) (Notification No. 26/2022-CT dated 26.12.2022)

[(4A) Every application made under Rule (4) shall be followed by -

(a) biometric-based Aadhaar authentication and taking photograph, unless exempted under sub-section (6D) of section 25, if he has opted for authentication of Aadhaar number; or

(b) taking biometric information, photograph and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of section 25, if he has opted not to get Aadhaar authentication done, *of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in* ***FORM GST REG-01*** *at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-Rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-Rule.]*

(4B) The Central Government may, on the recommendations of the Council, by notification specify the States or Union territories wherein the provisions of sub-Rule (4A) shall not apply.

(5) On receipt of an application under sub-Rule (4), an acknowledgement shall be issued electronically to the applicant in **FORM GST REG-02.**

(6) A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-Rule (5) shall be issued electronically only after the said deposit.

Rule 9. Verification of the application and approval. -

(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of [seven] working days from the date of submission of the application.

Provided that where -

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-Rule (4A) of Rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, the registration shall be granted within thirty days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided under Rule 25 and verification of such documents as the proper officer may deem fit.

(2) Where the application submitted under Rule 8 is found to be deficient, either in terms of any information or any document required to be furnished under the said Rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in **FORM GST REG-03** within a period of [seven] working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in **FORM GST REG-04**, within a period of seven working days from the date of the receipt of such notice.

"**Provided** that where -

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-Rule (4A) of Rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business; the notice in **FORM GST REG-03** may be issued not later than thirty days from the date of submission of the application.]

Explanation: For the purposes of this sub-Rule, the expression "clarification" includes modification or correction of particulars declared in the application for registration, other than Permanent Account Number, State, mobile number and e-mail address declared in Part A of **FORM GST REG-01**.

(3) Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within a period of seven working days from the date of the receipt of such clarification or information or documents.

(4) Where no reply is furnished by the applicant in response to the notice issued under sub-Rule (2) or where the proper officer is not satisfied with the clarification, information or documents furnished, he [may], for reasons to be recorded in writing, reject such application and inform the applicant electronically in **FORM GST REG-05.**

(5) If the proper officer fails to take any action, -

(a) within a period of seven working days from the date of submission of the application in cases where the person is not covered under proviso to sub-Rule (1); or

(b) within a period of thirty days from the date of submission of the application in cases where a person is covered under proviso to sub-Rule (1); or

(c) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-Rule (2), the application for grant of registration shall be deemed to have been approved.

Rule 10. Issue of registration certificate. -

(1) Subject to the provisions of sub-section (12) of section 25, where the application for grant of registration has been approved under Rule 9, a certificate of registration in **FORM GST REG-06** showing the principal place of business and additional place or places of business shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number shall be assigned subject to the following characters, namely :-

(a) two characters for the State code;

(b) ten characters for the Permanent Account Number or the Tax Deduction and Collection Account Number;

(c) two characters for the entity code; and

(d) one checksum character.

(2) The registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of thirty days from such date.

(3) Where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration under sub-Rule (1) or sub-Rule (3) or sub-Rule (5) of Rule 9.

(4) Every certificate of registration shall be duly signed or verified through electronic verification code by the proper officer under the act.

(5) Where the registration has been granted under sub-Rule (5) of Rule 9, the applicant shall be communicated the registration number, and the certificate of registration under sub-Rule (1), duly signed or verified through electronic verification code, shall be made available to him on the common portal, within a period of three days after the expiry of the period specified in sub-Rule (5) of Rule 9.

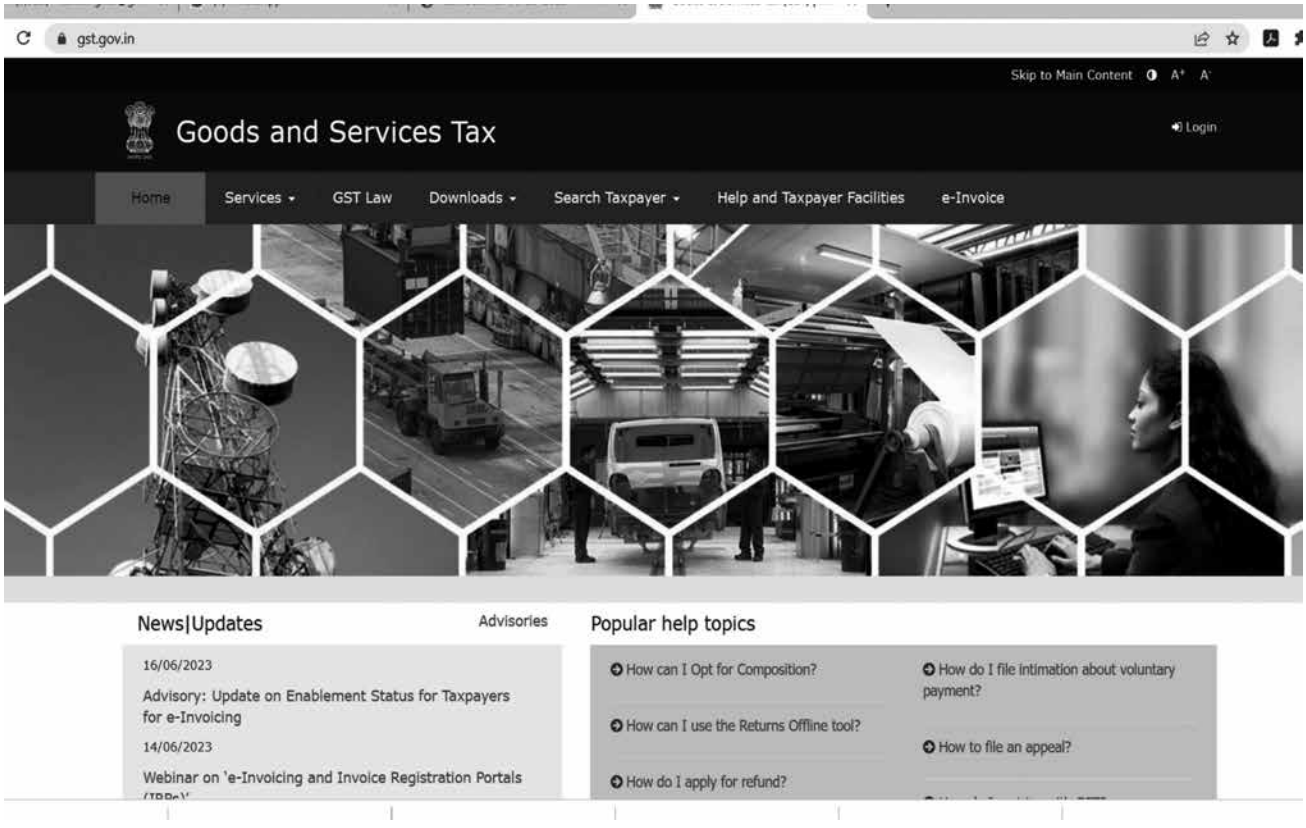
Rule 10A. Furnishing of Bank Account Details. - After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under Rule 12 or, as the case may be Rule 16, shall as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account which is in name of the registered person and obtained on Permanent Account Number of the registered person, or any other information, as may be required on the common portal in order to comply with any other provision.

Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.

Rule 25. Physical verification of business premises in certain cases. - Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication [or due to not opting for Aadhaar authentication] before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in **FORM GST REG-30** on the common portal within a period of fifteen working days following the date of such verification.

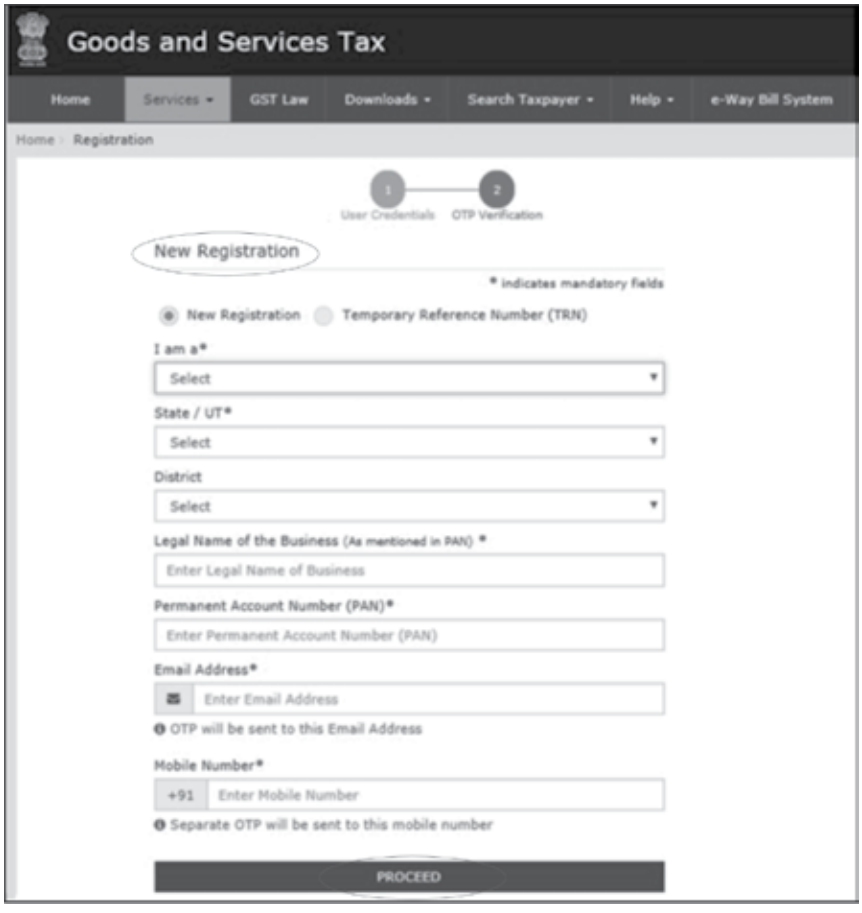
Practical Aspects of Registration

Step 1: To get registration under GST online, firstly the applicant needs to visit GST portal, i.e., *https://www.gst.gov.in/*.



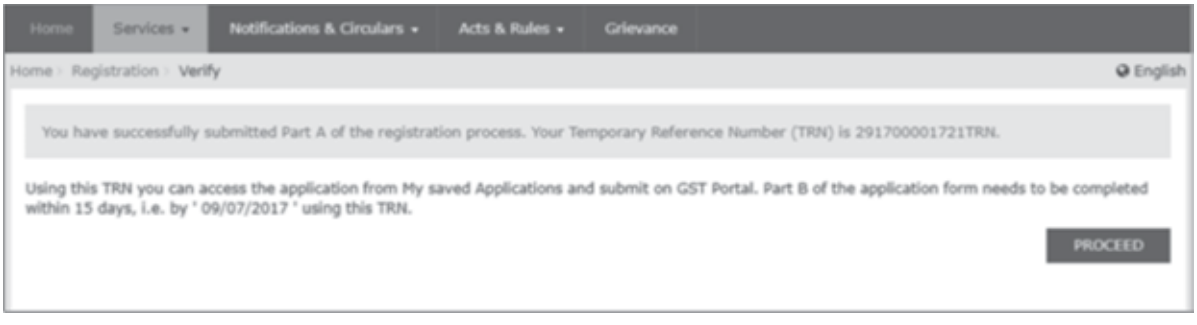
Step 2: Applicant has to click on 'Register now' link under 'Taxpayers' tab (Normal/TDS/TCS).

Step 3: The applicant will reach at *https://reg.gst.gov.in/registration/*. Now Select 'New Registration' and fill the below-mentioned details and click on 'Proceed'.



Step 4: On the subsequent OTP verification page, enter the OTP you received on your mobile number and that on your email address. Please note that this OTP is valid only for only 10 minutes.

Step 5: OTP (One Time Password) verification is done and the applicant receive the Temporary Reference Number (TRN) on mobile and e mail.



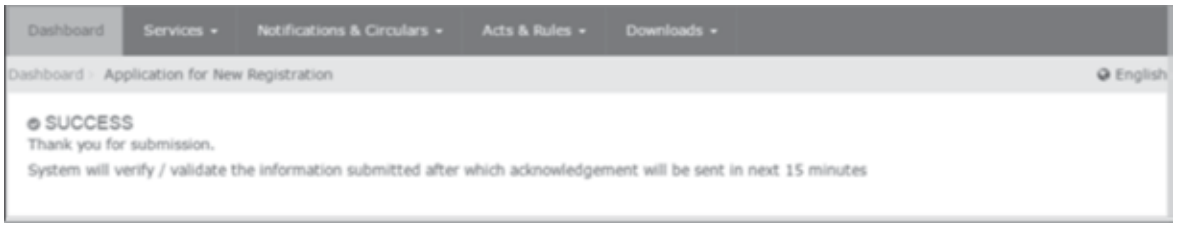
Step 6: The Applicant again receive an OTP on mobile / email id. enter the OTP and click on proceed after which applicant can see the status of application.

Step 7: After clicking edit Icon applicant can go on Part B which has various sections. The Applicant fill all the details and submit with appropriate documents.

Step 8: Once all the details are filled, applicant needs to go to the verification Page and tick on the declaration and submit the application using any of the following ways:

- Companies must submit application using DSC (Digital Signature Certificate).
- Using e-sign:- OTP will be sent to Aadhaar registered number.
- Using EVC (Electronic Verification Code): OTP will be sent to the registered mobile.

Step 9: A success message is displayed and Application Reference Number (ARN) is sent to registered email id and mobile. We can check the ARN status of our registration by entering the ARN in GST portal.



Effective Date of Registration:

- Where the application for registration has been submitted within 30 days from the date on which the person becomes liable to registration: The effective date of registration shall be the date on which he became liable for registration.
- Where the application for registration has been submitted by the applicant after 30 days from the date of his becoming liable to registration: The effective date of registration shall be the date of grant of registration.
- Voluntarily Registration: In case of a person taking registration voluntarily while being within the threshold exemption limit for paying tax, the effective date of registration shall be the date of order of registration.

- For Casual taxable persons / Non-resident taxable person: A Casual Taxable person and a non-resident taxable person should however apply for registration at least 5 days prior to commencement of business.

***Question*: Answer the following questions with respect to casual taxable person under CGST Act, 2017:**

(i) Who is a causal taxable person?

(ii) Can a casual taxable person opt for the composition scheme?

(iii) When is the causal taxable person liable to get registered?

(iv) What is the validity period of the registration certificate issued to a casual taxable person?

(v) Can the validity of registration certificate issued to a casual taxable person be extended? If yes, what will be the period of extension?

Answer:

(i) As per section 2 (20), "casual taxable person" means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

(ii) As per Rule 5, a casual taxable person cannot opt for composition scheme.

(iii) As per section 24, Every casual taxable person shall also be required to take registration irrespective of the turnover and procedure shall be same. He should apply for registration at least 5 days prior to commencement of business. Registration shall be granted only after the applicant has paid estimated amount of GST in advance.

(iv) As per section 27, Certificate shall be valid for the specified period but maximum 90 days.

(v) Yes it can be extended. Proper officer may extend it further but for maximum 90 days i.e. total period can be maximum 180 days. Such person shall make advance deposit of GST as estimated by him

Deemed Registration

Section 26 of the CGST Act provides that:

1. The grant of registration or the Unique Identity Number under the SGST Act or the UTGST Act shall be deemed to be a grant of registration or the Unique Identity Number under the CGST Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under the CGST Act within the time specified in sub-section (10) of section 25.
2. Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the SGST Act or the UTGST Act shall be deemed to be a rejection of application for registration under the CGST Act.

Special provisions relating to casual taxable person and non-resident taxable person

Section 27 of the CGST Act provides that:

1. The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration:

Provided that the proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of ninety days by a further period not exceeding ninety days.

2. A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought:

Provided that where any extension of time is sought under sub-section (1), such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

The amount deposited under sub-section (2) shall be credited to the electronic cash ledger of such person and shall be utilised in the manner provided under section 49.

Casual Taxable Person: In terms of Section 2(20) of the CGST Act, "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.

Procedure for grant of registration to non-resident taxable person:

Rule 13 of CGST Rules provides that:

1. A non-resident taxable person shall electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code, in **FORM GST REG-09,** at least five days prior to the commencement of business at the common portal either directly or through a Facilitation Centre notified by the Commissioner:

   Provided that in the case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its Permanent Account Number, if available.

2. A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the common portal for making an advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-Rule (5) of Rule 8 shall be issued electronically only after the said deposit in his electronic cash ledger.

3. The provisions of Rule 9 and Rule 10 relating to the verification and the grant of registration shall, mutatis mutandis, apply to an application submitted under this Rule.

4. The application for registration made by a non-resident taxable person shall be [duly signed or verified through electronic verification code] by his authorised signatory who shall be a person resident in India having a valid Permanent Account Number.

Extension in period of operation by casual taxable person and non-resident taxable person:

Rule 15 of the CGST Rules provides that:

1. Where a registered casual taxable person or a non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in **FORM GST REG-11** shall be submitted electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner, by such person before the end of the validity of registration granted to him.

2. The application under sub-Rule (1) shall be acknowledged only on payment of the amount specified in sub-section (2) of section 27.

Grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient:

Rule 14 of the CGST Rules provides that:

1. Any person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient shall electronically submit an application for registration, duly signed or verified through electronic verification code, in **FORM GST REG-10**, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.
2. The applicant referred to in sub-Rule (1) shall be granted registration, in **FORM GST REG-06**, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.

Grant of Registration to persons required to Deduct Tax at Source or to Collect Tax at Source

Rule 12 of the CGST Rules provide that:

1. Any person required to deduct tax in accordance with the provisions of section 51 or a person required to collect tax at source in accordance with the provisions of section 52 shall electronically submit an application, duly signed or verified through electronic verification code, in **FORM GST REG-07** for the grant of registration through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

1A. A person applying for registration to deduct or collect tax in accordance with the provisions of section 51 or 52, in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in **Part A** of the application in **FORM GST REG-07** and mention the name of the State or Union territory in **Part B** thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in **Part A**.

2. The proper officer may grant registration after due verification and issue a certificate of registration in **FORM GST REG-06** within a period of **three working days** from the date of submission of the application.

3. Where, upon an enquiry or pursuant to any other proceeding under the act, the proper officer is satisfied that a person to whom a certificate of registration in **FORM GST REG-06** has been issued is no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, the said officer may cancel the registration issued under sub-Rule (2) and such cancellation shall be communicated to the said person electronically in **FORM GST REG-08:**

Provided that the proper officer shall follow the procedure as provided in Rule 22 for the cancellation of registration.

Amendment of registration

Section 28 of the CGST Act provides that:

1. Every registered person and a person to whom a Unique Identity Number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in such form and manner and within such period as may be prescribed.
2. The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed:

   Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed:

Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

3. Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this act.

Amendment of registration: Rule 19 of the CGST Rules provides that:

(1) Where there is any change in any of the particulars furnished in the application for registration in **FORM GST REG-01** or **FORM GST REG-07** or **FORM GST REG-09** or **FORM GST REG-10** or for Unique Identity Number in **FORM GST-REG-13**, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, the registered person shall, within a period of fifteen days of such change, submit an application, duly signed or verified through electronic verification code, electronically in **FORM GST REG-14**, along with the documents relating to such change at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that:

a. where the change relates to, (i) legal name of business; (ii) address of the principal place of business or any additional place(s) of business; or (iii) addition, deletion or retirement of partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for the day to day affairs of the business, which does not warrant cancellation of registration under section 29, the proper officer shall, after due verification, approve the amendment within a period of fifteen working days from the date of the receipt of the application in **FORM GST REG-14** and issue an order in **FORM GST REG-15** electronically and such amendment shall take effect from the date of the occurrence of the event warranting such amendment;

b. the change relating to sub-clause (i) and sub-clause (iii) of clause (a) in any State or Union territory shall be applicable for all registrations of the registered person obtained under the provisions of this Chapter on the same Permanent Account Number;

c. where the change relates to any particulars other than those specified in clause (a), the certificate of registration shall stand amended upon submission of the application in **FORM GST REG- 14** on the common portal;

d. where a change in the constitution of any business results in the change of the Permanent Account Number of a registered person, the said person shall apply for fresh registration in **FORM GST REG-01:**

Provided further that any change in the mobile number or e-mail address of the authorised signatory submitted under this Rule, as amended from time to time, shall be carried out only after online verification through the common portal in the manner provided under sub-Rule (2) of Rule 8.

(1A) Notwithstanding anything contained in sub-Rule (1), any particular of the application for registration shall not stand amended with effect from a date earlier than the date of submission of the application in **FORM GST REG-14** on the common portal except with the order of the Commissioner for reasons to be recorded in writing and subject to such conditions as the Commissioner may, in the said order, specify.

(2) Where the proper officer is of the opinion that the amendment sought under sub-Rule (1) is either not warranted or the documents furnished therewith are incomplete or incorrect, he may, within a period of fifteen working days from the date of the receipt of the application in **FORM GST REG-14**, serve a notice in **FORM GST REG-03**, requiring the registered person to show cause, within a period of seven working days of the service of the said notice, as to why the application submitted under sub-Rule (1) shall not be rejected.

(3) The registered person shall furnish a reply to the notice to show cause, issued under sub-Rule (2), in **FORM GST REG-04**, within a period of seven working days from the date of the service of the said notice.

(4) Where the reply furnished under sub-Rule (3) is found to be not satisfactory or where no reply is furnished in response to the notice issued under sub-Rule (2) within the period prescribed in sub-Rule (3), the proper officer shall reject the application submitted under sub-Rule (1) and pass an order in **FORM GST REG -05**.

(5) If the proper officer fails to take any action,-

(a) within a period of fifteen working days from the date of submission of the application, or

(b) within a period of seven working days from the date of the receipt of the reply to the notice to show cause under sub-Rule (3), the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

Cancellation or Suspension of Registration

Section 29 of the CGST provides that:

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where, -

a. the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

b. there is any change in the constitution of the business; or

c. the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25.

Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, -

a. a registered person has contravened such provisions of the act or the Rules made thereunder as may be prescribed; or

b. a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

c. any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

d. any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

e. registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this act or to discharge any obligation under this act or the Rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

Application for Cancellation or Suspension of Registration

Rule 20 of the CGST Rules provides that a registered person, other than a person to whom a registration has been granted under Rule 12 or a person to whom a Unique Identity Number has been granted under Rule 17, seeking cancellation of his registration under sub-section (1) of section 29 shall electronically submit an application in **FORM GST REG-16,** including therein the details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock on the date from which the cancellation of registration is sought, liability thereon, the details of the payment, if any, made against such liability and may furnish, along with the application, relevant documents in support thereof, at the common portal within a period of thirty days of the occurrence of the event warranting the cancellation, either directly or through a Facilitation Centre notified by the Commissioner.

Registration to be cancelled in certain cases:

Rule 21 of the CGST Rules states that the registration granted to a person is liable to be cancelled, if the said person,-

(a) does not conduct any business from the declared place of business; or

(b) issues invoice or bill without supply of goods or services or both in violation of the provisions of the act, or the Rules made thereunder; or

(c) violates the provisions of section 171 of the act or the Rules made thereunder;

(d) violates the provision of Rule 10A;

(e) avails input tax credit in violation of the provisions of section 16 of the act or the Rules made thereunder; or

(f) furnishes the details of outward supplies in **FORM GSTR-1** under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or

(g) violates the provision of Rule 86B.

(h) violates the provision of Rule 86B.

(i) being a Registered Person required to file return under sub-section (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;

(j) being a Registered Person required to file return under sub-section (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.

Rule 21A. Suspension of Registration. –

(1) Where a registered person has applied for cancellation of registration under Rule 20, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration under Rule 22.

(2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under Rule 21, he may, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under Rule 22.

(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

(a) the details of outward supplies furnished in **FORM GSTR-1;** or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR-1,**

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the act or the Rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in **FORM GST REG-31,** electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.

(3) A registered person, whose registration has been suspended under sub-Rule (1) or sub-Rule (2) or sub-Rule (2A), shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.

Explanation. - For the purposes of this sub-Rule, the expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.]

(3A) A registered person, whose registration has been suspended under sub-Rule (2) or sub-Rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.]

(4) The suspension of registration under sub-Rule (1) or sub-Rule (2) or sub-Rule (2A) shall be deemed to be revoked upon completion of the proceedings by the proper officer under Rule 22 and such revocation shall be effective from the date on which the suspension had come into effect.]

Provided that the suspension of registration under this Rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Provided further that where the registration has been suspended under sub-Rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under Rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns [Inserted vide Notification No. 14/2022 - CT dated 05.07.2022.]

(5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

Note: Students may refer (Circular No. 145/01/2021-GST dated 11 Feb, 2021 in respect of Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-Rule (2A) of Rule 21A of CGST Rules, 2017 *(https://taxinformation.cbic.gov.in/view-pdf/1002920/ENG/Circulars)*

Cancellation of Registration:

Rule 22 of the CGST Rules provides that:

1. Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in **FORM GST REG-17**, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.
2. The reply to the show cause notice issued under sub-Rule (1) shall be furnished in **FORM REG-18** within the period specified in the said sub-Rule.
3. Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in **FORM GST REG-19**, within a period of thirty days from the date of application submitted under Rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-Rule (1) [or under sub-Rule (2A) of Rule 21A, cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.
4. Where the reply furnished under sub-Rule (2) or in response to the notice issued under sub-Rule (2A) of Rule 21A is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in **FORM GST REG-20**.

   Provided that where the person instead of replying to the notice served under sub-Rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in **FORM GST- REG 20**.
5. The provisions of sub-Rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

Revocation of Cancellation of Registration

Section 30 of the CGST provides that:

(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,-

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this act.

Revocation of cancellation of registration: Rule 23 of the CGST Rules states that:

1. A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30, in **FORM GST REG-21**, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

   Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

   Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of **thirty days** from the date of order of revocation of cancellation of registration:

   Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of **thirty days** from the date of order of revocation of cancellation of registration.

2. (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in **FORM GST REG-22** within a period of **thirty days** from the date of the receipt of the application and communicate the same to the applicant.

   (b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in **FORM GST REG- 05**, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

3. The proper officer shall, before passing the order referred to in clause (b) of sub-Rule (2), issue a notice in **FORM GST REG-23** requiring the applicant to show cause as to why the application submitted for revocation under sub-Rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in **FORM GST REG-24.**

4. Upon receipt of the information or clarification in **FORM GST REG-24**, the proper officer shall proceed to dispose of the application in the manner specified in sub-Rule (2) within a period of **thirty days** from the date of the receipt of such information or clarification from the applicant.

   Note: **Clarification BY CBIC FOR Revocation OF Cancellation OF Registration** Students may refer *Circular No. 99/18/2019-GST, dated 23-4-2019 at (https://taxinformation.cbic.gov.in/view-pdf/1002967/ENG/Circulars.*

OTHER PROVISIONS RELATING TO REGISTRATION

Display of Registration Certificate and GST Identification Number on the Sign Board of Business establishment

Rules 18 of the CGST Rules provides that:

1. Every registered person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place or places of business.
2. Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.

Modes of Authentication of Documents

Rule 26 of the CGST Rules provides that:

(1) All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these Rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf:

Provided that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall furnish the documents or application verified through digital signature certificate.

Provided also that a registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of April, 2021 to the 31st day of August, 2021, also be allowed to furnish the return under section **39 in FORM GSTR-3B** and the details of outward supplies under section 37 in **FORM GSTR-1** or using invoice furnishing facility, verified through electronic verification code (EVC)".

(2) Each document including the return furnished online shall be signed or verified through electronic verification code-

a. in the case of an **individual**, by the individual himself or where he is absent from India, by some other person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

b. in the case of a **Hindu Undivided Family**, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;

c. in the case of a **company**, by the chief executive officer or authorised signatory thereof;

d. in the case of a **Government or any Governmental agency or local authority,** by an officer authorised in this behalf;

e. in the case of a **firm**, by any partner thereof, not being a minor or authorised signatory thereof;

f. in the case of any other **association**, by any member of the association or persons or authorised signatory thereof;

g. in the case of a **trust**, by the trustee or any trustee or authorised signatory thereof; or

h. in the case of **any other person**, by some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48.

3. All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf.

Suo Moto Registration

Rule 16 of the CGST Rules provides that:

1. Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the act, the proper officer finds that a person liable to registration under the act has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in **FORM GST ReG-12.**
2. The registration granted under sub-Rule (1) shall be effective from the date of such order granting registration.
3. Every person to whom a temporary registration has been granted under sub-Rule (1) shall, within a period of ninety days from the date of the grant of such registration, submit an application for registration in the form and manner provided in Rule 8 or Rule 12:

   Provided that where the said person has filed an appeal against the grant of temporary registration, in such case, the application for registration shall be submitted within a period of thirty days from the date of the issuance of the order upholding the liability to registration by the Appellate Authority.
4. The provisions of Rule 9 and Rule 10 relating to verification and the issue of the certificate of registration shall, mutatis mutandis, apply to an application submitted under sub-Rule (3).

The Goods and Services Tax Identification Number assigned, pursuant to the verification under sub- Rule (4), shall be effective from the date of the order granting registration under sub-Rule (1).

CASE LAW

In Re : Sawai Manoharlal Rathi, 2020 (38) G.S.T.L. 354 (A.A.R. - GST - Guj.)

Facts : The applicant has submitted that he is an individual having not engaged in any business. His receipts are only from savings, personal loans and advances and deposits, which are reflected in the Income Tax Returns. The applicant has further submitted that his estimated receipts for the F.Y. 2018-19 is likely to be totally Rs. 20,12,000/-, which includes, (i) Rent receipts : Rs. 9,84,000/-, (ii) Bank interest : Rs. 3,000/-, (iii) Interest on PPF deposit : Rs. 2,76,000/- and (iv) Interest on Personal Loans and Advances : Rs. 7,49,000/-.

Questions Asked

In light of the above backdrops, the applicant is seeking an advance ruling in respect of the following questions:

(1) Whether Interest received inform of PPF would be considered for the purpose of calculating the threshold limit of Rs. 20.00 Lakh for registration under GST Law?

(2) Whether Interest received on Personal Loans and Advanced to family/friends would be considered for the purpose of calculating the threshold limit of Rs. 20.00 Lakh for registration under GST Law?

(3) Whether Interest received on Saving Bank Account would be considered for the purpose of calculating the threshold limit of Rs. 20.00 Lakh for registration under GST Law?

Discussion:

Notification No. 12/2017-Central Tax (Rate) and Notification No. 9/2017-Integrated Tax (Rate), both dated 28-6- 2017, as amended, provides a list of services exempted from payment of Central Tax on Intra-State supply and Integrated Tax on Inter-State supply. *Entry 27(a) of the Notification No. 12/2017 and Entry 28(a) of the Notification No. 9/2017* relates to *services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest.*

The services regarding interest income are covered under the above Notification. Therefore, such services are exempted from payment of GST and the individual is *not required to discharge GST on the activity of providing services by way of extending deposits, loans or advances where the consideration is represented by way of interest.* Therefore, in given case GST is not leviable on Interest Income earned by the Applicant.

From the above, it is revealed that the applicant is an individual with an annual turnover of more than Rs. 20 Lakh. Since this income is interest-related, the turnover is exempt from GST. However, the Applicant also supplies services of *"Renting of immovable property"* along with activity of providing services by way of extending deposits, loans or advances where the consideration is represented by way of interest. His turnover from the rent income is Rs. 9.84 Lakh and we know that this transaction (*"Renting of immovable property"*) is chargeable to GST. However, his taxable turnover is only Rs. 9.84 Lakh. Going by the definition of *"aggregate turnover*", the Applicant is required to consider the value of both the taxable supply, i.e., *"Renting of immovable property" and exempted supply* of service provided by way of extending deposits, loans or advances for which they earned *interest income, to arrive at "Aggregate Turnover"* to determine the threshold limit for the purpose of obtaining registration under the GST Act.

In view of the above, we conclude that the Applicant is required to aggregate the value of exempted interest income earned by way of extending deposits in PPF & Bank Saving accounts and loans and advances given to his family/friends along with the value of the taxable supply, i.e., "Renting of immovable property" for the purpose of calculating the threshold limit of Rs. 20.00 Lakh for obtaining registration under GST law.

Ruling

Ques. 1 : *Whether Interest received in form of PPF would be considered for the purpose of calculating the threshold limit of Rs. 20.00 Lakh for registration under GST Law?*

Answer : Answered in the Affirmative, as discussed above.

Ques. 2 : *Whether Interest received on Personal Loans and Advanced to family/friends would be considered for the purpose of calculating the threshold limit of Rs. 20.00 Lakh for registration under GST Law?*

Answer : Answered in the Affirmative, as discussed above.

Ques. 3 : *Whether Interest received on Saving Bank Account would be considered for the purpose of calculating the threshold limit of Rs. 20.00 Lakh for registration under GST Law?*

Answer : Answered in the Affirmative, as discussed above.

Advantages of Registration

Registration under Goods and Services Tax (GST) regime will confer following advantages to the business:

- Legally recognized as supplier of goods or services.
- Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.

- Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.
- Getting eligible to avail various other benefits and privileges rendered under the GST laws.

Disadvantage for not getting Registration

Where a person is not registered under the GST regime, he can neither collect GST from his customers nor can claim any input tax credit of GST paid by him.

Besides, where a person fails to get registration even though he is required to taken under the provisions of CGST Act, be shall be liable to penal provisions under the said act.

Forms relating to Registration

Please refer Annexure I for the various Forms prescribed for registration, which is given at the end of this chapter.

Students are also advised to refer FAQs on GST released by Central Board of Indirect Taxes & Customs, New Delhi, 2nd Edition: 31st March, 2017 (Updated as on 1st January, 2018) to have a quick view on the subject matter.

Analysis

Section 22 of the CGST deals with the registration. Where the threshold limit provided under the act has exceeded, the supplier shall be liable for the registration with the tax authorities by obtaining a unique identification code which is known as GSTIN. **It is to be noted that single registration remains valid under CGST, SGST, UTGST and IGST**. Once the supplier has got registration it is mandatory to collect the tax and pay to the Government even though the turnover is below the threshold limit.

Section 22 casts an obligation on the part of the supplier to get the registration in the State or Union territory, from where he makes a taxable supply of goods or services or both. Although the GST is a destination based tax, however the registration is required in the State from where the supply of goods or services or both are being made and not in the State/UT were the supplies are made available.

The registration certificate is required to be displayed at each business premises.

Aggregate limit: In calculating the aggregate turnover, both taxable and exempted turnover shall be taken into account in deriving the threshold limit.

TAX INVOICE, DEBIT & CREDIT NOTES

Chapter VII of the CGST Act, 2017 read with Chapter VI of the CGST Rules, 2017 deals with various documents which a registered person is required to issue in the course of making supply of goods and/ or services. Such documents include Tax Invoice, Bill of Supply, Credit and Debit Notes, Delivery Challan, Receipt Voucher, Payment Voucher, etc.

Tax Invoice

Tax invoice is issued when a registered person makes a taxable supply. Section 2(66) of the CGST Act states that “invoice” or “tax invoice” means the tax invoice referred to in section 31. Section 31 of the CGST Act provides that:

1. A registered person supplying **taxable goods** shall, before or at the time of, -
   (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
   (b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax

invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

2. A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification,-

(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;

(b) subject to the condition mentioned therein, specify the categories of services in respect of which-

(i) any other document issued in relation to the supply shall be deemed to be a tax invoice.

Contents of Tax Invoice

Rule 46 of the CGST Rules states that subject to Rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,-

a. name, address and Goods and Services Tax Identification Number of the supplier;

b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as " " and "/" respectively, and any combination thereof, unique for a financial year;

c. date of its issue;

d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

e. name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is fifty thousand rupees or more;

f. name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;

Provided that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient.

g. Harmonised System of Nomenclature code for goods or services;

h. description of goods or services;

i. quantity in case of goods and unit or Unique Quantity Code thereof;

j. total value of supply of goods or services or both;

k. taxable value of the supply of goods or services or both taking into account discount or abatement, if any;

l. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

m. amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

n. place of supply along with the name of the State, in the case of a supply in the course of Inter-State trade or commerce;

o. address of delivery where the same is different from the place of supply;

p. whether the tax is payable on reverse charge basis;

q. signature or digital signature of the supplier or his authorised representative: and

r. Quick response code, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under sub-Rule (4) of Rule 48.

Provided that the Board may, on the recommendations of the Council, by notification, specify -

(i) the number of digits of Harmonized System of Nomenclature code for goods or services that a class of registered persons shall be required to mention; or

(ii) a class of supply of goods or services for which specified number of digits of Harmonized System of Nomenclature code shall be required to be mentioned by all registered taxpayers; and

(iii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services

Number of HSN digits required on tax invoice

CBIC on the recommendations of the Council, has made the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2017 – Central Tax, dated the June 28, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 660(E), namely:–

In the said notification, with effect from the April 01, 2021, for the Table, the following shall be substituted, namely, -

Table

S. No. ***(1)***	***Aggregate Turnover in the preceding Financial Year*** ***(2)***	***Number of Digits of Harmonised System of Nomenclature Code (HSN Code)*** ***(3)***
1.	Up to rupees five crores	4
2.	more than rupees five crores	6

Provided further that where an invoice is required to be issued under clause (f) of sub-section (3) of section 31, a registered person may issue a consolidated invoice at the end of a month for supplies covered under sub-section (4) of section 9, the aggregate value of such supplies exceeds rupees five thousand in a day from any or all the suppliers:

Provided also that in the case of the export of goods or services, the invoice shall carry an endorsement "supply meant for export/supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax" or "supply meant for export/supply to SEZ unit or SEZ developer for authorised operations under bond or letter

of Undertaking without payment of integrated tax," as the case may be, and shall, in lieu of the details specified in clause (e), contain the following details, namely,- (i) name and address of the recipient; (ii) address of delivery; and (iii) name of the country of destination:

Provided that a registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code, as specified in the corresponding entry in column (3) of the said Table in a tax invoice issued by him under the said Rules in respect of supplies made to unregistered persons.

Provided also that a registered person, other than the supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens, may not issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 subject to the following conditions, namely,-

(a) the recipient is not a registered person; and

(b) the recipient does not require such invoice, and

shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).

Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code.

TIME LIMIT FOR ISSUE OF TAX INVOICE

Time limit for issue of Tax Invoice in case of supply of goods

Section 31 of the CGST Act provides that a registered person supplying taxable goods shall issue a tax 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 available thereof to the recipient, in any other case.

Section 31(4) provides that in case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

Section 31(7) provides that where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Proviso to Section 31(1) provides that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

Time limit for issue of Tax Invoice in case of supply of services

Section 31(2) provides that tax invoice in case of supply of services shall be issued before or after the provision of service but within a prescribed period.

Rule 47 provides that invoice in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service.

Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of the supply of service:

Provided further that an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

Section 31(5) provides that subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services, -

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Section 31(6) provides that in a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

Question :

Examine the following independent cases of supply of goods and services and determine the time of issue of invoice under each of the cases as per the provisions of CGST Act, 2017:

(i) Chill Enterprises, Kolkata entered into a contract with Cold Enterprises, Surat for supply of goods on 3rd October, 2022. The goods were removed from the factory at Kolkata on 11th October, 2022. As per the agreement, the goods were to be delivered by 31st October, 2022. Cold Enterprises has received the goods on 14th October, 2022.

(ii) BGT Ltd, an event management company, has provided its services for an event at ABC Film Agencies, Mumbai on 5th June, 2022. Payment for the event was made on 19th June, 2022.

Answer:

(a) As per section 31(1), a registered person supplying taxable goods shall issue a tax invoice, before or at the time of delivery of goods or making available thereof to the recipient. If the supply involves movement of goods, invoice should be issued before removal of goods.

In the given case, supply involves movement of goods, invoice should be issued before removal of goods i.e., before 11th October 2022.

(a) As per Rule 47, the invoice referred to in Rule 46, in the case of the taxable supply of services, shall be issued within a period of thirty days from the date of the supply of service.

In the given case, invoice shall be issued within 30 days from the date of supply of service i.e. 30 days from 5th June 2022.

Manner of Issue of Invoice

Rule 48 of the CGST Rules provides that:

1. The invoice shall be prepared in triplicate, in the case of supply of goods, in the following manner, namely,-
   a. the original copy being marked as ORIGINAL FOR RECIPIENT;
   b. the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
   c. the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.
2. The invoice shall be prepared in duplicate, in the case of the supply of services, in the following manner, namely,-
   a. the original copy being marked as ORIGINAL FOR RECIPIENT; and
   b. the duplicate copy being marked as DUPLICATE FOR SUPPLIER.
3. The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in **FORM GSTR-1.**
4. The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.
5. Every invoice issued by a person to whom sub-Rule (4) applies in any manner other than the manner specified in the said sub-Rule shall not be treated as an invoice.
6. The provisions of sub-Rules (1) and (2) shall not apply to an invoice prepared in the manner specified in sub- Rule (4)].

ACCOUNTS AND RECORDS

Chapter VIII of the CGST Act, 2017 (Section 35 and 36) read with Chapter VII of CGST Rules (Rules 56 to 58) deals with the matter relating to Accounts and Record.

Obligation to Maintenance Accounts and Records

Section 35 of the CGST Act, 2017 deals with the matter relating to accounts and other records:

1. Maintenance of Records at Principal Place of Business: Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of –
   (a) production or manufacture of goods;
   (b) inward and outward supply of goods or services or both;
   (c) stock of goods;
   (d) input tax credit availed;
   (e) output tax payable and paid; and
   (f) such other particulars as may be prescribed:

More than one place of business: Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business.

Rule 56 of CGST Rules deals with the maintenance of accounts by registered persons:

1. Every registered person shall keep and maintain, in addition to the particulars mentioned in sub- section (1) of section 35, a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.
2. Every registered person, other than a person paying tax under section 10, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the 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 including raw materials, finished goods, scrap and wastage thereof.
3. Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.
4. Every registered person, other than a person paying tax under section 10, shall keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of sub-section (3) and sub-section (4) of section 9), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.
5. Every registered person shall keep the particulars of -
    a. names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the act;
    b. names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;
    c. the complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.
6. If any taxable goods are found to be stored at any place(s) other than those declared under sub-Rule (5) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.
7. Every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.
8. Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.
9. Each volume of books of account maintained manually by the registered person shall be serially numbered.
10. Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

11. Every agent referred to in clause (5) of section 2 shall maintain accounts depicting the,-
    a. particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
    b. particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
    c. particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
    d. details of accounts furnished to every principal; and
    e. tax paid on receipts or on supply of goods or services effected on behalf of every principal.
12. Every registered person manufacturing goods shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.
13. Every registered person supplying services shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.
14. Every registered person executing works contract shall keep separate accounts for works contract showing -
    a. the names and addresses of the persons on whose behalf the works contract is executed;
    b. description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
    c. description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
    d. the details of payment received in respect of each works contract; and
    e. the names and addresses of suppliers from whom he received goods or services.
15. The records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.
16. Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.
17. Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.
18. Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.

2. **Maintenance of Records in Electronic Form:** The registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

Generation and maintenance of electronic records: Rule 57 of the CGST Rules states that:

1. Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.
2. The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.
3. Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

3. **Maintenance of Records by the Godown - Keeper:** Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

Records to be maintained by owner or operator of godown or warehouse and transporters: Rule 58 of the CGST Rules provides that:

1. Every person required to maintain records and accounts in accordance with the provisions of sub- section (2) of section 35, if not already registered under the act, shall submit the details regarding his business electronically on the common portal in **FORM GST eNR-01**, either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details furnished, a unique enrolment number shall be generated and communicated to the said person.

(1A) For the purposes of Chapter XVI of these Rules, a transporter who is registered in more than one State or Union Territory having the same Permanent Account Number, he may apply for a unique common enrolment number by submitting the details in **FORM GST eNR-02** using any one of his Goods and Services Tax Identification Numbers, and upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter:

Provided that where the said transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the Goods and Services Tax Identification Numbers for the purposes of the said Chapter XVI.

2. The person enrolled under sub-Rule (1) as aforesaid in any other State or Union territory shall be deemed to be enrolled in the State or Union territory.
3. Every person who is enrolled under sub-Rule (1) shall, where required, amend the details furnished in **FORM GST eNR-01** electronically on the common portal either directly or through a Facilitation Centre notified by the Commissioner.

4. Subject to the provisions of Rule 56,-
   a. any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with the Goods and Services Tax Identification Number of the registered consigner and consignee for each of his branches.
   b. every owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt and disposal of such goods.
5. The owner or the operator of the godown shall store the goods in such manner that they can be identified item- wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand.

4. **Maintenance of Additional Records:** The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

5. **Determination of tax liability in case of failure to maintain the accounts:** Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

Period of Retention of Records

Section 36 of the CGST Act, 2017 provides that every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall **retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records.**

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

ELECTRONIC WAY BILL

Section 68 of the CGST Act, 2017 provides that the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

In terms of the said provision, **Electronic Way Bill (e-way bill)** has been prescribed as one of the documents which the person in charge of a conveyance is required to carry.

E-way bill is a document introduced under the **GST regime** that needs to be generated before transporting or shipping goods worth more than Rs. 50,000 within state or Inter-State.

Procedure for the Generation of e-way bill

Rule 138 of the CGST Rules provides that:

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees-

i. in relation to a supply; or

ii. for reasons other than supply; or

iii. due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods as specified in **Part A** of **FORM GST EWB-01**, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided that the transporter, on an authorization received from the registered person, may furnish information in **Part A of FORM GST EWB-01**, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided further that where the goods to be transported are supplied through an e-commerce operator or a courier agency, on an authorization received from the consignor, the information in **Part A of FORM GST EWB- 01** may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Determination of the value of consignment

*"**Explanation 1***. - For the purposes of this Rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 56/2018-Central Tax, dated the 23rd October, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1056(E), dated the 23rd October, 2018 as amended from time to time.

Example:

Taxable value as per Invoice is Rs. 45,000 IGST @ 18% is Rs. 8,100

Total Invoice value is Rs. 53,100/-

In the above example, e-Way Bill is required to be issued as the value of invoice including taxes exceeds Rs. 50,000/-.

Explanation 2.- For the purposes of this Rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill in **FORM GST EWB-01** electronically on the common portal after furnishing information in **Part B of FORM GST EWB-01.**

(2A) Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in **Part B of FORM GST EWB-01.**

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these Rules is produced at the time of delivery.

(3) Where the e-way bill is not generated under sub-Rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in **Part A of FORM GST EWB-01.**

Provided that the registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in **FORM GST EWB-01** on the common portal in the manner specified in this Rule:

Provided also that where the goods are transported for a distance of upto fifty kilometers (50 Kms) within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in **Part B of FORM GST EWB-01.**

Explanation 1- For the purposes of this sub-Rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2- The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of **FORM GST EWB-01** has been furnished except in the case of movements covered under the third proviso to sub-Rule (3) and the proviso to sub-Rule (5).

(4) Upon generation of the e-way bill on the common portal, a unique E-Way Bill Number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

E-way bill in case of change of conveyance or recipient:

(5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in **Part A of the FORM GST EWB-01**, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in **Part B of FORM GST EWB-01.**

Provided that where the goods are transported for a distance of upto fifty kilometers (50 Kms) within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill.

(5A) The consignor or the recipient, who has furnished the information in **Part A of FORM GST EWB-01**, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in **Part B of FORM GST EWB-01** for further movement of the consignment:

Provided that after the details of the conveyance have been updated by the transporter in **Part B of FORM GST EWB-01**, the consignor or recipient, as the case may be, who has furnished the information in **Part A of FORM GST EWB-01** shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-Rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in **FORM GST EWB-02** maybe generated by him on the said common portal prior to the movement of goods.

Generation of e-way bill by the transporter

(7) Where the consignor or the consignee has not generated the e-way bill in **FORM GST EWB-01** and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter- State supply, generate the e-way bill in **FORM GST EWB-01** on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in **FORM GST EWB-02** on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in **Part A of FORM GST EWB-01** may be furnished by such e-commerce operator or courier agency.

(8) The information furnished in **Part A of FORM GST EWB-01** shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in **FORM GSTR-1:**

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in **FORM GST EWB-01**, he shall be informed electronically, if the mobile number or the e-mail is available.

Cancellation of e-way bill

(9) Where an e-way bill has been generated under this Rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within twenty four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of Rule 138B:

Provided further that the unique number generated under sub-Rule (1) shall be valid for a period of fifteen days for updation of **Part B of FORM GST EWB-01. Validity of e-way bill**

(10) An e-way bill or a consolidated e-way bill generated under this Rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:-

No.	*Distance*	*Validity Period*
(1)	*(2)*	*(3)*
1.	Upto 200 km.	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
2.	For every 200 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
3.	Upto 20 km	One day in case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo: or multimodal shipment in which at least one leg involves transport by ship.

*The validity of e-way bills for cases other than over-dimensional cargo is calculated based on a distance of 200 km and not 100 km from 1st January 2021 onwards.

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in **Part B of FORM GST EWB-01**, if required.

Provided also that the validity of the e-way bill may be extended within eight hours from the time of its expiry.

Explanation 1- For the purposes of this Rule, the relevant date shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Explanation 2- For the purposes of this Rule, the expression. Over Dimensional Cargo shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in Rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).

Question **:** ABC Ltd. a registered supplier wants to transport cargo by road between two cities situated at a distance of 345 kilometres. Calculate the validity period of e-way bill under Rule 138(10) of CGST Rules, 2017 for transport of the said cargo, if it is over dimensional cargo or otherwise.

Answer:

The validity period of e-way bill under Rule 138(10) of the CGST Rules, 2017 for transport of cargo by road between two cities situated at a distance of 345 km is as under:

(i) If it is over dimensional cargo: the validity period of the e-way bill is one day from relevant date upto 20 km and one additional day for every 20 km or part thereof thereafter.

Thus, validity period in given case:

= 1 day + 17 days

= 18 days

(ii) If it is a cargo other than over dimensional cargo: the validity period of the e-way bill is one day from relevant date upto 200 km and one additional day for every 200 km or part thereof thereafter. Thus, validity period in given case:

= 1 day + 1 day

= 2 days

Acceptance or Rejection of e-way bill details

(11) The details of the e-way bill generated under this Rule shall be made available to the-

a. supplier, if registered, where the information in **Part A of FORM GST EWB-0**1 has been furnished by the recipient or the transporter; or

b. recipient, if registered, where the information in **Part A of FORM GST EWB-01** has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-Rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this Rule or under Rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory.

Exemption from e-way bill

(14) Notwithstanding anything contained in this Rule, no e-way bill is required to be generated -

a. where the goods being transported are specified in Annexure;

b. where the goods are being transported by a non-motorised conveyance;

c. where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

d. in respect of movement of goods within such areas as are notified under clause (d) of sub-Rule (14) of Rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory;

e. where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017- Central tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 674 (E) dated the 28th June, 2017 as amended from time to time;

f. where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;

g. where the supply of goods being transported is treated as no supply under Schedule III of the act;

h. where the goods are being transported -

   i. under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

   ii. under customs supervision or under customs seal;

i. where the goods being transported are transit cargo from or to Nepal or Bhutan;

j. where the goods being transported are exempt from tax under notification No. 7/2017-Central Tax (Rate), dated 28th June 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub- section (i), vide number G.S.R 679(E)dated the 28th June, 2017 as amended from time to time and notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1181(E) dated the 21st September, 2017 as amended from time to time;

k. any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;

l. where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;

m. where empty cargo containers are being transported; and

n. where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with Rule 55;

o. where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply."

***Explanation**:* The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

Annexure

[(See Rule 138 (14)]

S. No.	Description of Goods
(1)	(2)
1.	Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) Customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)

5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601)

Note: For Clarification On E-Way Bill For Storing Goods in Transporter's Godown, students may refer [C.B.I. & C. Circular No. 61/35/2018-GST, dated 4-9-2018]

Documents and devices to be carried by a persons-in-charge of a conveyance

Section 68 (1) of the CGST Act states:

The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

Rule 138A of the CGST Rules provides that:

1. The person in charge of a conveyance shall carry -
    a. the invoice or bill of supply or delivery challan, as the case may be; and
    b. a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

    Provided that nothing contained in clause (b) of this sub-Rule shall apply in case of movement of goods by rail or by air or vessel.

    Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in **Part A of FORM GST EWB-01**.

Invoice Reference Number in lieu of e-way bill

2. In case, invoice is issued in the manner prescribed under sub-Rule (4) of Rule 48, the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.
3. Where the registered person uploads the invoice under sub-Rule (2), the information in **Part a of FORM GST EWB-01** shall be auto-populated by the common portal on the basis of the information furnished in **FORM GST INV-1.**
4. The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.
5. Notwithstanding anything contained in clause (b) of sub-Rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill
    a. tax invoice or bill of supply or bill of entry; or
    b. a delivery challan, where the goods are transported for reasons other than by way of supply.

Verification of Documents and Conveyance

Section 68(2) of the CGST Act states that the details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

Section 68(3) of the CGST Act states where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

Rule 138B of the CGST Rules provides that:

1. The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all Inter-State and Intra-State movement of goods.
2. The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.
3. The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

Inspection and Verification of Goods

Rule 138C of the CGST Rules provides that:

1. A summary report of every inspection of goods in transit shall be recorded online by the proper officer in **Part A** of **FORM GST EWB-03** within twenty four hours of inspection and the final report in **Part B** of **FORM GST EWB-03** shall be recorded within three days of such inspection.

   Provided that where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in **Part B** of **FORM EWB- 03**, for a further period not exceeding three days.

   Explanation. - The period of twenty four hours or, as the case may be, three days shall be counted from the midnight of the date on which the vehicle was intercepted.

2. Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently.

   Note*: Important Clarification on Interception of Conveyances for Inspection of Goods in Movement, and Detention, Release and Confiscation of Such Goods and Conveyances – Procedure Modified, students may refer, circular No. 64/38/2018-GST, dated 14-9-2018 at https://taxinformation.cbic.gov.in/view-pdf/1003002/ENG/Circulars.*

Facility for uploading information regarding detention of vehicle

Rule 138D of CGST Rules provides that where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in **FORM GST EWB-04** on the common portal.

Explanation. - For the purposes of this Chapter, the expressions 'transported by railways', 'transportation of goods by railways', 'transport of goods by rail' and 'movement of goods by rail' does not include cases where leasing of parcel space by Railways takes place.

Restriction on furnishing of information in Part A of FORM GST EWB-01

Rule 138E. Restriction on furnishing of information in Part A of FORM GST EWB-01- Notwithstanding anything contained in sub-Rule (1) of Rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in **Part A of FORM GST EWB-01** in respect of a registered person, whether as a supplier or a recipient, who, -

(a) being a person paying tax under section 10 or availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 2/2019-Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 189, dated the 7th March, 2019, has not furnished the statement in **FORM GST CMP-08** for two consecutive quarters; or

(b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two tax periods :

Provided that the Commissioner may, [on receipt of an application from a registered person in **FORM GST EWB-05**, on sufficient cause being shown and for reasons to be recorded in writing, by order in **FORM GST EWB-06**, allow furnishing of the said information in **Part A of FORM GST EWB-01**, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in **Part A of FORM GST EWB-01** under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in **FORM GSTR-3B** or the statement of outward supplies in **FORM GSTR-1** or the statement in **FORM GST CMP-08**, as the case may be, has not been furnished for the period February, 2020 to August, 2020.

(c) being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be.

(d) being a person, whose registration has been suspended under the provisions of sub-Rule (1) or sub-Rule (2) or sub-Rule (2A) of Rule 21A.

Explanation*:* For the purposes of this Rule, the expression "Commissioner" shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b). (Note: Students may refer Circular No. 47/21/2018-GST, dated 8-6-2018 for Clarification on e-way Bill.)

CASE LAWS

In the matter of ***Godrej Consumer Products Ltd. vs. ACST & E-Cum-Proper Officer, Baddi-II2020 (34) G.S.T.L. 272 (Appellate Authority - H.P.)***, the distance between Puducherry to Himachal Pradesh was mentioned as 20 Kilometers instead of 2000 Kilometers resulting in validity of one day been calculated by E-way Bill portal instead of twenty days and E-way Bill subsequently expiring on very next day. The Consignment

was intercepted and a tax/penalty imposed was imposed under Section 129 CGST Act. The appellate authority held that the mistake in entering distance in E-way Bill being typographic error to be treated as minor one *inter alia* in terms of C.B.I. & C. Circular No. 64/38/2018-GST, dated 14-9-2018 ordered refund of additional demand of tax and penalty deposited by the appellant. However, it imposed penalty of Rs. 500 under SGST and Rs. 500 under CGST under Sections 125 of Central Goods and Services Tax Act, 2017.

In the matter of ***Bhushan Power & Steel Ltd. Versus Asst. Commr. of State Taxes & Ex. (Proper Officer), Shimla, 2020 (34) G.S.T.L. 261 (Appellate Authority - H.P.)***, where the e-waybill was found expired at the time of interception, however the relevant documents like tax invoice, bilti, e-way bill were available with the driver, the appellate authority found such mistake as minor breach and held proceedings under Section 129 CGST Act as harsh.

In the matter of ***Same Deutzfahr India P. Ltd. Versus State Of Telangana 2020 (43) G.S.T.L. 673 (Telangana)***. briefly, the petitioner wrongly mentioned the address of its principal place of business as consignee address instead of its depot which was the actual destination. On verification by the authorities, the order was issued to recover applicable tax and equivalent penalty. The petitioner paid the demand amount but filed writ before the High Court against such order. The Hon'ble High Court ordered refund of tax and penalty so paid by the petitioner on the ground that it cannot be said that the petitioner was indulging in any illegal activity when the tax invoice shows that the supplier is the petitioner's Corporate office in Ranipet, Tamil Nadu State and that it was shipped to its Depot in Bongulur village in Ibrahimpatnam Mandal.

Forms relating to e-way Bill

S. No.	***Form No.***	***Particulars***	***Relevant Rule***
1.	GST EWB-01	E-Way Bill	Rule 138
2.	GST EWB-02	Consolidated E-Way Bill	Rule 138
3.	GST EWB-03	Verification Report	Rule 138(C)
4.	GST EWB-04	Report of detention	Rule 138(D)
5	GST EWB-05	Application for unblocking of the facility for generation of E-Way Bill	Rule 138E
6	GST EWB-06	Order for permitting/rejecting application for unblocking of the facility for generation of E-Way Bill	Rule 138E

ELECTRONIC INVOICING (E-INVOICING)

Electronic Invoicing is the introduction of the digital invoice for goods and services provided by the business firms generated at the government portal. It is a system in which all Business to Business invoices are electronically uploaded and authenticated by the designated Government portal. The concept of GST e-invoice generation system is launched primarily to counter tax evasion.

e-Invoicing [effective from 01.10.2020]

- Vide Notification No. 13/2019 C.T. dated 13.12.2019, the Government has inserted sub-Rule (4), (5) and (6) in Rule 48 of the CGST Rules, w.e.f. 1.4.2020, to provide for issuance of e invoices by certain category of persons.
- Rule 48(4) - The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **form GST INV-01** after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.
- Vide Notification No. 13/2020-CT dated 21.03.2020, as amended by Notification No. 61/2020-CT dated 31.7.2020, the Government has notified registered person, other than special economic zone units and those referred to in sub-Rules (2), (3), (4) and (4A) of Rule 54 of the said Rules whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds five hundred crore rupees, as a class of registered person who shall prepare e- invoice in terms of sub-Rule (4) of Rule 48 of the said Rules in respect of supply of goods or services or both to a registered person.
- Further, vide Notification No. 60/2020-CT dated 30.7.2020, the format/Schema of INV-1 has been replaced which the students may refer on cbic.gov.in.
- Vide Notification No. 88/2020-C.T., dated 10-11-2020, the threshold for e-invoicing was reduced from Rs. 500 Cr to Rs. 100 Cr w.e.f. 1.1.2021.
- Vide Notification No. 05/2021 – CT dated 8.3.2021, the threshold for e-invoicing was further reduced from Rs. 100 Cr to Rs. 50 Cr w.e.f. 1.4.2021.
- Vide Notification No. 01/2022 – CT dated 24.2.2022, the threshold for e-invoicing was further reduced from Rs. 20 Cr to Rs. 10 Cr w.e.f. 1.4.2022
- Vide Notification No. 17/2022 – CT dated 1.8.2022, the threshold for e-invoicing was further reduced from Rs. 20 Cr to Rs. 10 Cr w.e.f. 1.10.2022.
- Further, Vide Notification No. 69/2019-CT dated 13.12.2019 issued under Rule 48(4), the Government has notified the portals where e-invoices in terms of sub-Rule (4) of Rule 48 shall be prepared. List of portals are as below;
    - www.einvoice1.gst.gov.in;
    - www.einvoice2.gst.gov.in;
    - www.einvoice3.gst.gov.in;
    - www.einvoice7.gst.gov.in;
    - www.einvoice4.gst.gov.in;
    - www.einvoice8.gst.gov.in;
    - www.einvoice5.gst.gov.in;
    - www.einvoice9.gst.gov.in;
    - www.einvoice6.gst.gov.in;
    - www.einvoice10.gst.gov.in.

Facility of Digital Payment to Recipient (Section 31A of CGST Act, 2017):

The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed.

Vide Notification No. 14/2020-C.T., dated 21-3-2020, the Government has notified that an invoice issued by a registered person, whose aggregate turnover in a financial year exceeds five hundred crore rupees, other than those referred to in sub-Rules (2), (3), (4) and (4A) of Rule 54 of said Rules, and registered person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, to an unregistered person (hereinafter referred to as B2C invoice), shall have Dynamic Quick Response (QR) code :

Where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

Dynamic QR Code re-explained

Type of transaction covered	***Supplies made by a registered person to unregistered persons (also called B2C supplies).***
Applicable to whom?	Registered persons (GST taxpayers) having an aggregate turnover above Rs. 500 crore in a financial year.
Notification highlights	Issuance of a QR Code on the invoice by above mentioned registered taxpayers for supplies made to unregistered persons. The QR Code is for the purpose of making payment by the unregistered person/ Consumer to such registered person making the B2C supply, using UPI-based payment Apps by scanning the QR Code.
QR code to be generated by	Supplier himself either on the Point of Sale (PoS) machine or the Invoice issued.
Purpose	To enable payment using UPI by a mobile application by scanning of this QR Code.

The implementation of Dynamic QR Code came in effect from 1st day of July, 2021

Circular no. 146/02/2021- dated the 23rd February, 2021

GST Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020-

S. No.	***Issues***	***Clarification***
1.	To which invoice is Notification No 14/2020-Central Tax dated 21st March, 2020 applicable?	This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued in following cases:

S. No.	Issues	Clarification
2.	Would this requirement be applicable on invoices issued for supplies made for Exports?	i. Where the supplier of taxable service is: a) an insurer or a banking company or a financial institution, including a non-banking financial company; b) a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage; c) supplying passenger transportation service; d) supplying services by way of admission to exhibition of cinematograph in films in multiplex screens ii. OIDAR supplies made by any registered person, who has obtained registration under section 14 of the IGST Act 2017, to an unregistered person. As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, in terms of Notification no. 13/2020-Central Tax, dated 21st March, 2020 treating them as Business to Business (B2B) supplies, Notification no. 14/2020-Central Tax, dated 21st March, 2020 will not be applicable to them.
3.	What parameters/ details are required to be captured in the Quick Response (QR) Code?	Dynamic QR Code, in terms of Notification No. 14/2020-Central Tax, dated 21st March, 2020 is required, inter-alia, to contain the following information: - i. Supplier GSTIN number ii. Supplier UPI ID iii. Payee's Bank A/C number and IFSC iv. Invoice number & invoice date, v. Total Invoice Value and vi. GST amount along with breakup i.e. CGST, SGST, IGST, CESS, etc. Further, Dynamic QR Code should be such that it can be scanned to make a digital payment
4.	If a supplier provides/ displays Dynamic QR Code, but the customer opts to make payment without using Dynamic	If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements. In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: -

S. No.	Issues	Clarification
	QR Code, then will the cross reference of such payment, made without use of Dynamic QR Code, on the invoice, be considered as compliance of Dynamic QR Code on the invoice?	Using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the supplier provides a cross reference of the payment (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice; or In cash, without using Dynamic QR Code and the supplier provides a cross reference of the amount paid in cash , along with date of such payment on the invoice; The said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code.
5.	If the supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer based applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise, how can the requirement of Dynamic QR Code as per this notification be complied with?	In such cases, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code. However, if payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.
6.	Is generation/ printing of Dynamic QR Code on B2C invoices mandatory for pre- paid invoices i.e. where payment has been made before issuance of the invoice?	If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice

S. No.	Issues	Clarification
7.	Once the E-commerce operator (ECO) or the online application has complied with the Dynamic QR Code requirements, will the suppliers using such e-commerce portal or application for supplies still be required to comply with the requirement of Dynamic QR Code?	The provisions of the notification shall apply to each supplier/ registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies as per the said notification. In case, the supplier is making supply through the E-commerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code. In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

https://taxinformation.cbic.gov.in/view-pdf/1002919/ENG/Circulars

Tax invoice by the recipient

Section 31(3) (f) provides that a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both.

It is noteworthy that sub-section (3) or sub-section (4) of section 9 mandates the recipient of goods and/ or services to pay tax in specified situations.

Special dispensations

Section 31(3) of CGST Act provides that notwithstanding anything contained in sub-sections (1) and (2) of the said section -

a. a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

b. a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed.

Bill of Supply

Section 31(3)(c) of the CGST Act provides that a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:

Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;

Contents of Bill of supply: Rule 49 of the CGST Rules provides that a bill of supply referred to in clause (c) of sub-section (3) of section 31 shall be issued by the supplier containing the following details, namely,-

a. name, address and Goods and Services Tax Identification Number of the supplier;

b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

c. date of its issue;

d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

e. Harmonised System of Nomenclature Code for goods or services;

f. description of goods or services or both;

g. value of supply of goods or services or both taking into account discount or abatement, if any; and

h. signature or digital signature of the supplier or his authorised representative:

Provided that the provisos to Rule 46 shall, mutatis mutandis, apply to the bill of supply issued under this Rule:

Provided further that any tax invoice or any other similar document issued under any other act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the act.

Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000).]

Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the bill of supply shall have Quick Response (QR) code.

Receipt voucher

Section 31(3)(d) provides that a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

Contents of Receipt voucher.- Rule 50 of CGST Rules provides that a receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following particulars, namely,-

a. name, address and Goods and Services Tax Identification Number of the supplier;

b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

c. date of its issue;

d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

e. description of goods or services;

f. amount of advance taken;

g. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

h. amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

i. place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;

j. whether the tax is payable on reverse charge basis; and

k. signature or digital signature of the supplier or his authorised representative:

Provided that where at the time of receipt of advance,-

i. the rate of tax is not determinable, the tax shall be paid at the rate of eighteen per cent;

ii. the nature of supply is not determinable, the same shall be treated as Inter-State supply.

Refund voucher

Section 31(3)(e) provides that where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, **a refund voucher** against such payment;

Contents of Refund voucher: Rule 51 of the CGST Rules provides that a refund voucher referred to in clause (e) of sub-section (3) of section 31 shall contain the following particulars, namely:-

a. name, address and Goods and Services Tax Identification Number of the supplier;

b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

c. date of its issue;

d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

e. number and date of receipt voucher issued in accordance with the provisions of Rule 50;

f. description of goods or services in respect of which refund is made;

g. amount of refund made;

h. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

i. amount of tax paid in respect of such goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

j. whether the tax is payable on reverse charge basis; and

k. signature or digital signature of the supplier or his authorised representative.

Payment voucher

Section 31(3)(e) provides that a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

Contents of Payment voucher: Rule 52 of CGST Rules provides that a payment voucher referred to in clause (g) of sub-section (3) of section 31 shall contain the following particulars, namely:-

a. name, address and Goods and Services Tax Identification Number of the supplier if registered;

b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

c. date of its issue;

d. name, address and Goods and Services Tax Identification Number of the recipient;

e. description of goods or services;

f. amount paid;

g. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

h. amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

i. place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and

j. signature or digital signature of the supplier or his authorised representative.

Tax invoice cum Bill of Supply

Rule 46A of the CGST Rules states that notwithstanding anything contained in Rule 46 or Rule 49 or Rule 54, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single–invoice-cum-bill of supply may be issued for all such supplies.

Revised Tax Invoice and Credit & Debit Notes

Section 2(66) of the CGST states that **"invoice"** or **"tax invoice"** means the tax invoice referred to in section 31.

Explanation to Section 31 of the CGST Act states that for the purposes of this section, the expression "tax invoice" shall include any **revised invoice** issued by the supplier in respect of a supply made earlier.

Section 2(37) of the CGST Act states that **"credit note"** means a document issued by a registered person under sub- section (1) of section 34.

Section 2(38) of the CGST Act states that **"debit note"** means a document issued by a registered person under sub- section (3) of section 34.

Section 34(1) of the CGST Act states that where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

Section 34(2) : Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than the thirtieth day of November following the end of the financial year in which

such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Section 34(3) of the CGST Act states that where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed.

Rule 53 (2) provides that every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of the issuance of the certificate of registration:

Provided that the registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the act during such period.

Provided further that in the case of Inter-State supplies, where the value of a supply does not exceed two lakh and fifty thousand rupees, a consolidated revised invoice may be issued separately in respect of all the recipients located in a State, who are not registered under the act.

Contents of Revised Invoice, Debit Notes and Credit Notes

Rule 53 (1) provides that a revised tax invoice referred to in section 31 shall contain the following particulars, namely:-

(a) the word "Revised Invoice", wherever applicable, indicated prominently;

(b) name, address and Goods and Services Tax Identification Number of the supplier;

(c) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(d) date of issue of the document;

(e) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is unregistered;

(g) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply; and

(h) signature or digital signature of the supplier or his authorised representative.

Rule 53 (1A) provides that a credit or debit note referred to in section 34 shall contain the following particulars, namely:-

(a) name, address and Goods and Services Tax Identification Number of the supplier;

(b) nature of the document;

(c) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(d) date of issue of the document;

(e) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;

(f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is unregistered;

(g) serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;

(h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and

(i) signature or digital signature of the supplier or his authorised representative.

Rule 53(2) - Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of the issuance of the certificate of registration:

Provided that the registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the act during such period:

Provided further that in the case of Inter-State supplies, where the value of a supply does not exceed two lakh and fifty thousand rupees, a consolidated revised invoice may be issued separately in respect of all the recipients located in a State, who are not registered under the act.

Rule 53(3) - Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words "INPUT TAX CREDIT NOT ADMISSIBLE".

Tax Invoice in Special Cases

Rule 54 of the CGST Rules provides that:

(1) An Input Service Distributor invoice or, as the case may be, an Input Service Distributor credit note issued by an Input Service Distributor shall contain the following details:-

a. name, address and Goods and Services Tax Identification Number of the Input Service Distributor;

b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters- hyphen or dash and slash symbolised as- "---" and "/" respectively, and any combination thereof, unique for a financial year;

c. date of its issue;

d. name, address and Goods and Services Tax Identification Number of the recipient to whom the credit is distributed;

e. amount of the credit distributed; and

f. signature or digital signature of the Input Service Distributor or his authorised representative:

Provided that where the Input Service Distributor is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as mentioned above.

(1A) (a) A registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services to the Input Service Distributor, which shall contain the following details:-

i. name, address and Goods and Services Tax Identification Number of the registered person having the same PAN and same State code as the Input Service Distributor;

ii. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "?" and "/" respectively, and any combination thereof, unique for a financial year;

iii. date of its issue;

iv. Goods and Services Tax Identification Number of supplier of common service and original invoice number whose credit is sought to be transferred to the Input Service Distributor;

v. name, address and Goods and Services Tax Identification Number of the Input Service Distributor;

vi. taxable value, rate and amount of the credit to be transferred; and

vii. signature or digital signature of the registered person or his authorised representative.

(b) The taxable value in the invoice issued under clause (a) shall be the same as the value of the common services.

(2) Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company, the said supplier may issue a consolidated tax invoice or any other document in lieu thereof, by whatever name called for the supply of services made during a month at the end of the month, whether issued or made available, physically or electronically whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as mentioned under Rule 46.

Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000.

(3) Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consigner and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, Goods and Services Tax Identification Number of the person liable for paying tax whether as consigner, consignee or goods transport agency, and also containing other information as mentioned under Rule 46.

(4) Where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as mentioned under Rule 46.

Provided that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of ticket in accordance with the provisions of the Information Technology Act, 2000.

(4A) A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens shall be required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice for all purposes of the act, even if such ticket does not contain the details of the recipient of service but contains the other information as mentioned under Rule 46:

Provided that the supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure.

(5) The provisions of sub-Rule (2) or sub-Rule (4) shall apply, mutatis mutandis, to the documents issued under Rule 49 or Rule 50 or Rule 51 or Rule 52 or Rule 53.

Transportation of Goods under delivery challan in lieu of Invoice

Rule 55 of CGST Rules provides that:

(1) For the purposes of-

a. supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,

b. transportation of goods for job work,

c. transportation of goods for reasons other than by way of supply, or

d. such other supplies as may be notified by the Board,

the consigner may issue a **delivery challan,** serially numbered not exceeding sixteen characters, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation, containing the following details, namely:-

i. date and number of the delivery challan;

ii. name, address and Goods and Services Tax Identification Number of the consigner, if registered;

iii. name, address and Goods and Services Tax Identification Number or Unique Identity Number of the consignee, if registered;

iv. Harmonised System of Nomenclature code and description of goods;

v. quantity (provisional, where the exact quantity being supplied is not known);

vi. taxable value;

vii. tax rate and tax amount - central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;

viii. place of supply, in case of Inter-State movement; and

ix. signature.

(2) The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner, namely:-

a. the original copy being marked as ORIGINAL FOR CONSIGNEE;

b. the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and

c. the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.

(3) Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared as specified in Rule 138.

(4) Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.

(5) Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots -

(a) the supplier shall issue the complete invoice before dispatch of the first consignment;

(b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;

(c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and

(d) the original copy of the invoice shall be sent along with the last consignment.

Tax Invoice or Bill of Supply to accompany Transport of Goods

Rule 55A of the CGST Rules provides that the person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of Rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these Rules.

PAYMENT OF TAX

Chapter X of the CGST Act, 2017 (Section 49 to 53) and Chapter IX of CGST Rules (Rules 85 to 88) deals with the matter relating to Payment of Tax. The whole mechanism works with the aid of three ledgers maintained on the common portal namely (a) Electronic Cash Ledger (b) Electronic Credit Ledger and (c) Electronic Liability Ledger.

The scheme is such that the liability towards tax, interest, penalty, fee or any other amount is first created by debiting the Electronic Liability Ledger.

Then, Electronic Credit Ledger is credited by availing input tax credit and, for deficient amount, Electronic Cash Ledger is credited by the actual deposit of cash in the Government treasury.

The liability is then discharged by debiting the Electronic Cash Ledger and Electronic Credit Ledger and crediting Electronic Liability Ledger.

Electronic Cash Ledger [Section 49]

1. Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed. [Section 49(1) of the CGST Act, 2017]
2. Any amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this act or the Rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed. [Section 49(3) of the CGST Act.
3. A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, or integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this act. [Section 49(10)]
4. Where any amount has been transferred to the electronic cash ledger under this act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1). [Section 49(11)]
5. The date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger. [Explanation to Section 49 of the CGST Act].
6. The balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount payable under this act or the Rules made thereunder may be refunded in accordance with the provisions of section 54.

Rule 87 of the CGST Rules provides how the electronic Cash ledger shall be maintained:

1. The electronic cash ledger under sub-section (1) of section 49 shall be maintained in **FORM GST PMT-05** for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.
2. Any person, or a person on his behalf, shall generate a challan in **FORM GST PMT-06** on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount:

   Provided that the challan in **FORM GST PMT-06** generated at the common portal shall be valid for a period of fifteen days.
3. The deposit under sub-Rule (2) shall be made through any of the following modes, namely:-
   i. Internet Banking through authorised banks;
   ii. UPI from any bank;
   iii. IMPS from any bank;
   iv. Credit card or Debit card through the authorised bank;
   v. National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or
   vi. Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft.

   Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter payment shall not apply to deposit to be made by -
   a. Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;
   b. Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;
   c. Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit:

   Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also make the deposit under sub-Rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board.

   Explanation*:* For the purposes of this sub-Rule, it is hereby clarified that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.
4. Any payment required to be made by a person who is not registered under the act, shall be made on the basis of a temporary identification number generated through the common portal.
5. Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made.

Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.

6. On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.

7. On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.

8. Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in **FORM GST PMT-07** through the common portal to the bank or electronic gateway through which the deposit was initiated.

   Provided that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in **FORM GST PMT-06** on the Common Portal.

9. Any amount deducted under section 51 or collected under section 52 and claimed by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger.

10. Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.

11. If the refund so claimed is rejected, either fully or partly, the amount debited under sub-Rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in **FORM GST PMT-03.**

12. A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04.**

    Explanation 1*:* The refund shall be deemed to be rejected if the appeal is finally rejected.

    Explanation 2*:* For the purposes of this Rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

- A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the act to the electronic cash ledger for Integrated tax, Central tax, State tax or Union territory tax or cess or Integrated tax, central tax of a distinct person, provided registered person does not have an unpaid liability in the electronic liability register in **FORM GST PMT-09.**

Electronic Liability Ledger [Section 49(7)]

1. All liabilities of a taxable person under this act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

2. Every taxable person shall discharge his tax and other dues under this act or the Rules made thereunder in the following order, namely :-

   (a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this act or the Rules made thereunder including the demand determined under section 73 or section 74.

Electronic liability Register: Rule 85 of CGST Rules states that:

1. The electronic liability register specified under sub-section (7) of section 49 shall be maintained in **FORM GST PMT-0**1 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.
2. The electronic liability register of the person shall be debited by-
   a. the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;
   b. the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the act or as ascertained by the said person;
   c. the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or
   d. any amount of interest that may accrue from time to time.
3. Subject to the provisions of section 49 or section 49A or section 49B, payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per Rule 86 or the electronic cash ledger maintained as per Rule 87 and the electronic liability register shall be credited accordingly.
4. The amount deducted under section 51, or the amount collected under section 52, or the amount payable on reverse charge basis, or the amount payable under section 10, any amount payable towards interest, penalty, fee or any other amount under the act shall be paid by debiting the electronic cash ledger maintained as per Rule 87 and the electronic liability register shall be credited accordingly.
5. Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.
6. The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic liability register shall be credited accordingly.
7. A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04.**

Electronic Credit Ledger

The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41 or section 43A, to be maintained in such manner as may be prescribed. [**Section 49(2)** or section 49A or section 49B of the CGST Act, 2017.]

The amount available in the electronic credit ledger may be used for making any payment towards output tax under this act or under the Integrated Goods and Services Tax act in such manner and subject to such conditions and within such time as may be prescribed. [**Section 49(4)** of the CGST Act, 2017]

The amount of input tax credit available in the electronic credit ledger of the registered person on account of -

a. integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

b. the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

c. the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax.

d. the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax.

e. the central tax shall not be utilised towards payment of State tax or Union territory tax; and

f. the State tax or Union territory tax shall not be utilised towards payment of central tax.

Rule 86 of the CGST Rules provides how the electronic Credit ledger shall be maintained:

1. The electronic credit ledger shall be maintained in **FORM GST PMT-02** for each registered person eligible for input tax credit under the act on the common portal and every claim of input tax credit under the act shall be credited to the said ledger.

2. The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B.

3. Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

4. If the refund so filed is rejected, either fully or partly, the amount debited under sub-Rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03.**

4A. Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re- credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03**.

5. Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.

6. A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04.**

Explanation.- For the purposes of this Rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

Conditions of use of Amount Available in Electronic Credit Ledger [Rule 86A]

Vide Notification No. 75/2019-C.T. dated 26.12.2019, the Government has inserted Rule 86A in the CGST Rules, 2017 which empowers GST officers to block utilization input tax credit in certain scenarios as below.

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as-

a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under Rule 36-

i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

ii. without receipt of goods or services or both; or

b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under Rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under Rule 36, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-Rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction."

Restrictions on use of Amount Available in Electronic Credit Ledger [Rule 86B]

Notwithstanding anything contained in these Rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent, of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month **exceeds fifty lakh rupees**:

Provided that the said restriction shall not apply where -

(a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961 (43 of 1961) in each of the last two financial years for which the time limit to file return of income under sub-section (1) of section 139 of the said act has expired; or

(b) the registered person has received a refund amount of more than one lakh rupees in the preceding

financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or

(c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or

(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

(e) the registered person is -

(i) Government Department; or

(ii) a Public Sector Undertaking; or

(iii) a local authority; or

(iv) a statutory body :

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.

Miscellaneous Provisions

1. Every person who has paid the tax on goods or services or both under this act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both. [Section 49(9)]
2. the expression, -
   i. "tax dues" means the tax payable under this act and does not include interest, fee and penalty; and
   ii. "other dues" means interest, penalty, fee or any other amount payable under this act or the Rules made thereunder.

   [*Explanation to Section 49*]
3. The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this act or the Rules made thereunder may be refunded in accordance with the provisions of section 54. [Section 49(6)]

Interest on Delayed Payment of Tax

Section 50 of CGST Act deals with the interest on delayed payment of tax. It provides that:

1. Every person who is liable to pay tax in accordance with the provisions of this act or the Rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

   Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.]

The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such **rate not exceeding 24%,** as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

Vide Notification No. 13/2017-CT dated 26.6.2017, the Government has notified payment of interest under various provisions as below		
Serial Number	***Section***	***Rate of interest (in per cent)***
(1)	***(2)***	***(3)***
1.	Sub-section (1) of section 50	18
2.	Sub-section (3) of section 50	18
3.	Sub-section (12) of section 54	6
4.	Section 56	6
5.	Proviso to section 56	9

Provided that, the rate of interest per annum shall be as specified in column (3) of the Table given below, for the class of registered persons, mentioned in the corresponding entry in column (2) of the said Table, who are required to furnish the returns in **FORM GSTR-3B**, but fail to furnish the said return along with payment of tax for the months mentioned in the corresponding entry in column (4) of the said Table by the due date, but furnish the said return according to the condition mentioned in the corresponding entry in column (5) of the said Table, namely :-

Sl. No.	**Class of registered persons**	**Rate of interest**	**Tax period**	**Condition**
(1)	**(2)**	**(3)**	**(4)**	**(5)**
1.	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	Nil for first 15 days from the due date, and 9 per cent thereafter	February, 2020, March 2020, April, 2020	If return in FORM GSTR-3B is furnished on or before the 24th day of June, 2020
2.	Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees five crores in the preceding financial year	Nil	February, 2020, March, 2020	If return in FORM GSTR-3B is furnished on or before the 29th day of June, 2020
			April, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020

3.	Taxpayers having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year	Nil	February, 2020	If return in FORM GSTR-3B is furnished on or before the 30th day of June, 2020
			March, 2020	If return in FORM GSTR-3B is furnished on or before the 3rd day of July, 2020
			April, 2020	If return in FORM GSTR-3B is furnished on or before the 6th day of July, 2020.
4	Taxpayers having an aggregate turnover of more than rupees 5 crores in the preceding financial year	9 percent for the first 15 days from the due date and 18 per cent thereafter	March, 2021, April, 2021	
5	Taxpayers having an aggregate turnover of up to rupees 5 crores in the preceding financial year who are liable to furnish the return as specified under sub-section (1) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	March, 2021, April, 2021	
6	Taxpayers who are liable to furnish the return as specified under sub-section (2) of section 39	Nil for the first 15 days from the due date, 9 per cent for the next 15 days, and 18 per cent thereafter	Quarter ending March, 2021.	

TAX DEDUCTION AT SOURCE (TDS)

Section 51 of the CGST Act deals with the matter relating to TDS: It states that:

1. Notwithstanding anything to the contrary contained in this act, the Government may mandate,
   (a) a department or establishment of the Central Government or State Government; or
   (b) local authority; or
   (c) Governmental agencies; or
   (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is

in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation. -For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

Vide **Notification No. 50/2018 - Central Tax dated 13.9.2018** the Government appointed the 1st day of October, 2018, as the date on which the provisions of section 51 of the said act shall come into force with respect to persons specified under clauses (a), (b) and (c) of sub-section (1) of section 51 of the said act and the persons specified below under clause (d) of sub-section (1) of section 51 of the said act, namely:-

(a) an authority or a board or any other body, -

(i) set up by an act of Parliament or a State Legislature; or

(ii) established by any Government,

with fifty-one per cent or more participation by way of equity or control, to carry out any function;

(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

(c) Public Sector Undertakings.

Vide **Notification No. 61/2018- Central Tax dated 05.11.2018**, the Government has exempted the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person from the provisions of Section 1 CGST Act with effect from the 1st day of October, 2018.

Vide **Notification No. 73/2018-C.T., dated 31-12-2018 TDS**, the Government has exempted the application of TDS provision to supply of goods or services or both which takes place between one person to another person under department or establishment of Central or State Government or local authority or Government Agencies.

This can be explained in the following situations:

(a) Supplier, place of supply and recipient are in the same state. It would be Intra-State supply and TDS (Central plus State tax) shall be deducted. It would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.

(b) Supplier as well as place of supply are in different states. In such cases, integrated tax would be levied. TDS to be deducted would be TDS (Integrated tax) and it would be possible for the supplier (i.e. the deducted) to take credit of TDS in his electronic cash ledger.

(c) Supplier as well as place of supply are in State A and recipient is located in State B. The supply would be Intra-State supply and Central tax and State tax would be levied. In such case, transfer of TDS (Central tax + State tax State B) to the cash ledger of the supplier (Central tax + State tax of State A) would be difficult. So in such cases, TDS would not be deducted.

2. The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.

3. A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.

4. The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.

   Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

   Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

5. If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.

6. The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.

7. The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:

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

IMPORTANT CLARIFICATION ON TDS [Circular No. 76/50/2018-GST, dated 31-12-2018]	
Applicability of the provisions of section 51 of the CGST Act (TDS) in the context of notification No. 50/2018-Central Tax dated 13-9-2018.	1. A doubt has arisen about the applicability of long line mentioned in clause (a) of notification No. 50/2018-Central Tax, dated 13-9-2018. 2. It is clarified that the long line written in clause (a) in notification No. 50/2018-Central Tax, dated 13-9-2018 is applicable to both the items (i) and (ii) of clause (a) of the said notification. Thus, an authority or a board or any other body whether set up by an act of Parliament or a State Legislature or established by any Government with fifty-one per cent or more participation by way of equity or control, to carry out any function would only be liable to deduct tax at source. 3. In other words, the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an act of parliament or a State legislature or established by any Government in which fifty one per cent. or more participation by way of equity or control is with the Government.

RULE 66. Form and manner of submission of return by a person required to deduct tax at source. –

(1) Every registered person required to deduct tax at source under section 51 (hereafter in this Rule referred to as deductor) shall furnish a return in **FORM GSTR-7** electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

(2) The details furnished by the deductor under sub-Rule (1) shall be made available electronically to each of the deductees on the common portal after the filing of **FORM GSTR-7** for claiming the amount of tax collected in his electronic cash ledger after validation.

(3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in **FORM GSTR-7A** on the basis of the return furnished under sub- Rule (1).

COLLECTION OF TAX AT SOURCE (TCS)

Section 52 of CGST Act deals with the matter relating to collection of Tax at Source. It provides that:

1. Notwithstanding anything to the contrary contained in this act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such **rate not exceeding one per cent**., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

   Explanation: For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

   Vide **Notification No. 02/2018 – Integrated Tax dated 20.9.2018, the Government has notified** that every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of **1%** of the net value of Inter-State taxable supplies made through it by other suppliers where consideration with respect to such supplies is to be collected by the said operator.

2. The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

3. The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

4. Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

   Explanation: For the purposes of this sub-section, it is hereby declared that the due date for furnishing the said statement for the months of October, November and December, 2018 shall be the 07th February, 2019

   Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

5. Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

   Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

   Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

6. If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

   Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

7. The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

8. The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this act in such manner and within such time as may be prescribed.

9. Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

10. The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

11. The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

12. Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this act, requiring the operator to furnish such details relating to - (a) supplies of goods or services or both effected through such operator during any period; or (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses,

by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

13. Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

14. Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to **twenty-five thousand rupees**.

***Explanation**:* For the purposes of this section, the expression "concerned supplier" shall mean the supplier of goods or services or both making supplies through the operator.

Form and manner of submission of statement of supplies through an e-commerce operator: Rule 67 of the CGST Rules provides that:

1. Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in **FORM GSTR-8** electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.
2. The details furnished by the operator under sub-Rule (1) shall be made available electronically to each of the suppliers on the common portal after the of filing of **FORM GSTR-8** claiming the amount of tax collected in his electronic cash ledger after validation.

Circular No. 167 / 23 /2021 - GST on service supplied by restaurants through E-Commerce Operators (ECO)

https://taxinformation.cbic.gov.in/view-pdf/1003081/ENG/Circulars

Certain representations have been received requesting for clarification regarding modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO).Clarifications are as follows :

S. No	***Issue***	***Clarification***
1	Would ECOs have to still collect TCS in compliance with section 52 of the CGST, Act, 2017?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.

2	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with Rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
3	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
5	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)
7	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.

8	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.
9	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
11	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.	A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act, 2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

Forms relating to Payment of Tax

Forms relating to payment of tax, kindly refer to Annexure III at the end of this chapter.

GST RETURN MECHANISM

Chapter IX of the CGST Act (Sections37 to 48) and Chapter VIII of the CGST Rules (Rules 59 to 84) deals with the submission of the returns by the registered person.

In terms of Section 2(97) "return" means any return prescribed or otherwise required to be furnished by or under this act or the Rules made thereunder;

The return mechanism in GST works in a manner that all registered persons are required to file the outward return [containing invoice wise details of outward supplies] and file inward return [containing invoice wise details of inward supplies]. These returns shall then be consolidated by way of monthly/ quarterly return which contains summary of both outward and inward supplies. The monthly returns filed for a financial year shall then be supplemented by way of an annual return along with reconciliation thereof with books of accounts. There are few more ancillary returns for specific purposes which shall be explained alongside in the forgoing Paragraphs.

Students may note that the originally crafted return mechanism to the extent of requiring the registered persons to file inward return [containing invoice wise details of inward supplies] has yet not been operationalized. Thus, the filing of GSTR-2 [inward return] has been suspended since August 2017.

Similarly, GSTR-3, i.e., monthly return has also been suspended and in lieu thereof the Government has introduced GSTR-3B which contain summary details of both inward and outward supplies.

Furnishing details of outward supplies

Section 37 of the CGST Act deals with the matter relating to furnishing details of outward supplies: It states that:

Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

1. Any registered person, who has furnished the details under sub-section (1) for any tax period, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

   Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

   Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September,

2018 till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.

***Explanation**:* For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

Form and manner of furnishing details of outward supplies. Rule 59 of the CGST Rules states that:

(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in **FORM GSTR-1** for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

(2) The registered persons required to furnish return for every quarter under proviso to sub-section (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months,- using invoice furnishing facility (hereafter in this notification referred to as the "IFF") electronically on the common portal, duly authenticated in the manner prescribed under Rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.

Provided that a registered person may furnish such details, for the month of April, 2021, using IFF from the 1st day of May, 2021 till the 28th day of May, 2021.

(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in **FORM GSTR-1** for the said quarter.

(4) The details of outward supplies of goods or services or both furnished in **FORM GSTR-1** shall include the-

(a) invoice wise details of all -

(i) Inter-State and Intra-State supplies made to the registered persons; and

(ii) Inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;

(b) consolidated details of all -

(i) Intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise Inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

(5) The details of outward supplies of goods or services or both furnished using the IFF shall include the -

(a) invoice wise details of Inter-State and Intra-State supplies made to the registered persons;

(b) debit and credit notes, if any, issued during the month for such invoices issued previously.]

(6) Notwithstanding anything contained in this Rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months;

(b) registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under Rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period.

Furnishing details of Inward Supplies

Section 38 of the CGST Act deals with the furnishing of details of inward supplies. It states that:

1. Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub- section (1) of section 37.

2. Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:

   Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

   Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Form and manner of furnishing details of inward supplies: Rule 60 of the CGST Rules provides that:

(1) The details of outward supplies furnished by the supplier in **FORM GSTR-1** or using the Invoice Furnishing Facility (IFF) shall be made available electronically to the concerned registered persons (recipients) in **Part A of FORM GSTR-2A**, in **FORM GSTR-4A** and in **FORM GSTR-6A** through the common portal, as the case may be.

(2) The details of invoices furnished by an non-resident taxable person in his return in **FORM GSTR-5** under Rule 63 shall be made available to the recipient of credit in **PART A of FORM GSTR 2A** electronically through the common portal.

(3) The details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** under Rule 65 shall be made available to the recipient of credit in **Part B of FORM GSTR 2A** electronically through the common portal.

(4) The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in **FORM GSTR-7** shall be made available to the deductee in **Part C of FORM GSTR-2A** electronically through the common portal.

(5) The details of tax collected at source furnished by an e-commerce operator under section 52 in **FORM GSTR-8** shall be made available to the concerned person in **Part c of FORM GSTR 2A** electronically through the common portal.

(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in **Part D of FORM GSTR-2A** electronically through the common portal.

(7) An ~~auto -drafted~~ auto-generated statement containing the details of input tax credit shall be made available to the registered person in **FORM GSTR-2B**, for every month, electronically through the common portal, and shall consist of-

(i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in **FORM GSTR-1**, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of **FORM GSTR-1** for the month;

(ii) the details of invoices furnished by a non-resident taxable person in **FORM GSTR-5** and details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in **FORM GSTR-1** or using the IFF, as the case may be, -

(a) for the first month of the quarter, between the day immediately after the due date of furnishing of **FORM GSTR-1** for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;

(b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;

(c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of **FORM GSTR-1** for the quarter.

(iii) The details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.

(8) The Statement in **FORM GSTR-2B** for every month shall be made available to the registered person, -

(i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in **FORM GSTR-1** by a registered person, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;

(ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in **FORM GSTR-1** by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.]

Furnishing of Monthly Return

Section 39 of the CGST Act states the manner of furnishing of returns. It provides that:

1. Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

   Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

   Note: Students may note that the Government has notified filing of GSTR-3B on or before 20th of the following month and suspended the filing of GSTR-3 until further orders.

2. A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.

3. Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

4. Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

5. Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

6. The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:

   Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

7. Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

   Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,––

   (a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

   (b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.

   Provided further that every registered person furnishing return under sub-section (2) shall pay to the

Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.

8. Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

9. Where any registered person after furnishing a return under sub- section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars in such form and manner as may be prescribed, subject to payment of interest under this act:

   Provided that no such rectification of any omission or incorrect particulars shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.

10. A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him.

    Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period.

Form and Manner of Submission of Monthly Return [Rule 61]

(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in **FORM GSTR- 3B**, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under -

(i) sub-section (1) of section 39, for each month, or part thereof, on or before the twentieth day of the month succeeding such month:

(ii) proviso to sub-section (1) of section 39, for each quarter, or part thereof, for the class of registered persons mentioned in column (2) of the Table given below, on or before the date mentioned in the corresponding entry in column (3) of the said Table, namely :-

S. No.	*Class of registered persons*	*Due Date*
(1)	*(2)*	*(3)*
1.	Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	twenty-second day of the month succeeding such quarter.

2.	Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	twenty-fourth day of the month succeeding such quarter.

(2) Every registered person required to furnish return, under sub-Rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in **FORM GSTR-3B**.

(3) Every registered person required to furnish return, every quarter, under clause (ii) of sub-Rule (1) shall pay the tax due under proviso to sub-section (7) of section 39, for each of the first two months of the quarter, by depositing the said amount in **FORM GST PMT-06**, by the twenty fifth day of the month succeeding such month:

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the due date for depositing the said amount in **FORM GST PMT-06,** for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner:

Provided also that while making a deposit in **FORM GST PMT-06**, such a registered person may -

(a) for the first month of the quarter, take into account the balance in the electronic cash ledger.

(b) for the second month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the first month.

(4) The amount deposited by the registered persons under sub-Rule (3) above, shall be debited while filing the return for the said quarter in **FORM GSTR-3B**, and any claim of refund of such amount lying in balance in the electronic cash ledger, if any, out of the amount so deposited shall be permitted only after the return in **FORM GSTR-3B** for the said quarter has been filed.

Manner of opting for furnishing quarterly return [Rule 61A]

(1) Every registered person intending to furnish return on a quarterly basis under proviso to sub-section (1) of section 39, shall in accordance with the conditions and restrictions notified in this regard, indicate his preference for furnishing of return on a quarterly basis, electronically, on the common portal, from the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised :

Provided that where such option has been exercised once, the said registered person shall continue to furnish the return on a quarterly basis for future tax periods, unless the said registered person, -

(a) becomes ineligible for furnishing the return on a quarterly basis as per the conditions and restrictions notified in this regard; or

(b) opts for furnishing of return on a monthly basis, electronically, on the common portal :

Provided further that a registered person shall not be eligible to opt for furnishing quarterly return in case the last return due on the date of exercising such option has not been furnished.

(2) A registered person, whose aggregate turnover exceeds 5 crore rupees during the current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds 5 crore rupees.

Quarterly Return Monthly Payment (QRMP) Scheme

Circular No. 143/13/2020 – Central Tax, dated November 10, 2020

As a trade facilitation measure and in order to further ease the process of doing business, the GST Council in its 42nd meeting held on October 05, 2020, had recommended that registered person having aggregate turnover up to five (5) crore rupees is allowed to furnish return on quarterly basis along with monthly payment of tax, with effect from January 01, 2021.

CBIC has introduced Quarterly Return Monthly Payment (QRMP) scheme under GST to help small taxpayers whose aggregate annual turnover is up to Rs. 5 crores in the preceding Financial Year 2019 - 20. The QRMP scheme allows the taxpayers to file Form GSTR-3B on a quarterly basis and pay tax every month. QRMP scheme is an optional scheme. The registered persons opting for the Scheme would be required to furnish the details of outward supply in Form GSTR-1 quarterly as per the Rule 59 of the CGST Rule.

Notifications issued to operationalise Quarterly Return Monthly Payment Scheme (QRMP)

Persons required to furnish return for every quarter from January, 2021 onwards, and pay the tax due every month notified (Notification No. 84/2020-C.T., dated 10-11-2020)

https://taxinformation.cbic.gov.in/view-pdf/1000546/ENG/Notifications

(1) In exercise of the powers conferred by proviso to sub-section (1) of section 39 read with proviso to sub- section (7) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said act), the Government, on the recommendations of the Council, hereby notifies the registered persons, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), having an aggregate turnover of up to five crore rupees in the preceding financial year, and who have opted to furnish a return for every quarter, under sub-Rule (1) of Rule 61A of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said Rules) as the class of persons who shall, subject to the following conditions and restrictions, furnish a return for every quarter from January, 2021 onwards, and pay the tax due every month in accordance with the proviso to sub-section (7) of section 39 of the said act, namely :-

(i) the return for the preceding month, as due on the date of exercising such option, has been furnished;

(ii) where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the same.

(2) A registered person whose aggregate turnover crosses five crore rupees during a quarter in a financial year shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.

(3) For the registered person falling in the class specified in column (2) of the Table below, who have furnished the return for the tax period October, 2020 on or before 30th November, 2020, it shall be deemed that they have opted under sub-Rule (1) of Rule 61A of the said Rules for the monthly or quarterly furnishing of return as mentioned in column (3) of the said Table :-

Sl. No.	*Class of registered person*	*Deemed Option*
(1)	**(2)**	**(3)**
1.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished **FORM GSTR-1** on quarterly basis in the current financial year	Quarterly return
2.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished **FORM GSTR-1** on monthly basis in the current financial year	Monthly return
3.	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

(4) The registered persons referred to in column (2) of the said Table, may change the default option electronically, on the common portal, during the period from the 5th day of December, 2020 to the 31st day of January, 2021.

Special procedure for making payment of 35% as tax liability in first two months notified (Notification No. 85/2020-C.T., dated 10-11-2020)

1. In exercise of the powers conferred by section 148 read with sub-section (7) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), (hereinafter referred to as the said act), the Central Government, on the recommendations of the Council, hereby notifies the registered persons, notified under proviso to sub-section (1) of section 39 of the said act, who have opted to furnish a return for every quarter or part thereof, as the class of persons who may, in first month or second month or both months of the quarter, follow the special procedure such that the said persons may pay the tax due under proviso to sub-section (7) of section 39 of the said act, by way of making a deposit of an amount in the electronic cash ledger equivalent to, -

   (i) 35% of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly; or

   (ii) the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly :

   Provided that no such amount may be required to be deposited -

   (a) for the first month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability;

   (b) for the second month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the cumulative tax liability for the first and the second month of the quarter or where there is nil tax liability :

   Provided further that registered person shall not be eligible for the said special procedure unless he has furnished the return for a complete tax period preceding such month.

   Explanation - For the purpose of this notification, the expression "a complete tax period" means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

2. This notification shall come into force with effect from the 1st day of January, 2021.

Clarification issued by the Government on Quarterly Return Monthly Payment (QRMP) Scheme -C.B.I. & C. (Circular No. 143/13/2020-GST, dated 10-11-2020)

1. Eligibility for the Scheme

In terms of Notification No. 84/2020-Central Tax, dated 10-11-2020, a registered person who is required to furnish a return in **FORM GSTR-3B,** and who has an aggregate turnover of up to 5 crore rupees in the preceding financial year, is eligible for the QRMP Scheme. It is clarified that the aggregate annual turnover for the preceding financial year shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. This new Scheme will be effective from 1-1-2021. Further, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

2. Exercising option for QRMP Scheme

2.1 Facility to avail the Scheme on the common portal would be available throughout the year. In terms of Rule 61A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred as CGST Rules), a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option.

For example: *A registered person intending to avail of the Scheme for the quarter 'July to September' can exercise his option during 1st of May to 31st of July.*

If he is exercising his option on 27th July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 22/24th July.

2.2 Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

2.3 F*or the first quarter of the Scheme,* i.e., for the quarter January, 2021 to March, 2021, in order to facilitate the taxpayers, it has been decided that all the registered persons, whose aggregate turnover for the FY 2019- 20 is up to 5 crore rupees *and who have furnished the return in* ***FORM GSTR-3B*** *for the month of October, 2020 by 30th November, 2020*, shall be migrated on the common portal as below. Therefore, taxpayers are advised to furnish the return of October, 2020 in time so as to be eligible for default migration. The taxpayers who have not filed their return for October, 2020 on or before 30th November, 2020 will not be migrated to the Scheme. They will be able to opt for the Scheme once the **FORM GSTR-3B** as due on the date of exercising option has been filed.

Sl. No.	***Class of registered person***	***Default Option***
1	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished FORM GSTR-1 on quarterly basis in the current financial year	Quarterly return

2	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished FORM GSTR-1 on monthly basis in the current financial year	Monthly Return
3	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

Above default option has been provided for the convenience of registered persons based on their anticipated behaviour. However, such registered persons are free to change the option as above, if they so desire, from 5th of December, 2020 to 31st of January, 2021. It is re-iterated that any taxpayer whose aggregate turnover has exceeded 5 crore rupees in the financial year 2020-21, shall opt out of the Scheme.

2.4 Similarly, the facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.

2.5 All persons who have obtained registration during any quarter or the registered persons opting out from paying tax under Section 10 of the CGST Act during any quarter shall be able to opt for the Scheme for the quarter for which the opting facility is available on the date of exercising option as in para 4.1.

2.6 It is also clarified that such registered person, whose aggregate turnover crosses 5 crore rupees during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter. In other words, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

2.7 It is further clarified that the option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

3. Furnishing of details of outward supplies under section 37 of the CGST Act.

3.1 The registered persons opting for the Scheme would be required to furnish the details of outward supply in **FORM GSTR-1** quarterly as per the Rule 59 of the CGST Rule.

3.2 For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility - IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month. The said details of outward supplies shall, however, not exceed the value of fifty lakh rupees in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th day of the succeeding month. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the **FORM GSTR-2A** and **FORM GSTR-2B** of the concerned recipient.

For example, a registered person who has availed the Scheme wants to declare two invoices out of the total ten invoices issued in the first month of quarter since the recipient of supplies covered by those two invoices desires to avail ITC in that month itself. Details of these two invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in ***FORM GSTR-1*** *of the said quarter. The two invoices furnished in IFF shall be reflected in* ***FORM GSTR-2B*** *of the concerned recipient of the first month of the quarter and remaining eight invoices furnished in* ***FORM GSTR-1*** *shall be reflected in* ***FORM GSTR-2B*** *of the concerned recipient of the last month of the quarter. The said facility would however be available, say for the month of July, from 1st August till 13th August. Similarly, for the month of August, the said facility will be available from 1st September till 13th September.*

It is re-iterated that said facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme.

3.3 The details of invoices furnished using the said facility in the first two months are not required to be furnished again in **FORM GSTR-1**. Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in **FORM GSTR-1** for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in **FORM GSTR-1** only, without using the IFF.

4. Monthly Payment of Tax

4.1 The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in **FORM GST PMT-06**, by the twenty fifth day of the month succeeding such month. While generating the challan, taxpayers should select "Monthly payment for quarterly taxpayer" as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months -

(a) ***Fixed Sum Method:*** A facility is being made available on the portal for generating a pre-filled challan in **FORM GST PMT-06** for an amount equal to thirty five per cent. of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.

For easy understanding, the same is explained by way of illustration in table below :

(i) In case the last return filed was on quarterly basis for Quarter Ending March, 2021 :

Tax paid in Cash in Quarter (January - March, 2021)		***Tax required to be paid in each of the months - April and May, 2021***	
CGST	100	CGST	35
SGST	100	SGST	35
IGST	500	IGST	175
Cess	50	Cess	17.5

(ii) In case the last return filed was monthly for tax period March, 2021 :

Tax paid in Cash in March, 2021		***Tax required to be paid in each of the months - April and May, 2021***	
CGST	50	CGST	50
SGST	50	SGST	50
IGST	80	IGST	80
Cess	-	Cess	-

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month. A complete tax period means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

(b) ***Self-Assessment Method:*** The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in **FORM GST PMT-06**. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in FORM GSTR-2B, for every month.

4.2 The said registered person is free to avail either of the two tax payment method above in any of the two months of the quarter.

4.3 It is clarified that in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.

4.4 Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in **FORM GSTR-3B** for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter.

5. Quarterly filing of FORM GSTR-3B

Such registered persons would be required to furnish **FORM GSTR-3B**, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter. In **FORM GSTR-3B**, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein. The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter's **FORM GSTR-3B**. However, any amount left after filing of that quarter's **FORM GSTR-3B** may either be claimed as refund or may be used for any other purpose in subsequent quarters. In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in **FORM GSTR-3B** for the relevant tax period.

6. Applicability of Interest

6.1. For registered person making payment of tax by opting Fixed Sum Method

(i) No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount as detailed in para 6.1(a) above by the due date. In other words, if while furnishing return in **FORM GSTR-3B**, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made/received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the **FORM GSTR-3B** of the quarter by the due date.

(ii) In case such payment of tax by depositing the system calculated amount in **FORM GST PMT-06** is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing FORM GST PMT-06 till the date of making such payment.

(iii) Further, in case **FORM GSTR-3B** for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

Illustration : *A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was Rs. 40/- and for February it was Rs. 42/-. No interest would be payable for the lesser amount of tax (i.e. Rs. 5 and Rs. 7 respectively) discharged in these two months provided that he discharges his entire liability for the quarter in the* ***FORM GSTR-3B*** *of the quarter by the due date.*

Illustration : *A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that total liability for the quarter net of available credit was Rs. 125 but he files the return on 30th April. Interest would be payable at applicable rate on Rs. 55 [Rs. 125 - Rs. 70 (deposit made in cash ledger in M1 and M2)] for the period between due date of quarterly GSTR-3B and 30th April.*

6.2 For registered person making payment of tax by opting Self-Assessment Method Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid/paid beyond the due date for the first two months of the quarter.

6.3 Interest payable, if any, shall be paid through **FORM GSTR-3B**.

7. **Applicability of late Fee** - Late fee is applicable for delay in furnishing of return/details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the requirement to furnish the return under the proviso to sub-section (1) of Section 39 of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return/details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

Returns by persons opting for Composition Scheme

Rule 62 of the CGST Rules provide that:

(1) Every registered person paying tax under section 10 shall -

(i) furnish a statement, every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in **FORM GST CMP-08**, till the 18th day of the month succeeding such quarter; and

(ii) furnish a return for every financial year or, as the case may be, part thereof in **FORM GSTR-4**, till the thirtieth day of April following the end of such financial year, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) Every registered person furnishing the statement under sub-Rule (1) shall discharge his liability towards tax or interest payable under the act or the provisions of this Chapter by debiting the electronic cash ledger.

(3) The return furnished under sub-Rule (1) shall include the -

(a) invoice wise Inter-State and Intra-State inward supplies received from registered and un-registered persons; and

(b) consolidated details of outward supplies made.

(4) A registered person who has opted to pay tax under section 10 from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under Rules 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

Explanation. - For the purposes of this sub-Rule, it is hereby declared that the person shall not be eligible to avail input tax credit on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme.

(5) A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish a statement in **FORM GST CMP-08** for the period for which he has paid tax under the composition scheme till the 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish a return in **FORM GSTR- 4** for the said period till the thirtieth day of April following the end of the financial year during which such withdrawal falls.

Returns by Non-resident taxable person

Rule 63 of the CGST Rules provides that: every registered non-resident taxable person shall furnish a return in **FORM GSTR-5** electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner, including therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the act or the provisions of this Chapter within twenty days after the end of a tax period or within seven days after the last day of the validity period of registration, whichever is earlier.

Returns by persons providing online information and database access or retrieval services

Rule 64 of CGST Rules provides that every registered person providing online information and data base access or retrieval services from a place outside India to a person in India other than a registered person shall file return in **FORM GSTR-5A** on or before the twentieth day of the month succeeding the calendar month or part thereof.

Return by an Input Service Distributor

Rule 65 of the CGST Rules provides that every Input Service Distributor shall, on the basis of details contained in **FORM GSTR-6A**, and where required, after adding, correcting or deleting the details, furnish electronically the return in **FORM GSTR-6**, containing the details of tax invoices on which credit has been received and those issued under section 20, through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

Return by a person required to deduct tax at source

Rule 66 of CGST Act provides that:

1. Every registered person required to deduct tax at source under section 51 (hereafter in this Rule referred to as deductor) shall furnish a return in **FORM GSTR-7** electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.
2. The details furnished by the deductor under sub-Rule (1) shall be made available electronically to each of the deductees on the common portal after filing of **FORM GSTR-7** for claiming the amount of Tax Decuted in the electronic Case ledger after validation.
3. The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in **FORM GSTR-7A** on the basis of the return furnished under sub-Rule (1).

Return by a person making supplies through an e-commerce operator

Rule 67 of the CGST Act provides:

(1) Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in **FORM GSTR-8** electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.

(2) The details furnished by the operator under sub-Rule (1) shall be made available electronically to each of the suppliers on the common portal after filing of **FORM GSTR-8** for claiming the amount of tax collected in his electronic cash ledger after validation.

First Return

Section 40 of CGST provides that every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

Nil Return through SMS

Rule 67A of the CGST Rules provides:

Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in **FORM GSTR-3B** or a Nil details of outward supplies under section 37 in **FORM GSTR-1** or a Nil statement in **FORM GST CMP-08** for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.

Explanation. - For the purpose of this Rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under Rule 62, for a tax period that has nil or no entry in all the Tables in **FORM GSTR-3B** or **FORM GSTR-1** or **FORM GST CMP-08**, as the case may be.

Rule 78 states that the following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1,

a. State of place of supply; and

b. net taxable value:

Provided that where the time limit for furnishing **FORM GSTR-1** under section 37 has been extended, the date of matching of the above-mentioned details shall be extended accordingly.

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

ANNUAL RETURN

GSTR 9 is the Annual Return that is to be to be filed yearly by the taxpayers registered under Goods and Services Tax Act. It consists of details regarding the outward and the inward supplies made during the relevant financial year.

Before filing **GSTR 9,** the taxpayer must file all **GSTR-1, GSTR-3B**, or **GSTR 4** returns. In case of over dues, the GSTR registration holder will not be allowed to file an annual GST annual return.

GSTR 9 consists of details regarding the outward and the inward supplies made or received during the relevant financial year under CGST, SGST, and IGST. It is a consolidation of all the monthly/quarterly returns filed in that year.

Section 44 of CGST Act, 2017 provides that:

Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self- certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor- General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

[CGST Notification No. 29/2021-Central Tax dated July 30, 2021. CBIC has notified the provisions of Section 110 and 111 of the Finance Act, 2021 w.e.f. August 01, 2021. While Section 110 omits section 35(5) of CGST Act

means GST Audit (GSTR-9C) by Chartered Accountant or Cost Accountant is no longer required and Section 111 substitutes section 44 Annual return of Central Goods and Services Tax Act, 2017.]

Rule 80 of CGST Rules provides that

(1) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year as specified under section 44 electronically in **FORM GSTR 9** on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that a person paying tax under section 10 shall furnish the annual return in **FORM GSTR 9A.**

(1A) Notwithstanding anything contained in sub-Rule (1), for the financial year 2020-2021 the said annual return shall be furnished on or before the twenty-eighth day of February, 2022.

(2) Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in **FORM GSTR 9B**.

(3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a nonresident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in **FORM GSTR 9C** along with the annual return referred to in sub-Rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(3A) Notwithstanding anything contained in sub-Rule (3), for the financial year 2020-2021 the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the twenty-eighth day of February, 2022.

Final Return

Section 45 of the CGST Act provides that every registered person who is required to furnish a return under sub- section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

Rule 81 provides that every registered person required to furnish a final return under section 45, shall furnish such return electronically in **FORM GSTR-10** through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Notice to Return Defaulters

Section 46 of the CGST Act provides that where a registered person fails to furnish a return under section 39 or section 44 or section 45, a **notice shall be issued requiring him to furnish such return within fifteen days** in such form and manner as may be prescribed.

Further, Rule 68 of the CGST Rules prescribes a notice in **FORM GSTR-3A for the purpose of Section 46.**

CBIC has prescribed the Standard Operating Procedure that has to be followed in case of non- filers of GST return vide Circular No. 129/48/2019- GST dated December 24, 2019.

GST Board has issued clarification and guidelines to be followed in order to ensure uniformity across the field formation. **FORM GSTR-3A** – Notice for non-filing of GST returns consists of the reference number, GSTIN of the taxpayer, Legal/trade name, and the complete postal address.

In the said notice default period, i.e., tax period for which the taxpayer has made the default and the type of return is specifically mentioned.

Levy of the Fee

Section 47 of the CGST Act provides that:

1. Any registered person who **fails to furnish the details of outward or inward supplies required** under section 37 or returns required under section 39 or section 45 or section 52 **by the due date** shall pay a **late fee of one hundred rupees for every day** during which such failure continues subject to a **maximum amount of five thousand rupees.**
2. Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a **late fee of one hundred rupees for every day** during which such failure continues subject to a **maximum of an amount calculated at a quarter per cent** of his turnover in the State or Union territory.

Forms relating to Returns

List of Forms relating to Returns are contained in Annexure IV, at the end of this Chapter.

REFUND

GST refund is a process in which, registered taxpayers can claim excess amount if they paid more than the GST liability. Chapter XI of the CGST Act (Section 54 to 58) read with Chapter X of the CGST Rules (Rules 89 to 97A) deals with the manner of claiming and giving of refund. The concept of refund under GST relates to any amount returned by the Government that was paid by the registered taxpayer either in excess or was not liable to be taxed.

Statutory Provisions

Section 54 of the CGST provides that:

1. Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

   Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in such form and manner as may be prescribed.

2. A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of two years from the last day of the quarter in which such supply was received.

   Vide Notification No. 20/2018-C.T., dated 28-3-2018, in exercise of the powers conferred by section 148 of the said act, the Central Government, has allowed the persons notified under Section 55 to file refund application before the expiry of eighteen months from the last date of the quarter in which such supply was received.

3. Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

   Provided that no refund of unutilised input tax credit shall be allowed in cases other than -

   i. zero rated supplies made without payment of tax;

   ii. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

   Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

   Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

4. The application shall be accompanied by -

   a. such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

   b. such documentary or other evidence (including the documents referred to inspection 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

   Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

5. If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

6. Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as maybe notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

7. The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

8. Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

   a. refund of tax paid on export of goods or services or both or on inputs or input services used in making such export;

   b. refund of unutilised input tax credit under sub-section (3);

c. refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

d. refund of tax in pursuance of section 77;

e. the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

f. the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

8A. The Government may disburse the refund of the State tax in such manner as may be prescribed.

9. Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this actor the Rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

10. Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may -

a. withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

b. deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this act or under the existing law.

***Explanation**:* For the purposes of this sub-section, the expression "specified date "shall mean the last date for filing an appeal under this act.

11. Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

12. Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

13. Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

14. Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

***Explanation**:* For the purposes of this section, -

1. "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

2. "relevant date" means -

a. in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods, -

i. if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

ii. if the goods are exported by land, the date on which such goods pass the frontier; or

iii. if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India.

b. in the case of supply of goods regarded as deemed exports where are fund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;

c. in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of -

i. receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or

ii. issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice.

d. in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

e. in the case of refund of unutilised input tax credit under clause (ii) of the First proviso to sub- section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;

f. in the case where tax is paid provisionally under this act or the Rules made thereunder, the date of adjustment of tax after the final assessment thereof;

Refund is generally available in the following circumstances:

- Input taxes in relation to export of goods and/ or services;
- Output taxes in relation to export of goods and / or services;
- Inverted tax structure;
- Excess payment of tax under mistake or otherwise;
- Excess balance in electronic cash ledger;
- Deemed Exports;
- Tax suffered by specialized agencies such as Diplomats, UN, etc.;
- Tax suffered by inbound tourists.

g. in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and in any other case, the of payment of tax.

Procedures for claiming refund

Rule 89. Application for refund of tax, interest, penalty, fees or any other amount. -

(1) Any person, except the persons covered under notification issued under section 55, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sec 49(6) or any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the -

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

Provided further that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund:

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

Explanation.—For the purposes of this sub-Rule, – "specified officer" means a "specified officer" or an "authorised officer" as defined under Rule 2 of the Special Economic Zone Rules, 2006

(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-Rule, be filed before the expiry of a period of two years from the date on which this sub-Rule comes into force.

(2) The application under sub-Rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in **Form GST RFD-01**, As applicable, to establish that a refund is due to the applicant, namely:-

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods; [other than electricity];

(ba) "a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity"

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

(d) a statement containing the number and date of invoices as provided in Rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-Rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-Rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

(f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as Intra-State supply but which is subsequently held to be Inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

(ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved

in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) a Certificate in Annexure 2 of **FORM GST RFD-01** issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

***Explanation**:* For the purposes of this Rule -

(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression "invoice" means invoice conforming to the provisions contained in section 31;

(ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula -

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷ Adjusted Total Turnover Where, -

(A) **"Refund amount"** means the maximum refund that is admissible;

(B) **"Net ITC"** means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-Rules (4A) or (4B) or both;

(C) **"Turnover of zero-rated supply of goods"** means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-Rules (4A) or (4B) or both;

(D) **"Turnover of zero-rated supply of services"** means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero- rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) **"Adjusted Total Turnover"** means the sum total of the value of -

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non- zero- rated supply of services, excluding -

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-Rule (4A) or sub-Rule (4B) or both, if any, during the relevant period.

(F) **"Relevant period"** means the period for which the claim has been filed.

Explanation: For the purpose of this sub Rule, value of goods exported out of India shall be taken as

1) Free on Board value declared in the shipping bill or bill of export, as the case may be;

2) Value declared in tax invoice or bill of supply, whichever is less.

(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1305(E), dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has -

(a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017; or

(b) availed the benefit of notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E), dated the 13th October, 2017, the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.".

(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula :-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) × Net ITC ÷ Adjusted

Total Turnover} - tax payable on such inverted rated supply of goods and services x (Net ITC / ITC availed on input and input services x Net ITC/ITC availed on inputs and Input Services)}

Explanation:- For the purposes of this sub-Rule, the expressions -

(a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-Rules (4A) or (4B) or both; and

(b) Adjusted Total turnover shall have the same meaning as assigned to it in sub-Rule (4).

Rule 90. Acknowledgement -

(1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-Rules (2), (3) and (4) of Rule 89, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in **FORM GST RFD-03** through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies."

(4) Where deficiencies have been communicated in **FORM GST RFD-03** under the State Goods and Services Tax Rules, 2017, the same shall also deemed to have been communicated under this Rule along with the deficiencies communicated under sub-Rule (3).

(5) The applicant may, at any time before issuance of provisional refund sanction order in **FORM GST RFD-04** or final refund sanction order in **FORM GST RFD-06** or payment order in **FORM GST RFD-05** or refund withhold order in **FORM GST RFD-07** or notice in **FORM GST RFD-08**, in respect of any refund application filed in **FORM GST RFD-01**, withdraw the said application for refund by filing an application in **FORM GST RFD-01W.**

(6) On submission of application for withdrawal of refund in **FORM GST RFD-01W,** any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in **FORM GST RFD-01**, shall be credited back to the ledger from which such debit was made.

Rule 91. Grant of provisional refund -

(1) The provisional refund in accordance with the provisions of sub- section (6) of section 54 shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

(2) The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being *prima facie* satisfied that the amount claimed as refund under sub-Rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of section 54, shall make an order in **FORM GST RFD-04**, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under sub-Rule (1) or sub-Rule (2) of Rule 90.

Provided that the order issued in **FORM GST RFD-04** shall not be required to be revalidated by the proper officer.

(3) The proper officer shall issue a payment order in **FORM GST RFD-05** for the amount sanctioned under sub- Rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice.

Provided that the payment order in **FORM GST RFD-05** shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

(4) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-Rule (3).

Rule 92. Order sanctioning refund-

(1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in **FORM GST RFD-06** sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted against any outstanding demand under the act or under any existing law and the balance amount refundable

(1A) Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the act is due and payable to the applicant, he shall make an order in **FORM RFD-06** sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue **FORM GST PMT-03** recrediting the said amount as Input Tax Credit in electronic credit ledger.

(2) Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of sub-section (10) or, as the case may be, sub-section (11) of section 54, he shall pass an order in **Part A** of **FORM GST RFD-0**7 informing him the reasons for withholding of such refund.

"**Provided** that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in **Part B** of **FORM GST RFD- 07.**"

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD-08** to the applicant, requiring him to furnish a reply in **FORM GST RFD-**

09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-06** sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-Rule (1) shall, *mutatis mutandis*, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

(4) Where the proper officer is satisfied that the amount refundable under sub-Rule (1) or sub-Rule (2) or sub-Rule (1A) is payable to the applicant under sub-section (8) of section 54, he shall make an order in **FORM GST RFD-06** and issue a payment order in **FORM GST RFD-05** for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund, on the basis of a consolidated payment advice.

Provided that the order issued in **FORM GST RFD-06** shall not be required to be revalidated by the proper officer:

Provided further that the payment order in **FORM GST RFD-05** shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.

(4A) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-Rule (4).

(5) Where the proper officer is satisfied that the amount refundable under sub-Rule (1) or sub-Rule (1A) or sub- Rule (2) is not payable to the applicant under sub-section (8) of section 54, he shall make an order in **FORM GST RFD-06** and issue a payment order in **FORM GST RFD-05**, for the amount of refund to be credited to the Consumer Welfare Fund.

Rule 93. Credit of the amount of rejected refund claim -

(1) Where any deficiencies have been communicated under sub-Rule (3) of Rule 90, the amount debited under sub-Rule (3) of Rule 89 shall be re- credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under Rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in **FORM GST PMT-03.**

> ***Explanation****:* For the purposes of this Rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

Rule 94. Order sanctioning interest on delayed refunds. - Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in **FORM GST RFD-05**, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

Note: Refund claim subsequent to favorable order in appeal or any other forum Procedure;, Students may refer, Circular No. 111/30/2019-GST, dated 3-10-2019 (https://taxinformation.cbic.gov.in/view-pdf/1002955/ENG/Circulars)

Rule 96. Refund of integrated tax paid on goods [or services] exported out of India -

(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

(a) the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

(b) the applicant has furnished a valid return in **FORM GSTR-3B:**

Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in **FORM GSTR-1**, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter";

(c) the applicant has undergone Aadhaar authentication in the manner provided in Rule 10B

(2) The details of the [relevant export invoices in respect of export of goods] contained in **FORM GSTR-1** shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

Provided that where the date for furnishing the details of outward supplies in **FORM GSTR-1** for a tax period has been extended in exercise of the powers conferred under section 37 of the act, the supplier shall furnish the information relating to exports as specified in Table 6A of **FORM GSTR-1** after the return in **FORM GSTR- 3B** has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in **FORM GSTR-1** for the said tax period.

(3) Upon the receipt of the information regarding the furnishing of a valid return in **FORM GSTR-3 [or FORM GSTR-3B]** from the common portal, [the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods] and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

(4) The claim for refund shall be withheld where,-

(a) a request has been received from the jurisdictional Commissioner of Central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(5A) Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-Rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated **FORM GST RFD-01** and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other Rule, the said

system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5B) Where refund is withheld in accordance with the provisions of clause (b) of sub-Rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962 (52 of 1962), then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system-generated **FORM GST RFD-01** and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other Rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5C) The application for refund in **FORM GST RFD-01** transmitted electronically through the common portal in terms of sub-Rules (5A) and (5B) shall be dealt in accordance with the provisions of Rule 89.

(5) The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

(6) The application for refund of integrated tax paid on the services exported out of India shall be filed in **FORM GST RFD-01** and shall be dealt with in accordance with the provisions of Rule 89.

(7) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.".

Explanation. - For the purpose of this sub-Rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.

Rule 96A. Export of goods and services under bond or letter of Undertaking (LOU) -

(1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in **FORM GST RFD-11** to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of -

(a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.

(2) The details of the export invoices contained in **FORM GSTR-1** furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system:

Provided that where the date for furnishing the details of outward supplies in **FORM GSTR-1** for a tax period has been extended in exercise of the powers conferred under section 37 of the act, the supplier shall furnish the information relating to exports as specified in Table 6A of **FORM GSTR-1** after the return in **FORM GSTR- 3B** has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in **FORM GSTR-1** for the said tax period.

(3) Where the goods are not exported within the time specified in sub-Rule (1) and the registered person fails to pay the amount mentioned in the said sub-Rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.

(4) The export as allowed under bond or Letter of Undertaking withdrawn in terms of sub-Rule (3) shall be restored immediately when the registered person pays the amount due.

(5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

(6) The provisions of sub Rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.

Rule 96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised -

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50 :

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of

1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-Rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

Clarifications issued on refund claim by recipient of deemed export supply, zero-rated supplies and calculation of adjusted total turnover under CGST Rule 89(4)

Circular No. 147/03/2021-GST, dated 12-3-2021

1. Clarification in respect of refund claim by recipient of Deemed export Supply

1.1 Representations have been received in respect of difficulties being faced by the recipients of the deemed export supplies in claiming refund of tax paid in respect of such supplies since the system is not allowing them to file refund claim under the aforesaid category unless the claimed amount is debited in the electronic credit ledger.

1.2 Para 41 of Circular No. 125/44/2019-GST, dated 18-11-2019 [2019 (30) G.S.T.L. C44] has placed a condition that the recipient of deemed export supplies for obtaining the refund of tax paid on such supplies shall submit an undertaking that he has not availed ITC on invoices for which refund has been claimed. Thus, in terms of the above circular, the recipient of deemed export supplies cannot avail ITC on such supplies but when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger.

1.3 The 3rd proviso to Rule 89(1) of CGST Rules, 2017 allows for refund of tax paid in case of a *deemed export supply to the recipient or the supplier* of deemed export supplies. The said proviso is reproduced as under:

"**Provided also** that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund".

From the above, it can be seen that there is no restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies when the recipient files for refund claim. The said restriction has been placed by the Circular No. 125/44/2019-GST, dated 18-11-2019.

1.4 In this regard, it is submitted that in order to ensure that there is no dual benefit to the claimant, the portal allows refund of only Input Tax Credit (ITC) to the recipients which is required to be debited by the claimant while filing application for refund claim. Therefore, whenever the recipient of deemed export supplies files an application for refund, the portal requires debit of the equivalent amount from the electronic credit ledger of the claimant.

1.5 As stated above, there is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availment of ITC on the tax paid on such supply. Therefore, the para 41 of Circular No. 125/44/2019-GST, dated 18-11-2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient. The amended para 41 of Circular No. 125/44/2019-GST, dated 18-11-2019 would read as under :

"41. Certain supplies of goods have been notified as deemed exports vide Notification No. 48/2017-Central Tax, dated 18-10-2017 under section 147 of the CGST Act. Further, the third proviso to Rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in Notification No. 49/2017-Central Tax, dated 18-10-2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies.

The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU)/ Electronic Hardware Technology Park (EHTP) Unit/Software Technology Park (STP) Unit/ Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST, dated 6-11-2017 needs to be complied with."

2. extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a)

2.1 Para 26 of Circular No. 125/44/2019-GST, dated 18th November 2019 gave a clarification in relation to cases where taxpayers had inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of **FORM GSTR-3B** of the relevant period and were unable to claim refund of the integrated tax paid on the same through **FORM GST RFD-01A**. This was because of a validation check placed on the common portal which prevented the value of refund of integrated tax/cess in **FORM GST RFD-01A** from being more than the amount of integrated tax/cess declared in table 3.1(b) of **FORM GSTR-3B**. The said Circular clarified that for the tax periods from 1-7-2017 to 30-6-2019, such registered persons shall be allowed to file the refund application in FORM GST RFD-01A on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/ cess mentioned in the tables 3.1(a), 3.1(b) and 3.1(c) of **FORM GSTR-3B** filed for the corresponding tax period.

2.2 Since the clarification issued vide the above Circular was valid only from 1-7-2017 to 30-6-2019, taxpayers who committed these errors in subsequent periods were not able to file the refund applications in **FORM GST RFD-01A/ FORM GST RFD-01**.

2.3 The issue has been examined and it has been decided to extend the relaxation provided for filing refund claims where the taxpayer inadvertently entered the details of export of services or zero-rated supplies to a Special Economic Zone Unit/Developer in table 3.1(a) instead of table 3.1(b) of FORM GSTR-3B till 31-3- 2021. Accordingly, para 26 of Circular No. 125/44/2019-GST, dated 18-11-2019 stands modified as under:

"26. In this regard, it is clarified that for the tax periods commencing from 1-7-2017 to 31-3-2021, such registered persons shall be allowed to file the refund application in FORM GST RFD-01 on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period."

3. The manner of calculation of Adjusted Total Turnover under sub-Rule (4) of Rule 89 of CGST Rules, 2017

3.1 Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the "Turnover of zero-rated supply of goods" vide Notification No. 16/2020-Central Tax, dated 23-3-2020, would also apply for computation of "Adjusted Total Turnover" in the formula given under Rule 89(4) of CGST Rules, 2017 for calculation of admissible refund amount.

3.2 Sub-Rule (4) of Rule 89 prescribes the formula for computing the refund of unutilised ITC payable on account of zero-rated supplies made without payment of tax. The formula prescribed under Rule 89(4) is reproduced below, as under :

"Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷ Adjusted Total Turnover"

3.3 Adjusted Total Turnover has been defined in clause (E) of sub-Rule (4) of Rule 89 as under :

"Adjusted Total Turnover" means the sum total of the value of -

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero- rated supply of services, excluding -

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-Rule (4A) or sub-Rule (4B) or both, if any, during the relevant period.'

3.4 "Turnover in state or turnover in Union territory" as referred to in the definition of "Adjusted Total Turnover" in Rule 89(4) has been defined under sub-section (112) of Section 2 of CGST Act, 2017, as :

"Turnover in State or turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess".

3.5 From the examination of the above provisions, it is noticed that "Adjusted Total Turnover" includes "Turnover in a State or Union Territory", as defined in Section 2(112) of CGST Act. As per Section 2(112), "Turnover in a State or Union Territory" includes turnover/value of export/ zero-rated supplies of goods. The definition of "Turnover of zero-rated supply of goods" has been amended vide Notification No. 16/2020-Central Tax, dated 23-3-2020, as detailed above. In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-Rule (4) of Rule 89. Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "Adjusted Total Turnover" in Rule 89(4) of the CGST Rules, 2017.

3.6 Accordingly, it is clarified that for the purpose of Rule 89(4), the value of export/ zero-rated supply of goods to be included while calculating "adjusted total turnover" will be same as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-Rule. The same can explained by the following illustration where actual value per unit of goods exported is more than 1.5 times the value of same/similar goods in domestic market, as declared by the supplier :

All values in Rs.

Outward Supply	***value per unit***	***No of units supplied***	***Turnover***	***Turnover as per amended definition***
Local (Quantity 5)	200	5	1000	1000
Export (Quantity 5)	350	5	1750	1500 (1.5*5*200)
			2750	2500

Illustration: Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below :

Net admissible ITC = Rs. 270

The formula for calculation of refund as per Rule 89(4) is :

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷Adjusted Total Turnover

Turnover of Zero-rated supply of goods (as per amended definition) = Rs. 1500

Adjusted Total Turnover= Rs. 1000 + Rs. 1500 = Rs. 2500 [and not Rs. 1000 + Rs. 1750] Net ITC = Rs. 270

$$\text{Refund Amount} = \frac{\text{Rs. } 1500 \times 270}{2500} = \text{Rs.}$$

Thus, the admissible refund amount in the instant case is Rs. 162.

Refund in Certain Cases

Section 55 of the CGST Act provides that the Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

Rule 95 of the CGST Rules provides that:

1. Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued section 55 shall apply for refund in **FORM GST RFD-10** once in every quarter, electronically on the common portal or otherwise, either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in **FORM GSTR-11**.
2. An acknowledgement for the receipt of the application for refund shall be issued in **FORM GST RFD-02**.
3. The refund of tax paid by the applicant shall be available if –
   a. the inward supplies of goods or services or both were received from a registered person against a tax invoice;
   b. name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant is mentioned in the tax invoice; and
   c. such other restrictions or conditions as may be specified in the notification are satisfied.

   Provided that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorised representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10**.
4. The provisions of Rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this Rule.
5. Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

Interest on delayed Refunds

Section 56 of the CGST Act provides that if any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. As may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such **rate not exceeding nine per cent** as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately **after the expiry of sixty days** from the date of receipt of application till the date of refund.

Explanation. - For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

Order sanctioning interest on delayed refunds:

Rule 94 of the CGST Rules provides that where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in FORM GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

CONSUMER WELFARE FUND

Section 57 of the CGST provides that the Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund, -

a. the amount referred to in sub-section (5) of section 54;

b. any income from investment of the amount credited to the Fund; and

c. such other monies received by it, in such manner as may be prescribed.

Section 58 of the CGST Act provides that:

1. All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.

2. The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Rule 97 of the CGST Rules provides that:

1. All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies specified in sub-section (2) of section 12C of the Central Excise Act, 1944 (1 of 1944), section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and section 12 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017) shall be credited to the Fund:

   Provided that an amount equivalent to fifty per cent of the amount of integrated tax determined under sub- section (5) of section 54 of the Central Goods and Services Tax Act, 2017, read with section 20 of the Integrated Goods and Services Tax Act, 2017, shall be deposited in the Fund.

   Provided further that an amount equivalent to **fifty per cent.** of the amount of cess determined under sub- section (5) of section 54 read with section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), shall be deposited in the Fund.

2. Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.

3. Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.

4. The Government shall, by an order, constitute a Standing Committee (hereinafter referred to as the "Committee") with a Chairman, a Vice-Chairman, a Member Secretary and such other members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Fund for welfare of the consumers.

5. (a) The Committee shall meet as and when necessary, generally four times in a year;

   (b) The Committee shall meet at such time and place as the Chairman, or in his absence, the Vice-Chairman of the Committee may deem fit;

   (c) The meeting of the Committee shall be presided over by the Chairman, or in his absence, by the Vice-Chairman;

   (d) The meeting of the Committee shall be called, after giving at least ten days 'notice in writing to every member;

   (e) The notice of the meeting of the Committee shall specify the place, date and hour of the meeting and shall contain statement of business to be transacted thereat;

   (f) No proceeding of the Committee shall be valid, unless it is presided over by the Chairman or Vice-Chairman and attended by a minimum of three other members.

6. The Committee shall have powers -

   a. to require any applicant to get registered with any authority as the Central Government may specify;

   b. to require any applicant to produce before it, or before a duly authorised officer of the Central Government or the State Government, as the case may be, such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;

   c. to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or the State Government, as the case may be;

   d. to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;

   e. to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum along with accrued interest, the sanctioned grant to the Committee, and to be subject to prosecution under the act;

   f. to recover any sum due from any applicant in accordance with the provisions of the act;

   g. to require any applicant, or class of applicants to submit a periodical report, indicating proper utilisation of the grant;

   h. to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;

   i. to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of the nature of activity under pursuit, after ensuring that the financial assistance provided shall not be misutilised;

   j. to identify beneficial and safe sectors, where investments out of Fund may be made, and make recommendations, accordingly;

   k. to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;

l. to make guidelines for the management, and administration of the Fund.

7. The Committee shall not consider an application, unless it has been inquired into, in material details and recommended for consideration accordingly, by the Member Secretary.

(7A) The Committee shall make available to the Board **50 per cent.** of the amount credited to the Fund each year, for publicity or consumer awareness on Goods and Services Tax, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is **not less than twenty-five crore rupees per annum.**

8. The Committee shall make recommendations:-

a. for making available grants to any applicant;

b. for investment of the money available in the Fund;

c. for making available grants (on selective basis) for reimbursing legal expenses incurred by a complainant, or class of complainants in a consumer dispute, after its final adjudication;

d. for making available grants for any other purpose recommended by the Central Consumer Protection Council (as may be considered appropriate by the Committee).

***Explanation**:* For the purposes of this Rule, -

a. 'Act' means the Central Goods and Services Tax Act, 2017 (12 of 2017), or the Central Excise Act, 1944 (1 of 1944) as the case may be;

b. 'applicant' means,

i. the Central Government or State Government;

ii. regulatory authorities or autonomous bodies constituted under an Act of Parliament or the Legislature of a State or Union Territory;

iii. any agency or organization engaged in consumer welfare activities for a minimum period of three years, registered under the Companies Act, 2013 (18 of 2013) or under any other law for the time being in force;

iv. village or mandal or samiti or samiti level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes;

v. an educational or research institution incorporated by an Act of Parliament or the Legislature of a State or Union Territory in India or other educational institutions established by an Act of Parliament or declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956) and which has consumers studies as part of its curriculum for a minimum period of three years; and

c. a complainant as defined under clause (b) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986), who applies for reimbursement of legal expenses incurred by him in a case instituted by him in a consumer dispute redressal agency. 'application' means an application in the form as specified by the Standing Committee from time to time;

d. 'Central Consumer Protection Council' means the Central Consumer Protection Council, established under sub- section (1) of section 4 of the Consumer Protection Act, 1986 (68 of 1986), for promotion and protection of rights of consumers;

e. 'Committee' means the Committee constituted under sub-Rule (4);

f. 'consumer' has the same meaning as assigned to it in clause (d) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986), and includes consumer of goods on which central tax has been paid;

g. 'duty' means the duty paid under the Central Excise Act, 1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962);

h. 'Fund' means the Consumer Welfare Fund established by the Central Government under sub-section (1) of section 12C of the Central Excise Act, 1944 (1 of 1944) and section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017);

i. 'proper officer' means the officer having the power under the act to make an order that the whole or any part of the central tax is refundable.

Manual Filing and Processing

Rule 97A of the CGST Rules provides that notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these Rules.

SCN for recovery of refund granted by duly adjudicated order

The Supreme Court has held that a show cause notice u/s 74(1) of CGST Act, 2017 can be issued against a refund order granted as per duly adjudicated order. The petitioner in SLP before Supreme Court and High Court contended that it was not open to the Revenue Authorities to reopen refund granted pursuant to an adjudication on refund application but it can only file an appeal. High Court held that the provisions of section 74 does not make any distinction between refund orders passed with or without adjudication and that the said provision does not provide that an order of refund after adjudication cannot be reopened.

Supreme Court declined to interfere and held that petitioner may urge before the Authorities that the show cause notice travels beyond the reasons stipulated in section 74 of the CGST Act, 2017.

[*Ganesh Ores (P.) Ltd.* v. *State of Orissa* (*2022*) (*SC*)]

Note : For Clarification issued by CBIC on Refund Related Issues students may refer Circular No. 135/05/2020-GST, dated 31-3-2020 at https://taxinformation.cbic.gov.in/view-pdf/1002931/ENG/Circulars.

Annexure-B

Statement of invoices to be submitted with application for refund of unutilized ITC

Sr. No.	*GSTIN of the Supplier*	*Name of the Supplier*	*Invoice Details*			*Category of input supplies*		*Central Tax*	*State Tax / Union Territory Tax*	*Integrated Tax*	*Cess*	*Eligible for ITC*	*Amount of eligible ITC*
			Invoice No.	Date	Value	Inputs/ Input Services/ capital goods	HSN / SAC					Yes / No/ Partially	
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Forms relating to Refund

Forms relating to Refund are contained in Annexure V, at the en d of this chapter.

Forms relating to Assessment

Forms relating to Assessments are contained in Annexure VI at the end of this Chapter.

GST ON DIRECTOR'S REMUNERATION

Directors' remuneration is the process by which Directors of a Company are compensated, either through fees, salary, or the use of the company's property, with approval from the shareholders and board of directors.

Doubts have been raised as to whether the remuneration paid by companies to their directors falls under the ambit of entry in Schedule III of the Central Goods and Services Tax Act, 2017, i.e., "services by an employee to the employer in the course of or in relation to his employment" or whether the same are liable to be taxed in terms of notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017 (entry no.6).

CBIC has clarified the applicability of GST on director's remuneration vide CGST circular no. 140/2020 dated 10th June 2020.

The issue of Remuneration to Directors has been examined under two categories:

i) Leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and

ii) Leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.

GST on remuneration paid by Companies to Independent Directors

The primary issue to be decided is whether or not a "Director" is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:

a. the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he may be a person who is not an employee of the company.

b. the definition of "independent directors" under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that such director should not have been an employee or proprietor or a partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.

Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017, the recipient of the said services, i.e., the Company, is liable to discharge the applicable GST on it on reverse charge basis.

The remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

GST on remuneration paid by Companies to the Directors, who are also an employee of the Company

After the primary issue is resolved, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service".

The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e., under a contract of service (employment) entered into with the company.

Treatment of the Director's remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

The part of Director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017 and the part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017, the recipient of the said services, i.e., the Company, is liable to discharge the applicable GST on it on reverse charge basis.

CASE LAW

In Re : Mansi Oils And Grains Pvt. Ltd. 2020 (38) G.S.T.L. 626 (A.A.R. - GST - W.B.)

Question asked:

a. whether any sale done by the liquidator of the assets of the applicant results in a supply of goods and/or services or both within the meaning of "supply" as defined under Section 7 of the GST Act.

b. If the answer is affirmative, then what will be the rate of GST?

c. The applicant also wants to know whether the liquidator needs to get registered under the GST Act.

Discussions:

Sl. No. 4(a) of Schedule-II of the GST Act says, where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.

The liquidator is appointed under Section 34(1) of IBC after NCLT initiates liquidation in terms of Section 33 of IBC. As the applicant - the corporate debtor - is not a going concern, the liquidator is required to sell its assets under clauses (a) to (d) of Regulation 32 of the Insolvency and Bankruptcy Board of India (liquidation process) Regulations. The sale of the applicant's assets like the plant and machinery, office equipment & furniture is, therefore, a supply of goods by the liquidator. She is required to take registration under Section 24 of the GST Act.

NCLT appoints the 'resolution professional' (hereinafter RP), as defined under Section 3(27) of IBC, as the liquidator subject to her consent. If she is already registered as a distinct person of the corporate debtor in

terms of Notification No. 11/2020-Central Tax, dated 21-3-2020, she should continue to remain registered till her liability ceases under Section 29(1)(c) of the GST Act. It may be noted that the RP/liquidator Acts as the authorized person of the corporate debtor. Once an insolvency professional takes registration as the authorized person of the corporate debtor, it remains in effect with suitable amendment in the certificate of registration if the status or person of the authorized person gets changed (refer to Circular No. 138/08/2020-GST, dated 6-5-2020).

According to the applicant, the goods sold are plant and machineries, office equipment and furniture. They are broad categories classifiable under different HSN and taxable under appropriate Sl. Nos. of the Schedules under Notification No. 1/2017-C.T. (Rate), dated 28-6-2017.

Ruling

The sale of the assets of the applicant by NCLT appointed liquidator is a supply of goods by the liquidator, who is required to take registration under Section 24 of the GST Act.

If she is already registered as a distinct person of the corporate debtor in terms of Notification No. 11/2020-Central Tax, dated 21-3-2020, she should continue to remain registered till her liability ceases under Section 29(1)(c) of the GST Act.

Annexure I

Forms relating to Registration

S. No.	*Form No.*	*Particulars*	*Relevant Rule*
1.	GST REG-01	Application for Registration	Rule 8(1)
2.	GST REG-02	Acknowledgment	Rule 8(5)
3.	GST REG-03	Notice for Seeking Additional Information	Rule 9(2)
4.	GST REG-04	Clarification/ additional information/ document for Registration/ Amendment/ Cancellation	Rule 9(2)]
5.	GST REG-05	Order of Rejection of Application for Registration / Amendment / Cancellation/	Rule 9(4)
6.	GST REG-06	Registration Certificate	Rule 10(1)
7.	GST REG-07	Application for Registration as Tax Deductor at source (u/s 51) or Tax Collector at source (u/s 52)	Rule 12(1)
8.	GST REG-08	Order of Cancellation of Registration as Tax Deductor at source or Tax Collector at source	Rule 12(3)
9.	GST REG-09	Application for Registration of Non Resident Taxable Person	Rule 13(1)
10.	GST REG-10	Application for registration of person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person	Rule 14(1)

S. No.	Form No.	Particulars	Relevant Rule
11.	GST REG-11	Application for extension of registration period by casual / non-resident taxable person	Rule 15(1)
12.	GST REG-12	Order of Grant of Temporary Registration/ Suo Moto Registration	Rule 16(1)
13.	GST REG-13	Application/Form for grant of Unique Identity Number (UIN) to UN Bodies/ Embassies /others	Rule 17
14.	GST REG-14	Application for Amendment in Registration Particulars	Rule 19(1)
15.	GST REG-15	Order of Amendment	Rule 19(1)
16.	GST REG-16	Application for Cancellation of Registration	Rule 20
17.	GST REG-17	Show Cause Notice for Cancellation of Registration	Rule 22(1)
18.	GST REG-18	Reply to the Show Cause Notice issued for cancellation for registration	Rule 22(2)w
19.	GST REG-19	Order for Cancellation of Registration	Rule 22(3)
20.	GST REG-20	Order for dropping the proceedings for cancellation of registration	Rule 22(4)
21.	GST REG-21	Application for Revocation of Cancellation of Registration	Rule 23(1)
22.	GST REG-22	Order for revocation of cancellation of registration	Rule 23(2)
23.	GST REG-23	Show Cause Notice for rejection of application for revocation of cancellation of registration	Rule 23(3)
24.	GST REG-24	Reply to the notice for rejection of application for revocation of cancellation of registration	Rule 23(3)
25.	GST REG-25	Certificate of Provisional Registration	Rule 24(1)
26.	GST REG-26	Application for Enrolment of Existing Taxpayer	Rule 24(2)
27.	GST REG-27	Show Cause Notice for cancellation of provisional registration	Rule 24(3)
28.	GST REG-28	Order for cancellation of provisional registration	Rule 24(3)
29.	GST REG-29	Application for cancelation of registration of migrated taxpayers	Rule 24(4)
30.	GST REG-30	Form for Field Visit Report	Rule 25
31	GST REG-31	Intimation for suspension and notice for cancellation of registration	Rule 21A

Annexure II

The list of States along with the State Codes is as under:

Serial No.	***State Name***	***State Code***
1.	JAMMU AND KASHMIR	01
2.	HIMACHAL PRADESH	02
3.	PUNJAB	03
4.	CHANDIGARH	04
5.	UTTARAKHAND	05
6.	HARYANA	06
7.	DELHI	07
8.	RAJASTHAN	08
9.	UTTAR PRADESH	09
10.	BIHAR	10
11.	SIKKIM	11
12.	ARUNACHAL PRADESH	12
13.	NAGALAND	13
14.	MANIPUR	14
15.	MIZORAM	15
16.	TRIPURA	16
17.	MEGHLAYA	17
18.	ASSAM	18
19.	WEST BENGAL	19
20.	JHARKHAND	20
21.	ODISHA	21
22.	CHATTISGARH	22
23.	MADHYA PRADESH	23
24.	GUJARAT	24

Serial No.	State Name	State Code
25.	DAMAN AND DIU (MERGED WITH DADRA AND NAGAR HAVELI SINCE 26.01.2020)	26
26.	MAHARASHTRA	27
27.	ANDHRA PRADESH (BEFORE DIVISION)	28
28.	KARNATAKA	29
29.	GOA	30
30.	LAKSHWADEEP	31
31.	KERALA	32
32.	TAMIL NADU	33
33.	PUDUCHERRY	34
34.	ANDAMAN AND NICOBAR ISLANDS	35
35.	TELANGANA	36
36.	ANDHRA PRADESH (NEW)	37

Annexure III

Forms relating to payment of tax

S. No.	Form No.	Particulars	Relevant Rule
1.	GST PMT - 01	Electronic Liability Register of Registered Person (Part-I: Return related liabilities)	Rule 85(1)
2.	GST PMT - 02	Electronic Credit Ledger of Registered Person	Rule 86(1)
3.	GST PMT - 03	Order for re-credit of the amount to cash or credit ledger on rejection of refund claim	Rules86(4) & 87(11))
4.	GST PMT - 04	Application for intimation of discrepancy in Electronic Credit Ledger/Cash Ledger/Liability Register	Rules 85(7), 86(6) & 87(12)
5.	GST PMT - 05	Electronic Cash Ledger	Rule 87(1)
6.	GST PMT - 06	Challan for deposit of goods and services tax	Rule 87(2)
7.	GST PMT - 07	Application for intimating discrepancy relating to payment	Rule 87(8)
8	GST PMT-09	Transfer of amount from one account head to another in electronic cash ledger	Rule 87(13)

Annexure IV

Forms relating to Returns

S. No.	*Form No.*	*Particulars*	*Relevant Rule*
1.	GSTR-1	Details of outward supplies of goods or services	Rule 59(1)
2.	GSTR-1A	Details of auto drafted supplies (From GSTR 2, GSTR 4 or GSTR 6)	Rule 59(4)
3.	GSTR-2	Details of inward supplies of goods or services	Rule 60(1)
4.	GSTR-2A	Details of auto drafted supplies (From GSTR 1, GSTR 5, GSTR-6, GSTR-7 and GSTR-8)	Rule 60(1)
5.	GSTR-3	Monthly return	Rule 61(1)
6.	GSTR-3A	Notice to return defaulter u/s 46 for not filing return	Rule 68
7.	GSTR-3B		Rule 61(5)
8.	GSTR-4	Quarterly return for registered person opting for composition levy	Rule 62
9.	GSTR-4A	Auto-drafted details for registered person opting for composition levy (Auto-drafted from GSTR-1, GSTR-5 and GSTR-7)	Rules 59(3) & 66(2)]
10	GSTR-5	Return for Non-resident taxable person	Rule 63
11.	GSTR-5A	Details of supplies of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India	Rule 64
12.	GSTR-6	Return for input service distributor	Rule 65
13.	GSTR-6A	Details of supplies auto-drafted form (Auto-drafted from GSTR-1)	Rules 59(3) & 65]
14.	GSTR-7	Return for Tax Deducted at Source	Rule 66(1)
15.	GSTR-7A	Tax Deduction at Source Certificate	Rule 66(3)]
16.	GSTR-8	Statement for tax collection at source	Rule 67(1)
17.	GSTR-9	Annual Return	Rule 80
18.	GSTR-9C	Reconciliation Statement	Rule 80(3)
19	GSTR10	Final Return	Rule 81
20.	GSTR-11	Statement of inward supplies by persons having Unique Identification Number (UIN)	Rule 82

Annexure V

Forms relating to Refund

S. No.	*Form No.*	*Particulars*	*Relevant Rule*
1.	GST-RFD-01	Application for Refund	Rule 89(1)
2.	GST-RFD-01 A	Application for Refund (Manual)	Rules 89(1) and 97A
3.	GST-RFD-01 B	Refund Order details	Rules 91(2), 92(1) 92(3), 92(4), 92(5) and 97A
4	GST RFD-01 W	Application for Withdrawal of Refund Application	Rule 90(5)
5.	GST-RFD-02	Acknowledgment	Rules90(1), 90(2) and 95(2)
6.	GST-RFD-03	Deficiency Memo	Rule 90(3)
7.	GST-RFD-04	Provisional Refund Order	Rule 91(2)]
8.	GST-RFD-05	Payment Advice	Rule 91(3), 92(4), 92(5) & 94
9.	GST-RFD-06	Refund Sanction/Rejection Order	Rule 92(1), 92(3), 92(4), 92(5) & 96(7)]
10.	GST-RFD-07	Order for Complete adjustment of sanctioned Refund	Rule 92(1), 92(2) & 96(6)]
11.	GST-RFD-08	Notice for rejection of application for refund	Rule 92(3)
12.	GST-RFD-09	Reply to show cause notice	Rule 92(3)]
13	GST-RFD-10	Application for Refund by any specialized agency of UN or any Multilateral Financial Institution and Organization, Consulate or Embassy of foreign countries, etc.	Rule 95(1)]
14	GST-RFD-10A	Application for refund by Canteen Stores Department (CSD)	
15	GST-RFD-10B	Application for refund by Duty Free Shops/Duty Paid Shops (Retail outlets)	
16.	GST-RFD-11	Furnishing of bond or Letter of Undertaking for export of goods or services	Rule 96A

LESSON ROUND-UP

- **Registration:** In terms of Section 22 of the CGST/SGST Act 2017, every supplier (including his agent) who makes a taxable supply of goods and / or services which are leviable to tax under GST law, and his aggregate turn over in a financial year exceeds the threshold limit of twenty lakh rupees shall be liable to register himself in the State or the Union territory, as the case may be, from where he makes the taxable supply.

  In case of eleven special category states (as mentioned in Art. 279A(4)(g) of the Constitution of India), this threshold limit for registration liability is ten lakh rupees.

- **Aggregate Turnover:** It includes the aggregate value of all taxable supplies, all exempt supplies, exports of goods and/or service and all Inter-State supplies of a person having the same PAN.

- **Compulsory Registration:** The following categories of persons are required to be registered compulsorily irrespective of the threshold limit:

  – persons making any Inter-State taxable supply, except persons making Inter-State supply of certain handicraft goods, and services;

  – casual taxable persons except persons making supply of certain handicraft goods;

  – persons who are required to pay tax under reverse charge;

  – persons who are required to pay tax under sub-section (5) of section 9;

  – non-resident taxable persons making taxable supply;

  – persons who are required to deduct tax under section 51;

  – persons who make taxable supply of goods or services on behalf of other registered taxable persons whether as an agent or otherwise;

  – Input service distributor (whether or not separately registered under the Act);

  – persons who supply goods, other than supplies specified under Section 9(5), through such e-commerce operator who is required to collect tax at source under section 52;

  – every electronic commerce operator;

  – every person supplying online information and data base retrieval services from a place outside India to a person in India, other than a registered person.

- Time Limit is within thirty days from the date on which he becomes liable to registration.

  An e-way bill is a document required to be carried by a person in charge of the conveyance carrying any consignment of goods of value exceeding fifty thousand rupees as mandated by the Government in terms of Section 68 of the Goods and Services Tax Act read with Rule 138 of the Rules framed thereunder. It is generated from the GST Common Portal for eWay bill system by the registered persons or transporters who cause movement of goods of consignment before commencement of such movement.

- **TCS:** The e-commerce operator is required to collect an amount calculated at the rate not exceeding one percent of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such operator. The amount so collected is called as Tax Collection at Source (TCS). However, Section 52 of the CGST Act, 2017 which deals with TCS has not come into force as of yet and GST Council has recommended to keep this provision in abeyance till 31.03.2018.

- **Filing of Return:** Every person registered under GST will have to file returns in some form or other. A registered person will have to file returns either monthly (normal supplier) or quarterly basis (Supplier opting for composition scheme). An ISD will have to file monthly returns showing details of credit distributed during the particular month. A person required to deduct tax (TDS) and persons required to collect tax (TCS) will also have to file monthly returns showing the amount deducted/collected and other specified details. A non- resident taxable person will also have to file returns for the period of activity undertaken.
- "Refund" includes, (a) any balance amount in the electronic cash ledger so claimed in the returns, (b) any unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), (c) tax paid by specialized agency of United Nations or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries on any inward supply.
- Compliance Rating in GST seeks to bring transparency to the entire GST compliances and administration by way of assigning compliance ratings.
- All registered taxpayers will be publically rated according to how they comply with GST regulations.

GLOSSARY

Aggregate Turnover - means the total value of all taxable supplies, exempt supplies, exports of goods and/or services, and interstate supplies of a person having the same PAN, computed on the pan-India basis and excluding taxes. However, the value of inward supplies on which taxation is based on reverse-charge mechanism shall not be admitted.

Application Service Providers (ASPs) - are like GST Suvidha Providers (GSPs) but are more wholesome than GSPs. The support provided by ASPs will address most taxpayer compliance difficulties as they work as a liaison between the taxpayers and the GSPs.

ARN Number - is the unique number generated after a successful GST enrolment or transaction on the GST common portal.

Assessment of Tax Liability - is the process of calculating tax liability of a specific taxpayer based on the outward and inward supplies details furnished by them on the GST portal.

Bill of Supply - Bill of Supply is a non-formal document issued by a supplier of GST exempted goods/services or by a composition dealer. The bill of supply doesn't contain any tax information.

Cash Ledger - is one of the subsidiary ledgers that are maintained by a company alongside the general ledger. As the name says 'cash', this ledger is a record of all transactions associated to cash accounts that are operated by an organization and its branches.

Casual Taxable Person - is a person occasionally undertaking transactions involving the supply of goods and/or services during business, whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business.

Common Portal - refers to the online GST portal approved by the Central and State Governments, on the recommendation of the council.

Credit Note - Credit Note means a document issued by a taxable person in relation to the tax invoice exceeding the taxable value and/or tax payable in respect of supply, or where the goods supplied are returned by the recipient, or where the services supplied are found to be deficient.

Debit Note - Debit Note means a document issued by a taxable person relating to the taxable value and/or tax charged as per the tax invoice when found to be less than the taxable value and/or tax payable in respect of such supply.

E-commerce Operator - refers to businesses that offer an online marketplace where other vendors can sell goods to customers.

Electronic Commerce - means the supply of goods and/or services including digital products over a digital or electronic network.

E-sign / Electronic Signature - is an online electronic service which allows a GST registered taxpayer/Aadhar holder to digitally sign a document. This can be configured inside the GST portal during the registration process.

E-Way Bill - E-way Bill is an electronic (digital) bill required to be produced to facilitate the movements of goods with the value above Rs. 50,000.

Goods and Services Tax Network (GSTN) - is a non-profit, public-private partnership company. Its main purpose is to provide IT infrastructure and services to Central and State Governments, taxpayers, and other stakeholders to facilitate the implementation of GST.

GST Suvidha Provider (GSP) - GST Suvidha Provider refers to third-party applications that assist the taxable person in accessing the GST portal in an enriched manner by being more user-friendly and customer-centred.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Who are the persons liable to take a Registration under the GST Law?
2. What is Aggregate Turnover?
3. Which are the cases in which registration is compulsory?
4. Explain the provisions relating to revocation of cancellation of Registration Certificate.
5. What is an e-way bill and what is its validity?
6. What is Electronic Commerce? Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption?
7. Write a brief note on Electronic Credit Ledger.
8. What is the difference between Annual Return and Final Return in GST?
9. What is “Quarterly Filing Monthly Payment” scheme under GST?
11. Can unutilized Input Tax Credit be allowed as refund? If Yes, in what circumstances?
12. Discuss the parameters for assigning compliance rating.
13. Discuss the taxability of Director’s remuneration under various scenarios.

14. How will GST compliance rating scores be updated/intimated to all concerned?
15. Discuss the eligibility in refund on account of inverted rate structure in the light of recent judgment of Gujarat High Court?
16. Discuss the circumstances under which revised invoice can be issued by the registered person.
17. Allied Agencies is having four outlets in the state of Punjab from where it sells its Likeee brand of shoes. Allied Agencies prepare its financial statement where it accounts whole of its business under the common segment namely 'trading in branded shoes'. Now Allied Agencies intends to take GST registration separately for each outlet for each of compliances. Advise Allied Agencies about of the possibility of taking such four registrations in the light of applicable provisions under CGST Act, 2017.
18. Who is required to furnish Final Return under CGST Act, 2017 and what is the time limit for the same? Discuss.
19. Explain filing of return by the non-resident taxable person
20. Explain filing of return by persons providing online information and database access or retrieval services

LIST OF FURTHER READINGS

- GST Ready Reckoner – Taxmann – V.S. Datey
- GST Manual with GST Law Guide & GST Practice Referencer – Taxmann
- GST Acts with Rules & Forms – Taxmann
- GST – Law, Practice & Procedures – Bharat Publications Vineet Gupta & N.K. Gupta

Assessment, Audit, Scrutiny, Demand and Recovery, Advance Ruling, Appeals and Revision

Lesson 7

KEY CONCEPTS

■ Self-Assessment & Provisional Assessment ■ Scrutiny of Returns & Special Audit ■ Demand and Recovery ■ Determination of tax not paid ■ Advance Ruling ■ Appeals & Revision ■ Appearances by authorised representative

Learning Objectives

To understand:

- Concept of assessment
- Procedure for conduct of Audit
- Procedure for recovery of GST/Other sum
- Concept of Advance Ruling
- Procedure for Appeal & Revision

Lesson Outline

ASSESSMENT & AUDIT (CHAPTER XII & XIII OF CGST ACT)

Chapter XII of the CGST Act, 2017 deals with the assessment (Section 59 to 64) and Chapter XIII deals with the audit (Section 65 and 66). Further Chapter XI of the CGST Rules (Rules 98 to 102) deals with the assessment and audit. Provisions of CGST Act related to Assessment and Audit is also applicable to IGST vide Section 20 of IGST Act, 2017.

REGULATORY FRAMEWORK

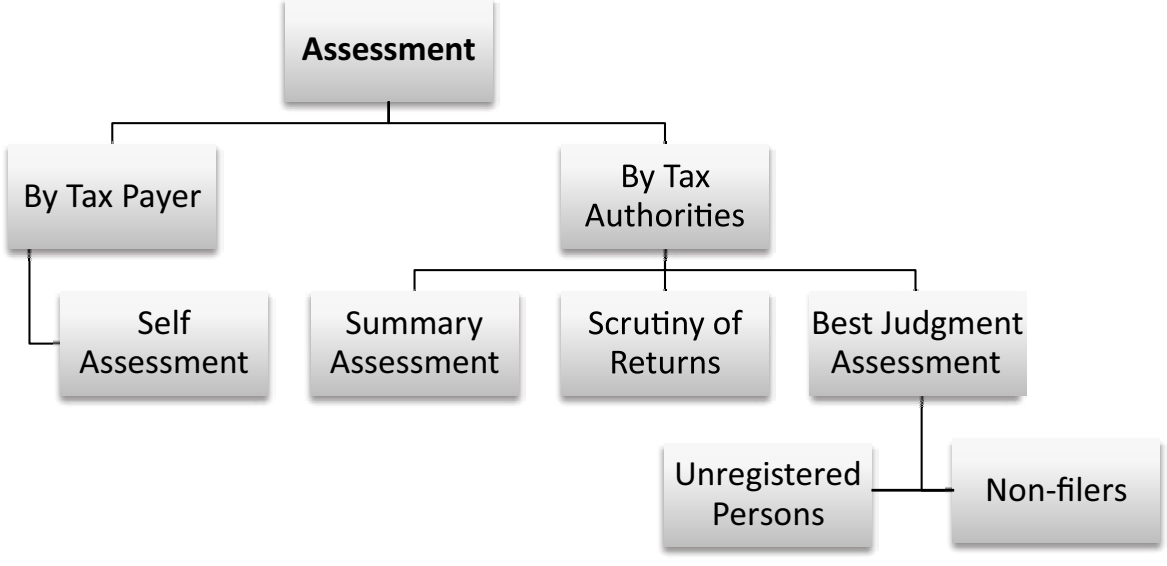
Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 59	Self-Assessment
Section 60	Provisional Assessment
Section 61	Scrutiny of Returns
Section 62	Assessment of non-filers of returns
Section 63	Assessment of unregistered persons
Section 64	Summary assessment in certain special cases
Section 65	Audit by Tax Authorities
Section 66	Special Audit

ASSESSMENT

According to Section 2(11) of the CGST Act, 2017 "assessment" means determination of tax liability under this act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

In short, the assessment under GST means the determination of tax liability. It has been further categorized as below:



1) Self-Assessment

Section 59 of the CGST Act, 2017 states that every registered person shall self-assess the taxes payable under this act and furnish a return for each tax period as specified under section 39.

Thus, GST has continued with the legacy of tax philosophy of self-assessment where trust is placed on the assessee to determine its tax liability on its own volition and file its returns.

2) Provisional Assessment

Section 60 of the CGST Act, 2017 provides that:

1. Subject to the provisions of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.
2. The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.
3. The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

   Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.
4. The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-section (1) of section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual Consumer payment, whether such amount is paid before or after the issuance of order for final assessment.
5. Where the registered person is entitled to a refund consequent to the order of final assessment under sub- section (3), subject to the provisions of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.

Rule 98 of CGST Rules provides that:

1. Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of sub-section (1) of section 60 shall furnish an application along with the documents in support of his request, electronically in **FORM GST ASMT-01** on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.
2. The proper officer may, on receipt of the application under sub-rule (1), issue a notice in **FORM GST ASMT- 02** requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in **FORM GST ASMT-03**, and may appear in person before the said officer if he so desires.

3. The proper officer shall issue an order in **FORM GST ASMT-04** allowing the payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security to be furnished not exceeding twenty-five per cent of the amount covered under the bond.
4. The registered person shall execute a bond in accordance with the provisions of sub-section (2) of section 60 in **FORM GST ASMT-05** along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3):

   Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the act and the rules made thereunder.

   Explanation- For the purposes of this rule, the expression 'amount' shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.
5. The proper officer shall issue a notice in **FORM GST ASMT-06**, calling for information and records required for finalization of assessment under sub-section (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in **FORM GST ASMT-07.**
6. The applicant may file an application in **FORM GST ASMT-08** for the release of the security furnished under sub-rule (4) after issue of the order under sub-rule (5).
7. The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in **FORM GST ASMT-09** within a period of **seven working days** from the date of the receipt of the application under sub-rule (6).

Analysis:

Thus, the aforesaid provisions relating to provisional assessment give an opportunity to the registered person to determine its tax liability on provisional basis without attracting penal provisions under the Act. It requires prior permission from the proper officer and he is required furnish bond or such security as the proper offer seeks to secure the interest of revenue. The proper officer is, however, mandated to finalize the assessment within the prescribed timelines.

3) Scrutiny Assessment

As such, the registered person is entitled to determine its tax liability on its own, GST officer is however empowered to scrutinize the return to verify its correctness. The officer will ask for explanations on any discrepancies noticed in the returns.

Scrutiny of Returns

Section 61 of the CGST Act, 2017 provides that:

1. The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.
2. In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

3. In case no satisfactory explanation is furnished **within a period of thirty days** of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Rule 99 of the CGST Rules provides that:

1. Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in **FORM GST ASMT-10**, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.
2. The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in **FORM GST ASMT-11** to the proper officer.
3. Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in **FORM GST ASMT-12**.

4) Summary Assessment in Certain Special Cases

Section 64 of the CGST Act, 2017 provides that:

1. The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

   Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

   Rule 100 (3). The order of assessment under sub-section (1) of section 64 shall be issued in **FORM GST ASMT-16** and a summary of the order shall be uploaded electronically in **FORM GST DRC-07.**

2. On an application made by the taxable person **within thirty days** from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

   Rule 100 (4). The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the assessment order in **FORM GST ASMT-17**.

   Rule 100 (5). The order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of section 64 shall be issued in **FORM GST ASMT-18.**

5) Best Judgement Assessment

(i) Assessment of non-filers of returns[1]

Section 62 of the CGST Act, 2017 provides that:

1. Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issued an assessment order **within a period of five years** from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

> **Rule 100.** Assessment in certain cases. – The order of assessment made under sub-section (1) of section 62 shall be issued in **FORM GST ASMT-13** and a summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

2. Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

> **Rule 100 (2).** The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in **FORM GST DRC-01,** and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15** and summary thereof shall be uploaded electronically in **FORM GST DRC-07.**

(ii) Assessment of unregistered persons

Section 63 of the CGST Act, 2017 provides notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order **within a period of five years** from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid r elates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

> **Assessment in Certain Cases: Rule 100(2)** of the CGST Rules provides that the proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15.**

1. Students may refer circular No. 129/48/2019-GST, dated 24-12-2019 on Standard Operating Procedure to be followed in case of non-filers of returns at https://taxinformation.cbic.gov.in/view-pdf/1002937/ENG/Circulars

CASE LAW

Audco India Limited vs. Commercial Tax Officer (2020) – Madras High Court

Best Judgement Assessment on debatable issue by the Assessing Officer

The assessee, Mr. K.A.Parthasarathi was engaged in the export and received the cash incentives from the export. The assessing officer had made a demand and penalty invoking Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959 on the grounds that cash incentives received from the export attracts additional tax and the same was not paid by the assessee.

Consequently, the assessee filed the writ petition and contended that the assessing authority imposed an additional tax on the sales made by the Assessee, which were not supported by the declaration in 'C' Forms and secondly on the Cash Incentives received by the Assessee on the Exports made by it was held to be part of taxable turnover, which was not so.

According to the assessee, the imposition of additional tax, however, has not been done as a result of 'Best Judgment Assessment' under Section 12(2) of the TNGST Act, upon which only the penalty under Section 12(3)(b) of the act is attracted.

It was held that the additional tax cannot be imposed on case incentives on exports and no penalty is applicable under Section 12(2) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959.

The High Court of Madras held that the Assessing Officer cannot pass the best judgment assessment on the ground of best judgment assessment and the penalty under Section 12(3) of the Tamil Nadu General Sales Tax (TNGST) Act, 1959.

Rule 80(3) of CGST Rules - Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees, shall also furnish a self-certified reconciliation statement as specified under section 44 in **FORM GSTR-9C** along with the annual return referred to in sub-rule (1), on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner..

(3A) Notwithstanding anything contained in sub-rule (3), for the financial year 2020-2021 the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the twenty-eighth day of February, 2022

AUDIT BY TAX AUTHORITIES

Section 65 of the CGST Act, 2017 provides that:

1. The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
2. The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.
3. The registered person shall be informed by way of a notice **not less than fifteen working days** prior to the conduct of audit in such manner as may be prescribed.
4. The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

***Explanation.* –** For the purposes of this sub-section, the expression "commencement of audit" shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

5. During the course of audit, the authorised officer may require the registered person, –
   i. to afford him the necessary facility to verify the books of account or other documents as he may require;
   ii. to furnish such information as he may require and render assistance for timely completion of the audit.
6. On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.
7. Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Audit Procedure - Rule 101 CGST Rules

(1) The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or part thereof or multiples thereof.

(2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in **FORM GST ADT-01** in accordance with the provisions of sub-section (3) of the said section.

(3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

(4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

(5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in **FORM GST ADT-02.**

SPECIAL AUDIT

Section 66 of the CGST Act, 2017 provides that:

1. If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit

availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

2. The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

   Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of **ninety days**.

3. The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this act or any other law for the time being in force.

4. The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this act or the rules made thereunder.

5. The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

6. Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

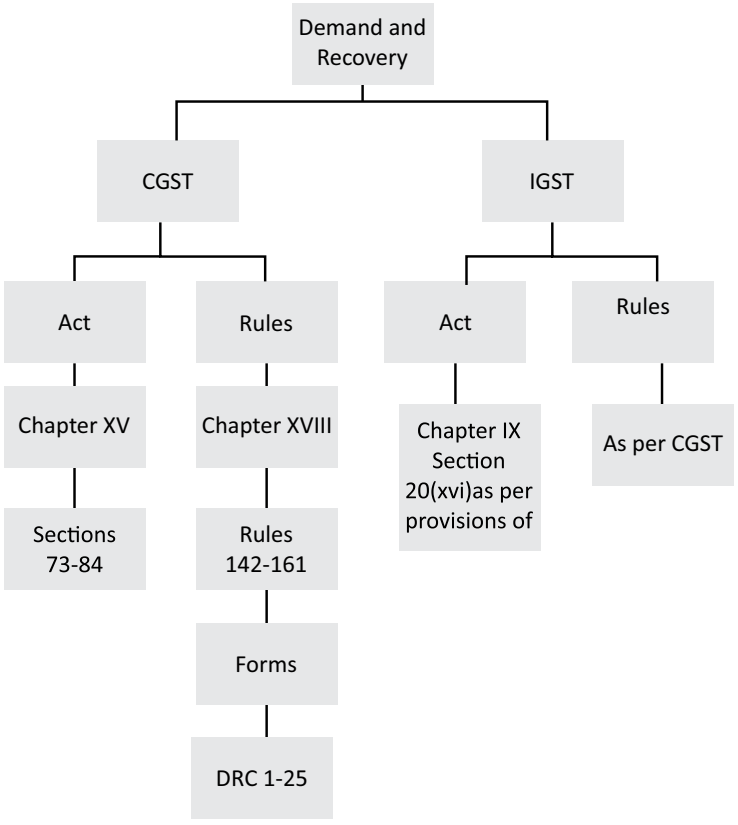
Special Audit Procedure: Rule 102 of the CGST Rules provides that:

1. Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in **FORM GST ADT-03** to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction.
2. On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in **FORM GST ADT-04.**

DEMAND AND RECOVERY (CHAPTER XV OF CGST ACT)

Introduction

The liability for payment of Goods and Services Tax (GST) rests on the taxpayer, as it is payable on self-assessment basis. Under self-assessment system of tax determination and payment of tax in the GST regime, there is every possibility of inadvertently short payment of tax and sometimes deliberately taxes are also not paid by the certain assessees. GST provisions have embedded the elaborate provisions for the recovery of tax under various situations such as tax short paid or erroneously refunded or Input tax credit wrongly availed and non-payment of self-assessed tax or amount collected but not deposited to the Government. If such liability is assessed wrongly, it may be a result of taxes collected but not paid or short paid, input tax credit wrongly availed & utilized, erroneous refund claimed & subsequent to its identification, demand may be raised by GST officials. Sections 73 & 74 of the CGST Act, 2017, state the circumstances under which a proper officer can serve a show cause notice for recovery of tax along with interest or penalty applicable.



Chapter XV and Section 73 to Section 84 of the CGST Act, 2017 contains the provisions of demand and recovery of tax under GST. The recovery process of tax starts with communication of demand details, the issuance of show cause notice and end with Adjudication proceedings.

REGULATORY FRAMEWORK

Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 50	Interest on delayed payment of tax
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts
Section 75	General provisions relating to determination of tax
Section 76	Tax collected but not paid to Government
Section 77	Tax wrongfully collected and paid to Central Government or State Government
Section 78	Initiation of recovery proceedings

Section	*Deals with*
Section 79	Recovery of tax
Section 80	Payment of tax and other amount in instalments
Section 81	Transfer of property to be void in certain cases
Section 82	Tax to be first charge on property
Section 83	Provisional attachment to protect revenue in certain cases
Section 84	Continuation and validation of certain recovery proceedings
Section 122	Penalty for certain offences
Section 125	General penalty
Section 129	Detention, seizure and release of goods and conveyances in transit
Section 130	Confiscation of goods or conveyances and levy of penalty
Section 132	Punishment for certain offences

CGST RULES (Chapter XVIII)

Rules	*Provisions*
142	Notice and order for demand of amounts payable under the Act
142A	Recovery of dues under existing laws
143	Recovery by deduction from any money owed
144	Recovery by sale of goods under the control of proper officer
145	Recovery from a third person
146	Recovery through execution of a decree, etc.
147	Recovery by sale of movable or immovable property
148	Prohibition against bidding or purchase by officer
149	Prohibition against sale on holidays
150	Assistance by Police
151	Attachment of Debts and Shares, etc.
152	Attachment of property in custody of courts or Public officer
153	Attachment of interest in partnership
154	Disposal of proceeds of sale of goods and movable or immovable property
155	Recovery through land revenue authority

Rules	*Provisions*
156	Recovery through court
157	Recovery through surety
158	Payment of tax and other amounts in instalments
159	Provisional attachment of property
160	Recovery from company in liquidation
161	Continuation of certain recovery proceedings

Demand and Recovery Forms prescribed:

Forms	*Deals with*
GST DRC 01A	Communication of the details of tax, interest or penalty ascertained by the proper officer in Part A and response thereto by the assessee in Part B
GST DRC 01	Summary of Show Cause Notice
GST DRC 02	Summary of Statement
GST DRC 03	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement
GST DRC 04	Acknowledgement of acceptance of payment made voluntarily
GST DRC 05	Intimation of conclusion of proceedings
GST DRC 06	Reply to the Show Cause Notice
GST DRC 07	Summary of the order
GST DRC 08	Summary of rectification or withdrawal of the Order
GST DRC 07A	Summary of Order issued under existing laws
GST DRC 08A	Summary of rectification, modification or quashing of Order issued under existing laws
GST DRC-09	Order for recovery through specified officer under section 79
GST DRC-10	Notice for Auction of Goods under section 79 (1) (b) of the Act
GST DRC-11	Notice to successful bidder
GST DRC-12	Sale Certificate
GST DRC-13	Notice to a third person under section 79(1) (c)
GST DRC-14	Certificate of Payment to a Third Person
GST DRC-15	Application before the civil court requesting execution for a decree application before the civil court requesting execution for a decree

Forms	*Deals with*
GST DRC-16	Notice for attachment and sale of immovable/movable goods/shares under section 79
GST DRC-17	Notice for Auction of Immovable/Movable Property under section 79(1) (d)
GST DRC-18	Certificate action under clause (e) of sub-section (1) section 79
GST DRC-19	Application to the Magistrate for Recovery as Fine
GST DRC-20	Application for Deferred Payment/ Payment in Instalments
GST DRC-21	Order for acceptance/rejection of application for deferred payment / payment in instalments
GST DRC-22	Provisional attachment of property under section 83
GST DRC-23	Restoration of provisionally attached property / bank account under section 83
GST DRC-24	Intimation to Liquidator for recovery of amount
GST DRC-25	Continuation of Recovery Proceedings

Pre-Show Cause Notice Communications

To avoid detailed litigation procedures, the Government has obligated the proper officer to communicate the details of tax, interest or penalty to the concerned assessee as ascertained by him enable the assessee to deposit the ascertained amount voluntarily or make submissions against the proposed liability. The relevant provisions have been inserted in the CGST Rules, 2017 *vide Notification No. 49/2019-C.R.*

Rule 142(1A) The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of *FORM GST DRC-01A***.

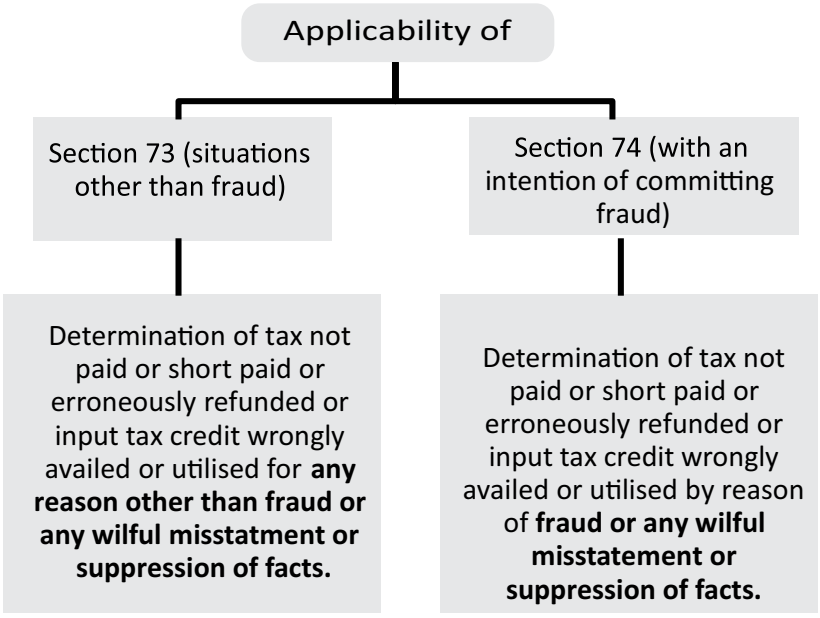
Rule 142(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B** of ***FORM GST DRC-01A.***

Analysis:

The aforesaid provisions provide for communication of the ascertained amount of tax, interest and penalty to the assessee in **Part A of DRC-01A** the aforesaid provisions are intending to reduce litigation by affording the registered person an opportunity to pay the tax dues, wholly or partially. Where the registered person opts to pay the tax dues as demanded under Rule 142(1A), the proper office shall not proceed to issue show cause notice to the extent the amount is paid.

As per the process, the proper officer shall communicate the ascertained amount of tax, interest and penalty to the assessee in **Part A of DRC-01A**. Upon receipt thereof, the assessee, if it feels that the proposed liability is payable at its end, may choose to deposit the same. In case, it has reasons for not payment of the proposed liability, it should submit its response in **Part B of Form GST DRC-01A.** Further proceedings under Section 73 / Section 74 of the CGST Act, 2017 shall be initiated only upon consideration of response, if any, received in Part B of **Form GST DRC-01A**.

A brief overview of the applicability of Section 73 / Section 74 of the CGST Act, 2017 may be represented as under:



DETERMINATION OF TAX NOT PAID

Section 73 of the CGST Act, 2017, Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub- section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or,

as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub- section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 **within thirty days** of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to **ten per cent of tax or ten thousand rupees, whichever is higher**, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9**) within three years** from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or **within three years** from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid **within a period o**f **thirty days** from the due date of payment of such tax.

Analysis of Section 73 of the CGST Act, 2017

This section deals with determination of tax and its demand & subsequent recovery in situations resulting into:

- Taxes not paid;
- Taxes short paid;
- Tax erroneously refunded;
- Input tax credit wrongly availed or utilised;
- Recovery of interest payable which is not paid or partly paid or interest erroneously refunded. But not involving any fraud, wilful misstatement or suppression of facts.

Procedure Rule 142 of the CGST Rules 2017

Notice and order for demand of amounts payable under the Act. –

(1) The proper officer shall serve, along with the

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01,**

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.

(1A) The proper officer MAY, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A.**

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the act, whether on his own ascertainment or, as communicated by the proper officer

under sub-rule (1A), he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04.**

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B of FORM GST DRC-01A.**

(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within 7 days of the notice issued u/s 129(3) but before issuance of order under the said sub section, he shall intimate the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in **FORM GST DRC-01** under sub-rule (1) shall be furnished in **FORM GST DRC-06.**

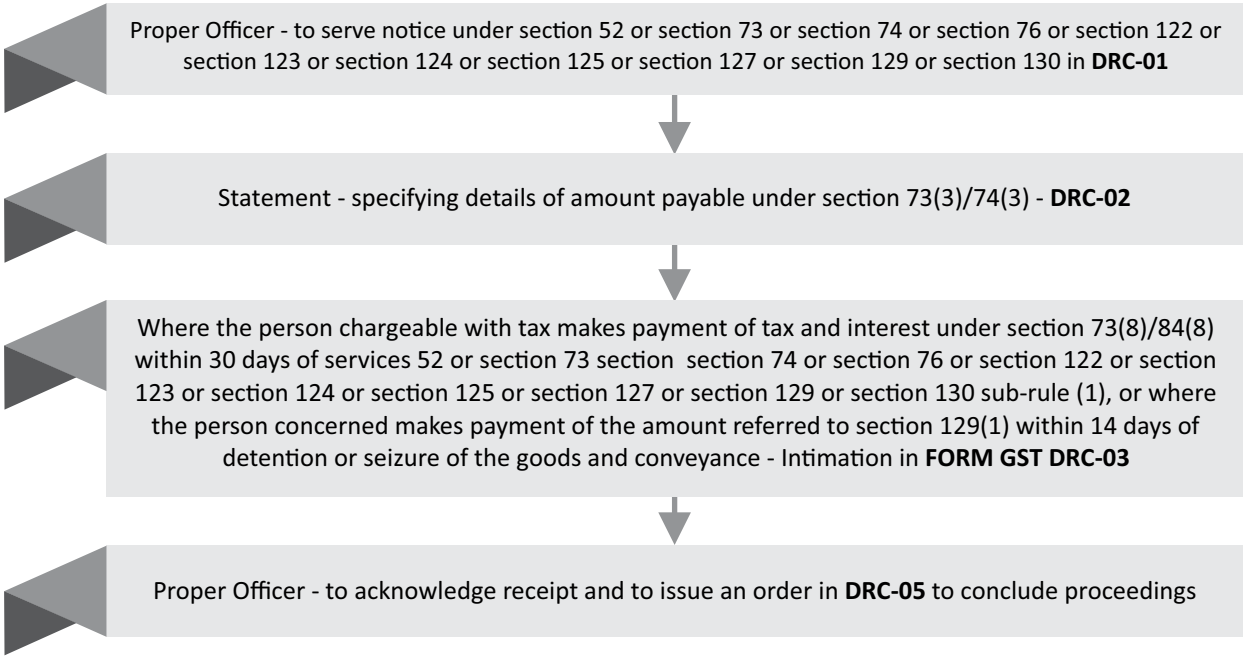
(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

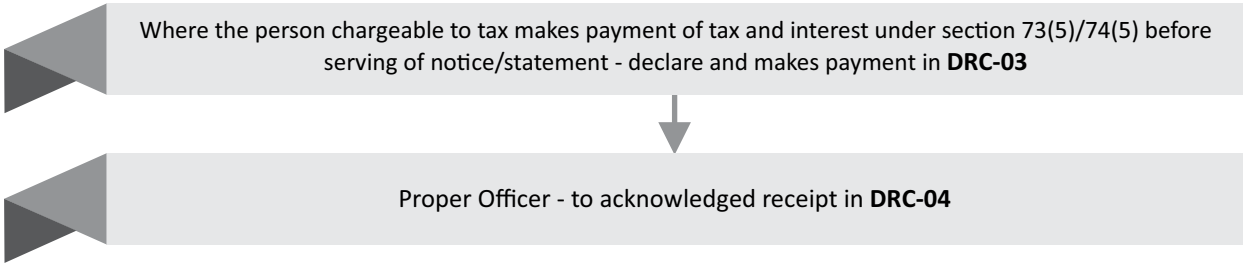
(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08.**

Flow Diagram:

(i) Where notice is served



(ii) Where notice is not served but the taxpayer pays voluntarily



Time limit for Issue of Notice, Penalty and Adjudication under Section 73

Payment of Penalty	*Amount of Penalty*
Dues paid before issuance of show cause notice.	No penalty.
Dues paid within 30 days of issuance of show cause notice.	No penalty.
Dues paid after 30 days of issuance of Order.	10% of tax dues or INR 10,000 Whichever is higher.
Any other case.	10% of tax dues or INR 10,000 Whichever is higher.

Calculation of Time limit for issuance of Notice under Section 73

Financial Year	*2017-18*
Due Date for filing of Annual Return	31.12.2018
Add: Time period u/s 73(10) of 3 years from the due date of furnishing annual return	3 years
Time Period for issuance of order as per Section73(10)	31.12.2021
Less: Notice to be issued u/s 73(2) at least 3 months prior to the due date as per Section73(10)	3 months
Time period within which notice u/s 73(1) to be issued	30.09.2021

Section 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) **at least six months prior to** the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub- section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to **fifteen per cent.** of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub- section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to **twenty-five per cent.** of such tax **within thirty days** of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) **within a period of five years** from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or **within five years** from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to **fifty per cent.** of such tax **within thirty days** of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1. – For the purposes of section 73 and this section,–

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.– For the purposes of this act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Analysis of Section 74 of the CGST Act, 2017

This section deals with determination of tax and its demand & subsequent recovery in situations resulting **into by way of any fraud, wilful misstatement or suppression of facts:**

- ❖ Taxes not paid;
- ❖ Taxes short paid;
- ❖ Tax erroneously refunded;
- ❖ Input tax credit wrongly availed or utilised;
- ❖ Recovery of interest payable which is not paid or partly paid or interest erroneously refunded.

Statutory provisions of Rule 142 of the CGST Rules, 2017

Procedure contained in Rule 142 is equally applicable for the statutory provision in Section 74. Thus, Students may refer the bare contents of Rule 142 in the foregoing paragraphs.

Time limit for Issue of Notice, Penalty and Adjudication under Section 74

Payment of Penalty	***Amount of Penalty***
Dues paid before issuance of show cause notice.	15% of tax amount due
Dues paid within 30 days of issuance of show cause notice.	25% of tax amount due
Dues paid after 30 days of issuance of Order.	50% of tax amount due
Any other case.	100% of tax amount due

Calculation of Time limit for issuance of Notice under Section 74

Financial Year	***2019-20***
Due Date for filing of Annual Return	31.12.2020
Add: Time period u/s 74(10) of 5 years from the due date of furnishing annual return	5 years
Time Period for issuance of order as per Section74(10)	31.12.2025
Less: Notice to be issued u/s 74(2) at least 6 months prior to the due date as per Section74(10)	6 months
Time period within which notice u/s 74(1) to be issued	30.06.2025

Comparative Analysis of Sections 73 & 74 of the CGST Act, 2017

Basis of comparison	***Section 73***	***Section 74***
Applicability	Non-payment or short payment of tax without fraud or wilful misstatement or suppression of facts	Non-payment or short payment of tax with fraud or wilful- misstatement or suppression of facts

Basis of comparison	*Section 73*	*Section 74*
Time limit for proper officer to issue notice	At least 3 months prior to issuance of order	At least 6 months prior to issuance of order
Time limit for proper officer to issue order	Within 3 years from the due date for furnishing of annual return	Within 5 years from the due date for furnishing of annual return
Penalty – before issuance of show cause notice	No penalty	15% of the tax amount
Penalty – within 30 days after the issuance of show cause notice	No penalty	25% of the tax amount
Penalty – after 30 days of issuance of show cause notice or after the issuance of order	10% of tax or Rs.10,000, whichever is higher	50% of the tax amount
In any other case	10% of tax or Rs.10,000, whichever is higher	100% of the tax amount (equivalent to tax)

CASE LAW

Anand Nishikawa Co. Ltd. v/s Commissioner of Central Excise, Meerut - Supreme Court

The expression "suppression of facts" has been deliberated by the Hon'ble Supreme Court in the land mark judgement wherein it was held that there must be positive action on the part of the assessee to make a willful suppression. The relevant text of the said judgment reads as follows, "27. Relying on the aforesaid observations of this Court in the case of *Pushpam Pharmaceutical Co.* vs. *Collector of Central Excise, Bombay* [*1995 Suppl.* (*3*) *SCC 462*], we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to Section 11A of the act. We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was not open to the CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts".

Section 75: General provisions relating to determination of tax

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub- section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-

misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued **within two years** from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for **more than three times** to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or **within five years** as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Explanation. For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this act.

Analysis of Section 75 of the CGST Act, 2017

Section 75 of the CGST Act, 2017 deals with the general provisions relating to determination of tax and demand under GST. The following are some of the important provisions under Section 75 of GST Act.

- **Stay of Notice**

  If the service of notice or issuance of order is stayed by an order of Court or Appellate Tribunal, the period of stay will be excluded in computing the period 3 years or 5 years – the time limit for issue of notice or adjudication.

- **No Fraud or Wilful Misrepresentation**

  If any Appellate Authority or Appellate Tribunal or Court concludes that the notice issued under Section 74 is not sustainable for the reason that the charges of fraud or wilful misstatement or suppression of facts to evade tax has not been established, the officer shall determine the tax payable deeming as if the notice were issued under Section 73.

- **Time limit for Passing Order**

  Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order should be issued within 2 years from the date of communication of the said direction.

- **Opportunity for Being Heard**

  An opportunity of hearing should be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is proposed against such person.

- **Maximum Adjournments Allowed**

  The officer can, if sufficient cause is shown by the person chargeable with tax, adjourn the hearing for reasons to be recorded in writing. Adjournment will be allowed for maximum of 3 times.

- **Passing Order**

  The officer, in his order, should set out the relevant facts and the basis of his decision.

- **Limitations**

  The amount of tax, interest and penalty demanded in the order should not be in excess of the amount specified in the notice and no demand can be confirmed on the grounds other than the grounds specified in the notice.

  Further, where any penalty is imposed u/s 73 or section 74, no penalty for the same act or omission can be imposed on the same person under any other provision of this act.

  Finally, if the order is not issued within 3 years or 5 years as provided u/s 73 and 74, respectively, then it shall be deemed that the adjudication proceedings are completed and no order can be issued afterwards.

- **Applicability of Interest**

  The interest on the tax short paid or not paid should be payable whether or not specified in the order determining the tax liability.

Monetary limits fixed by the Board for Issuance of Show Cause Notices and Orders under Section 73 and 74 of the Act

TABLE

Sl. No.	***Officer of Central Tax***	***Monetary limit of the amount of central tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act, 2017***	***Monetary limit of the amount of integrated tax (including cess) not paid or short paid or erroneously re- funded or input tax credit of integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act, 2017 made applicable to matters in relation to integrated tax vide Section 20 of the IGST Act***	***Monetary limit of the amount of central tax and integrated tax (including cess) not paid or short paid or erroneously re- funded or input tax credit of central tax and integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act, 2017 made applicable to integrated tax vide Section 20 of the IGST Act***
(1)	(2)	(3)	(4)	(5)
1.	Superintendent of Central Tax	Not exceeding Rupees 10 lakhs	Not exceeding Rupees 20 lakhs	Not exceeding Rupees 20 lakhs
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakhs and not exceeding Rupees 1 crore	Above Rupees 20 lakhs and not exceeding Rupees 2 crores	Above Rupees 20 lakhs and not exceeding Rupees 2 crores
3.	Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crores without any limit	Above Rupees 2 crores without any limit

Illustration:

Notice issued by the proper officer demanding suppression of turnover INR 35,00,000, GST @5% thereon. Assuming the amount was challenged by the respondent taxpayer before the Appellate Tribunal & Tribunal awarded the judgement of addition to the tune of INR 12,50,000, GST @5%.

The liability for payment of GST shall be as follows:

GST liability 5% of INR 12,50,000	INR 62,500
Add: Interest @ 24% p.a. on INR 62,500 from the date of liability till the date of actual payment	
Add: Penalty (depending upon the date of issuance of notice)	

Procedure for recovery of dues under existing laws

Rule 142A.

(1) A summary of order issued under any of the existing laws creating demand of tax, interest, penalty, fee or any other dues which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall, unless recovered under that law, be recovered under the act and may be uploaded in **FORM GST DRC-07A** electronically on the common portal for recovery under the act and the demand of the order shall be posted in Part II of Electronic Liability Register in **FORM GST PMT-01**.

(2) Where the demand of an order uploaded under sub-rule (1) is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in **FORM GST DRC-08A** and Part II of Electronic Liability Register in FORM GST PMT-01 shall be updated accordingly.

Analysis

Vide Notification No. 60/2018-C.T., dated 30-10-2018, the Government has inserted Rule 142A to provide that the dues arisen under pre-GST laws, unless recovered under the said laws, be recovered under the CGST Act, 2017.

Where a Penalty is imposed u/s 73 or 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Section 76: Tax collected but not paid to Government

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this act or the rules made there under or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Section 77: Tax wrongfully collected and paid to Central Government or State Government

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an Intra-State supply, but which is subsequently held to be an inter- State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an Inter-State supply, but which is subsequently held to be an Intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

Example:

Situation	***Suggested procedure***
A Registered person has wrongly paid Central Tax and State Tax / Union Tax on a transaction, which is considered to be Intra-State, subsequently held to be Inter-State, shall be refunded the amount of taxes so paid.	There is no actual refund back of the tax paid. Rather, there shall have to be an amendment of invoice/invoices to be made while filing return of any subsequent tax period.
A registered person who has paid integrated tax on a transaction considered to be an Inter-State supply, shall not be required to pay any interest on the amount of central tax and state tax/union territory tax.	Similar procedure as above & no interest is payable.

Section 78: Initiation of recovery proceedings

Any amount payable by a taxable person in pursuance of an order passed under this act shall be paid by such person **within a period of three months** from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period **less than a period of three months** as may be specified by him.

Example:

The Time Limit for issuance of Notice & initiation of recovery proceedings u/s 78 shall be calculate as:

Financial Year	***2017-18***
Date of passing the order by the proper officer	31.03.2019
Add: Time period within 3 months	3 months
Recovery proceedings to be initiated within	30.06.2019

SECTION 79: RECOVERY OF TAX

(1) Where any amount payable by a person to the Government under any of the provisions of this act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:–

(a) The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;

(b) The proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;

(c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this act or the rules made thereunder shall follow;

(iv) The officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof.

(d) The proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(e) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

(2) Where the terms of any bond or other instrument executed under this act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

Explanation. – For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.

Analysis of Section 79

Proper officer can adopt one or more of the methods for recovery of the amounts payable	➢ Deduction out of any money owing to defaulter. ➢ By detaining and selling the goods belonging to the defaulter. ➢ Recovery from any other person who owes money to defaulter. ➢ Collection by detention of any moveable or immoveable property. ➢ Recovery through District Collector. ➢ Recovery through Magistrate.
Bonds or any other instruments may be executed towards amount due	Bonds or any other similar instruments may be executed towards the amount due.
By way of an explanation, the scope of Section 79 has been expanded to include distinct person, which means that recovery proceedings can be initiated against any of the persons falling under the same PAN. ***For example*** – LLT Limited has business places in all 29 states of India and accordingly registered with the GST authorities in each state. One of its branch located in Gujarat defaulted for payment of tax for the month of April 2019. Upon conclusion of adjudication proceedings, the authorities can proceed against any of the registration of LLT Limited located in 29 states [although the default is made by of its branch located in Gujarat]	

Rules pertaining to recovery of tax

Rule	*Provision*	*Form*
143	Recovery by deduction from any money owed	GST DRC-09
144	Recovery by sale of goods under the control of proper officer	GST DRC-10
		GST DRC-11
		GST DRC-12
145	Recovery from a third person	GST DRC-13
		GST DRC-14
146	Recovery through execution of a decree, etc.	GST DRC-15

Section 80: Payment of tax and other amount in instalments

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this act, other than the amount due as per the liability self- assessed in any return, by such person in **monthly instalments not exceeding twenty four**, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

Rule	*Provision*	*Form*	*Relates to*
158	Payment of tax and other amounts instalments	GST DRC-20	Application to be filed electronically by the taxable person
		GST DRC-21	Grant of permission & issue of order

Section 81: Cases where the transfer of property is void

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

Analysis of Section 81

Situations / cases – valid	*Situations / Cases – void*
❖ Made for adequate consideration	❖ Creates a charge on ; or
❖ Without notice of the pendency of proceeding	❖ Parts with the property; or
❖ Without notice of such tax or other sum payable by the said person	❖ Belonging to the tax payer; or
❖ With previous permission of the proper officer	❖ In the possession of the tax payer, by way of sale, mortgage, exchange or any other mode of transfer whatsoever of any of his properties.

Section 82: Tax to be first charge on property

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

Analysis of Section 82

- ❖ The provisions would apply to a taxable person or any other person who is liable to pay tax, interest or penalty to Central or State Government;
- ❖ Any liability payable to the Central or State Government would be given priority in the matter of effecting recovery by placing a first charge on the property of the taxable person or any other person;
- ❖ This provision also covers recovery from any person, other than the taxable person like a legal representative, member of partitioned HUF, etc.

Rule	*Provision*	*Form*	*Relates to*
147	Recovery by sale of moveable or immoveable property	GST DRC-16	Proper officer shall prepare a list of moveable and immoveable property, issue an order of attachment and a notice for sale prohibiting any transaction in relation thereto
		GST DRC-17	Notice for auction including e-auction indicating the property to be sold and the purpose of sale
		GST DRC– 11	Proper officer to inform successful bidder requesting him to pay the amount within 15 days
		GST DRC -12	Issue a Certificate after payment indicating date of transfer, details of property, details of bidder, amount paid, rights, title, interest on the property
151	Attachment of Debts and Shares, etc.	GST DRC -16	Proper officer to issue written order

Rule	*Provision*	*Form*	*Relates to*
152	Attachment of property in custody of courts or Public officer		Copy of attachment to be sent to courts or public officer requesting property, interest receivable or any other income be held
153	Attachment of interest in Partnership		Charge may be created by the Proper Officer to recover dues by issuing attachment order of interest in partnership property and profits
154	Disposal of proceeds of sale of goods and moveable or immoveable property		Amount recovered be appropriated towards recovery expenses and then towards principal recovery amount
155	Recovery through land revenue authority	GST DRC-18	The proper officer shall send a certificate to the Collector or Deputy Commissioner of the district or any other officer authorised in this behalf in FORM GST DRC-18 to recover from the person concerned, the amount specified in the certificate as if it were an arrear of land revenue.
156	Recovery through Court	GST DRC-19	Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in accordance with the provisions of clause (f) of sub- section (1) of section 79 in FORM GST DRC- 19 to recover from the person concerned, the amount specified thereunder as if it were a fine imposed by him.
157	Recovery from surety		Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.
160	Recovery from company in liquidation	GST DRC-24	Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the act in FORM GST DRC -24.

Rule 147: Recovery by sale of moveable or immoveable property

- ❖ List of properties to be seized is to be prepared by the proper officer.
- ❖ Property shall be seized by the proper officer.
- ❖ Notice for sale in **Form GST DRC-16.**
- ❖ All such properties shall remain affixed till the confirmation of sale.
- ❖ Notice for auction / e-auction in **Form GST DRC-17.**

- Proper officer may mention the pre-bid deposit amount.
- The last day for the submission of the bid or the date of the auction shall not be earlier than fifteen days from the date of issue of the **GST DRC-17**, subject to deviation in number of days in cases of perishable/hazardous goods or where the proper officer finds the cost of holding is more than the expected realisable value.
- Any amount relating to stamp duty, etc. for transfer of property to the bidder would be borne by the Government.
- If the defaulter pays the amount due under recovery including recovery expenses before the issuance of **GST DRC-17**, then the proper officer shall cancel the process of auction.
- If there is no bidder found then re-auction can also be initiated by the proper officer.

Section 83: Provisional attachment to protect revenue in certain cases

(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1). Analysis of Section 83:

- This section applies only during the pendency of any proceedings under.
- Provisional attachment of the property of taxable person can be initiated by the Commissioner.
- Such provisional attachment would be valid for one year from the date of the order made by the Commissioner.

Rule	*Provision*	*Form*	*Relates to*
159	Provisional attachment of property	GST DRC-22	Commissioner to pass an order detailing property including bank account to be attached
		GST DRC-23	Release of property to the taxable person if he pays the lower of amount due or equal to the market value of the property

Section 84: Continuation and validation of certain recovery proceedings.

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then –

(a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice

of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) Where such Government dues are reduced in such appeal, revision or in other proceedings –

(i) It shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) The Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii) Any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Analysis of Section 84

- Deals with continuation of proceedings, where a notice is already served;
- Refers to any notice of demand in respect of Government dues (tax, interest and penalty) served on taxable person;
- Any appeal, revision application is filed or other proceedings are initiated with reference to recovery of such Government dues;
- Continue recovery proceedings for the reduction or enhancement of any demand in Form GST DRC 25;
- Other rules in support of the Demand and Recovery proceedings.

Rule 148: Prohibition against bidding or purchase by officer

No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Rule 149: Prohibition against sale on holidays

No sale under the rules under the provision of this chapter shall take place on a Sunday or other general holidays recognized by the Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.

Rule 150: Assistance by police

The proper officer may seek such assistance from the officer-in-charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall depute sufficient number of police officers for providing such assistance.

ADVANCE RULING (CHAPTER XVII OF THE CGST ACT, 2017)

Under the GST Act, taxpayers have been provided with a mechanism to get clarification or answers to the questions related to any specified matter or any matter related to the supply of goods and services. To get the clarification, a taxpayer can approach a body called AAR or Authority for Advance Ruling which then gives a decision in the form of Advance Ruling over the matter. If there are matters over which the AAR cannot issue an Advance Ruling then the applicant or any other concerned party like a jurisdictional officer, concerned officer, any interested person can approach AAAR or Appellate Authority or National Appellate Authority for Advance Ruling.

Advance Ruling- as per OECD Report (2004)- 'any advice, information or undertaking provided by a tax authority to a specific taxpayer or a group of tax payers concerning their tax situation and on which they are entitled to rely.'

REGULATORY FRAMEWORK

Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 95	Definitions
Section 96	Authority for Advance Ruling
Section 97	Application for Advance Ruling
Section 98	Procedure on receipt of Advance Ruling
Section 99	Appellate Authority for Advance Ruling
Section 100	Appeal to Appellate Authority
Section 101	Orders of Appellate Authority
Section 102	Rectification of Advance Ruling
Section 103	Applicability of Advance Ruling
Section 104	Advance ruling to be void in certain circumstances
Section 105	Powers of Authority, Appellate Authority and National Appellate Authority
Section 106	Procedure of Authority, Appellate Authority and National Appellate Authority

CGST Rules (Chapter XII)

Rules	*Provisions*
103	Qualification and appointment of Members of the Authority for Advance Ruling
104	Form and manner of application to the Authority for Advance Ruling
105	Certification of copies of Advance rulings pronounced by the Authority
106	Form and manner of appeal to the appellate authority for Advance Ruling
107	Certification of copies of the advance rulings pronounced by the Appellate Authority
107A	Manual filing and processing

Demand and Recovery Forms prescribed:

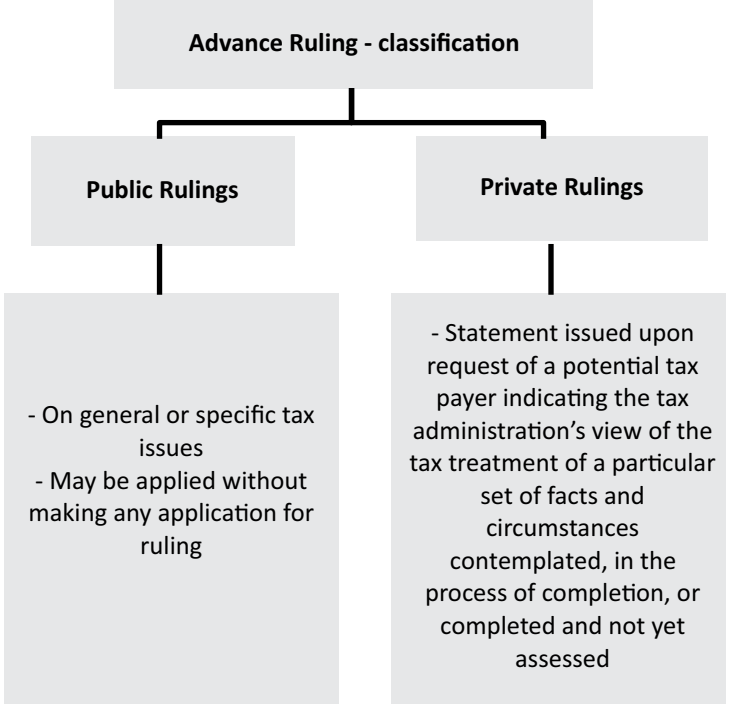
Forms	*Deals with*	
GST ARA 01	Application form for Advance Ruling	[Rule 104(1)]
GST ARA 02	Appeal to the Appellate Authority for Advance Ruling	[Rule 106(1)]
GST ARA 03	Appeal to the Appellate Authority for Advance Ruling	[Rule 106(2)]

What is Advance Ruling under GST?

Advance Ruling is an interpretation of tax laws by tax authorities, given to taxpayers who are confused about various tax laws.

The rules and procedures related to Advance Ruling are covered by section 95 to section 106 of the Chapter XVII of the CGST Act, 2017. If a taxpayer or any concerned party has a question on the supply of goods and services or any specified matter, he can approach AAR or AAAR or National Appellate Authority, which then gives a decision to resolve the query. Advance Ruling applies not only to the supplies which are being undertaken but also on supplies which are proposed to be undertaken.

"National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in Section 101A.



Advance Ruling – Objectives

Here are the objectives to set up the Advance Ruling mechanism by the tax payer.

- Provide certainty in advance for tax liability in relation to an activity proposed to be undertaken by the applicant,
- Attract Foreign Direct Investment (FDI) if the tax liability is transparently shown along with accurate taxation,
- Reduce litigation and other disagreements,
- Disclose the ruling efficiently in a transparent and inexpensive manner.

Under Section 97(2) Advance Ruling can be sought for the following questions:

- Classification of goods or services or both;
- Applicability of a Notification;
- Determination of time and value of supply of goods or services or both;
- Admissibility of Input Tax Credit of tax paid or deemed to have been paid ;

- ❖ Determination of tax liability to pay tax on any goods or services or both ;
- ❖ Clarification on registration requirements of the applicant ;
- ❖ Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

The above stated questions are briefly explained hereunder:

Classification of goods or services or both :

- Impact of wrong classification,
- Pre-GST classification & Post-GST Classification issues,
- Comparative Analysis of classification.

Applicability of a Notification :

- Impact of each Notification,
- Granting exemption from registration,
- Waiver of taxes beyond a prescribed rate,
- Date of applicability of each notification & its effect on compliance – both under GST & Statutory Compliance (Income Tax, Statutory Audits & Financial Statements).

Determination of time and value of supply of goods or services or both :

- Identifying the time of supply – inherent conflicts in recording of transactions in the books of accounts,
- Identifying the supplies on which tax liability arises under reverse charge u/s 9(3) & 9(4),
- Determining the nature & contents of supply – goods / services/ composite supply/ mixed supply/ works contract,
- Determining the proper classification,
- Evaluating the parties involved – related or unrelated,
- Determining whether price would be the sole consideration for supply,
- Ascertaining its value as per Section 15.

Admissibility of Input Tax Credit of tax paid or deemed to have been paid

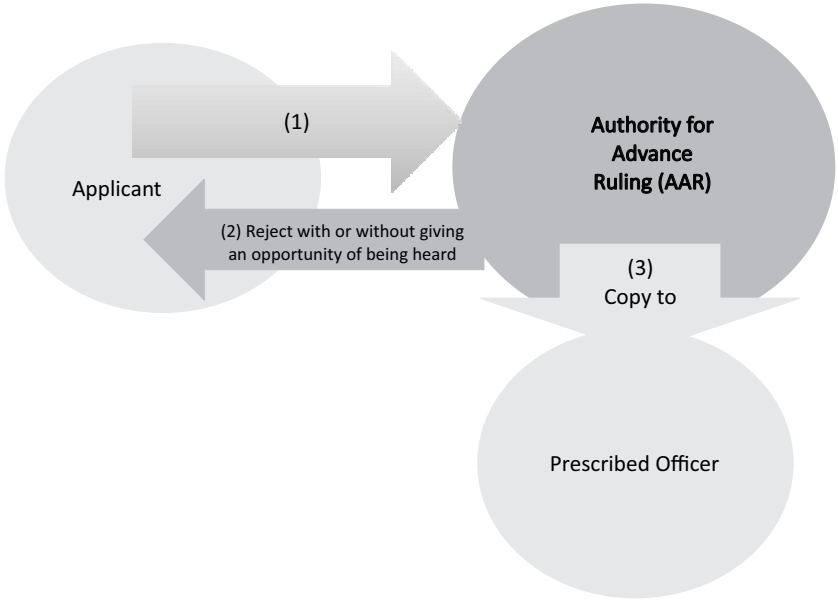
- Identifying eligibility of ITC based on Registration,
- Identifying eligibility of ITC based on Supply,
- Blocked Credit / Proportionate Credit,
- Impact of Notification on ITC eligibility (say, if outward supplies, which were taxable, is notified to be nil/ exempted, what would be the impact),
- Correlation with pricing & Anti-Profiteering Issue,
- Determination of tax liability to pay tax on any goods or services or both,
- Ascertaining Tax Liability based on Registration,
- Time of Supply,
- Consider the eligibility of ITC to be adjusted against tax liability.

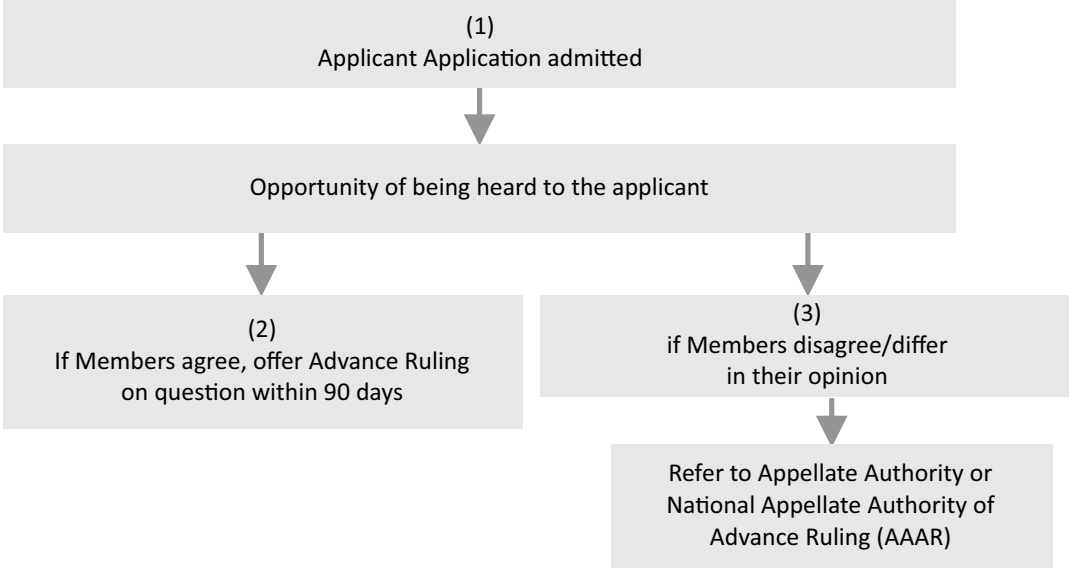
Clarification on registration requirements of the applicant

- Registration requirement Section 22/23/24/25,
- Exemptions from taking registration, which were subsequently notified,

- Issues related to Time period calculation for both Casual Taxable Person / Non- Resident Taxable Person,
- Eligibility of ITC based on Registration,
- Compliance factors based on Registration.

Procedure on receipt of application [Section 98]





Procedure on receipt of application [Section 98]

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records,

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application.

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this act.

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant.

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

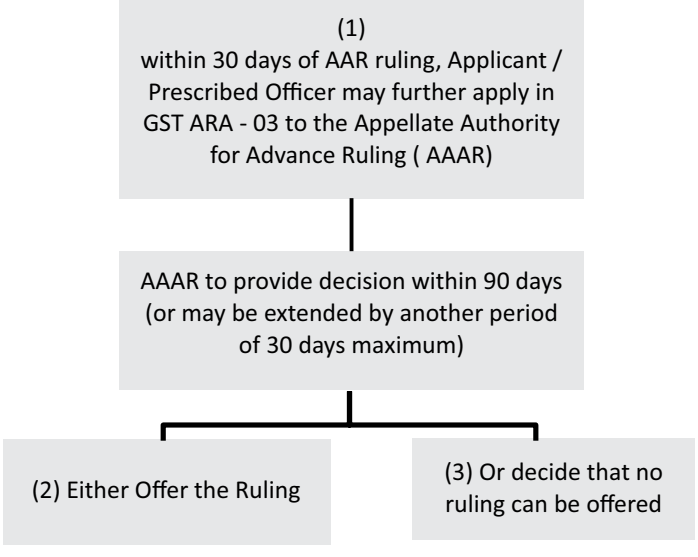
(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

Note: Application for Advance Ruling shall not be admitted if the same is already pending or decided in any proceedings under any provisions of GST.

Appeal against the order of the Advance Ruling Authority [Section 99, 100 & 101]



Appellate Authority for Advance Ruling (Section 99)

Subject to the provisions of this Chapter, for the purposes of this act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

Appeal to Appellate Authority (Section 100)

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Orders of Appellate Authority (Section 101)

(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

National Appellate Authority for Advance Ruling [Section 101A, 101B and 101C]

Section 101A. Constitution of National Appellate Authority for Advance Ruling–

(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B.

(2) The National Appellate Authority shall consist of -

(i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period **not less than five years**;

(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in **Group A**;

(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax

with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this act to fill such vacancy, enters upon his office.

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.

(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by reason of any vacancy or defect in the constitution of the Selection Committee.

(6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed :

Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.

(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.

(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of **five years** from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.

(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office.

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who -

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest. **Provided** that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12).

(14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

Appeal to National Appellate Authority (Section 101B)

(1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting advance rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such advance ruling, may prefer an appeal to National Appellate Authority :

Provided that the officer shall be from the States in which such advance rulings have been given.

(2) Every appeal under this section shall be filed within a period of **thirty days** from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officer and jurisdictional officer.

Provided that the officer authorised by the Commissioner may file appeal within a period of **ninety days** from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer.

Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of **thirty days**, or as the case may be, ninety days, allow such appeal to be presented within a **further period not exceeding thirty days.**

***Explanation*.** - For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Order of National Appellate Authority (Section 101C)

(1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.

(2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.

(3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.

(4) A copy of the advance ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.

Rectification of Advance Ruling [Section 102]

Orders issued by the AAR or AAAR or the National Appellate Authority may be rectified without making any amendment in its substantial part, only if the mistake is apparently identified from records **within 6 months** of the date of order.

- For mistake apparent from record.
- Either on own motion or if brought to notice by prescribed/ jurisdictional CGST/ SGST/ UTGST officer or applicant.
- Opportunity of being heard if prejudicial to Applicant/ Appellant.

Applicability of Advance Ruling [Section 103]

Orders issued by the AAR or AAAR shall be binding only –

- on the applicant who had sought it;
- on the concerned officer or the jurisdictional officer in respect of the applicant.

Orders issued by the National Appellate Authority shall be binding on -

- the applicants, being distinct persons, who had sought the ruling and all registered persons having the same PAN;
- the concerned officers and the jurisdictional officers in respect of the applicants and the registered persons having the same PAN.

The advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Advance ruling to be void in certain circumstances [Section 104]

Where the Authority or the Appellate Authority or the National Appellate Authority finds that advance ruling pronounced by it has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all

the provisions of this act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made.

Procedure for availing Advance Ruling

RULE 103. Qualification and appointment of members of the Authority for Advance Ruling. – [The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.]

RULE 104. Form and manner of application to the Authority for Advance Ruling–

(1) An application for obtaining an advance ruling under sub-section (1) of section 97 shall be made on the common portal in **FORM GST ARA-01** and shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49.

(2) The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26.

RULE 105. Certification of copies of advance rulings pronounced by the Authority. – A copy of the advance ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Ruling.

RULE 106. Form and manner of appeal to the Appellate Authority for Advance Ruling–

(1) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by an applicant on the common portal in **FORM GST ARA-02** and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.

(2) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by the concerned officer or the jurisdictional officer referred to in section 100 on the common portal in **FORM GST ARA-03** and no fee shall be payable by the said officer for filing the appeal.

(3) The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all the relevant documents accompanying such appeal shall be signed, -

  (a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and

  (b) in the case of an applicant, in the manner specified in rule 26.

RULE 107. Certification of copies of the advance rulings pronounced by the Appellate Authority. – A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to -

(a) the applicant and the appellant;

(b) the concerned officer of Central tax and State or Union territory tax;

(c) the jurisdictional officer of Central tax and State or Union territory tax; and

(d) the Authority,

in accordance with the provisions of sub-section (4) of section 101 of the act.

RULE 107A. Manual filing and processing. – Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

CASE LAWS

- ***Sutherland and Mortgage Services INC vs. Principal Commissioner (2020) – Kerala High Court***

"Whether supply of services by India Branch of Sutherland Mortgage Services Inc. USA to the customers located outside India shall be liable to GST in the light of the intra-company agreement entered into by the said branch with the principal company incorporated in USA?" The Advance Ruling Authority observed that as per the submissions of the petitioner, it is evident that the question raised is whether the supply made by the petitioner would qualify as "export of service" as defined in Section 2(6) of the IGST, 2017 and that therefore, the question would essentially and substantially involve the determination of place of supply, etc. Thereafter, the Advance Ruling Authority has proceeded to hold that the issue to be determined is one relating to the place of supply of service and then such an aspect may not be subject matter of an Advance Ruling as envisaged in Section 97, for the simple reason on the ground that the issue relating to the "determination of supply of service" as in the instant case, is not covered by any of the provisions contained in Section 97(2) of the CGST Act, 2017.

On appeal before the High Court under writ jurisdiction - High Court Held that hyper technical view taken by AAR not to admit at threshold application seeking advance ruling on subject of export of services on the ground that it involves issue relating to place of supply not enumerated in Section 97(2) of Central Goods and Services Tax Act, 2017 - While it is true that there is no specific mention of term 'Place of Supply' in any of clauses from (a) to (g) of Section 97(2) ibid, clause (e) of said Section on 'determination of liability to pay tax on goods or services or both' is wide enough to cover all aspects relating to levy of GST - Thus, any question as to whether a supply is zero-rated or not would ultimately mean whether supply is leviable to GST or not - Making clause (e) wider as compared to other pigeon hole clauses of Section ibid, legislator's intention is clear and tax authorities have to take correct prospective on issues relating to export of services - In this era of globalization, foreign investors also require certainty and precision on tax liability - In view of above, held that AAR has jurisdiction to address aforesaid issue.

- ***Assessee has Right to Appeal even after Voluntary Payment of Penalty under CGST:***

Kerala High Court has held that the assessee has the right to appeal even after the voluntary payment of the penalty made under the Central Goods and Service Tax (CGST) Act in *Hindustan Steel and Cement* vs. *Assistant State Tax Officer* [2022 TAXSCAN (HC) 609]

- ***In Re Swayam (2020) – West Bengal AAR***

Charitable trust facilitating Legal Aid, Medical Assistance and Vocational Training to Women and their Children Surviving Violence does not amount to 'Supply' of Service

The Applicant M/s Swayam was a Charitable Trust registered under Section 12A of Income Tax Act, 1961. It facilitated Legal Aid, Medical Assistance and Vocational Training to Women Survivors and their Children who had faced violence and hardships in their life.

West Bengal AAR held that M/s Swayam did not charge any consideration for facilitating the legal aid and other assistance. Such activities of M/s Swayam, therefore, does not result in 'supply' of service as defined under section 7 (1) of the GST Act. Hence, They are not liable to pay GST.

- ***In Re Leprosy Mission Trust India (2020) – West Bengal AAR***

Imparting vocational training recognized by Government of India makes an entity eligible for exemption from GST

The applicant was registered under section 12A of the Income Tax Act 1961. It is a Non-Governmental Organization (NGO), which, among others, administers a Vocational Training Institute at Bankura named Bill Edgar Memorial Vocational Training Centre (BEMVT) primarily for skill development of the underprivileged suffering from leprosy.

Clause (h) (ii) of the Exemption from Notification 12/2017 – Central Tax (Rate) dated 28/06/2017 defines an 'approved vocational course' as a modular employable skill course, approved by National Council for Vocational Training (NCVT) and run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship.

BEMVT is registered with DGET and its courses on formal trade skills of diesel mechanic, welder and sewing technology, as mentioned in the Table in para 2.2 above, are approved by NCVT. Imparting education is a part of approved vocational education courses.

The applicant is, therefore, an educational institution in terms of clause 2(y)(iii) of the Exemption Notification, and its supplies to the students, faculty and staff relating to the courses imparting skills of diesel mechanic, welder and sewing technology are exempt in terms of Entry 66 (a) of the Exemption Notification.

- ***In re Portescap India Private Limited (2020) – Maharashtra AAR***

This application was filed under Section 97 of the CGST Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 (MGST Act) by the applicant, seeking an advance ruling in respect of the following question:

1. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on procurement of renting of immovable property services from Seepz Special Economic Zone Authority (Local Authority) in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 – Central Tax (Rate) dated 25th January 2018?
2. Whether Portescap India Pvt. Ltd. is required to pay tax under reverse charge mechanism on any other services in accordance with Notification No. 13/2017 dated 28th June, 2017 read with Notification No. 03/2018 – Central Tax (Rate) dated 25th January 2018?
3. If answer to the above point is in the affirmative, then the tax under reverse charge mechanism is required to he paid under which tax head i.e., IGST or CGST and SGST?

AAR Authority made it clear that the provisions of both the CGST Act, 2017 and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purpose of this Advance Ruling, the expression `GST Act' would mean CGST Act and MGST Act. Section 95 of the CGST Act, 2017 allows AAR authority to decide the matter in respect of supply of goods or services or both, undertaken or proposed to be undertaken by the applicant.

In this case the applicant has not undertaken the supply in the subject case. The applicant is a recipient of services pertaining to renting of immovable property in the subject case. The impugned transactions are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant and therefore, the subject application cannot be admitted as per the provisions of Section 95 of the GST Act. Hence, Recipient of Services cannot apply for Advance Ruling under GST.

- ***In re HP Tourism Development Board (2020) - GST AAR Himachal Pradesh***

No GST on grant received for promotion of Tourism

The Appellant submitted that the Government of Himachal Pradesh, Department of Tourism agreed to credit the amounts to Tourism Development Board (in lieu of Grant) for smooth functioning of the board. The

amount was credited on account of receipts of amount from the sale of Publicity material/ Literature books; Fee from parking lots and public places of convenience built by the Tourism Department, Adventure sports fee including heli skiing and paragliding fee, etc. 25% to be contributed by the Tourism Development Council from their resources; donation/grants received especially for tourism promotion/ development and a nnual license fee and success fee received to the department from BOOT/BOT basic project.

The Appellant sought the advance ruling on the issue of Whether the amount credited in favour of H.P Tourism Development Board by Department of Tourism, Govt. of H.P, as grant in aid or financial assistance is taxable or not.

The Himachal Pradesh Authority of Advance Ruling (AAR) held that no GST applicable on the amount credited to H.P. Tourism Development Board by Govt. of H.P., as grants in aid or financial assistance. The amount credited in favour of H.P Tourism Development Board by Department of Tourism, Govt. of H.P, as grant in aid or financial assistance is exempt under GST as per Serial No 9C of Notification No 32/2017-Central Tax (Rate) dated October 13, 2017.

- ***In re Tamil Nadu Textbook and Educational Services Corporation (2020) - GST AAR Tamilnadu***

GST is exempted on supply of Dress, School Bag, Boots etc. to students without consideration to Government and Government Aided schools."

Tamil Nadu Textbook and Educational Services Corporation have sought advance ruling whether the supply of educational aids to students such as school bags, footwear, geometry box, wooden colour pencils, crayons, a woollen sweater to government and government-aided schools based on the State Government educational policy for which the consideration is paid to Tami Nadu Text Book and Educational Services Corporation by the State Government utilizing a budgetary allocation constitutes a supply. If the answer to the above is in the affirmative then the Tamil Nadu Text Book and Educational Services Corporation is entitled to avail the corresponding input tax credit on the procurement made.

GST AAR Tamilnadu ruled that GST is exempted on the supply of Dress, School Bag, Boots etc. to students without consideration to Government and Government Aided schools. The applicant, Tamil Nadu Textbook and Educational Services Corporation is controlled by the Government of Tamil Nadu and therefore they are a government entity.

Students may note Advance Ruling is issued based on specified facts and binding only on the applicant and its Jurisdictional GST authorities, Thus cannot be relied upon as Judicial Precedent by other assessees in the normal course.

APPEALS & REVISION (CHAPTER XVII OF THE CGST ACT, 2017)

Applicable Regulatory Framework

Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 107	Appeals to Appellate Authority
Section 108	Powers of Revisional Authority
Section 109	Constitution of Appellate Tribunal and Benches thereof

Section	*Deals with*
Section 110	President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.
Section 111	Procedure before Appellate Tribunal
Section 112	Appeals to Appellate Tribunal
Section 113	Orders of Appellate Tribunal
Section 114	Financial and administrative powers of President
Section 115	Interest on refund of amount paid for admission of appeal
Section 116	Appearance by authorised representative
Section 117	Appeal to High Court
Section 118	Appeal to Supreme Court
Section 119	Sums due to be paid notwithstanding appeal, etc.
Section 120	Appeals not to be filed in certain cases
Section 121	Non appealable decisions and orders

CGST Rules, Chapter XIII

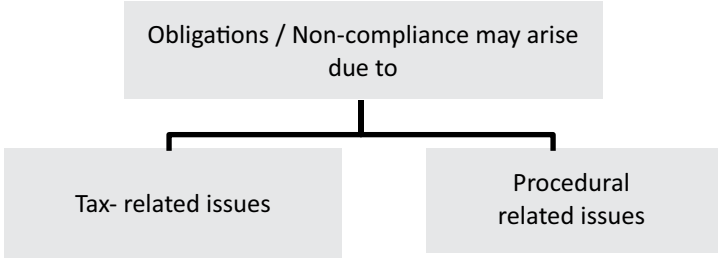
Rules	*Provisions*
108	Appeal to Appellate Authority
109	Application to the Appellate Authority
109A	Appointment of Appellate Authority
109B	Orders by the Revisional Authority
110	Appeal to the Appellate Tribunal
111	Application to the Appellate Tribunal
112	Production of additional evidence before the Appellate Authority or the Appellate Tribunal
113	Order of Appellate Authority or Appellate Tribunal
114	Appeal to High Court
115	Demand Confirmed by the Court
116	Disqualification for misconduct of an authorised representative

Forms prescribed in connection with the filing of appeals:

Forms	*Deals with*
GST APL 01	Appeal to Appellate Authority
GST APL 02	Acknowledgement for submission of Appeal
GST APL 03	Application to the Appellate Authority under sub-section (2) of Section 107
GST APL 04	Summary of the demand after issue of order by the Appellate Authority, Tribunal or Court
GST APL 05	Appeal to the Appellate Tribunal
GST APL 06	Cross-objections before the Appellate Tribunal
GST APL 07	Application to the Appellate Tribunal under sub section (3) of Section 112
GST APL 08	Appeal to High Court
GST RVN 01	Notice by the revisional authority to a person who may be affected by its proposed order

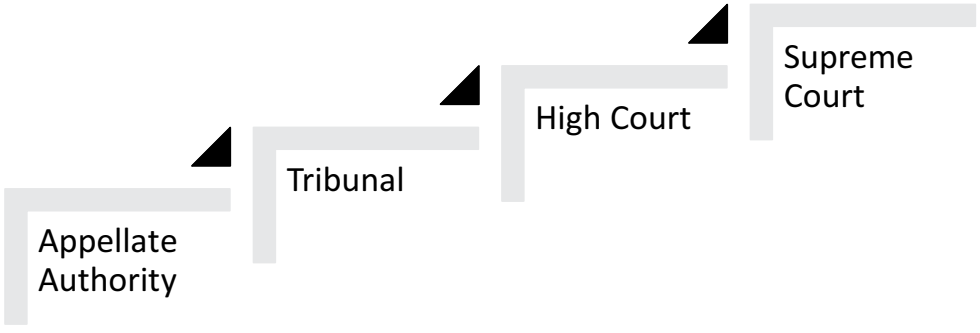
APPEALS & REVISIONS

In cases where either the proper officer passes an order which is prejudicial to the interest of the taxpayer or the Department feels that the order passed by the proper officer is incorrect, the tax payer or the Department, as the case may be, deserves the right to make an appeal against such orders passed.



Appeal Hierarchy

A person who is aggrieved by a decision or order passed against him by an adjudicating authority, can file an appeal to the Appellate Authority (AA, for short). It is important to note that it is only the aggrieved person who can file the appeal. Also, the appeal must be against a decision or order passed under the act.



STATUTORY PROVISIONS

Appeals to Appellate Authority (Section 107)

(1) Any person aggrieved by any decision or order passed under this act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid –

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to **ten per cent.** of the remaining amount of tax in dispute arising from the said order, **[subject to a maximum of twenty-five crore rupees,]** in relation to which the appeal has been filed.

Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order.

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short- paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed.

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

Rule 108. Appeal to the Appellate Authority

(1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in **FORM GST APl-01**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.

(2) The grounds of appeal and the form of verification as contained in **FORM GST APl-01** shall be signed in the manner specified in rule 26.

(3) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of **FORM GST APL-01** and a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of **FORM GST APL-01**, the date of submission of such copy shall be considered as the date of filing of appeal.

Explanation. – For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Rule 109. Application to the Appellate Authority

(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be filed in FORM GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgment shall be issued to the appellant immediately.

(2) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal under sub-rule (1):

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of **FORM GST APL-03** and a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of **FORM GST APL-03**, the date of submission of such copy shall be considered as the date of filing of appeal.

Rule 109A. Appointment of Appellate Authority

(1) Any person aggrieved by any decision or order passed under this act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to -

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) any officer not below the rank of Joint Commissioner (Appeals)] where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent, **within three months** from the date on which the said decision or order is communicated to such person.

(2) An officer directed under sub-section (2) of section 107 to appeal against any decision or order passed under this act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to -

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or the Superintendent, **within six months** from the date of communication of the said decision or order.

Powers of Revisional Authority (Section 108)

(1) **Subject to** the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him

is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) The Revisional Authority shall not exercise any power under sub-section (1), if –

(a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or

(b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or

(c) the order has already been taken for revision under this section at an earlier stage; or

(d) the order has been passed in exercise of the powers under sub-section (1) :

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.

(4) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub- section (2).

(6) For the purposes of this section, the term, –

(i) "record" shall include all records relating to any proceedings under this act available at the time of examination by the Revisional Authority;

(ii) "decision" shall include intimation given by any officer lower in rank than the Revisional Authority.

Rule 109B. Notice to person and order of revisional authority in case of revision–

(1) Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in **FORM GST RVN- 01** and shall give him a reasonable opportunity of being heard.

(2) The Revisional Authority shall, along with its order under sub-section (1) of section 108, issue a summary of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed.

Constitution of Appellate Tribunal and Benches thereof (Section 109)

(1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as "Regional Benches"), State Bench and Benches thereof (hereafter in this Chapter referred to as "Area Benches").

(3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

(4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.

(6) The Government shall, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory.

Provided further that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council :

Provided also that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to Act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

(7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5).

(8) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State.

(9) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.

(10) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

(11) If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

(12) The Government, in consultation with the President may, for the administrative convenience, transfer –

(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or

(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.

(13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.

(14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

President and Members of Appellate Tribunal (Section 110)

(1) A person shall not be qualified for appointment as –

(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

(b) a Judicial Member, unless he –

(i) has been a Judge of the High Court; or

(ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or

(iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years.

(c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in **Group A**;

(d) a Technical Member (State) unless he is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this act to fill such vacancy, enters upon his office.

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.

(3) The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

(4) The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High Court of the State or his nominee.

(5) The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.

(6) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

(7) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(8) The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed.

Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment.

(9) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for reappointment.

(10) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.

(11) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.

(12) The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or, as the case may be, the State Government resign from his office.

Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the State Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(13) The Central Government may, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench, Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who –

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President, State President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or has so abused his position as to render his continuance in office prejudicial to the public interest.

Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(14) Without prejudice to the provisions of sub-section (13), –

(a) the President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard;

(b) the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.

(15) The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Members of the National Bench or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (14).

(16) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (14).

(17) Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.

Procedure before Appellate Tribunal (Section 111)

(1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

(2) The Appellate Tribunal shall, for the purposes of discharging its functions under this act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely :-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(h) any other matter which may be prescribed.

(3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction, –

(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Appeals to Appellate Tribunal (Section 112)

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does **not exceed fifty thousand rupees.**

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this act or the State Goods and Services Tax act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, **within forty-five days** of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal **within three months** after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections **within forty-five days** after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid –

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to **twenty per cent.** of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, subject to a maximum of fifty crore rupees, in relation to which the appeal has been filed.

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal, –

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.

Orders of Appellate Tribunal (Section 113)

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing.

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order.

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund

or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an opportunity of being heard.

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of **one year** from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.

(6) Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

Rule 110. Appeal to the Appellate Tribunal

(1) An appeal to the Appellate Tribunal under sub-section (1) of section 112 shall be filed along with the relevant documents either electronically or otherwise as may be notified by the Registrar, in **FORM GST APL-05**, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112 shall be filed either electronically or otherwise as may be notified by the Registrar, in **FORM GST APL-06.**

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) A certified copy of the decision or order appealed against along with fees as specified in sub-rule (5) shall be submitted to the Registrar within seven days of the filing of the appeal under sub-rule (1) and a final acknowledgement, indicating the appeal number shall be issued thereafter in **FORM GST APL-02** by the Registrar :

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the **FORM GST APL-05**, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation. – For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued.

(5) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty five thousand rupees.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112.

Rule 111. Application to the Appellate Tribunal

(1) An application to the Appellate Tribunal under sub- section (3) of section 112 shall be made electronically or otherwise, in **FORM GST APL-07**, along with the relevant documents on the common portal.

(2) A certified copy of the decision or order appealed against shall be submitted **within seven days** of filing the application under sub-rule (1) and an appeal number shall be generated by the Registrar.

Rule 112. Production of additional evidence before the Appellate Authority or the Appellate Tribunal

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely :-

(a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose off the appeal.

Rule 113. Order of Appellate Authority or Appellate Tribunal

(1) The Appellate Authority shall, along with its order under sub-section (11) of section 107, issue a summary of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed.

(2) The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

Financial and Administrative Powers of President (Section 114)

The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

Interest on Refund of Amount Paid for Admission of Appeal (Section 115)

Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Appearance by Authorised Representative (Section 116)

(1) Any person who is entitled or required to appear before an officer appointed under this act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this act, may, otherwise than when required under this act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this act, the expression "authorised representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being –

(a) his relative or regular employee; or

(b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or

(c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or

(d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a **Group-B Gazetted officer** for a period of **not less than two years**.

Provided that such officer shall not be entitled to appear before any proceedings under this act for a period of one year from the date of his retirement or resignation; or

(e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.

(3) No person, –

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceedings under this act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or

(c) who is found guilty of misconduct by the prescribed authority;

(d) who has been adjudged as an insolvent, shall be qualified to represent any person under sub-section (1) –

(i) for all times in case of persons referred to in clauses (a), (b) and (c); and

(ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).

(4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this act.

Rule 116. Disqualification for misconduct of an authorised representative. – Where an authorised representative, other than those referred to in clause (b) or clause (c) of sub-section (2) of section 116 is found, upon an enquiry into the matter, guilty of misconduct in connection with any proceedings under the act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorised representative.

Appeal to High Court (Section 117)

(1) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

(2) An appeal under sub-section (1) shall be filed within a period of **one hundred and eighty days** from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner as may be prescribed :

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(5) The High Court may determine any issue which –

(a) has not been determined by the State Bench or Area Benches; or

(b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of **not less than two Judges** of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) Save as otherwise provided in this act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

Rule 114. Appeal to the High Court –

(1) An appeal to the High Court under sub-section (1) of section 117 shall be filed in **FORM GST APL-08.**

(2) The grounds of appeal and the form of verification as contained in **FORM GST APL-08** shall be signed in the manner specified in rule 26.

RULE 115. Demand confirmed by the Court. – The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.

Appeal to Supreme Court (Section 118)

(1) An appeal shall lie to the Supreme Court –

(a) from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or

(b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

Sums due to be paid notwithstanding appeal (Section 119)

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

Appeal not to be filed in certain cases (Section 120)

(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances

under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

Non-appealable Decisions and Orders (Section 121)

Notwithstanding anything to the contrary in any provisions of this act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely :–

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under this act; or

(d) an order passed under section 80.

Analysis

Time limit for filing of Appeals:

Against Order issued by	***Appeals to be made to***	***Within the time limit***	***Extension / Condonation of Delay***
Adjudicating Officer/ Proper Officer	Appellate Authority (AA)	3 months from the date of the impugned order	One month in case of just and equitable causes/ reasons
Against Orders-in-appeal passed by AA or Order in Revision passed by the Revisional Authority	Tribunal ❖ State/Area Bench ❖ National/Regional Bench	3 months from the date of the order under appeal Cross Objections can be filed by the respondent within 45 days from the date of receipt of notice of filing of appeal	Upto 3 months in case of appeal and upto 45 days in case of cross-objections, beyond the mandatory period
Against Orders of Tribunal	High Court	180 days from the date of order passed by the Tribunal	Power to condone delay on (62) sufficient reasons/ cause
Against Order of the High Court	Supreme Court	Only if the High Court certifies the matter as 'fit' to be appealed before the Apex Court.	Power to condone delay on sufficient reasons/ cause

Pre-deposit for filing appeals

The statutory right is at times misutilised by the aggrieved party, hence, to discourage frivolous appeals and to safeguard the *bonafide* interests of both the taxpayers and the revenue, the concept of pre-deposit for filing appeals is imposed upon for the tax payer (and not for the tax administrator / revenue).

Amount of Pre-deposit prescribed as per the CGST Act, 2017:

Provision	*Orders issued by*	*Appeal to*	*Deposit (Basic)*	*Deposit (in addition to the basic)*
Section 107(6)	Adjudicating Authority/ Proper Officer (below the rank of Tribunal)	Appellate Authority	Full amount of tax, interest, fine and penalty as is admitted by him arising from the impugned order	A sum equal to 10% of the remaining amount of tax in dispute arising from the said order, subject to a maximum of Rs. 25 Crores
112(8)	Appellate Authority	Tribunal	Full amount of tax, interest, fine and penalty as is admitted by him arising from the impugned order	A sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid under Section 107(6), arising from the said order subject to a maximum of Rs. 50 Crores

Note: In the case, where the pre-deposit made by the appellant before the AA or Tribunal is required to be refunded consequent to any order of the AA or of the Tribunal, as the case may be, interest at the rate specified in Section 56 shall be payable from the date of payment of the amount (and not from the date of order of AA or of the Tribunal) till the date of refund of such amount.

Example 1:

Appeal before the Appellate Authority

Tax Liability as disclosed by the taxpayer through return	INR 500,00,00,000
Tax paid by the taxpayer	INR 400,00,00,000
Tax liability as assessed by the Adjudicating Authority.	INR 900,00,00,000
Total amount of deposit required by the Taxpayer for being eligible to file and an appeal before the 1st appellate authority	(i) Tax Due = INR [500,00,00,000 - 400,00,00,000] INR 100,00,00,000 (ii) 10% of remaining amount =10% of INR [900,00,00,000 - 500,00,00,000] = 40,00,00,000 subject to the maximum of INR. 25,00,00,000. Deposit to be made = INR 25,00,00,000

Example 2:

Tax Liability as disclosed by the Tax payer through return filed	INR 2,00,000
Tax paid by the Tax Payer	INR 1,70,000
Tax liability as assessed by the Adjudicating Authority	INR 2,50,000
Total amount of deposit required by the Tax Payer for being eligible to file an application for Appeal	(i) Tax Due = INR [2,00,000 (-) 1,70,000] = INR 30,000 (ii) 10% of the additional tax liability imposed = 10% of [(2,50,000 – 2,00,000)] = INR 5,000

Note: Interest, late fee, penalty components are ignored for the purpose of simplicity of this illustration, which, however, shall have to be discharged in accordance.

Conclusion

The establishment of right to appeal, though statutory in nature, depends upon fulfillment of various compliance parameters including meeting the question of law. In all cases, where the revenue or the tax payer are aggrieved may file an appeal to the appropriate authority and seek remission.

LESSON ROUND-UP

- Under GST, a seamless flow of credit throughout the value chain is available removing the cascading effect of taxes
- Audit by Department: The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Section 65 of the CGST/SGST Act).
- Special Audit: If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of the opinion that the value has not been correctly.
- The liability for payment of GST lies on the taxpayer and it is payable on self-assessment basis.
- If such liability is determined wrongly, subsequent to its identification, demand may be raised.
- Section 73 deals with without fraud or misstatement of facts and section 74 deals with willful fraud or misstatement of facts period of stay will be excluded in computing the period 3 years or 5 years • the time limit for issue of notice or adjudication.
- Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

- A taxpayer can approach Authority of Advance Ruling to get clarification for any specific matter related to supply of goods & services.
- The main objective of Advance Ruling is to provide certainty in advance for tax liability and to reduce litigation and other disagreements.
- The taxpayer has the right to make an appeal against the order passed by proper officer.
- Appeal Mechanism – Appellate Authority → Tribunal → High Court → Supreme Court.
- The taxpayer seeking appeal has to pre-deposit specified amount before filing an appeal.
- It is to be noted that no appeals whatsoever can be filed against the following orders:-
    a. an order of the commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
    b. an order pertaining to the seizure or retention of books of account, register and other documents; or
    c. an order sanctioning prosecution under the Act; or
    d. an order passed under Section 80 (Payment of Tax in instalments).

GLOSSARY

Audit: An audit under GST is all about checking and verifying the financial documents maintained and submitted to the tax authority under GST.

Assessment : Assessment means the determination of tax liability under the GST Act

Advance Ruling: As per GST, the advance ruling is a written decision given by the tax authorities to an applicant on questions relating to the supply of goods/services.

"Appellate Authority" means an authority appointed or authorised to hear appeals as referred to in section 107.

"Appellate Tribunal" means the Goods and Services Tax Appellate Tribunal constituted under section 109.

"Proper Officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.

Recovery of Tax: The recovery under the Goods and Services Tax (GST) is a process under which the tax authority recover any outstanding tax or interest that is payable by the taxpayer.

"Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Discuss the various types of audits prescribed under GST law.
2. Describe the circumstances under which summary assessment can be carried out.
3. Discuss the procedure for provisional assessment.

4. What is the time limit for passing best judgment order?
5. Briefly discuss the time limit for issuing SCN under section 73 & 74 of CGST Act, 2017.
6. Briefly discuss the modes of recovery of tax available to the proper officer under section 79 of CGST Act, 2017.
7. Explain the objectives of Advance Ruling.
8. To whom will the Advance Ruling be applicable?
9. When can an advance ruling be declared *void ab initio*?
10. Explain the provisions of Departmental Appeal to Appellate Authority under section 107 of CGST Act, 2017.
11. List out the situations where advance ruling cannot be applied.
12. Can rectification of advance ruling take place?
13. L Limited has defaulted in the payment of tax for the month of June 2019. GST Officer has sent notice to L Limited for immediate payment of tax due from them. However, L Limited has shown inability to pay as their customers have not paid against the bills issued by them in the last 6 months. In the circumstances, what options do GST officer has to recover the defaulted amount?

LIST OF FURTHER READINGS

- GST Ready Reckoner – Taxmann – V.S. Datey
- GST Manual with GST Law Guide & GST Practice Referencer – Taxmann
- GST Acts with Rules & Forms – Taxmann
- GST – Law, Practice & Procedures – Bharat Publications Vineet Gupta & N.K. Gupta

Inspection, Search, Seizure, Offences & Penalties

Lesson 8

KEY CONCEPTS

■ Inspection ■ Search & Seizure ■ Offences & Penalty ■ Detention of Goods & Conveyance ■ Levy of Penalty ■ Confiscation of Goods & Conveyance and Levy of Penalty ■ Cognizance of Offence

Learning Objectives

To understand:

- Provisions related to Inspection, Search and Seizure
- Inspection of goods in motion
- Search Warrant
- Provisions related to Arrest
- Procedure at time of Seizure
- Summons
- Distinction between Seizure and Detention
- Confiscation
- Offences and Penalties
- Prosecution

Lesson Outline

REGULATORY FRAMEWORK

1. Central Goods and Services Tax Act, 2017

Section	*Deals with*
Section 67	Power to carry out inspection, conduct search and seizure after obtaining authorization
Section 68	Power of the central or state government to prescribe documents to be carried by a transporter along with the consignment of goods of value of the consignment exceeding prescribed limit
Section 69	Power of an officer to arrest a person who has committed certain specified category of offences along with certain safeguards prescribed in respect of the person arrested
Section 70	Power of a proper officer to summon a person to give evidence and produce documents
Section 71	Power of a proper officer to have access to any business premises for inspection of various documents
Section 72	Category of officers who as per law are required to assist proper officers in execution of the CGST/SGST Act

CGST Rules

139	Inspection, search and seizure
140	Bond and security for release of seized goods
141	Procedure in respect of seized goods

2. The Code of Criminal Procedure, 1973

Section	*Deals with*
Section 47	Search of place entered by person proposed to be arrested
Section 51	Search of person arrested
Section 94	Search of a place where books, documents, property etc. are suspected
Section 99	Search warrants
Section 100	Persons in charge of closed place to allow search
Section 101	Disposal of things found in search beyond jurisdiction
Section 103	Magistrate's direction for search in his presence
Section 165	Search by a police officer
Section 166	Officer-in-charge of police station requiring another to issue search Warrant

INSPECTION, SEARCH, SEIZURE & ARREST

Chapter XIV of the CGST Act, 2017 deals with the matter relating to the Inspection, Search, Seizure and Arrest. It consists of section 67 to 72 read with rules 139 to 141 of the CGST Rules, 2017. The provisions for Inspection, Search, Seizure and Arrest are provided to protect the interests of *bona fide* tax payers as the Tax evaders by evading the tax get an unfair advantage over the genuine tax payers. These provisions are also required to safeguard and protect revenue of the nation.

POWER OF INSPECTION, SEARCH AND SEIZURE (SECTION 67)

1. Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that -

   a. a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this act or has indulged in contravention of any of the provisions of this act or the rules made thereunder to evade tax under this act; or

   b. any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this act,

   he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

   > ***Prakashsinh Hathisinh Udavat v. State of Gujarat***
   >
   > The Search Authorization issued in Form GST INS-01, shall be serially numbered containing System Generated Document Identification Number (ARN Number) Manual GST INS-01 shall be not be issued by Proper Officers.
   >
   > If Search Authorization does not contain the System Generated Document Identification Number then it shall be presumed as unauthorized one.

2. Where the proper officer, **not below the rank of Joint Commissioner**, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

   Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

   Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this act.

3. The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

4. The officer authorised under sub-section (2) shall have the power to seal or break open the door of

any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

5. The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

6. The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

7. Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

   Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

8. The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

9. Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

10. The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted.

11. Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this act or the rules made thereunder for prosecution.

12. The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

> It was held that provision of section 67, should not be exercised as a matter of course, but only after due application of mind to the relevant factors.
>
> *Patran Steel Rolling Mill* v. *Assistant Commissioner of State Tax* (*Guj.*)

INSPECTION OF GOODS IN MOVEMENT (SECTION 68)

1. The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.
2. The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.
3. Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub- section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

ARREST PROVISION UNDER GST (SECTION 69)

1. Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.
2. Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.
3. Subject to the provisions of the Code of Criminal Procedure, 1973, -
    a. where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
    b. in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Power to summon persons to give evidence and produce documents (Section 70)

1. The proper officer under this act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.
2. Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

Access to business premises (Section 71)

1. Any officer under this act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
2. Every person in charge of place referred to in sub-section (1) shall, on demand, make available to

the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66-

i. such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

ii. trial balance or its equivalent;

iii. statements of annual financial accounts, duly audited, wherever required;

iv. cost audit report, if any, under section 148 of the Companies Act, 2013;

v. the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and

vi. any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

Officers to assist proper officers (Section 72)

1. All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this act.
2. The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this act when called upon to do so by the Commissioner.

Relevant Rules under CGST Act, 2017

Rule 139. Inspection, search and seizure:

1. Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in **FORM GST INS-01** authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.
2. Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorised officer shall make an order of seizure in **FORM GST INS-02.**
3. The proper officer or an authorised officer may entrust upon the the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer.
4. Where it is not practicable to seize any such goods, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in **FORM GST INS-03** that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.
5. The Officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, *inter alia*, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.

Rule 140. Bond and security for release of seized goods:

1. The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in **FORM GST INS-04** and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

   Explanation: For the purposes of the rules under the provisions of this Chapter, the - "applicable tax" shall include central tax and State tax or central tax and the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017).

2. In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.

Rule 141. Procedure in respect of seized goods:

1. Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in **FORM GST INS-05**, on proof of payment.

2. Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the Proper officer may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

Relevant Forms to be used at a Glance

Form No.	*Order*
GST INS-01	Authorization to be issued
GST INS-02	Order of seizure
GST INS-03	Order of prohibition [Where it is not practicable to seize any goods]
GST INS-04	Seized goods may be released on a provisional basis upon execution of a bond for value of the goods
GST INS-05	Order of goods for realization

Meaning of Search

"Search" has not been defined in the GST law. However, Shorter Oxford English Dictionary defines "search" to mean to probe, scrutinize, examine, investigate. The rights of the state to authorize a search are well recognized and are used against those who perpetrate fraud on the revenue. There has to be compelling reasons to order for a search i.e., transgression into one's privacy. In case of search, due process of law has to be followed. In case of taxes, a suspicion of undisclosed or concealed income or assets is sufficient for issuance of a search warrant.

Meaning of Seizure

"Seizure" has not been defined in the GST law.

> In Law Lexicon Dictionary, "seizure" is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

Seizure is the outcome of search. If any documents are found during the search which need to be seized, the officials conducting the search can seize such documents etc. When power to seize exists, the power to release seized items is also implied. Once the investigation is completed, the department may retain or release the seized documents or papers or things. The investigation officer, if establishes that there has been an evasion of tax, notice under section 74 of the act may be issued.

Seizure is taking into possession of goods in pursuance of a legal right. In *CIT v. Tarsem Kumar (1986) 26 ELT 10 (SC)*, the Apex Court held that seizure implies forcibly taking something from its owner or who has possession and who was unwilling to part with such possession.

Powers of Search and Seizure

The objective of search and seizure provisions in tax statutes is to act as a restraint on evasion of taxes. Such powers are within the constitutional frame work and cannot be considered as violative of Article 19 of Constitution of India.

Power of search and seizure in any system of jurisprudence is an overriding power of the state to provide security and that power is necessarily regulated by law - *M.P. Sharma v. Satish Chandra, District Magistrate 1954 AIR 300; 2 ELT 287 (SC)*.

In *Baboo Ram Hari Chand* v. *Union of India* (*2014*) *304 ELT 371* (*Gujarat*), it has been held that powers to seize and confiscate are quite drastic powers, such that authority exercising the same should have reasons to believe that goods were liable therefore. It was held that passing of a composite order, i.e., *panchnama-cum-seizure* order is impermissible in law.

Section 67 of CGST Act, 2017 provides for powers of inspection, search and seizure in GST regime.

Appropriate Authority to authorize search & seizure and circumstances

As per section 67(2) of the CGST Act, 2017, where the proper officer (not below the rank of Joint Commissioner) or any officer which is authorized to do an inspection, has reasons to believe that:

- any goods are liable to confiscation, or
- any documents/books/or things, which in his opinion may be useful and relevant for any proceedings under the act,

are secreted in any place, then, he may authorize in writing any other officer to search and seize or may himself search and seize such goods, documents or books or things and be retained for so long as may be necessary for their examination and for any inquiry or proceeding under this act.

The powers to search and seizure can be exercised in the following manner:

(a) Only proper officer of the rank of Joint Commissioner or above may authorize search and seizure.

(b) It can be in pursuance of inspection under section 67(1) or otherwise.

(c) He should have "reasons to believe" that any goods liable for confiscation or any documents/books/things are secreted at any place which in his opinion shall be useful or relevant for any proceedings under the GST law.

(d) He may authorize any other officer to carry out search and seize such goods, documents or books or things.

(e) He may also search and seize himself.

(f) Seizure could of goods, documents, books or things.

In terms of Rule 139(1) of GST Rules, 2017, where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in **FORM GST INS-01** authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.

Confiscation of goods

Under section 67(2) of the CGST Act, 2017, search can be ordered where the CGST / SGST officer has reasons to believe that goods are liable to confiscation. In terms of section 130 of CGST Act, 2017, goods become liable to confiscation when any person does the following acts:

(i) supplies any goods in contravention of any of the provisions of this act or rules made there under leading to evasion of tax;

(ii) does not account for any goods on which he is liable to pay tax under this act;

(iii) supplies any goods liable to tax under this act without having applied for registration;

(iv) contravenes any of the provisions of the GST Act or rules made there under with intent to evade payment of tax.

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this act or the rules made there under unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance.

Powers of Authorized Officer

In terms of section 67(4) of CGST Act, 2017, the officer so authorized shall have the power to seal or break open the door of any premises or to break or open any almirah, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed where access to such premises, box etc is denied by the taxable person.

Places where search can be conducted

Search can be conducted at any place which would include any house, office, building, vehicle etc. It includes the premises of any person and not just a taxable person. Search is supposed to be an invasion into person's privacy. However, it must be guided by certain principles under normal human tendency.

Reason to believe

As per Section 26 of Indian Penal Code, a person is said to have reason to believe a thing, if he has sufficient cause to believe that thing, but not otherwise. 'Reason to believe' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.

Although the officer is not required to specifically state the "reasons for such belief" before issuing a written authorization for search and seize, he has to disclose the material on which his belief was formed.

'Reason to believe' means having knowledge of facts, that would make any reasonable person, knowing the same facts, to reasonably conclude the same thing.

"Reason to believe" need not be recorded invariably in each case. However, it would be better if the materials/ information etc are recorded before issue of search warrant or before conducting search.

CASE LAWS

- **Reasons to believe is required for search and seizure**

  RCI Industries and Technologies Ltd. vs.Commissioner DGST - Delhi High Court

  The Hon'ble High Court held that under Section 67 of the CGST Act, when an authorized officer carries out an inspection, search and seizure, the same is on the basis of the satisfaction arrived at by the proper officer not below the rank of the Joint Commissioner that reasons to believe as specified under the said provision.

  Our scrutiny is limited because of the well settled principles of law relating to judicial review of search action. While exercising writ jurisdiction, we cannot adjudge or test the adequacy and sufficiency of the grounds. We can only go into the question and examine the formation of the belief to satisfy if the conditions specified under the statutory provision invoked are met. The Courts can interfere and hold the exercise of power to be bad in law only if the grounds on which reason to believe is founded have no rational connection between the information or material recorded; or are non-existent; or are such on which no reasonable person can come to that belief.

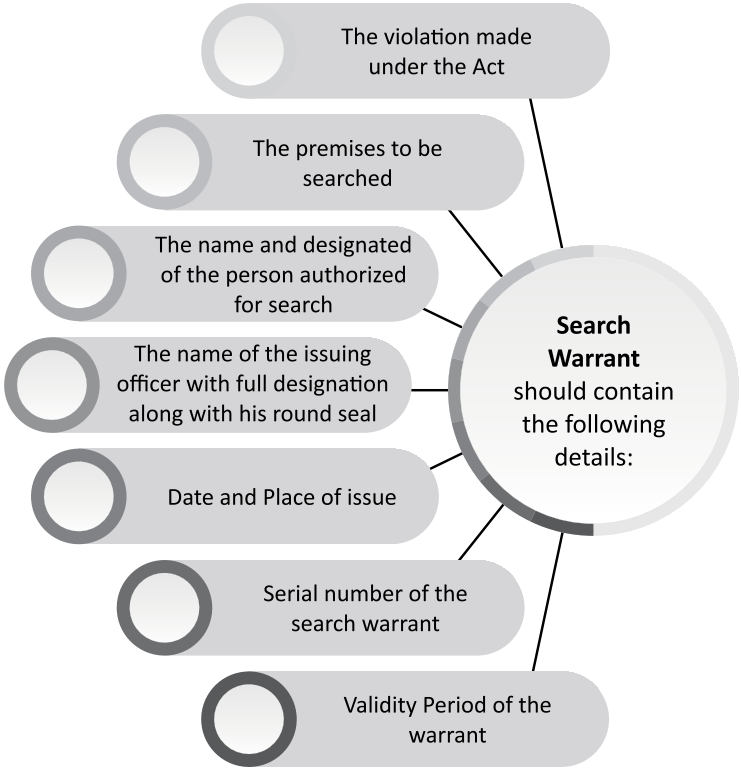
- ***Rimjhim Ispat Limited vs. State of U.P. & Others (2019) - Allahabad High Court***

  Section 67 of CGST Act provides for the inspection, search and seizure. But this power can be exercised only when there is a reason to believe. It is also argued that the 'reasons to believe' should be based upon tangible material and should not be based upon fanciful consideration as the exercise of powers of search and seizure is an exception to the fundamental right of the petitioner guaranteed under Article 19(1)(g) of the Constitution of India.

  The Allahabad High Court has held that the 'reasons to believe' are mandatory to conduct search and seizures procedure adopted as per the State GST Acts. The Court held that, "it is essential that the officer authorizing the search should have 'reasons to believe.' The principles that are culled out from the catena of decisions referred above is that the 'reasons to believe' should exist and should be based on reasonable material and should not be fanciful or arbitrary. It is also established that this Court in exercise of its powers under Article 226 cannot go into the sufficiency of the reasons and should not sit as an appellate court over the reasons recorded. It is also well established that the reasons may or may not be communicated to the assessee but the same should exist on record."

PARTICULARS OF SEARCH AUTHORIZATION (WARRANT)

The written authority to conduct search is generally referred to as 'search warrant'. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search.



PERIOD FOR RETENTION OF DOCUMENTS OR BOOKS

- As per second proviso to section 67(2) of CGST Act, 2017, the goods, documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under the GST law.
- According to section 67(3) of CGST Act, 2017, the documents, books or things or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this act or the rules made thereunder, shall be returned to such person within a period **not exceeding thirty days** of the issue of the said notice.

Procedure to be followed at the time of seizure

- Where any goods, documents, books or things are liable for seizure under section 67(2), the proper officer or an authorized officer shall make an order of seizure in **FORM GST INS-02.** [Rule 139(2)]
- The proper officer or an authorized officer may entrust upon the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer. [Rule 139(3)]

If seizure of goods is impractical:

Where it is not practicable to seize any such goods, the proper officer or the authorized officer may serve on the owner or the custodian of the goods, an order of prohibition **in FORM GST INS-03** that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. [Rule 139(4)]

The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, *inter alia*, description, quantity or unit, make, mark or model, where

applicable, and get it signed by the person from whom such goods or documents or books or things are seized. [Rule 139(5)]

Seizure provisions at a Glance

- A proper officer not below the rank of **Joint Commissioner** or an officer authorised by such proper officer can make an order of seizure in form **GST INS-02** for cases authorised under Section 67(2).
- Where Goods or things cannot he seized, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in **FORM GST INS-03** that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.
- When goods are seized, the officer is required to prepare an inventory of such goods or books or documents seized containing *inter alia*, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.

Return of goods where no notice is served

As per section 67(7) of CGST Act, 2017, where any goods are seized, but no notice in respect thereof is given **within 6 months** of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. However, the period of 6 months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding 6 months.

Person searched entitled to copies of documents seized

In terms of section 67(5), the person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts there from in the presence of an officer at such time and place as allowed.

However, where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

Disposal of goods in specified circumstances

In terms of section 67(8) of CGST Act, 2017, the proper officer may dispose off the goods in such manner as may be prescribed, if such goods pertain to the following class of goods or goods as specified by the Government by notification:

- Perishable or hazardous nature of any goods,
- Depreciation in the value of the goods with the passage of time,
- Constraints of storage space for the goods, or
- Any other relevant considerations, by notification.

Making of inventory of the seized goods

As per section 67(9) of CGST Act, 2017, where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorized by him he shall prepare an inventory of such goods in such manner as may be prescribed.

As per Rule 139(5) of CGST Rules, 2017, the officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, *inter alia*, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.

Purchase goods or services to check authenticity of invoices

In terms of section 67(12) of CGST Act, 2017, the Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

PROCEDURE FOR RELEASING THE SEIZED GOODS

- Rule 140 of GST Rules, 2017 deals with bond and security for release of seized goods.
- The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in **FORM GST INS-04** and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.
- The "applicable tax" shall include central tax and State tax or central tax and the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017.

Consequences if goods provisionally released are not produced on demand

In terms of Rule 140(2) of CGST Rules, 2017, in case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine if any, payable in respect of such goods.

SEIZURE OF PERISHABLE AND HAZARDOUS NATURE GOODS

In terms of Rule 141 of CGST Rules, 2017, where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in **FORM GST INS-05**, on proof of payment.

Where the taxable person fails to pay the amount in respect of the said goods or things, the Commissioner may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

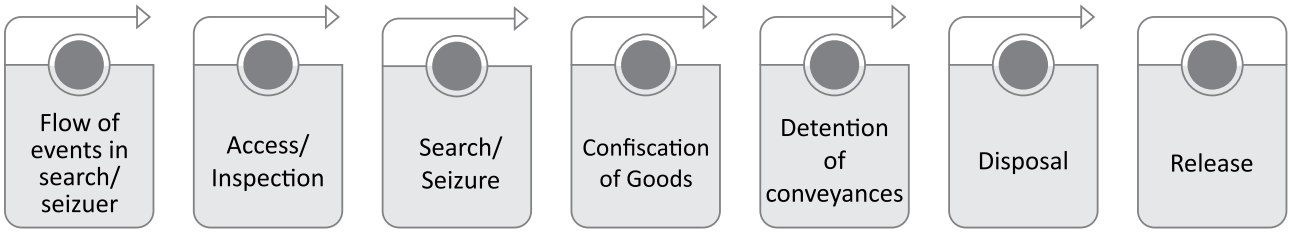
Search without valid warrant is illegal

Search without a valid search warrant (i.e., issued by other than a competent authority or without a search warrant) results in an illegal search without authority of law. However, due to this reason, the accused cannot get benefit but evidence collected even during an illegal, search and seizure is considered admissible in trial and adjudication proceedings.

Validity of documents seized during illegal search

- Even if a search and seizure of documents or account books is illegal, the documents or materials prepared and obtained on search or seizure can be looked into and relied on for the purpose of making the assessment. They have probative value. They are public documents prepared by the public officer in the performance of his official duties. Law presumes that the proceedings so recorded are accurate and were made as reflected in the documents.
- To find out the business practice being followed by the appellant, the Department made sample

purchase before search, and established that the appellant had suppressed sales; and based upon other unaccounted slips seized, it made best judgment assessment. The high court held that burden of proof lies upon the appellant to establish that all slips were accounted for as sales in the books of accounts.



Applicability of the Code of Criminal Procedure to Search & Seizure

As per Section 67(10) of CGST Act, 2017, the provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that section 165(5) of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

Thus, the powers of the Magistrate under the Code of Criminal Procedure vest with the Commissioner and the Principal Commissioner in the GST.

Guiding Principles for conduct of search

C.B.I. & C. GST Investigation Wing has issued following procedure to be followed during search operations in accordance with provisions of Code of Criminal Procedure, 1973 [Instructions No. 01/2020-21/GST-Investigation, dated 2-2-2021]

(i) The officer issuing authorization for search should have valid and justifiable reasons for authorizing a search which shall be duly recorded in the file. Search should be carried out only with a proper search authorization issued by the Competent Authority.

(ii) The instructions related to generation of DIN for each search authorization shall be scrupulously followed by the officer authorising search.

(iii) The premises of a person cannot be searched on the authority of a search warrant issued for the premises of some other person. Where a search warrant, through oversight, has been issued in the name of a person who is already dead, the authorised officer should report to the Competent Authority and get a fresh warrant issued in the names of the legal heirs.

(iv) In case of search of a residence, a lady officer shall necessarily be part of the search team.

(v) The search shall he made in the presence of two or more independent witnesses who would preferably be respectable inhabitants of the locality, and if no such inhabitants are available or willing, the inhabitants of any other locality should be asked to be witness to the search. PSU employees, Bank employees etc. may be included as witnesses during sensitive search operations to maintain transparency and credibility. The witnesses should be informed about the purpose of the search and their duties.

(vi) The officers conducting the search shall first identify themselves by showing their identity cards to the person in-charge of the premises. Also, before the start of the search, the officers as well as the independent witnesses shall offer their personal search. After the conclusion of the search all the officers and the witnesses should again offer themselves for their personal search.

(vii) The search authorization shall be executed before the start of the search and the same shall be shown to the person in charge of the premises to be searched and his/her signature with date and time shall be obtained on the body of the search authorization. The signatures of the witnesses with date and time should also be obtained on the body of the search authorization.

(viii) A Panchnama containing truthful account of the proceedings of the search shall necessarily be made and a list of documents/ goods/things recovered should be prepared. It should be ensured that time and date of start of search and conclusion of search must be mentioned in the Panchnama. The fact of offering personal search of the officers and witnesses before initiation and after conclusion of search must be recorded in the Panchnama.

(ix) In the sensitive premises videography of the search proceedings may also be considered and the same may be recorded in Panchnama.

(x) While conducting search, the officers must be sensitive towards the assessee/party. Social and religious sentiments of the person(s) under search and of all the person(s) present, shall be respected at all times. Special care/attention should be given to elderly, women and children present in the premises under search. Children should be allowed to go to school, after examining of their bags. A woman occupying any premises, to be searched, has the right to withdraw before the search party enters, if according to the customs she does not appear in public. If a person in the premises is not well a medical practitioner may be called.

(xi) The person from whose custody any documents are seized may be allowed to make copies thereof or take extracts therefrom for which he/she may be provided a suitable time and place to take such copies or extract therefrom. However, if it is felt that providing such copies or extracts therefrom prejudicially affect the investigation, the officer may not provide such copies. If such request for taking copies is made during the course of search, the same may be incorporated in Panchnama, intimating place and time to take such copies.

(xii) The officer authorized to search the premises must sign each page of the Panchnama and annexures. A copy of the Panchnama along with all its annexures should be given to the person in-charge of the premises being searched and acknowledgement in this regard may be taken. If the person in-charge refuses to sign the Panchnama, the same may be pasted in a conspicuous place of the premises, in presence of the witnesses. Photograph of the Panchnama pasted on the premises may be kept on record.

(xiii) in case any statement is recorded during the search, each page of the statement must be signed by the person whose statement is being recorded. Each page of the statement must also be signed by the officer recording the statement as 'before me'.

(xiv) After the search is over, the search authorization duly executed should be returned to the officer who had issued the said search authorization with a report regarding the outcome of the search. The names of the officers who had participated in the search should be written on the reverse of the search authorization. If search authorization could not be executed due to any reason, the same should be mentioned in the reverse of the search authorization and a copy of the same may be kept in the case file before returning the same to the officer who had issued the said search authorization.

(xv) The officers should leave the premises immediately after completion of Panchnama proceedings.

(xvi) During the prevalent COVID-19 pandemic situation, it is imperative to take precautionary measures such as maintaining proper social distancing norms, use of masks and hand sanitizers etc. The search team should take all measures as contained in the guidelines of Ministry of Home Affairs, and Ministry of Health & Family Welfare, and also the guidelines issued by the State Government from time to time.

Inspection of goods in movement

Under Section 68 of CGST Act, 2017, person in-charge of any conveyance (vehicle) carrying goods is required to carry certain documents and devices in respect of those goods being consigned or moved, which are required to be produced for inspection and verification by proper officer on being intercepted during movement of such goods. The provision empowers the tax authorities to resort to in-transit inspection of goods, which are not business premises.

Following are the essential features for inspection of goods in movement -

(a) The documents and devices required to be accompanied by person in charge of conveyance with goods under movement shall be prescribed.

(b) It can be prescribed / authorized by Central Government or State Government.

(c) Person in charge of conveyance carrying any consignment of goods will be required to carry with him those prescribed documents.

(d) Value of goods being carried shall exceed ₹ 50,000.

(e) Any proper officer under CGST or SGST may intercept the vehicle carrying goods at any place.

(f) Proper officer may require the person in charge of the vehicle to produce the prescribed documents for verification.

(g) Person in charge of such conveyance or vehicle shall be liable to produce the prescribed documents on demand by the proper officer.

(h) In accordance with section 2(34) of CGST Act, 2017, the term conveyance includes a vessel, an aircraft and a vehicle.

(i) If on verification of the consignment, during transit, it is found that the goods were removed without prescribed document or the same are being supplied in contravention of any provisions of the act then the same can be detained or seized and may be subjected to penalties as prescribed.

Distinction in law between 'Seizure' and 'Detention'

Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. It is a condition when the owner of the goods is not allowed to access the goods. But it shall be noted that the ownership of the detained goods remains with the owner. Seizure is taking over of actual possession of the goods by the department.

Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

Confiscation of the goods is an ultimate act that takes place after detention and seizure. It is done after proper adjudication. Under confiscation, the ownership of the goods is taken away from the owner by the government authority.

Time limit for detention of conveyance carrying goods

In case an enforcement officer decides at random to inspect a truck and check the veracity of the declaration by matching with the EBN at a time when the GSTN portal is not functioning, then the vehicle should not be detained beyond 30 minutes. It will also allow transporters to file a complaint if the vehicle is detained for a period exceeding 30 minutes.

Documents to be carried by the person in-charge of conveyance

The documents required to be carried by the person in-charge of conveyance (bus, truck etc) shall be e-way bills as prescribed under rule 138 of the GST Rules, 2017. Those would include the details of vehicle, supplier, origin of goods, destination, recipient, value etc.

Issuance of prescribed documents: By whom

The registered person (supplier) or any person who is handing over or originating the delivery of goods to conveyance will generate the prescribed documents (e-way bill) on the common portal and handover to the person in-charge of the conveyance. It can also be generated by conveyance owner or recipient of goods.

E-way bill number

Upon generation of the e-way bill on the common portal, a unique E-way Bill Number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

Monetary limit

The monetary limit shall be per consignment and not per conveyance. If a truck is carrying several consignments and the value of an individual consignment is less than ₹ 50,000 but the combined value of different consignments in the truck is more than ₹ 50,000, no document (e-way bill) as prescribed in this section needs to be carried by the person in-charge of the truck. However, if a transport vehicle is carrying six consignments and out of these two are of a value of more than ₹ 50,000, the e-way bill will be generated by these two consignors and handed over to the person in-charge of the vehicle.

ACCESS TO BUSINESS PREMISES

Section 71 of the CGST Act, 2017, provides for allowing for access to the business premises of a taxable person. While 'business premises' has not been defined in the GST law, the terms business [section 2(17)], place of business [section 2(85) and principal place of business [section 2(89)] have been defined in the CGST Act, 2017.

Meaning of 'Access'

The term 'access' has not been defined in the GST law. However, 'access' does not mean inspection or search. 'Access' literally means approach or the means or power of approaching. According to section 2(1)(9) of Information Technology Act, 2000, 'access' with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network.

Any proper officer duly authorized by the Joint Commissioner of GST is empowered to have access to any business premises. Such authorization shall be in writing and shall be restricted to business premises of the taxable person.

Authorization for inspection

Rule 139(1) provides that where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in **FORM GST INS-01** authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.

Powers of the Officers and Circumstances warranting access / inspection

The access to business premises shall be for the carrying out of inspection.

Inspection may be carried out for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

Accordingly, any proper officer authorized by the officer not below the rank of Joint Commissioner of GST shall have:

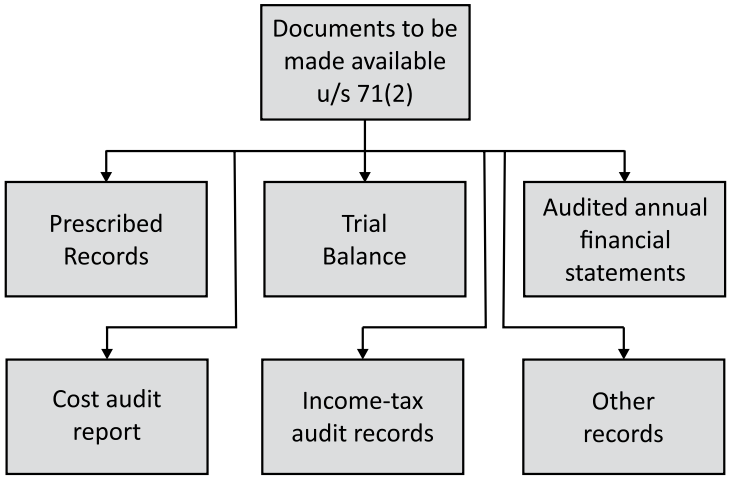
- access to any business premises,
- inspection of books of account,
- documents,
- computers,
- computer programs,
- computer software (whether installed in a computer or otherwise), and
- such other things as he may require and which may be available at such place.

Obligations and duties of person in charge of business premises

According to section 71(2) of CGST Act, 2017, every person in charge of place of business shall on demand made by:

- officer authorized, or
- the audit party deputed by the Additional/Joint Commissioner of GST or SGST, or
- a cost accountant nominated to carry out special audit, or
- a chartered accountant nominated to carry out special audit shall make available or provide the following:
  - the records as prepared or maintained by the registered taxable person and declared to the proper officer as may be prescribed,
  - trial balance or its equivalent,
  - statements of annual financial accounts, duly audited, wherever required,
  - cost audit report, if any, under section 148 of the Companies Act, 2013,
  - income-tax audit report under section 44AB of the Income-tax Act, 1961; and
  - any other relevant record,

for the purpose of scrutiny or audit within a reasonable time**, not exceeding fifteen working days** from the day when such demand is made, or such further period as may be allowed by the said officers/audit party/chartered accountant /cost accountant etc.



Assistance from Officers of other Departments

Section 72 of the CGST Act, 2017, provides that following officers are empowered and required to assist the proper officers of CGST/SGST in execution of the provisions of GST law.

Accordingly, following officers are empowered and required to assist the proper officers in the implementation of provisions of the act:

- Officers of Police,
- Officers of Customs,
- Officers of Railways,
- Officers of State Government engaged in collection of State tax,
- Officers of Union Territory tax,
- Officers of State/Central Government engaged in the collection of land revenue, and
- All village officers.

Section 72(2) of the CGST Act, 2017, provides that the Board/Commissioner of SGST may by notification, empower and require any other class of **officers to assist the proper officers** in the execution of provisions of this act.

SUMMONS

Why summons are issued?

Summons are issued to enquire about evasion of tax or duty and contravention of statutory provisions. It does not specifically state that who is evader and against whom proceedings have to be initiated. It also does not mean that the noticee is an evader.

Noticee means a person to whom a show cause notice or an order is issued. It cannot be assumed or presumed that summon means action against the person to whom it is issued. If one reads the language employed, then one can have a presumption without any doubt that authorities have only issued summons intending to enquire into alleged evasion of tax or duty.

The power to issue summons and examine a person has a vital bearing in an enquiry under the CGST Act, 2017. The evidence so gathered will have a bearing on the quality of adjudication proceedings. Status of the person summoned is of no consequence. However, sufficient care should be taken to summon only such persons who would have first- hand knowledge of material relevant to the investigation being conducted. It must be ensured that the procedural safeguards are not violated.

Summons can be used in an inquiry for recording statements or for collecting evidence/documents. While the evidentiary value of securing documentary and oral evidence under the said legal provision can hardly be over emphasized, nevertheless, it is desirable that summons need not always be issued when a simple letter, politely worded, can also serve the purpose of securing documents relevant to investigation.

Powers to summon to produce documents / things

According to section 70 of CGST Act, 2017, where any officer has reasons to believe that any person is required in attendance to give evidence and produce documents, he may authorize any officer to issue summons. Any proper officer, duly authorized by the competent authority shall have the power to summon any person whose attendance he considers necessary, either to give evidence or to produce a document or any other thing in any inquiry, which such officer is making.

Under section 63(1), a summon may be issued for -

(a) production of specified documents or other things (say, a contract or audit report)

(b) production of all documents or things of a particular description (say, financial statements).

The condition is that such documents or things must be in the possession or control of the person to whom summon is being served.

Summons to be issued in writing only

A summon issued to give evidence or produce documents shall be issued by the CGST/SGST officer in writing only, duly authorized by the competent authority.

Validity of on-spot summons

In *Anghinghu Nice Tobacco (Firm) v. CCE (2013) 298 ELT 570 (Cestat, Chennai)*, It was held that summons issued on spot are valid when issued with prior approval of competent authority. Generally, this is resorted to during the search proceedings.

Obligations of a person who has been issued and served with a summon

All persons so summoned shall be bound to attend, either in person or by an authorised representative, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things, as may be required. However, the exemptions under section 132 and 133 of the Code of Civil Procedure, 1908 shall be applicable to requisitions for attendance.

Section 132 of the Code of Civil Procedure, 1908 exempts certain women (such as *parda nashin*) from personal appearance. Section 132 exempts certain other persons like president, vice president, speaker of parliament, union ministers, Supreme Court judges, governors of states, administrators of union territories, speakers of state

legislatures, chairman of state legislative councils, ministers of states, high court judges and rulers of former Indian states.

The persons summoned are obligated to/have rights as follows:

(a) attend to the summons;

(b) attend in person or through an authorised representative, as the officer issuing summon may direct (he may direct to attend in person);

(c) state the truth upon any subject in respect of which they are examined;

(d) make statements (recording of statement by officers);

(e) produce documents or things as required;

(f) seek exemption under section 132 and 133 of Code of Civil Procedure regarding attendance.

Nature of summon proceedings

As per section 70(2) of the CGST Act, 2017, every act of summoning a person by issuance of summons to give evidence and produce documents in enquiries, shall be deemed to be judicial proceedings as provided for in section 193 and 228 of Indian Penal Code, 1860. Section 193 deals with punishment for false evidence. Section 228 provides action in case of intentional insult or interruption to public servant sitting in a judicial proceeding.

Consequences of non-appearance or not responding to summons

Since the summon proceedings are deemed to be judicial proceedings, if a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC.

Monetary penalty for non-responding to summons

In terms of penal provisions, if a person does not appear before any officer who has issued the summon, he shall be liable to a monetary penalty upto ₹ 25,000.

Other provisions of Indian Penal Code relevant for the purpose of summoning enquiry.

Apart from section 193 and 228 of Indian Penal Code, 1860, following provisions are also relevant in respect of summon enquiries:

(a) Absconding to avoid service of summons or other proceeding (Section 172).

(b) Non-attendance in obedience to an order from public servant (Section 179).

(c) Omission to produce document or electronic record to public servant by person legally bound to produce it (Section 175).

In case the person to whom summons are issued does not comply with or respond to the same, following actions are contemplated:

(a) Not responding/answering to summons - liable to prosecution under section 174 of the Indian Penal Code (IPC).

(b) Giving false evidences - liable to prosecution under section 193 of the Indian Penal Code for giving false evidence in judicial proceedings.

(c) Refusing to record statement/non-cooperation - reporting non-cooperation to senior authority for further action such as informing the Magistrate.

(d) Non-appearance after repeated summons - liable for complaint to jurisdictional Magistrate for offence under section 172 of IPC (absconding to avoid service of summons/proceedings); under section 174 of IPC (non- attendance in obedience to an order from public servant; or under section 175 of IPC (omission to produce documents called for).

Failing to appear even after court's directions to joint investigations- punitive action including issuance of warrants by court.

CASE LAW

Paresh Nathalal Chauhan vs. State of Gujarat (2020) - Gujarat High Court

Search and Seizure operations conducted by GST Officials on the residential premises

Pursuant to an authorisation issued under sub-section (2) of Section 67 of the Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017, a search came to be conducted at the residential premises of the petitioner herein, which went on from 11-10-2019 to 18-10-2019. The search has taken place, whereby a search for any goods liable to confiscation or any documents or books or things, has literally been converted to a search for the taxable person and the search party has camped in the residential premises of the petitioner for in all eight days, during which period the family members of the petitioner were at the mercy of the authorised officer and were confined to the searched premises and kept under surveillance, interrogated during night hours, checking their mobile phones and were not permitted to leave the premises without the permission of the authorised officer. Panchnama did not mention what officers, panchas and constable did inside residential premises, where they stayed and slept at night.

Gujarat High Court held that the action of revenue officers was abhorrent, shocking to conscience of Court and should not be repeated - Assessee's family were literally under house arrest - action of search party was illegal, invalid and not backed by statute - Even if assessee intentionally avoided authorities, it could not be ground to convert search of premises to search of assessee as there is no power for that - All statutory requirements were thrown to winds - It was offence against revenue officers under Section 348 of Indian Penal Code, 1860 - It was violation of right to privacy of assessee's family and infringed fundamental rights of citizens under Article 21 of Constitution of India.

OFFENCES AND PENALTIES

Regulatory Framework

Central Goods and Services Act, 2017

Chapter XIX deals with the Offences and Penalties. It comprises of section 122 to 138 details of which are under:

Section	*Deals with*
Section 73	Determination of Tax not paid or erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts
Section 74	Determination of Tax not paid or erroneously refunded or ITC wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts
Section 122	Penalty for certain offences

Section	*Deals with*
Section 123	Penalty for failure to furnish information returns
Section 124	Fine for failure to furnish Statistics
Section 125	General Penalty
Section 126	General disciplines related to penalty
Section 127	Power to impose penalty in certain cases
Section 128	Power to waive penalty or fee or both
Section 129	Detention, seizure and release of goods and conveyances in transit
Section 130	Confiscation of goods or conveyances and levy of penalty
Section 131	Confiscation or penalty not to interfere with other punishments
Section 132	Punishment for certain offences
Section 132(1)(a)	Supply of any goods or services or both without issue of any invoice in violation of the provisions of the act or Rules with intent to evade tax
Section 132(1)(b)	Issue of any invoice or bill without supply of goods or services or both in violation of the provisions of the act or Rules leading to wrongful availment or utilisation of input tax credit or refund of tax
Section 132(1)(c)	Availment of input tax credit using the invoice or bill referred to in clause (b)
Section 132(1)(d)	Collection of any amount of tax but failing to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due
Section 133	Liability of officers and certain other persons
Section 134	Cognizance of offences
Section 135	Presumption of culpable mental state
Section 136	Relevancy of statement under certain circumstances
Section 137	Offences by companies
Section 138	Compounding of Offences

The provisions of the relevant sections are detailed hereunder:

Section 122. Penalty for certain offences:

(1) Where a taxable person who -

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this act;

(xi) is liable to be registered under this act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this act or the rules made thereunder or furnishes false information or documents during any proceedings under this act;

(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this act,

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, **whichever is higher.**

(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub- section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short- paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, -

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of **ten thousand rupees or ten per cent. of the tax due** from such person, **whichever is higher;**

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to **ten thousand rupees or the tax due** from such person, **whichever is higher.**

(3) Any person who -

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this act or the rules made thereunder or fails to account for an invoice in his books of account,

shall be liable to a penalty which may extend to **twenty-five thousand rupees**.

Section 123. Penalty for failure to furnish information return:

If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of **one hundred rupees for each day of** the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall **not exceed five thousand rupees.**

Section 124. Fine for failure to furnish statistics:

If any person required to furnish any information or return under section 151:

(a) without reasonable cause fails to furnish such information or return as may be required under that section, or

(b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may **extend to one hundred rupees for each day after the first day** during which the offence continues subject to a **maximum limit of twenty five thousand rupees.**

Section 125. General penalty:

Any person, who contravenes any of the provisions of this act or any rules made there under for which no penalty is separately provided for in this act, shall be liable to a penalty which may extend to **twenty-five thousand rupees.**

Section 126. General disciplines related to penalty:

(1) No officer under this act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation. - For the purpose of this sub-section,-

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this act is either a fixed sum or expressed as a fixed percentage.

Section 127. Power to impose penalty in certain cases:

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

Section 128. Power to waive penalty or fee or both:

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

Section 129. Detention, seizure and release of goods and conveyances in transit:

(1) Notwithstanding anything contained in this act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-

(a) on payment of penalty equal to **two hundred per cent** of the tax payable on such goods and, in

case of exempted goods, on payment of an amount equal to **two per cent of the value of goods or twenty-five thousand rupees, whichever is less,** where the owner of the goods comes forward for payment of such penalty.

(b) on payment of penalty equal to **fifty per cent** of the value of the goods or **two hundred per cent** of the tax payable on such goods, **whichever is higher**, and in case of exempted goods, on payment of an amount equal to **five per cent of the value of goods or twenty-five thousand rupees, whichever is less**, where the owner of the goods does not come forward for payment of such penalty.

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The proper officer detaining or seizing goods or conveyance shall issue a notice **within seven days** of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub- section (1).

(3) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(4) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(5) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3).

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less :

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

Section 130. Confiscation of goods or conveyances and levy of penalty:

(1) Where any person -

(i) supplies or receives any goods in contravention of any of the provisions of this act or the rules made there under with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this act; or

(iii) supplies any goods liable to tax under this act without having applied for registration; or

(iv) contravenes any of the provisions of this act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this act or the rules made thereunder unless the owner of the conveyance proves

that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the penalty equal to hundred per cent of the tax payable on such goods.

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(4) Where any goods or conveyance are confiscated under this act, the title of such goods or conveyance shall thereupon vest in the Government.

(5) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(6) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

Section 131. Confiscation or penalty not to interfere with other punishments:

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this act or under any other law for the time being in force.

Power of GST Authorities to arrest

Section 132. Punishment for certain offences:

(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely: -

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this act;

(g) obstructs or prevents any officer in the discharge of his duties under this act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable -

- in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken **exceeds five hundred lakh rupees,** with imprisonment for a term which may extend to **five years and with fine;**
- in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken **exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees,** with imprisonment for a term which may extend **to three years and with fine;**
- in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken **exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees**, with imprisonment for a term which may **extend to one year and with fine;**
- in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may **extend to six months or with fine or with both.**

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may **extend to five years and with fine.**

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term **not less than six months.**

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this act, except the offences referred to in sub-section (5) shall be non cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation: For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

Section 133. Liability of officers and certain other persons:

(1) Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section(1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, wilfully discloses any information or the contents of any return furnished under this act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this act or under any other act for the time being in force, he shall be punishable with imprisonment for a term which may extend to **six months or with fine which may extend to twenty-five thousand rupees, or with both.**

(2) Any person -

(a) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;

(b) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Section 134. Cognizance of offences:

No court shall take cognizance of any offence punishable under this act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

Section 135. Presumption of culpable mental state:

In any prosecution for an offence under this act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation: For the purposes of this section, -

(i) the expression "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;

(ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Section 136. Relevancy of statements under certain circumstances:

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this act shall be relevant, for the purpose of proving, in any prosecution for an offence under this act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence,

or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

Section 137. Offences by companies:

(1) Where an offence committed by a person under this act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, *mutatis mutandis*, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation: For the purposes of this section, -

(i) "company" means a body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

Section 138. Compounding of offences:

(1) Any offence under this act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to -

a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;

b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this act or under the provisions of any State Goods and Services Tax act or the Union Territory Goods and Services Tax act or the Integrated Goods and Services Tax act in respect of supplies of value exceeding one crore rupees;

c) a person who has been accused of committing an offence under this act which is also an offence under any other law for the time being in force;

d) a person who has been convicted for an offence under this act by a court;

e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and

f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than **ten thousand rupees or fifty per cent** of the tax involved, whichever is **higher,** and the maximum amount not being less than **thirty thousand rupees or one hundred and fifty percent** of the tax, whichever is **higher.**

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Meaning of Offences and Penalty

The term 'Offences' has not been defined under the CGST Act, 2017. However, the dictionary meaning of the term 'offence' is an illegal act or a breach of law or rule. The courts have interpreted this term as violation of any law of the land for which the law prescribes penalty. According to section 3(38) of the General Clauses Act, 1897, 'offence' shall mean any act or the omission made punishable by any law for the time being in force.

There is an essential distinction between an offence and the prosecution for an offence. The former forms part of the substantive law and the letter of procedural law. An offence is an aggregate of acts or omissions punishable by law while prosecution signified the procedure for obtaining an adjudication of Court in respect of such acts or omissions. *(Kanpur Chand Pokhraj v. State of Bombay, AIR 1958 SC 993, 997).*

The term 'Penalty' has not been defined under the CGST / SGST Act, 2017. The dictionary meaning of the word 'penalty' means a punishment for breaking a law, rule or a contract.

The term 'penalty' has also been defined as a punitive measure that the law imposes for the performance of an act that is prescribed or for the failure to perform a required act. In the context of revenue law, penalty can be described as a punishment, monetary or otherwise, to a person for violating the provisions of law or for not doing any act which was expected of him or doing an act which was not expected of him.

Though the word "penalty" has not been defined in the CGST/SGST Act but judicial pronouncements and principles of jurisprudence have laid down the nature of a penalty as:

- a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
- a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.

Specified Offences liable to Penalty

Section 122(1) of CGST Act, 2017 has specified following 21 offences, apart from the penalty prescribed under section 10, i.e., composition levy scheme, for wrongly availing composition scheme. These specified offences committed by a taxable person with penalties are enumerated in the table given below:

Offences prescribed	*Penalties prescribed*
(i) Supplies any goods and services without issue of an invoice or issue an incorrect or false invoice. (ii) Issues any invoice or bill without the supply of any goods and/or services in violation of the provisions of the act or rules. (iii) Collects any amount of tax and failure to pay it to the credit of Government beyond a period of three months from its due date. (iv) Collects any tax in contravention of provisions of this act and failure to pay it to the credit of Government beyond a period of three months from its due date. (v) Fails to deduct tax or deduction of an amount which is less than the amount required to be deducted or failure to pay to the credit of appropriate Government the amount of tax deducted. (vi) Fails to collect tax or collect an amount which is less than the amount which is required to be collected or failure to pay to the credit of appropriate Government the amount of tax collected. (vii) Takes and/or utilizes input tax credit without the actual receipt of goods and/or services either fully or partly. (viii) Fraudulently taking refund of CGST/SGST. (ix) Takes or distributes of input tax credit in violation of section 20. (x) Falsifies or substitutes financial records or producing fake accounts or documents or furnishing any false information or return with an intention to evade tax. (xi) Fails to obtain registration, when liable to be registered. (xii) Furnishes any false information with regard to registration either at the time of applying for registration or subsequently. (xiii) Obstructs or prevents any officer in discharge of his duties. (xiv) Transports any taxable goods without the cover of documents (xv) Suppresses turnover leading to evasion of tax. (xvi) Fails to keep, maintain or retain books of accounts and other documents in accordance with provision of law. (xvii) Fails to furnish information and/or documents called for by CGST/ SGST officer or furnishes false information and/or documents.	(a) ₹ 10,000/- or (b) an amount equivalent to - (i) tax evaded, or (ii) tax not deducted/ collected, or (iii) short deducted / collected, or (iv) deducted/collected but not paid, or (v) input tax credit availed of or passed on or distributed irregularly, or (vi) refund claimed fraudulently, or as the case may be, whichever is higher. In case of transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1), any person who retains the benefit of and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on. Example: R and Co. supplied goods to S Industries of the value of ₹ 1, 00,000/- without issuing any invoice. On such goods GST of ₹ 18,000/- was to be levied. On this transaction, penalty of ₹ 18,000/- will be leviable as higher of the amount of tax evasion or ₹ 18,000/-

Offences prescribed	*Penalties prescribed*
(xviii) Supplies, transports and stores of goods which he has reason to believe are liable for confiscation. (xix) Issues any invoice or document by using the identification number of another taxable person. (xx) Tampers with or destroys any material evidence (xxi) Disposes off or tampers with any goods that have been detained, seized or attached.	

Prescribed penalty for offences specified under section 73 and 74

Relevant section	*Deals with*	*Penalty prescribed*
Section 73	Tax not paid or short paid, erroneously refunded or wrong availment or utilization of input tax credit for reasons other than fraud, wilful misrepresentation or suppression of facts to evade tax	₹ 10,000/- or 10% of the amount of tax due from such person, whichever is higher.
Section 74	Tax not paid or short paid, erroneously refunded or wrong availment or utilization of input tax credit for reasons of fraud, willful misrepresentation or suppression of facts to evade tax	₹ 10,000/- or amount of tax due from such person, whichever is higher.

Other offences for which penalties have been prescribed

In terms of section 122(3) of the CGST Act, 2017, penalty can be imposed on any person who-

Offences	*Penalty*
(a) Aids or abets any of the offences (21 offences as listed above). (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation. (c) Receives or in any way concerned with the supply of services which he knows are in contravention of provisions of the act or rules. (d) Fails to appear to give evidence or produce a document, when issued with a summon for giving evidence/ producing documents in an enquiry. (e) Fails to issue invoice or fails to account for an invoice in books of accounts.	Penalty which may extend to ₹ 25,000/-. This implies that penalty can be less than ₹ 25,000/- but subject to maximum amount of ₹ 25,000/-.

General Penalty

Section 125 of the CGST Act, 2017 prescribes penalty of rupees **twenty five thousand** for violation of provisions of the act or any rules for which no penalty is separately provided for under the act.

General Principles related to Penalty

Section 126 of the CGST Act, 2017 prescribes the principles related to penalty which is as follows:

(a) No penalty shall be levied for minor breaches of tax regulation or procedural requirements. In particular no penalty should be levied for any *bona fide* mistake in documentation which can be rectified.

(b) Penalty be commensurate with the degree and severity of the breach and should depend on facts and circumstances of each case.

(c) No penalty shall be imposed on anyone without giving him an opportunity of being heard.

(d) The person on whom penalty has been levied should be informed of the nature of breach and applicable law, regulation or procedure under which penalty has been prescribed.

(e) Provisions covered in points (a) to (d) above will not apply in case where penalty has been prescribed under the law as a fixed amount or fixed percentage. In such cases, such specified penalty would be applicable and this provision will not apply.

Voluntarily disclosure to tax authorities

In terms of section 126(5) of the CGST Act, 2017, when a person voluntarily discloses to a tax authority the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the tax authority, the tax authority may consider this fact as a potential mitigating factor when establishing a penalty for that person.

Restrictions on imposing substantial penalties

As per section 126(1) of the CGST Act, 2017, no tax authority shall impose penalties for minor breaches of tax regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence.

When breach of law will be considered as a minor breach and easily rectifiable mistake

As per explanation to sub-section (1) of section 126 of the CGST Act, 2017 provides that a 'minor breach' shall be considered as minor breach if the amount of tax involved is less than ₹ 5,000/-. An omission or mistake in documentation will be considered to be 'easily rectifiable' if the same is an error apparent on record.

Power to impose penalty in certain cases

Section 127 of CGST Act, 2017 provides that when the proper officer is of view that the person is liable to a penalty and is not covered under any proceeding under sections 62 or 64, 73 or 74, 129 or 130, he may issue an order of such penalty after giving a reasonable opportunity of being heard.

Power to waive penalty or fee or both

The Government under the provisions of section 128 of CGST Act, 2017 has the power to waive in part or full any penalty referred to in sections 122,123 or 125 or late fee referred to in section 47 for such class of taxpayers under such mitigating circumstances as may be specified in notification. This power can be used on recommendation of GST Council.

DETENTION OF GOODS AND CONVEYANCE, AND LEVY OF PENALTY

Circumstances Warranting Detention

As per provisions of section 129 of the CGST Act, 2017, where any person-

(a) transports any goods or stores any goods in violation of provisions of the act, or

(b) stores or keeps in stock goods or supply goods which have not been accounted for in the books of accounts or records maintained by him.

All such goods and the transport used as a means of transport for carrying such goods shall be liable to detention by the proper officer.

The person as above shall be issued a show cause notice and he will be given an opportunity of being heard for levy of tax, interest and penalty.

Release of goods/conveyances detained under Section 129

In terms of section 129(1) of the CGST Act, 2017, any goods or conveyance detained as above can be released on payment of penalty equivalent to 200% of tax payable on such goods.

However, in case of exempted goods, it can be released on payment of penalty equivalent to **2% of value of goods or** twenty five thousand, whichever is less.

The above provisions apply where the owner of goods come forward for payment of such penalty.

However, in case owner of the goods does not come forward for release of goods, the goods can be released on payment of penalty equal to **50% of value of goods or 200% of tax, whichever is higher** and in case of exempted goods, on payment of penalty equal to **5% of value of goods or ₹ 25,000/- whichever is less.**

In all the above situations, the goods shall also be released on furnishing of security equal to the amount of penalty determined under each such situation.

Determination of Penalty

The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under each of the above situations. [Section 129(3)]

Reasonable opportunity of being heard is must

As provided in section 129(4) of CGST Act, 2017, no penalty can be determined in case of detention of goods and conveyance, without giving a show cause notice and without giving a reasonable opportunity of being heard.

Consequences for owner of goods in case of failure to pay tax and penalty

As provided in section 129(6) of CGST Act, 2017, in case owner of the goods fails to pay penalty as determined **within 15 days** of the passing of order under section 129(3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of to recover the penalty payable under sub-section. In case the goods are perishable or hazardous, the period of 15 days can be reduced as deemed appropriate.

Penalty in case of composition scheme

Section 10(5) provides that if a person who has paid under composition levy is found as not being eligible to pay the tax under composition scheme, such person shall be liable to penalty under section 73 or section 74, as applicable, in addition to the tax payable by him under any other provisions of the act.

Procedure for seizure and disposal of goods under CGST Rules

Rule 139 provides:

(1) Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in **FORM GST INS-01** authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.

(2) Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorised officer shall make an order of seizure in **FORM GST INS-02**.

(3) The proper officer or an authorised officer may entrust upon the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer.

(4) Where it is not practicable to seize any such goods, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in **FORM GST INS-03** that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(5) The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, *inter alia*, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.

Bond and security for release of seized goods [Rule 140]

(1) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in **FORM GST INS-04** and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

Explanation. - For the purposes of the rules under the provisions of this Chapter, the "applicable tax" shall include Central tax and State tax or Central tax and the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017).

(2) In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.

Procedure in respect of seized goods [Rule 141]

(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in **FORM GST INS-05**, on proof of payment.

(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the [proper officer] may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

CASE LAW

Om Dutt vs. ACST&E-cum-proper officer (2020) - GST Appellate Authority Himachal Pradesh

The assessee being unregistered dealer/transporter engaged his vehicle for transportation of two wheelers/ activa scooter against proper invoice along with E-way Bill. In the way the Vehicle break down and the appellant arranged another vehicle and goods moved in new vehicle to its destination. Due to weak internet connectivity the E-way Bill was not updated and the dealer carry on the goods in new vehicle with the old E-way Bill. During movement the vehicle carrying goods was intercepted and tax and penalty u/s. 129(3) of the CGST Act, 2017, equal to one hundred per cent of the tax payable on the goods were levied wrongly which was deposited by the supplier.

The appellate authority held that the proper officer acted in haste to levy tax/penalty without giving proper opportunity of being heard. Penalty imposed in mechanical manner ignoring corrected and updated E-way Bill produced by assessee. It further held that the mistake was a procedural one and minor penalty imposable. Tax and penalty deposited by assessee ordered to be refunded and penalty of Rs. 10,000 imposed.

CONFISCATION OF GOODS AND CONVEYANCE AND LEVY OF PENALTY

Meaning of Confiscation

The term 'confiscation' has not been defined under the CGST Act, 2017. However, Dictionary meaning of the word 'confiscation' is to expropriate private property for public use without compensating the owner, to appropriate (private property) to the public treasury by way of penalty, to deprive of property as forfeited to the State.

The concept is derived from Roman law wherein it meant seizing or taking into the hands of emperor, and transferring to Imperial "fiscus" or Treasury. The word "confiscate" has been defined in Aiyar's Law Lexicon as to "appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State." In short in means transfer of the title to the goods to the Government.

Under the CGST Act, 2017, goods can be confiscated in certain circumstances as provided in section 130 of the CGST Act, 2017.

Circumstances under which Goods can be Confiscated and Penalty be levied

As per section 130 of the CGST Act, 2017, the goods are liable for confiscation and any person shall be liable to penalty in the following cases:

(a) On supply or receipt of goods in contravention of provisions of the act or rules leading to evasion of tax.

(b) On not accounting for any goods which are liable to pay tax under the act.

(c) On supply of goods liable for taxation under the act, without having applied for registration.

(d) Contravention of any of the provisions of the act or rules with an intention to evade payment of tax.

(e) Uses any conveyance or means of transport for carriage of goods in contravention of provisions of this act or rules made thereunder, unless the owner proves that it was used without his knowledge or connivance.

All such goods or conveyances shall be liable for confiscation and person shall be liable for penalty under section 122 of the act.

Fine and Penalty

As per provisions of section 130(2) of the CGST Act, 2017, following actions can be considered by proper officer:

(a) The proper officer shall give an option to pay fine as determined by the officer, in lieu of confiscation to owner.

(b) Where any fine in lieu of confiscated goods is imposed, the fine shall not be more than the market value of goods.

(c) The aggregate of fine and penalty shall not be less than the amount of penalty leviable under section 129(1) of CGST Act, 2017.

(d) In case of hired conveyance, the owner of conveyance shall be given an option to pay fine equal to tax payable on goods in lieu of confiscation of conveyance.

Dealing of confiscated goods and rights of owner of confiscated goods

It has been provided in section 130(4) to 130(7) of CGST Act, 2017 as follows:

(a) The owner of the goods will be served with show cause notice and will be given an opportunity of being heard before confiscation is ordered or any penalty is levied.

(b) The title of confiscated goods vest in the Appropriate Government.

(c) The proper officer will take possession of the confiscated goods and every officer of police shall assist him in doing so.

(d) In case proper officer is satisfied that the goods or conveyance are not required in any other proceedings under the act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose such goods or conveyance and deposit the amount with government.

Requirement of giving option to the persons to redeem the goods after confiscation

In terms of section 130(2), the Owner or the person in-charge of the goods liable to confiscation is to be given the option for fine (not exceeding market price of confiscated goods) in lieu of confiscation. This fine shall be in addition to the tax and other charges payable in respect of such goods.

Confiscation of conveyance carrying goods without cover of prescribed documents

In terms of Section 130 conveyance carrying goods without the cover of any documents or declaration prescribed under the act shall be liable to confiscation. However, if the owner of the conveyance proves that the goods were being transported without cover of the required documents/declarations without his knowledge or connivance or without the knowledge or connivance of his agent then the conveyance shall not be liable to confiscation as aforesaid.

Confiscation or Penalty not to interfere with other Punishments

It has been provided in section 131 of CGST Act, 2017 that the confiscation and fine imposed under the provisions of the act will not prevent charging of any other penalty or punishment, under the act or any other law, for carrying goods without the cover of valid documents.

CASE LAW

Synergy Fertichem Private Limited vs. State of Gujarat (2019) - Gujarat High Court

Confiscation before seizure can't be ordered on mere suspiction

In the present case a show cause notice had been issued under section 130 of the CGST Act calling upon the petitioner to show cause as to why the goods in question as well as the vehicle should not be confiscated for non-payment of a certain amount. The petitioner said that the showcause notice under section 130 of the CGST Act had been issued without complying with the requirements of section 129 of the CGST Act and the goods in question are perishable in nature.

Gujarat High Court held that for the purpose of issuing a notice of confiscation u/s 130 of the act, mere suspicion may not be sufficient to invoke Section 130 of the act straightway. The Court further said that sections 129 and 130 of the act should be amended to remove certain inconsistencies in the two provisions.

Liability of Officers and certain other persons

According to section 133 of CGST Act, 2017, officers and certain specified person shall be liable for punishment and fine as enumerated hereunder:

(i) Persons liable

- person engaged in connection with the collection of statistics under section 151 or compilation or computerization thereof; or
- officer of central tax having access to information specified under section 150(1);
- person engaged in connection with the provision of service on the common portal or the agent of common portal.

(ii) Nature of offence

Such person willfully discloses any information or the contents of any return furnished under the CGST Act, 2017 otherwise than in execution of his duties under the said sections, or for the purposes of prosecution for an offence under this act or under any other act for the time being in force.

(iii) Punishment

Such person shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to ₹ 25,000/-, or with both.

(iv) Previous sanction of the Competent Authority

(a) Any person who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;

(b) Any person who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

(v) Fine for failure to furnish Statistics

Section 151 of CGST Act, 2017 requires furnishing of Statistics as per manner and time frame prescribed in such section. In case of failure to furnish such information or return or wilfully furnishes any information or return, which he knows to be false, a fine equal to ₹ 10,000/- and for continuing offence a further fine equal to ₹ 100/- per day during which such default continues subject to maximum of ₹ 25,000/- may be levied by an order of proper officer.

(vi) Penalty for failure to furnish Information Return

Section 150 of CGST Act, 2017 requires furnishing of information returns as per manner prescribed in such section. In case of failure to furnish such returns, a penalty equal to ₹ 100/- per day during which such default continues subject to maximum of ₹ 5,000/- may be levied by an order of proper officer.

COGNIZANCE OF OFFENCES

Section 134 of CGST Act, 2017 provides no court shall take cognizance of any offence under this act or rules made there under unless sanctioned by Commissioner under this act. No court inferior to that of Magistrate of first class shall try such offences.

Presumption of Culpable Mental State

Section 135 of CGST Act, 2017 provides that in case of an offence involving culpable mental state on the part of accused, the court shall presume such state unless the accused proves that fact that he had no such mental state with respect to the act.

The culpable mental state includes intention, motive, knowledge of a fact, belief in or reason to believe in a fact.

Relevance of statements under certain circumstances

Section 136 of CGST Act, 2017 provides that the statement made or signed by a person on appearance in response to a summon shall be relevant for the purpose of proving the facts it contains in the following cases:

(a) Death of person or person who cannot be found, incapable of giving evidence or is kept out of way by adverse party or whose presence require substantial expense or delay, which is considered unreasonable.

(b) Person is examined as a witness in the court and the court is of opinion that the statement should be admitted in evidence in the interest of justice.

Prosecution

Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines “prosecution” as the institution and carrying on of the legal proceedings against a person.

Offences which Warrant Prosecution under the CGST/SGST Act

Section 132 of the CGST/SGST Act codifies the major offences under the act which warrant institution of criminal proceedings and prosecution. 12 such major offences have been listed as follows:

- Making a supply without issuing an invoice or upon issuance of a false/incorrect invoice;
- Issuing an invoice without making supply;
- Not paying any amount collected as tax for a period exceeding 3 months;
- Availing or utilizing credit of input tax without actual receipt of goods and/or services;
- Obtaining any fraudulent refund;
- Evades tax, fraudulently avails ITC or obtains refund by an offence not covered under clause (a) to (e);
- Furnishing false information or falsification of financial records or furnishing of fake accounts/documents with intent to evade payment of tax;
- Obstructing or preventing any official in the discharge of his duty;

- Dealing with goods liable to confiscation, i.e., receipt, supply, storage or transportation of goods liable to confiscation;
- Receiving/dealing with supply of services in contravention of the act;
- Tampers with or destroys any material evidence or documents;
- Failing to supply any information required of him under the act/Rules or supplying false information;
- Attempting to commit or abetting the commission of any of the offences at (a) to (l) above.

Punishment on conviction of any offence under the CGST/SGST Act: The scheme of punishment provided in section 132(1) is as under:

Offence involving	*Punishment (Imprisonment extending to)*
Tax evaded exceeding Rs. 5 crore or repeat offender Rs. 250 lakh	5 years and fine
Tax evaded between Rs. 2 crore and Rs.5 crore	3 years and fine
Tax evaded between Rs.1 crore and Rs.2 crore	1 years and fine
False records Obstructing officer Tamper records	6 months

OFFENCE COMMITTED BY A COMPANY

Section 137 of CGST Act, 2017 provides that in case of an offence committed by a company, every following person will be liable to be proceeded against and punished.

(a) Person in charge of or responsible for conduct of business of the company at the time of offence as well as company.

(b) Director, Manager, Secretary or any other officer, in case it is proved that the offence has been committed with the consent of, connivance of or is attributable to negligence of such person.

OFFENCE COMMITTED BY A PARTNERSHIP FIRM, HUF, TRUST

Section 137 of CGST Act, 2017 provides that following persons will be liable for any offence committed under CGST Act, 2017:

In case of partnership firm or LLP	Partner of firm
In case of HUF	Karta of HUF
In case of trust	Managing trustee

shall be deemed to be guilty of any offence under the provisions of the act and liable to be proceeded against.

PROCEDURE FOR COMPOUNDING OF OFFENCES BY A PARTNERSHIP FIRM, HUF, TRUST

Rule 162 of the CGST Rules, 2017 provide a detailed procedure to be followed for compounding of offences as under:

(1) An applicant may, either before or after the institution of prosecution, make an application under sub-section (1) of section 138 in **FORM GST CPD-01** to the Commissioner for compounding of an offence.

(2) On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.

(3) The Commissioner, after taking into account the contents of the said application, may, by order in **FORM GST CPD-02**, on being satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.

(4) The application shall not be decided under sub-rule (3) without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

(5) The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

(6) The applicant shall, within a period of thirty days from the date of the receipt of the order under sub-rule (3), pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.

(7) In case the applicant fails to pay the compounding amount within the time specified in sub-rule (6), the order made under sub-rule (3) shall be vitiated and be void.

(8) Immunity granted to a person under sub-rule (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions of the act shall apply as if no such immunity had been granted.

CASE LAWS

- ***P.V. Ramana Reddy vs. Union of India (2019) - Telangana High Court***

  Landmark judgment on Power of Arrest

  The accused was allegedly involved in circular trading with turnover on paper and also in fraudulent claims of Input Tax Credit (ITC) depriving Government of its dues. The High Court said that he was not entitled to any relief against his arrest. His contention that the prosecution for offences under Section 132(1) of CGST Act, 2017 can be launched only after completion of assessment, was held to be not acceptable. Merely because offences under CGST Act, 2017 are compoundable cannot be a ground not to arrest the accused.

  The High Court also observed that since the power of Commissioner to order for arrest under Section 69(1) of CGST Act, 2017 is confined only to cognizable and non-bailable offences, it is not known as to how he can pass an order for arrest for offences specified under clauses (f) to (l) of Section 132(1) which are declared non-cognizable and bailable under Section 132(4) of the said act. It seems that there are some incongruities between Sections 69(1) and 132 of the act.

  The High Court held that though Section 69(1) of CGST Act, 2017 which confers power upon the Commissioner to order arrest of a person for cognizable and non-bailable offence does not contain safeguards incorporated in Sections 41 and 41A of the Code of Criminal Procedure, 1973 in view of provisions of Section 70(1) of the said act same must be kept in mind before arresting a person. However, Section 41A(3) of the Code of Criminal Procedure does not provide an absolute irrevocable guarantee against arrest.

The High Court further held that the enquiry by GST Commissionerate under Central Goods and Services Tax Act, 2017 is a judicial proceedings and not a criminal proceedings.

It was held that if the reasons to believe that a person committed any offence under clauses (a), (b), (a) or (d) of Section 132(1) of CGST Act, 2017 warranting his arrest though found in the file but not disclosed in the order authorizing the arrest, the same is enough and it is not required to be recorded in order of authorization.

The High Court also held that since no FIR lodged before exercising power of arrest under Section 69(1) of CGST Act, 2017, the accused person cannot invoke Section 438 of Code of Criminal Procedure for anticipatory bail.

Only way open to him is to seek protection against pre-trial/pre-prosecution arrest by invoking writ jurisdiction of the High Court under Article 226 of the Constitution of India.

- ***Union of India vs. LC Infra Projects (P) Ltd. (2019) - Karnataka High Court***

  GST Interest Recovery and Attachment of Bank Account can't be done without Notice

  Before penalizing the assessee by making him pay interest, the principles of natural justice ought to be complied with before making a demand for interest under sub section (1) of Section 50 of the CGST Act. Consequence of demanding interest and non-payment thereof is very drastic.

  The impugned demand has been set aside only on the ground of the breach of the principles of natural justice by granting liberty to the respondents to initiate action in accordance with law obviously for recovery of interest.

  Before recovery of interest payable in accordance with Section 50 of the CGST Act, a show Cause Notice is required to be issued to the assessee. Hence, no case for interference is made out. The appeal was accordingly dismissed. Interim applications do not survive.

  Further, HC make it clear that as far as the main demand for interest has been set aside, the order of attachment, also will have to be set aside.

- ***Govind Enterprises vs. State of U.P (2019) - Allahabad High Court***

  FIR under Code of Criminal Procedure for GST Offences

  The petitioners set up fake firms for the purpose of evading tax and had been preparing false documents and invoices for that.

  The Allahabad High Court upheld the First Information Report (FIR) against GST evaders under the Criminal Procedure Code. The Court held that the contention of the petitioner that no first information report can be lodged against the petitioner under the provisions of the Code of Criminal Procedure for offences punishable under the Indian Penal Code, as proceeding could only be drawn against him under the U.P. Goods and Services Tax Act, 2017, is liable to be rejected.

LESSON ROUND-UP

- Inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following:
  - ➢ suppressed any transaction of supply;

- suppressed stock of goods in hand;
- claimed excess input tax credit;
- contravened any provision of the CGST/SGST Act to evade tax;
- a transporter or warehouse owner has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

- Search and Seizure: An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place.
- Reason to believe is to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. As per Section 26 of the IPC, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise." 'Reason to believe' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.
- Confiscation of Goods: As per section 130 of SGST/SGST Act, goods become liable to confiscation when any person does the following:
  - supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion of tax;
  - does not account for any goods on which he is liable to pay tax under this Act;
  - supplies any goods liable to tax under this Act without having applied for the registration;
  - contravenes any of the provisions of the CGST/ SGST Act or rules made thereunder with intent to evade payment of tax;
  - Document required to be carried during transport of taxable goods:

  Under section 68 of CGST /SGST Act, a person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount may be required to carry a prescribed document as prescribed in the E way Bill Rules.
- Arrest of the person: The Commissioner of CGST/SGST can authorize a CGST/SGST officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or Section 132(2) of the CGST/SGST Act.

GLOSSARY

Arrest: The term 'arrest' has not been defined in the GST act. However as per judicial pronouncements it denotes 'the taking into custody of a person under some lawful command or authority'.

Inspection: Search enables officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

"Proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.

"Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108.

Search: Search, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object, etc., in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises, etc., can only be done under proper and valid authority of law.

Seizure: 'Seizure' is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Can revenue officials access the business premises of a taxable person?
2. Who has the power to inspect any person or premises under section 67 of CGST Act, 2017 and what can be inspected?
3. In case of goods in movement, what are the provisions for inspection? Whether the conveyance be detained or seized?
4. Should "reasons to believe" be recorded to initiate/order search?
5. What places can be searched and how long seized can be retained?
6. What consequences would follow if goods provisionally released are not produced on demand?
7. What would happen when search conducted is held to be illegal, i.e. without proper authority?
8. What are the powers under GST law for issue of summons?
9. When can the proper officer authorize 'arrest' of any person under CGST / SGST Act?
10. What are the safeguards provided u/s 69 to a person who is placed under arrest ?
11. What is the general penalty which can be levied for any violation for which no specific penalty has been prescribed?
12. Whether any penalty can be levied even when fine has already been paid on confiscation?
13. Which court can take cognizance of and try offences under CGST Act, 2017?
14. Who will be guilty in case of offence committed by a partnership firm, HUF, Trust under the CGST Act, 2017?

LIST OF FURTHER READINGS

- GST Ready Reckoner - Taxmann - V.S. Datey
- GST Manual with GST Law Guide & GST Practice Referencer - Taxmann
- GST Acts with Rules & Forms - Taxmann
- GST - Law, Practice & Procedures - Bharat Publications Vineet Gupta & N.K. Gupta

Compliance Rating, Anti-Profiteering, GST Practitioners, Authorised Representative

Lesson 9

KEY CONCEPTS

■ Compliance Rating ■ Anti-Profiteering ■ Standing Committee ■ Screening Committees ■ GST practitioners

Learning Objectives

To understand:

- Regulatory Framework for GST Compliance Rating
- Concept of National Anti-Profiteering Authority
- Who may be GST Practitioner
- Examination of GST Practitioners
- Appearance by the authorized representative
- Professional opportunities under GST

Lesson Outline

REGULATORY FRAMEWORK

Central Goods and Services Tax Act, 2017

Section	*Deals with*
2(15)	Authorised representative
2(55)	Goods and services tax practitioner
48	Goods and services tax practitioners
116	Appearance by authorised representative
149	Goods and services tax compliance rating
171	Antiprofiteering measure
Rules	***Deals With***
83	Provisions relating to a goods and services tax practitioner
83B	Surrender of enrolment of goods and services tax practitioner
84	Conditions for purposes of appearance
116	Disqualification for misconduct of an authorised representative
123	Constitution of the Standing Committee and Screening Committees
126	Power to determine the methodology and procedure
127	Functions of the Anti-Profiteering Authority
128	Examination of application by the Standing Committee and Screening Committee
129	Initiation and conduct of proceedings
130	Confidentiality of information
131	Cooperation with other agencies or statutory authorities
132	Power to summon persons to give evidence and produce documents
133	Order of the Authority
135	Compliance by the registered person
136	Monitoring of the order

GST COMPLIANCE RATING

Compliance Rating- A new concept

Compliance Rating in GST seeks to bring transparency to the entire GST compliances and administration by way of assigning compliance ratings. All registered taxpayers will be publically rated according to how they comply with GST regulations. As per Section 149 of the CGST/SGST Act, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall also be placed in the public domain. A prospective client will be able to see the compliance ratings

of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

Meaning and scope of Compliance Rating

In general, the concept of GST compliance rating is akin to a performance ranking / scale for all registered taxable persons based on their record of compliance with the provisions of the GST Act which tells how compliant they are with respect to the GST provisions. This will be irrespective of nature, size, or turnover of the business of all registered taxable persons. The idea behind this concept of tax administration is to compel people to be fully GST compliant and on time with uploading invoices in relation to with or without ITC and other necessary documents.

For example: a rating system may be devised on a scale of 1 to 10, with 10 being the highest compliant and '1' being least compliant. If one person files his / her returns on time or pay its taxes on time, there is a greater probability that he / she will be rewarded with the higher rating as compared to those who are not compliant and punctual in following the rules, regulations and time limits. Please note that the actual rating system has still not been notified by the Government.

Statutory Provisions: The verbatim of Act/Rule is as under:

Section 149 of the CGST, 2017 contains provision in respect of GST compliance rating as under:

"(1) Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this act.

(2) The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.

(3) The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed."

Working of Compliance Rating

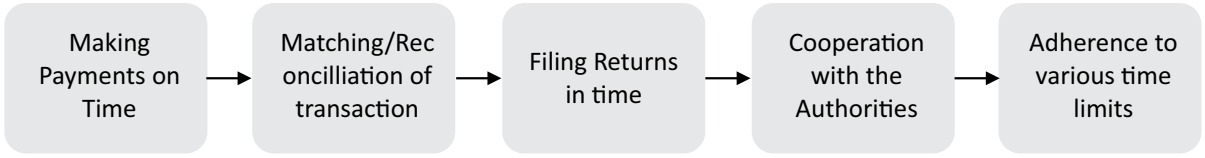
According to section 149(3) of the CGST Act, 2017, the compliance rating score in GST shall be updated periodically. The same shall be intimated to the taxable person and also placed in the public domain, in the manner prescribed. However, the parameters, criteria and methodology have not been notified yet, but it is expected that compliance rating scores may be based on following:

- timely **payment** of taxes
- timely **e-filing** of monthly/quarterly returns
- **matching** of transactions
- **adherence** to various time limits
- **co-operation** in dealing with tax Department etc.
- **filing of regular and annual returns** timely and correctly
- **correct utilization of input tax credit** and its disclosure

- **correct deduction** of TDS/TCS, wherever applicable
- **findings** in scrutiny of returns/audit findings
- **refund** claims etc.

Criteria for Compliance Rating

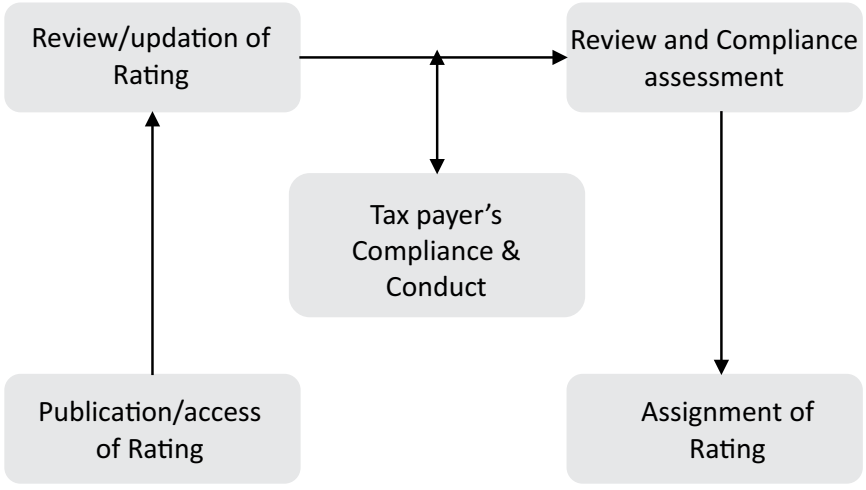
The following diagram depicts the important factors which will form basis for Compliance Rating:



Since, GST shall operate on electronic platform, it is likely that GSTN may be entrusted with the responsibility of determining rating scores based on parameters, its periodic updating and publication of rating in public domain.

The rating flow is expected to be as follows:

Steps in GST Compliance Rating



Objectives of Compliance Rating

The following are the major benefits / objectives of compliance rating:

- **Efficient input tax credit mechanism:** A person can claim an input tax credit in **GSTR-2** (return with purchase details for the month) only when the seller also files his **GSTR-1** (return with monthly sales details), and the details on both these forms reconcile or match with each other. This was not so earlier.

  The rating of a taxable person would be relevant to determine the eligibility of input tax credit in respect of inward supplies, selection for scrutiny and other administrative/monitoring purposes. The rating would be based on tax payer's record of compliance with the provisions of CGST, SGST and IGST. The details of parameters and methodology for rating would be prescribed.

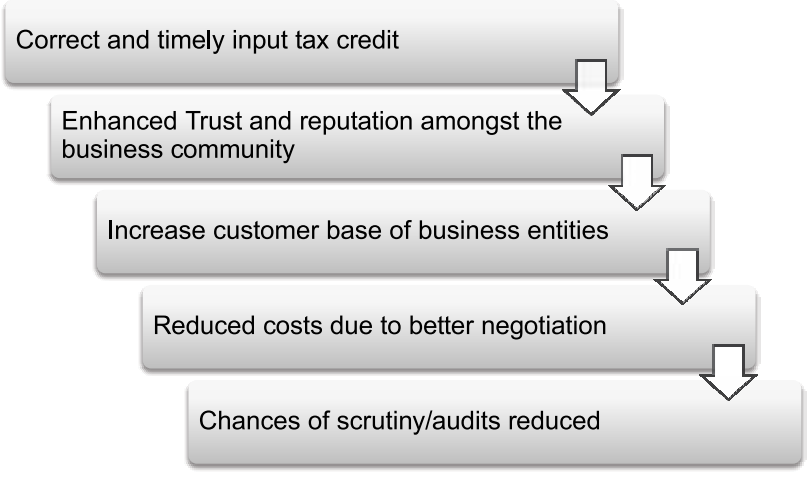
- **Preferred supplier chosen by buyers / Increase customer base:** As compliance rating increases, so is customer base, in accordance with rating and reputation. The buyer will prefer to choose those suppliers whose rating is good in the market.

- **Will ensure healthy competition and enhanced compliances:** The objective of this concept of tax administration is to make people fully GST compliant and on time with the uploading of invoices and other necessary documents, which will ensure healthy competition in the market.
- **Lower or Poor rating may attract stricter scrutiny and surveillance:** If rules and regulations are regularly followed, then the chances of business coming under the spotlight or scrutiny of the GST authorities are significantly reduced, as the need to audit accounts will be nil.

Benefits would also include:

- Reputation built up;
- Preferences/privileges by the Department (not known now);
- May be used by banks/suppliers as a bench mark;
- Will facilitate better negotiation with suppliers;
- Add to good governance aspects of organization;
- Speedy refunds.

Impact of Compliance Rating



Effect on buyers

Buyers will look for sellers with a higher rating which will ensure they can avail input tax credit faster and create minimal disputes with the department.

Effect on sellers

Sellers with a higher rating will attract more customers yielding to high sales.

Thus, the GST rating will bring in a healthy competition among businesses. A prospective client will inquire about the compliance ratings of suppliers before dealing with them.

Thus, GST compliance ratings are expected to bring a new culture of compliance which will not only ensure fullest and correct compliances but will also result in avoidance of tax evasion and lesser tax disputes and litigation with the tax administration. While initially, the compliance rating system may seem harsh, confusing and unforgiving, it will bring change to the tax structure, which is very much required for the people of our nation to lessen tax disputes/litigations and dissuade tax evasion and create a clear and transparent economy.

NATIONAL ANTI-PROFITEERING AUTHORITY

Administration of Anti-Profiteering Authority

The Government has notified Anti-Profiteering Authority (APA) which will check any undue increase in prices of products of companies under GST. The APA will work to check any undue increase in prices of products by taxpayer companies under the GST regime.

It will work in a three-tier structure - a Standing Committee on Anti-profiteering as well as State-level Screening Committees. The National Anti-Profiteering Authority would consist of five members, including a Chairman.

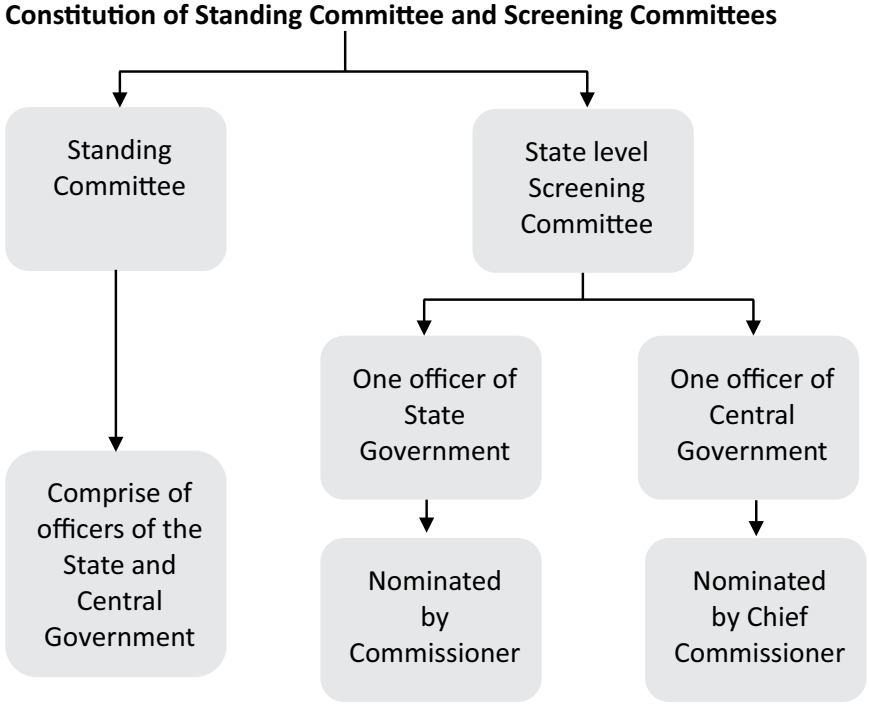
Various Authorities under GST law for regulating anti-profiteering instances shall, thus comprise of the following:

- National Anti-profiteering Authority,
- Standing Committee on Anti-Profiteering,
- State level Screening Committee, and
- Director General of Anti-profiteering.

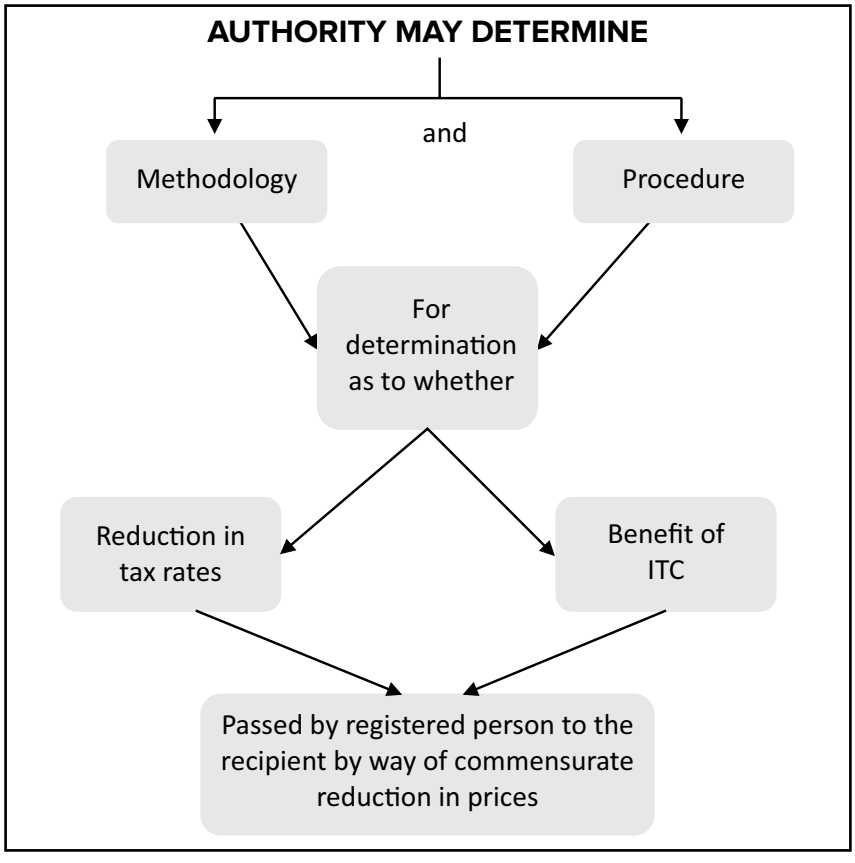
Constitution of the Standing Committee and Screening Committees [Rule 123]

The Council will constitute a Standing Committee and a state level Screening Committee on Anti-profiteering, Standing Committee will comprise of officers of the State and Central Government as nominated by it.

It will also constitute State-level Screening Committees, which will have one officer of the State Government, to be nominated by the Commissioner, and one officer of the Central Government, to be nominated by the Chief Commissioner. The Additional Director General of Anti-profiteering will be the Secretary to the Authority.



Power to determine the methodology and procedure [Rule 126]



As per GST law, the Authority shall determine its own methodology and procedure for its functions, duties and adjudication etc.

Functions of Anti-Profiteering Authority (APA) [Rule 127]

Section 171(2) of the GST Act read with rule 127 of CGST Rules, 2017, APA is duty bound to:

- determine whether any reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices.
- identify the registered persons / taxpayers who has not passed on the benefits.
- pass an appropriate order.
- to furnish a performance report to the Council by the tenth day of the close of each quarter.

The intention is to make it sure that whatever tax benefits are allowed, the benefit of that reaches to the ultimate customers and is not pocketed by trade.

Duties of Various Authorities

Authority	***Duties***
National anti-profiteering authority (Chairman and Technical Members)	Shall pass orders within 3 months of receiving the report from Directorate General (DG) Anti-profiteering

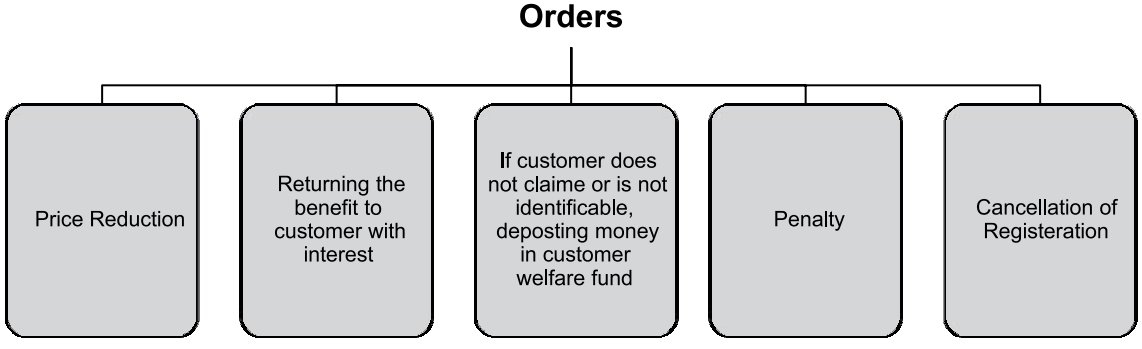
Authority	*Duties*
Director General Anti-profiteering	Shall conduct investigations and collect necessary evidence and **within 3 months** of receipt of reference, submit a report of findings to the NAA
Standing Committee (Constituted onGST Council Recommendations)	Shall examine applications received from interested parties or Commissioner or any other person and ascertain if evidence submitted is sufficient for it to be a fit case for investigation. It shall then refer the case to DG Anti-profiteering **within 2 months**
State level screening committee	Shall examine applications involving local issues and forwardit to the Standing Committee with recommendation if it deems it fit.

Orders to be issued by Authority [Rule 133(3)]

Order may be for any of the following:

- Reduction in prices;
- Returning to the buyer, the benefit amount not passed along with 18 percent interest. Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount;
- Depositing money in customer welfare fund in case the customer does not claim it or is not identifiable. Interest will be calculated from the date collection of higher amount till the date it is deposited in the Fund;
- Imposition of penalty equivalent to the amount involved of undue profiteering;
- Cancellation of registration.

Note: The Authority will pass order **within 3 months** from the date of the receipt of the report from the Director General of Anti-profiteering. An opportunity of being heard will be given if the interested parties request for it in writing.



Power to issue orders may result in

Time limit for complying with Authority's order [Rule 135]

Any order passed by the Authority under shall be immediately complied with by the registered person. If the said order is not complied with, action shall be initiated in accordance with the provisions of the law.

Monitoring of the order [Rule 136]

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

Relevant Form

APAF – 1 (Anti-Profiteering Application Form)	To be filed before Standing Committee/State level Screening Committee in terms of Rule 128 of CGST Rules, 2017

CONCEPT AND SCOPE OF ANTI-PROFITEERING MEASURE

While every business would like to earn more and more profits from business, given an opportunity, it is a fact that GST is a new concept being introduced in India for first time and claimed as a major tax reform and that experience suggests that GST may bring in general inflation in the introductory phase. The Government wants that GST should not lead to general inflation and for this, it becomes necessary to ensure that benefits arising out of GST implementation be transferred to customers so that it may not lead to inflation. For this, anti-profiteering measures will help check price rise and also put a legal obligation on businesses to pass on the benefit. This will also help in instilling confidence in citizens.

As per section 171 of the CGST/SGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. An authority has been constituted by the government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Reduction of Tax Rate in GST Regime

Passing of benefit due to reduction of tax rate, in case of supplies exclusive of tax or for immediate services is not a big challenge. This is because the reduction in tax rate will directly be evidenced by invoices, and the recipient will get benefit of the rate reduction.

For example, eating out in a restaurant has become cheaper under GST (mostly 5% GST as compared to earlier 20% approx.). This benefit must be passed on to the consumers.

However, in case where contract of supplies is inclusive of taxes, this provision will cast responsibility on the supplier to reduce the price due to reduction in rate of taxes.

For example, FMCG items are normally sold on MRP basis or some other fixed prices by retailers. If there is any reduction in rate of tax, it has to be passed on to the ultimate recipient. Accordingly, there will be a need to revise MRP or other prices fixed for such supplies.

However, if GST has a negative impact on the cost, then prices can be increased. For example: If the output supply was zero-rated in previous regime and also remains zero-rated in GST regime, the business will not get any input tax credit.

If the tax rates are increased either under forward charge or reverse charge, then prices may increase. For example, domestic LPG was exempt from tax under earlier regime but now they fall under 5% GST and as such it will result in an increase in the prices of cooking gas (LPG).

Benefit of Input Tax Credit

Almost all industries will be affected with respect to passing of benefit due to better credit chain. In most of the cases, be it service sector, manufacturing, trading, or any specific industry, tax payers are expected to get

advantage of better flow of input tax credit except sectors having zero-rated output supply. So overall the expectations of anti-profiteering provisions are commensurate reduction in prices of supplies.

Objectives of anti-profiteering measure in GST

The objectives of the anti-profiteering provision can be enumerated as under:

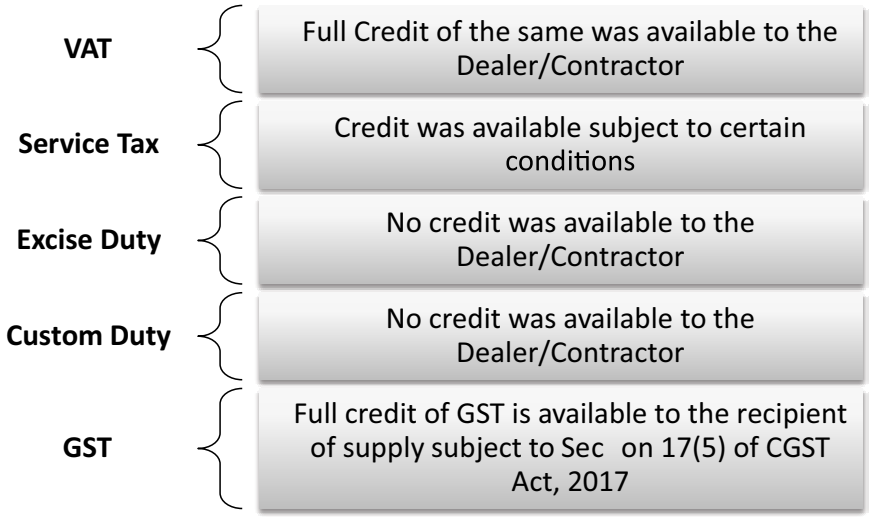
- If there is reduction in rate of tax on the supply of goods or services; or
- Benefit of input tax credit is now available under GST.

Then, a registered person must pass on the benefit by reduction in prices to the consumer, i.e., anti-profiteering measure would obligate the businesses to pass on the cost benefit arising out of GST implementation to their customers.

Why benefit of reduced prices?

In the earlier regime of indirect taxes, the input tax credit of various inputs were not available. However, Goods and Services Tax (GST), being a new indirect tax shall operate on the concept of seamless flow of credit, as a result of which, the overall cost of the product/inputs are bound to be reduced. This is illustrated in the below diagram.

From the above bifurcation of Indirect taxes in the pre-GST era and in GST era, the admissibility of input credit can be summarized as under :



Anti-profiteering practices in foreign countries

Many countries like Australia, Malaysia, Singapore, Austria, New Zealand, Russia, Canada and China have already introduced the GST. Australia was the first country to have Anti-Profiteering provisions (Australian Competition and Consumer Commission) in 2000.

Malaysia was the latest country before India to introduce GST in April, 2015. Anti-profiteering clause has been borrowed from Malaysia to ensure GST benefits are passed on to end consumer by Industry.

Gist of Anti profiteering order of NAA

Provisions have been subjected to judicial scrutiny by the National Anti-Profiteering Authority (NAA) set up under the CGST Act, 2017.

(1) Automobile Case

These provisions had been subjected to judicial scrutiny by the National Anti-Profiteering Authority (NAA) set up under the CGST Act, 2017 in *Dinesh Mohan Bharadwaj* vs. *M/s Vrandavaneshwree Automotive Pvt. Ltd.* vide Order dated 27.03.2018 [Case No. 1/2018 instituted on 27.02.2018 as reported in (2018) 4 TMI 1377; (2018) 92 Taxmann.com 360 (NAA)].

In its first order on anti-profiteering under Goods and Services Tax (GST), the National Anti Profiteering Authority (NAA) has dismissed the complaint against the supplier of goods, Vrandavaneshwree Automotive Pvt. Ltd. (Respondent), a Bareilly-based Honda car dealer, by concluding that it did not contravene the anti-profiteering provisions of the Central ST Act, 2017. The order states that the Honda car dealer had passed on the benefit of the reduction in tax rate after GST to the applicant by way of reduction in the price of the car by Rs 10,550.

"We find that the respondent (Honda car dealer) has given details of all the basic components of the price of the car purchased by the applicant ... and benefit of Rs 10,550 on account of reduction of tax by about 2 per cent viz. from 31.254 percent (pre GST) to 29 percent (post GST) has already been passed on to the applicant and the amount of Rs 10,550 is inclusive of the ITC (input tax credit) ... therefore, no additional benefit on account of ITC is required to be paid by the respondent".

It was thus held that the respondent (Honda car dealer) has not contravened the provisions of Section 171 of the CGST Act, 2017, and accordingly, there was no merit in the application of Dinesh Mohan Bharadwaj (complainant or applicant), which was filed under Rule 128 of the CGST Tax Rules, 2017 and the same was dismissed.

(2) Rice Case

In its Order dated 04.05.2018 in *Kumar Gandharv* v. *KRBL Ltd.* (2018) 5 TMI 1760; (2018) 93 taxmann.com 149 (NAA), National Anti-profiteering Authority has upheld the trade practice and pricing of rice manufacturer and dismissed the complaint as it proved to be substantially false. In the instant case, applicant was aggrieved that benefit of reduction in the rate of tax on 'India Gate Basmati Rice' has not been passed on to customers as its maximum retail price (MRP) had been increased resulting in margin of profit also being increased. The complaint was examined by Standing Committee on Anti-profiteering and forwarded to Director General of Anti- profiteering (DGAP). In pre-GST regime, there was no tax on packed basmati rice whereas w.e.f. 1.7.2017, GST @ 5% was imposed on branded packed rice resulting in availability of input tax credit.

The NAA observed that the "India Gate Basmati Rice" sold by the Respondent was not liable for tax before the implementation of the GST and after coming into force of the CGST Act, 2017 it was levied GST @ 5% w.e.f. 22.09.2017. The Respondent was also made eligible to avail ITC w.e.f. the above date. However, the ITC claimed by the company was not sufficient to meet his output tax liability and he had to pay the balance amount of tax in cash as is evident from the perusal of the table prepared by the DGAP. It was further observed that it was also apparent from the returns filed by the respondent for the months of September, 2017, October, 2017 and November, 2017 that the ITC available to then as a percentage of the total value of taxable supplies was between 2.69% to 3% whereas the GST on the outward supply of his product was 5% which was not sufficient to discharge its tax liability. Moreover, in this case the rate of tax has been increased from 0% to 5% instead of reduction in the same. Therefore, there was no reason for treating the price fixed by the Respondent as violation of the provisions of the Anti-Profiteering clause.

Also, there was an increase in the purchase price of paddy in the year 2017 as compared to its price during the year 2016 which constitutes major part of the cost of the above product. It is further revealed from the record that the Respondent had increased the MRP of his product from Rs. 540/- to Rs. 585/- which constituted increase of 8.33% keeping in view the increase in the purchase price. Therefore, due to the imposition of the GST on the above product as well as the increase in the purchase price of the paddy, there

does not appear to be denial of benefit of ITC as has been alleged by the Applicant as there has been no net benefit of ITC available to the Respondent which could be passed on to the consumers.

It was, therefore, held that there was no substance in the application of the applicant and there was no violation of section 171 of the CGST Act, 2017 and as such, the application was dismissed without cost.

(3) *Shri. Abhishek* vs. *Signature Builders Pvt. Ltd.* (National Anti-Profiteering Authority) (2019)

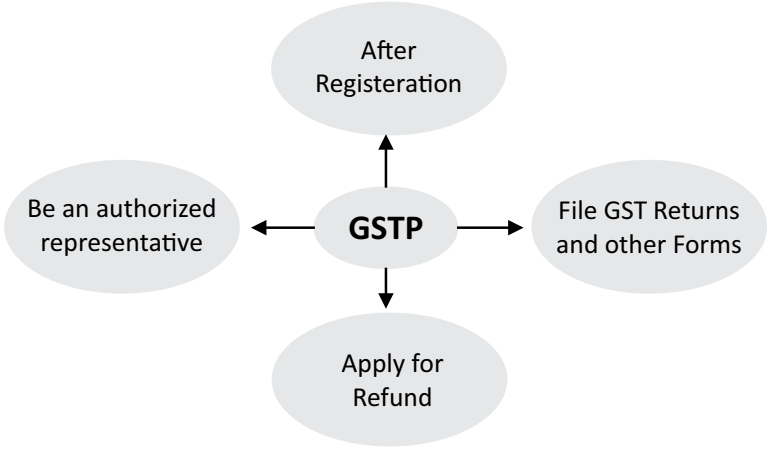
Signature Builders Pvt. Ltd. is guilty of not passing ITC to buyers of the flats and the shops being constructed by him in his Project 'Orchard Avenue 93' in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section.

GST PRACTITIONER (GSTP)

Goods and Services Tax Practitioner (GSTP) is a person recognized and authorized under section 48 of CGST Act, 2017 to act as GST Professional. GSTP is authorized to provide prescribed services to GST Registered persons. Concept of GSTP ensures smooth implementation of GST in true letter and spirit.

GST PRACTITIONER

Company Secretaries are eligible to apply for GST Practitioner and can become GST Practitioner after fulfilling conditions mentioned in Section 48 of CGST Act, 2017



Statutory provisions: The relevant provisions of the CGST Act, 2017 are as under:

The definition of GST Practitioner is provided under Section 2(55) of CGST Act, 2017. It states that "Goods and Services Tax Practitioner" means any person who has been approved under section 48 to the act as such practitioner.

Section 48:

(1) The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.

(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, and the return under section 39 or section 44 or section 45 and to perform such other function in such manner as may be prescribed.

(3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.

RELEVANT RULES OF CGST RULES, 2017

Rule 83. Provisions relating to a goods and services tax practitioner

(1) An application in **FORM GST PCT-01** may be made electronically through the common portal, i.e., *www.gst.gov.in* either directly or through a Facilitation Centre notified by the Commissioner for enrolment as goods and services tax practitioner by any person who,

(i) is a citizen of India;

(ii) is a person of sound mind;

(iii) is not adjudicated as insolvent;

(iv) has not been convicted by a competent court;

and satisfies any of the following conditions, namely:-

(a) that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Indirect taxes and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post **not lower than the rank of a Group-B gazetted officer** for a period of **not less than two years**; or

(b) that he has enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of **not less than five years**;

(c) he has passed,

(i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or

(ii) a degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or

(iii) any other examination notified by the Government, on the recommendation of the Council, for this purpose; or

(iv) has passed any of the following examinations, namely:-

(a) final examination of the Institute of Chartered Accountants of India; or

(b) final examination of the Institute of Cost Accountants of India; or

(c) final examination of the Institute of Company Secretaries of India.

(2) On receipt of the application referred to in sub-rule (1), the officer authorised in this behalf shall, after making such enquiry as he considers necessary, either enrol the applicant as a goods and services tax practitioner and issue a certificate to that effect in **FORM GST PCT-02** or reject his application where it is found that the applicant is not qualified to be enrolled as a goods and services tax practitioner.

[*Note: For details, students can refer Circular No 9/9/2017 dated 18th October 2017 https://www.cbic.gov.in/ resources//htdocs-cbec/gst/circularno-9-gst.pdf*]

(3) The enrolment made under sub-rule (2) shall be valid until it is cancelled:

Provided that no person enrolled as a goods and services tax practitioner shall be eligible to remain enrolled unless he passes such examination conducted at such periods and by such authority as may be notified by the Commissioner on the recommendations of the Council:

Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of **thirty months** from the appointed date.

(4) If any goods and services tax practitioner is found guilty of misconduct in connection with any proceedings under the act, the authorised officer may, after giving him a notice to show cause in **FORM GST PCT-03** for such misconduct and after giving him a reasonable opportunity of being heard, by order in **FORM GST PCT- 04** direct that he shall henceforth be disqualified under section 48 to function as a goods and services tax practitioner.

(5) Any person against whom an order under sub-rule (4) is made may, within thirty days from the date of issue of such order, appeal to the Commissioner against such order.

(6) Any registered person may, at his option, authorise a goods and services tax practitioner on the common portal in **FORM GST PCT-05** or, at any time, withdraw such authorisation in **FORM GST PCT-05** and the goods and services tax practitioners authorised shall be allowed to undertake such tasks as indicated in the said authorization during the period of authorisation.

(7) Where a statement required to be furnished by a registered person has been furnished by the goods and services tax practitioner authorised by him, a confirmation shall be sought from the registered person over email or SMS and the statement furnished by the goods and services tax practitioner shall be made available to the registered person on the common portal.

Provided that where the registered person fails to respond to the request for confirmation till the last date of furnishing of such statement, it shall be deemed that he has confirmed the statement furnished by the goods and services tax practitioner.

(8) A goods and services tax practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by him to-

(a) furnish the details of outward supplies;

(b) furnish monthly, quarterly, annual or final return;

(c) make deposit for credit into the electronic cash ledger;

(d) file a claim for refund;

(e) file an application for amendment or cancellation of registration;

(f) furnish information for generation of e-way bill;

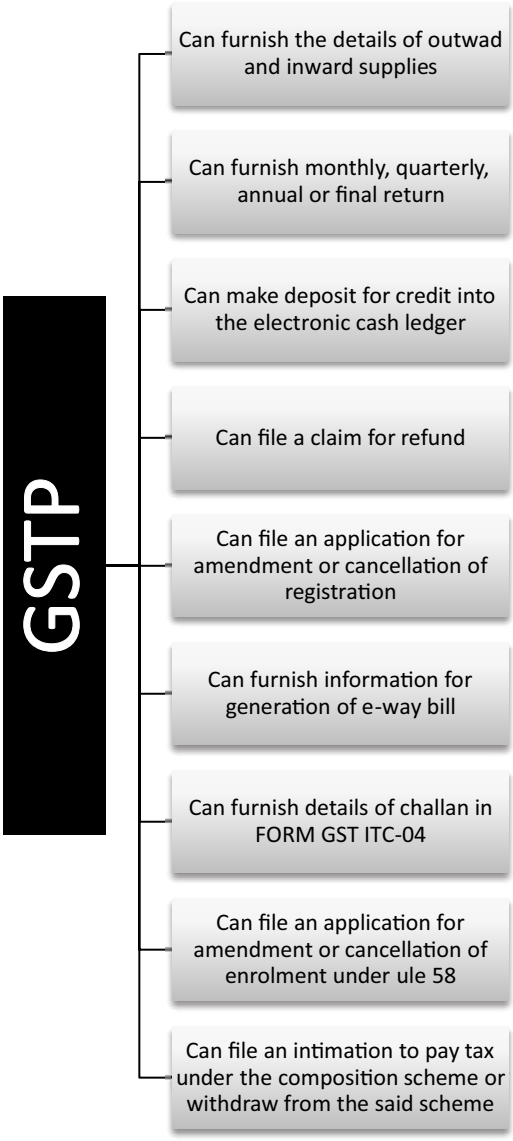
(g) furnish details of challan in **FORM GST ITC-04**;

(h) file an application for amendment or cancellation of enrolment under rule 58; and

(i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme:

Provided that where any application relating to a claim for refund or an application for amendment or cancellation of registration or where an intimation to pay tax under composition scheme or to withdraw from such scheme has been submitted by the goods and services tax practitioner authorised by the registered person, a confirmation shall be sought from the registered person and the application

submitted by the said practitioner shall be made available to the registered person on the common portal and such application shall not be further proceeded with until the registered person gives his consent to the same.



(9) Any registered person opting to furnish his return through a goods and services tax practitioner shall-

(a) give his consent in **FORM GST PCT-05** to any goods and services tax practitioner to prepare and furnish his return; and

(b) before confirming submission of any statement prepared by the goods and services tax practitioner, ensure that the facts mentioned in the return are true and correct.

(10) The goods and services tax practitioner shall-

(a) prepare the statements with due diligence; and

(b) affix his digital signature on the statements prepared by him or electronically verify using his credentials.

(11) A goods and services tax practitioner enrolled in any other State or Union territory shall be treated as enrolled in the State or Union territory for the purposes specified in sub-rule (8).

EXAMINATION OF GST PRACTITIONERS

Rule 83A. Examination of Goods and Services Tax Practitioners

(1) Every person referred to in clause (b) of sub-rule (1) of rule 83 and who is enrolled as a goods and services tax practitioner under sub-rule (2) of the said rule, shall pass an examination as per sub-rule (3) of the said rule.

(2) The National Academy of Customs, Indirect Taxes and Narcotics ("NACIN") shall conduct the examination.

[***Note:*** *For details students can visit www.nacin.gov.in and know more about NACIN and latest updates on Examination*]

(3) Registration for the examination and payment of fee.

(i) A person who is required to pass the examination shall register online on a website specified by NACIN.

(ii) A person who registers for the examination shall pay examination fee as specified by NACIN, and the amount for the same and the manner of its payment shall be specified by NACIN on the official websites of the Board, NACIN and common portal.

(4) **Examination centers** - The examination shall be held across India at the designated centers. The candidate shall be given an option to choose from the list of centers as provided by NACIN at the time of registration.

(5) Period for passing the examination and number of attempts allowed.

(i) A person enrolled as a goods and services tax practitioner in terms of sub-rule (2) of rule 83 is required to pass the examination within two years of enrolment:

Provided that if a person is enrolled as a goods and services tax practitioner before 1st of July 2018, he shall get one more year to pass the examination:

Provided further that for a goods and services tax practitioner to whom the provisions of clause (b) of sub-rule (1) of rule 83 apply, the period to pass the examination will be as specified in the second proviso of sub-rule (3) of said rule.

(ii) A person required to pass the examination may avail of any number of attempts but these attempts shall be within the period as specified in clause (i).

(iii) A person shall register and pay the requisite fee every time he intends to appear at the examination.

(iv) In case the goods and services tax practitioner having applied for appearing in the examination is prevented from availing one or more attempts due to unforeseen circumstances such as critical illness, accident or natural calamity, he may make a request in writing to the jurisdictional Commissioner for granting him one additional attempt to pass the examination, within thirty days of conduct of the said examination. NACIN may consider such requests on merits based on recommendations of the jurisdictional Commissioner.

(6) **Nature of examination** - The examination shall be a Computer Based Test. It shall have one question paper consisting of Multiple Choice Questions (MCQs). The pattern and syllabus are specified in Annexure-A.

(7) **Qualifying marks** - A person shall be required to secure fifty percent (50%) of the total marks.

(8) Guidelines for the candidates. –

(i) **NACIN** shall issue examination guidelines covering issues such as procedure of registration, payment of fee, nature of identity documents, provision of admit card, manner of reporting at the examination center, prohibition on possession of certain items in the examination center, procedure of making representation and the manner of its disposal.

(ii) Any person who is or has been found to be indulging in unfair means or practices shall be dealt in accordance with the provisions of sub-rule (10). An illustrative list of use of unfair means or practices by a person is as under:

(a) obtaining support for his candidature by any means;

(b) impersonating;

(c) submitting fabricated documents;

(d) resorting to any unfair means or practices in connection with the examination or in connection with the result of the examination;

(e) found in possession of any paper, book, note or any other material, the use of which is not permitted in the examination center;

(f) communicating with others or exchanging calculators, chits, papers etc. (on which something is written);

(g) misbehaving in the examination center in any manner;

(h) tampering with the hardware and/or software deployed; and

(i) attempting to commit or, as the case may be, to abet in the commission of all or any of the Acts specified in the foregoing clauses.

(9) **Disqualification of person using unfair means or practice** - If any person is or has been found to be indulging in use of unfair means or practices, NACIN may, after considering his representation, if any, declare him disqualified for the examination.

(10) **Declaration of result** - NACIN shall declare the results within one month of the conduct of examination on the official websites of the Board, NACIN, GST Council Secretariat, common portal and State Tax Department of the respective States or Union territories, if any. The results shall also be communicated to the applicants by e-mail and/or by post.

(11) **Handling representations** - A person not satisfied with his result may represent in writing, clearly specifying the reasons therein to NACIN or the jurisdictional Commissioner as per the procedure established by NACIN on the official websites of the Board, NACIN and common portal.

(12) **Power to relax** - Where the Board or State Tax Commissioner is of the opinion that it is necessary or expedient to do so, it may, on the recommendations of the Council, relax any of the provisions of this rule with respect to any class or category of persons.

Explanation:- For the purposes of this sub-rule, the expressions –

(a) "jurisdictional Commissioner" means the Commissioner having jurisdiction over the place declared as address in the application for enrolment as the GST Practitioner in FORM GST PCT-1. It shall refer to the Commissioner of Central Tax if the enrolling authority in FORM GST PCT-1 has been selected as Centre, or the Commissioner of State Tax if the enrolling authority in FORM GST PCT1 has been selected as State;

(b) NACIN means as notified by notification No. 24/2018-Central Tax, dated 28.05.2018.

Annexure-A

[See sub-rule 7]

Pattern and Syllabus of the examination

PAPER: GST law & Procedures:

Time allowed:	2 hours and 30 minutes
Number of Multiple Choice Questions (MCQs):	100
Language of Questions:	English and Hindi
Maximum Marks:	200
Qualifying Marks:	100

No Negative Marking

Syllabus:	
1.	The Central Goods and Services Tax Act, 2017
2.	The Integrated Goods and Services Tax Act, 2017
3.	All State Goods and Services Tax Acts, 2017
4.	The Union territory Goods and Services Tax Act, 2017
5.	The Goods and Services Tax (Compensation to States) Act, 2017
6.	The Central Goods and Services Tax Rules, 2017
7.	The Integrated Goods and Services Tax Rules, 2017
8.	All State Goods and Services Tax Rules, 2017
9.	Notifications, Circulars and orders issued from time to time under the said Acts and Rules."

[***Note:*** *For details students can visit E Library of NACIN to read interesting material https://www. nacenkanpur.gov.in & For more details of NACIN GST Weekly updates students can visit www.cbic.gov.in*]

Rule 83B: Surrender of enrolment of goods and services tax practitioner

(1) A goods and services tax practitioner seeking to surrender his enrolment shall electronically submit an application in **FORM GST PCT-06**, at the common portal, either directly or through a facilitation centre notified by the Commissioner.

(2) The Commissioner, or an officer authorised by him, may after causing such enquiry as deemed fit and by order in **FORM GST PCT-07**, cancel the enrolment of such practitioner.

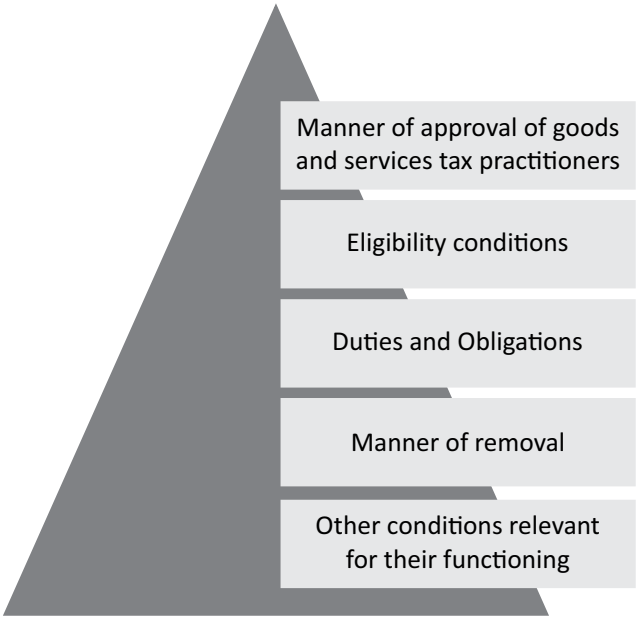
Rule 84. Conditions for purposes of appearance

No person shall be eligible to attend before any authority as a goods and services tax practitioner in connection with any proceedings under the act on behalf of any registered or un-registered person unless he has been enrolled under rule 83(20). A goods and services tax practitioner attending on behalf of a registered or an unregistered person in any proceedings under the act before any authority shall produce before such authority, if required, a copy of the authorisation given by such person in FORM GST PCT-05.

Prescribed forms for GST practitioner

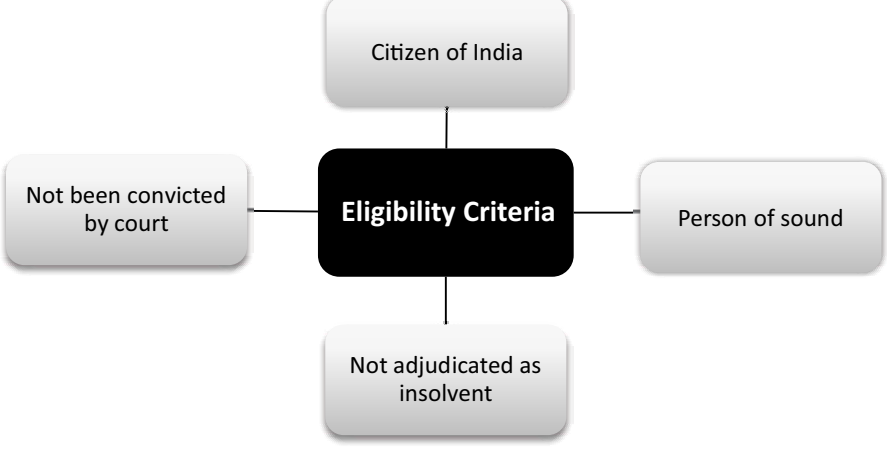
Form GST PCT-01	Application for enrolment as GST practitioner
Form GST PCT-02	enrolment certificate for GST practitioner
Form GST PCT-03	Show cause notice for disqualification
Form GST PCT-04	Order for disqualification to function as GST practitioner
Form GST PCT-05	Authorization / Withdrawal of authorization to GST practitioner

Section 48(1) of CGST Act, 2017 under Chapter IX read with Rule 83 of Central Goods and Services Tax (CGST) Rules, 2017 deals with the following:



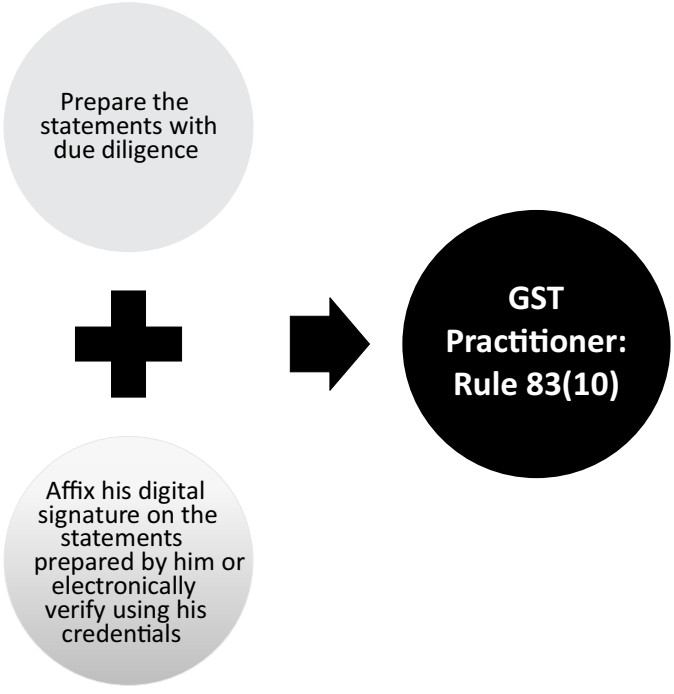
Eligibility Criteria for becoming GST Practitioner

Any person can apply for registration as a GST Practitioner under Rule 83(1) of CGST Act, 2017, if he qualifies as per following criteria:



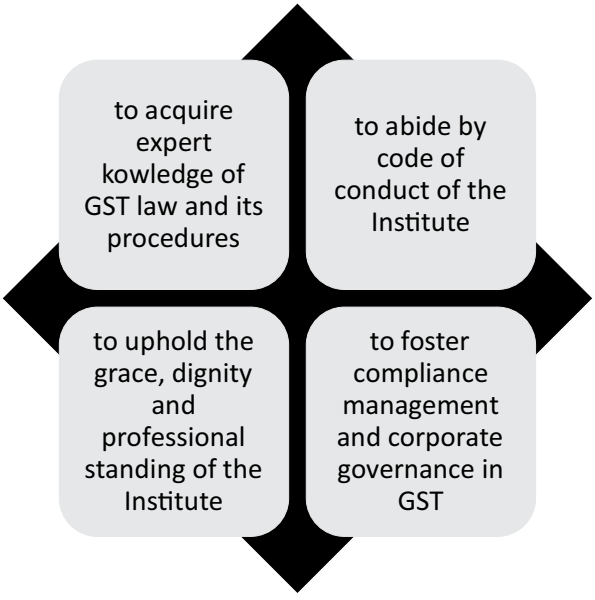
Goods & Services Tax Practitioner – Responsibilities

The Goods and Services Tax Practitioner shall under Rule 83(10) of the CGST Act, 2017 has the following responsibilities -



Although the responsibility for correctness of particulars furnished in return is of the taxable person but it is the duty of the professional to furnish correct return otherwise he may be charged under negligence. In case GST Practitioner is found guilty of misconduct in connection with any proceedings under the act, he shall be disqualified under section 48 to function as GST Practitioner.

Additional responsibilities for Company Secretaries in their capacity as a GST Practitioner:



FUNCTIONS OF A GOODS & SERVICES TAX PRACTITIONER [RULE 83(8)]

A Goods and Services Tax Practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorized by him as shown below:

Furnish the details of outward and inward supplies
Furnish monthly, quarterly, annual of final return
Make deposit for credit into the electronic cash ledger
File a claim for refund
File ail application for amendment or cancellation of registration
Furnish information for generation of e-way bill
Furnish details of challan in FORM GST ITC-04
File an application for amendment or cancellation of enrolment under rule 58
File an intimation to pay tax under the composition scheme or withdraw from the said scheme

[***Visit www.gst.gov.in, click Help & Taxpayer Facilities → GST Knowledge Portal → Enroll/Function as GST Practitioner***]

APPEARANCE BY THE AUTHORISED REPRESENTATIVE

Statutory provisions: The relevant provisions of the act/rules are as under:

Section 2(15) authorized representative means the representative as referred to in section 116.

Section 116. Appearance by authorised representative:

(1) Any person who is entitled or required to appear before an officer appointed under this act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this act, may, otherwise than when required under this act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.

(2) For the purposes of this act, the expression "authorised representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being—

(a) his relative or regular employee; or

(b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or

(c) a Chartered Accountant, a Cost Accountant or a Company Secretary, who holds a certificate of practice;

(d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this act for a period of one year from the date of his retirement or resignation; or

(e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.

(3) No person, –

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceedings under this act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or

(c) who is found guilty of misconduct by the prescribed authority;

(d) who has been adjudged as an insolvent, shall be qualified to represent any person under sub-section (1)–

(i) for all times in case of persons referred to in clauses (a), (b) and (c); and

(ii) for the period during which the insolvency continues in the case of a person referred to in clause(d).

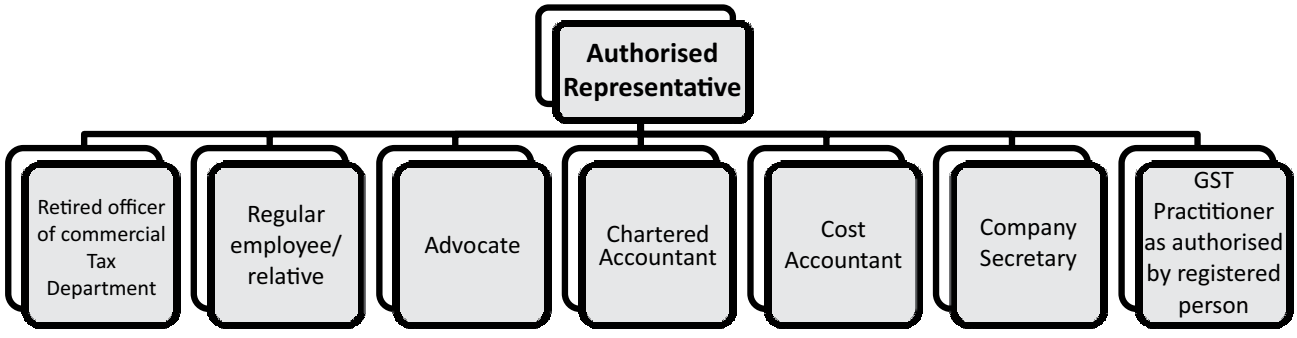
(4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this act.

Relevant rule of CGST Rules, 2017

Rule 116- Disqualification for misconduct of an authorised representative.- Where an authorised representative, other than those referred to in clause (b) or clause (c) of subsection (2) of section 116 is found, upon an enquiry into the matter, guilty of misconduct in connection with any proceedings under the act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorised representative.

Who can be authorized representative?

In terms of Section 2 (15) of CGST Act, 2017 in the expression "authorized representative" shall mean a person authorized by the person referred to Section 116 in appear on his behalf, who shall be any one of the following:

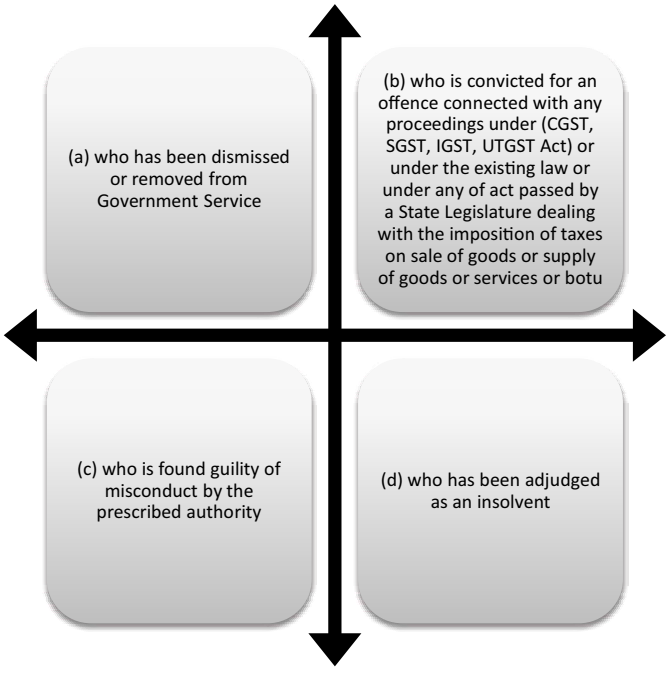


[**Note:** A retired officer of the Commercial Tax Department of any State Government or Union territory or of the

Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than 2 years. Further, such officer shall not be entitled to appear before any proceedings under this act for a period of one year from the date of his retirement or resignation.]

Disqualifications for becoming an authorized representative

Under section 116(3) CGST Act, 2017, the following persons shall be disqualified to act as an authorized representative under the CGST Act, 2017:



- Disqualifications under (a), (b) and (c) are all time disqualifications but disqualification under (d) above is for the period during which the insolvency continues.
- Where an authorized representative, other than those referred to in clause (b) or clause (c) of sub-section (2) of section 116 is found, upon an enquiry into the matter, guilty of misconduct in connection with any proceedings under the act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorized representative.
- Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this act.

CASE LAW

Suresh Balkrishna Jajra Versus Union of India (Rajastahn HC)

Section 116 of the CGST Act deals with appearance by authorised representatives. The law says that any person who is required to appear before an officer or the Appellate Authority in connection with any proceedings under GST may appear by an authorised representative.

The petitioner contended that he was entitled to be represented through his representative in view of the provisions contained in Section 116 of the CGST Act, 2017 was not acceptable in law because the provisions under Section 116 of the CGST Act will not be applicable when a person was required to appear personally for examination on oath or affirmation.

The petitioner contented that even though in a case where the summons u/s 70 of CGST Act have been issued to a person, the authority may consider his request of limited nature either for changing date of personal appearance or granting some relief in the context of personal disability, was a matter of consideration of the concerned authority and not for the Court. It would be open for the petitioner to move an application of limited nature before the authority, if for any unavoidable reason, he was unable to appear on a particular date.

The court relied on decision of the Supreme Court in the case of *Paramvir Singh Saini* vs. *Baljit Singh & Others* (2021), in which it was observed that even in the matter of issuance of summons under Section 70 of the CGST Act for personal appearance and recording of statement, a procedure has to be followed.

"The allegation with regard to high handed action against the son of the petitioner could not be subject matter of this petition. We would not comment upon that," the court said.

Distinction between Authorized Representative and GST Practitioner

Basis	*Authorised Representative*	*GST Practitioner*
Meaning	An authorised representative means a person who is authorised by a person to appear on his behalf for any proceedings under GST law before Appellate authority.	GST Practitioner is a tax professional who can prepare returns and perform other activities on behalf of the person whom he is representing.
Scope of work	Authorised representative can appear before any Appellate Authority/ Tribunal.	GST practitioner can be authorised for purposes like furnishing of returns, claiming refund, etc. and also for representation purposes.
Passing examination	There is no concept of examination for becoming an authorised representative.	For becoming a GST practitioner, a person is required to clear the prescribed examination.
Role	An Authorised representative can become a GST Practitioner subject passing out of prescribed examination.	Any GST practitioner can also act as an authorised representative also.

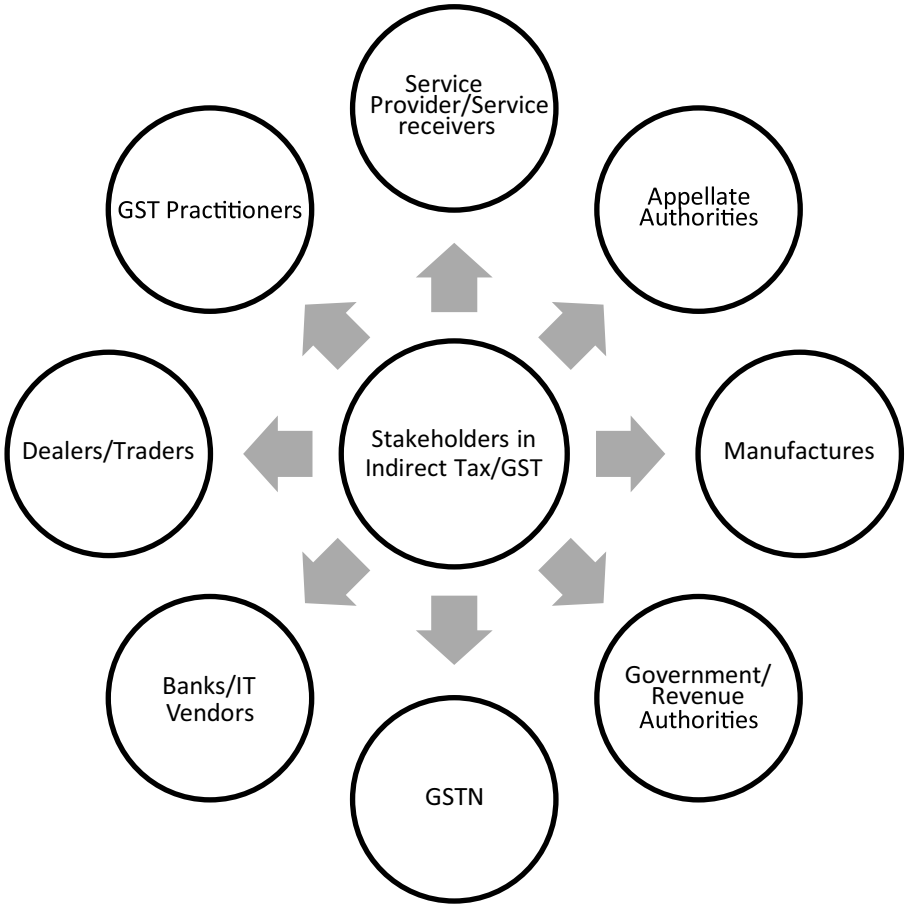
PROFESSIONAL OPPORTUNITIES UNDER GST

Introduction

India stands out for the size and dynamism of its Services Sector. It is expected that services and demography are likely to drive Indian economic growth. Services which now have a huge share (about 57 per cent) in GDP will be the main driving force. The services sector has been a major and vital force steadily driving growth in the Indian economy, particularly in the last two decades. Because of services sector, Indian economy is expected to successfully navigate through the recent turbulent years of global economic crisis. After the introduction of GST there is an increase in compliance needs which has created huge demand of Professionals in the economy.

Various stakeholders in GST

Professionals are qualified and equipped to provide services to all the above stakeholders.



Specific Recognition to Professionals in GST laws

Following professional opportunities are available to eligible professionals:

- Authorised representative under section 2(15) of CGST Act, 2017;
- GST practitioners under section 2(55) and section 48 of CGST Act, 2017;
- Authentication for certification with regard to return, refund, registration and payment;
- Appearance before Appellate authorities (section 116 of CGST Act, 2017);
- Facilitation/Advisory in compliance with GST compliance ratings (section 149) and Anti-profiteering measures (section 171) of CGST Act, 2017.

Role of Professionals

The role of professionals is important in every field, specially, in the management of taxation. They need to create space for self and look at the opportunities in the economic system arising out of the changed tax structure and need for interpretation and assistance/advisory.

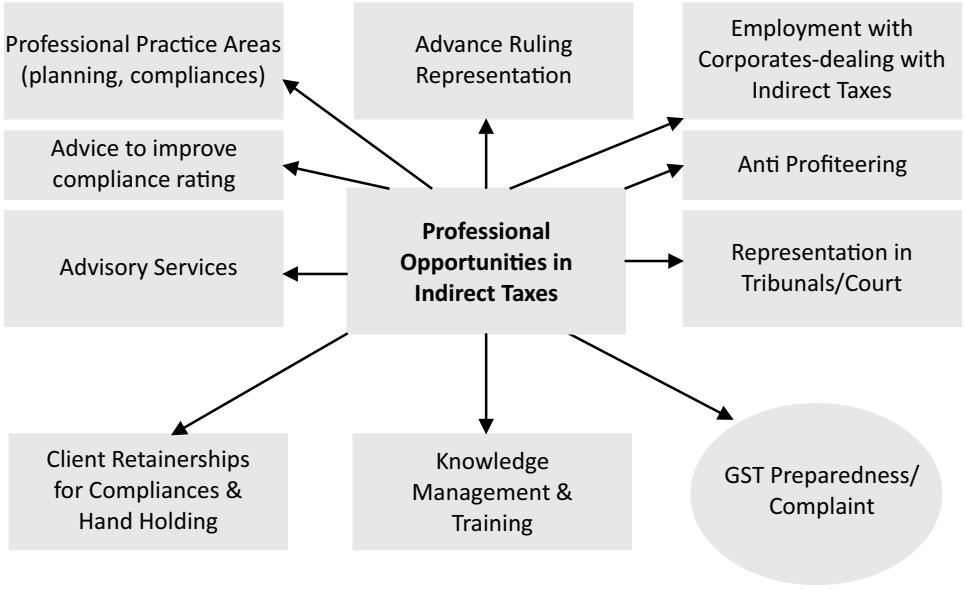
Today's professional's focus has to be on value addition as well as compliance procedures which is an industry norm. In current era, there is need to become Business consultant or Solution provider rather than being

mere Tax consultant. Professionals should look at how to maximize profits, wealth or the intrinsic value of the entrepreneurs and look at ease of doing business, yet complying with tax laws.

Following professionals can provide services in relation to indirect taxation-

- Company Secretaries;
- Chartered Accountants;
- Cost & Management Accountants;
- GST Practitioners;
- Tax Advocates;
- Tax Consultants;
- Tax / Corporate Executives.

Professional Opportunities in Indirect Taxes at a Glance:



As the gamut of indirect tax expands and reorients for future tax regime, there is going to be ever increasing need for professionals to advise and assist the assessees. Company Secretaries and other professionals with proper training and experience are considered to be well equipped to position in the dynamic role as an advisor and facilitator for compliances under the law. New professional areas would also include role as GST practitioner, GST suvidha providers, facilitation centre management etc.

Professionals can find the emerging opportunities in relation to multiple areas of practice in indirect taxation.

Emerging opportunities for professionals may include:

- Advisory and consulting services;
- Tax planning issues;
- Interpretation of legal provisions and procedures;
- Tracking GST developments;
- Developing systems, procedures and MIS;

- Contesting cases on behalf of clients in adjudication / appeals;
- Knowledge dissemination- corporate presentations/training of client's personnel or even revenue Authorities;
- Providing tax planning and documentation advisory in Government/Commercial projects/investments/ IPRs having substantial investment;
- Migration to GST/Registration of assessees;
- Disclosures and submissions to Department/Revenue Authorities;
- Implementation assistance and post GST support;
- Tax review and periodic audit;
- Review of systems and procedure before Departmental audit;
- Voluntary due diligence of compliances;
- Assistance during Departmental IAP or CAG audit;
- Compliance of procedural requirements;
- Computation of monthly/quarterly payment of tax / duties;
- Filing of returns / verification;
- Verification of revenue leakages (including input tax credit);
- Providing opinions / clarifications;
- Transaction planning and structuring;
- Guidance on understanding of effects of Budget changes in law on business activities;
- Filing and adjudication of Refund claims of Indirect Taxes;
- Handling Departmental representations;
- Reply to Show Cause Notices (SCN) and adjudications;
- Attending to summons by way of representation;
- Drafting of representation at Appellate Forums;
- Facilitation to Advocates at High Court/Supreme Court;
- Assistance/advisory services to clients in cases before Settlement Commission;
- Representation before Authority for Advance Ruling;
- Assistance/Advisory services for GST regime - preparedness, impact study, change in business processes, knowledge dissemination, change process, compliances, tax planning etc.;
- Other areas such as training/teaching, writing articles, submission/representation to the Government, etc.

The role of a professional tax consultants can no longer be the traditional tax/accounting/representation/audit and attestation practices etc. Global lending institutions have been urging India to streamline their tax laws to usher in simplicity and transparency. Towards this end, the Union Government has been striving to convince States to adopt a Goods and Services Tax. In Goods and Services Tax (GST), the onus of proper understanding of the GST law and giving it a proper direction to a large extent lies on the professionals.

GST is technology based, without knowledge of technology, professionals cannot survive. Data is the few fuel and emerging field and future is data analysis. GSTN has become hub and mine of GST related data. Gradually, traditional way of doing work will extinct. Under the paperless environment, new and creative technology based techniques will emerge. Therefore, mere knowledge of GST is not sufficient unless lesson of technology is learnt.

Enhanced Role of Company Secretaries

GST is the game changer and biggest tax & business reform in the country. Company Secretaries can contribute for the successful implementation and sustainability of this wonderful concept. Professional opportunities and responsibilities comes together. Besides assisting honest Tax Payers, it becomes our responsibility to discourage Tax Evasion & tax Crime and to spread congenial Tax Compliance Environment in the Society.

In the era of "E" Electronic, faceless is the buzz word. Under the income tax, faceless E assessment & scrutiny has already been started. GST is born on E platform, almost all actions are paperless, faceless and done electronically. It's time to understand and practice technology and utmost skill of writing is required. Under faceless regime, mode of communication is writing, therefore, writing skill cannot be ignored.

Company Secretary can do all the work related to GST. They help Business entities in getting GST registration, filing of returns, knowing the exact amount of ITC and many more. Company Secretaries have all the capabilities to do all the GST compliances. At present Company Secretary is providing following type of services in the field of GST:

1. **Interpretation of law and Advisory Services**

   Company Secretaries are professionally qualified and equipped with Interpretational skills. They also possess good communication skills due to which they provide advisory services which are very apt for the organisations.

2. **Classification of Goods**

   Various organisations have doubt about the category in which their goods are classified. Company Secretary being well versed with legal knowledge can help organisations in these types of query and save huge cost of litigation.

3. **Procedural Compliance under GST**

   GST involves huge amount of procedural compliance and these compliances are based on Technology. Company Secretaries have already gained experience in IT services for MCA. They easily understand the GST portal and its terminology.

4. **GST Practitioner**

   As per Section 48 of CGST Act, 2017 read with Rule 24 of GST Return Rules, 2017 a Practicing Company Secretary is eligible to register itself as a GST Practitioner. They provide lots of services which are mentioned in detail above.

5. **Authorised Representative**

   CGST Act recognize Company Secretary (CS) as authorized person who is entitled or required to appear before an officer appointed under GST Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under GST Act. Company Secretaries have profound knowledge of Indirect taxes, can efficiently perform in GST domain.

6. **Tax Management**

   In the context of tax management, Company Secretaries play an important role in aiding tax administration, tax compliance, tax revenue collection and facilitating dispute redressal by way of litigation management. They help in avoiding the penalty and minimizing the tax liability.

7. Authors of Books

Company Secretaries have proved that they can explain typical GST terms in simple language. There are many books written by Company Secretaries which has made GST Good and Simple Tax for everyone. They can explain the Notifications of GST in easy to understand language.

8. Creating Awareness and educating people

Company Secretaries are well aware about Business Reorganisation and hence, they can easily educate the entrepreneurs about the relevant law which is applicable on their business. They have already created awareness in the Market about GST through seminars, webinars, Workshops and many more.

9. Miscellaneous Work

GST is the biggest taxation reform in India. It involves many things and a Company Secretaries is empowered to do everything related to GST. Even Fresher Company Secretary can also play a pivotal role in GST. Detailed knowledge of GST gives them the power to be the backbone of Business Organisations in the field of Taxation.

LESSON ROUND-UP

- GST Compliance Rating; under this system the GST authority's rates the score based on his record of compliance i.e. how well the business of registered person has adhered to the GST rules and regulations.
- GST Practitioner is a professional who can prepare returns and perform other activities on the basis of the information furnished to him by a registered person.
- There is huge demand of GST Experts in the market, Company Secretaries can explore opportunity in GST.
- Company Secretaries are well known for implementing Good Corporate Governance. Now the time has come to be handhold the Industry for better implementation of GST.
- By providing valuable services in GST, Company Secretaries can contribute for revenue growth and efficient Compliance of GST in the country.

GLOSSARY

GST Practitioner: GST Practitioner is a tax professional who can prepare returns and perform other activities on the basis of the information furnished to him by a registered person.

Authorised: Authorized representative means a person who is authorized by a person to appear before an officer.

"Proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.

Representative his behalf: Section 2(15) of CGST Act, 2017, provides that 'authorized representative' means the representative as referred to in section 116.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Who can authorise a person to act as a GST Practitioner on his behalf?
2. Whether a person disqualified under any SGST Act/UTGST Act/be disqualified for Central GST also?
3. How can a registered person shall authorise a person to act as a GST Practitioner?
4. What is the criteria to be fulfilled to become a GST Practitioner?
5. Are there any preconditions before one can enroll on the GST Portal as a GST Practitioner?
6. What is the role of Company Secretary in GST?
7. Whether production of authorisation a must before any GST authority?
8. What are the functions of GST Practioner?
9. Who shall be responsible for the correctness of the particulars filed by GST practitioner?
10. Whether a person (GST Practitioner) needs to register separately in each State and Union Territory under GST?
11. Will GSTN provide separate user ID and password for GST Practitioner to enable them to work on behalf of their customers (Taxpayers) without requiring user ID and password of taxpayers, as happens today?
12. Can a GST practitioner also Act as an authorised representative?

LIST OF FURTHER READINGS

- GST Ready Reckoner – Taxmann – V.S. Datey
- GST Manual with GST Law Guide & GST Practice Referencer – Taxmann
- GST Acts with Rules & Forms – Taxmann
- GST – Law, Practice & Procedures – Bharat Publications Vineet Gupta & N.K. Gupta

PART II

CORPORATE TAX PLANNING

Corporate Tax Planning

Lesson 10

KEY CONCEPTS

Tax Planning ■ Tax Avoidance ■ Tax Evasion ■ Tax Management

Learning Objectives

To understand:

- The Concept of Tax Planning
- Objectives of Tax Planning
- Types of Tax Planning
- The Concept of Tax Avoidance
- The Concept of Tax Evasion
- The Concept of Tax Management

Lesson Outline

REGULATORY FRAMEWORK

Income Tax Act, 1961

INTRODUCTION

It is the duty of every citizen to pay taxes in a legal manner and also save taxes in a legal manner. Every good citizen is selfish in respect of the payment of taxes as his hard-earned money should not be taken away by others forcibly. Since the introduction of Income tax, there is a conflict between the taxpayer and the collector, tax collector wants to collect more taxes from the taxpayer on the other hand taxpayer wants to pay the minimum tax.

TAX PLANNING

Tax Planning is the exercise to minimize the tax and take the advantage of all provisions of Income Tax like deductions, exemptions, relief and rebates.

Tax planning is may be defined as an arrangement of one's financial affairs by taking all advantages like deductions, exemptions, rebates and relief without violating the provisions of the Income Tax and focusing on the spirit behind the law.

The planning of Income Tax is neither tax avoidance nor tax evasion. It's for the clinical making of plans for one's economic affairs in the form of a manner as to draw minimum tax liability to tax or postponement of the tax legal responsibility for the subsequent period by way of manner of availing several incentives.

Objectives of Tax Planning

Tax Planning is an essential part of financial and economic planning. Due to effective tax planning, all elements of financial planning are performed in the most effective manner. Tax planning leads to the direction of taxable income from various investment areas, relieving the tax liability of the assessee.

The followings are the objectives as follows:

1. **Reduction or minimization of tax liability**

   The main objective of tax planning is the minimization of tax liability, every assessee wants to reduce the tax so that a surplus of the profit can be invested in social security and also invest in the development of the business which will be helpful for nation-building.

2. **Reduction or Minimisation of litigation**

   There is always disagreement between the tax administration and the taxpayer. Tax administration wants to collect more tax and taxpayer wants to pay less tax. Sometimes taxpayers saved the tax by violating the provision of taxation and defeating the intention of the law, this is the major reason for litigation. If the taxpayer saves the tax under the ambit of taxation law, then the taxpayer never falls into litigation.

3. **Productive Investment**

   Investment is a vital source of tax planning. Investing the money by the taxpayers helps the growth of a nation's economy as well as the prosperity of its citizens.

4. **Healthy growth of the economy**

   Whenever citizens grow it will help the growth of the nation's economy. When taxpayers pay the tax using tax planning its flows the white money for the nation which helps nation-building and the growth of the economy.

5. **Generation of employment**

   At the time of commencement of a new undertaking or expansion of the business, the assessee invests

the money and plans to save the tax and create employment opportunities in the business. Whenever Government gives the offer to set up the undertaking and saved the tax it will help to generate employment. If the taxpayer commences the business and opts for the benefit under Income tax it will create employment.

6. Economic stability

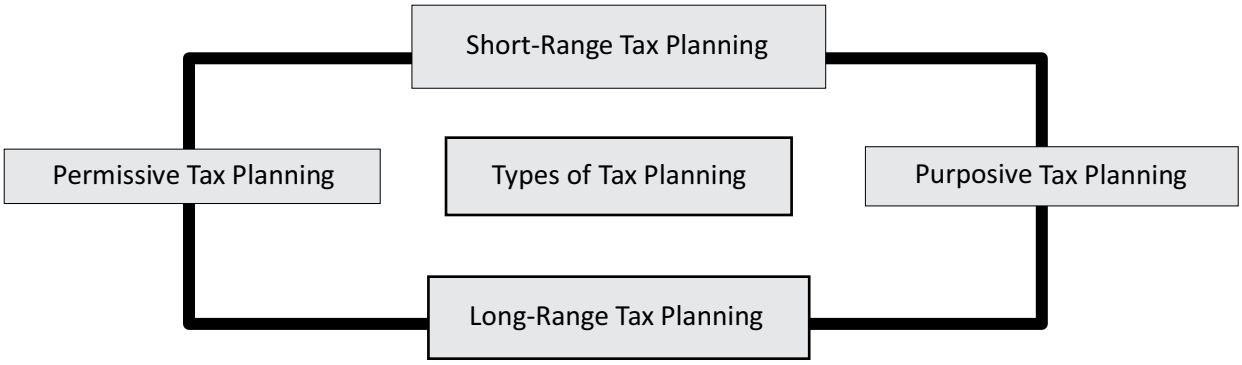
According to the case law of *M.V. Valliapan* vs. *ITO* (*1988*) *170 1TR 238* (*Mad.*), by a proper tax planning, a smooth tax flow from the taxpayer to the tax administration, without recriminations are ensured. This results in economic stability by way of:

(a) availing avenues for productive, investment by the taxpayer, and

(b) harnessing resources for national projects aimed at the general prosperity of the national economy and reaping benefits even by those not liable to pay tax on their incomes.

Therefore, notwithstanding the legal rulings in cases like McDowell and its English parallels, real and genuine transactions aimed at valid tax planning cannot be turned down merely; on grounds of reduction of the tax burden.

Types of Tax Planning



Following are some of the various methods of tax planning:

1. Short-range tax planning

Short-range tax planning means planning and executing at the end of the financial year to reduce taxable income in a legal way.

Suppose the financial year like in the month of March assessee finds his tax has been excessive in constant with last year's tax and he intends to reduce it, now he may plan to save tax using different Income Tax Acts like deductions U/s 80C, 80D etc. Such a plan does not contain any long-term dedication, yet its outcomes in large savings in tax.

2. Long-range tax planning

Long-range tax planning is created at the beginning of the financial year and taxpayers follow it throughout the year. In Long-range tax planning, it may not give you immediate tax credits, but it can help you in the long run.

3. Permissive tax planning

Permissive tax planning means making plans that are permissible under various provisions of the Income Tax Laws.

4. Purposive tax planning

Purposive tax planning involves using tax savings tools that take your specific goals into account. This will give you the best return on your investment. This includes accurately selecting the right investments, setting up an appropriate asset replacement program (if necessary), and diversifying your business assets and income based on your residency status.

CORPORATE TAX PLANNING

Corporate Tax Panning -making plans are the arrangement of financial sports in this type of way that the maximum tax blessings are loved through making use of all useful provisions inside the tax laws. Corporate tax planning presents strategies that are extensive in minimizing taxes.

It entitles the company assessee to avail of positive exemptions, deductions, rebates and remedies so that you can minimize the tax liability.

Finally, we will see that the simple reason for corporate tax planning is to lessen or postpone the liability of tax beyond, present and foreseeable destiny thru the intelligent application of the concepts, practices, approaches, guidelines and law under the availability of the tax law to real conditions and via deriving optimum gain of all tax exemptions, deductions, allowances, rebates and reliefs by guiding the management rules & decisions referring to monetary to monetary affairs knowing nicely earlier their tax results. It leads to a reduction of liability to direct taxes.

TAX AVOIDANCE

Tax avoidance is the art of evading tax without breaking the law. There is a totally skinny line between tax planning and tax avoidance.

Tax avoidance outcomes while movements are taken to reduce tax, even as in the letter of the regulation, the movements of the one contravenes the object and spirit of the law.

In other phrases, 'tax avoidance' is a tool which technically satisfies the requirement of the regulation however in truth it is not in accordance with the legislative motive.

For example, the intention of the law is "Stop, don't let go" (रोको मत जाने दो) but by using the loopholes of the law assessee claims that this is "Don't stop, let go" (रोको मत जाने दो) and the authorities accept the assessee's views than this is the tax avoidance.

CASE STUDY

Instances of Tax avoidance: Case Analysis

In respect of tax avoidance, we may refer to the dictum laid down by the House of Lords in England in the case of ***IRC* vs. *Duke of Westminster* (*1936*) *AC 1* (*754 of 263 ITR***). In that case, it was held that every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however, unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.

They said was quoted by the Supreme Court of India in the case of ***'Commissioner of Income Tax* vs. *A. Raman and Co.* (*1968*) *67 ITR 11*** and ***Madhuram Agarwal* vs. *State of Madhya Pradesh* (*1999*) *8 SCC 667*** decided by a Constitution Bench.

In **'A. Raman and Co.,'** case (**supra**) the Supreme Court held that avoidance of tax liability is distributed are not prohibited. A taxpayer may resort to a device to divert the income before it accrues or arises to him. The effectiveness of the device depends not upon considerations of morality, but on the operation of the Income Tax Act. The legislative injunction in taxing statutes may not, except on peril of penalty, be violated, but it may lawfully be circumvented.

In '*Macdowell's* case (1985) 154 ITR 148 the Court does not endorse the views expressed in Westminster and Raman's case but expressed a different but concurring opinion. However, the Supreme Court in **'*Union of India* vs. *Azadi Bachao Andolan*' (2003) 263 ITR 706** reiterated the observations made by the Duke of Westminster.

Indian Scenario: In *CIT vs. A. Raman & Co. 1 SCR 10 the* Supreme Court followed the dictum of the Westminster case. It observed that avoidance of tax liability by so arranging commercial affairs in a charge of tax is distributed is not prohibited. The taxpayer may resort to a device to divert the income before it accrues or arises to him. The effectiveness of the device depends not upon consideration of morality but on the operation of the Income-tax Act. The legislative injunction in taxing statutes may not, except on pain of penalty, be violated but it may lawfully be circumvented. The same view was expressed in *CIT vs. Kharwar 72 ITR 603* as follows:

"The taxing authority is entitled and is indeed bound to determine the true legal relation resulting from a transaction, if the parties have chosen to conceal by a device the legal relation, it is open to the taxing authorities to unravel the device and to determine the true character of the relationship. But the legal effect of a transaction cannot be displaced by probing into the substance of the transaction."

However, the Supreme Court **in Mc Dowell's case** clearly departed from the above views and expressly disassociated itself from the earlier observations of the Supreme Court echoing the sentiments of the Westminster principle. The court enumerated the evil consequences of tax avoidance as follows:

(1) Substantial loss of much-needed public revenue.

(2) Serious disturbance caused to the economy of the country by the piling up of mountains of black money, directly causing inflation.

(3) Largely hidden loss to the community by some of the best brains of the country involved in perpetual litigation.

(4) Sense of injustice and inequality which tax avoidance arouses in the minds of those who are unwilling or unable to profit by it.

(5) The unethical practice of transferring the burden of tax liability to the shoulders of the guileless, good citizens from those of the 'artful dodgers'.

The court felt that there was as much moral sanction behind taxation laws as behind any other welfare legislation and it was a presence to say that avoidance of taxation was not unethical and that it stood on no less a moral plane than honest payment of taxation.

CASE LAW

Vodafone International Holding v. Union of India, South Carolina, 2012

Fact:

In February 2007, the Dutch company Vodafone International Holding acquired a 100% stake in CGP Investment (Holding) Ltd in the Cayman Islands for US$11. $1 billion from Hutchingson Telecommunications International Limited. CGP controls 67% of the Indian company Hutchingson Essar Limited ("HEL") in India through various conversion/practising entities. Through this acquisition, Vodafone acquired subsidiaries including CGP and Hutchingson Essar Limited.

In September 2007, Hutchingson Telecommunications International Limited was taxed by the Indian Tax Authority. The tax department states that a CGP transfer transaction results in the transfer or transfer of indirect assets in India.

Verdict:

The Supreme Court of India delivered a landmark ruling in this case. The court overturned a Bombay High Court ruling seeking a capital gains tax of 12,000 crores and released Vodafone Holding and Hutchingson Telecommunication Limited (non-resident for tax purposes).

The Court held that the Indian Tax Authority had no jurisdiction to tax offshore transactions between non-resident companies where, as part of the transaction, the non-resident company acquired a controlling interest in an (India) resident company. This is an obvious case of tax avoidance.

TAX EVASION

Tax evasion usually involves intentional disregard for certain parts of the law. Tax evasion is when an individual reduces total income by making false claims or withholding information about real income in order to reduce their tax liability. Tax evasion is not only illegal, but it is also immoral, anti-social and anti-state.

For example, people involved in tax evasion may underestimate their taxable income or claim non-deductible or inflated expenses. They may also attempt to evade tax by deliberately refusing to comply with legal reporting requirements.

Tax evasion can be seen as part of a strategy to not morally evade one's responsibility to society or support violent government action, or simply as the right of every citizen to seek all legal means to avoid paying excessive taxes. On the other hand, tax evasion is a crime in almost all countries and entails fines or even imprisonment for those guilty.

These are some of the ways in which people may avoid/evade taxes.

1. **Failing to pay the dues**

   This is the easiest way to avoid paying taxes. Even if dues are required, they will not pay the government. A person who engages in this type of tax evasion knowingly or unknowingly fails to pay tax before or after the due date.

2. **Faulty financial statement**

   Taxes owed by an individual or entity may be determined by financial transactions that occurred during the reporting year. Taxes may be reduced if fraudulent financial documents or books are presented showing less income than was actually earned.

3. Use of false documents to obtain exemptions

The government may grant certain exemptions and privileges to certain classes or members of society in order to give them a little more financial freedom for development. In some cases, members who are not actually entitled to such privileges will receive documents written to support their claim to be part of this group, so exceptions are necessary if they are not suitable.

4. Failure to report income

This is one of the most common ways to evade taxes. In this case, the individual does not report the income received during the fiscal year. By not reporting your income, you do not pay taxes and you succeed in total tax evasion. The simplest example of this would be a landlord who left the tenant but failed to tell the authorities that he had rented the house and was actually generating an income.

5. Storing wealth abroad

You've all heard the story of a Swiss bank account. Offshore accounts are accounts opened abroad, and information about transactions in these accounts is not disclosed to the tax office, allowing you to avoid tax on this wealth.

6. Benami Transaction

A benami transaction is any transaction in which property is transferred to one person for a consideration paid or provided by another.

In simpler terms, if "P" has paid for the property, but it is in the name of some other person "Q", it is labelled as a Benami property.

TAX PLANNING vs. TAX AVOIDANCE vs. TAX EVASION

The line of demarcation between tax planning and tax avoidance is very thin and blurred. There is an element of malafide motive involved in tax avoidance. The type of cases that come under 'Tax Avoidance' are those where the taxpayer has apparently circumvented the law, without giving rise to an offence, by the use of a scheme, arrangement or device though of a complex nature, whose main or sole purpose is to defer, reduce or completely avoid the tax payable under the law. Sometimes, the avoidance is accomplished by shifting the liability for tax to another person, not at arm's length in whose hands the tax payable is reduced or eliminated. Tax avoidance can be said to be the act of dodging tax without actually breaking the law.

Tax evasion is a method of evading tax liability by dishonest means. Tax evasion can never be construed as tax planning because it amounts to breaking of law whereas tax planning is devised within the legal framework by availing of what the legislature provides. Tax planning ensures not only the accrual of tax benefits within the four corners of the law but also ensures that tax obligations are properly discharged so as to avoid penal provisions.

The differences between Tax Planning, Tax Avoidance and Tax Evasion are summarised as under:

Basis	***Tax Planning***	***Tax Avoidance***	***Tax Evasion***
Meaning	It is to avail maximum benefit of deductions, exemptions, rebates etc. for minimizing tax liability.	It refers to reducing the tax liability by finding out loopholes in the law.	It refers to reducing tax liability by dishonest means.

Basis	*Tax Planning*	*Tax Avoidance*	*Tax Evasion*
Legality	It is fully within the framework of law and it makes use of the beneficial provisions in law.	It complies with the legal language of the law but not the spirit of the law.	It is clearly violation of law and unethical in nature. It includes an element of deceit.
Example	An enterprise opening a three-star hotel to claim deduction under Section 35AD.	An enterprise shifting its income by transfer of its assets to another person.	An enterprise inflating its expenses by showing fake invoices to claim more deductions.
Acceptance	This concept is very well accepted by the Judiciary in India.	This concept can be considered heinous to tax evasion. Government brings amendment to curb such practices and to plug the loopholes.	This is clearly prohibited, as it is wholly illegal.
Penalties and Prosecution	It does not result in levy of penalty and prosecution as it is within the language and spirit of law.	It may result in disregarding the transaction done to avoid tax and may/may not result in penalties and prosecution against the person engaged in it.	It results in stringent penalties and prosecution against the person engaged in it.
Time Period	It is futuristic in nature, i.e., it aims to minimize the tax liability of the future years.	It is also futuristic in nature.	It aims at evading the payment of tax after the liability to tax has arisen.

It may be concluded that while the object of all the three are the same, i.e., to reduce the liability of taxes on a person, the three are distinguished based on the means they entail. The methods involved in tax planning are sanctioned by law and the actions taken are not only envisaged by law but supported by it. On the other hand, tax avoidance implies the exploitation of the loopholes in the laws so as to reap benefits which were not intended by the law. Finally, tax evasion refers to the illegal actions to reduce tax burden which invite stringent legal penalties and punishment.

TAX MANAGEMENT

Tax management includes regular and timely compliance with the law to help taxpayers avoid interest, fines, penalties and prosecution. The motive of tax management is to comply with the provisions of the law.

Tax management deals with issues relating to

(a) Actions to Take Advantage of Multiple Tax Benefits

(b) Compliance with Tax Rules and Regulations (Including On-Time Reporting/filling income tax returns)

(c) Protection from Unfair Consequences - Compliance with Tax Rules and Regulations. Examples: Fines, prosecutions, etc.

(d) agency order and, if necessary, filing an application for rectification of mistake, filing an appeal, tax audit, or settlement of cases.

Important areas of tax management are discussed below:

1. **TDS (Tax Deducted at Source):** Persons responsible for deducting tax at source should deduct from the income and that should be paid to the central government on time. Moreover, he should issue a deduction certificate to the deductees and file it on the income tax website.
2. **Collection of tax at source:** In some special cases, some persons are responsible for collecting the tax at the source from the buyers (Section 206C). They should comply with those formalities.
3. **Payment of tax:** It includes
   (a) Payment of advance tax.
   (b) Payment of tax on self-assessment.
   (c) Payment of tax on demand (payment after receiving notice from authorities).
4. **Maintenance of books of accounts:** Every businessman or professional must maintain books of accounts and other relevant documents so that the tax can be computed accurately and verified by the Assessing Officer. Maintenance of account books, vouchers, bills, correspondence and agreements, etc. is a part of tax management.
5. **Audit of books of accounts:** If the turnover of the business for the previous year exceeds the specific limit, the audit of books of accounts is compulsory as per income tax rules.
6. **Furnishing the return of income:** The tax manager must ensure that the return of income is furnished on time otherwise the assessee will lose the right to carry forward and set off the losses and become liable to pay interest, penalty, prosecution or fine or both.
7. **Documentation and maintenance of tax records:** An assessee should keep complete and updated tax files so that documentary evidence can be made available in case of all queries. Tax files include filed returns, Form 16, documentary evidence in support of deductions, rebates and relief, court orders, etc.
8. **Review of orders of the Income Tax Department:** Reviewing the assessment orders and other orders received from the tax department is an important function of tax management. If there is any mistake in the order, an application for rectification can be made. If the order is prejudicial to the interest of the assessee he can file an appeal, revision or an application for settlement of the case can be made.

Question:

Specify with reason, whether the following acts can be considered as an act of (i) tax planning; (ii) tax evasion; or tax management

i. "Mr P deposited Rs.1 lakh in PPF account so as to reduce his total income from Rs. 6 lacks to Rs. 5 lacks" assuming Mr P does not opt for concessional tax regime u/s 115BAC of the Income-tax Act, 1961.

ii. To reduce tax payable, Mr Kunal Sharma, a resident individual, paid Rs. 55,000 as a life insurance premium on the policy of his minor son. Assuming Mr Kunal does not opt for a concessional tax regime u/s 115BAC of the Income Tax Act, 1961.

iii. Company claiming depreciation on the motor car which is being used by the director for personal purposes.

iv. Samarth deposits Rs. 65,000 in the term deposit of 5 years with the Post Office to avail of tax deduction under section 80C. Assuming Mr Samarth does not opt for a concessional tax regime u/s 115BAC of the Income Tax Act, 1961.

v. Sushil is using a motor car for his personal purposes but charges it as business expenditure.

vi. PQR Industries Ltd installed an air-conditioner costing Rs. 75,000 at the residence of a director as per terms of his appointment but treats it as fitted in the quality control section in the factory. This is with the objective to treat it as a plant for the purpose of computing depreciation.

vii. SQL Limited maintains a register of tax deductions at source affected by it to enable timely compliance.

viii. R. Ltd issues a credit note for Rs.90,000 for brokerage payable to Suresh who is the son of R, managing director of the company. The purpose is to increase his total income from Rs.1,60,000 to Rs.2,50,000 and reduce his its income correspondingly.

Solution:

i. The investment of Rs.1 lakh in the PPF account so as to reduce his total income from Rs.6 lakh to Rs. 5 lacks is considered Tax Planning because the same is carried out within the framework of law by availing the deductions permitted by law and thereby minimising the tax liability.

ii. Premium paid on the life insurance policy of the minor son is allowed as a deduction under section 80C of the Income Tax Act, 1961. Therefore, Rs. 55,000 paid, by Mr Kunal Sharma, as a premium on life insurance policy of his minor son is an act of Tax Planning.

iii. Claiming depreciation on the motor car being used for the personal purpose is not allowed under section 32 of the Income Tax Act, 1961. Therefore, the depreciation claimed by the company on the motor car which is being used by the director for personal purposes is an act of Tax Evasion.

iv. The claiming of deduction from gross total income under Section 80C by depositing Rs. 65,000 in the term deposit of 5 years with the Post Office falls under the purview of tax planning.

v. It is an unlawful act to treat a personal expenditure as a business expenditure, which is disallowed under the law. Sushil is resorting to unfair means to claim the deduction by falsification of records. Therefore, it is tax evasion.

vi. It is a case of tax evasion as the air-conditioner fitted at the residential place is furniture, depreciable at 10% whereas the rate of depreciation applicable for plant and machinery fitted at the Quality control section in the factory is 15%. The wrong treatment unjustifiably increases the amount of depreciation and consequently, reduces profit unlawfully.

vii. It is tax management because maintaining a register of payment subject to TDS helps in complying with the obligations under the Income Tax Act, of 1961.

viii. Net effect of the transaction is the reduction of tax liability of the company by improper means. The company is liable to tax at the flat rate of 30% whereas Suresh would not be liable to pay tax since income does not exceed the basic exemption limit of Rs.2, 50,000. The issue of a credit note to reduce the liability of the company amounts to tax evasion.

LESSON ROUND-UP

- Tax Planning is the exercise to minimize the tax and take the advantage of all provisions of Income Tax like deductions, exemptions, relief and rebates.
- There are various methods we can use to take a decision in respect of tax planning namely short-range tax planning, Long-range tax planning, Permissive tax planning and Purposive tax planning.
- Corporate tax-making plans are the arrangement of financial sports in this type of way that the maximum tax blessings are loved through making use of all useful provisions inside the tax laws. Corporate tax planning presents strategies that are extensive in minimizing taxes.
- Tax avoidance is the art of evading tax without breaking the law. There is a totally skinny line between tax planning and tax avoidance. Tax avoidance outcomes while movements are taken to reduce tax, even as in the letter of the regulation, the movements of the one contravenes the object and spirit of the law.
- Tax evasion usually involves intentional disregard for certain parts of the law. Tax evasion is when an individual reduces total income by making false claims or withholding information about real income in order to reduce their tax liability. Tax evasion is not only illegal, but it is also immoral, anti-social and anti-state.
- Tax management includes regular and timely compliance with the law to help taxpayers avoid interest, fines, penalties and prosecution. The motive of tax management is to comply with the provisions of the law.

GLOSSARY

Long-range tax planning: Long-range tax planning is created at the beginning of the financial year and taxpayers follow it throughout the year.

Permissive tax planning: Permissive tax planning means making plans that are permissible under various provisions of the Income Tax Laws.

Purposive tax planning: Purposive tax planning involves using tax savings tools that take your specific goals into account. This will give you the best return on your investment.

Short-range tax planning: Short-range tax planning means planning and executing at the end of the financial year to reduce taxable income in a legal way.

Tax Planning: Tax planning is may be defined as an arrangement of one's financial affairs by taking all advantages like deductions, exemptions, rebates and relief without violating the provisions of the Income Tax and focusing on the spirit behind the law.

Tax Avoidance: Tax avoidance is the art of evading tax without breaking the law. There is a totally skinny line between tax planning and tax avoidance.

Tax Evasion: Tax evasion is when an individual reduces total income by making false claims or withholding information about real income in order to reduce their tax liability.

Tax Management: Tax management includes regular and timely compliance with the law to help taxpayers avoid interest, fines, penalties and prosecution.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. What is Tax Planning? How is distinguishable from tax evasion?
2. Discuss McDowell"s case to highlight the distinction between tax planning and tax avoidance.
3. Explain the types of tax planning.
4. Tax Management is the primary step to planning the tax. Discuss.
5. Explain the objectives of tax planning.
6. Define Tax Evasion. What are the ways in which people may avoid/evade taxes?

LIST OF FURTHER READINGS

- Corporate Tax Planning and Business Tax Procedure - Taxman- Dr Vinod K Singhania
- Corporate Tax Planning & Management - Bharat Publication - Dr Girish Ahuja and Dr Ravi Gupta
- Tax Planning and Management - Satiya Bhawan Publication- Dr S.P. Goyal

OTHER REFERENCES

- Income Tax Act, 1961 - https://www.incometaxindia.gov.in/Pages/Acts/income-tax-Act.aspx
- Income Tax Rules, 1962 - https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962. Aspx
- Circulars - https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx
- Notifications - https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx

Tax Planning and Nature of Business

Lesson 11

KEY CONCEPTS

■ Deductions ■ Specified Business ■ Tax incentives ■ Start-ups ■ Exporters

Learning Objectives

To understand:

- The concept relating to the nature of the business
- The provision of a tea development account, coffee development account and rubber development account
- The provision of a site restoration fund
- The provision of expenditure for obtaining the right to use spectrum for telecommunication service
- The provision of expenditure for obtaining a license to operate telecommunication services
- The provision of Deduction in respect of expenditure on specified business
- The provision of Deduction for expenditure on prospecting, etc., for certain minerals
- The provision of Special provision for computing profits and gains of business on presumptive basic
- The provision of Special provision for computing profits and gains of business plying, hiring or leasing goods carriage
- The provision of Profits and gains from the business of collecting and processing bio-degradable waste
- The provision of Deduction in respect of eligible start-up

Lesson Outline

INTRODUCTION

Tax planning is also relevant at the time of deciding the nature of business. At the time of commencement of the new undertaking, the assessee has to think about which types of business must be started so that the assessee can plan the tax and save the tax.

DEDUCTIONS IN RESPECT OF INVESTMENT IN SPECIFIED BUSINESS

There are certain businesses which are granted special tax treatment. Some of these are as follows:

Section 33AB: Tea Development Account, Coffee Development Account and Rubber Development Account

Available to all assessee who is engaged in the business of growing and manufacturing tea/ coffee/ rubber in India.

Essential Condition

The assessee has, within 6 months from the end of the previous year or before the due date of furnishing the return of income, whichever is earlier;

(i) deposited with a National Bank for Agriculture and Rural Development (NABARD) any amount in a special account maintained by the assessee with that Bank in accordance with a scheme approved by Tea Board or Coffee Board or Rubber Board, **or**

(ii) deposited any amount in an account to be known as the Deposit Account opened by the assessee in accordance with the scheme framed by the Tea Board or Coffee Board or Rubber Board, as the case may be, (hereinafter referred to as the deposit scheme) with the previous approval of the Central Government.

Quantum of Deduction:

(a) the amount deposited in the above scheme; **or**

(b) 40% of the profit of the such business.

Whichever is less.

Profit for the purpose under this section is the Net profit of such business during the relevant previous year only, which means profit before making deduction under section under section 33AB and before making adjustment of brought forward losses under section under section 72.

Note: *if the assessee is engaged in the business of growing and manufacturing tea/coffee/rubber along with other businesses also and separate books of accounts not maintained by the assessee then profit shall be calculated as under:*

$$\textbf{Profits of the business} \times \frac{\textbf{Total turnover of the business of growing and manufacturing tea/coffee/rubber}}{\textbf{The total turnover of the assessee's business}}$$

Audit of Books of Accounts

Assessee's accounts must be audited and furnished at least one month before the date of furnishing the return of income as audit report in Form No. 3AC.

However, where the assessee is required by any other law to get his accounts audited it shall be sufficient compliance with the provision of this section if such assessee gets the accounts of such business audited under any such law and furnishes the report of the audit and a further report in the prescribed form under this section.

Restriction on Utilization of the Deposited Amount

The amount deposited either in NABARD or a special account must be utilised by the assessee during the previous year per the scheme specified.

However, deduction shall not be allowed where the assessee utilized the amount for the following purposes:

(a) Any machinery or plant installed in any office premises or residential accommodation including a guest house;

(b) Any office appliances (other than computers);

(c) Any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head 'Profits and Gains of Business or Profession of any one previous year;

(d) Any new machinery or plant to be installed in an industrial undertaking for the construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

the whole of such amount so utilised will be treated as taxable profits of that year and taxed accordingly.

Withdrawal of Deposit

The amount deposited in NABARD or the deposit account cannot be withdrawn by the assessee except for the purpose specified under this section.

The deposit amount can be withdrawn for the following purposes:

(a) Closure of business;

(b) Death of an assessee;

(c) Partition of HUF;

(d) Dissolution of a firm;

(e) Liquidation of a company.

Where any amount is withdrawn by the assessee from the special account or deposit account during any previous year on the closure of his business or dissolution of a firm, the whole of such withdrawal shall be deemed to be the profits and gains of business of that previous year and shall be chargeable to tax as the income of that previous year, as if the business had not closed or the firm had not been dissolved. But in other cases, i.e., death of the assessee, the partition of HUF and liquidation of a company, the amount withdrawn shall not be taxable.

Withdrawal of Deduction

The deduction shall be withdrawn in the following circumstances:

(a) Where the deposited amount under NABARD or deposited account is withdrawn by the assessee for utilizing the specified purpose but the assessee fails to utilize the amount in that previous year, the amount not so utilized shall, be treated as business income and charged to income tax of that previous year.

(b) Where any assets acquired in accordance with the scheme are sold or otherwise transferred before the expiry of eight years from the end of the previous year in which assets were acquired, such portion of the cost relatable to the deduction allowed under Section 33AB (1) shall be deemed to be profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall be chargeable to income-tax as the income of that previous year.

In the following cases, a restriction of 8 years shall not be applicable:

(a) Where the asset is sold or transferred by the assessee to the Government, Local authority, a Statutory Corporation, or a Government Company.

(b) Where the sale or transfer of the asset is made in connection with the succession of a form by a company provided the following condition satisfied

(i) All the assets and liabilities of the firm relating to the business or profession immediately before the succession become the assets and liability of the company;

(ii) All the shareholders of the company were partners of the firm immediately before the succession.

Partially Agriculture and Partially Business Income

As per Rules 7 and 8 of the Income Tax Rules, 1962 following are the criteria to classify agriculture income and non-agriculture income :

Rule No.	***Nature of Business***	***Agriculture Income***	***Business Income***
7A	Income from growing and manufacturing rubber	65%	35%
7B	• Income from growing and curing coffee	75%	25%
	• Income from growing, curing, roasting and grounding	60%	40%
8	Income from growing and manufacturing tea	60%	40%

Note:

1. If an individual wants to take the benefit of section 33AB then the assessee cannot opt to be taxed under section 115BAC.
2. If a company wants to take the benefit of section 33AB then the assessee cannot opt to be taxed under section 115BAA.
3. If a co-operative society wants to take benefit of section 33AB then the assessee cannot opt to be taxed under section 115BAD.

CASE STUDY

Mr. Raj was running a business manufacturing pumping sets. Due to the continued loss, Mr. Raj close the business. Now Mr. Raj is planning to set up a growing and manufacturing tea business. For that purpose, Mr. Raj has prepared a project report and is able to arrange the plants and machinery and funds for working capital. The estimated profit of the business for the first year is Rs. 10,00,00,000 before charging deduction under section 33AB. Brought forward loss of the previous business was Rs.1,20,00,000. Before the commencement of business, Mr. Raj wants to know the taxation aspect, for that purpose Mr. Raj approached a Company Secretary Mr. Abhay to guide him in respect of taxation. What types of suggestions should be taken by Mr. Abhay?

Solution:

1. Mr. Raj can't adjust brought a forward loss of Rs. 4 cr.
2. Mr. Raj must be deposited Rs. 4 cr either in NABARD or a special account to take the maximum benefit of section 33AB.

3.	Computation of the total income of Mr. Raj	
	Profit before allowing the deduction under section 33AB	10,00,00,000
	Less: Deduction under section 33AB	
	40% of profit i.e., Rs. 4,00,00,000	
	Or	
	Amount deposited Rs. 4,00,00,000	
	Whichever is less	4,00,00,000
		6,00,00,000
	Less: 60% of Rs. 6,00,00,000 being agriculture income	3,60,00,000
	Business Income	2,40,00,000
	Less: Brought forward a loss	1,20,00,000
	Taxable Business Income	**20,00,000**
4.	There is a restriction on the utilization of the deposited amount. You can utilize the specified scheme only.	
5.	Deduction under section 33AB may be withdrawn in case of Utilization and misutilization of the deposited amount.	

Section 33ABA: Site Restoration Fund

Available to all assessee who is engaged in the business of prospecting for, or extraction or production, of petroleum or natural gas or both in India.

Essential Condition

1. The Central Government has entered into an agreement with the assessee for such business.
2. The assessee has before the end of the previous year -
   - deposited any sum with the State Bank of India in a special account maintained by the assessee with that bank in accordance with the scheme approved on this behalf by the Government of India in the Ministry of Petroleum and Natural Gas, **or**
   - deposited any amount in a Site Restoration Account opened by the assessee for the purposes specified in a scheme framed by the said Ministry. The scheme is known as the deposit scheme.

Quantum of Deduction:

(a) the amount deposited in the above scheme; **or**

(b) 20% of the profit of the such business.

Whichever is less.

Profit for the purpose under this section is the Net profit of such business during the relevant previous year only, which means profit before making deduction under section 33ABA and before making adjustment of brought forward losses under section 72.

Audit of Books of Accounts

Assessee's accounts must be audited and furnished at least one month before the date of furnishing the return of income as audit report in Form No. 3AC.

However, where the assessee is required by any other law to get his accounts audited it shall be sufficient compliance with the provision of this section if such assessee gets the accounts of such business audited under any such law and furnishes the report of the audit and a further report in the prescribed form under this section.

Restriction on Utilization of the Deposited Amount

The amount which is deposited either in the special account of the State bank of India or the Site Restoration Account must be utilised by the assessee during the previous year in accordance with the scheme specified.

However, deduction shall not be allowed where the assessee utilized the amount in the following purposes:

(i) Any machinery or plant installed in any office premises or residential accommodation including a guest house;

(ii) Any office appliances (other than computers);

(iii) Any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head 'Profits and gains of business or profession of any one previous year;

(iv) Any new machinery or plant to be installed in an industrial undertaking for the construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

the whole of such amount so utilised will be treated as taxable profits of that year and taxed accordingly.

Withdrawal of Deposit

The amount deposited in the special account of the State Bank of India or the Site Restoration Account cannot be withdrawn by the assessee except for the purpose specified under this section.

Withdrawal of Deduction

The deduction shall be withdrawn in the following circumstances:

(a) Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is withdrawn on the closure of the account during any previous year by the assessee, the amount so withdrawn from the account as reduced by the amount, if any, payable to the Central Government by way of profit or production share as provided in the agreement referred to in section 42, shall be deemed to be the Profits and Gains of Business or Profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.

(b) Where any amount is withdrawn on the closure of the account in a previous year in which the business carried on by the assessee is no longer in existence, these provisions will apply as if the business is in existence in that previous year.

(c) Where any assets acquired in accordance with the scheme are sold or otherwise transferred before the expiry of 8 years from the end of the previous year in which assets were acquired, such portion of the cost relatable to the deduction allowed under section 33AB (1) shall be deemed to be profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall be chargeable to income-tax as the income of that previous year.

In the following cases, a restriction of 8 years shall not be applicable:

(i) Where the asset is sold or transferred by the assessee to the Government, Local authority, a Statutory corporation, or a government company.

(ii) Where the sale or transfer of the asset is made in connection with the succession of a form by a company provided the following condition satisfied:

(a) All the assets and liabilities of the firm relating to the business or profession immediately before the succession become the assets and liability of the company;

(b) All the shareholders of the company were partners of the firm immediately before the succession.

Note:

1. *If an individual wants to take the benefit of section 33AB then the assessee cannot opt to be taxed under section 115BAC.*
2. *If a company wants to take the benefit of section 33AB then the assessee cannot opt to be taxed under section 115BAA.*
3. *If a co-operative society wants to take benefit of section 33AB then the assessee cannot opt to be taxed under section 115BAD.*

Section 35ABA: Expenditure for Obtaining the Right to Use Spectrum for Telecommunication Service

Available to all assessee where capital expenditure incurred by the assessee for acquiring any right to use spectrum for telecommunication service.

Essential Condition

Any capital expenditure incurred for the acquisition of any right to use spectrum for telecommunication services either before the commencement of the business or thereafter at any time during any previous year and for which payment has actually been made to obtain a right to use spectrum.

Amount of Deduction

A deduction equal to the appropriate fraction of the amount of such expenditure shall be allowed for each of the relevant previous years.

Meaning of relevant previous years, appropriate fractions and payment have actually been made "Relevant Previous Year".

Situation	***Meaning***
Where the spectrum fee is actually paid before the commencement of business to operate telecommunication services	The previous years beginning with the previous year in which such business commenced and the subsequent previous year or years during which the spectrum, for which the fee is paid, shall be in force.
In any other case	The previous years beginning with the previous year in which the spectrum fee is actually paid and the subsequent previous year or years during which the spectrum, for which the fee is paid, shall be in force.

"Appropriate fraction" means the fraction, the numerator of which is one and the denominator of which is the total number of the relevant previous years.

"Payment has actually been made" means actual payment of expenditure irrespective of the previous year in which the liability for expenditure was incurred according to the method of accounting regularly employed by the assessee or payable in the prescribed manner as may be prescribed.

Sale or transfer of spectrum

Case	*Situation*	*Provision*
1.	Where the spectrum is transferred and the proceeds of the transfer are less than the expenditure incurred remaining unallowed. [Section 33ABA (2)]	A deduction equal to such expenditure remaining unallowed as reduced by the proceeds of transfer shall be allowed in the previous year in which the spectrum is transferred. **Amount of deduction = Unallowed expenditure (-) sale proceed.**
2.	Where whole or any part of the spectrum is transferred and the proceeds of the transfer exceed the amount of the expenditure remaining unallowed. [Section 33ABA (3)]	The excess amount or expenditure allowed to date (i.e., the difference between the expenditure incurred to obtain the spectrum and the expenditure that remains unallowed), **whichever is less,** shall be chargeable to income tax as profits and gains of business in the previous year in which the spectrum has been transferred. ***Explanation -*** If the spectrum is transferred in a previous year in which the business is no longer in existence, the taxability would arise in the above manner as though the business is in existence in that previous year.
3	Where whole or any part of the spectrum is transferred and the proceeds of the transfer are **not less than** the amount of expenditure incurred remaining unallowed. [Section 33ABA (4)]	No deduction for such expenditure shall be allowed in the previous year in which spectrum is transferred or in respect of any subsequent previous year or years.
4	Where a part of the spectrum is transferred and case 2 does not apply. [Section 33ABA (5)]	Unallowed expenditure would be amortised in the following manner – (a) subtracting the transfer proceeds from the expenditure remaining unallowed, and (b) dividing the remainder by the number of relevant previous years that not expired at the beginning of the previous year during which the spectrum is transferred.

Transfer of the spectrum in case of Amalgamation [Section 33ABA (5)]

In the scheme of amalgamation, the amalgamating company transferred the spectrum to the amalgamated company, and the amalgamated company shall be allowed to write off the balance amount of the spectrum fee.

Transfer of the spectrum in case of Demerger [Section 33ABA (6)]

In the scheme of the demerger, the demerged company transferred the spectrum to the resulting company, and the resulting company shall be allowed to write off the balance amount of the spectrum fee.

Section 35ABB: Expenditure for Obtaining License to Operate Telecommunication Services

Available to all assessee where capital expenditure incurred by the assessee for acquiring any right to operate telecommunication service.

Essential Condition

Any capital expenditure incurred by the assessee for acquiring any right to operate telecommunication services either before the commencement of the business or thereafter at any time during any previous year and for which payment has actually been made to obtain a license.

Amount of Deduction

A deduction equal to the appropriate fraction of the amount of such expenditure shall be allowed for each of the relevant previous years.

Meaning of relevant previous years, appropriate fractions and payment has actually been made "Relevant Previous Year" means:

Situation	*Meaning*
Where the fee for acquiring any right to operate telecommunication services is actually paid before the commencement of business.	The previous years beginning with the previous year in which such business commenced and the subsequent previous year or years during which the license, for which the fee is paid, shall be in force.
Where the fee for acquiring any right to operate telecommunication services is actually paid after the commencement of business.	The previous years beginning with the previous year in which the license fee is actually paid and the subsequent previous year or years during which the spectrum, for which the fee is paid, shall be in force.

"Appropriate fraction" means the fraction, the numerator of which is one and the denominator of which is the total number of the relevant previous years.

"Payment has actually been made" means actual payment of expenditure irrespective of the previous year in which the liability for expenditure was incurred according to the method of accounting regularly employed by the assessee.

Sale or transfer of license

Case	*Situation*	*Provision*
1.	Where the license is transferred and the proceeds of the transfer are less than the expenditure incurred remaining unallowed. [Section 33ABA (2)]	A deduction equal to such expenditure remaining unallowed as reduced by the proceeds of transfer shall be allowed in the previous year in which the license is transferred. **Amount of deduction = Unallowed expenditure (-) sale proceed.**

Case	*Situation*	*Provision*
2.	Where the whole or any part of the license is transferred and the proceeds of the transfer exceed the amount of the expenditure remaining unallowed. [Section 33ABA (3)]	The excess amount or expenditure allowed to date (i.e., the difference between the expenditure incurred to obtain the license and the expenditure that remains unallowed), whichever is less, shall be chargeable to income tax as profits and gains of business in the previous year in which the license has been transferred. ***Explanation*** - If the license is transferred in a previous year in which the business is no longer in existence, the taxability would arise in the above manner as though the business is in existence in that previous year.
3	Where whole or any part of the spectrum is transferred and the proceeds of the transfer **are not less than the amount of Expenditure** incurred remaining unallowed. [Section 33ABA (4)]	No deduction for such expenditure shall be allowed in the previous year in which spectrum is transferred or in respect of any subsequent previous year or years.
4	Where a part of the license is transferred and case 2 does not apply. [Section 33ABA (5)]	Unallowed expenditure would be amortised in the following manner – (c) subtracting the proceeds of transfer from the expenditure remaining unallowed, and (d) dividing the remainder by the number of relevant previous years which have not expired at the beginning of the previous year during which the license is transferred.

Transfer of the license in case of Amalgamation [Section 33ABA (5)]

In the scheme of amalgamation, the amalgamating company transferred the license to the amalgamated company, and the amalgamated company shall be allowed to write off the balance amount of the spectrum fee

Transfer of the license in case of Demerger [Section 33ABA (6)]

In the scheme in the demerger, the demerged company transferred the license to the resulting company, and the resulting company shall be allowed to write off the balance amount of the spectrum fee.

CASE STUDY

ABC Telecom Ltd. engaged in the business of telecommunication service, now ABC Telecom Ltd. wants to obtain a telecommunication license for 4G service. ABC Telecom Ltd approaches the acquired license and finds that the license cost will be Rs. 10 crores for a period of 10 years and there is two option to make the payment.

1. The entire license fee is to be made at the time of obtaining the license i.e., 15/06/2022.
2. Rs. 4.6 crores paid at the time of obtaining and the remaining 5.4 crores paid in equal two instalments in subsequent years.

Before the commencement of business ABC Telecom Ltd, acquired all the information so ABC Telecom Ltd. find out all the pros and consequences of the business.

Expert says that after at least two years if you are not in the position to run the business then you can sell the license for Rs. 7.5 crores or 10.25 crores.

ABC Telecom Ltd.'s approach to a you to give the report in which includes all the taxation aspects.

Prepare a report in respect of section 35ABB.

Solution:

Calculation of the amount of Deduction:

1. If the entire license fee is paid during the financial year 2022-23

   The deduction under section 35ABB shall be allowed for 10 relevant previous in equal amount 1 crore each year beginning from 2022-23 to 2031-32

   The fee paid during the year/Unexpired period of license = Rs. 10 crores/10 years

   Amount of deduction for the previous year 2022-23 = Rs. 1 crore

2. If the entire license fee is not paid during the financial year 2022-23.

   - Amount of deduction allowed in the previous year 2022-23

     The fee paid during the year/Unexpired period of license = Rs. 4.6 crores/10 years

     Amount of deduction for the financial year 2023-24 = Rs. 46 lakhs

   - Amount of deduction allowed in the previous year 2023-24

     1/10th the amount paid in the previous year = Rs. 46 lakhs

     2.7 crores/9 years = Rs. 30 lakhs

     Amount of deduction for the financial year 2023-24 = Rs. 76 lakhs

   - Amount of deduction allowed in the previous year 2024-25

     = Rs. 76 lakhs

     2.7 crores/8 years = Rs. 33.75 lakhs

     Amount of deduction for the financial year 2024-25 = Rs. 109.75 lakhs

   For the previous year 2024-25 to 2031-32 the amount of deduction will be Rs. 109.75 lakhs

Computation of WDV of license on the date of sale

The previous year 2022-23 License cost	Rs. 10 crores
Less: Deduction allowed in the p/y 2022-23	Rs.1 crore
WDV as on 01/04/2023	Rs.9 crores
Less: Deduction allowed in the p/y 2023-24	Rs.1 crore
WDV as on 01/04/2024	Rs.8 crores

Case 1: Where the entire payment has been made and the license sold for Rs. 7.5 crores.

Sale price	Rs.7.5 crores
Less: WDV as on 01/04/2024	Rs.8 crores
The deficit shall be allowed as a deduction in the p/y 2024-25	Rs.50 lakhs

Case 2: Where the entire payment has been made and the license sold for Rs. 10.25 crores.

Cost of the license	Rs.10 crores
Less: WDV as on 01/04/2024	Rs.8 crores
Business Income	**Rs. 2 crores**
Sale Price	Rs. 10.25 Crores
Less: Cost of the license	Rs. 10 crores
Short-term capital gain	Rs. 25 lakhs

Section 35AD: Deduction in Respect of Expenditure on Specified Business

Available to all assessee who is engaged in the specified business.

Essential Condition

1. Where the capital expenditure incurred wholly or exclusively for the purpose of a specified business carried on by him during the previous year.

   "Specified business" is

   - setting-up and operating 'cold chain' facilities for specified products;
   - setting-up and operating warehousing facilities for storing agricultural produce;
   - laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of the such network;
   - building and operating a hotel of the two-star or above category, anywhere in India;
   - building and operating a hospital, anywhere in India, with at least 100 beds for patients;
   - developing and building a housing project under a notified scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government.
   - developing and building a housing project under a notified scheme for affordable housing framed by the Central Government or State Government;
   - production of fertilizer in India;
   - setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;
   - bee-keeping and production of honey and beeswax;

- setting up and operating a warehousing facility for the storage of sugar;
- laying and operating a slurry pipeline for the transportation of iron ore;
- setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines;
- developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility.

2. It should not be set up by splitting up, or the reconstruction, of a business already in existence.
3. It should not be set up by the transfer to the specified business of machinery or plant previously used for any purpose;

   To satisfy this condition, the total value of the plant or machinery so transferred must not exceed 20% of the total value of the plant or machinery used in the particular business.

   For the purposes of this clause, a machine or plant will not be deemed to have been used previously if it has been used outside India by anyone other than the assessee.

   Provided the following conditions are satisfied:

   (i) such plant or machinery was not used in India at any time prior to the date of its installation by the assessee;

   (ii) the plant or machinery was imported into India from a foreign country;

   (iii) no deduction in respect of depreciation of such plant or machinery has been allowed to any person at any time prior to the date of installation by the assessee.

4. Where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction under the provisions of Chapter VI-A under the heading "C - Deductions in respect of certain incomes" or section 10AA is permissible in relation to such specified business for the same or any other assessment year.
5. The assessee cannot claim a deduction in respect of such expenditure incurred for specified business under any other provision of the Income-tax Act, 1961 in the current year or under this section for any other year if the deduction has been claimed or opted by him and allowed to him under section 35AD.

Amount of Deduction

100% of capital expenditure incurred in the previous year, entirely devoted to said business shall be deducted from business income for the benefit of the assessee who elects to deduct under Section 35AD.

Note: In the case of

(a) expenditure incurred prior to the commencement of its operations; and

(b) the assessee has capitalized the amount in the books of account on the date of commencement of its operations.

The deduction shall be allowed in that previous year in which the assessee commence operations of his specified business.

Conditions to be fulfilled by certain specific companies

1. Business of laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

(a) Such business should be owned by a company formed and registered in India under the Companies Act, 1956/2013 or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;

S. No.	*Nature of business*	*Condition to be fulfilled*
1.	Business of laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.	Such business is owned by a company formed and registered in India under the Companies Act, 1956/2013 or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act.
2.	Business of developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility.	A. The business should be owned by a company registered in India or by a consortium of such companies or by an authority or a board or corporation or any other body established or constituted under any Central or State Act. B. The entity has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining, a new infrastructure facility.

Important Definition

Associated Person

In relation to the assessee means a person:

(i) who participates directly or indirectly or through one or more intermediaries in the management or control or capital of the assessee;

(ii) who holds, directly or indirectly, shares carrying not less than 26% of the voting power in the capital of the assessee;

(iii) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or

(iv) who guarantees not less than 10% of the total borrowings of the assessee.

Cold Chain Facility

A chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.

Infrastructure facility

(i) A road including a toll road, a bridge or a rail system.

(ii) A highway project including housing or other activities being an integral part of the highway project.

(iii) A water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system.

(iv) A port, airport, inland waterway, inland port or navigational channel in the sea.

Capital Expenditure

Expenditure of capital nature shall not include:

(i) Expenditure incurred on the acquisition of any land or goodwill or financial instrument; or

(ii) Any expenditure in respect of which payment or aggregate of payment made to a person of an amount exceeding Rs. 10,000 in a day otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic mode would not be eligible for deduction.

Set-off or carry forward and set-off of loss from Specified Business:

The loss of an assessee claiming deduction under section 35AD in respect of a specified business can be set off against the profit of another specified business under section 73A, irrespective of whether the latter is eligible for deduction under section 35AD.

Such loss can, however, be carried forward indefinitely for set-off against profits of the same or any other specified business but the assessee has to file the return of income on or before the due date of filing the return of income under section 139 for carry forward of losses from specified business

Note:

1. *If an individual wants to take the benefit of section 35AD then the assessee cannot opt to be taxed under section 115BA.*
2. *If a company wants to take the benefit of section 35AD then the assessee cannot opt to be taxed under section 115BAA.*
3. *If a co-operative society wants to take benefit of section 35AD then the assessee cannot opt to be taxed under section 115BAD.*

CASE STUDY

Ajanta Group running a 5-star hotel name Ajanta Inn in Udaipur having a profit of Rs. 35 lakhs in the financial year 2022-23. Management of Ajanta wants to commence a new 3-star hotel in Nathdwara on 01/04/2022. The Ajanta group incurred the following expenditure in this connection.

1.	The capital expenditure of Rs. 90 lakhs (including land costing Rs 50 lakhs) during the period February 2022 to March 2022 exclusively for the above business, and capitalized in the books of account as of 01/04/2022.
2.	The capital expenditure incurred during the previous year 2022-23 Rs. 80 lakhs (including machinery for Rs. 50 lakhs which are paid in cash).
3.	The Revenue expenditure incurred to purchase groceries, crookery and others for Rs. 10,00,000 (out of Rs. 10,00,000 Rs. 2,00,000 paid in cash).

The profits from the business of running this hotel (before claiming deduction under section 35AD) for the A.Y.2022-23 is Rs. 58 lakhs.

Compute the income under the head "Profits and Gains of Business or Profession" for the A.Y.2023-24, assuming that Ajanta Inn has fulfilled all the conditions specified for a claim of deduction under section 35AD and opted for claiming deduction under section 35AD; and has not claimed any deduction under Chapter VI-A under the heading "C. – Deductions in respect of certain incomes".

Solution

Computation income from business and profession for the assessment year 2023-24.

Particulars	***Amount***
Profit from the new 3-star hotel before claiming a deduction 35AD	58,00,000
Less: Deduction under section 35AD (as per calculation)	70,00,000
Loss from the specified business of new 3-star hotel in Nathdwara	12,00,000
Profit from the existing business 5-star hotel in Udaipur	35,00,000
Net profit from business after set-off of loss of specified business against profits of another specified business under section 73A	23,00,000

Calculation of deduction under section 35AD

Particulars	**Amount**
Capital expenditure incurred prior to 01/04/2022 i.e. before the commencement of business and capitalized in the books of account as on 01/04/2022	90,00,000
Less: Cost of land not eligible for deduction under section 35AD	50,00,000
Total (I)	**40,00,000**
Capital expenditure incurred during the previous year 2022-23	80,00,000
Less: Machinery which is paid in cash not eligible for deduction under section 35AD	50,00,000
Total (II)	**30,00,000**
Eligible amount of deduction under section 35AD (I+II)	**70,00,000**

Section 35E: Deduction for Expenditure on Prospecting, Etc., for Certain Minerals

Available to an Indian company or a person (other than a company) who is resident in India, is engaged in any operations relating to prospecting for or the extraction or production of any mineral which is specified in the seventh schedule.

Essential Condition

Where the specified expenditure incurred by the assessee by the assessee for operations relating to prospecting for or the extraction or production of any mineral is specified in the seventh schedule.

"Specified expenditure" means these expenditure must have taken place during the year of commercial production and one or more of the four years immediately preceding that year, wholly and exclusively on any

operations relating to the prospecting for any mineral or group of associated minerals specified in the Seventh Schedule or on the development of a mine or other natural deposit of any mineral or group of associated minerals.

Specified expenditure not included:

There shall be excluded from such expenditure any portion thereof, which is met directly or indirectly by any other person or authority and any sale, salvage, compensation or insurance money realized by the assessee in respect of any property or rights brought into existence as a result of the expenditure.

The following expenditure shall not be part of the specified expenditure and shall not be eligible for deduction.

(i) Expenditure incurred on the acquisition of the site of the source of any minerals or group of associated minerals stated above or of any right in or over such site;

(ii) Expenditure on the acquisition of the deposits of minerals or group of associated minerals referred to above or to any rights in or over such deposits; or

(iii) Expenditure of a capital nature in respect of any building, machinery, plant or furniture for which depreciation allowance is permissible under section 32.

Quantum of Deduction

The deduction to be allowed for any relevant previous year shall be:

(a) An amount equal to one-tenth (1/10) of the specified expenditure; **or**

(b) such amount as will reduce to nil the income (as computed before making the deduction under this section) of that previous year arising from the commercial exploration of any mine or other natural deposit of the mineral or any one or more of the minerals in a group of associated minerals in respect of which the expenditure was incurred,

Whichever is less

Provided that the amount of the instalment relating to any relevant previous year, to the extent to which it remains unallowed, shall be carried forward and added to the instalment relating to the previous year next following and deemed to be a part of that instalment, and so on, for ten previous years beginning from the year of commercial production.

Important definition

"Operation relating to prospecting" means any operation undertaken for the purpose of exploiting, locating or proving deposits of any minerals and includes any such operation which proves to be infructuous or abortive.

"Year of commercial production" means the previous year in which as a result of any operation relating to prospecting or commercial production of any material or one or more of the minerals in a group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule to Act actually commences.

"Relevant previous year" means ten previous years beginning with the year of commercial production

Audit of accounts

Where an assessee is a person other than a company or a co-operative society, no deduction shall be admissible unless the accounts of the assessee for the year or years is which such expenditure incurred, is audited by a Chartered Accountant and submitted at least one month before the due date of furnishing the return of income of the first year in which deduction under this section is claimed.

Section 42: Special Provision for Deductions in the Case of Business for Prospecting, Etc., for Mineral Oil

Available to all assessee who engaged in the business of prospecting for or extraction or production of mineral oil.

Essential Condition

For the purpose of computing the profits or gains of any business consisting of the prospecting for or extraction or production of mineral oils in relation to which the Central Government has entered into an agreement with any person for [the association or participation of the Central Government or any person authorised by it in such business] (which agreement has been laid on the table of each House of Parliament), there shall be made in lieu of, or in addition to, the allowances admissible under this Act, such allowances as are specified in the agreement in relation -

(a) to expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee;

(b) after the beginning of commercial production, to expenditure incurred by the assessee, whether before or after such commercial production, in respect of drilling or exploration activities or services or in respect of physical assets used in that connection, except assets on which allowance for depreciation is admissible under section-32;

*[**Provided** that in relation to any agreement entered into after the 31st day of March 1981, this clause shall have effect subject to the modification that the words and figures "except assets on which allowance for depreciation is admissible under section 32" had been omitted; and]*

(c) to the depletion of mineral oil in the mining area in respect of the assessment year relevant to the previous year in which commercial production is begun and for such succeeding year or years as may be specified in the agreement; and such allowances shall be computed and made in the manner specified in the agreement, the other provisions of this Act are deemed for this purpose to have been modified to the extent necessary to give effect to the terms of the agreement.

Amount of Deduction

The sum of those allowances should be computed and deduction should be made in the manner specified in the agreement entered into by the Central Government with any person for the association or participation of the Central Government or any authorized person by it in such business for the prospecting or exploration of mineral oil.

Sale or transfer of business

Where the business of the assessee consisting of the prospecting for or extraction or production of petroleum and natural gas is transferred wholly or partly or any interest therein is transferred in accordance with the aforesaid agreement subject to the provisions of the said agreement.

Case	*Situation*	*Provision*
1.	Where proceeds of the transfer are less than the expenditure incurred remaining unallowed	A deduction equal to such expenditure remaining unallowed as reduced by the proceeds of transfer shall be allowed in the previous year in which such business or interest, as the case may be, is transferred. **Amount of deduction = Unallowed expenditure (-) sale proceed.**

Case	*Situation*	*Provision*
2.	Where the whole or any part of the business or interest is transferred and the proceeds of the transfer exceed the amount of the expenditure remaining unallowed	The excess amount or expenditure allowed to date (i.e., the difference between the expenditure incurred in connection with business or to obtain interest therein and the expenditure that remains unallowed), whichever is less, shall be chargeable to income tax as profits and gains of business in the previous year in which the business or interest therein has been transferred. ***Explanation*** - If the business or interest therein is transferred in a previous year in which the business is no longer in existence, the taxability would arise in the above manner as though the business is in existence in that previous year.
3	Where the proceeds of the transfer are not less than the amount of expenditure incurred remaining unallowed.	No deduction for such expenditure shall be allowed in the previous year in which spectrum is transferred or in respect of any subsequent previous year or years.
4	Where the transfer of the business or interest not covered in case 2 above.	Deduction of unallowed expenditure as reduced by the proceeds of transfer from the expenditure remaining unallowed.

Section 44AD: Special Provision for Computing Profits and Gains of Business on Presumptive Basic

Available to 'eligible assessee' who is engaged in 'eligible business

"Eligible Assessee" means

(i) An individual, HUF or a Partnership Firm, who is resident in India but not a Limited Liability Partnership Firm; and

(ii) who has not claimed deduction under section 10AA or Chapter VIA under "C – Deductions in respect of certain incomes".

"Eligible Business" means

(i) any business except the business of plying, hiring or leasing goods carriage referred to in section 44AE; and

(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of two crore rupees.

Presumptive income

CASE	*INCOME CRITERIA*
Where the amount of total turnover/ sales/ gross receipts received by A/c payee cheque/ bank draft/ Electronic Clearance System (ECS) through a bank account or through such other prescribed electronic modes (credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, and BHIM Aadhar Pay) during the previous year or before the due date of filing of return under section 139(1) in respect of that previous year.	6% of the turnover/gross receipts. Assessee may claim a higher amount of 6%.
In any other case.	8% of the turnover/gross receipts. Assessee may claim a higher amount of 8%.

Section 44AD does not apply in certain circumstances

The provision of section 44AD shall not apply in the following circumstances:

(a) a person carrying on a profession as referred to in section 44AA (1);

(b) a person who is earning income in the nature of commission or brokerage;

(c) a person who is carrying on any agency business.

Consequences if a qualified assessee chooses Section 44AD

(a) The deductions provided for in sections 30 to 38 are deemed to be allowed: Any deduction covered under sections 30 to 38 shall not be allowed as a deduction if the assessee opts for section 44AD to compute the profit of the business.

In the case of a firm, the deduction on account of interest and salary paid to partners is not allowed if the firm opts for section 44AD to calculate the profit of the business.

(b) Written down value: The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(c) Restriction of the utilization of section 44AD: If the assessee regularly declares the income under section 44AD and the assessee is eligible to declare income under section 44AD in the previous year but the assessee does not declare the income under section 44AD, he shall not be eligible to claim the benefit of the provisions under this section for 5 assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of section 44AD.

(d) Maintenance of books of account: If the eligible assessee declares profits in accordance with the provisions of section 44AD, he is not required to maintain books of account under section 44AA or get them audited under section 44AB.

(e) Advance payment of tax: if an eligible assessee declared profit as per section 44AD, the assessee can pay the whole amount of advance tax during each financial year on or before the 15th of March.

CASE STUDY

Mr. Roshan is engaged in the textile business. The following information was provided by Mr. Roshan to his Accountant Mr. Sehgal.

Trading and Profit & Loss Account for the previous year ending 31-03-2023

Particulars	***Amount***	***Particulars***	*Amount*
Opening Stock	36,00,000	Sales	1,72,00,000
Purchase	1,24,00,000	Closing Stock	42,00,000
Wages	4,21,300		
Carriage on purchase	3,78,000		
Gross Profit	46,00,700		
Total	**2,14,00,000**	**Total**	**2,14,00,000**
Salary	8,21,200	BY Gross Profit	46,00,700
Rent	12,00,000		
Advertisement expenses	1,12,000		
Electricity bill	1,48,600		
Fire Insurance Premium	30,500		
Telephone expenses	24,200		
Miscellaneous expenses	52,800		
Staff welfare expenses	36,400		
Drawings	3,20,000		
Life Insurance Premium	21,000		
Car expenses	48,000		
Legal charges	18,000		
Depreciation on Furniture	1,50,000		
Depreciation on the car	1,18,000		
Net Profit	15,00,000		
Total	**46,00,700**	**Total**	**46,00,700**

Other information:

1. Rent paid includes Rs. 2,00,000 for which tax was deducted at source on 31/03/2023 but deposited on 15/12/2023.
2. The car was used for business as well as personal purposes. Half of the car is used for personal purposes.
3. The turnover of Rs. 1,72,00,000 includes Rs, 50,00,000 received by way of cash and Rs. 42,00,000 received through RTGS up to 31st March 2023. Out of the balance of turnover, Rs, 45,00,000 was realized by cheque up to the date of filing the return of income as per section 139(1).
4. Savings/payments made by Mr Roshan during the previous year is Term deposit for a period of 5 years in a bank Rs.1,00,000 and Contribution to Public Provident Fund Rs. 40,000; Medical Insurance premium Rs. 28,000. He had taken a loan for the higher education of his son and during the previous year 2023-24, he repaid Rs. 95,000 out of which interest is Rs. 45,000.

Mr. Roshan wants to clarify the following points from Mr. Sehgal

(a) Weather Mr. Roshan should opt for 44AD?

(b) Calculate the income and tax liability

(i) If Mr. Roshan does not opt to be taxed under section 115BAC

(ii) If Mr. Roshan opts to be taxed under section 115BAC.

(c) Weather Mr. Roshan liable to maintain the books of accounts and get the books of accounts audited?

(d) Weather Mr. Roshan is liable to pay in advance and how much.

Answer

Since the turnover of Mr. Roshan is less the Rs. 2 crores, Mr. Roshan can opt for section 44AD to calculate the income.

Computation of Total Income of Mr. Roshan For the Assessment Year 2023-24

Particulars		***Amount***
Net Profit as per Profit & Loss A/c		15,00,000
Add: Expenses not admissible		
30% of the Rent of Rs. 2,00,000, TDS on account of which was deposited after the due date of filing Return of Income as per section 139(1).	60,000	
Drawing	3,20,000	
Life Insurance Premium	21,000	
Car expenses (1/2)	24,000	
Depreciation on the car (1/2)	59,000	4,84,000
Income from Business		19,84,000

Presumptive income as per section 44AD

Computation of Total Income of Mr. Roshan for the Assessment Year 2023-24.

Particulars		*Amount*
Received by cash Rs. 50,00,000 up to 31.03.2033 @ 8%	4,00,000	
Received through RTGS Rs. 42,00,000 up to 31.03.2023 @ 6%	2,52,000	
Rs. 45,00,000 released by cheque after 31.03.2023 but before filing the return of income as per section 139(1). 6% on 45,00,000	2,70,000	
Balance of turnover of Rs. 35,00,000 which is not released up to the due date of filling return of income as per section 139(1). 8% on 35,00,000	2,80,000	
Income from Business		**12,02,000**

(a) As per the income tax normal provision the profit of the business is Rs. 19,84,000 and as per section 44AD, the presumptive income is Rs. 12,02,000. Since the income as per section, 44AD is lower than the normal provision of the income tax act, Mr. Roshan must opt for section 44AD.

(b) Income as per section 44AD Rs. 12,02,000 if Mr. Roshan

Computation of Tax	*does not opt to be taxed under section 115BAC*	*opt to be taxed under section 115BAC*
Gross Total Income	12,02,000	12,02,000
Less: Deduction under section 80C up to a maximum of Rs. 1,50,000	1,50,000	Nil
Less: Deduction under section 80D	25,000	Nil
Less: Deduction under section 80E	45,000	Nil
Total Income	9,82,000	12,02,000
Tax on Total Income	1,08,900	1,15,400
Add: H&EC @4%	4,356	4,616
Total Tax Payable	**1,13,256**	**1,20,016**

(c) Since Mr. Roshan declares profits in accordance with the provisions of section 44AD, he is not required to maintain books of account under section 44AA or get them audited under section 44AB.

(d) Mr. Roshan declared profit as per section 44AD, he has to pay the whole amount of tax i.e. 1,13,256 on or before the 15th of March, 2024.

Section 44AE: Special Provision for Computing Profits and Gains of Business Plying, Hiring or Leasing Goods Carriage

Available to an assessee who is engaged in the business of plying, hiring or leasing goods carriage and who owns not more than 10 goods carriages **at any time** during the previous year.

Presumptive income

Nature of Vehicle	*Presumptive income*
Heavy Goods Vehicle	**Rs. 1,000 per ton** of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year **or** an amount claimed to have been actually earned from such vehicle, **whichever is higher.**
Other than Heavy Goods Vehicle	Rs. 7,500 per month or part of a month during which such vehicle is owned by the assessee **or** an amount claimed to have been actually earned from such vehicle, **whichever is higher.**

Consequences if a qualified assessee chooses Section 44AE

(a) **The deductions provided for in sections 30 to 38 are deemed to be allowed:** Any deduction covered under sections 30 to 38 shall not be allowed as a deduction if the assessee opts for section 44AE to compute the profit of the business.

In the case of a firm, the deduction on account of interest and salary paid to partners is allowed as a deduction subject to the condition and limit specified under section 40(b).

(b) **Written down value:** The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(c) **Maintenance of books of account:** If the eligible assessee declares profits in accordance with the provisions of section 44AE, he is not required to maintain books of account under section 44AA or get them audited under section 44AB.

(d) **However,** if the assessee claim that his actual profit is lower than the profit calculated as per section 44AE, he has to maintain books of accounts under section 44AA and get is accounts audited under section 44AB

Important definition

S. No.	*Term*	*Definition*
1.	Heavy Goods Vehicle	Any goods carriage, the gross vehicle weight of which exceeds 12,000 kilograms.

S. No.	Term	Definition
2.	Goods Carriage	(a) Any motor vehicle constructed or adapted for use solely for the carriage of goods, or (b) Any motor vehicle not so constructed or adapted when used for the carriage of goods.
3.	Gross Vehicle Weight	Total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle.
4.	Unladen Weight	The weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working but excluding the weight of the driver or attendant and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative body or part.

CASE STUDY

Kavita has been engaged in the plying, hiring and leasing of goods carriage business for the last 20 years with the name of Kavita Enterprises and Savita is engaged in the business of textiles. Due to the continuous loss in the business, Savita wants to shut down the business. Kavita and Savita want to form a partnership firm with the name of KS Enterprises and want to start the business of leasing and hiring goods carriage on 1st April 2023. Each contributes Rs. 25,00,000 to the business and planning to purchase 5 heavy goods vehicles (whose gross weight is 16 MT) and 5 other than heavy goods vehicles. On the basis of experience of Kavita, the estimated Receipts will be 1,42,00,000.

Estimated expenses as under:

Nature of expenses	Amount
Interest on bank loan	6,50,000
Diesel	16,80,000
Drivers Salary	36,00,000
Repairs and Maintenance	3,52,000
Other allowed expenses	1,55,000
Depreciation	40,60,000
Interest to partners on capital @12% (As per section 40(b)	6,00,000
Remuneration paid to partners as per section 40(b)	4,80,000

Give the suggestion in the following:

(a) In this case can the firm as well as Kavita both adopt the provisions of section 44AE and declare income as per the presumptive taxation scheme?

(b) If yes, calculate the income of the firm and find out which option must be adopted by KS Enterprises.

Solution

(a) The provisions of section 44AE can be adopted by every person (i.e., an individual, HUF, firm, company, etc.). There is no restriction on partnership firms and partners both adopting the provisions of section 44AE. Hence, in this case, both, i.e., KS Enterprise and Kavita can adopt the provisions of section 44AE if they satisfy the other criteria of the scheme and can declare income on a presumptive basis.

(b) Since KS Enterprises does not own more than 10 vehicles at any time during the previous year 2023-24, the firm is eligible to opt for a presumptive taxation scheme under section 44AE. Rs. 1,000 per ton of gross vehicle weight or unladen weight per month or part of the month for each heavy goods vehicle and Rs. 7,500 per month or part of a month for each goods carriage other than heavy goods vehicle, owned by him would be deemed as his profits and gains from such goods carriage.

Option 1: Computation of Income for the assessment year 2024-25 as per section 44AE

For Heavy Goods Vehicle			
No of Vehicle	Ownership months	Vehicle weight	Presumptive Income
5	12	16 MT	5 x 16,000 x 12 = 9,60,000
For other than Heavy Goods Vehicle			
No of Vehicle	Ownership months		Presumptive Income
5	12		5 x 7,500 x 12 = 4,50,000
			9,60,000 + 4,50,000 = Rs. 14,10,000
Less: Interest on capital			6,00,000
Less: Remuneration to partners			4,80,000
Business Income/Total Income			**3,30.000**

Option 2: Computation of Income for the assessment year 2024-25 as per income tax normal provision

Gross Receipts	1,19,00,000
Less: Admissible Expenses	
Interest on bank loan	6,50,000
Diesel	16,80,000
Drivers' salary	36,00,000
Repairs and Maintenance	3,52,000
Other allowed expenses	1,55,000

Depreciation	40,60,000
Interest to partners on capital @12% (As per section 40(b)	6,00,000
Remuneration paid to partners as per section 40(b)	4,80,000
Net Profit	**3,23,000**

M/s KS Enterprises has a lower income in option no. 2 hence total income is Rs. 3,23,000. If KS Enterprises choose 2nd option, there is a requirement to maintain books of accounts as per section 44AA and get books of accounts under section 44AB.

Advise: M/s KS Enterprises may choose 1st option as there is a very thin difference in the income under options 1 and 2. If KS Enterprises opt for section 44AE to calculate income then KS Enterprises is not liable to maintain books pf accounts and get an audit of books of account.

Section 80JJA: Profits and Gains from the Business of Collecting and Processing of Bio-Degradable Waste

Where the gross total income of an assessee includes any profits and gains derived from the business of collecting and processing or treating of bio-degradable waste for:

(1) generating power, or

(2) producing bio-fertilizers, bio-pesticides or other biological agents, or

(3) for producing bio-gas, or

(4) making pellets or briquettes for fuel, or

(5) organic manure.

Quantum of deduction: An amount equal to the whole of such profits and gains for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the business commences.

TAX INCENTIVES FOR START-UPS

Startup India is an initiative of the Government of India. The plan was first announced in a speech by Indian Prime Minister Narendra Modi on 15 August 2015.

The action plan of this initiative is focussing on three areas:

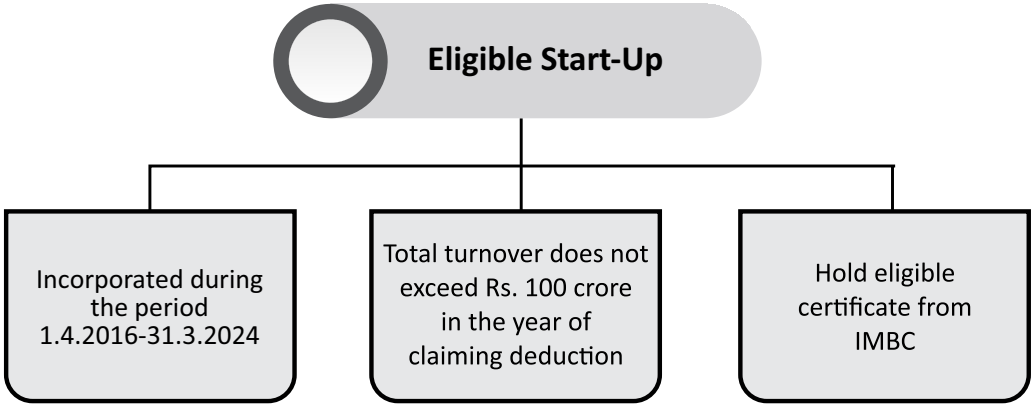
1. Simplification and Handholding.
2. Funding Support and Incentives.
3. Industry-Academia Partnership and Incubation.

Start in India aims to create a strong ecosystem in the country to support innovation and entrepreneurship, support economic growth and create jobs on a large scale.

The start-ups can take the benefit under section 80-IAC under the Income Tax Act.

Section 80-IAC: Deduction in Respect of Eligible Start-Up

Available to an "eligible start-up"



"Eligible start-up" means a **company** or a **limited liability partnership** engaged in an **eligible** business which fulfils the following conditions, namely: –

(a) it is incorporated on or after the 1st day of April 2016 but before the 1st day of April 2023; (Budget 2023 amends Section 80-IAC to extend the period of incorporation of eligible start-ups to 1st day of April 2024);

(b) the total turnover of its business does not exceed 100 crore rupees in the previous year relevant to the assessment year for which deduction under sub-section (1) is claimed; and

(c) it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government.

"Eligible Business" means a business carried out by an eligible start-up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential for employment generation or wealth creation.

Condition for claiming deduction

1. The assesses must be engaged in the eligible business.
2. Eligible business is not formed by splitting up, or the reconstruction, of a business already in existence:

   Provided that this condition shall not apply in respect of a start-up which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 33B, in the circumstances and within the period specified in that section;
3. It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

   Explanation 1. – For the purposes of this clause, any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if all the following conditions are fulfilled, namely: –

   (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;

   (b) such machinery or plant is imported into India;

(c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

Explanation 2. – Where in the case of a start-up, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (*ii*) of this sub-section, the condition specified therein shall be deemed to have been complied with.

4. The provisions of sub-section (5) and sub-section (7) to (11) of section 80-IA shall apply to the start-ups for the purpose of allowing deductions under sub-section (1).

Audit of Accounts [Section 80-IA (7)]: The deduction under this section from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by a Chartered Accountant and the assessee furnished, at least 10 months before re due date of furnishing the return of income, the report of such audit in the Form no. 10CCB duly signed and verified by such an accountant.

Section 80-IA (8): Where any goods or services held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date :

Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner herein before specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation. – For the purposes of this sub-section, "market value", in relation to any goods or services, means–

(i) the price that such goods or services would ordinarily fetch in the open market; or

(ii) the arm's length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA .

Section 80-IA (9): Where any amount of profits and gains of an undertaking or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "*C. – Deductions in respect of certain incomes*", and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be.

Section 80-IA (10): Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of the such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (*ii*) of section 92F.

Section 80-IA (11): The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertaking or enterprise with effect from such date as it may specify in the notification.

Quantum of deduction

100% of the profits and gains derived from such business for any three consecutive assessment years out of 10 years beginning from the year in which the eligible start-up is incorporated.

LESSON ROUND-UP

- At the time of commencement of the new undertaking, the assessee has to think about which types of business must be started so that the assessee can plan the tax and save the tax.
- In the case of tea, coffee, and rubber development plant if assess deposits the specified amount in the specified scheme then the amount deposited or 40% of the profit of such business w.e.f. is allowed as a deduction to all types of assesses.
- If a person engaged in the business of prospecting for extracting or production of petroleum or natural gas or both in India is eligible for deduction if s/he deposit amount in specific schemes. The quantum of deduction will be the amount deposited or 20% of the profit from such business w.e.f.
- If a person does capital expenditure for acquiring any right to use spectrum for telecommunication services, then the assessee will be eligible for deduction for the appropriate faction of the amount of such expenditure.
- If an assessee is doing specified business viz., cold chain facilities of specified products, warehousing facilities for storing agricultural products, laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, building and operation of hotel, building and operation of the hospital, slum redevelopment or rehabilitation, production of fertilizers, setting up an inland container depot, bee-keeping and production of honey, etc. will be eligible to get the deduction of 100%of capital expenditure incurred in the previous year.
- If an Indian company or a person resident in India and is engaged in any operations relating to prospecting for or the extraction or production of any mineral which is specified in the seventh schedule is eligible for the deduction equal to 1/10th of the specified expenditure or such amount as will reduce to nil the income w.e.l.
- If an assessee who engaged in the business of prospecting for or extraction or production of mineral oil will be eligible for deduction as specified in the Income Tax Act, 1961.
- If an assessee spends some amount on capital expenditure incurred by the assessee for acquiring any right to use spectrum for telecommunication service, for acquiring any right to operate telecommunication service, incurred wholly or exclusively for the purpose of a specified business, etc. will be eligible for deduction of capital expenditure as specified in the act.
- Certain deductions are allowed under sections 44AD, 44AE, and 80JJA as specified in the act.
- The eligible start-ups can take the benefit under section 80-IAC under the Income Tax Act if satisfy all the condition under section 80-IAC.

GLOSSARY

"Appropriate fraction" means the fraction, the numerator of which is one and the denominator of which is the total number of the relevant previous years.

"Operation relating to prospecting" means any operation undertaken for the purpose of exploiting, locating or proving deposits of any minerals and includes any such operation which proves to be infructuous or abortive.

"Payment has actually been made" means actual payment of expenditure irrespective of the previous year in which the liability for expenditure was incurred according to the method of accounting regularly employed by the assessee or payable in the prescribed manner as may be prescribed.

Profit for section 33AB is the Net profit of such business during the relevant previous year only, which means profit before making deduction under section 33AB and before making adjustment of brought forward losses under section 72.

"Year of commercial production" means the previous year in which as a result of any operation relating to prospecting or commercial production of any material or one or more of the minerals in a group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule to Act actually commences.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Tele express Ltd. is engaged in the business of telecommunication services and obtained a licence on 25.05.2022 for a period of 10 years. The licence cost Rs. 150 lakhs. Find out the amount of deduction under section 35ABBof the Income Tax Act, 1961, if:

   (i) Entire amount paid at the time of obtaining the licence.

   (ii) The entire amount paid in two equal instalments on 25.05.2022 and 01.04.2024.

2. PQ Associates is a partnership firm of professionals engaged in the business of providing service but his profession is not covered under section 44AA (1). Gross receipts from the profession for the financial year 2023-24 is Rs. 74,00,000.

   As per the partnership deed each partner i.e., P and Q can withdraw a salary Rs. 20,000 p.m. and interest @ 11% of the capital of Rs. 50,00,000.

   Compute the income from business and profession for the assessment year 2023-24 using the specific section of presumptive basis. The firm has received the following amount by online mode and/or account payee cheque.

   (i) Rs. 39,00,000 till 28.03.2023

   (ii) Rs. 18,00,000 on 31.07.2023

   (iii) Rs. 6,00,000 on 01.08.2023.

3. Mr. Randhir is engaged in the business of plying, hiring and leasing goods carries with the name of M/s Randhir Travels. On 01.04.2022 he has 9 trucks out of which 5 are heavy goods vehicles (2 whose gross vehicle weight is 15MT and 3 has 18 MT). On 15.09.2022, he sold one heavy goods vehicle whose gross vehicle weight is 15 MT and on the same day purchase a light commercial vehicle. Compute the business of Mr Randhir for the assessment year 2023-24.

4. Explain the tax planning provisions in respect of the Tea, Coffee and Rubber industries.
5. Who is the eligible assessee for the start-up? How can a start-up save the tax, explain.

LIST OF FURTHER READINGS

- Corporate Tax Planning and Business Tax Procedure : Dr Vinod K Singhania
- Corporate Tax Planning & Management : Dr Girish Ahuja and Dr Ravi Gupta
- Tax Planning and Management : Dr S.P. Goyal

OTHER REFERENCES

- Income Tax Act, 1961 - https://www.incometaxindia.gov.in/Pages/Acts/income-tax-Act.aspx
- Income Tax Rules, 1962 - https://incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx
- Circulars - https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx
- Notifications - https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx

Tax Planning and Location of Business

Lesson 12

KEY CONCEPTS

■ Free Trade Zone ■ Special Economic Zone ■ Infrastructure Development ■ International Financial Services Centre

Learning Objectives

To understand:

- Provision in respect of newly established units in special economic zones
- Calculate the income of offshore banking units and international financial services centre
- How to claim deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.
- Provision in respect of Investment in new plants or machinery in notified backward areas in certain States

Lesson Outline

- Tax Provisions in respect of Free Trade Zone / Special Economic Zone
- Tax Provisions in respect of Infrastructure Development
- Tax Provisions in respect of Investment in notified Backward Areas.
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

Income Tax Act, 1961

Sections	*Deals with*
10AA	Special provision in respect of newly established units in special economic zones
80LA	Deduction in respect of certain income of offshore banking units and international financial services centre
80-IA	Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.
32AD	Investment in new plants or machinery in notified backward areas in certain States.

TAX PROVISIONS IN RESPECT OF FREE TRADE ZONE / SPECIAL ECONOMIC ZONE

Section 10AA: Special Provision in Respect of Newly Established Units in Special Economic Zones

Available to: all assessee located in the special economic zones, deriving profits or gains an undertaking, being a unit, engaged in the export of articles or things or providing any service.

The assessee should be an entrepreneur referred to in section 2(j) of the SEZ Act, 2005 i.e., a person who has been granted a letter of approval by the Development Commissioner under section 15(9) of the said Act.

Essential conditions

The following are the essential conditions to be fulfilled for claiming a deduction under Section 10AA:

1. The unit which is situated in Special Economic Zones has begun to manufacture articles or things or provides any service during the year relevant to the assessment year commencing on or after 01.04.2006 but before 01.04.2021.
2. The unit is not formed by any splitting up, or the reconstruction of a business that is already in existence. However, such a condition does not apply to a unit formed as a result of the assessee's re-establishment, reconstruction or revival of the business of any undertaking as referred to in Section 33B.
3. It must not be constituted by the transfer to the new company of machinery or plant previously used for any purpose whatsoever. However, two exceptions are there.
    i. The machinery or plant previously used by any person other than the assessee outside India shall not be treated as machinery or plant previously used for any purpose subject to fulfilment of certain conditions:
        (a) The machinery or plant should not be previously used in India.
        (b) The machinery or plant should not be imported into India.
        (c) The deduction of depreciation should not be allowed on such machinery or plant to any person previously.
    ii. It should be allowed if the total value of machinery or plant transferred to the new undertaking does not exceed 20 per cent of the total value of the machinery or plant used in the unit.
4. The assessee should furnish in the prescribed form, before the date i.e., one month prior to the due date for furnishing the return of income under section 139(1), the report of a Chartered Accountant certifying that the deduction has been correctly claimed.

Period for which deduction is available

S. No	*Period*	*Percentage of deduction*
1.	For the first 5 consecutive assessment years relevant to the previous year in which the unit begins to manufacture or produce such article or things or provide service	100% of the profits and gains derived from the export of such articles or things or from service.
2.	For the next 5 consecutive assessment years	50% of such profits or gains.
3.	For the next 5 consecutive assessment years	So much of the amount not exceeding 50% of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilised for the purpose [as per section 10AA(2)] of acquiring new machinery or plant which should be put to use before the expiry of a period of 3 years next following the previous year in which the reserve was created.

Example: An undertaking is set up in a Special Economic Zones and begins providing service on 03.02.2020. The deduction under section 10AA shall be allowed as under:

Period	*Percentage of deduction*
From A/Y 2021-22 to A/Y 2025-26	100% of profits of such undertaking
From A/Y 2026-27 to A/Y 2030-31	50% of profits of such undertaking
From A/Y 2031-32 to A/Y 2035-36	100% of profits of such undertaking
Subject to condition satisfied of section 10AA (2)	

Section 10AA (2): Conditions to be satisfied for claiming a deduction for further after 10 years in respect of "Special Economic Zone Re-investment Reserve Account"

(a) The amount credited to the Special Economic Zone Re-investment Reserve Account is to be utilised-

(i) for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created; and

(ii) until the acquisition of the machinery or plant as aforesaid, for the purposes of the business of the undertaking. However, it should not be utilized for distribution by way of dividends or profits; for remittance outside India as profits; or for the creation of any asset outside India.

(b) The particulars, as may be specified by the CBDT on this behalf, have been furnished by the assessee in respect of machinery or plant. Such particulars include details of the new plant/ machinery, name and address of the supplier of the new plant/ machinery, date of acquisition and date on which the new plant/machinery was first put to use. Such particulars have to be furnished along with the return

of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

Section 10AA (3): Consequences of mis-utilisation / non-utilisation of reserve

Where any amount credited to the Special Economic Zone Re-investment Reserve Account -

(a) has been utilised for any purpose other than those referred to in sub section (2), the amount so utilized shall be deemed to be the profits in the year in which the amount was so utilised and charged to tax accordingly; or

(b) has not been utilised before the expiry of the said period of 3 years, the amount not so utilised, shall be deemed to be the profits in the year immediately following the said period of three years and be charged to tax accordingly.

Section 10AA (7): Calculation of deduction of profit and gains from exports of such undertakings

If the total turnover includes the export turnover, then deduction under this section shall be computed as under:

$$\text{Profits of Unit in SEZ} \times \frac{\text{Export turnover of Unit}}{\text{Total turnover of Unit SEZ}}$$

"Export turnover" means the consideration in respect of export by the undertaking, being, the unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the article or things outside India or expenses, if any, incurred in foreign exchange in the rendering of service (including computer software) outside India.

Section 10AA (10): Where a deduction under this section is claimed and allowed in relation to any specified business eligible for investment-linked deduction under section 35AD, no deduction shall be allowed under section 35AD in relation to such specified business for the same or any other assessment year.

Illustration:

NPK Limited for and registered during the financial year in special economic zones. The company is providing services. During the financial year 2022-23, following information was provided by the company:

Particulars	*Amount (Fig in crore)*
Total turnover	200
Export Turnover	160
Profit	35

What amount of deduction can NPK Limited claim for the assessment year 2023-24?

Solution:

NPK Limited is eligible to claim a 100% deduction of export of service as per section 10AA. As per section 10AA (7), the profit derived from the export of articles or things or services shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of articles or things or services bears to the total turnover of the business carried on by the undertaking.

The amount of deduction under section 10AA:

$$= \text{Profits of Unit in SEZ} \times \frac{\text{Export turnover of Unit}}{\text{Total turnover of Unit SEZ}}$$

$$= 35 \times \frac{160}{200}$$

The amount of deduction will be 28 crores.

NPK Limited can claim a deduction for Rs. 28 crores.

Deduction in Respect of Certain Income of Offshore Banking Units and International Financial Services Centre [Section 80A]

Available to:

(a) a scheduled bank, or, any bank, incorporated by or under the law of a country outside India and having an offshore banking unit in a "Special Economic Zone"; or

(b) being a Unit of an International Financial Services Centre (IFSC).

Quantum Deduction:

(a) In case of a scheduled bank, or, any bank, incorporated by or under the law of a country outside India and having an offshore banking unit in a "Special Economic Zone";	
100% of such income	For the first 5 consecutive assessment years beginning with the assessment year relevant to the previous year in which the permission, under clause (a) of sub-clause (1) of section 23 of the Banking Regulation Act, 1949 or permission or registration under the Securities and Exchange Board of India Act, 1992 or permission or registration under the International Financial Centre Authority Act, 2019 was obtained.
50% of such income	For the next 5 consecutive assessment years.
(b) In case of the Unit of an International Financial Services Centre (IFSC).	
100% of such income	For any 10 consecutive AYs at the option of the assessee, out of 15 years, beginning with the assessment year relevant to the previous year in which the permission, under clause (a) of sub-clause (1) of section 23 of the Banking Regulation Act, 1949 or permission or registration under the Securities and Exchange Board of India Act, 1992 or any other relevant law was obtained.

Essential Conditions:

The following conditions have to be fulfilled for claim deduction under this section-

(a) The report of a an Accountant in the prescribed Form No. 10CCF certifying that the deduction has been correctly claimed in accordance with the provisions of this section should be submitted along with the return of income.

(b) A copy of the permission obtained under section 23(1)(a) of the Banking Regulation Act, 1949 or a copy of permission or registration obtained under the International Financial Services Centre Authority Act, 2019 should also be furnished along with the return of income.

- "Offshore Banking Unit" means a branch of a bank in India located in the special economic zone and has obtained permission under clause (a) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 (10 of 1949);
- "International Financial Service Centre" means an International Financial Service Centre which has been approved by the Central Government under sub-section (1) of section 18 of the Special Economic Zones Act, 2005;
- "Scheduled bank" shall have the same meaning assigned to it in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934).

TAX PROVISIONS IN RESPECT OF INFRASTRUCTURE DEVELOPMENT

Section 80-IA: Deductions in Respect of Profits and Gains From Industrial Undertakings or Enterprises Engaged in Infrastructure Development, etc.

Available to an assessee where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4).

Section 80-IA (4) applies to –

(A) Infrastructure facility

(i) Any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfils all the following conditions, namely: —

(a) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

(b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;

(c) it has started or started operating and maintaining the infrastructure facility on or after the 1st day of April 1995.

Provided that where an infrastructure facility is transferred on or after the 1st day of April 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction if the transfer had not taken place:

Provided further that nothing contained in this section shall apply to any enterprise which starts the development or operation and maintenance of the infrastructure facility on or after the 1st day of April 2017.

"Infrastructure facility" means-

(a) a road including a toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;

(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(d) a port, airport, inland waterway, inland port or navigational channel in the sea.

(A) Industrial Park

Any undertaking which develops, develops and operates or maintains and operates an industrial park or special economic zone notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on the 1st day of April 1997 and ending on the 31st day of March 2006:

Provided that in a case where an undertaking develops an industrial park on or after the 1st day of April 1999 or a special economic zone on or after the 1st day of April 2001 and transfers the operation and maintenance of such industrial park or such special economic zone, as the case may be, to another undertaking (hereafter in this section referred to as the transferee undertaking), the deduction under sub-section (1) shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee undertaking :

Provided further that in the case of any undertaking which develops, develops and operates or maintains and operates an industrial park, the provisions of this clause shall have effect as if for the figures, letters and words "31st day of March 2006", the figures, letters and words "31st day of March 2011" had been substituted.

(B) Generation of Power Undertaking

An undertaking which, —

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April 1993 and ending on the 31st day of March 2017;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April 1999 and ending on the 31st day of March 2017:

Provided that the deduction under this section to an undertaking under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution;

(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April 2004 and ending on the 31st day of March 2017.

Explanation: For the purposes of this sub-clause, "substantial renovation and modernisation" means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on the 1st day of April, 2004.

(C) Undertaking owned by an Indian company and set up for reconstruction or revival of a power-generating plant

An undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant, if—

(a) the such an Indian company is formed before the 30th day of November 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified before 31st day of December 2005 by the Central Government for the purposes of this clause;

(b) such undertaking begins to generate or transmit or distribute power before the 31st day of March, 2011;

The amount of deduction: *100% of the profits and gains derived from such business for 10 consecutive assessment years* commencing at any time during the periods specified in period of tax holiday.

Tax Holiday Period

	Eligible Business	***Tax Holiday Period***
1	For all eligible business except business mentioned in point 2 below.	Assessee has the option to claim a deduction for 10 consecutive assessment years out of 15 years beginning from the year in which the undertaking or the enterprise develops or begins to operate the infrastructure facility or develops industrial park or generates power or commences transmission or distribution of power or undertakes substantial renovation and modernization of the existing transmission or distribution lines.
2	In case of an infrastructure facility being a public facility like – (i) a road, including a toll road, bridge or rail system; or (ii) a highway project including housing or other activities which are an integral part of the highway project; or (iii) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system.	Assessee has the option to claim deduction for 10 consecutive assessment years out of 20 years beginning from the year in which the undertaking or the enterprise develops or begins to operate the eligible business.

Section 80-IA (7) Audit of accounts: The deduction under this section from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an Accountant and the assessee furnished, at least 10 months before re due date of furnishing the return of income, the report of such audit in the **Form No. 10CCB** duly signed and verified by such an accountant.

Section 80-IA (8): Where any goods or services held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date :

Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner herein before specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Explanation: For the purposes of this sub-section, "market value", in relation to any goods or services, means,

(i) the price that such goods or services would ordinarily fetch in the open market; or

(ii) the arm's length price as defined in clause (ii) of section 92F, where the transfer of

such goods or services is a specified domestic transaction referred to in section 92BA.

Section 80-IA (9): Where any amount of profits and gains of an undertaking or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading *"C.—Deductions in respect of certain incomes",* and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be.

Section 80-IA (10): Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the Assessing Officer shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F.

Section 80-IA (11): The Central Government may, after making such inquiry as it may think fit, direct, by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertaking or enterprise with effect from such date as it may specify in the notification.

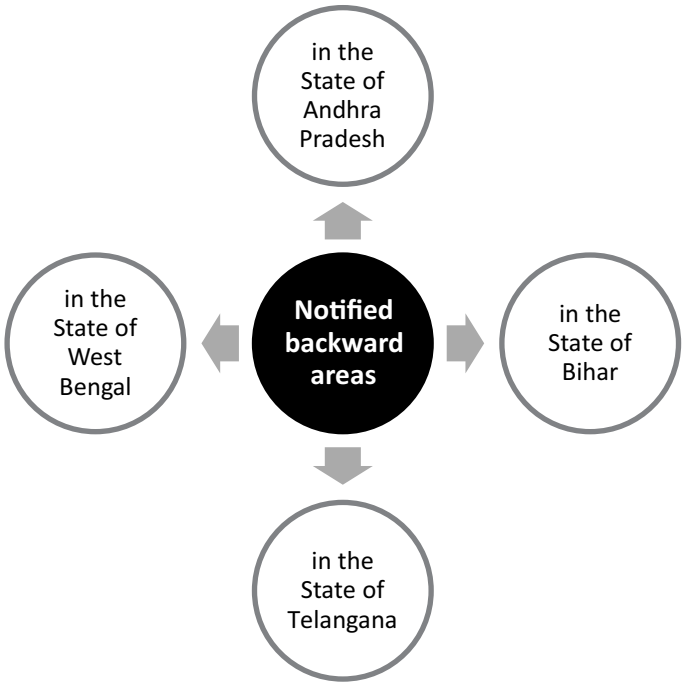
TAX PROVISIONS IN RESPECT OF INVESTMENT IN NOTIFIED BACKWARD AREAS

Section 32AD: Investment in new plant or machinery in notified backward areas in certain States.

Available to: An assessee, sets up an undertaking or enterprise for the manufacture or production of any article or thing, on or after the 1st day of April 2015 in any backward area notified by the Central Government.

Notified backward area

- in the State of Andhra Pradesh or
- in the State of Bihar or
- in the State of Telangana or
- in the State of West Bengal.



Condition for claiming deduction:

Acquires and installs any new asset for the purposes of the said undertaking or enterprise during the period beginning on the 1st day of April 2015 and ending before the 1st day of April 2020 in the said backward area.

Amount of deduction

15% of the actual cost of such new asset for the assessment year relevant to the previous year in which such new asset is installed.

Other conditions:

Section 32AD(2): If any new asset acquired and installed by the assessee is sold or otherwise transferred, except in connection with the amalgamation or demerger or re-organisation of business referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47, within a period of five years from the date of its installation, the amount of deduction allowed under this section in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which such new asset is sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset.

Section 32AD(3): Where the new asset is sold or otherwise transferred in connection with the amalgamation or demerger or re-organisation of business referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47 within a period of five years from the date of its installation, the provisions of sub-section (2) shall apply to the amalgamated company or the resulting company or the successor referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47, as the case may be, as they would have applied to the amalgamating company or the demerged company or the predecessor referred to in clause (xiii) or clause (xiiib) or clause (xiv) of section 47.

Section 32AD (4): For the purposes of this section, "new asset" means any new plant or machinery (other than a ship or aircraft) but does not include—

(a) any plant or machinery, which before its installation by the assessee, was used either within or outside India by any other person;

(b) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(c) any office appliances including computers or computer software;

(d) any vehicle; or

(e) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

LESSON ROUND-UP

- At the time of commencement of the new undertaking, the assessee has to think about the location so that the assessee can plan the tax and save the tax.
- Tax Provisions in Respect of Free Trade Zone / Special Economic Zone assessee can take the benefit under section 10AA and assessee can get the benefit of tax holiday period up to a maximum of 15 years.
- In case of a schedule bank a scheduled bank, or, any bank, incorporated by or under the law of a country outside India and having an offshore banking unit in a "Special Economic Zone"; or being a Unit of an International Financial Services Centre (IFSC) then the assessee can take the benefit of section 80LA.
- Tax Provisions in Respect of Infrastructure Development assessee can take the benefit of section 80IA. In that case, different types of undertaking are covered in which the assessee can avail of the benefit from 10 years to 20 years.
- Tax Provisions in Respect of Investment in Notified Backward Areas, in that case, if assessee invests in plants and machinery in notifies backward areas like in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal then assess ca claim deduction @15% of the actual cost of such new asset for the assessment year relevant to the previous year in which such new asset is installed.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Explain the essential condition for claiming deduction under section 10AA.
2. Explain the provision regarding deduction in respect of certain income of offshore banking units and international financial services centre.
3. Explain the provision regarding the Generation of Power Undertaking.
4. What type of benefit assessee can take in the case of Investment in notified Backward Areas.

LIST OF FURTHER READINGS

- Dr Vinod K Singhania : Corporate Tax Planning and Business Tax Procedure
- Dr Girish Ahuja and Dr Ravi Gupta : Corporate Tax Planning & Management
- Dr S.P. Goyal : Tax Planning and Management

OTHER REFERENCES

- Income Tax Act, 1961 - https://www.incometaxindia.gov.in/Pages/Acts/income-tax-Act.aspx
- Income Tax Rules, 1962 - https://incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx
- Circulars - https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx
- Notifications - https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx

Tax Planning and Managerial Decisions

Lesson 13

KEY CONCEPTS

■ Make or Buy decision ■ Scientific Research ■ Capital Structure ■ Inter-Corporate Dividends ■ Bonus Shares

Learning Objectives

To understand:

- The management strategic planning like own or lease, make or buy and shut down and continue
- The concept of tax planning with reference to the Sale of assets used for Scientific Research
- The organisation structure
- The provision of Inter-Corporate Dividends and Bonus Shares

Lesson Outline

- Tax Planning with respect to own or Lease Decision
- Make or Buy Decisions, Shut Down or Continue Decision
- Sale of Assets used for Scientific Research
- Capital structure & Dividend policy
- Inter-Corporate Dividends and Bonus Shares
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

Income-tax Act, 1961 Sections	*Deals with*
2 (22)	Deemed Dividend
56(2)(i)	Taxability of Dividend
80M	Deduction in respect of Inter Corporate Dividend Available to domestic companies

INTRODUCTION

Tax planning is very important in relation to all of these management decisions and specific management decisions on various issues such as decisions to own or lease, make or buy, Shut-down or continue, Sale of Assets used for Scientific Research, Capital Structure & Dividend Policy, Inter-Corporate Dividends and Bonus Shares etc.

When making a decision, the management must consider the tax saving according to the income tax act.

TAX PLANNING WITH RESPECT TO OWN OR LEASE DECISION

Purchase of assets out of own funds or out of borrowed capital

Property can be purchased or leased. In addition to the tax aspect, other factors such as the rate of technological change are also important when deciding whether to lease or buy.

Property Lease Benefits: Lease rent and lease management expenses may be deducted as revenue expenses. However, since the asset is not owned by the taxpayer, depreciation cannot be claimed.

When the assets *purchase out of their own fund* then the assessee can claim depreciation, however, when assets are *purchased out of borrowed* then the assessee can claim interest on the loan as well as assessee can claim depreciation too.

Purchase of an asset from own funds

Particulars	***Amount (Rs.)***
Gross cash outflow [Investment in the Year 0 (end)/ Year 1(beginning)]	XX
Less: PV of tax savings on account of depreciation	XX
Less: PV of cash inflow on account of sale	XX
Less: PV of tax savings on account of STCL (short-term capital loss)	XX
Add: PV of tax loss on account of STCG (short-term capital gain)	XX
Net cash outflow	**XXX**

Purchase of an asset from borrowed funds Particulars	***Amount (Rs.)***
Down payment	XX
PV of Interest payment every year	XX
PV of Principal Payment at the end of term loan	XX
Gross cash outflow [Investment in the Year 0 (end)/ Year 1(beginning)]	XX

Less: PV of tax savings on account of depreciation	XX
Less: PV of tax savings on account of interest payment	XX
Less: PV of cash inflow on account of sale	XX
Less: PV of tax savings on account of STCL (short-term capital loss)	XX
Add: PV of tax loss on account of STCG (short-term capital gain)	XX
Net cash outflow	**XXX**

CASE STUDY

An assessee, who carries on a business of manufacturing copper pipes, acquires machinery costing Rs. 1,00, 00,000. The machinery is utilized for the business of the company till year 5 with zero scrap value. In this case, the taxpayer can claim depreciation from year one to year five u/s 32. Effective tax benefits depend upon the maximum rate of tax is 33.384% (30% + Surcharge @ 7% + Health & Education cess @4% and rate of depreciation @ 15%. Tax savings are discounted at the rate of 10% to find out the present worth/value.

This case study is based on two plans, namely,

(i) When own funds are invested; and

(ii) When 75% cost of machinery is financed by a deposit taken from the bank @ 9%. interest is paid annually and the principal is repaid in year 5.

TABLE 1

A tax saving of depreciation @ 15%

[Investment: Rs. 1, 00,00,000; Tax rate: 33.384% and present value factor @ 10%]

Year (end)	*Amount of depreciation*	*Tax savings on depreciation*	*Tax savings on depreciation after the PV factor*
1	15,00,000	5,00,760	4,55,191
2	12,75,000	4,25,646	3,51,584
3	10,83,750	3,61,799	2,71,711
4	9,21,188	3,07,529	2,10,043
5	7,83,009	2,61,400	1,62,329
			14,50,858

Present value of outflow of cash when the machinery is purchased out of own funds

Investment in machinery	Rs. 1,00,00,000
Less: Tax saving on depreciation	Rs. 14,50,858
Net outflow	**Rs. 85,49,142**

TABLE 2

Present value of outflow on the purchase of machinery with borrowed funds

[Investment: Rs. 1,00,00,000 and amount borrowed: Rs. 75,00,000]

Year	*Interest @ 9%*	*Own investment and principal repaid*	*Present value of total outflow on principal and interest after tax saving @ 33.384% and after present value factor @ 10%*
0	-	25,00,000	25,00,000
1	6,75,000	75,00,000	4,08,739
2	6,75,000		3,71,418
3	6,75,000		3,37,693
4	6,75,000		3,07,116
5	6,75,000		49,36,738
			88,61,704

Present value of total outflow on principal and interest as per TABLE 2 Rs. 88,61,704

Less: Tax saving on depreciation as per TABLE 1 Rs. 14,50,858

Net outflow **Rs. 74,10,846**

Conclusion: From the above records it would be better than purchasing equipment out of the borrowed fund.

OWN OR LEASE

A lease is a provision that gives an individual the right to use and control an asset without ownership, for a price payable periodically. If the assets took on the lease, then the assessee pays the lease rent periodical as well as the Lease management fee and claimed both expenses in the books of accounts.

Where the Asset is leased:

1. Compute the time processing fees in zero years.
2. Computer Lease Rental spread over a number of years.
3. Compute Cash Outflow (processing fees + lease rental) spread over a number of years.
4. Compute Tax saved on deduction claimed (processing fees + lease rental) spread over a number of years.
5. Compute adjusted cash Outflow which is (3 – 5).
6. Compute the present value of adjusted cash outflow.

CASE STUDY

The situation in the case study-1 remains the same with the following additional information. The asset can be obtained on lease. The lease rentals are at the rate of Rs. 30,00,000 p.a. Lease management fee @ 1% is payable on the inception of the lease. Make calculations for all the 3 situations i.e.

(i) purchase with own funds.

(ii) purchase with borrowed capital.

(iii) taking assets on lease.

TABLE 3

Present value of cash outflow on leasing with own fund

Year	*Lease management fee*	*Lease rent*	*The outflow of lease management fee and lease rent after tax saving @33.384% and after present value factor @10%*
0	1,00,000	30,00,000	20,65,096
1		30,00,000	18,16,618
2		30,00,000	16,50,744
3		30,00,000	15,00858
4		30,00,000	13,64,962
			83,98,278

Conclusion: From the above records it would be better than purchasing equipment out of the borrowed fund.

MAKE OR BUY DECISIONS, SHUT-DOWN OR CONTINUE DECISION

If the company assembled the product and it is not feasible for to company to produce all the parts of the product. If the company produced all the components or parts, the company needs infrastructure, raw materials and all other arrangements to produce the parts of the product.

Manufacturing or purchasing decisions are driven by many cost and non-cost considerations. Some of these considerations include:

(a) capacity utilization,

(b) lack of funding,

(c) emerging technology,

(d) variable production cost versus purchase price,

(e) vendor dependencies,

(f) labour issues in factories, etc.

In respect of tax planning concerns at the time of making or buying decision various tax considerations should be kept in mind for these decisions:

- ***Establishing the new unit:*** If the assessee has to set up a new unit, then all the provisions according

to the Income Tax Act in respect of the location of the business and tax holiday period must be kept in mind.

- ***Sale of plants and machinery****:* Existing plants and equipment can be sold if purchasing is cheaper than manufacturing and taxpayers decide to purchase parts for the long term. Tax implication as specified by Sec. 50 has to consider.

CASE STUDY

The company requires 20,000 units of a component of Laptop every year for the next 5 years. The company has two options either Purchasing from the market or manufacturing the component. If the company manufacture the component it has to purchase machinery costing Rs. 5,00,000 by taking a loan75% of the value of machinery @ 9.5% p.a. from the bank. The company approach the bank and the bank makes the payment plan that the company need to pay interest annually and principal at the end of five years. The life of the machine is 5 years and the salvage value at the end of five years will be Rs. 25,000.

Estimated manufacturing are

Material Cost per component	Rs. 20
Labour Cost per component	Rs. 20
Variable cost per component	Rs. 15

The component is available in the market at Rs. 62 per component.

TABLE 4

A tax saving of depreciation @ 15%

[Investment: Rs. 1, 00,00,000; Tax rate: 33.384% and present value factor @ 10%]

Year	*Amount of depreciation*	*Tax savings on depreciation*	*Tax savings on depreciation after the PV factor*
1	75,000	25,038	22,760
2	63,750	21,282	17,579
3	54,188	18,090	13,586
4	46,059	13,586	9,279
5	39,150	13,070	8,116
			71,320

Present value of outflow of cash when the machinery is purchased out of own funds

Investment in machinery	Rs. 5,00,000
Less: Tax saving on depreciation as per TABLE 4	Rs. 71,320
Net outflow	**Rs. 4,28,680**

TABLE 5

Present value of outflow on the purchase of machinery with borrowed funds

[Investment: Rs. 5,00,000 and amount borrowed: Rs. 3,75,000]

Year	*Interest @ 9.5%*	*Own investment and principal repaid*	*Present value of total outflow on principal and interest after tax saving @33.384% and after present value factor @10%*
0	-		1,25,000
1	35,625	3,75,000	21,572
2	35,625		19,603
3	35,625		17,823
4	35,625		16,209
5	35,625		2,47,613
			4,47,820

Present value of total outflow on principal and interest as per TABLE 5	Rs. 4,47,820
Less: Tax saving on depreciation as per TABLE 4	Rs. 71,320
Net outflow	**Rs. 3,76,500**
Calculation of Manufacturing Cost	**Per Component**
Material	Rs. 20
Labour	Rs. 20
Variable Cost	Rs. 15
Depreciation	
Outflow as per TABLE 5/Unit Produced 3,76,500/1,00,000	Rs. 3.76
Manufacturing Cost per unit	Rs. 58.76
Buying Cost	Rs. 62

Conclusion: From the above records it would be better to manufacture the component than buying.

SALE OF ASSETS USED FOR SCIENTIFIC RESEARCH

When the assets are sold without having been used for another purpose

When the scientific research asset is sold without having been used for another purpose, then

(i) Net sale proceeds; or

(ii) Amount of deduction allowed as per section 35,

Whichever is less, shall be chargeable to tax under the head income from business and profession in the year of selling.

If the sale price exceeds the amount of deduction already allowed under section 35, shall be chargeable to tax under the head capital gain.

When the assets are sold after having been used for business

Where the scientific research assets are used for business purpose after it ceases to be used for scientific research, Assessee has been allowed the full amount as a deduction under section 35 hence value of assets shall be taken as NIL

➢ Opening WDV of the block	xxx
Add: Scientific research assets	NIL
Less: sale proceed	xxx
Gain/loss	xxx

CAPITAL STRUCTURE & DIVIDEND POLICY

Capital Structure

Arrangement of funds before the commencement of business is a very crucial task.

Managers have to think about different types of aspects at the time deciding on capital structure. Capital structure is a mix of sources of funds i.e., equity share capital, preference share capital, debenture, retain earnings and loans which are required for the establishment of the business.

The choice of the optimal capital structure has important implications in terms of maximizing returns, costs and risk participation for shareholders. Therefore, an appropriate combination of different funding sources is extremely important to maximize shareholder wealth and reduce funding costs.

From the taxation point of view expenses incurred on arranging loans/debentures like interest allowed expenditure while computing the business income of the assessee as per section 36(1)(iii) whereas dividend paid on shares to shareholders is not allowed expenses. The cost of raising funds is also allowed as a deduction in the year in which such expenditure is incurred. If such expenditure is incurred before the commencement of business or the extension of the undertaking or the new unit commences production or operation then it will be allowed in five equal instalments beginning with the previous year of commencement of business or the previous year in which the extension of the undertaking is completed or the new unit commences production or operation as per section 35D.

CASE STUDY

Q & R is the promoter of the business. He is planning to set up the cement industry and taking consultations on a regular basis with all types of experts. They have a plan on the basis of taxation the location, nature and form of organisation. On the basis of the project report, he needs 75 crores to commence the business.

Q & R form a Private Limited Company name QR Private Limited.

For the arrangement of funds, they explore the markets and the three options to arrange from which they can arrange the fund as a capital structure.

Case 1: The company can arrange the fund Rs. 75 crores from the issue of shares.

Case 2: The company can arrange the fund Rs. 50 crores from the issue of shares and Rs. 25 crores as a loan from the State Bank of India.

Case 3: The company can arrange the fund of Rs. 30 crores from the issue of shares, Rs. 20 crore from the issue of debentures and Rs. 25crores a loan from the State Bank of India.

Other information: Expected rate of return is 25%. The company can debt fund @12% p.a. and the rate of interest on bank loans is 10%. The effective tax rate is 33.384% including surcharge and cess.

Q & R approach to you to find out the best suitable mix. As a Finance Professional, what willyou're your suggestion be to QR Private Limited?

Solution (Fig in crores)

Particulars	***Alternative***		
	Case 1	***Case 2***	***Case 3***
Equity Share Capital	75	50	30
Bank Loan		25	25
Debentures			20
Total Fund	**75**	**75**	**75**
EBIT (Return @ 25 on 75,00,00,000)	18.75	18.75	18.75
Less: Interest on loan @ 10%		2.50	2.50
Less: Interest on debt @ 12%			2.40
EBT (Earning Before Tax)	**18.75**	**16.25**	**13.85**
Less: Tax payable @33.384%	6.260	5.425	4.624
Profit after Tax	12.49	10.825	9.226
Return on Equity Share Capital	16.65%	21.65	30.75%

Conclusion: Q&R Private Limited should opt for Case 3 as the return on equity share capital is maximum.

CASE STUDY

RRR Limited is considering an expansion plan. He had to choose between a debt offer and an equity offer for his expansion plans. The current plan is as follows:

Particulars	***Amount (in crores)***
10% Debt	16
Equity Share Capital (Rs. 10 per share)	40
Reserve and Surplus	24
Total Capitalisation	80

Total Sales	240
Less: Total Cost	216
EBIT	24
Less: Interest @10%	1.6
EBT	22.4
Less: Tax @ 34.944% (Tax @25%+12%Surcharge+4%Cess)	7.83
EAT	14.57

The expansion plan is estimated to cost Rs. 40 crores. If this is financed through debt, the new rate of debt will be 10% and the price-earnings ratio will be 5 times. If the expansion plan is financed through equity, new shares can be sold at Rs. 25 per share and the price-earnings ratio will be 6 times. The expansion plan will generate extra sales of Rs. 120 crores with a return of 12% on sales before interest and taxes. If the company is to follow a policy of maximizing the market value of shares, which form of financing should be chosen?

Solution:

Computation of Market Value of shares under different alternative

Particulars	***(Figures in crores)***	
	Alternative	
	10% Debt	***Equity Shares***
Present earnings before interest and tax (EBIT)	24	24
Add: Additional Income on sale of Rs. 120 crores @12% before interest and tax	14.4	14.4
Total expected EBIT	38.4	38.4
Less: Interest on debentures @ 10%	5.6	1.6
EBT	**32.8**	**36.8**
Less: Tax @34.944	11.46	12.86
EAT	21.34	23.94
Earnings per share (I = 21.34/4) (II- 23.94/4+1.6)	5.34	4.28
Price Earnings Ratio	5	6
Market Value of share	**26.7**	**25.68**
Conclusion: Since in Alternative 1 market value per share is maximum, so RRR Limited should choose debt financing for the expansion plan.		

DIVIDEND POLICY

A dividend, generally, means the sum paid to or received by a shareholder in proportion to his shareholding in a company out of the total profit distributed. The word 'deemed' has not been defined anywhere in the Act.

Section 56(2)(i) Taxability of Dividend

Dividend declared by:

(a) Domestic Company;

(b) Any other income distributed by Unit Trust of India;

(c) Foreign Company.

Dividends (whether interim or otherwise) declared, distributed or paid by the domestic companies whether out of current or accumulated profit shall be taxable in the hands of shareholders.

Dividend received from the company is also taxable in the hand of the shareholder under the head 'Income from Other Sources".

Dividend received in respect of :

(i) Units from the Administrator of the specified undertaking, or

(ii) The specified company, or

(iii) A Mutual Fund specified under clause (23D).

shall be taxable in the hands of shareholders.

Deemed Dividends

The sub-clauses (a) to (e) of section 2 (22) of the Income-tax Act, 1961 bring within the scope of dividends certain distributions/outflows which would otherwise not be considered dividends in the ordinary sense. 'Dividend' includes the following disbursements by the company to the shareholders, to the extent of accumulated profits.

Section 2 (22) (a): Distribution entailing the release of assets of the company

Any distribution by the company of accumulated profits, whether capitalized or not, if this distribution involves the release by the company to its shareholders of all or part of the company's assets.

In simpler words, there are two conditions highlighted

(i) The company should distribute from accumulated profit;

(ii) Such distribution must be released in the form of assets of the company.

Note: Distribution may be in form of cash or kind, where the distribution in form of kind, the market value of the assets shall be treated as deemed dividend in the hands of shareholders.

The allocation of bonus shares to shareholders does not result in the release of assets for the benefit of shareholders and is therefore not taxed as a dividend.

If a company offers shareholders an option to accept bonus shares or cash and the shareholders accept cash, then such activity leads to an outflow of assets from the company to shareholders. In such cases, it would be taxable as a dividend in the hands of the shareholder.

If accumulated profits are capitalised and redeemable preference shares are issued as a bonus to equity shareholders, then on redemption of such bonus preference shares there would certainly be the release of

assets in favour of the shareholders; such payoff of bonus shares would be taxable as dividends. [*Shashibala Navnitlal (54 ITR 478) Guj.&Dalmia Investment (52 ITR 567) SC]*. Where assets are distributed as dividends, the amount of dividend is taken to be the market value of the property on the date on which the shareholders become entitled to receive the dividend *[CIT vs. Central India Industries Ltd. 82 ITR 555 (SC)]*

Section 2 (22) (b): Distribution not involving the release of assets of the company

Any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest and any distribution to its preference shareholders of shares, by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not.

Section 2(22) (c): Distribution on liquidation

Any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not.

Distribution by a liquidator by itself does not trigger taxability as dividend income unless the company had accumulated profits before it went into liquidation.

Shareholders are subject to capital gains tax u/s. 46 (1) on assets distributed on liquidations. Capital Gain is calculated after deducting from the consideration price or market value, the deemed dividend under section 2(22) (c).

Section 2(22) (d): Distribution on reduction of share capital

Any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits whether such accumulated profits have been capitalised or not.

Distribution to shareholders on account of reduction of share capital attracts tax implications u/s. 2(22) (d) of the Act and also capital gains taxation u/s. 45 of the Act. *Kartikeya vs. Sarabhai v. CIT (228 ITR 163) SC.*

Section 2(22) (e): Distribution of accumulated profit by way of Loan or advance to shareholder

Any payments by a company not being a company in which the public are substantially Interested of any sum by way of loan or advances to a shareholder is the beneficial owner of the share, holding not less than 10 per cent of the voting power; or to any concern in which such a shareholder is a member or a partner and in which he has a substantial interest i.e. holding 20% voting power or 20% shares in the concern; or to any person on behalf of or for the individual benefit of such a shareholder Shall be treated as deemed dividends in the hands of shareholders to the extent of accumulated profit.

Note:

1. The advance or loan is made to an equity shareholder who beneficially owns at least 10 per cent of the equity capital or to a concern in which he is a member/partner and is beneficially entitled to not less than 20% shares of the concern;
2. The company should possess accumulated profits at the time it makes the payment. The payment can be deemed to be a dividend only to the extent of such profits.
3. Here 'concern' means a HUF, a firm, AOP, BOI or a company.

   If a loan or advance is given to a concern, such amount shall be treated as deemed dividend in hands of the shareholder and not the concern. *ACIT* v. *Bhaumik Colour Pvt. Ltd. 27 SOT 270 Mum* (*SB*) and *CIT* vs. *Universal Medicare* (*P.*) *Ltd.* 324 ITR 263 (Bom.)

4. When a loan is deemed to be a dividend, the same amount when repaid/relent cannot once again be taxed as a dividend. The accumulated profits should be notionally reduced by the amount of loans once deemed to be a dividend. *CIT vs. G. Narasimhan 236 ITR 327 (SC)*

5. 'Accumulated profits' means commercial profits and not profits as assessed for income tax purposes. From accumulated profits, all "disbursements legitimately attributable to it by way of expenses, development, dividends and deemed dividends" must be reduced.

6. SC in *CIT vs. Damodaran 121 ITR 572 & CIT vs. Ashokbhai Chimanbhai 56 ITR 42* held that 'accumulated profits' cannot include current profits. However, Explanation 2 to section 2 (22) provides that the expression "accumulated profits" shall include all profits of the company up to the date of distribution or payment or liquidation.

7. These would include development rebate & investment allowance reserve. *P. K. Badiani vs. CIT 105 ITR 642 (SC).* It will even include income which is exempt from tax. *Tea Estate vs. CIT 103 ITR 785 (SC).*

8. Building & Machinery Depreciation fund not to be included in accumulated profits. CIT vs. Jaldu Rama Rao 140 ITR 168 (Andhra Pradesh).

9. Depreciation calculated at income tax rates should be deducted in computing accumulated profits even if lower depreciation has been provided for in accounts. *CIT vs. Jamnadas 92 ITR 105 (Bom).*

10. Share premium is not a part of accumulated profits. *DCIT vs. Maipo India Ltd.116 TTJ 791 (Delhi).*

11. Due to the operation of section 8 of the Act, dividend income becomes taxable in the year in which it is declared, distributed or paid even if it relates to an earlier year in respect of which it is declared. The right of the shareholders to dividend crystallizes only when the dividend is declared.

12. Applicability of Tax Deduction at Source – As per section 194, provisions of tax deduction at source are applicable to deemed dividends and the company is bound to deduct tax whenever the payment made to the shareholder falls within the provisions of section 2(22)(e).

Exclusions from deemed dividend

a. Distribution to shareholders in the event of liquidation or on reduction of share capital, to the extent of the accumulated profits of the company is included as a dividend. But any such distribution in respect of any share issued for full consideration, where the shareholder is not entitled to participate in the surplus assets in event of liquidation is excluded from the definition of the dividend. In other words, distribution to preference shareholders on liquidation or reduction of capital shall not be treated as deemed dividends.

b. In the case where money lending is a substantial part of the business of a company, any advance or loan made to a shareholder or the concern by the company in the ordinary course of business is not taxable as a dividend. *CIT vs. Sivasubramaniam (231 ITR 656)*

c. Any subsequent dividend paid by the company is not taxable as a dividend to the extent to which it is set off by the company against any loan or payment that has been earlier treated as a dividend within the meaning of sub-clause (e). However, if the dividend paid is not set off against the earlier deemed dividend, then in absence of set off such dividend will be taxable. *Walchand & Co. Pvt Ltd vs. CIT 204 ITR 146 (Bom.)*

d. Any payment made by a company for the buyback of its own shares in accordance with provisions of section 77A of the Companies Act, 1956 is not to be taxed as a dividend. It will be taxable as capital gains/losses to shareholders as per section 46A.

e. Distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company) is to be excluded from the definition of the dividend.

f. Inter-corporate deposits are not 'loans and advances' and are not assessable to tax as deemed dividends. *IFB Agro Industries Ltd.* vs. *JCIT 63 SOT 207* (*KOL*).

Case Laws

CASE: 1- What kinds of advances are covered within the scope of section 2(22)(e)?

It has been held by *Rajasthan High Court, In Re. CIT* vs. *Raj Kumar* (2009) 23 DTR (Del) 304 that the word 'advance' has to be read in conjunction with the word 'loan' i.e., payment shall be construed as a loan or advance if it involves following attributes–

- Positive act of lending coupled with acceptance by the other side of the money as a loan;
- Generally, carries interest;
- Obligation of repayment is inherent.

Considering the rule of construction viz., *noscitur a sociis* and keeping in view the intent of introducing the provisions [i.e., to plug the evasion of tax by payment of dividends in the guise of loans & advances to the principal shareholders], ***any advance which does not carry with it the obligation of repayment*** cannot fall within the four corners of the deeming provision. Consequently, trade advances made in the ordinary course of business that are adjusted against the supply of goods/services do not fall within the ambit of section 2(22)(e).

CASE: 2- In whose hands will the payment deemed to be a dividend if the loans or advances are made to the concern or person on behalf of or for the benefit of the substantial shareholder?

It is a general principle that a payment can be taxed as a dividend only in the hands of a shareholder. The same cannot be taxed in the hands of a non-shareholder. This view has been reiterated by *Rajasthan High Court, In Re. CIT* vs. *Hotel Hilltop* (2008) 217 CTR (Raj.) 527 wherein it was held that the essential requirement of section 2(22)(e) is that payment should be made on behalf of or for the ***individual*** benefit of the substantial shareholder. Thus, the provision is intended to attract the liability of tax on the person on whose behalf or for whose benefit the amount is paid by the company.

In re CIT vs. *Bhaumik Colour P. Ltd* (2009), the special bench of the Mumbai tribunal held that the inclusive definition of section 2(22)(e) enlarges the scope of the term dividend by including loans & advances. The legal fiction created by the said section is operative only so long as the deemed dividend is taxed in the hands of the shareholder. If the legal fiction is extended to loans & advances to a non-shareholder, the very term 'dividend' will lose its identity.

One of the exceptions to section 2(22)(e) is that dividend shall not include any dividend paid by the company which is set off by the company against the whole or any part of the sum previously paid by it and treated as a dividend within the meaning of sub-clause (e) to the extent it is so set off.

In the event of the payment of a loan or advance by a company to a concern being treated as a dividend and taxed in the hands of the concern then the benefit of set-off cannot be allowed to the concern, because the concern can never receive a dividend from the company which is only paid to the shareholder, who has a substantial interest in the concern. The above provision, further, contemplates that deemed dividends be taxed in the hands of shareholders only.

CASE: 3- One of the exceptions to section 2(22)(e) is that dividend shall not include any loans or advances made to a shareholder or the said concern by the company in the ordinary course of its business, where lending money is a substantial part of the business of the company. Elaborate?

The term 'substantial' appearing in the aforesaid exception is not defined. But the same is defined in explanation 3(b) to section 2(22)(e) as not less than 20% of the income of such concern. Following the judgement of the supreme court in *CIT* vs. *Venkateshwara Hatcheries* (237 ITR 174) wherein it was held that the definition in one section can be used for understanding the meaning of the word in another section if the context justifies it, it can be concluded the definition of the term 'substantial' used in the aforesaid section means 20% or more of the income of a concern.

Thus, if the income from money lending is 20% or more of the total income of the closely held company and the turnover of the loan funds to total funds of the company is above 20%, any loans or advances made by the said company to its principal shareholder cannot be deemed to be a dividend. The same was upheld by Delhi Tribunal in *Mrs. Rekha Modi vs. ITO* (2007) (13 SOT 512) and the same was not further challenged by the revenue.

Further, in deciding whether the company is engaged in the money lending business, the factual position only for the relevant previous year in question has to be considered i.e., the year in which the loan or advance has been given to the principal shareholder holding 10% or more of the voting power. The same has been upheld in the aforesaid judgement of the tribunal

CASE: 4- Indian tax authorities would invoke this provision whenever they came across any related party transaction involving a grant of loans and advances, especially in cases where shareholders of the lender company were substantially interested.

For a long time, there has been significant litigation regarding the applicability of this provision. Indian tax authorities would invoke this provision whenever they came across any related party transaction involving a grant of loans and advances, especially in cases where shareholders of the lender company were substantially interested. The Courts have stated that this provision would be attracted only if the shareholder itself received the requisite loans and advances. However, tax authorities continue to invoke this provision even when it involves other group entities belonging to the shareholder group.

This issue seems to have been resolved with the recent decision of the Hon'ble Supreme Court in the case of ***Madhur Housing***. The Hon'ble Supreme Court, while dealing with multiple appeals from various High Courts **(HC)** conclusively held that the provision of deemed dividends under the IT Act would not be attractive if the borrower is not a shareholder of the lender company. The Hon'ble Supreme Court upheld the decision of the Hon'ble Delhi HC in the case of ***Ankitech*** and has subscribed to the reasoning given by the Hon'ble HC in the aforementioned judgment, without giving any additional reasoning. Thus, it would be pertinent to examine the decision of the Hon'ble Delhi HC in the case of Ankitech.

Facts of the case :

The taxpayer company had received certain amounts as advances from another company 'A'. The shareholders holding a substantial interest in the taxpayer company also held more than 10% voting power in A. The tax authorities held that since the shareholders who were holding a substantial interest in the taxpayer company also held a substantial interest in A, which made advances to the taxpayer, the amount of loans and advances should be construed as deemed dividends.

However, the Hon'ble Income Tax Appellate Tribunal (ITAT) reversed the decision of the lower authorities and held that though the amount received by the taxpayer qualified as deemed dividends, it could not be taxed in the hands of the taxpayer company, since the taxpayer company was not a shareholder in A. The ITAT also clarified that such dividends could only be taxed in the hands of the shareholders who had a substantial interest in the taxpayer company and were also holding not less than 10 per cent of the voting power in A.

Decision:

The tax authorities were aggrieved by the relief granted by the ITAT, so approached the Hon'ble Delhi HC. The Hon'ble HC held that from the perusal of the relevant provisions, it appears that the intention of the legislature was to tax deemed dividends only in the hands of the shareholders of the lender company which holds a substantial interest. The Hon'ble HC also observed that the deeming provisions were introduced to curb tax evasion resorted to by certain closely held companies which distributed accumulated profits as loans or advances instead of dividends and to tax such advances as dividends in the hands of the 'shareholders.

The Hon'ble HC further observed that the aforesaid provisions are deeming provisions, as the section creates a legal fiction that such loans and advances, which otherwise would not qualify as dividends, are in nature of dividend payments. Accordingly, the Hon'ble HC held that this deeming fiction is limited to enlarging the scope of the term 'dividend' and in no case can it be extended to broaden the understanding of the term 'shareholder'. The Hon'ble HC also went on to further clarify that if it were the intention of the legislature to broaden the definition of the term 'shareholder', it would have introduced similar language to that effect. The Hon'ble HC also relied upon the decision of the Supreme Court in the case of *CP Sarathy* and the decision of the Hon'ble Bombay HC in the case of *Universal Medicare* respectively, to hold that in order to invoke the provisions pertaining to deemed dividends, the loan or advances must be advanced to shareholders or to a concern in which such shareholders have substantial interest and the such shareholder must be both registered as well as a beneficial shareholder of the lender company.

The tax authorities attempted to place their reliance on Circular no. 495 dated September 22, 1997, which provided that deemed dividends would be taxable in the hands of the concerned borrower. However, the Hon'ble HC rejected such a claim and held that such a circular was to no avail, as the correct legal position was that the deemed dividend income can only be taxed in the hands of the shareholders of the lender company.

Conclusion

The Hon'ble Supreme Court, by upholding the decision of the Hon'ble Delhi HC in the case of Ankitech, has cleared the clouds of ambiguity surrounding the taxation of deemed dividends and has clarified that loans or advances given to a concern in which the shareholders of the lender company are substantially interested would not be taxable as deemed dividends in the hands of the recipient if the borrower entity itself was not a shareholder of the lender company.

This Hon'ble Supreme Court's final decision is expected to grant relief to the taxpayers in respect of a number of other outstanding litigations. However, with the introduction of a number of anti-abuse provisions including the General Anti-Avoidance Rule (GAAR), tax authorities are now legally empowered to challenge any transaction undertaken by taxpayers if such transactions cannot be substantiated on account of business expediency. Hence, taxpayers would be well advised to plan their tax affairs so that any such transactions can be justified with commercial rationale and meet "substance over form". It must be remembered that aggressive tax planning could result in unwarranted litigation.

Other Case Laws:

- In *Kantilal Manilal* vs.*CIT* [1961] 41 ITR 275(SC) the Supreme court held that Section 2(22) deals with various types of cases and creates a fiction by which certain receipts or parts thereof are treated as dividends for the purpose of levy of Income-tax.
- In *CIT* vs. *Martin Burn Ltd.*, (1982)136 ITR 805(cal) the Calcutta High court held that Under section 2(22) certain amounts which are actually not distributed are also brought within the net of dividends. Therefore, that section must receive a strict interpretation.
- Section 2(22)(e) has been held to be constitutionally valid in *Navnitlal C. Javeri* v. *K.K.Sen, AAC* [1965] 56 ITR 198 (SC).
- A loan of money results in a debt but every debt does not involve a loan [*Bombay Steam Navigation Co. (1953) (P.) Ltd*. vs. *CIT* (1965) 56 ITR 52 (SC): TC 16 R. 881];
- Any loan given by life insurance companies to their policy holders-shareholders in the normal course of business on the security of insurance policies and within the limits of their surrender value should not be treated as dividends [Circular No.43 (LXXVI-7) dt. 27th Oct. 1955];
- Payment by the company to a firm in which the shareholder is a partner for repayment of advances in the regular course of business cannot be deemed dividend under section 2(22)(e) [*Mukundray K. Shah* vs. *CIT* (2005) 197 CTR (Cal) 563: (2005) 277 ITR 128 (Cal)];
- Withdrawal over and above credit balance is to be treated as deemed dividend. For example, When a company has accumulated profits, withdrawal by a shareholder over and above the credit which he has with the company would be deemed a dividend when the shareholder had no credit balance in any other account [*CIT* vs. *P. Sarada* (1985) 46 CTR (Mad) 328: (1985) 154 ITR 387 (Mad): TC41R.306];
- Loan obtained by the shareholder through proprietary concern would be treated as deemed dividend under section 2(22)(e) [*Nandlal Kanoria* vs. *CIT* (1980) 122 ITR 405 (Cal): TC 41 R. 311];
- Shareholder doing business with the company and always having debit balance **Explanation:** When a shareholder has business with the company and when his accounts with the company are always on the debit side, the amount in question would be regarded as a loan by the company to the shareholder and if there are accumulated profits to cover the debit balance, the amount in question would be regarded as deemed dividend under section 2(22)(e) [*CIT* vs. *Jamnadas Khimji Kothari* (1973) 92 ITR 105 (Bom): TC 41 R. 320]. However, where the company has made advances to the concern of the shareholder towards purchases to be made by the company from the said concern, such advances would not be deemed dividend under section 2(22)(e) [*CIT* vs. *Nagindas M. Kapadia* (1989) 75 CTR (Bom) 161: (1989) 177 ITR 393 (Bom): TC 41 R. 321];
- Money advanced as a loan by a company substantially doing money lending business could not be treated as deemed dividend under section 2(22)(e) [*CIT* vs. *V. S. Sivesubramaniam* (1997) 141 CTR (Mad) 34]
- (*Income Tax Officer* vs. *Kalyan M Gupta* (2007) 111 TTJ (Mumbai) 1005, (2007) 107 ITD 34 (Mumbai), (2007) 11 SOT 530

  Kalyan Gupta was a shareholder with more than 10 per cent interest in Om Shipping Agents (P) Ltd. He received a loan of Rs 73 lakh from the company. This was outstanding as on March 31, 1998. After hearing from the assessee, the income-tax officer (ITO) added Rs 73 lakh as deemed dividend assessable under Section 2(22)(e).

It was pleased that the amount was only temporary borrowing and not in the nature of a loan or advance. As this argument was not accepted, another submission was raised to the effect that the dividend exemption provided under Section 10 should be given effect in respect of the sum of Rs 73 lakh.

This provision came into effect from the assessment year 1998-99. What applies to dividend income should also apply to deemed dividends under Section 2(22)(e). The Bench examined Sections 115O, 115P and 115Q in Chapter XIID of the Act. It referred to the Explanation given in this chapter: "For the purposes of this Chapter, the expression "dividend" shall have the same meaning as is given to "dividend" in clause (22) of Section 2 but shall not include sub-clause (e) thereof."

The loan or advance to the substantial shareholder is treated as deemed a dividend under Section 2(22)(e). The Explanation at the end of Chapter XI B stipulates that the expression 'dividends' shall not include this type of deemed dividends comprising loans and advances. Thus, deemed dividend referred to in Section 2(22)(e) has been excluded from the ambit of Chapter XIIB. Tax is not levied on the company with regard to such deemed dividends. Consequently, the exemption provided under Section 10 is not applicable to the "deemed dividend" referred to in Section 2(22)(e).

- In order to attract the provisions of section 2(22)(e), the important consideration is that there should be a loan/advance by a company to its shareholder. Every payment by a company to its shareholder may not be a loan/advance. To be treated as a loan every amount paid must make the company a creditor of the shareholder for that amount. If, however, at the time when payment is made, the company is already the debtor of the shareholder, the payment would be merely a repayment by the company towards its already existing debt. It would be a loan by the company only if the payment exceeds the amount of its already existing debt and that too only to the extent of the excess. If the shareholder has a current account with the company, the position as regards each debit will have to be considered individually, as it may or may not be a loan. In such case, the debit balance of the shareholder with the company at any point in time cannot be taken to represent an advance/loan by the company; nor can the amount at the end of the previous year be alone taken as a loan. *CIT vs. P.K. Badiani[1970] 76 ITR 369 (Bom.).*
- Whether an overdraft taken by a major shareholder from the company will be covered as deemed dividend? An overdraft taken by a shareholder from the company is treated as a loan and taxable as a dividend if conditions of section 2(22) (e) are satisfied – *CIT vs. K..Srinivasan [1963] 50 ITR 788 (Mad.).*
- What will be the position when a major shareholder misappropriated some amount from the company? Amount misappropriated by the director cannot be treated as deemed dividend in his hands since in such a case there is no lending or advancing by the company. It cannot be said that in such a case the company has paid anything and unless there is an actual payment by the company as a loan or advance to the assessee, it cannot be treated as a dividend under section 2(22) (e). *CIT* v. *G. Venkataraman* [1975] 101 ITR 673 (Mad.)
- If a loan is repaid before the end of the previous year, the section will be attracted? Yes, even if a loan is repaid before the end of the previous year the section will be attracted. In Tarulata Shyam v. CIT [1977] 108 ITR 345 (SC) the Supreme court held that under section 2(22) the liability to tax attaches to any amount taken as a loan by the shareholder from a controlled company to the extent it possesses accumulated profits at the moment the loan is borrowed and it is immaterial whether the loan is repaid before the end of the accounting year.

- Whether Book debts will be covered by "loans and advances"? Where the assessee-shareholder, having a business of his own, was transacting business with the company and the account of the assessee in the company always showed a debit balance, it was held that the said debit balance would amount to a loan from the company to the assessee. *CIT* v. *Jamnadas Khimji Kothari* [1973] ITR 105 (Bom.)

- Every sale of goods on credit does not amount to a transaction of loan. A loan contract no doubt creates a debt but there may be a debt without contracting a loan. *Bombay Steam Navigation Company P. Ltd.* v. *CIT* (1965) 56 ITR 52(SC)

- Whether a Security deposit to a major shareholder for use of premises will be covered under clause (e)? A genuine security deposit without any element of a loan may not be considered a loan.

- Whether loans or advances to b will be covered? Loans to relatives of substantial shareholders are not covered as loans or advances to the shareholder. However, such loans or advances may be covered as" payment on behalf of or for the individual benefit" of the shareholder.

- Clause (ii) to section 2(22) provides that "dividend" does not include any advance or loan made to a shareholder [or the said concern] by a company in the ordinary course of business, where the lending of money is a substantial part of the business of the company;

  If a majority of a company's assets and income are from a money-lending business, it will be proper to assume that the lending of money is a substantial part of the company's business.

  In Walchand & co. Ltd. v. CIT, (1975)100 ITR 598(Bom) it was held that the onus to prove these facts lies on the assessee. The same was also confirmed in the case of *CIT* v. *Creative dyeing & Printing (P) Limited* 184 taxman 483.

- Clause (iii) to section 2(22) provides that "dividend" does not include any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is set off.

  This clause gives some relief to the assessee by way of avoiding double taxation as well as brings in some scope for tax planning. Thus, if a loan is already treated as a dividend, it may make sense to declare a dividend and adjust the outstanding loan amount against the dividend declared. No tax will be payable by a shareholder on such dividend declared.

  However, if the loan has been repaid by the shareholder and nothing is due by the shareholder against the loan referred in section 2(22)(e), then no set-off would be possible. Also, if the sum due by the assessee is on account of some other payments not covered by section 2(22)(e), then set-off will not be possible.

- A managing director of a company, whenever he needed money used to ask an employee to take a loan from the company and pass it on to him even without executing any pronote. Can he be said to have received any benefit? It was held that the loans made by the company to the employee fell in the category of "benefit" to the assessee managing director and were, therefore, assessable as deemed dividends in his hands – *CIT vs. L.Alagusundaram Chettiar [1977] 109 ITR 508 (Mad.).*

- In one case, the assessee, having substantial interest in company X, obtained from company Y two loans of Rs. 75,000 and Rs.2,00,000 on July 30, 1968, and September 2, 1968, respectively. The question for consideration was whether these amounts could be treated as deemed dividends in the hands of the assessee under section 2(22)(e) on the ground that Y had made these loans to the assessee out of loans received by Y from X on the same dates. The Court held (in *Nandlal Kanoria* vs. *CIT* [1980] 122 ITR 405 (Cal.)), that there was no loan given by X to the assessee. However, as the loan of Rs. 75,000 was given by Y to the assessee out of an equal amount received as a loan from X on the same date, this amount was a payment by X for the benefit of the assessee and fell within the mischief of section 2(22)(e). The same could not be said of the loan of Rs. 2,00,000, as on the date of making that loan, Y had received loans not only from X but from another source also and the loan was made out of a blended amount
- In *Navnitlal C. Jhaveri* vs. *CIT* [1971]80 ITR 582(Bom) a question arose that while calculating accumulated profits depreciation as per books should be considered or as per IT Act? The Bombay High court held that while calculating accumulated profits an allowance for depreciation at the rates provided by the Income-tax Act itself has to be made by way of deduction.
- Even a loan obtained by the assessee-shareholder from a company out of its Accumulated profits, which are exempt in the hands of the company as agricultural income, is to be treated as deemed dividend in the hands of the assessee. *S. Kumaraswami* vs. *ITO [1961] 43 ITR 423 (Mad.)*
- Whether balancing charge u/s 41(2) will form part of accumulated profits? In *CIT* vs. *Urmila Ramesh* (1998) 230 ITR 422, the Supreme Court held that the amount of balancing charge under section 41(2) of the Act, did not represent Accumulated profits.
- Provision for tax and provision for dividends cannot form part of Accumulated profits. *CIT* vs. *V. Damodaran [1972] 85 ITR 59 (Ker.).* This is obvious because each of them represents a liability and is not in the nature of profits or reserves.
- These words which are found in clauses (a) to (d) are not found in clause (e) of section 2(22) and, therefore, that provides some relief from the mischief of the section as well as provides some scope for planning. Thus, it must be interpreted that to the extent of capitalisation of profits, accumulated profits would reduce for the purpose of this clause but not for the other four clauses of section 2(22). What is capitalisation? It will ordinarily mean the conversion of profits or reserves or income into capital as per the Company's Articles of Association.
- Similarly, a transfer to General Reserve will not amount to capitalisation.

  The reason for allowing the reduction of the accumulated profits to the extent of capitalisation of profits seems to be that to the extent of capitalisation, divisible profits i.e., profits available for distribution of dividends will reduce. A company cannot distribute dividends out of capitalised profits i.e., the capital. Thus, if a closely held company wants to give a loan or advance to a shareholder or his concern/company which is covered by this clause, it may first issue bonus shares (and thus capitalise the accumulated profits) and then grant such loan or advance. This is one sure way of escaping from the clutches of section 2(22)(e). However, it may involve expenses of filing fees and stamp duty on the increase of authorised share capital. Also, a company may not want to increase its capital due to various other reasons.
- *In CIT* vs. *Mayur Madhukant Mehta [1972] 85 ITR 230 (Guj.)* it was held that there is nothing in sub-clause (e) of section 2(22) to restrict the deemed dividend to that portion of Accumulated profits which corresponds to the assessee's shareholding in the capital of the company.

- If a loan is given by a company to a shareholder who owns 25 per cent of share capital, the amount of loan to the extent of entire Accumulated profits (and not to the extent of 25 per cent of Accumulated profits) will be treated as dividends. *CIT* vs. *Arati Debi* [1978] 111 ITR 277 (Cal.).
- When a loan is treated as a deemed dividend and is repaid by the shareholder will it be added to the "accumulated profits"? Section 2(22)(e) must be so interpreted that once an amount goes out of "accumulated profits" as a loan and the loan is to be deemed as a dividend the same amount when repaid cannot again be capable of attracting fiction and be deemed as a dividend. To avoid the happening of any such eventuality, the "accumulated profits" must be notionally reduced by the amount of all loans which are to be treated as dividends under section 2(22)(e). *CIT* vs. *P.K. Badiani.* [1970] 76 ITR 369 (Bom.).
- Whether interest paid on a loan which is treated as deemed dividend will be admissible as a deduction under section 57(iii)? Section 57(iii) allows a deduction for any expenditure (not capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income. In Nandlal Kanoria vs. *CIT* [1980] 122 ITR 405(Cal.) the Calcutta High court held that interest paid on a loan treated as deemed dividend under section 2(22)(e) is not admissible as a deduction under section 57(iii).
- Trade advance to shareholder not to be considered as Deemed dividend. Refer to *CIT* v. *Raj Kumar* 318 ITR 462.
- Financial transactions in the normal course of business – cannot be considered as deemed dividends u/s 2(22)(e). Refer to *CIT* v. *Ambassador Travels (P) Limited* 318 ITR 376.
- Deemed dividend is taxable in the hands of the shareholder not to the company. Refer, to *CIT* v. *Universal Medicare Private Limited* 324 ITR 263.
- Money lending being one of the six main objects of the lender company and the said business having been carried on by it in preference to other business, the loan given to the assessee was in the course of money lending business and therefore, the assessee's case is not covered by the provisions of s. 2(22)(e), income criteria from a particular source of income were not relevant. Refer, to Krishnoics Ltd. 120 TTJ 650.
- The Tribunal accepted the assessee's contention that both the companies were non-banking companies and the amounts were given in the ordinary course of business hence the receipt of the loan as deemed dividend cannot be taxed. Refer to *Usha Commercial (P) Ltd.* 30 SOT 37.
- Assessee company having received advances from another company in the normal course of business, same cannot be treated as deemed dividend u/s. 2(22)(e). Refer to *Timeless Fashions (P) Ltd.* 33 DTR 48.
- Assessee procured a loan from a company in which he was a director and was holding 50% equity shares. The said company was in the business of lending money, and on the amount given as a loan to the assessee it charged Interest. Held, that s. 2(22)(e) cannot be attracted as it was a business transaction of the company. Refer to *Bharat C. Gandhi* 178 Taxmann 83.
- Loan received by the assessee before becoming a registered shareholder of the lender company cannot be treated as deemed dividend u/s. 2(22)(e). Refer to *Sagar Sahil Investment (P) Ltd.* 120 TTJ 925.
- Inter Corporate Deposits (ICDs) are different from loans or advances and would not come within the purview of deemed dividend u/s. 2(22)(e). Refer to *Bombay Oil Industries Ltd.* 28 SOT 383.

- It has been held that for the purpose of s. 2(22)(e) of the Income-tax Act (Act), accumulated profits would mean commercial profits. In determining his commercial profit, depreciation, which has been recognized as a charge towards profit both under the Companies Act, 1956 as well as the Act has to be reduced from the commercial profit for the purpose of S. 2(22)(e) of the Act. Refer, Yasin Hotels (P) Ltd. 30 SOT 47.
- Deemed dividends can be assessed only in the hand of a shareholder of the lender company and not in the hands of a person other than a shareholder. The expression 'shareholder' referred to in s. 2(22)(e) refers to both – a registered shareholder and a beneficial shareholder. Thus, if a person is a registered shareholder but not a beneficial shareholder or vis-a-versa then provisions of s. 2(22)(e) would not apply. Refer, Bhaumik Colour (P) Ltd. 118 ITD 1.
- Deemed dividend under section 2 (22) (e), can only be assessed in hands of a person, who is a shareholder of the lender company and not in hands of a person other than a shareholder. Refer, *MTAR Technologies (P) Ltd. vs. Asst CIT 39 SOT 465.*
- Where lending of Money was a substantial part of the business of a lending company, the money given by its way of advances or loans to the assessee could not be regarded as a dividend u/s 2(22) (e). Refer, to CIT vs. Parle Plastics Limited.
- Any advance received as a deposit by the company in connection with leasing out of the property of the director cannot be treated as Deemed Dividend. Refer, to *ACIT vs. Madras Madurai Properties (P) Limited.*
- Amounts advanced by a company to its directors under a Board resolution, for a specific purpose, would not fall under the mischief of section 2(22)(e). Refer, to *ACIT vs. Harshad V Doshi 49 DTR 181.*
- Amounts given by a company to an assessee against his debenture account cannot be treated as Loans or advances for purpose of section 2(22)(e). Refer, to *Anil Kumar Agarwal vs. ITO. 51 DTR 251.*
- Loans or advances given by a company to another company, which is not a shareholder of the lender company, can't be treated as deemed dividends. Refer, to *Sadana Brothers Sales (P) Limited vs. ACIT.*
- Security deposit given by a company to its sister concern, a firm cannot be regarded as deemed dividend under section 2(22) (e). Refer to *DCIT* vs. *Atul Engineering Udyog*.
- "Deemed dividend" is not assessable if the recipient is not a shareholder. Refer, to *CIT vs. Ankitech Pvt. Ltd.*
- Assessee is a director in two companies holding substantial shareholding in both. The certain sum was transferred from one company to another at the instance of the assessee. Assessee having substantial credit balance with the company, cannot hold as loan or deposit nor can be assessed as deemed dividend. (Assessment years 2001-02, 2005-06).
- Assessee is a director in two companies holding substantial shareholding in both. The certain sum was transferred from one company to another at the instance of the assessee. Assessee having substantial credit balance with the company, cannot hold as loan or deposit nor can be assessed as deemed dividend. (Assessment years 2001-02, 2005-06). *Refer, Asst vs. C. Rajini 9 ITR (Trib) 487.*
- Since on the date on which the security deposit was given by the company to the assessee, the assessee held less than 10 per cent beneficial interest in the company, the amount of the security deposit cannot be treated as deemed dividend under section 2 (22) (e), merely on the ground that shareholding increased to 44% on the issue of shares by the company in lieu of security deposit. (A. Y. 1998-99). Refer, to *CIT vs. Late C.R. Das 57 DTR 201.*

CASE STUDY

Determine deemed dividends as per section 2(22) (e) in the following cases.

Case 1. Following is the extract of the Balance Sheet of PQR Limited.

Abstract from the Balance Sheet of PQR Ltd.

Liabilities		***Assets***	
Equity shares capital	50,00,000	Fixed Assets	60,00,000
Reserves & surplus	40,00,000	Bank and Cash Balance	13,15,000
		P&L A/c	16,85,000
Total Rs.	**90,00,000**	**Total Rs.**	**4,9000000**

The company is a closely held company and it provides loans of Rs. 25,00,000 to Mr Q a Shareholder who holds 12% shares of the company.

Solution:

Under section 2(22)(e), any payment by a closely-held company by way of loan or advance to its shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power, is deemed as dividend to the extent to which the company possesses accumulated profits.

Accumulated profit is Rs. 23,15,000. Since Mr. Q is a shareholder who holds 12% shares in PQR Limited then Rs. 23,15,000 shall be treated as deemed dividend in the hands of Mr. Q.

Case 2. Mr Ajay is a shareholder of a company in which the public are not substantially interested. He holds 15% shares of the company. Ajay took a loan of Rs. 5,00,000 on 15 July, 223 from the company. The company the medical expenses bill for Rs, 2,00,000 on his behalf. On the date of the loan and reimbursement of medical expenses, the company have an accumulated profit of Rs. 7,20,000.

Solution:

Under section 2(22)(e), any payment by a closely-held company by way of loan or advance to its shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power, is deemed as dividend to the extent to which the company possesses accumulated profits.

Amount of loan taken	Rs. 5,00,000
Add: Reimbursement of medical expenses	Rs. 2,00,000
The total amount is taken by the company	Rs. 7,00,000
Accumulated profits of the company	Rs. 7,20,000
The deemed dividend shall be	**Rs. 7,00,000**

Case 3. Mr. Mazumdar held 16% equity shares in RND Pvt. Ltd. He gifted all the shares held by him to his wife on 15.04.2022 without adequate consideration. On 20.09.2022 Mrs. Mazumdar obtained a loan of Rs. 5,00,000 from RND Pvt. Ltd. when the company's accumulated profits were Rs. 4,15,000. What are the tax implications of the above transaction?

Solution:

Under section 2(22)(e), any payment by a closely-held company by way of loan or advance to its shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power, is deemed as dividend to the extent to which the company possesses accumulated profits.

Therefore, in order to attract the deeming provisions under section 2(22)(e), the recipient of the loan should be a beneficial owner of shares of 10% of the voting power.

Accordingly, in this case, Rs. 4,15,000 (i.e. loan to the extent of accumulated profits of RND Pvt. Ltd.) would be deemed dividend. In the hands of Mrs. Mazumdar, who holds 16% equity shares in the RND Pvt. Ltd. , under section 2(22)(e).

INTER-CORPORATE DIVIDENDS AND BONUS SHARES

Inter-Corporate Dividends

When the dividend is paid between two companies then such a dividend is called an Inter-corporate dividend. Inter-corporate dividends occur when a company receives a dividend from another company as a result of its ownership of shares in another company.

Section 80M Deduction in respect of Inter Corporate Dividend Available to domestic companies

Essential Condition

Where gross total income includes in any previous year, any income by way of dividends received from any other domestic company or foreign company or a business trust.

Quantum of deduction

The amount of dividends received from other domestic companies or foreign companies or business trusts; or

amount of dividend distributed by such domestic company on or before the due date.

whichever is less is the eligible amount of deduction

"Due date" means the date one month prior to the date for furnishing the return of income under section 139(1).

How to calculate deduction under section 80M?

Suppose Hero Limited and Zero Limited both are domestic companies. Zero Limited is a 100% subsidiary of Hero Limited. During the previous year 2022-23, Hero Limited received a dividend from Zero Limited of Rs. 25,00,000. On 21st July 2023, Hero Limited declared and distributed a dividend of Rs. 25,50,000.

In this case amount of deduction

Dividend received	Rs. 25,00,000
Dividend declared or distributed on or before the due date	Rs. 25,50,000
Whichever is less. The amount of deduction is	Rs. 25,00,000

What will be the amount of deduction if the dividend is declared or distributed on 21st July 2023 for Rs. 24,00,000?

Dividend received	Rs. 25,00,000
Dividend declared or distributed on or before the due date	Rs. 24,00,000
Whichever is less. The amount of deduction is	Rs. 24,00,000

What would be your answer if Zero Limited declared and distributed dividends on 29th September 2023?

Since the due date for furnishing the return of income is 30th September in the case of the company. In that situation, Hero Limited declared and distribute the dividend only 1 day prior to the of furnishing the return of income, hence Hero Limited is not eligible to claim a deduction u/s 80M.

BONUS SHARES

Bonus shares to equity shareholders:

(a) At the time of issue of bonus shares by the company: When the equity shareholders receive the bonus shares shall not be treated as a dividend then shareholders and the company both are not liable to tax.

(b) At the time of the sale of bonus shares by the shareholder:

(i) Tax treatment in the hands of a company: No tax liability

(ii) Tax treatment in the hands of shareholders

Case	***Situation***	***Cost of acquisition***
1.	If bonus shares allotted without payment before 01.04.2001	COA =NIL, the assessee may opt for the fair market value as on 01.04.2001 as the cost of acquisition of such bonus shares.
2.	If bonus shares allotted without payment after 01.04.2001	COA = NIL, the entire sale consideration received on the transfer shall be treated as a capital gain.
3.	Bonus shares allotted before 01.02.2018, on which STT has been paid at the time of transfer	The cost would be higher of – (i) Actual cost of acquisition as per the situation (ii) Lower of – (a) FMV as on 31.1.2018; and (b) Actual sale consideration

CASE STUDY

Mr. JJ purchased 1000 equity shares of RSQ Limited at a cost of Rs. 150 per share on 15.05.1997 and paid 1% brokerage. On 01.10.2000 the company allotted him bonus shares on the basis of one share for every 5 shares held. Mr JJ again gets 800 bonus shares on 01.03.2005. The fair market value of the shares of RSQ Ltd. on April 1, 2001, is Rs. 260.

Mr. JJ sold all the shares on 20.12.2022 @600 per share (brokerage 1%).

(A) Compute the capital gain for the assessment year 2023-24.

(B) What will be your answer if these shares had been sold through the recognised stock exchange? Assume the fair market value of shares on 31.01.2018 was Rs. 450.

Solution

(A) Computation of capital gain for the assessment year 2023-24

A. Capital gain on original shares (1,000 shares)	
Sale consideration (1000 shares x Rs. 600)	6,00,000
Less: Brokerage @ 1%	6,000
Net sale consideration	5,94,000
Less: Indexed cost of acquisition (Rs. 1,51,500 x 348/100)	5,27,220
Long-Term Capital Gain	66,780
B. Capital gain on bonus shares (200 shares)	
Sale consideration (200 shares x Rs. 600)	1,20,000
Less: Brokerage @ 1%	1,200
Net sale consideration	1,18,800
Less: Indexed cost of acquisition (200 x 260 x 348/100)	1,80,960
Long-Term Capital Loss	**(62,160)**
C. Capital gain on bonus shares (800 shares)	
Sale consideration (800 shares x Rs. 600)	4,80,000
Less: Brokerage @ 1%	4,800
Net sale consideration	4,75,200
Less: Indexed cost of acquisition	NIL
Long-Term Capital Gain	4,75,200
Total Long Term Capital Gain (A+B+C)	**6,02,838**

(B) Computation of capital gain for the assessment year 2023-24

A. Capital gain on original shares (1,000 shares)	
Sale consideration (1000 shares x Rs. 600)	6,00,000
Less: Brokerage @ 1%	6,000
Net sale consideration	5,94,000
Less: Cost of acquisition The cost of acquisition shall be higher of (i) Cost of acquisition Rs. 151.50 per share AND ((ii) Lower of (a) FMV as on 31.01.2018 - Rs. 450 per share (b) Sale Price - Rs. 600 per share Hence the cost of acquisition shall be Rs. 450 per share.	4,50,000
Long-Term Capital Gain	**1,44,000**
B. Capital gain on bonus shares (200 shares)	
Sale consideration (200 shares x Rs. 600)	1,20,000
Less: Brokerage @ 1%	1,200
Net sale consideration	1,18,800
Less: Cost of acquisition The cost of acquisition shall be higher of (ii) Cost of acquisition Rs. 260 per share AND ((ii) Lower of (c) FMV as on 31.01.2018 - Rs. 450 per share (d) Sale Price - Rs. 600 per share Hence the cost of acquisition shall be Rs. 450 per share.	90,000
Long-Term Capital Gain	**28,800**
C. Capital gain on bonus shares (800 shares)	
Sale consideration (800 shares x Rs. 600)	4,80,000

Less: Brokerage @ 1%	4,800
Net sale consideration	4,75,200
Less: Cost of acquisition The cost of acquisition shall be higher of (iii) Cost of acquisition NIL AND ((ii) Lower of (e) FMV as on 31.01.2018 - Rs. 450 per share (f) Sale Price - Rs. 600 per share Hence the cost of acquisition shall be Rs. 450 per share.	3,60,000
Long-Term Capital Gain	**1,15,200**
Total Long Term Capital Gain (A+B+C)	**2,88,000**

LESSON ROUND-UP

- Tax planning has an important role to play while taking managerial decisions like purchasing an asset or taking on the lease, making or buying, shutting down or continuing, sale of an asset used for scientific research, capital structure, interoperate dividends, bonus shares, etc.
- In the case of taking the decision to purchase an asset or to take on the lease, it is to be decided that the asset is to be purchased from own funds or from borrowed funds. If we decide to take the asset on lease then one must consider lease rent which will spread over a number of years along with processing fees. Taking an asset on lease will give a tax shield as well and that is also to be considered.
- In case the manufacturer finds it difficult to manufacture all parts of a product then they can decide either to buy some parts of the product as in manufacturing a product there are various cost and non-cost factors that needs to be considered.
- In case the manufacturer finds it difficult to manufacture all parts of a product then they can decide either to buy some parts of the product as in manufacturing a product there are various cost and non-cost factors that needs to be considered.
- Apart from all the above managers have to think about different types of aspects at the time deciding on capital structure. Therefore, an appropriate combination of different funding sources is extremely important to maximize shareholder wealth and reduce funding costs.
- Declaration of dividends is another important point while doing tax planning. It is important to decide whether to pay dividends out of the current year's profit or from accumulated profits. This is also to be considered that the distribution of dividends involves releasing the assets of the company, hence it is important to decide whether to declare dividends or not.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Enumerate the factors and tax considerations involved in own or lease decisions.
2. Discuss the important factors while taking a decision with respect acquire the assets out of your own fund or the assets or taking assets on lease.
3. In what situation leasing be preferred over purchase? Explain with a suitable example.
4. Explain the factors which are the key point to take the decision in respect of make or buy.
5. What factors and tax considerations should be kept in mind at the time of selecting the best capital structure?
6. Explain the concept of deemed dividends under section 2(22) of the Income Tax Act.
7. What is the benefit given under the Income Tax Act in respect of Inter-Corporate Taxation?
8. Decide which one is a better alternative – lease or buy – in the following situations:

   Tax rate: 33.384%

   Cost of capital: 12%

   Depreciation rate: 15%

   Lease cost: Rs 1,70,000 per annum for 5 years (per Rs. 5 lahks)

   Make any other suitable assumption, if necessary.
9. The management of PQR Limited wants to purchase a new machine. The price of the machine is Rs. 10,00,000. The company has enough fund reserves to purchase the machine. However, it seeks your advice, on whether, from point of view of tax planning, it should buy the machine or get it in lease. On the basis of the following particulars, explain the suitability of each alternative.

   Rate of Income-tax: 33.384% (Tax @30%+Surcharge@7%+Cess@4%)

   Rate of depreciation: 15%

   The expected life of the machine: 8 years

   Lease rent: Rs. 2,80,000 per annum for the first five years and Rs. 30,000 per year afterwards

   Present value factor: 12%
10. Ride well cycles limited purchases 20,000 bells per annum from an outside supplier at Rs. 42 each. The management feels that these be manufactured and not purchased. A machine costing Rs. 10,00,000 will be required to manufacture the item within the factory. The machine has an annual capacity of 30,000 units and a life of 5 years. The following additional information is available:

    Material cost per bell - Rs. 20.00;

    Labour cost - Rs. 10.00

    Variable overheads - 100% of labour cost

    You are required to advise whether: -

    The company should continue to purchases the bells from outside supplier or should make them in the factory. Does it make any difference if the bells can be manufactured on an existing machine?

LIST OF FURTHER READINGS

- Dr Vinod K Singhania : Corporate Tax Planning and Business Tax Procedure
- Dr Girish Ahuja and Dr Ravi Gupta : Corporate Tax Planning & Management
- Dr S.P. Goyal : Tax Planning and Management

OTHER REFERENCES

- Income Tax Act, 1961 - https://www.incometaxindia.gov.in/Pages/Acts/income-tax-Act.aspx
- Income Tax Rules, 1962 - https://incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx
- Circulars - https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx
- Notifications - https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx

Tax Planning and Business Restructuring

Lesson 14

KEY CONCEPTS

■ Amalgamation ■ Foreign Collaboration ■ Carry forward of losses ■ Setoff of losses■ Restructuring ■ Merger ■ Demerger ■ Slump Sale

Learning Objectives

To understand:

- Income-tax Act concession or incentive in respect of amalgamation
- The provision regarding carry forward and setoff of losses and unabsorbed depreciation in case of amalgamation
- Income-tax Act concession or incentive in respect of demerger
- The provision regarding slump sale

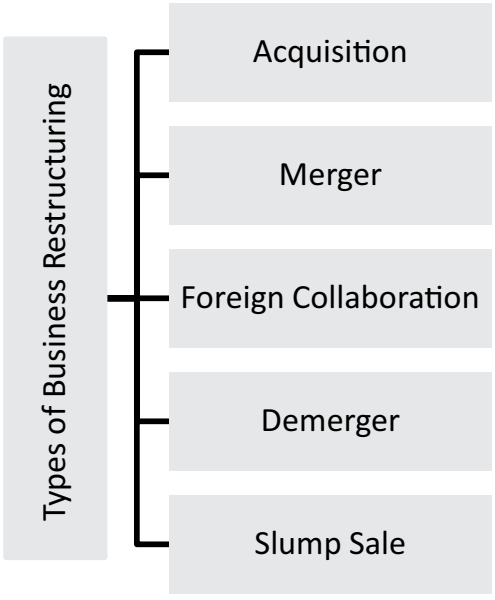
Lesson Outline

REGULATORY FRAMEWORK

Section	*Income Tax Act, 1961*
Section 2(1B)	Amalgamation
Section 72A	Carry forward and setoff of losses and unabsorbed depreciation in case of amalgamation
Section 2(19AA)	Demerger
Section 2(19AAA)	Demerged Company
Section 2(41A)	Resulting Company
Section 2(42C)	Slump Sale
Section 35ABB	Expenditure for obtaining a license to operate telecommunication services
Section 47	Transactions not regarded as transfer
Section 50B	Computation of Capital Gains in Case of Slump Sale
Section 72A	Carry forward and setoff of losses and unabsorbed depreciation in case of amalgamation

INTRODUCTION

Business restructuring is the corporate governance term for the act of reorganizing the legal, ownership, operational or other structure of a business with the aim of making it more profitable or better organized to meet its current needs.



AMALGAMATION

Meaning of Amalgamation [Section 2(1B) of Income tax Act, 1961]

Amalgamation in relation to companies means the merger of one or more companies with another company, or the merger of two or more companies to form a new company.

The company so merged goes out of existence as an "amalgamating company." The company into which the amalgamating company merges, or the new company that is formed to affect an amalgamation, is an "amalgamated company" in such a manner that: –

(a) All property of amalgamating company or companies, immediately before the amalgamation, should become the property of the amalgamated company,

(b) All liabilities of amalgamating company or companies, immediately before the amalgamation, should become the liabilities of the amalgamated company,

(c) Shareholders holding 75% in value of the shares in the amalgamating company or companies become shareholders of the amalgamated company.

However, if the amalgamated company or its subsidiary/nominee already holds some shares in the amalgamating company, the value of such shares is excluded from calculating 75% of the value of shares of the amalgamating company.

The following situation may arise due to amalgamation:

(i) P Ltd. Merged with Q Ltd., thus P Ltd. goes out of existence;

(ii) P Ltd. And Q Ltd. both merged with R Ltd;

(iii) P Ltd. And Q Ltd. both merged and form a new company PQ Ltd. P Ltd and Q Ltd. go out of existence.

In the above cases, the companies which go out of existence are known as amalgamating companies and the merged company and the newly formed company will be known as the amalgamated company.

The effective date in a scheme of amalgamation is the date of transfer specified in the scheme and not the date of the high court's order approving the scheme. So long as the court does not modify the date specified in the scheme, amalgamation takes effect on the date of transfer specified in the scheme. The income of the amalgamating company from such date of transfer shall be assessed as income of the amalgamated company and shall be assessed accordingly. *[Marshall Sons and Co. (India) Ltd. vs. ITO (SC), 223 ITR 809]*

a. Following mergers are regarded as amalgamation: Where the amalgamation scheme is not approved by the High Court and Company ABC Ltd. sells all its assets and liabilities to Company XYZ Ltd. and thereafter Company ABC Ltd. is liquidated.

b. Where the amalgamation scheme is not approved by the High Court and Company ABC Ltd. goes into liquidation and its assets are distributed to Company XYZ Ltd.

INCOME-TAX ACT CONCESSION OR INCENTIVE IN RESPECT OF AMALGAMATION

(a) To Amalgamating Company:

(i) **Section 47 (vi): If the amalgamated company is an Indian company**

In the scheme of amalgamation, capital assets transferred by the amalgamating company to the amalgamated company shall not be regarded as transfer for the purpose of capital gain under section 45 of the Income Tax Act, and resulting no capital will arise subject to the amalgamated company be an Indian Company

Note: Condition of Section 2(1B) of Income Tax Act, 1961 must be satisfied to take the concession of taxation.

(ii) Section 47 (via): Transfer of shares of an Indian company on an amalgamation of two Foreign Companies

Any transfer, in a scheme of amalgamation, of a capital asset being a share or shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company, shall not be regarded as a transfer for the purpose of capital gain under section 45 of the Income Tax Act, and resulting no capital will arise if:

(a) at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and

(b) such transfer does not attract tax on capital gains in the country where the amalgamating company is incorporated.

(iii) **Section 47 (viaa): Amalgamation of a Banking Company**

Any transfer, in a scheme of amalgamation of a banking company with a banking institution sanctioned and brought into force by the Central Government under section 45(7) of the Banking Regulation Act, 1949 of a capital asset by the banking company to the banking institution, such shall not be regarded as a transfer for the purpose of capital gain under section 45 of the Income Tax Act, and resulting no capital will arise.

(b) To shareholders of an Amalgamating Company:

Section 47(vii): Any transfer by a shareholder, in a scheme of amalgamation of a capital asset being a share or shares held by him in the amalgamating company, such transaction will not be regarded as a transfer for capital gain if:

(i) transfer is made in consideration of allotment to him of shares in the amalgamated company, and

(ii) the amalgamated company is an Indian Company.

As per section 49(2), the cost of acquisition of the shares in the amalgamated company shall be the cost of acquisition of the shares in the amalgamating company.

As per section 2(42A), the period for which the shares in the amalgamated company are held, the period for which the shares were held in the amalgamating company shall also be included.

(c) To Amalgamated Company:

The following expenditure in the hands of the amalgamating company is available to the amalgamated company and it shall be allowed in the balance number of years to the amalgamated company.

1. Section 35(5): Expenditure on Scientific Research

If the amalgamating company transfers the assets represented by capital expenditure for scientific research on the amalgamated Indian companies under the amalgamation, the provisions of section 35 applicable to the amalgamating company will eventually apply to the amalgamated company consequently.

(i) Unabsorbed capital expenditure on scientific research of the amalgamating company will be allowed to be carried forward and set off in the hands of the amalgamated company.

(ii) If such an asset ceases to be used in a previous year for scientific research related to the business of the amalgamated company and is sold by the amalgamated company without

having been used for other purposes, the sales price, to the extent of the cost of the asset shall be treated as business income from other amalgamated companies.

The excess of the sale price over the cost of the asset shall be subject to the provisions of the capital gains.

2. Section 35ABB (6): Expenditure for obtaining a license to Operate Telecommunication Services

Where the license transferred by the amalgamating company is to any amalgamated Indian company, the provisions of section 35ABB (6) which are applicable to the amalgamating company shall become applicable in the same manner to the amalgamated company, consequently.

(i) The expenditure on the acquisition of a license not yet written off shall be allowed to the amalgamated company in the same number or balance instalments.

(ii) Where such licenses are later on sold by the amalgamated company, the treatment of the profit or loss will be the same as would have been in the case of the amalgamating company.

3. Section 35D (5): Amortisation of Preliminary Expenses

In case of amalgamation, the amount of preliminary expenses of the amalgamating company, which are not yet written off, shall be allowed as a deduction to the amalgamated company in the same manner as would have been allowed to the amalgamating company.

4. Section 35DD: Amortisation of expenditure in case of Amalgamation or Demerger

Expenses on amalgamation shall be allowed in five successive assessment years beginning with the previous year in which the amalgamation took place.

5. Section 36E (7A): Deduction for expenditure on prospecting etc. for Certain Minerals

In the case of amalgamation, the amount of expenditure on prospecting, etc., of certain minerals of the amalgamating company, which are not yet written off, shall be allowed as a deduction to the amalgamated company in the same matter as would have been allowed to the amalgamating company.

6. Section 36(ix): Expenditure incurred for the purpose of Promoting Family Planning

Where the capital expenditure on family planning is transferred by the amalgamating company to the Indian amalgamated company, in a scheme of amalgamation, the provisions of section 36(a)(ix) to the amalgamating company shall become applicable in the same manner, the amalgamated company. Consequently :

I. The capital expenditure on family planning not yet written off shall be allowable to the amalgamated company in the same number of balance instalments.

II. Where such assets are sold by the amalgamated company, the treatment of the profit or loss will be the same as would have been in the case of the amalgamating company.

7. Section 36(1)(vii): Treatment of Bad Debts

In case of amalgamation, the debts of the amalgamating company have been taken over by the amalgamated company and subsequently such debt or part of the debt becomes bad, such bad debt will be allowed as a deduction to the amalgamated company. *[CIT vs. T. Veerabhadra Rao, K.Koteswara Rao & Co. (1985) 155 ITR (SC)].*

8. Deduction in respect of under sections 80-IAB or 80-IB or 80-IC or 80-IE

Where an undertaking which is entitled to deduction under section 801A/80-1B is transferred in the

scheme of amalgamation before the expiry of the period of deduction under sections 80-IAB or 80-IB or 80-IC or 80-IE then:

(a) No deduction under sections 80-IAB or 80-IB or 80-IC or 80-IE shall be available to the amalgamating company for the previous year in which amalgamation takes place; and

(b) The provisions of sections 80-IAB or 80-IB or 80-IC or 80-IE shall apply to the amalgamated company in such a manner as they would have applied to the amalgamating company.

9. Section 72A: Carry forward and set off business losses and unabsorbed depreciation of the Amalgamating Company

The business losses and unabsorbed depreciation of the amalgamating company can be set off by the amalgamated company subject to the fulfilment of conditions under section 72A.

Section 72A: Carry forward and setoff of losses and unabsorbed depreciation in case of Amalgamation

As per section 72A (1), the amalgamated company is entitled to carry forward the unabsorbed depreciation and accumulated loss of the amalgamating company provided the following conditions are fulfilled:

(1) There should be an amalgamation of-

(a) a company owning an industrial undertaking or ship or a hotel with another company, or (b) a banking company referred to in section 5(c) of the Banking Regulation Act, 1949 with a specified bank, or

(c) One or more public sector company or companies with one or more public sector company or companies; or

(d) erstwhile public sector company with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company and the amalgamation is carried out within 5 years from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.

"Erstwhile public sector company" means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment, meaning, the sale of shareholding by the Central Government or any State Government in a public sector company which results in a reduction of its shareholding to below 51% along with transfer of control to the buyer.

'Industrial undertaking' means any undertaking which is engaged in

a. The manufacture or processing of goods; or

b. The manufacture of computer software; or

c. The business or generation or distribution of electricity or any other form of power; or

d. The business of providing telecommunication services; or

e. Mining;

f. The construction of ships, aircraft, or rail systems.

Section 72A (2) Conditions to be satisfied by the Amalgamating Company

(i) The amalgamating company has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for 3 or more years prior to the date of amalgamation.

(ii) The amalgamating company has held continuously as of the date of the amalgamation at least 75% of the book value of fixed assets held by it 2 years prior to the date of amalgamation;

Conditions to be satisfied by the Amalgamated Company:

(i) the amalgamated company holds continuously for a minimum period of 5 years from the date of amalgamation at least 75% of the book value of fixed assets of the amalgamating company acquired in the scheme of amalgamation;

(ii) the amalgamated company continues the business of the amalgamating company for a period of 5 years from the date of amalgamation;

(iii) the amalgamated company fulfils such other conditions as may be prescribed (See Rule 9C mentioned below) to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purposes laid down by section 72A(2)(b) (iii)-

(a) The amalgamated company shall achieve the level of production of at least 50% of the installed capacity (capacity of production as of the date of amalgamation) of the said undertaking before the end of 4 years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation. Central Government has the power to modify this requirement on an application made by the amalgamated company.

(b) The amalgamated company shall furnish to the Assessing Officer a certificate in the prescribed form verified by a Chartered Accountant in this regard.

Conditions for carrying forward or set-off of accumulated loss and unabsorbed depreciation allowable in case of Amalgamation [Rule 9C]

The conditions referred to in section 72A (2) (b) (iii) shall be the following, namely:

a) The amalgamated company, owning an industrial undertaking of the amalgamating company by way of amalgamation, shall achieve the level of production of at least fifty per cent of the installed capacity of the said undertaking before the end of four years from the date of amalgamation and continue to maintain the said minimum level of production till the end of five years from the date of amalgamation. Provided that the Central Government, on an application made by the amalgamated company, may relax the condition of achieving the level of production or the period during which the same is to be achieved or both in suitable cases having regard to the genuine efforts made by the amalgamated company to attain the prescribed level of production and the circumstances preventing such efforts from achieving the same.

b) The amalgamated company shall furnish to the Assessing Officer a certificate in Form No. 62, duly verified by an accountant, with reference to the books of account and other documents showing particulars of production, along with the return of income for the assessment year relevant to the previous year during which the prescribed level of production is achieved and for subsequent assessment years relevant to the previous year's falling within five years from the date of amalgamation.

"Installed capacity" means the capacity of production existing on the date of amalgamation.

"Accountant" means the accountant as defined in the Explanation below sub-section (2) of section 288 of the Income-tax Act, 1961.

If the conditions mentioned under (2)(a) and (2)(b) previously are satisfied by both the amalgamating and amalgamated company, then the accumulated loss and unabsorbed depreciation of the amalgamating company shall become the business loss and unabsorbed depreciation of the amalgamated company. Such accumulated loss will be allowed to be carried forward by the amalgamated company for fresh 8 years and unabsorbed depreciation can be carried forward indefinitely.

"Accumulated loss" means so much of the loss of amalgamating company under the head "profits and gains of business or profession" (not being a loss sustained in a speculation business) which the amalgamating would have been entitled to carry forward and set off under the provisions of section 72 if amalgamation had not taken place. Further, brought forward loss under the head "house property" or "capital gain" whether short or long-term of the amalgamating company will get lost and neither company can avail it as there is no special provision in this regard.

Although unabsorbed depreciation and accumulated business loss will be carried forward by the resulting company in a scheme of demerger provided conditions mentioned in section 72A are complied with, unabsorbed capital expenditure on scientific research cannot be brought either under unabsorbed depreciation or accumulated business loss *[ITO vs. Mahyco Vegetable Seeds Ltd (2009) 308 ITR (AT) 205 (Mum)].*

As per section 72A (3), where if the conditions laid down under clause (b) above are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamated company chargeable to tax for the year in which such conditions are not complied with. Further, the balance accumulated loss and unabsorbed depreciation not yet set off shall not be allowed to be carried forward and set off.

Apportionment of depreciation between the amalgamating company and amalgamated company [Proviso 5 to section 32]: If in any previous year, there is any amalgamation then for computing depreciation for that previous year it will be first assumed as if no amalgamation had taken place and thereafter depreciation so computed shall be apportioned between the amalgamating company and the amalgamated company in the ratio of the number of days for which the assets were used by them.

There can be two types of assets which can be transferred by an amalgamating company to the Indian amalgamated company in the scheme of amalgamating viz:

(i) Non-depreciable assets.

(ii) Depreciable assets.

The cost of acquisitions of assets in each case is as under: Acquisition cost in case of non-depreciable assets for purposes of capital gains under section 45:

In this case, the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of asset, incurred or borne by the previous owner or the assessee, as the case may be.

However, if the capital asset is a non-depreciable asset and is acquired by the previous owner before 01-04-1981, the cost of acquisition to the amalgamated company can be taken as the cost of acquisition to the previous owner or the Fair Market Value of the asset on 01-04-1981, at the option of the amalgamated company.

a. Since in the above case, the cost of the previous owner is taken, the period for which the previous owner had held the asset shall also be considered for determining whether the capital gain is short-term or long-term.

b. However, indexation of cost shall be done from the year in which it was first held by the amalgamated company i.e., the year of amalgamation.

For other provisions of income tax, the cost of these assets to the amalgamated company shall not be the value at which it is actually transferred to the company but it shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purpose of his own business. Acquisition cost in case of depreciable assets:

(i) Cost of acquisition for the purpose of business income i.e. for calculating depreciation: It shall be the written down value of the block of assets as in the case of the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year.

(ii) For the purpose of capital gains: In the case of depreciable assets, transferred by the amalgamating company to the amalgamated company, the period of holding and indexed cost of acquisition are irrelevant as, these assets will be included in the 'block of assets' of the amalgamated company and according to section 50, if any capital asset of the block is transferred, or the entire block of assets is transferred, the capital gains, if any, on such transfer will be treated as short-term capital gain.

As per section 41(1), where an amalgamating company was earlier allowed any allowance/deduction in respect of loss, expenditure, or trading liability and subsequently, the amalgamated company has obtained/recovered whether in cash or in any other manner any amount in respect of which any allowance/deduction was allowed to the amalgamating company, such amount shall be deemed to be the profits and gains of business or profession of the amalgamated company of the previous year in which it is obtained or recovered.

Where any tax is payable by the amalgamating company in respect of its income of business or profession of the earlier period, the amalgamated company shall be liable to pay such tax, if it cannot be recovered from the amalgamating company. However, the amalgamated company shall be liable for the following period:

(i) for the previous year in which the amalgamation took place but only up to the date of amalgamation;

(ii) for the previous year preceding the year in which the amalgamation takes place. For example:

If the amalgamation took place on 17-7-2022 the liability of tax of the amalgamating company for the previous year 2021-22 and the previous year 2022-23 (up to 17-7-2022 only) can be recovered from the amalgamated company.

Every amalgamation scheme is effective from the specified/appointed date. The important tax issue that arises is whether the transfer is effective from the date mentioned in the scheme or from the date on which the scheme was approved by the Court. The Madras High Court in *United India Life Insurance Co. Ltd* vs. *CIT (1963) 49 ITR 965 (Mad)* held that it is effective from that date of approval by the court.

However, the Bombay High Court in *CIT* vs. *Swastik Rubber Product Ltd.* (1983) 140 ITR 304 (Bom) held that it is effective from the appointed date as specified in the scheme of amalgamation.

The above issue of specified/appointed date was put at rest by Supreme Court in *Marshal Sons & Co. (India) Ltd* vs. *CIT (1997) 223 ITR 809 (SC)* where it was held that it is effective from the date mentioned in the scheme and not from the date on which the courts sanctioned the order. However, the courts while sanctioning the scheme are open to modifying the said date and prescribing such date of amalgamation as it thinks appropriate in the facts.

CASE STUDY

AB Limited (an industrial undertaking) wants to amalgamate with CD Limited (an Indian Company) on 31.07.2022, You are required to find out the tax implications in respect of the following losses/allowances of AB Limited in the assessment of CD Limited (i.e. amalgamated company)

Unabsorbed depreciation allowance of the previous year 2021-22	Rs. 26,00,000
Brought forward business loss of the previous year 2021-22	Rs. 35,00,000
Expected bad debts	Rs. 2,50,000
Brought forward capital loss for the previous year 2021-22	Rs. 6,00,000

Brought forward a speculative loss for the previous year 2021-22	Rs. 12,00,000
Capital expenditure incurred for promoting family planning in the year 2019-20, due to insufficient profit company count bot claim deduction in the previous year 2020-21 and 2021-22.	Rs. 5,00,000

Solution:

The tax implications in respect of various items given are discussed on the assumption that the amalgamation satisfied the conditions of section 2(1B) and section 72.

1. Bought forward loss of Rs. Rs. 35,00,000 can be adjusted by CD Limited within 8 years from the end of the financial year 2022-23 against its business profits provided the prescribed conditions are satisfied:

   (A) The amalgamating company satisfies the following conditions:

   (i) The amalgamating company has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for 3 or more years prior to the date of amalgamation.

   (ii) The amalgamating company has held continuously as of the date of the amalgamation at least 75% of the book value of fixed assets held by it 2 years prior to the date of amalgamation.

   (B) The amalgamated company fulfils the following conditions:

   (i) the amalgamated company holds continuously for a minimum period of 5 years from the date of amalgamation at least 75% of the book value of fixed assets of the amalgamating company acquired in the scheme of amalgamation;

   (ii) the amalgamated company continues the business of the amalgamating company for a period of 5 years from the date of amalgamation;

   (iii) the amalgamated company fulfils such other conditions as may be prescribed (See Rule 9C mentioned below) to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purposes laid down by section 72A(2)(b) (iii).

2. The unabsorbed depreciation shall be added to the depreciation allowance in the following previous year or succeeding previous years till such time it is fully deducted.

   In other words

   (i) It can be carried forward for an indefinite period till it is fully deducted whether the business continuous or not;

   (ii) It can be set off against any income of the assessee provided the conditions mentioned in 1 above are satisfied.

3. Expected bad debts of Rs. 2,50,000 are allowable to CD Limited provided these were allowed to the amalgamating company had there been no amalgamation.

4. Brought forward capital loss Rs. 6,00,000 and speculative loss Rs. 12,00,000 cannot be set off by CD Limited against its capital gains/speculative profits.

5. AB Limited incurred capital expenses Rs. 5,00,000 in the previous year 2019-20 for promoting family planning amongst its employees. Such expenses are allowed in five equal annual instalments. Hence, from the previous year 2019-2020 to 2023-24 the company is entitled to claim Rs. 1,00.000 every year. In this case, the amalgamated company is entitled to claim a deduction in respect of the remaining instalments and the unabsorbed amount of such instalments. Hence, CD Limited can claim a deduction of Rs. 1,00,000 each in two remaining years.

CASE STUDY

On 01.04.2022, CDR Ltd. was amalgamated with DDR Ltd. with the satisfaction of all conditions of section 2(1B).

CDR Ltd. has the following carried forward losses as assessed till the Assessment Year 2022-23:

Particulars	***Amount (in lakh)***
Unabsorbed depreciation	52
Business loss	75
Unabsorbed capital expenditure on scientific research	12

DDR Ltd. has computed a profit of Rs. 220 lacs for the financial year 2022-23 before setting off the eligible losses of CDR Ltd. but after providing depreciation at 15% per annum on 200 lacs, being the consideration at which plant and machinery were transferred to DDR Ltd. The written-down value as per the Income-tax record of CDR Ltd. as on 1st April 2022 was Rs. 140 lacs.

What type of benefit can be availed by DDR Limited in the eye of the Income Tax Act, also compute the total income of DDR Limited.

Solution:

Computation of total income of DDR Limited for the assessment year 2023-24.

<table>
<tr><th>Particulars</th><th>Amount (in lakh)</th></tr>
<tr><td>Business income before setting off brought forward losses of CDR Ltd.</td><td>220</td></tr>
<tr><td>Add: Excess depreciation claimed in the scheme of amalgamation of DDR Ltd. with CDR Ltd.
<table>
<tr><td>Value at which P&M is transferred by CDR Ltd</td><td>200</td></tr>
<tr><td>WDV in the books of CDR Ltd.</td><td>140</td></tr>
<tr><td>Excess value accounted by DDR Ltd.</td><td>60</td></tr>
<tr><td>Excess depreciation (60 x 15%)</td><td>9</td></tr>
</table></td><td>9</td></tr>
<tr><td></td><td>229</td></tr>
</table>

Less: Brought forward losses of CDR Ltd.	
(i) Business loss	75
(ii) Unabsorbed depreciation	52
(iii) Unabsorbed capital expenditure on scientific research	12
Total Income	**90**

Note:

1. *In the case of amalgamation, the business losses (except speculation business losses) and unabsorbed depreciation of the amalgamating company can be shall be deemed to be losses of the amalgamated company, such losses can be carried forward and set off by the amalgamated company for* ***fresh 8 years*** *and unabsorbed depreciation can be carried forward indefinitely if conditions mentioned in section 72A are satisfied.*
2. Unabsorbed capital expenditure of scientific research can be carried forward and set off in the same manner as unabsorbed depreciation.

DEMERGER INCLUDING SLUMP SALE

DEMERGER [Section 2(19AA)]

"Demerger" in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 2013, by a demerged company of its one or more undertakings to any resulting company in such a manner that —

(i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;

(ii) all the liabilities relatable to the undertaking being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;

(iii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger (ignored revaluation);

(iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis except where the resulting company itself is a shareholder of the demerged company;

(v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(vi) the transfer of the undertaking is on a going concern basis;

(vii) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

Key points for consideration for demerger

(a) Explanation 1 to Section 2(19AA): For the purpose of this definition, "undertaking" shall include any part of an undertaking, or a unit of division of an undertaking or a business activity taken as a whole, but does not include individual assets and/or liabilities or a combination of these not constituting a business activity.

(b) Explanation 2 to Section 2(19AA): For the purposes of this clause, the liabilities referred to in sub-clause (ii), shall include-

(a) the liabilities which arise out of the activities or operations of the undertaking;

(b) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and

(c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of the such demerged company immediately before the demerger. In other words, it will be calculated

$$\text{General or multipurpose borrowings, if any, of the Demerged Company} \times \frac{\text{Value of the Assets transferred in a Demerger}}{\text{The Total Value of the Assets of the such Demerged Company immediately before the Demerger}}$$

Explanation 3 to Section 2(19AA): For determining the value of the property which is the subject matter of demerger, any change in the value of assets on account of revaluation shall be ignored.

Explanation 4 to Section 2(19AA): Splitting up or the reconstruction of any authority or a body constituted or established under any Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies shall be deemed to be the demerger if such split up or reconstruction fulfils the conditions as may be notified by the Central Government.

Explanation 5 to Section 2(19AA): Reconstruction or splitting up of a company, which ceased to be a public sector company as a result of the transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger if such reconstruction or splitting up has been made to give effect to any condition attached to the said transfer of shares and also fulfils such other conditions as may be notified by the Central Government in the Official Gazette.

Important Terms

- **Section 2(19AAA): Demerged Company**

  It means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company.

- **Section 2(41A): Resulting Company**

  One or more companies (including wholly-owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and the resulting company in consideration of such transfer of undertaking, issues shares to shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of the demerger.

CASE STUDY

The following information determines the value of shares issued by the resulting company (say R Ltd.) to the shareholders of the demerged company (say D Ltd.), assuming unit I is proposed to be demerged.

Balance Sheet of D Ltd. (*Fig. in lakhs*)

	Unit I	***Unit II***	***Head Office (Common to both unit***	***Total***
Assets:	Amount	Amount	Amount	Amount
Fixed Assets (W.D.V.)	20,00,000	40,00,000	9,00,000	69,00,000
Current Assets	10,00,000	7,00,000	4,00,000	21,00,000
TOTAL	**30,00,000**	**47,00,000**	**13,00,000**	**90,00,000**
Liabilities:				
Share Capital 40,000 shares of Rs. 100 each	-	-	40,00,000	40,00,000
General Reserve	-	-	18,00,000	18,00,000
Loans	8,00,000	10,00,000	3,50,000	21,50,000
Current Liabilities	3,00,000	5,00,000	2,50,000	10,50,000
TOTAL	**11,00,000**	**15,00,000**	**64,00,000**	**90,00,000**

Solution:

Computation of the value of shares issued by R. Ltd. (*Fig. in lakhs*)

Particulars	***Amount***	***Amount***
Total Assets of Unit I		30,00,000
Less:		
(i) Liabilities of Unit I	11,00,000	
(ii) Proportionate Common Liabilities		
Common Liability x $\frac{\text{Book value of assets transferred}}{\text{Total book value of assets}}$		
= 6,00,000 x $\frac{30,00,000}{90,00,000}$	2,00,000	13,00,000
Value of Shares to be issued by the Resulting Company		17,00,000

Income-tax Act concession or incentive in respect of Demerger

If any demerger takes place within the meaning of section 2(19AA) of the Income-tax Act, the following tax concession shall be available:

(1) Tax concessions to demerged company.

(2) Tax concessions to shareholders of demerged company.

(3) Tax concessions to the resulting company.

These incentives are similar to the amalgamation discussed earlier. However, in the event of an amalgamation, some benefits provided in the event of an amalgamation do not apply in the event of the demerger.

(1) Tax concession to Demerged Company:

(i) Capital gains tax not attracted [Section 47(vib)]: According to section 41(vib) where there is a transfer of any capital asset in a demerger by the demerged company to the resulting company, such transfer will not be regarded as a transfer for the purpose of capital gain provided the resulting company is an Indian company.

(ii) Tax concession to a Foreign Demerged Company [Section 47(vic)]: Where a foreign company holds any shares in an Indian company and transfers the same, in a demerger, to another resulting foreign company, such transaction will not be regarded as transfer for the purpose of capital gain under section 45 if the following conditions are satisfied:

(a) at least seventy-five per cent of the shareholders of the demerged foreign company continue to remain shareholders of the resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country where the demerged foreign company is incorporated.

(iii) any transfer in a demerger, of a capital asset, being a share of a foreign company, referred to in Explanation 5 to section 9(1)(i) which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company, if—

(a) the shareholders, holding not less than three-fourths in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated:

Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 shall not apply in case of demergers referred to in this clause.

(2) Tax concessions to the shareholders of the Demerged Company [Section 47(vid)]: Any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company, shall not be regarded as a transfer if the transfer or issue is made in consideration of demerger of the undertaking.

In the case of a demerger, the existing shareholder of the demerged company will now hold:

(a) shares in the resulting company; and

(b) shares in demerged company,

and in case the shareholder transfers any of the above shares subsequent to the demerger, the cost of such shares shall be calculated as under: —

Cost of acquisition of shares in the Resulting Company [Section 49(2C)]: It shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bear to the net worth of the demerged company immediately before such demerger.

In other words, it will be calculated as,

$$\text{Cost of acquisition of share held by the assessee in the demerged company} \times \frac{\text{net book value of the assets transferred in a demerger}}{\text{The net worth of the demerged company immediately before such a demerger.}}$$

Cost of acquisition of shares in the Demerged Company [Section 49(2D)]: The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been **reduced by** the amount as so arrived at under section 49(2C) above.

For the above purpose, net worth shall mean the aggregate of the paid-up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.

Period of holding of shares of the Resulting Company [Section 2(42A) (g)]: In the case of a capital asset, being a share or shares in an Indian company, which becomes the property of the assessee in consideration of a demerger, there shall be included the period for which the share or shares held in the demerged company were held by the assessee.

(3) Tax concession to the Resulting Company:

The resulting company shall be eligible for tax concessions only if the following two conditions are satisfied:

(i) The demerger satisfies all the conditions laid down in section 2(19AA); and

(ii) The resulting company is an Indian company.

The following concessions are available to the resulting company pursuant to a scheme of demerger:

(a) Expenditure for obtaining a licence to Operate Telecommunication Services [Section 35ABB (7)]: Where in a scheme of demerger, the demerged company sells or otherwise transfers its licence to the resulting company (being an Indian company), the provisions of section 35ABB which were applicable to the demerged company shall become applicable in the same manner to the resulting company, consequently:

(i) The expenditure on the acquisition of the licence, not yet written off, shall be allowed to the resulting company in the same number of balance instalments.

(ii) Where a such licence is sold by the resulting company, the treatment of the deficiency/ surplus will be the same as would have been in the case of demerged company.

(b) Treatment of preliminary expenses [Section 35D (5A)]: Where the undertaking of an Indian company which is entitled to a deduction of preliminary expenses is transferred before the **expiry of 10 years/5 years,** as the case may be, to another company in a scheme of demerger, the preliminary expenses of a such undertaking which are not yet written off shall be allowed as a deduction to the resulting company in the same manner as would have been allowed to the demerged company. The demerged company will not be entitled to the deduction thereafter.

(c) Treatment of expenditure on prospecting, etc. of certain minerals [Section 35E (7A)]: Where the undertaking of an Indian company which is entitled to a deduction on account of prospecting of

minerals, is transferred before the expiry of the period of 10 years to another company in a scheme of demerger, such expenditure of prospecting, etc. which is not yet written off shall be allowed as a deduction to the resulting company in the same manner as would have been allowed to the demerged company. The demerged company will not be entitled to the deduction thereafter.

(d) Treatment of bad debts [Section 36(1) (vii)]: Where due to demerger the debts of the demerged company have been taken over by the resulting company and subsequently by such debt or part of debt becomes bad as per ICDS, such bad debt will be allowed as a deduction to the resulting company.

(e) Amortisation of expenditure in case of demerger [Section 35DD]: According to sub-section 1 where an assessee, being an Indian company, incurs any expenditure, on or after 1-4-1999, wholly and exclusively for the purposes of demerger of an undertaking, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the demerger takes place. No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) under any other provision of this Act.

(f) Carry forward and set off of business losses and unabsorbed depreciation of the demerged company [Section 72A (4) & (5)]: The accumulated loss and unabsorbed depreciation, in a demerger, should be allowed to be carried forward by the resulting company if these are directly relatable to the undertaking proposed to be transferred. Where it is not possible to relate these to the undertaking, such loss and depreciation shall be apportioned between the demerged company and the resulting company in the proportion of the assets coming to the share of each as a result of the demerger.

(g) Deduction available under section 80-IAB or 80-IB or 80-IC or 80-IE: Where an undertaking which is entitled to deduction under section 80-IAB/80-IB/80-IC/80-IE is transferred in the scheme of demerger before the expiry of the period of deduction under section80-IAB/80-IB/80-IC/80-IE, then—

(i) **No deduction** under section 80-IAB/80-IB/80-IC/80-IE shall be available to the demerged company for the previous year in which amalgamation takes place; and

(ii) the provisions of section 80-IAB/80-IB/80-IC/80-IE shall apply to the resulting company in such manner in which they would have applied to the demerged company.

SLUMP SALE

Section 2(42C): **"slump sale"** means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

Explanation 1 to clause (19AA) "Undertaking" shall include any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets and liabilities or any combination thereof not constituting a business activity.

Explanation 2 to clause (19AA) The determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as an assignment of values to individual assets or liabilities.

Section 50B: Computation of Capital Gains in Case of Slump Sale

Section 50B (1) Nature of Capital Gains: Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

Provided that, any profits or gains arising from the transfer under the slump sale, of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

Section 50B(2) Cost of acquisition and cost of improvement: In relation to capital assets being an undertaking or division transferred by way of such sale, the **"net worth"** of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

Section 50B(2)(ii) Full value of consideration: Fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.

Accordingly, the CBDT has inserted Rule 11UAE to determine the fair market value of the capital assets.

"Net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account.

However, any change in the value of assets on account of the revaluation of assets shall be ignored for the purposes of computing the net worth.

For computing the net worth, the aggregate value of total assets shall be, –

(a) in the case of depreciable assets, the written down value of the block of assets is determined in accordance with the provisions contained in section 43(6)(c)(i) relating to written down value in case of slump sale;

(aa) in case of capital asset being goodwill of a business or profession which has not been acquired by the assessee by purchase from a previous owner, nil;

(b) in respect of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 34AD, nil; and

(c) in the case of other assets, the book value of such assets.

Computation of Fair Market Value of Capital Assets for the purposes of Section 50B of the Income-tax Act.

11UAE. (1) For the purpose of section 50B(2)(ii), the fair market value of the capital assets shall be

(i) the FMV1 determined under sub-rule (2); or

(ii) the FMV2 determined under sub-rule (3),

whichever is higher.

(2) The **FMV1** shall be the fair market value of the capital assets transferred by way of slump sale determined in accordance with the formula -

A+B+C+D - L, where,

A = book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale as reduced by the following amount which relates to the such undertaking or the division, —

(i) any amount of income tax paid, if any, less the amount of income-tax refund claimed, if any; and

(ii) any amount is shown as an asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B =the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C =fair market value of shares and securities as determined in the manner provided in sub-rule (1) of rule 11UA;

D =the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L= book value of liabilities as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale, but not including the following amounts which relate to such undertaking or division, namely:-

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than the amount of income tax paid, if any, less the amount of income tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

(3) **FMV2** shall be the fair market value of the consideration received or accruing as a result of a transfer by way of slump sale determined in accordance with the formula

E+F+G+H, where,

E = value of the monetary consideration received or accruing as a result of the transfer;

F = fair market value of non-monetary consideration received or accruing as a result of the transfer represented by the property referred to in sub-rule (1) of rule 11UA determined in the manner provided in sub-rule (1) of rule 11UA for the property covered in that sub-rule;

G =the price which the non-monetary consideration received or accruing as a result of the transfer represented by the property, other than immovable property, which is not referred to in sub-rule (1) of rule 11UA would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer, in respect of the property;

H =the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property in case the non-monetary consideration received or accruing as a result of the transfer is represented by the immovable property.

(4) The fair market value of the capital assets under sub-rule (2) and sub-rule (3) shall be determined on the date of slump sale and for this purpose, the valuation date referred to in rule 11UA shall also mean the date of slump sale.

Explanation. - For the purposes of this rule, the expression “registered valuer” and “securities” shall have the same meanings as respectively assigned to them in rule 11U.

Form of report of an accountant under section 50B (2)

Rule 6H. The report of an accountant which is required to be furnished by every assessee along with the return of income, in case of slump sale, under sub-section (3) of section 50B shall be in Form No. 3CEA. Here Accountants means **Chartered Accountants**.

CASE STUDY

Computech Limited started the business in the year 2015 with two units- one unit is the "Laptop Unit" engaged in the business of manufacturing "Laptops" and another unit is the "Tablet Unit" engaged in the business of manufacturing "Tablet". Due to the less demand for tablets, the management decided to transfer Tablet units by way of a slump sale for a consideration of Rs. 900 lakhs.

The balance sheet of Computech Limited as on 31st March 2023, the date on which the Tablet unit has been transferred, is given here under –

Balance Sheet as on 31.3.2023 (*Figures in lakhs*)

Liabilities		***Amount***	***Assets***		***Amount***
Paid-up Share Capital		1,000	Land & Building		
General Reserve		250	- Laptop Unit	850	
Revaluation Reserve		320	- Tablet Unit	540	1,390
Bank Loan			Plant & Machinery		
- Laptop Unit	134		- Laptop Unit	280	
- Tablet Unit	75	179	- Tablet Unit	210	490
Trade Creditors			Debtors		
- Laptop Unit	125		- Laptop Unit	18	
- Tablet Unit	126	251	- Tablet Unit	12	30
			Trade Mark		
			- Laptop Unit	16	
			- Tablet Unit	16	32
			Inventories		
			- Laptop Unit	32	
			- Tablet Unit	26	58
		2,000			**2,000**

Other Information:

1. Revaluation reserve includes Rs. 100 lakhs for the Tablet unit of the building.
2. Land and Building of Tablet unit Rs. 700 lakhs in which the value of land is Rs. 320 lakhs and the value of the building is Rs. 380 lakhs. However, the written down value of the building as per the Income Tax Act is Rs. 220 lakhs.

3. The evaluated value of the building of the Tablet unit at Rs. 520 lakhs as on 31.03.2023.
4. The book value of the Plant & Machinery of the Tablet Unit was Rs. 450 lakhs.
5. Trademark was acquired on 18.10.2020 for Rs. 16 lakhs.
6. Expenses incurred on slump sale @.5% on consideration.

Compute the capital gain and tax liability for the assessment year 2023-24.

Assume The company has not opted for the provisions of section 115BAA.

Solution:

As per section 50B, any profits and gains arising from the slump sale effected in the previous year shall be chargeable to income tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before the slump sale, the capital gain shall be deemed to be long-term capital gain. Indexation benefit is not available in case of slump sales as per section 50B (2).

Computation of capital gain and tax liability for the assessment year 2023-24

Particulars	***(fig. in lakhs)***
Sale consideration for slump sale of Tablet Unit	**900**
Less: Expenses on transfer	**4.5**
Net sale consideration	**895.5**
Less: Net worth of Software Unit	**527.5**
Long-term capital gains arising on slump sale	**368**
(The capital gains is long-term as the Laptop Unit is held for more than 36 months)	
Tax liability on LTCG	
Under section 112@20% on Rs. 368 lakhs 94.00	**73.6**
Add: Surcharge@7% (since total income exceeds ₹1 crore but does not exceed ` 10 crores)	**5.15**
	78.75
Add: Health and education cess@4%	**3.15**
Tax Liability	**81.90**

Working Note-1: Computation of net worth of Tablet Unit

Particulars		*(fig. in lakhs)*
Land		320
Building (540-320-100)		120
Plant & Machinery		210
Debtors		12
Trade Mark (Working note -2)		10.5
Inventory		26
TOTAL ASSETS		698.5
Less: Current Liability		
Bank Loan	45	
Creditors	126	171
NET WORTH		**527.5**

Working note-2: WDV of Trademark as on 01.04.2022

Particulars	*(fig. in lakhs)*
Cost of acquision as on 18.10.2020	16
Less: Depreciation @25% for financial year 2020-21(Half rate)	2
WDV as on 01.04.2021	14
Less: Depreciation@25% for the financial year 2021-22	3.5
WDV as on 14.04.2022	10.5

LESSON ROUND-UP

- Restructuring of business includes amalgamation, acquisition, merger, foreign collaboration, demerger, and slump sale.
- Amalgamation means the liquidation of two or more companies and the formation of one new company.
- As per Income Tax Act, there are various tax incentives or concessions to amalgamating companies, Shareholders of amalgamating companies, and amalgamated companies also like no capital gain tax on the transfer of the capital assets, No capital Gain on the transfer of the shares, benefits of unabsorbed scientific research expenditure, amortization of preliminary expenses, treatment of bad debts, Carry forward and set off business losses and unabsorbed depreciation of the amalgamating company, etc.

- In demerger when a company splits off into two or more companies. There are various tax concessions and incentives in respect of demergers like tax concessions to demerged companies, tax concessions to shareholders of demerged companies, and tax concessions to resulting companies. These incentives are similar to the amalgamation. However, some are not applicable in the demerger.
- Slump sale means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. This case attracts capital gain that will arise from the transfer of long-term capital assets and is hence taxable. This will be the income of the previous year in which the transfer took place.

GLOSSARY

Amalgamation: Amalgamation in relation to companies means the merger of one or more companies with another company, or the merger of two or more companies to form a new company.

Amalgamating company: The Company so merged goes out of existence.

Amalgamated company: The Company into which the amalgamating company merges, or the new company that is formed to affect an amalgamation.

Demerger: in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 2013, by a demerged company of its one or more undertakings to any resulting company.

Demerged Company: It means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company.

Erstwhile public sector company: means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment, meaning, the sale of shareholding by the Central Government or any State Government in a public sector company which results in a reduction of its shareholding to below 51% along with transfer of control to the buyer.

Installed capacity: means the capacity of production existing on the date of amalgamation.

Resulting Company: One or more companies (including wholly-owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and the resulting company in consideration of such transfer of undertaking, issues shares to shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of the demerger.

Slump sale" means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. NPK Limited is an industrial undertaking which has an accumulated business loss of Rs. 50,00,000 and unabsorbed depreciation of Rs. 70,00,000 going to reorganize its business by amalgamating with PPK Limited. PPK Limited. PPK Limited is agreeable to the amalgamation.

State the conditions to be fulfilled by these companies so that the merger is treated as an amalgamation and losses can be carried forward by PPK Limited under section 72A of the Income Tax Act.

2. Define amalgamation u/s 2(1B) if Income Tax Act. State the tax incentives available to 'Amalgamated Company' in the case of amalgamation under the Income Tax Act, 1961.
3. What tax concessions are available in case of demerger to shareholders of a demerged company?
4. NK Ltd. was amalgamated with PK Ltd. on 15.09.2022. The following information is available as on 01.04.2022 is under:

Block of assets	***Rate of depreciation***	***WDV as on 01.04.2022***	***Transfer value***
Building	10%	Rs. 50,00,000	Rs. 45,00,000
Plant & Machinery	25%	Rs. 80,00,000	Rs. 70,00,000

You are required to compute the capital gain for NK Ltd. and the amount of depreciation for NK Ltd. and PK Ltd. for the assessment year 2022-23.

5. What the concessions available in the case of demerger :
   (i) To a demerged company
   (ii) To shareholders of the demerged company
   (iii) To resulting company

LIST OF FURTHER READINGS

- Corporate Tax Planning and Business Tax Procedure : Dr Vinod K Singhania
- Corporate Tax Planning & Management : Dr Girish Ahuja and Dr Ravi Gupta
- Corporate Tax Planning & Management : Dr S.P. Goyal

OTHER REFERENCES

- Income Tax Act, 1961 - https://www.incometaxindia.gov.in/Pages/Acts/income-tax-Act.aspx
- Income Tax Rules, 1962 - https://incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx
- Circulars - https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx
- Notifications - https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx

WARNING

Regulation 27 of the Company Secretaries Regulations, 1982

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or any Committee formed by the Council in this regard, may suo-moto or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity of being heard, suspend or debar him from appearing in any one or more examinations, cancel his examination result, or registration as a student, or debar him from re-registration as a student, or take such action as may be deemed fit.

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PROFESSIONAL PROGRAMME

GOODS AND SERVICES TAX (GST) & CORPORATE TAX PLANNING

GROUP 2 • ELECTIVE PAPER 7.2

(*This test paper is for practice and self-study only and not to be sent to the Institute*)

Time allowed: 3 hours *Maximum Mark: 100*

Note: All the references to sections mentioned in Part II of the Question Paper relate to the Income Tax Act, 1961 and relevant Assessment Year 2023-24, unless stated otherwise.

Answer all Questions

PART I - GOODS AND SERVICES TAX 'GST' (70 MARKS)

Question No. 1

(a) M/s Star Events (Noida registered) is an event management company having place of business in Noida (UP) organise 2 awards functions for M/s Riddi-Siddi Golf Merchant (Mumbai Registered) in Delhi and one in Singapore.

Determine place of supply if: Organising event in Singapore

i. Place of supplier (Noida)

ii. Location of Recipient (Mumbai)

iii. At Singapore

iv. None of the above

(b) Mr. Shyam an unregistered person resident of Jaipur, hires the service of M/s Moon Limited an event management company registered in Delhi, for organising of the new product launch in Kochi. The place of service provided by M/s Moon Limited will be_____.

i. Jaipur

ii. Delhi

iii. Kochi

iv. None of the above

(c) Mr. Puneet, a service provider, received an advance of Rs. 50,000 from Mr. X on 5th April a part payment for a service. The service was completed on 10th April and the date of invoice was 16th may, He received remaining amount of Rs. 1, 00,000. Determine Time of Supply (TOS) of Service.

i. For advance TOS is 5th April for balance 10th April

ii. 10th April for both payments

iii. 5th April advance and 14th June for remaining

iv. 14th June for both

(d) X Limited provides details of goods supplied from Y limited:

Purchase price (without tax and discount) is Rs, 50,000 and packing charges is Rs, 5,000, Duty by local authority is Rs. 2000 and CGST/SGST charged in Invoice is Rs. 9,000. Subsidy received from NGO is Rs. 10,000. Y Limited offers 2 % Discounts on purchase price. What will be the taxable supply made by X Limited?

i. Rs. 67,000

ii. Rs. 57,000

iii. Rs. 66,000

iv. Rs. 76,000

(e) Details of few items (on which GST paid) is given in respect GST inputs of Ram Co. Ltd. during the month of January. Raw Material Rs. 40,000, Machine Rs. 25,000, Capital Goods (fully capitalised) Rs. 32,000, Lorry used for Transportation of Raw Material is Rs. 30,000 and Food to employees for Rs. 35,000. Determine the amount of Input Tax Credit available.

i. Rs. 1,30,00

ii. Rs. 95,000

iii. Rs. 65,000

iv. Rs. 98,000

(5 x 2 Marks = 10 Marks)

Question No. 2

M/s Realtech Limited, a registered supplier under GST, in the State of Tamil Nadu and engaged in Real Estate business. It provides following information for the month of January, 2023.

S. No.	*Particulars*	*Amount (Rs.)*
	Outward Supply	
1.	Transferred one Lot of Cement Begs to its Branch (Puducherry), from its head office at Chennai, Both places are under GST Registration	4,50,000
2.	Provide Labour Services of Constructions of single commercial unit from Cochin (Kerala)	10,00,000
3.	Supplies of Marbles consignment in the territorial water to JK Associates (under 12 nautical miles from State of Tamil Nadu)	4,00,000
4.	Received advance for future supplies of goods from a customer in Tamil Nadu (70% related to future supply of services)	5,00,000
5.	A Laptop used for business was given to free of cost to an unrelated person based in State of Tamil Nadu, Laptop was purchased 2 year back of Rs, 1,00,000 (including GST Rs. 28,000) having W.D.V. of Rs 64,000 as on date of sale. Market value is Rs 55,000 (excluding GST). NO ITC taken on this at the time of purchase	NIL
	Inward Supply	
1.	Availed services of an arbitral tribunal in Chennai, to settle a case of RERA Act.	5,00,000

2.	Purchase construction material from Strong Steels Ltd. (Registered in Andra Pradesh)	12,00,000
3.	Purchase a new truck from a Dealer in Chennai, Tamil Nadu for transport of material	8,00,000

Additional information: (a) Paid Rs. 5, 00,000 to an independent director based at Chennai during the month, (b) Company claims Depriciation on truck, (c) Turnover of M/s Realtech Limited in previous year was Rs. 180 Lakh, (d) E-invoice portal shows Strong Steels Ltd.'s GST number has been enabled for e-invoicing. However the supplier did not issue e-invoice/tax invoice with invoice reference number (IRN). The invoice was reflected in GSTR-2A. (e) Rate of CGST/SGST 9% and IGST 18%,) compute net GST payable in the month of January with reasons of treatment (All amounts are exclusive of tax).

(10 Marks)

Question No. 3

(i) Mr. Aryan Committed an offences under CGST Act which can be compounded under section 138(1) of CGST Act, 2017. Under the offence he paid a tax of Rs. 8 lakh. He want to apply to Commissioner for compounding the said offence. Compute minimum and maximum compounding amount as per provisions of CGST Act, 2017 payable by Aryan. What consequences will be after paying compounding amount as may be decided by Commissioner?

(5 Marks)

(ii) Mr. Deepak, a regular tax payer filed GSTR-1 (Return for outward supply) for the month of January 2023 before due date, later in May, 2023 he discovered that there is an error in GSTR-1 of the month of January already filed and wants to revise it. You are required to advise him as what we done by him as per the provision of CGST Act.

(5 Marks)

Attempt all parts of either Q. No. 4 or Q. No. 4A

Question No. 4

(a) Janki Traders, registered in Karnataka, is engaged in supply of taxable goods. Its turnover in the preceding financial year was Rs. 200 lakh and was furnishing its GST return on monthly basis. In the beginning of April month in the current financial year, it sought advice from its tax consultant, Jeevan Consultants, whether it can furnish its GST returns on quarterly basis from now onwards. Jeevan Consultants advised Janki Traders that it cannot furnish its return on quarterly basis as the GST law does not provide for quarterly return under any circumstances. Discuss the technical veracity of the advice given by Jeevan Consultants.

(**b)** In 2020, at the time of Covid pandemic, M/s. Harish Chandra decided to sell at 25 % of cost of his own branded food grains & groceries items to others who providing free food to the needy people. Following is the details of transactions from April to September:

1. Total turnover excluding GST of groceries and food grains (Actual value is Rs 22 Cr.)	Rs. 5,50,00,000
2. Tax paid on security and maintenance services during period	CGST/SGST 1,00,000 each
3. Tax paid on warehouse rent during period	CGST/SGST 1,50,000 each
4. Tax paid on packing material and printing thereof during period	CGST/SGST 5,00,000 each

What is the value for the purpose of payment of GST? Calculate input tax credit and output liability. (Assume tax rate is 3% CGST, 3% SGST)

(c) M/s Neat & Clean Noida, Uttar Pradesh, provides house-keeping services. The Entity supplies its services exclusively through an e-commerce portal owned and managed by E-Expert Pvt. Ltd., Delhi. The turnover of M/s Neat & Clean in the current financial year is Rs. 19 lakh. Advise M/s Neat & Clean as to whether it is required to obtain GST registration. Will your advice be different if M/s Neat & Clean sells readymade Suits & Sari exclusively through the e-commerce website owned and managed by E-Expert Pvt. Ltd.?

(d) Describe with reason whether E-way bill is required to be issued under CGST Act, 2017 in the following given cases:

(i) Pacific Limited, Andra Pradesh Registered Company, supply goods for job work to T & T Company (Job worker) in Karnataka (Registered under GST) Value of Consignment was Rs. 48,000.

(ii) Mr. Abhimanyu (a casual tax payer) of Telangana started business in notified handicraft products. He got a direct order of Rs. 45,000 from Tamil Nadu which he transport. He is not registered in GST because he has threshold limit of Rs 20 Lakh.

(4 x 5 Marks = 20 Marks)

OR (Alternate question to Q. No. 4)

Question No. 4A

(a) Akash Private Limited, registered in Navi Mumbai, Maharashtra, is engaged in supply of taxable goods and services. In the month of May, it sold goods worth Rs.8,00,000 (excluding GST) to Sun Enterprises and collected tax @ 18% on said goods from the buyer. However, the actual rate of tax applicable in the given case was 12%. Akash Private Limited deposited the tax @ 12% on these goods to the Government on the due date and retained the remaining tax collected. What will be the amount of penalty, if any that may be imposed on Akash Private Limited in the month of November in the given case ignoring interest payable, if any?

(b) In case of M/s Divyajyoti Enterprise, Agra (U.P.) following are the details for the year 22-23, determine the total turnover for the purpose of registration;

S. No.	***Particulars***	***Amount (Rs.)***
1	Sale of Diesel (Vat levied by U.P Govt)	4,00,000
2	Supply of goods from X enterprise directly by Principal, after completing job work	2,50,000
3	Export Supply to U.S.	7,00,000
4	Supply to Own branch in Lucknow (U.P)	3,00,000
5	Outward supply on which GST is to be paid by Recipient under Reverse charge	5,00,000

(*Note: All the amounts are excluding GST*).

(c) XYZ limited a manufacturer of Jaipur, instruct PQR limited to supply a machine directly to the job worker,

JW Enterprise outside its factory to carry out some work on goods. Machine send on 7th March 2019 and was received by job Workers as on 10th March, JW enterprise carry on job work and return it back to XYZ Limited on 1st April 2022.

(i) Can XYZ limited manufacturer retain ITC availed by them on the machine?

(ii) Would your answer be the same if place of machine, Jigs, fixture were supplied to the job worker which was returned to the principal on 1st march, 2022.

(d) Mr. Rajkumar is the Chief Executive Officer of King technology Ltd., got the summon to appear before the central tax officer to produce the books of accounts of King Technology Ltd. under an inquiry conducted on the company. What will be the amount of penalty, if any that may be imposed on Rajkumar, if he fails to appear before the central tax officer?

(4 x 5 Marks = 20 marks)

Question No. 5

(**a**) Explain the following with respect to CGST Act, 2017:

(i) GST Compliance Rating.

(ii) Advance Ruling

(**b**) What is CPIN also explain the concept of Electronic Cash Ledger with respect to CGST Act, 2017.

(**c**) You have to discuss the validity of following cases under the provision of CGST Act, 2017:

(i) Proper office issue the notice under section 74(1) against which appeal was preferred by Mr. Rakesh (assessee). Appellate Authority conducted that the notice issued under said section is not sustainable for the reason that charges of fraud has not been established. Now, the officer wants to determine the tax payable by treating the said notice as it was issued u/s 73(1). Determine whether the action of Proper officer is valid?

(ii) Mr. Arvind a GST officer issued an adjudication order which did not specify the amount of interest on tax short paid by Mr. R (Assessee) a registered person. Hence, Mr. R contends that interest cannot be demanded as the said order is quite on the same matter. Is the contention of Mr. R is correct?

(d) Bhramosh Limited filed GST Return under section 39 of CGST Act, 2017 for the month of April 2022 on 11th of July 2022. Due date was 20th of May, 2022. Details of tax assessed as payable for the said month as gives as under:

Particulars	***CGST(Rs.)***	***SGST(Rs.)***
Output tax payable	2,00,000	2,00,000
Tax payable under Reverse charge	50,000	50,000
ITC available	90,000	90,000

(i) Compute tax liability while filing the return as well as interest payable for delay

(ii) Assuming, Company has ITC balance of Rs. 2, 70,000 each under CGST and SGST for the said

month, Compute the interest payable, if entire tax due for the said month was paid through the Electronic Credit ledger to the extent possible.

(e) What happens to Input tax credit in case of exempt supply of Goods & Services or both by a registered supplier became a taxable supply? Explain with example.

(5 x 4 = 20 Marks)

PART II: CORPORATE TAX PLANNING (30 MARKS)

Question No. 6

(i) What do you understand by tax planning how it is different from tax management? Explain.

(ii) What is the difference between tax avoidance and tax evasion?

(iii) When the transfer of capital assets under amalgamation is not treated the 'Transfer'?

(iv) Explain the Objectives of Tax Planning.

(v) What are the Conditions for carrying forward or set-off of accumulated loss and unabsorbed depreciation allowable in case of Amalgamation?

(5 x 3 Marks = 15 Marks)

(Attempt all part of either Q. No. 7 or Q. No. 7A)

Question No. 7

(i) Explain the tax concession or incentive under section 47 of Income-tax Act, 1961 in respect of Demerged Company.

(ii) X limited is proposed to merge with Y limited. Following are the given particulars if the former company:

Unabsorbed depreciation	Rs. 2, 50, 00,000
Unabsorbed business losses	Rs. 1, 00, 00,000

Consider which of the benefit can be availed by company Y and advise on condition to be fulfilled to claim each such benefit.

(iii) Explain the treatment of sale of assets used for scientific research in respect of Income-tax Act 1961.

(3 x 5 Marks = 15 Marks)

OR (Alternate question to Q. No. 7)

Question No. 7A

(i) What are the conditions to avail deduction under section 80-IB of income tax Act, in case of certain industrial undertaking other than infrastructure development undertaking?

(ii) Sarv Janhitay Limited has 2 undertakings A and B. The following information are available-

Particulates	*(Rs. in thousands)*		
	Unit A	***Unit B***	***Total***
Assets	Plants R & S	Plants P & Q	
Depreciation rate	15%	15 %	
Depreciated value on 1st April 2020	--	600	600
Add: Actual cost of old plants R & S acquired on 1st June 2020	400	--	400
Less: sale proceed of plants P transferred on November 30th 2020.	--	900	900
WDV on March 31st 2021	400	--	100
Less: Depriciation 2020-21	60	--	15
Depreciated value on 1st April 2021	340	--	85
Less: Depriciation 21-22	51	--	12.75
Depreciated value on 1st April 2022	289	--	72.25

On 1st April 2022, Unit A is transferred to Sarv Janshukhay Limited, an India company in the scheme of demerger. What will be the Written Down Value (WDV) and Actual cost in the hands of Both Companies?

(iii) What is Slump Sale? How to find out the written Down value in the hands of transferor in the case of slump sale under section 43 of Income-tax Act, 1961 ?

(3 x 5 Marks = 15 Marks)

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