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READING MATERIAL

# INDIRECT TAXATION



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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# INTRODUCTION

Indirect taxes are the taxes levied on goods and services on the basis of production, sale or purchase of goods or provision of services, in the form of import and export duty, excise, sales tax, Value Added Tax (VAT), service tax, entertainment tax, electricity duty, tax on passenger fares and freights etc. They are called indirect taxes as the burden on 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.

Broadly, the existing indirect tax regime can be looked at from the point of view of Central and State laws. For the Central Government, Central Excise, Customs and Service tax were the three main components of indirect taxes. Similarly, for the State Governments, Value Added Tax and Central Sales Tax were major taxes along with Octroi , Entertainment Tax etc.

The taxation reforms in India go back right from liberalization and globalization in the early 1990s to the recent Goods and Services Tax (GST). Goods and Services Tax is one of the most comprehensive single tax reforms of independent India. GST is a comprehensive indirect tax levied on goods as well as services at the national level. It 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 four Acts :**



This is a comprehensive study material updated till December, 2017. The material contains the indirect tax portion with the purpose of guiding the students appearing in June, 2018 examination.

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# **Lesson 1**

## **Concept of Indirect Taxes at a Glance**

### **LESSON OUTLINE**

- Background
- Constitutional Powers of Taxation
- Indirect Taxes in India – An Overview
- Pre GST Tax Structure and Deficiencies
- Administration of Indirect Taxation in India
- Existing Tax Structure

## BACKGROUND

Taxation is one of the essential and decisive elements in the working of machinery of a Nation. It forms a quintessential part of development of any country. The revenue that is collected in the form of taxes is used for providing goods and services for public utility such as infrastructure, transportation, facilities like rain shelters and common areas, sanitation and all other such amenities which are provided by the government of the country.

A tax can be said to be a non-penal, yet compulsory transfer of resources from the private to the public sector levied on the basis of a predetermined criteria. Taxes are collected for serving the primary purpose of providing sufficient revenues to the State and have become a mechanism through which the social and economic objectives of a welfare state could be achieved. Every amount that is collected is contributed towards providing better infrastructure facilities for public at large. The same is also utilized towards rural revival and social well-being of general public. Taxation system is instrumental in removing poverty and inequality from the society. On the other hand, tax reform is fundamental equipment in strategy development aiming at holistic growth of the society. Thus, the importance of an efficient tax system and reforms in tax system cannot be undermined.

There are two types of taxes levied in India, i.e., Direct tax, which is levied directly on income, profession, etc, of an individual and where the tax burden cannot be passed on to any other person. Indirect tax, on the other hand, is not paid on the direct income of an individual person but is levied indirectly on the ultimate consumer of goods and services for consumption of goods and services. Hence, the former is levied on the income while latter is levied on the goods and services. In indirect taxes, immediate burden is on one person and ultimate burden is on some other person i.e., the person who ultimately consumes.

Goods and Services Tax (GST) was rolled out in India with effect from 1st July, 2017. GST is one of the greatest tax reforms in India. It transforms the system of taxation and tax administration into a digital world by adopting the latest information technology. With the introduction of GST, India has joined the club of developed and progressing Nations which are already having a common tax on goods and services.

**Following are some of the distinctions between direct and indirect taxes :**

DIRECT TAXES	INDIRECT TAXES
These are mainly on income, wealth, profession etc. of persons	These are consumption based taxes on goods and services
Tax payer pays taxes directly to government	Tax payer pays taxes indirectly through intermediaries like importers , suppliers etc.
Direct taxes become payable after the benefit/ income reaches the tax payer	Indirect taxes are payable even before the goods/ services reach the tax payer.
Income tax, corporation tax are main sources of direct tax	Customs and GST are major indirect taxes in India.

## CONSTITUTIONAL POWERS OF TAXATION

Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government institutions and sets out fundamental rights, directive principles and the duties of citizens. Constitution of India thus lays down the foundation brick for arranging the powers, duties and the supremacy to legislate all laws of India. The authority to levy a tax is hence derived from the Constitution of India.

Article 246 of the Indian Constitution, lays down three types of lists and distributes legislative powers including taxation, between the Parliament of India and the State Legislatures. It lays down the subject matters with respect to which only the Parliament can make rules, where the State Legislatures can exclusively lay down the rules and a Concurrent List whereby both the Parliament as well as State Legislatures can legislate. Thus the Constitution of India allocates the power to levy various taxes between the Centre and the states.

Broadly, the previous indirect tax regime consisted of Central and State laws. For the Central Government, Central Excise, Customs and Service tax were the three main components of indirect taxes. While for State Government, Value Added Tax (VAT) and CST were the major taxes along with Octroi, Entertainment Tax etc. Taxation of goods and services was governed under separate legislatures. In respect of goods, the Centre had the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the states had the powers to levy tax on the sale of goods. In the case of inter-state sales, the Centre had the power to levy a tax (the Central Sales Tax) but, the tax was collected and retained entirely by the states. As far as services were concerned, it was the Centre alone that was empowered to levy service tax governed by the Finance Act.

Introduction of the Value Added Tax (VAT) was considered to be a major step and an essential breakthrough in the field of indirect taxes. Although primarily VAT was successful, there were certain shortcomings in the structure of VAT. The reasons for such shortcomings was that there was a mosaic of taxes being levied on goods and services, such as luxury tax, entertainment tax, etc., which were not subsumed in the VAT thereby marginalizing the benefits of comprehensive tax credit mechanism. Further to this, many other taxes were levied by both the Central Government and the State Government on production, manufacture and distributive trade, where no set-off was available in the form of input tax credit. These taxes added to the cost of goods and services and led to tax on tax i.e., cascading of taxes and the erstwhile indirect tax regime was ineffective to remove this cascading effect of taxes.

These taxes were being levied and collected exclusively under their respective entries in Union and State lists as demarcated by Article 246.

Goods & Services Tax regime of indirect taxes brought a single tax which was levied on supply of goods or services or both with concurrent jurisdiction of Centre and states. This led to bringing about amendments in the Constitution so that they may simultaneously levy and collect Goods & Services Tax.

The Constitution of India has been amended by the Constitution (One Hundred and First Amendment) Act, 2016 for this purpose.

To bring out GST laws governing goods and services, Article 246A has been inserted to enable levy of tax on goods and services simultaneously both by Centre and states/ union territories.

## **CONSTITUTION AMENDMENT ACT, 2016**

### **Article 246A**

Article 246A was inserted by Constitution (101st) Amendment Act, 2016, especially for the Goods & Services Tax. Article 246A provides that:

- (1) Notwithstanding anything contained in Article 246 and Article 254, Parliament, and subject to clause (2), the Legislature of every State, has the 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, or of services, or both takes place in the course of inter-State trade or commerce.

*Explanation* : Provisions of Article 246A, shall, in respect of goods and service tax referred to Article 279A (5), will be effective from the date recommended by the Goods and Services Tax Council.

Article 246 deals with subject matter of laws made by Parliament and by the legislatures of the States and Article 254 with Inconsistency between laws made by the Legislatures of State.

### **Amendment to Article 248**

Article 248 contains the Residuary Powers of legislation. Article 248(1) reads as follows –

**Article 248(1)** : Subject to Article 246A, Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

**Article 248(2)** : Such power shall include the power of making any imposing a tax not mentioned in either of those Lists.

#### **Amendment to Article 249**

**Article 249** deals with the power of Parliament to legislate with respect to a matter in the State List in the national interest. After amendment Article 249(1) reads as follows –

**Article 249(1)** : Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to goods and services tax provided under Article 246A or any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

#### **Amendment to Article 250**

**Article 250** deals with the power of Parliament to legislate with respect to any matter in the State List if a Proclamation of emergency is in operation. After amendment Article 250(1) reads as follows -

**Article 250(1)** - Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to goods and services tax provided under Article 246A or any of the matters enumerated in the State List.

#### **Amendment to Article 268**

**Article 268** deals with duties levied by the Union but collected and appropriated by the states. The amendment proposes deletion of some words. After amendment, Article 268 reads as follows –

**Article 268(1)** : Such stamp duties as are mentioned in the Union List shall be levied by the Government of India but shall be collected –

In the case where such duties are leviable within any Union territory.

In other cases, by the States within which such duties are respectively leviable.

**Article 268(2)** : The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

#### **Omission of Article 268A**

Article 268A dealt with service tax levied by Union and collected and appropriated by the Union and States. This has been omitted being irrelevant.

#### **Amendment to Article 269**

**Article 269** deals with taxes levied and collected by the Union but assigned to the states.

The amended Article 269 (1) reads as follows –

**Article 269(1)** - Taxes on the sale or purchase of goods and taxes on the consignment of goods except as provided in Article 269A shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

### Article 269A

The newly inserted Article 269A provides for levy and collection of goods and services tax in course of inter-state trade or commerce.

Article 269A(1) provides that 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.

The explanation to this clause provides that supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-state trade or commerce.

*Note:* Integrated Goods & Services Tax Act, 2017 was passed by Parliament on the basis of Article 269A

Article 269A (2) provides that the amount apportioned under clause (1) shall not form part of the Consolidated Fund of India.

Article 269A(3) provides that where an amount collected as tax levied has been used for payment of the tax levied by a State under Article 246A, such amount shall not form part of the Consolidated Fund of India.

Article 269A (4) provides that where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

Article 269A(5) provides that the Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes places in the course of inter-state trade or commerce.

### Amendment to Article 270

Article 270 deals with distribution of revenues between the Union and states. After amendment Article 270 (1) reads as follows –

Article 270(1) - All taxes and duties referred to in the Union List, except the duties and taxes referred to in Articles 268, 268A and 269, respectively, surcharge on taxes and duties referred to in Article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

The newly inserted clauses are –

Article 270(1A) – The tax collected by the Union under clause (1) of Article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

Article 270(1B) - The tax levied and collected by the Union and clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).

### Amendment to Article 271

Article 271 deals with surcharge on certain duties and taxes for the purpose of the Union. After amendment, Article 271 reads as follows-

Article 271 - Notwithstanding anything in Articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those Articles, except the goods and services tax under Article 246A, by a surcharge for the purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.



## GOODS AND SERVICES TAX COUNCIL

Section 12 of the Act proposed to insert a new Article 279A after Article 279 which deals with Goods and Services Tax Council.

Consequently, Article 279A was inserted by the Constitution (101st) Amendment Act, 2016 with effect from September 12, 2016

### Article 279A

(1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely :

- (a) the Union Finance Minister..... Chairperson;
- (b) the Union Minister of State in charge of Revenue or Finance..... Member;
- (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on –

- (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;
- (b) the goods and services that may be subjected to, or exempted from the goods and services tax;
- (c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;
- (d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
- (e) the rates including floor rates with bands of goods and services tax;
- (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
- (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
- (h) any other matter relating to the goods and services tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely : –

- (a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and
- (b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of –

- (a) any vacancy in, or any defect in, the constitution of the Council; or
- (b) any defect in the appointment of a person as a Member of the Council; or
- (c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute —

- (a) between the Government of India and one or more States; or
- (b) between the Government of India and any State or States on one side and one or more other States on the other side; or
- (c) between two or more States, arising out of the recommendations of the Council or implementation thereof.

The GST Council has been constituted under Article 279A to make recommendations to the Union and States on the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which are subsumed in the GST.

It brings about certainty and breaks trade barriers and entry barriers among the states of India including Jammu & Kashmir.

Thus, Article 279A (1) provides that the President shall, within 60 days from the date of the commencement of the Act, by order, constitute a Council to be called the Goods and Services Tax Council. Article 279A(2) provides the constitution of GST Council as under -

1. Union Finance Minister – Chairperson;
2. The Union Minister of State in charge of Revenue or Finance- Member;
3. The Minister in charge of Finance or Taxation or any other Minister nominated by each State Government – Members.

The members shall, as soon as may be, choose one amongst themselves to be the Vice Chairperson of the Council for such period as they may decide.

The mechanism of GST Council would ensure harmonization on different aspects of GST between the Centre and the states as well as among states. It has been provided in the Constitution (101st Amendment) Act, 2016 that the GST Council, in discharge of its various functions, shall be guided by the need for a harmonized structure of GST and for the development of a harmonized national market for goods and services.

### **Amendment of Article 286**

Article 286 deals with the restrictions as to imposition of tax on the sale or purchase of the goods. After amendment, Article 286 reads as follows:

Article 286 (1) - No law of a State shall impose, or authorize the imposition of, a tax on the supply of goods or of services or both, where such supply takes place –

1. outside the State; or
2. in the course of the import of the goods into, or export of the goods out of, the territory of India.

Article 286 (2) - Parliament may by law formulate principles for determining when a supply of goods or services or both takes place in any of the ways mentioned in clause (1).

### **Amendment of Article 366**

Article 366 defines some words. Clause (12A) is proposed to be inserted after clause (12). The newly inserted clause (12A) defines the term 'goods and services tax' as any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption.

Clauses (26A) and (26B) have been inserted after clause (26). Clause (26A) defines the term 'services' as anything other than goods.

Clause (26B) defines the term 'State', with reference to articles 246A, 268, 269, 269A and 279A including a Union territory with Legislature.

### **Amendment of Article 368**

Article 368 deals with the power of Parliament to amend Constitution and procedure there for.

### **Amendment of Sixth schedule**

Sixth schedule deals with the provisions as to the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.

Para 8 of the schedule deals with powers of the Regional Councils to assess and collect land revenue and impose taxes. Clause (e) after clause (3) (d) has been inserted. After this para, 8(3) reads as follows –

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say -

- (a) taxes on professions, trades, callings and employments;
- (b) taxes on animals, vehicles and boats;
- (c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries;
- (d) taxes for the maintenance of schools, dispensaries or roads.; and
- (e) taxes on entertainment and amusements.

### **Amendment of Seventh Schedule**

Seventh Schedule deals with three types of Lists viz., Union List, State List and Concurrent List.

84. Duties of excise on the following goods manufactured or produced in India, namely-

1. Petroleum crude;
2. High speed diesel;
3. Motor spirit (commonly known as petrol);
4. Natural gas;

5. Aviation turbine fuel; and
6. Tobacco and tobacco products.

*Note:* On the above 6 items central excise duty is continued to be levied. On 1 to 5 only Central excise duty is levied and no GST. But on item No. 6 both GST and Central excise duty are imposed.

Entries 92 (Taxes on the sale or purchase of newspapers and on advertisements published therein) and 92C have been omitted.

Existing Entry 54 in the State List substituted as under :

**New Entry 54:** Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.

*Note:* On the above petroleum products imported, IGST is payable

Entry 62 in the State List substituted:

**62:** Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.

*Note:* only taxes on entertainments and amusements collected by local bodies are taxable under Entry No. 62. All others have been subsumed under GST.

The following entries have been deleted

1. Entry No. 52 – Taxes on the entry of goods into a local area for consumption, use or sale therein.
2. Entry No. 55 - Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.

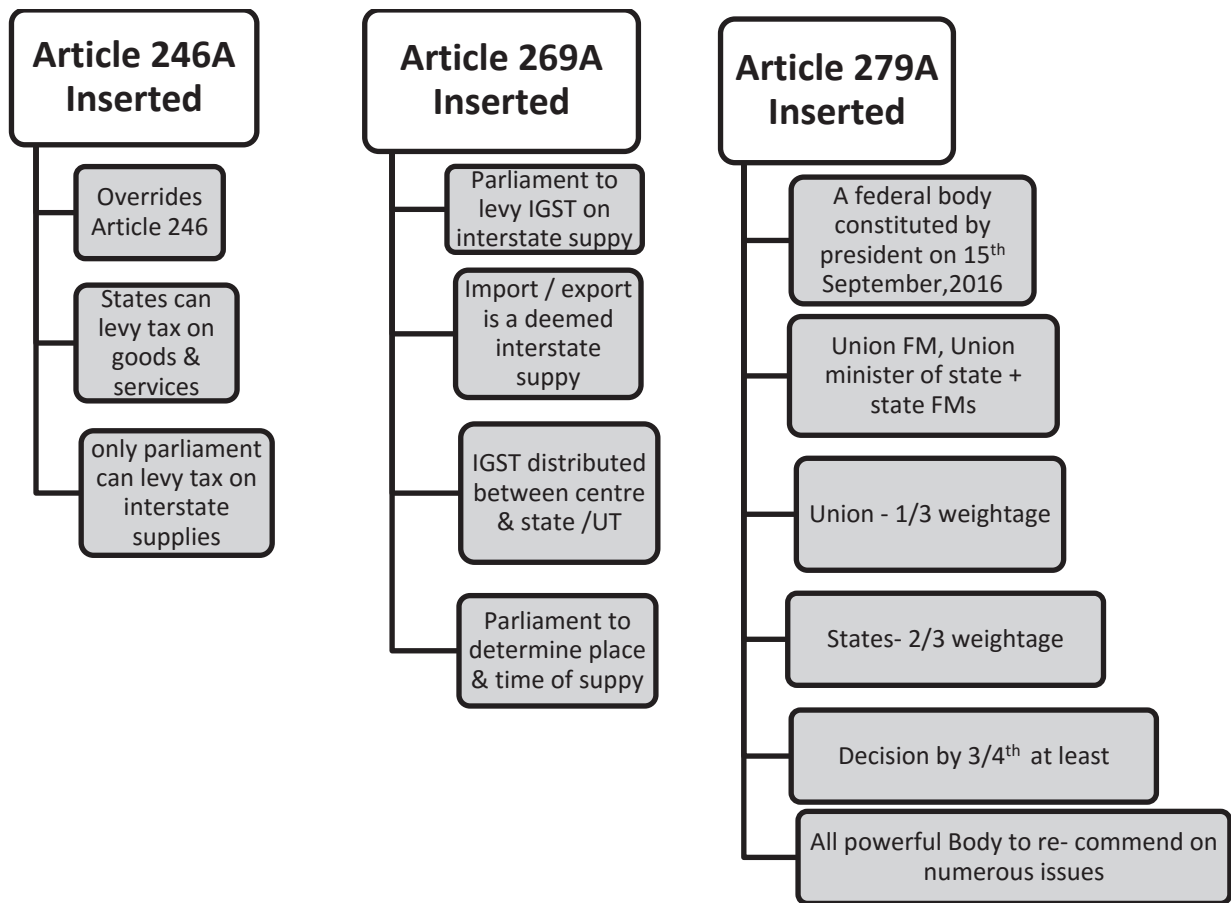
## COMPENSATION TO STATES FOR DEFICIT IN TAX COLLECTIONS

The amendment provides that Parliament shall, by law, on the recommendations of the GST Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and service tax for a period of five years.

Parliament has passed the law to compensate states for revenue deficit. The Act is 'GST (Compensation to States) Act, 2017. Under this Act some additional tax is collected as GST compensation cess on specified goods and the amount is distributed among those states incurring revenue loss due to introduction of GST.

## POWER TO REMOVE DIFFICULTIES

Section 20 gives powers to the President to remove difficulties. If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitutions as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty. No such order shall be made after the expiry of three years from the date of such assent. Every order shall, as soon as may be after it is made, be laid before each House of Parliament.



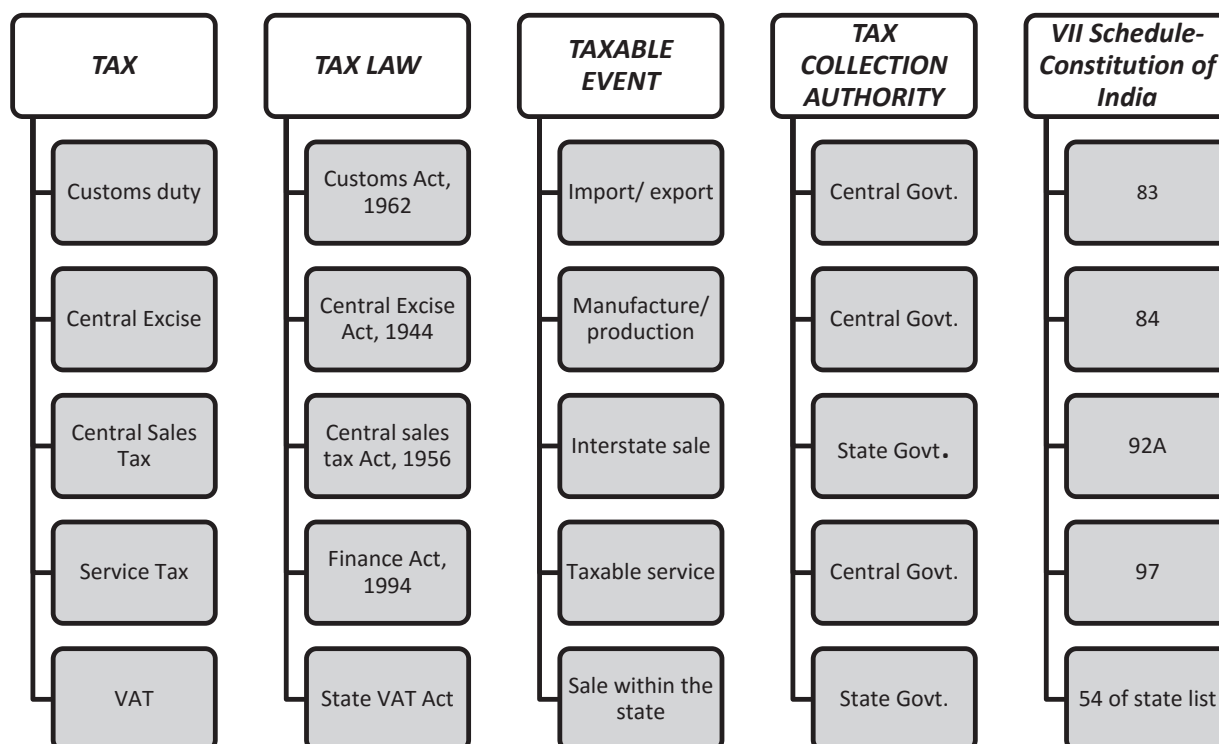
## INDIRECT TAXES IN INDIA – AN OVERVIEW

In the erstwhile regime of indirect taxes, goods were subject to tax by both i.e., the Centre as well as the States. Up to the manufacture stage, Central Government was collecting excise duty except for on alcohol for human consumption, narcotics and narcotic drugs, etc. on which state excise was being imposed. Even after the implementation of GST, states continue to levy tax of state excise duty and sales tax on liquors. States have exclusive powers to collect tax on both intra state and interstate sales.

Service tax was levied and collected by Union Government exclusively. There were plenty of taxes collected by State governments on various subjects like luxury tax, purchase tax, entry tax and so on.

Till 1987, Central Excise was collected on the gross value which resulted in cascading effect. MODVAT scheme was introduced to reduce cascading effect. MODVAT Scheme was replaced by CENVAT Credit scheme was extended to service tax later on. Further, Centre was able to convince the states to introduce VAT on local sales. The process continued from 2003 to 2008 by which all the states in India became VAT states. In 2003, Haryana was the only state to introduce VAT. In 2005, majority of the states introduced VAT, the rest followed in the later years.

The following diagram summarizes the erstwhile indirect taxation in India :



### Basic summary of Goods & Services Tax

- The first country to implement Goods & Services Tax was France in as early as 1954.
- India has the highest tax slab in the world i.e., 28%, next only to Argentina which is at 27%
- Almost 160 countries around the world follow this scheme of indirect taxation
- Indian GST has four rate structure, viz. 5%, 12%, 18% and 28% with cess on sin goods and luxury items
- There is a special rate of 3% on precious metals like gold
- GST is covered under five legislations i.e., Central GST Act, State GST Act, Integrated GST Act, Union Territory GST Act and GST (Compensation to States) Act
- Integrated GST, Compensation cess and Central GST are charged by Central Government
- All taxation policies and their implementation are based on the recommendations of the GST Council
- The taxable event under GST is supply
- GST Bill was introduced under 122nd Constitutional Amendment Bill, but passed under 101st Amendment Act, 2016
- Assam was the first state to ratify GST Bill but Telangana was the first state to pass State GST Bill
- GST Council was constituted with its headquarters in Delhi. The Union Finance Minister is the Chairperson
- State Finance Ministers are members of GST Council

- 1st July will be observed as the GST day
- The threshold limit under GST is Rs. 20 Lakhs, for some special category states it is Rs. 10 Lakhs
- There is a special purpose vehicle called GSTN which caters the IT needs of GST. GSTN comes under Companies Act, 2013 with combined stake of Central and State Governments is 49%. The rest is contributed by LIC Finance with 11% and ICICI Bank, HDFC, HDFC Bank and NSE Strategic Investment Corporation with 10% each.
- GST Council is meeting frequently to monitor and modify taxation policies. In order to simplify the procedures, it relaxed the system of filing the returns for small suppliers upto the annual turnover of Rs.1.5 crore. These suppliers can file returns quarterly instead of monthly.
- The GST Council also recommended a uniform policy on e way bill which is being implemented all over the country. This totally eliminates the checkpost system breaking the entry barriers and reducing bottlenecks in transportation.
- GST Council has also reviewed the rate structure of GST on goods and services. It also recommended reduction of rates on cases of merit.

## PRE GST TAX STRUCTURE & DEFICIENCIES

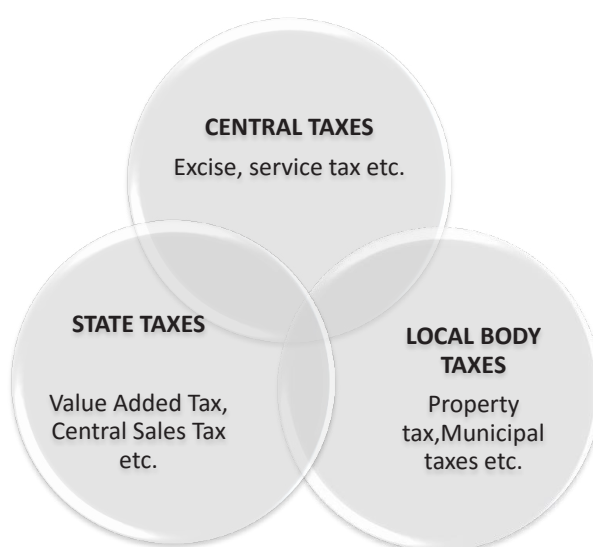
There are various economic factors internal as well as external due to which reforms in tax system become necessary. Issue of reforms in Indian tax system has always been a priority for all the administrative machinery even at the highest policy forums in the country. Integration of domestic economy with world economy makes it desirable.

Previous structure of indirect taxation in India had some challenges which needed to be addressed. Some of the challenges under the previous indirect tax structure could be attributed to:

- Central Excise wherein there were variable rates under Excise Duty such as 2% without CENVAT, 6%, 10%, 18%, 24%, 27%, coupled with multiple valuation system and various exemptions
- VAT where different states were charging VAT at different rates, which were resulting in imbalance of trade between the states
- Also, under VAT, there was a lack of uniformity in terms of registration, due date of payment, return filing assessment procedures, refund mechanism, appellate process etc., thus complicating the compliance mechanism. For example: A business establishment having offices in different states were required to follow the laws of the respective states.
- In respect of taxation of goods, CENVAT was confined to the manufacturing stage and did not extend to the distribution chain beyond the factory gate. As such, CENVAT paid on goods could not be adjusted against State VAT payable on subsequent sale of goods. This was true both for CENVAT collected on domestically produced goods as well as that collected as additional duty of customs on imported goods.
- CENVAT comprised of several components in the nature of cesses and surcharges such as the National Calamity Contingency Duty (NCCD), education and secondary and higher education cess, additional duty of excise on tobacco and tobacco products etc. This multiplicity of duties complicated the tax structure and often used to obstruct the smooth flow of tax credit.
- While input tax credit of CENVAT or additional duty of customs paid on goods was available to service providers paying Service Tax, they were unable to neutralize the State VAT or other State taxes paid on their purchase of goods.
- State VAT was payable on the value of goods inclusive of CENVAT paid at the manufacturing stage and thus the VAT liability of a dealer always used to get inflated without compensatory set-off.



- Inter-State sale of goods was liable to the Central Sales Tax (CST) levied by the Centre and collected by the states. This was an origin-based tax and could not be set-off against VAT in many situations.
- State VAT and CST were not directly applicable to the import of goods on which Special Additional Duties (SAD) of customs were levied at a uniform rate of 4% by the Centre. Input tax credit of such duties was available only to those entities who were manufacturing excisable goods. Other importers had to claim refund of this duty as and when they pay VAT on subsequent sales.
- VAT dealers were unable to set-off any Service Tax that they paid on procurement of taxable input services.
- State Governments also levied and collected a variety of other indirect taxes such as luxury tax, entertainment tax, entry tax etc. for which no set-off was available.



Following can be summarized as major reasons for implementation of a new indirect tax regime:

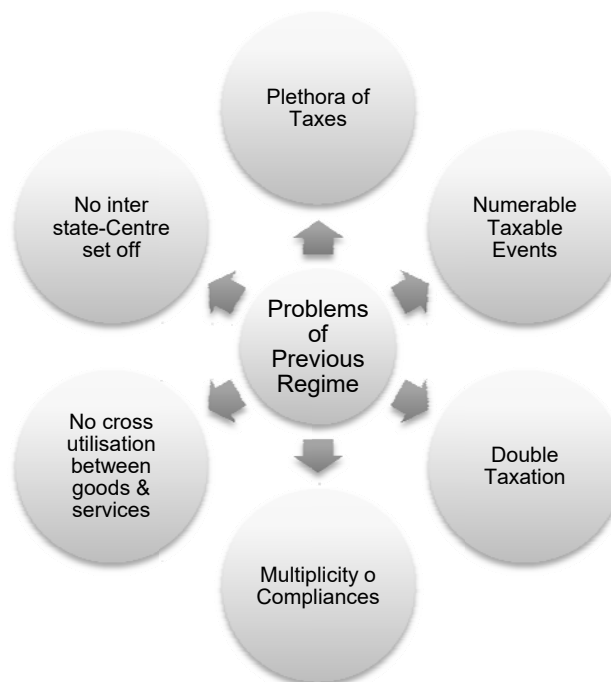
- (a) **Plethora of taxes** : There were various indirect taxes in India in existence prior to introduction of GST. There was a three tier system of tax collection in India :
  - i. Taxes levied by Central Government i.e. Customs Duties, Central Excise Duties, Service tax, additional duties of Excise etc.
  - ii. State Excise, VAT, CST, Entry tax, entertainment tax, luxury tax etc. are levied by the State Governments
  - iii. Local Bodies levy taxes like: entertainment tax Octroi, property tax, local body tax, etc.
- (b) **Plenty of Taxable Events** : Taxes were levied at various stages on various taxable events by different authorities on the same subject matter or transaction. For example, Excise duty was levied at central level on manufacture. Service tax was levied on transport and other incidental services again by Central Government. Sales tax (VAT/CST) was collected by the State Government on sale. Entry tax was collected by State Government on the entry of goods in the state. Octroi was collected by municipal authorities when the goods enter the municipal area. The same goods were being subjected to varieties of taxes on variety of taxable events like entry, transport, manufacture, sale and so on. Most of the taxes were having cascading in effect as there was no benefit of input tax credit.
- (c) **Double taxation** : On a single transaction, multiple taxes were being imposed, often by different authorities. For e.g. for a stay in a hotel in Delhi, you had to pay luxury tax as well as service tax. Service tax was collected by Central Government and applicable local taxes by State Government.



- (d) *Multiplicity of compliances* : Payment of tax to various authorities, different due dates, assessment, refund process at various levels made the taxation system more complex and led to an increase in compliance cost.

Further, there was inbuilt cascading effect of taxes due to:

- (i) *Lack of Cross-utilization facility between goods and services* : Taxes paid on procurement of input purchases were not allowed to be set off against output tax payable on services and vice versa.
- (ii) *Non-availability of set off arrangement against other State or Central Government levies* : CST paid in one state was not available as set off against sales tax payable in another state. Similarly, central taxes were not available as credit to set off against the taxes payable at the state level and vice versa. E.g., Excise duty and service tax paid on goods could not be used to pay VAT or CST. In the same way, VAT Credit (ITC) could not be used to pay excise duty or service tax.



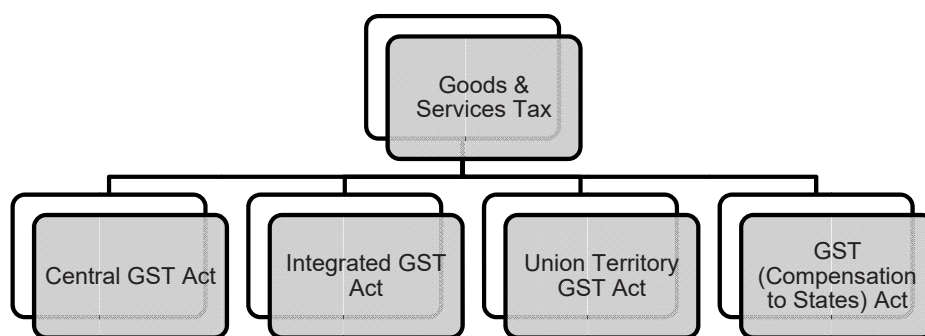
## ADMINISTRATION OF INDIRECT TAXATION IN INDIA

### Framework of GST

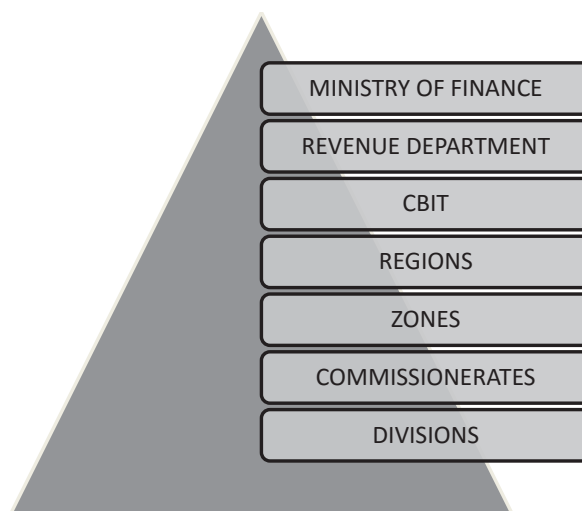
India is a federal country where both the Centre and the states have been assigned the powers to levy and collect taxes through respective legislations. Both the levels of Government i.e., at Centre and at the State level, have distinct responsibilities to perform according to the division of powers prescribed in the Constitution. A dual GST is thus implemented keeping in mind the Constitutional requirement of fiscal federalism.

Along with the amendment in the Constitution, to empower the Centre and the states to levy and collect the GST, four legislations were given assent by the President on April 12, 2017, which include:

- The Central GST Act, 2017
- The Integrated GST Act, 2017
- The GST (Compensation to States) Act, 2017 and
- The Union Territory GST Act, 2017



## ADMINISTRATIVE MECHANISM AT THE CENTRAL LEVEL



AUTHORITY	HEADED BY
MINISTRY OF FINANCE	Union Finance Minister
REVENUE DEPARTMENT	Revenue Secretary
CBIT (Central Board of Indirect Taxes)	Chairman and Members
REGIONS	Principal Chief Commissioners
ZONES	Chief Commissioners
COMMISSIONERATES	Commissioners/ Principal Commissioners
DIVISIONS	Divisional officers/ deputy commissioner etc.

GST Council is the apex body for making recommendations on various issues relating to policy making, formulation of principles, implementation of policies under Goods and Services Tax regime.

Administration and Procedural Aspects of Goods and Services tax are administered by the Central Board of Indirect Taxes (CBIT) which is under the control of the Department of Revenue, Ministry of Finance.

## EXISTING TAX STRUCTURE

### Passage of GST in India

Goods & Services Tax is prevalent in almost 160 countries around the world and France was the first country to introduce the same in 1954. The journey to introduction of GST in India has been long and is a result of

larger sections of the society, particularly, trade and industry and the foreign establishments who have business interests in India.

To address the anomalies in the previous Indirect tax system, the Vajpayee government proposed comprehensive taxation on goods and services in July 17, 2000. It entrusted the job to a committee set up and headed by the then West Bengal Finance Minister to design a GST model.

When the Government of India set up the Empowered Committee of State Finance Ministers with the Hon'ble State Finance Ministers of West Bengal, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Uttar Pradesh, Gujarat, Delhi and Meghalaya as members, it had the following objectives:

- to monitor the implementation of uniform floor rates of sales tax by States and Union Territories;
- to monitor the phasing out of the sales-tax based incentive schemes;
- to decide milestones and methods of States to switch over to VAT; and
- to monitor reforms in the Central Sales Tax system existing in the country.

Subsequently, Hon'ble State Finance Ministers of Assam, Tamil Nadu, Jammu & Kashmir, Jharkhand and Rajasthan were also notified as the members of the Empowered Committee.

On August 12, 2004, the Government of India decided to reconstitute the Empowered Committee with all the Hon'ble State Finance/Taxation Ministers as its members. Later on, it was decided to register the body as a Society under the Societies Registration Act, 1860. GST has been in the pipeline for a long time, for its implementation.

Here is a brief flash back mentioning the key milestones of the journey of GST in India:

- (i) **2003:** The Kelkar Task Force on Indirect Tax had suggested a comprehensive Goods and Services Tax based on VAT principle.
- (ii) **February, 2007:** An announcement was made by the then Hon'ble Union Finance Minister in the Central Budget (2007- 08) to the effect that GST would be introduced with effect from April 01, 2010.
- (iii) **September, 2009:** The Empowered Committee (EC) decided to constitute a Working Group consisting of Principal Secretaries / Secretaries (Finance / Taxation) and Commissioners of Trade Taxes of all States/UTs to give their recommendations on:
  - the commodities and services that should be kept in the exempted list;
  - the rules and principles of taxing the transactions of services including the transactions in inter-State services; and
  - finalization of the model suggested for inter-state transaction/movement of goods including stock transfers in consultation with the State Bank of India and some other nationalized banks.
- (iv) **November, 2009:** Based on inputs from Government(s) of Centre and States, Empowered Committee released its First Discussion Paper on GST.
- (v) **March, 2011:** The Constitution (One Hundred and Fifteenth Amendment) Bill, 2011 to give concurrent taxing powers to the Union and States was introduced in Lok Sabha. The Bill suggested the creation of Goods and Services Tax Council and a Goods and Services Tax Dispute Settlement Authority. The Bill was lapsed in 2014 and was replaced with the Constitution (122nd Amendment) Bill, 2014.
- (vi) **November, 2012:** A "Committee on GST Design", consisting of the officials of the Government of India, State Governments and Empowered Committee (EC) was constituted.
- (vii) **January, 2013:** The Empowered Committee deliberated on the proposed design including the Constitution (115th) Amendment Bill and submitted the report. Based on this Report, the EC

recommended certain changes in the Constitution Amendment Bill and decided to constitute three below mentioned Committees of Officers to discuss and Report on various aspects of GST:

- Committee on Place of Supply Rules and Revenue Neutral Rates;
- Committee on dual control, threshold and exemptions;
- Committee on IGST and GST on imports.

- (viii) **March, 2013:** A not for profit, non-Government, private limited company was incorporated in the name of Goods and Services Tax Network (GSTN) as special purpose vehicle setup by the Government primarily to provide IT infrastructure and services to the Central and State Government(s), tax payers and other stakeholders for implementation of GST.
- (ix) **August, 2013:** The Parliamentary Standing Committee submitted its Report to the Lok Sabha. The recommendations of the Empowered Committee and the recommendations of the Parliamentary Standing Committee were examined by the Ministry in consultation with the Legislative Department. Most of the recommendations made by the Empowered Committee and the Parliamentary Standing Committee were accepted and the Draft Amendment Bill was suitably revised.
- (x) **September, 2013:** The final draft Constitutional Amendment Bill incorporating the above stated changes was sent to the Empowered Committee (EC) for consideration.
- (xi) **November, 2013:** The EC once again made certain recommendations on the Bill after its meeting in Shillong. Certain recommendations of which were incorporated in the draft Constitution (115th Amendment) Bill and the revised draft was again sent to EC for its consideration.
- (xii) **June, 2014:** The draft Constitution Amendment Bill in March, 2014 was sent to the Empowered Committee after approval of the new Government.
- (xiii) **December, 2014:** The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 seeking to amend the Constitution to introduce GST and subsume state Value Added Tax, Octroi and entry tax, luxury tax, etc. was introduced in the Lok Sabha on December 19, 2014 by the Hon'ble Minister of Finance, Mr. Arun Jaitley.
- (xiv) **May, 2015:** Constitution Amendment (122nd) Bill was passed by Lok Sabha on May 06, 2015.
- (xv) **May, 2015:** In Rajya Sabha, Bill was referred to a 21-member Select Committee of Rajya Sabha.
- (xvi) **July, 2015:** Select Committee submitted its report to Rajya Sabha on July 22, 2015.
- (xvii) **June, 2016:** On June 14, 2016, the Ministry of Finance released draft model law on GST in public domain for views and suggestion.
- (xviii) **August, 2016:** On August 03, 2016, the Constitution (122nd Amendment) Bill, 2014 was passed by Rajya Sabha with certain amendments.
- (xix) **August, 2016:** The changes made by Rajya Sabha were unanimously passed by Lok Sabha, on August 08, 2016.
- (xx) **September, 2016:** The Bill was adopted by majority of State Legislatures wherein approval of at least 50% of the State Assemblies was required
- (xxi) **September, 2016:** Final assent of Hon'ble President of India was given on 8th September, 2016
- (xxii) **April, 2017:** Parliament passed the following four bills:
  - Central Goods and Services Tax (CGST) Bill
  - Integrated Goods and Services Tax (IGST) Bill

- Union Territory Goods and Services Tax (UTGST) Bill
- Goods and Services Tax (Compensation to States) Bill

(xxiii) **April, 2017:** President's assent was given to four key legislations on Goods and Services tax.

(xxiv) **July, 2017:** GST became a reality

The current status of GST Laws Passed in India is as under:

The law	Purpose
The Central Goods and Services Tax, 2017 (CGST Act)	To levy, collect CGST on intra-state supplies and for other matters
The Integrated Goods and Services Tax, 2017 (IGST Act)	To levy, collect IGST on inter-state supplies and for other matters
The Union Territory Goods and Services Tax, 2017 (UTGST Act)	To levy, collect UTGST on intra-UT supplies and for other matters
GST (Compensation to States) Tax, 2017	To compensate states for the loss of revenue if any due to introduction of GST
The States Goods and Services Tax, 2017 (SGST Act)	To levy, collect SGST on intra-state supplies and for other matters

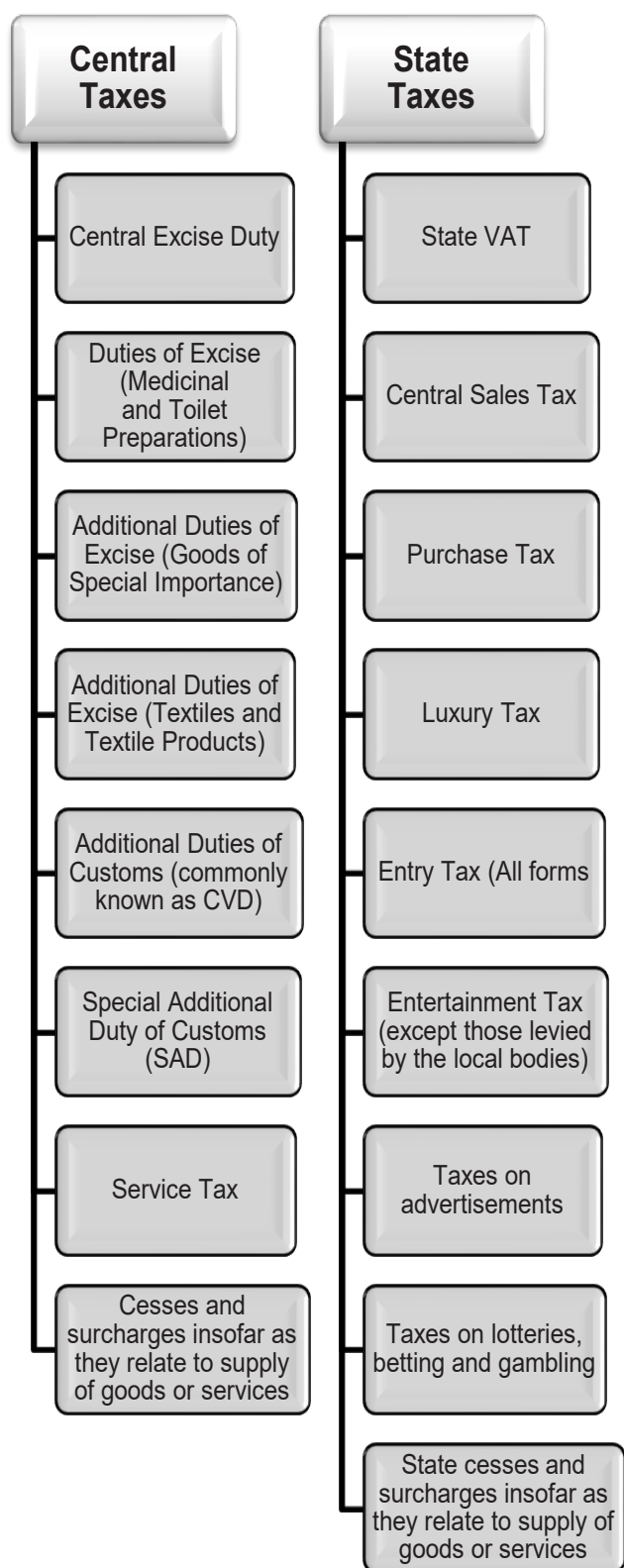
## GST in India

GST is one of the biggest taxation reforms of independent India with the objective of integrating State economies. GST, the most historic indirect tax reform, is implemented with the aim of enhancing the overall growth of the Nation along with supporting the Make in India initiative. It aims at creating a single, unified Indian market throughout the Nation. It is a comprehensive destination based indirect tax levy of 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 an array of tax levies, overcoming the limitations of previous indirect tax structure, and creating efficiencies in tax administration.

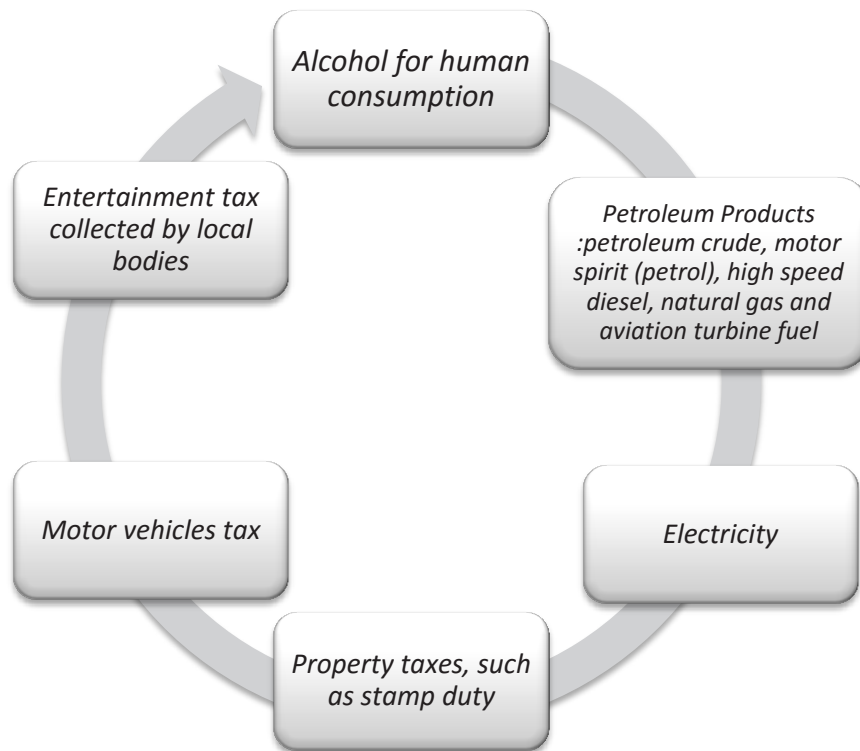
GST is a consumption based tax which is levied on the basis of "Destination principle." The concept relates to taxing the supply of goods or services at the point of consumption. It is a comprehensive tax regime covering both goods and services, and is collected on value-added at each stage of the supply 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. Simply put, Goods and Services Tax is a tax levied on goods and services imposed at each point of supply. GST is a national level tax based on value added principle just like State level VAT which was levied as tax on sale of inter-state goods.

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. GST is a major improvement over existing system of VAT and disjointed Service Tax ushering a collective gain for industry, trade and common consumers as well as for the Central Government and the State Governments at large. GST, as a well-designed value added tax on all goods and services, is the most elegant method to eliminate distortions and to tax consumption.

The following taxes have been subsumed under GST:



The following subject matters kept outside the purview of GST. As such these are taxed under the existing laws of centre and states as the case may be.



Tobacco and tobacco products would be subject to GST. In addition, the Centre would have the power to levy Central Excise duty on these products.

### Models of GST

The principles of GST are largely common in almost all the countries. However, there are significant differences in the implementation of the same depending on continued existence of exemptions and special arrangements to meet specific policy objectives. The point of difference also arises from differences of approaches in the defining the jurisdiction of consumption and hence of the taxation. Moreover, there are a number of variations in the application of GST alongwith different interpretation of the same or similar concepts; different approaches to time of supply and its interaction with place of supply; different definitions of services and intangibles and inconsistent treatment of mixed supplies, around the world.

Different countries follow different model of GST based upon their own legislative and administrative structure and their requirements. Some of these models are:

- Australian Model wherein, tax is collected by the Centre and distributed to the States
- Canadian Model wherein there are three variants of taxes
- Kelkar-Shah Model based on Canada Model wherein taxes are collected by the Centre however, two different rates of tax are to be levied by the Centre and the States and
- Bagchi-Poddar Model which envisages a combination of Central Excise, Service Tax and VAT to make it a common base of GST to be levied both by the Centre and the States separately.

Mostly all over the world, many countries follow a unified GST regime. However, considering the federal nature of Indian Constitution, dual model of GST was required, proposed and levied. In dual model of GST, where the power to levy taxes is subjectively distributed between Centre and States, GST is levied by both, the Centre as well as the States and there are separate levies in the form of Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST) and Integrated Goods and Services Tax (IGST) enabling the tax credit across these three variants of taxes. Currently, Brazil and Canada also follow dual GST model.

The Indian GST system has its own uniqueness in many ways. Apart from India, Brazil is the only country in the world which follows a similar dual GST System. In India, GST has been rolled out as a uniform taxation system all across the Nation by removing entry barriers between states.

In Canada, though GST scheme closely resembles that of India, it failed to achieve consensus among states. As a result the GST was made optional not mandatory. States are free to adopt or reject GST. In India, GST is uniformly applicable all over India including the State of Jammu and Kashmir.



## **Lesson 2**

# **Basics of Goods and Services Tax**

### **LESSON OUTLINE**

- Basics concepts and overview of GST
- GST Model – CGST / IGST / SGST / UTGST
- Constitutional Framework of GST
- Taxable Event
- Concept of supply including composite and mixed supply
- Levy and collection of CGST and IGST
- Composition Scheme & Reverse Charge
- Exemptions under GST

## BASIC CONCEPTS AND OVERVIEW OF GOODS AND SERVICES TAX

GST is a single, unified tax on every value-add, right from manufacture to sale / consumption of goods / services. Hence, with the advent of GST, the legacy taxes on manufacture (Excise), Inter-state sales (CST), Intra-state sales (VAT) and Service Tax have been subsumed. There has been a paradigm shift in the way the tax is being levied. We have now moved from source based to destination-based taxation, with GST coming into foray. Hence GST is also labelled as a destination-based / consumption-based tax.

GST also does away with the cascading effects of taxation, by providing a comprehensive and continuous chain of tax credits, end to end and taxing only the value-added at every stage. The final tax is borne by the end consumer, as all the parties in the interim can extinguish their respective collections against their respective liabilities and the tax already paid by them (Input Tax Credit).

A numerical example of the same below helps understand the concept better:

		Tax Collected from C      21600			
Tax Collected from B      18000		Tax paid to A                -18000		Tax Paid to B                -21600	
Tax paid to Govt            -18000		Tax Paid to Govt            3600			
<b>Tax Incidence                NIL</b>		<b>Tax Incidence                NIL</b>		<b>Final Tax Incidence   -21600</b>	

		Value Add	20%		
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<b>Party A (Wholeseller)</b>		<b>Party B (Retailer)</b>		<b>Party C (Consumer)</b>	
Value of Supply	100000			Value of Supply	120000
GST	18000			GST	21600
<b>Invoice Value</b>	<b>118000</b>			<b>Invoice Value</b>	<b>141600</b>

### Note:

- There is no tax incidence on any interim party, i.e., neither on the wholeseller nor the retailer
- The reason is simple, the tax that each of them have paid, can be set off against their respective output tax liabilities (Input Tax Credit)
- The final incidence is only on the end consumer, clearly reiterating the manner in which the cascading effects of the legacy taxation methodologies have been done away with.

## GST MODEL

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).

GST, therefore is a destination-based tax applicable on all transactions, involving supply of goods / services for a consideration, and comprises of Central Goods & Services Tax (CGST), levied by the Central Government, and State Goods and Services Tax (SGST), levied by the State Government OR Union Territory Goods and Services Tax (UTGST) levied by Union Territories, on Intra-state supplies of taxable goods & services. Inter-

state supplies of taxable goods / services are subject to Integrated Goods & Services Tax (IGST), which is levied by the Central Government and is equal to CGST + SGST.

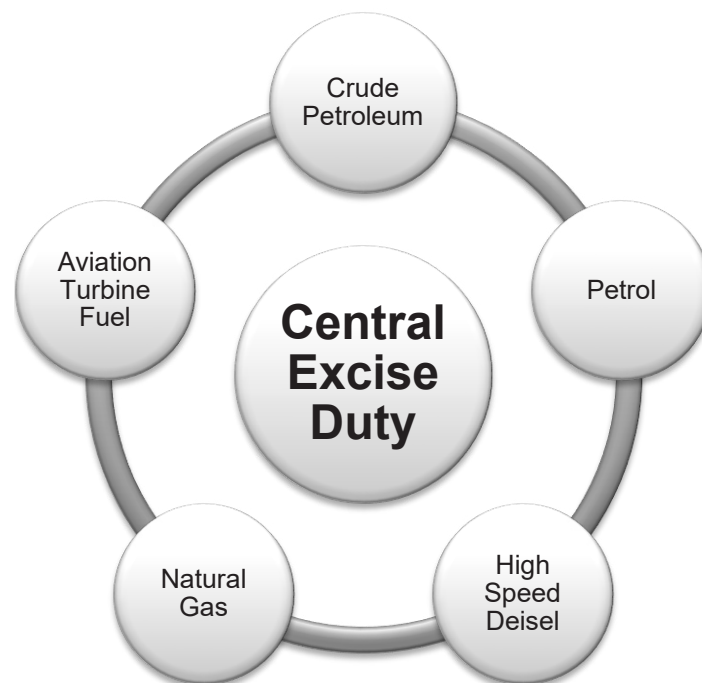
The CGST is levied under the CGST Act, 2017. UTGST is levied under the UTGST Act, 2017 and this is applicable to Union Territories, i.e., Andaman & Nicobar Islands, Lakshadweep, Dadra & Nagar Haveli, Daman & Diu, Chandigarh and other territory. SGST is levied under the respective state legislations.

## CONSTITUTIONAL FRAMEWORK OF GOODS & SERVICES TAX

Power to levy Goods and Services Tax (GST), has been conferred by Article 246A of the Constitution. This was introduced, by the Constitution (101st Amendment) Act, 2016.

### Presently not taxable under GST

In respect of the following goods, the provisions around chargeability of GST would apply from the date when recommended by the GST Council.



Therefore, Central Excise Duty continues to be levied on manufacture of Tobacco, Petroleum Crude, High Speed Diesel, Petrol, Natural Gas and Aviation Turbine Fuel.

State Excise Duty continues to be levied on manufacture of alcohol. Tobacco attracts both Excise and GST.

### Outside the scope of GST

Alcoholic Liquor for human consumption and Electricity have been kept outside the ambit of GST.

## TAXABLE EVENT

The crux of any taxation system is the incidence, i.e., the point at which the liability to charge tax arises, and that event is nomenclated as the taxable event.

Goods and Services Tax, with its introduction and in the process of subsuming the other Acts, has overcome

many shortcomings of the legacy system too, one of them being, the definition of taxable event. The multitude of tax laws that prevailed earlier, that is Central Excise, Sales Tax, Service Tax, VAT etc., were prone to ambiguity and controversies which has been overcome to a great extent by the comprehensive approach and definition as laid down by GST.

GST has kept it not only simple, but also robust, by stating that the entire value of supply of goods / services are taxed in an integrated manner.

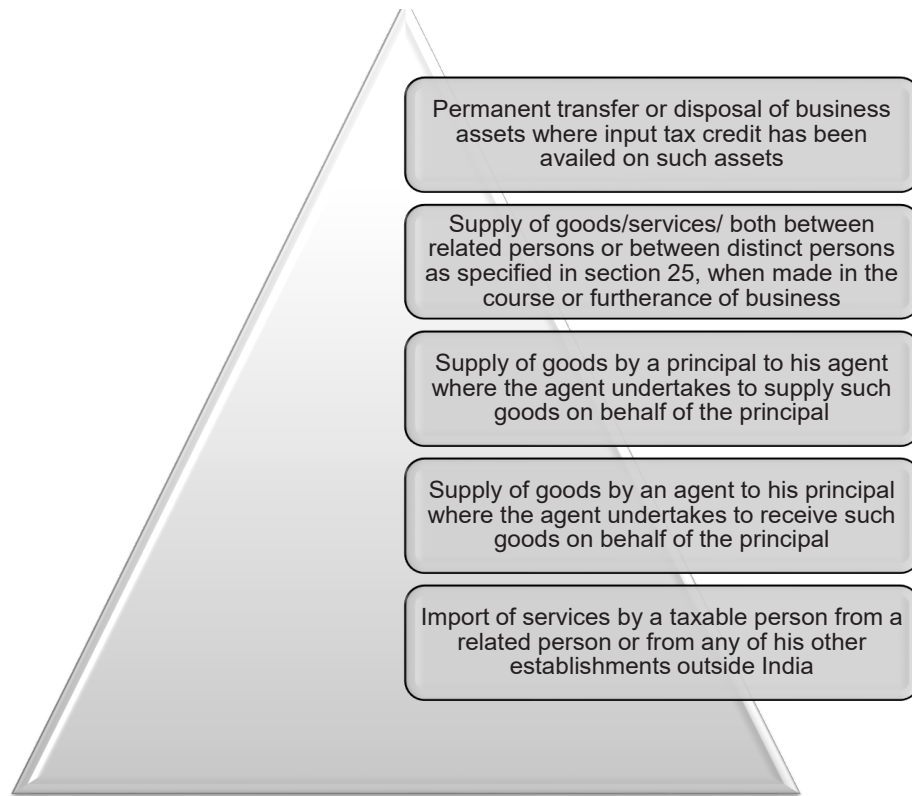
## CONCEPT OF SUPPLY

Supply is the point of taxation or the taxable event under Goods & Services Tax. The term supply is characterised by the following necessary traits:

- Supply should be of goods or services
- Anything which is not goods / services (like money, securities etc.) is not supply
- It must be reiterated that only movable property is construed as goods
- Barter and exchanges would be leviable to GST
- Licences, leases, rentals with or without transfer of the right to use are considered as supply and leviable to GST
- Supply should be made for a consideration which could be in the form of money or otherwise
- Supply includes the flow of money from a 3rd party in lieu of OR on behalf of the recipient
- Deposit is not consideration unless specifically applied to by the supplier
- Supply should be made in the course of OR for the furtherance of business
- Any supply made for personal consumption OR in personal capacity does not attract GST
- Supply should be made by a taxable person
- Supply between both non-taxable parties is not leviable to GST
- Supply could be made to a non-taxable person also
- A taxable person is one who is registered OR is liable to be registered under the Act

### Schedule I:

There are a few transactions which, even without consideration are construed as supply, also known as deemed supplies as specified in Schedule I:



### Schedule II:

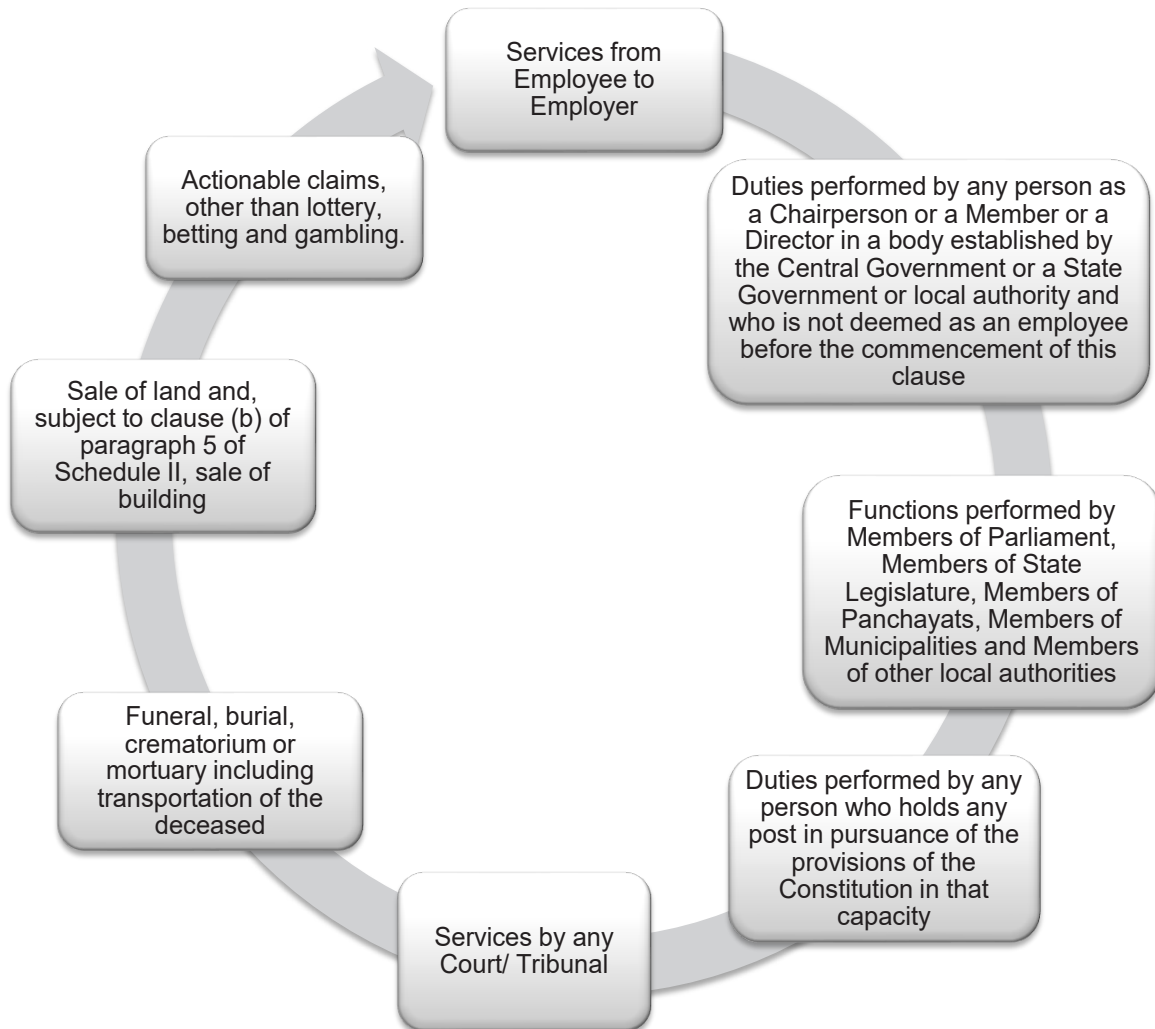
Schedule II of the Central Goods & Services Tax Act, 2017 lists activities which are to be treated as supply of goods and supply of services. In this issue, activities which form supply of goods are discussed.

Form of Supply	Description
<b>Transfer</b>	Transfer of title in goods
	Transfer of title in goods under an agreement where property in goods passes at a future date on payment of full consideration
<b>Transfer of business assets</b>	<p>Permanent transfer or disposal of goods forming part of business assets by or under the directions of the person carrying on the business whether or not for consideration</p> <p>Any goods forming a part of business assets will be deemed to be transferred in furtherance of business, before any person ceases to be a taxable person</p> <p>Exception</p> <ul style="list-style-type: none"> <li>• The business is transferred as a going concern</li> <li>• The business is carried on by a personal representative who is deemed to be a taxable person</li> </ul>
<b>Supply by unincorporated association</b>	Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

Transfer	Ant transfer of right in goods or undivided share in goods without transfer of title
Land and Building	Any lease, tenancy, easement, licence to occupy land Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly
Treatment or process	Any treatment or process which is applied to another person's goods
Transfer of business	Where, by or under the direction of a person carrying on a business, goods held assets or used for the purpose of business are put for any private use or made available to any person for any use other than for the purpose of business, at the direction of the person carrying on the business, whether or not for a consideration.
Immovable property	Renting of immovable property
Construction or Sale	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
Intellectual Property rights	Temporary transfer or permitting the use or enjoyment of any intellectual property right
Information technology software	Development design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software
Action	Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
Rights to use goods	Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration
Composite Supplies	Works Contract as defined under Section 2(119) Supply of goods, as a part of any service or in any manner, 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

### Schedule III:

There are a few activities which are specifically not to be considered as Supply. Schedule III to CGST Act, 2017 lists down the following activities which shall neither be treated as neither supply of goods nor supply of services.



For example, as per Schedule III, the services by an employee to an employer are not chargeable to GST, and the gifts made by employer to any employee up to INR 50,000 in any Financial Year shall not be treated as supply, however if more than INR 50,000 shall be subject to GST.

### Composite & Mixed Supply

Often goods or services or both together are supplied in combination and that's when it may not be simple enough to distinguish supplies and identify them separately, as each of them may attract a different rate of tax but is sold as one package.

### Composite Supply

Section 2(30) defines “composite supply” as 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;

The features of a composite supply are:

- a) Two or more taxable supplies of goods / services / both which are supplied in conjunction with each other
- b) They are naturally bundled
- c) A single price is charged for the supply
- d) One of the supplies within the package is identifiable as a principal supply

**Example:**

On buying a LED Television, along with it, the remote control, the wires and all the accessories that go with it along with the warranty and the maintenance services are provided.

It is evident here that the LED Television is the principal supply and the others (remote / wires / warranty are all ancillaries).

**Taxability**

The composite supply will be charged at the rate which is applicable to the principal supply.

Composite Supply	
	INR
LED Television supplied with remote, wires and 1 Yr Warranty with AMC	100000
GST (LED TV) @ 28%	28000
<b>Invoice Value</b>	<b>128000</b>

**Mixed Supply**

Under Section 2(74) of CGST Act, 2017, “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. The features of a mixed supply are:

- a) Two or more taxable supplies of goods / services / both which are supplied in conjunction with each other
- b) They are deliberately bundled
- c) A single price is charged for the supply
- d) None of the supplies within the package is identifiable as a principal supply

**Example:**

One buys a consolidated package of beauty products (that is shampoo, comb, conditioner, nail polish, lipstick and tooth powder).

It is evident here that the products can all be independently supplied and any one of them cannot be singled out as a principal supply and these are deliberately bundled and sold together.

**Taxability**

The mixed supply will be charged at the rate applicable to the supply that attracts the highest rate of tax from within the consolidated package.



Mixed Supply	
	INR
Bottles of Shampoo (GST @ 28%)	2000
Bottles of Conditioners (GST @ 28%)	1500
Comb (GST @ 5%)	200
Hair Dryer (GST @ 28%)	1250
Lipstick set (GST @ 28%)	1750
Nail Polish (GST @ 28%)	800
Tooth Powder (GST @ 12%)	500
Consolidated Value of Supply	8000
GST (highest rate 28%)	2240
Invoice Value	10240

## LEVY & COLLECTION OF TAX

GST is levied at the point of supply, that is at the time and place of supply and that's when the liability to charge GST arises.

As explained under Section 15 to Central Goods & Services tax Act, 2017, such GST would be levied on the transaction value.

### Rates (Goods)

Rates are broadly 0.25%, 3%, 5%, 12%, 18% and 28% and that is split into CGST and SGST equally for Intra-state sales and fully leviable as IGST for Inter-state sale.

### Rates (Services)

Rates are broadly 5%, 12%, 18% and 28% and that is split in to CGST and SGST equally for Intra-state sales and fully leviable as IGST for Inter-state sale.

## COMPOSITION SCHEME

The objective of the scheme is to bring about simplicity and to reduce compliance cost for the small taxpayers. Small tax payers, who have an annual turnover of less than Rs. 1 crore in the preceding Financial Year (FY) are eligible to opt for this scheme i.e., Composition Levy. Notification No. 46/2017- Central Tax dated 13th October, 2017 was issued to substitute Notification No. 8/2017-Central Tax dated 27th June, 2017 which stated that the annual turnover limit to be Rs. 1 crore in the whole of India except North Eastern States including Himachal Pradesh wherein the limit shall be Rs. 75 lakhs.


The aggregate turnover would mean the sum of:

- i) Taxable supplies
- ii) Exempt supplies
- iii) Zero-rated supplies
- iv) Inter-state supplies

The Reverse Charge Mechanism supplies are not included here, as these would be added to the turnover of the unregistered supplier.

## Conditions & Restrictions

- 1) The supplier who opts for Composition Levy cannot raise tax invoice
- 2) Therefore, they need not collect any tax on supply
- 3) Hence, the recipient of such supplies can't claim any Input Tax Credit (ITC) on supplies from such suppliers who have opted for Composition Levy
- 4) Similarly, even they themselves cannot claim any ITC on the inward taxable supplies
- 5) A person opting for the scheme shall mention on the invoices issued that he has opted for such scheme
- 6) He shall also mention "composition taxable person" on every notice board displayed at the place of business
- 7) The following cannot opt for composition levy:
  - a. Supplier of services (except food & restaurant services)
  - b. Supplier of exempt goods
  - c. Supplier of Inter-state supplies
  - d. E-commerce operators
  - e. Manufacturers of ice-cream, pan masala and tobacco



A.	•Persons who supply goods not taxable under GST i.e., suppliers of non taxable goods
B.	•Casual Taxable person and a non-resident taxable person
C.	•Supplier of services, other than restaurant service
D.	•Persons making any inter-State supply of goods
E.	•Supplier of goods through E-Commerce operators who are required to collect tax at source
F.	•Other Manufacturers, as may be notified by Government

## Rates

The tax rate prescribed for different categories of registered persons under the scheme is as follows :

S. NO.	REGISTERED PERSON	CGST RATE	SGST RATE	TOTAL TAX RATE
1.	Manufacturers (other than manufacturers of goods as may be notified by the Government)	0.5%	0.5%	1%
2.	Restaurant Services i.e., suppliers of food/ drink for human consumption (other than alcoholic liquour for human consumption)	2.5%	2.5%	5%

3.	Traders or any other supplier eligible for composition levy	0.5%	0.5%	1%
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The GST under Composition Scheme is not collected from the recipients / customers; this is simply a facility for hassle free compliance under GST. The composition levy if opted is applicable under one PAN, and then it is applicable for all businesses under that PAN, or none. This implies, that it is not allowed for some businesses under normal levy and some under composition levy.

Once the turnover breaches the threshold, the composition levy is switched off and the normal levy is applicable. The GST Council in its 23rd meeting has decided to increase the threshold for the composition levy to INR 1.5 Crores. In the same meeting, the rates were unified for Manufacturers and Traders @ 1% and the Food & Restaurant Business @ 5% continues, issued vide Notification No. 1/2018-CT. The same notification substitutes "half per cent of turnover" by the words "half per cent of turnover of taxable supplies of goods". No hassle of book keeping and compliances under GST and only a simple quarterly return is what's required under this scheme.

### Illustration 1

P, a trader who has a revenue of INR 50,00,000 inclusive of GST @ 5% has purchases amounting to INR 40,00,000 (GST @ 5% extra). Book-keeping and GST compliance costs are INR 250,000 and other administrative costs are INR 50,000. He now wants to switch to Composition Levy. You are requested to advise in your capacity as a GST consultant.

Normal Levy		Composition Levy	
Revenue	50,00,000	Revenue	50,00,000
Less: GST	2,38,095	Less: GST	NIL
Net Revenue	47,61,905	Net Revenue	50,00,000
Less: Purchases	40,00,000	Less : Purchases	42,00,000
Book Keeping	2,50,000	Book Keeping	1,00,000
Other Costs	50,000	Other Costs	50,000
		GST Liability	50,000
<b>Profit</b>	<b>4,61,905</b>	<b>Profit</b>	<b>6,00,000</b>
Payable	2,38,095	<b>GST Liability</b>	<b>50,000</b>
ITC	2,00,000	(1% of Turnover)	
<b>GST Liability</b>	<b>38,095</b>		
<b>Cash Flow</b>	<b>4,23,810</b>	<b>Cash Flow</b>	<b>6,00,000</b>

### Notes:

1. GST liability wouldn't exist if he opts for composition levy and the trader can now charge the full amount which he was charging inclusive of GST earlier
2. For normal levy, the GST included in sales is  $50,00,000 \times 5 / 105$
3. The ITC is available in case of normal levy and not composition levy
4. Hence, the taxes (input) are a part of purchase costs and the output is @ 1% of the turnover in case of Composition Levy

Since the book keeping costs are substantially lower in case of composition levy, the profits and cash flows are higher and hence the trader should be advised to switch to Composition Levy.

### Composition Rules [Chapter II, CGST Rules, 2017]

Chapter II of Central Goods & Services Tax Rules, 2017 specify Composition Rules which lay down the conditions and restrictions of composition levy. The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely :

- a. • he is neither a casual taxable person nor a non-resident taxable person
- b. • the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 3
- c. • the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under section 9(4)
- d. • he shall pay tax under section 9(3) or 9(4) on inward supply of goods or services or both
- e. • he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (2) of section 10, during the preceding financial year
- f. • he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him
- g. • he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business

- Any person who has been granted registration on a provisional basis under 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 (EVC), 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**
- Any person who applies for registration under 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

- 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 EVC, on the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner **prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised** and shall furnish the statement in FORM GST ITC-3 in accordance with the provisions of sub-rule (4) of Rule 44 within sixty days from the commencement of the relevant financial year
- 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 sixty days of the date from which the option for composition levy is exercised** or within such further period as may be extended by the Commissioner in this behalf
- Any intimation under sub-rule (1) or sub-rule (3) 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 PAN
- 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 intimation is filed under sub-rule (1) of the said rule
- 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 these rules. **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 these rules** 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 occurrence of such event.
- 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 EVC, electronically on the Common Portal.
- 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 these rules, 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 should not be denied.
- Upon receipt of 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 thirty days of receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of option or from the date of the event concerning such contravention, as the case may be.
- 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 30 days, from the date

from which the option is withdrawn or from the date of order passed in FORM GST CMP-07, as the case may be. Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax under section 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

Chapter II of Central Goods & Services Tax Rules, 2017 specify Composition Rules which lay down the forms to be submitted by a person opting to be a Composition Dealer under Section 10 of the Act. The following is the list of forms specified in relation to a Composition Dealer.

S. No.	Form No.	Description	Due date
1.	GST CMP-01	Intimation to pay tax under section 10 (Only for persons registered under the existing law migrating on the appointed day)	Prior to appointed date or within 30 days of the appointed date
2.	GST CMP-02	Intimation to pay tax under section 10 (For persons registered under the Act)	Prior to commencement of financial year for which the scheme is opted for
3.	GST CMP-03	Intimation of details of stock and inward supplies from unregistered person	Within 90 days of exercise of option
4.	GST CMP-04	Intimation/Application for withdrawal from composition scheme	Within 7 days of occurrence of event
5.	GST CMP-05	Show cause notice on contravention of rules or act by proper officer	On contravention
6.	GST CMP-06	Reply to the notice to show cause	Within 15 days from service of such Notice
7.	GST CMP-07	Order for acceptance / rejection of reply to show cause notice	Within 30 days

## REVERSE CHARGE MECHANISM

### Liability to pay GST

The liability to pay GST would depend on the mechanism the transaction aligns to, as under:

#### a) Forward Charge Mechanism

Here the supplier is registered with GST, he issues a tax invoice, collects the GST and pays it to the Government.

#### b) Reverse Charge Mechanism

Here the supplier is not registered with GST, hence, he cannot issue a tax invoice, and therefore the recipient pays the GST on the supply on behalf of the supplier, directly to the Government.

It must be noted although, that Input Tax Credit can be availed in both the above scenarios, subject to the fulfilment of conditions for availing Input Tax Credit.

In case of E-commerce, the E-commerce operators, who are mandatorily required to register with GST, collect tax at source at a specified percentage and pay the same to the Government.



## EXEMPTIONS UNDER GOODS & SERVICES TAX

Governments offer 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. Eg. 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.

### Power to grant exemption from tax [Section 11 of CGST Act, 2017]

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

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

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

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

### Distinctions between General Exemption and Specific (Special Order) Exemption

GENERAL EXEMPTION SECTION 11(1)	EXEMPTION BY SPECIAL ORDER SECTION 11(2)
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.

Section 6 of the IGST Act, 2017 also contains similar provisions and exemption of IGST is granted on interstate supply.

### **Exemptions under GST**

Exempt supply has been defined as supply of any goods / services / both, which attract a NIL rate of tax, or which may be wholly exempt from tax, and therefore includes non-taxable supplies.

Essential goods / services, have been exempted, some of the key ones are:

- a) Unbranded atta / besan / maida
- b) Milk
- c) Eggs
- d) Curd
- e) Fresh vegetables
- f) Health care &
- g) Education
- h) Services by the Government (except Post Office, transport of goods / passengers etc.)
- i) Services by RBI
- j) Services by ESIC / EPFO
- k) Services by IRDA, SEBI



## **Lesson 3**

# **Concept of Time, Value and Place of Taxable Supply**

### **LESSON OUTLINE**

- Basic concepts relating to nature of supply of goods and services
- Place of Supply of goods and services
- Provisions relating to Time of supply
- Value of Taxable Supply of goods and services

## CONCEPT OF SUPPLY

### Nature of Supply [Section 7 to 9 of Integrated Goods & Services Tax Act, 2017]

Goods and Services Tax (GST) envisages two types of supply, intra state and interstate. The following table illustrates the nature of supply. It is important to know whether a given supply is interstate or intra-state. The tax or taxes payable are different in each case. For example, IGST is payable for interstate supply and CGST +SGST is payable for intra-state supply.

The following services shall be treated as inter-state supply –

Supply	Goods	Services	Nature of supply
Where location of the supplier and the place of supply are in	two different States; two different Union territories; or a State and a Union territory		Interstate
(1) Import	till they cross the customs	No specific requirement	I
(2) supplier located in India and the place of supply is outside India	frontiers of India	(all services imported will be treated as inter state supply)	N
(3) to or by a Special Economic Zone developer or a Special Economic Zone (SEZ) unit			T
(4) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section			E
			R
			S
			T
			A
			T
			E
			SUPPLY

The following supplies shall be treated as intra- state supply:

Intra State Supply			
Supply of	Goods	Services	Nature of Supply
Where location of the supplier and the place of supply are in	same State or same Union Territory		Intra State

Essentially, if the location of supplier and the place of supply is within the same state, it is an Intra-State supply, and if these are in different states, then that is Inter-State supply.

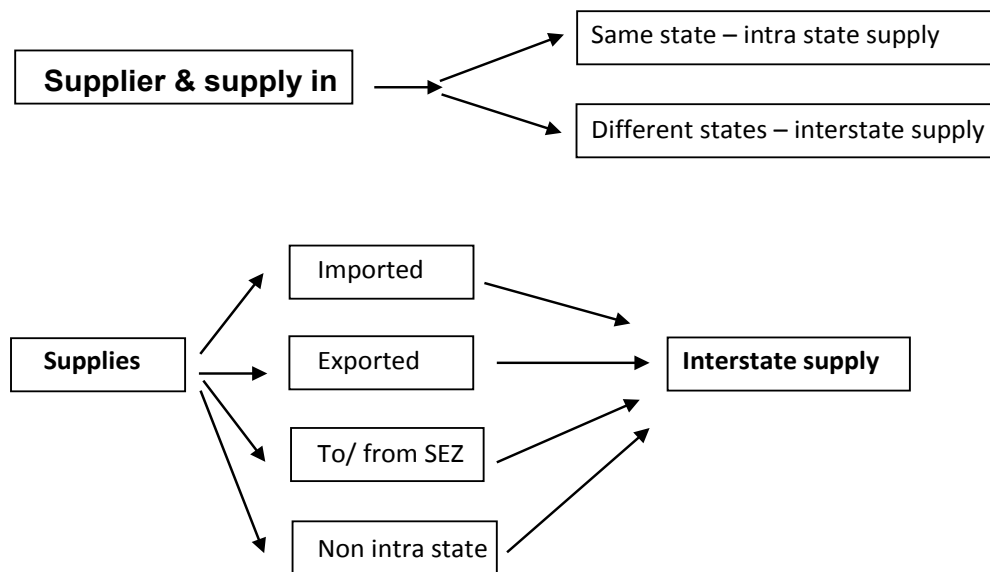
### What is not intra-state supply?

- (i) Supplies to and by SEZ
- (ii) Imported goods till they cross the customs frontiers of India
- (iii) Supplies made to a foreign tourist taking the goods out of India

Earlier, purchases made by foreign tourists in India were treated as intrastate sale and VAT was being collected. Now under GST regime, IGST paid on goods taken out of India by a foreign tourist will be refunded under IGST Act, 2017. This practice is to conform to global taxation policies.

The following supplies will be treated as interstate supplies:

- (i) Supplies received from SEZ unit in Noida to Domestic Tariff Area
- (ii) Supplies made to SEZ developer in Kandla from Ahmedabad
- (iii) Goods imported from France
- (iv) Supplier is in Delhi and supply is made in Switzerland
- (v) Supplier is within Rajasthan and supply is made in Punjab, place of supply being Punjab
- (vi) Supplier is in Chandigarh (UT) and supply is made in Himachal Pradesh



### Supply in Territorial Waters [Section 9 IGST Act, 2017]

Notwithstanding anything contained in this Act, –

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

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

The expression territorial waters have not been defined under the GST law. It should be understood that area upto 12 nautical miles from base line of sea coast into the sea.

**Note:** 1 nautical mile = 1.853 Km

If the supplier is in territorial waters, the location of supplier or if the supply is in territorial waters, the place of supplies shall be taken as the coastal state or Union Territory closest to the base line.

**Example 1:** Suppose there is a supply from the territorial waters where the supplier is located and the nearest base line is at Kandla, Gujarat state, then the place of supply is said to be in Gujarat.

**Example 2:** Some goods were supplied to a fishing trawler located in territorial waters near Yanam, a part of Union Territory of Puducherry. Since the nearest base line is at Yanam, place of supply shall be the Union Territory of Puducherry. If the supplier is located in Puducherry, it shall be an intra-state supply. If the supplier is located in Chennai, it is an interstate supply.

## PLACE OF SUPPLY

### Place of Supply of Goods [Section 10 of IGST Act, 2017]

Section 10 prescribes the provisions for determining the place of supply of goods in domestic transactions. The five broad rules so set out are as under:

	SITUATION	PLACE OF SUPPLY OF GOODS
A	Supply involves movement of goods	Termination of goods for delivery (Illustration 1)
B	Delivery on the direction of third party	Principal place of business of third party (Illustration 2)
C	No movement of goods in a supply	Location of goods at the time of delivery (Illustration 3)
D	Installation/ assembly	Place of assembly or installation (Illustration 4)
E	Supply on board a conveyance	Location where goods are taken on board (Illustration 5)

Where place of supply cannot be determined, it is determined as per Rules.

### Place of supply in case of import/ export [Section 11 of IGST Act, 2017]

In case of import of goods, place of supply is location of importer and where goods are exported, location is outside India.

#### Illustration 1

Mr. X of Mumbai sells refrigerators to M/s Y of Ahmedabad.

The place of supply would be Ahmedabad. Since the location of supplier (Maharashtra) and the place of supply (Gujarat) are in different states, IGST would be charged, being inter-state supply.

#### Illustration 2

A having registered place of business at Pune, placed an order on B Ltd. in New Delhi, for delivering a parcel to C who was at Nasik.

In this case, the place of supply would be Pune and since the location of supplier (New Delhi) and place of supply (Maharashtra) are different, IGST would be charged.

#### Illustration 3

Srinivasan from Bangalore travelled to Chennai for a vacation and purchased a laptop from Croma at Chennai.

In this case, the place of business would be Chennai and since the location of supplier and place of supply are same, CGST + SGST would be charged, being an intra-state supply

#### Illustration 4

Surya Narayan from Jamshedpur ordered a machine to be installed in his factory at Jamshedpur. The supplier, from Kolkata, sourced the parts from various states across the country after which the machine was successfully installed at his factory at Jamshedpur.

In this case, the place of supply would be Jamshedpur. Since the location of the supplier (West Bengal) and the place of supply (Jharkhand) are different, IGST would be charged.

**Illustration 5**

Howrah – New Delhi Rajdhani Express supplies food which was taken on board at Mugalsarai in Uttar Pradesh.

The place of supply would be Mugalsarai (Uttar Pradesh) in this case.

**Place of supply of services [Section 12 & 13 of IGST Act, 2017]**

Section 12 : Supplier and Recipient both are located in India

SERVICES	STATUS OF RECIPIENT	
	Registered	Unregistered
<b>Section 12(2):</b> General Principle	Location of Recipient	location of recipient if address on records exists or location of supplier, in other cases
<b>Section 12(3):</b> Exception/Special cases – a) Directly related to immovable property (b) Lodging accommodation (c) Accommodation for functions (d) Ancillary services to the above	Place of supply would be the location where the immovable property is situated.  If the immovable property is located at more than one state, value shall be taken proportionately as per contract or as per Rules.	
<b>Section 12(4):</b> Beauty parlor, fitness, restaurant and catering services plastic cosmetic surgery etc	Place of performance of service	
<b>Section 12(5):</b> Training & Performance Appraisal	Location of recipient	Location of performance
<b>Section 12(6):</b> Admission to cultural, artistic, sporting, educational, entertainment, amusement event etc. and ancillary services	Place where the event is held or where the park or such place is located	
<b>Section 12(7):</b> (a) Organization of events above including conferences, fair exhibition etc. (b) Ancillary Services, or assigning of sponsorship of such events Location of such person	Location of event.	Location of recipient if the event is outside India
	If the activity is in more than one state, it is proportionate  If the event is held outside India, location of the recipient	

SERVICES	STATUS OF RECIPIENT	
<b>Section 12(8):</b> Transport of goods, including Courier/mail	Location of recipient	Location where goods are handed over for transportation.
<b>Section 12(9):</b> Transportation of passengers right to passage given for a future use & point of embarkment not known	Location of recipient	Place where the passenger embarks on (gets into) the conveyance for a continuous journey.
<b>Section 12(10):</b> On board a conveyance while in transit. Conveyance may be a ship, air craft, train, vehicle etc	Location of first, scheduled point of departure of that conveyance for the journey.	
<b>Section 12(12):</b> Banking & Financial services and Stock broking services	Location of recipient if address exists on records of supplier or else, location of supplier.	
<b>Section 12(13):</b> Insurance services	Location of recipient	Location of recipient of services as on the records of the supplier.
<b>Section 12(11):</b> Telecommunication services including data transfer, broad casting, cable TV services etc.		
(a) fixed telecom line	Place of fixing/installation	
(b) post paid mobile, internet services	Billing address of recipient	
(c) Prepaid through agent	Address of Agent, place of payment/sale of voucher coupon etc.	
(d) In other cases	Address of recipient as per records. If address is not available, place of supplier of services	

### Analysis

1. Mr. A is a Company Secretary registered at Mumbai and travels to Bangalore for business purpose and stays at a hotel there.

In this case, the place of supply would be Bangalore i.e. place of immovable property.

2. XYZ Consultants (registered at Bangalore) provides training to its client's employees at Mumbai. The clients are registered at Chennai.

In this case, if the client (recipient) is registered, the place of supply would be the location of recipient, that is Chennai and consequently IGST would be charged as the location of Supplier (State of Karnataka) and the Place of Supply (State of Tamil Nadu) are different. (Training & Performance Appraisal Services)

3. In the above example, if the client was unregistered, the place of supply would have been Mumbai and again IGST would be charged. (Training & Performance Appraisal Services)

4. Radha is a resident of Mumbai and travelled to Bangalore for a vacation and booked tickets for an event at the water park.

In this case, the place of supply would be Bangalore (Admission to events).

5. Mr. X based in Ahmedabad, solicits the services of an event management company based in New Delhi, for his daughter's marriage. They plan for a destination wedding at a palace in Udaipur.

In this case, if Mr. X is registered, the place of supply would be Ahmedabad (Gujarat) and IGST would be charged, but if he is unregistered the place of supply would be Udaipur (Rajasthan) and IGST would be charged.

6. Nagendra Kumar is relocating from Bangalore to Chennai and calls for packers and movers for packing and relocation and shipping of household effects.

In this case the place of supply would be Bangalore (transportation services). Assuming the packers are also from Bangalore, CGST + SGST would be applicable.

7. Tarun books a round trip for AHM – PNQ – BLR – PNQ – AHM, with a stopover at Bangalore. The tickets are booked with a Bangalore based airline.

In this case, this would be treated as a continuous journey with a stopover. For the first leg, the place of supply would be Ahmedabad and since the Location of Supplier (BLR) and the Place of Supply (AHM) are different, IGST would be charged. For the second leg of the journey, the place of supply would be Bangalore, and since the Location of Supplier (BLR) and the place of supply are same, CGST + IGST would be charged. (Passenger Transportation Services).

8. Nikhil, from Kolkata, gets a job at Mumbai and he gets a landline connection done at Mumbai.

In this case, the place of supply would be Mumbai. If he would have taken a post-paid connection, and provided the Billing Address of Kolkata, the place of supply would have been Kolkata.

9. Priya, an unregistered person, from New Delhi, has an account with a Bank at New Delhi. She is on a vacation in Nainital, and visits a bank for getting a Demand Draft made.

In this case, since the address of the recipient will be available in the records of the supplier, the place of supply would be New Delhi.

In case she went to a branch at Nainital for availing currency exchange services which isn't linked to her account in New Delhi, the address of the recipient would not be available in the records of the supplier, and hence the place of supply would be Nainital.

### **Place of supply of service [Section 13 of IGST ACT, 2017]**

Section 13 of IGST Act, 2017 deals with place of supply of service the parties is outside India

**Section 13(2) General:** Location of recipient or supplier, if location of supplier is not available

**Section 13(3) Specific cases:** location of actual performance

**Section 13(4) Immovable Property:** location of such property

**Section 13(5) Admission to/organization of events etc:** location of event

**Section 13(6) Multi location:** location in Taxable territory

**Section 13(7) Multi location & more than one state/UT:** proportional to value in each state/UT

**Section 13(8) Banking, intermediary and hiring of means of transport:** location of supplier

**Section 13(9) Goods transport other than mail/courier:** destination of goods

**Section 13(10) Passenger transport:** location of embarkment

**Section 13(11) services on board a conveyance:** first scheduled point of departure

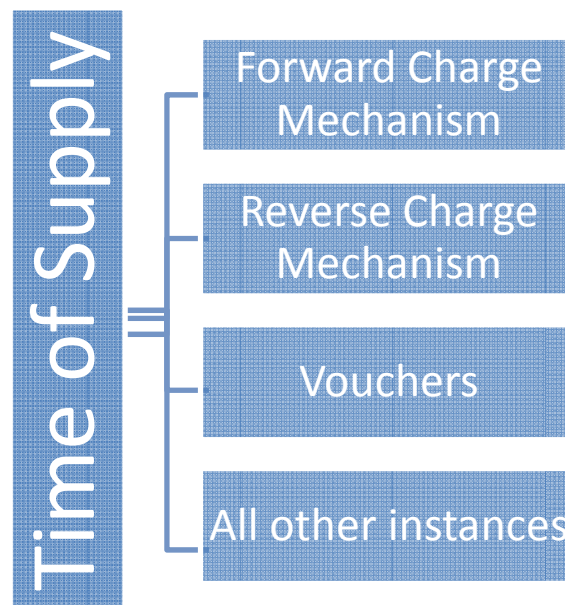
**Section 13 (12) on line info, database etc:** location of recipient

## TIME OF SUPPLY

**Concept of Time:** Time is the essence of levy. Tax is imposed when the supply is made. Hence it is important to determine the time of supply. Once time of supply is determined, levy will be made.

Point of taxation means the point in time when goods have been deemed to be supplied or services have been deemed to be provided. The point of taxation enables us to determine the rate of tax, value, and due dates for payment of taxes. Under GST the point of taxation, i.e., the liability to pay CGST / SGST, will arise at the time of supply as determined for goods and services. CGST Act, 2017 states provisions to determine time of supply of goods under section 12 and time of supply of services under section 13 of the Act.

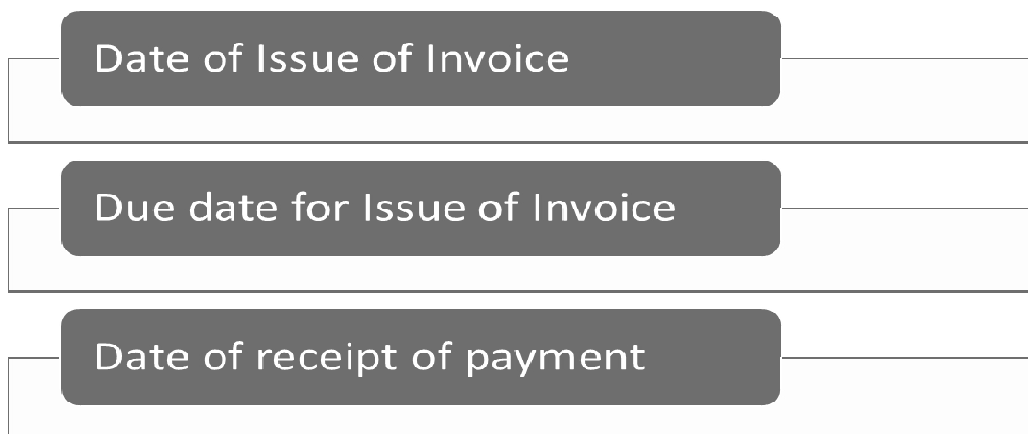
The provisions relating to the time of supply of goods and services are broadly centered around the following categories, as explained by the diagram below:



### Time of Supply of Goods [Section 12 of CGST Act, 2017]

#### Forward Charge Mechanism

The provisions with respect to time of supply of goods under the forward charge mechanism can be depicted as under, the time of supply would be the earliest of the following dates below, but this must be read in conjunction with the other key points mentioned below:





The due date of the invoice can be deciphered from Section 31(1) of the Act which mentions that the Invoice must be issued

- a. On / before the time of removal of the goods, where the supply involves movement of the goods
- b. On / before the delivery of the goods to the recipient, where the supply doesn't involve the movement of the goods
- c. On / before the issuance of the statement of account, in case of a continuous supply of goods
- d. On / before the time of supply subject to a maximum of 6 months from the date of removal, whichever is earlier, where the goods are supplied on "approval for sale / return" basis

The date of receipt of payment would be considered to be the earlier of

- a. Date of credit in the entity's bank account, as reflected in the bank statement
- b. Date on which the payment is recorded in the books of accounts of the supplier

As per Section 12(2), if there is an excess payment received, up to INR 1000/-; the supplier can choose to take the date of the invoice issued with respect to such excess amount, as the time of supply of goods for such excess value.

### Illustration 6

ABC Ltd. supplied goods to XYZ Ltd., under a contract for the goods to be delivered to the factory of XYZ Ltd. The goods were removed from the factory of ABC Ltd. on 9th September, 2017 and the goods were delivered to the factory of XYZ on 15th September, 2017.

The invoice was issued on 18th September, 2017 and the payment was credited to ABC's a/c on 20th October, 2017 although the entry in the books was made on 19th September, 2017 when the cheque was received.

Please advise on the time of supply.

In the above case, the dates are as under:

- o Date of issue of invoice: 18th September, 2017
- o Due date for issue of invoice: 9th September, 2017 (as the supply involved movement of goods)
- o Date of receipt of payment: 19th September, 2017 (earlier of the entry in the books and the credit in the bank a/c)

Hence, the time of supply will be the earliest of the above dates, i.e., 9th September, 2017.

### Illustration 7

A supplier delivers consignments of bricks on a continuous supply basis to various contractors. With respect to one of the supplies, the following details are available:

Invoice Date	Statement of Account (Due Date)	Receipt of Payment Date	Time of Supply
1st November	5th November	1st November	1st November
11th December	5th December	11th December	5th December
1st January	5th January	1st January	1st January

### Illustration 8

X Ltd. receives payment of INR 100,000 in advance while the invoice was issued for INR 99,000. Advise the treatment on the excess payment.

In this case, the INR 1000/- for which the invoice would be subsequently issued, the time of supply can be taken to be the date of the issue of the next invoice, for this amount, even though the payment was received earlier.

### **Reverse Charge Mechanism**

The time of supply under the “reverse charge mechanism” is the earliest of the following:

- a) Date of receipt of goods
- b) 30 days from the date of invoice
- c) Date of payment, which is the earlier of the date of debit in the bank account as reflected in the bank statement and the date of recording the payment in the books of account, by the recipient

### **Illustration 9**

Seema is an unregistered trader and supplies the goods to a registered recipient on 1st Feb 2017. The goods were received by Vir at his factory on 28th February, 2017. The invoice was issued on 15th February, 2017 and the payment was made on 5th March, 2017. Advise on the time of supply.

As the transaction stated above exhibits “reverse charge mechanism”, supplier i.e. Seema being unregistered, the time of supply would be the earliest of:

- a) Date of receipt of goods: in this case, 28th February, 2017
- b) 30 days from date of invoice: in this case, 16th March, 2017
- c) Date of payment: in this case 5th March, 2017

Hence the time of supply would be 28th February, 2017.

### **Vouchers**

The time of supply vis-à-vis vouchers is determined as under:

- a) Where the supply is identifiable at the time of the issue of the voucher, the date of issue of the voucher would be construed as the time of supply
- b) Where the supply is not identifiable at the time of issue of the voucher, the date of redemption of the voucher would be construed as the time of supply

Vouchers are instruments that can be exchanged as payment for goods / services, of the designated value therein. Hence, per definition, these are instruments, that the potential suppliers, are obliged to accept as consideration in lieu of the goods / services so supplied, in part or full. These vouchers set out clearly, the terms & conditions of use, validity, goods / services covered, identity of the potential suppliers etc.

### **Illustration 10**

ABC Ltd., enters in to an arrangement with “Hush Puppies”, buys the vouchers, these vouchers were issued on 14th December, 2017. The Company then distributes these vouchers with denomination INR 4,000/- to all its employees on 24th December, 2017 valid until 31st January, 2018, so that they can use these vouchers for buying shoes of their choice. The employees make the most of it and redeem these vouchers on the New Year’s, i.e., on 1st January, 2018.

In this case, the supply is identifiable at the point of issue of the voucher and hence the time of supply would be construed as 14th December, 2017.

### Illustration 11

Nisha buys a voucher from Shoppers Stop for INR 10,000 and gifts it to Tarun on 14th February. The voucher was valid until 29th February. Tarun redeems the vouchers at the nearby Shoppers Stop store on 29th February.

In this case, the supply was not identifiable at the point of issue of the voucher as Tarun was open to purchase anything from Shoppers' Stop, therefore the time of supply would be construed as the date of redemption of the voucher, that is 29th February.

### All other instances

In all other instances, the time of supply as per Section 12(5) is fixed as under:

- a) Due-date for filing periodic returns or
- b) In other cases, the date of payment of GST

### Time of supply of services [Section 13 of IGST Act, 2017]

Section 13 covers the time of supply for services, as mentioned above, under Forward Charge Mechanism, Reverse Charge Mechanism, Vouchers and all other instances.

### Forward Charge Mechanism

- In cases where the invoice has been issued on time, as per Section 31, earlier of the date of invoice and the date of receipt of payment
  - o Date of receipt of payment would be the earlier of the date of credit in the bank account or the date of entry in the books of account, whichever is earlier
- In cases where the invoice has not been issued on time, per Section 31, earlier of the date of provision of service and the date of receipt of payment
  - o Date of receipt of payment would be the earlier of the date of credit in the bank account or the date of entry in the books of account, whichever is earlier

Section 31 mandates that the time limit for issue of invoice is that the invoice must be issued either before the provision of service, or within 30 days from the date of supply of service (45 days for BFSI companies & NBFC's). Additionally, where the supply involves continuous supply of services, the invoice must be issued on / before the due date of payment (where the contract specifies the date) OR on / before the date of actual receipt of payment (where the due date is not ascertainable from the Contract) OR on / before the date of completion of milestone event where the payment is linked to completion of a milestone event.

### Illustration 12

Determine the time of supply from the following particulars:

15th October	The marriage hall was fixed and the advance of INR 25000 was paid (amount agreed was INR 100,000)
30th November	The marriage ceremony took place in the hall
14th December	The invoice was issued for balance INR 75000 indicating & adjusting the advance paid earlier
31st December	The balance payment was received

In the above case, the invoice was issued within the prescribed time (that is within 30 days of the event) and hence the time of supply would be the earlier of:

- a) The date of invoice: which is 14th December and
- b) The date of receipt of payment: which is 31st December

Therefore, for the amount of INR 75000, the time of supply would be 14th December. For the advance of INR 25000, the date of payment precedes the invoice and hence the time of supply for that amount would be 15th October.

As per Section 13(2), if there is an excess payment received, up to INR 1000/-; the supplier can choose to take the date of the invoice issued with respect to such excess amount, as the time of supply of services for such excess value.

### **Reverse Charge Mechanism**

The time of supply of services under the reverse charge mechanism would be the earliest of:

- a) 60 days from the date of invoice &
- b) Date of payment, which is the earlier of the date of debit in the bank account as reflected in the bank statement and the date of recording the payment in the books of account, by the recipient

### **Illustration 13**

DEF Ltd., an unregistered supplier, renders professional services to GHI Ltd. and issues the invoice on 7th August, 2017. There is a dispute on the quality of services and the payment gets delayed and is finally released on 14th November, 2017 by cheque and an entry is made in the books of account of the recipient.

In this case, the time of supply would be the earlier of:

- a) 60 days from date of invoice: 7th October, 2017
- b) Date of payment: 14th November, 2017

Hence the time of supply would be 7th October, 2017.

### **Vouchers**

The term, “vouchers” has been explained earlier in the chapter. The time of supply of vouchers that are exchangeable for services, is as under:

- a) if the supply is identifiable at the point of issue, the date of issue of voucher
- b) the date of redemption of voucher in all other cases

### **All other instances**

In all other instances, the time of supply per Section 13(5) is fixed as under:

- a) Due-date for filing periodic returns or
- b) In other cases, the date of payment of GST

### **Time of Supply in case of change in rate of tax [Section 14 of CGST Act, 2017]**

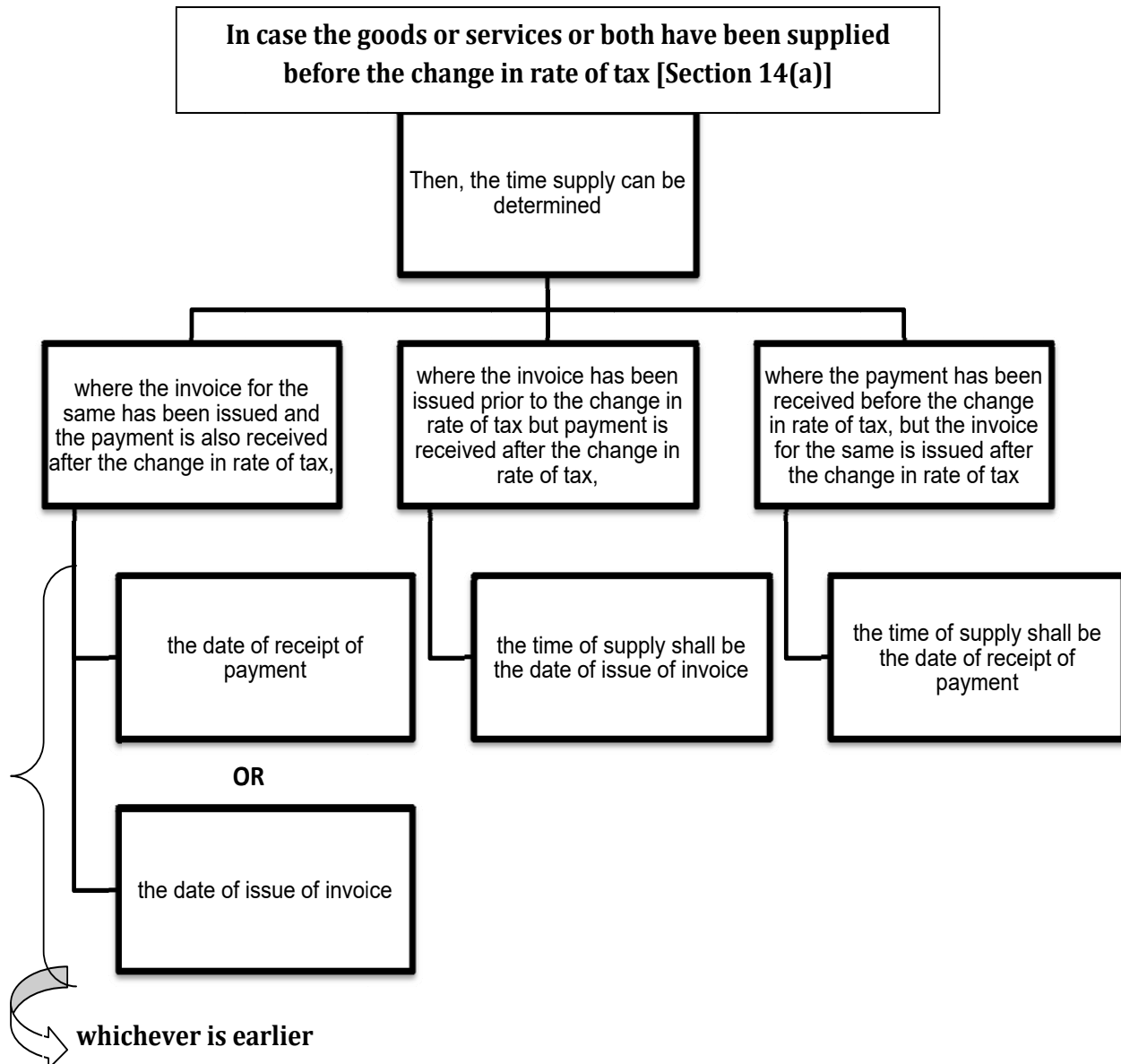
Section 14 of the CGST Act, 2017 defines the time of supply, where there is a change in the rate of tax in respect of goods or services or both.

**Section 14(a):** In case the goods or services or both have been supplied before the change in rate of tax, the time of supply can be determined as follows:

- 1) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

- 2) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
- 3) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment

In case the goods or services or both have been supplied after the change in rate of tax, the time of supply can be determined as follows :



**Section 14(b):** In case the goods or services or both have been supplied after the change in rate of tax, the time of supply can be determined as follows:

- 1) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
- 2) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

- 3) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

In case the goods or services or both have been supplied after the change in rate of tax, the time of supply can be determined as follows

where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax,	<ul style="list-style-type: none"> <li>The time of supply shall be the date of receipt of payment</li> </ul>
where the invoice has been issued and payment is received before the change in rate of tax,	<ul style="list-style-type: none"> <li>The time supply shall be :               <ul style="list-style-type: none"> <li>a) the date of receipt of payment or</li> <li>b) date of issue of invoice, whichever is earlier;</li> </ul> </li> </ul>
where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax	<ul style="list-style-type: none"> <li>The time of supply shall be the date of issue of invoice</li> </ul>

#### Illustration 14

Supply was made on 10th May, 2018. From the following particulars, find out the rate of GST applicable.

Event	Date of event	Rate applicable
Change of rate	31st May, 2018	Rate changed from 18% to 12%
Issue of Invoice	5th June, 2018	12%
Payment received	6th July, 2018	12%

Applicable rate is 12%. i.e. which is applicable on earlier of the two events, date of invoice and date of payment which in this case would be 5th June, 2018.

#### Illustration 15

Supply was made on 10th May, 2018. From the following particulars, find out the rate of GST applicable.

Event	Date of event	Rate applicable
Change of rate	30th June, 2018	Rate changed from 18% to 12%
Issue of Invoice	5th June, 2018	18%
Payment received	6th July, 2018	12%

**Answer:** Applicable rate is 18%. i.e. date of invoice i.e. 5th June, 2018 because it is earlier than the date of payment.

**Note:** When supply is made before change in rate, the principle of 'whichever is earlier' is followed. Similarly, where supply is made after the change in rate, 'whichever is later' principle is followed.

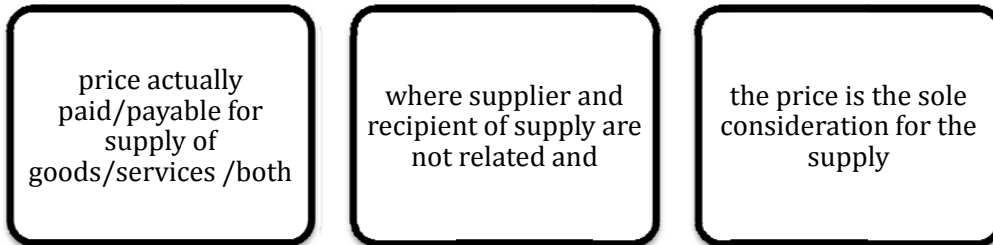
### VALUE OF TAXABLE SUPPLY [SECTION 15 OF CGST ACT, 2017]

Section 15 of the CGST Act when read in conjunction with Chapter IV: Determination of Value of Supply of the

CGST rules, states that the value of taxable supply under GST is the transaction value. Transaction value is defined as 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.

Section 15 is applicable to interstate supplies under IGST also.

#### Transaction value means



#### Inclusions in determination of Value of Supply

- (a) any taxes, duties, cess, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments

*Note: Interest or late fee or penalty for delayed payment of any consideration for any supply was not taxable under Central Excise or Sales Tax laws. Now they are all part of value.*

#### Exclusions in determination of Value of Supply

- (a) 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; and
- (b) any discount given after the supply has been affected, if –
  - (i) such discount was known and agreed at the time of supply, that 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.

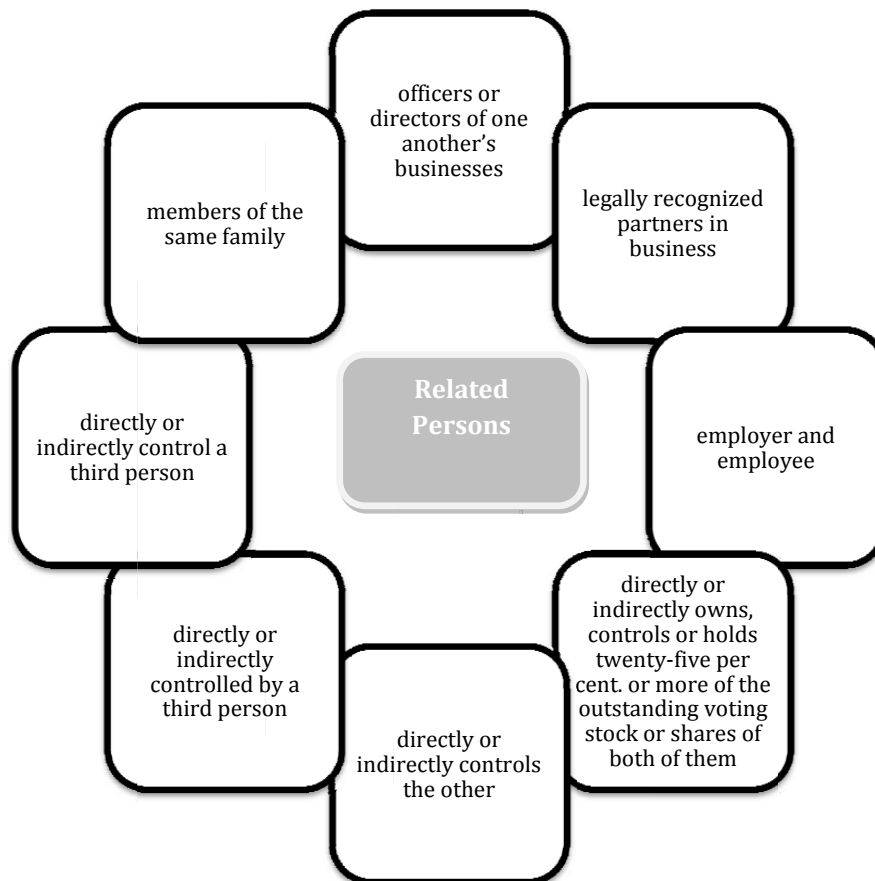
Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

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. For the purposes of this Act 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 recognized 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;

The term “person” also includes legal persons and persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related



## VALUATION RULES : CHAPTER IV, CGST RULES, 2017

### Rule 27: Value of supply of goods or services where the consideration is not wholly in money-

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall-

- (a) be the open market value of such supply;



- (b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
- (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
- (d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

**For example :**

- (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 the barter of a 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 the laptop is forty-four thousand rupees.

**Rule 28: Value of supply of goods or services or both between distinct or related persons, other than through an agent-**

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

**Rule 29: Value of supply of goods made or received through an agent-**

The value of supply of goods between the principal and his agent shall

- (a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety percent. of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.

**For example:** A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 per cent of five thousand rupees i.e., four thousand five hundred rupees

per quintal.

- (b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.

### **Rule 30: Value of supply of goods or services or both based on cost-**

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

### **Rule 31: Residual method for determination of value of supply of goods or services or both-**

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

### **Rule 32: Determination of value in respect of certain supplies-**

- (1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter
- (2) The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely: -

- (a) for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one per cent of the gross amount of Indian Rupees provided or received by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one per cent of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.

Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

- (b) at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be
  - (i) one per cent. of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;
  - (ii) one thousand rupees and half of a per cent of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and
  - (iii) five thousand and five hundred rupees and one tenth of a per cent of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.
- (3) The value of the supply of services in relation to booking of tickets for travel by air provided by an

air travel agent shall be deemed to be an amount calculated at the rate of five percent of the basic fare in the case of domestic bookings, and at the rate of ten per cent of the basic fare in the case of international bookings of passage for travel by air.

*Explanation.* - For the purposes of this sub-rule, the expression “basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

- (4) The value of supply of services in relation to life insurance business shall be, -
- (a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;
  - (b) in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or
  - (c) in all other cases, twenty-five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from the policy holder in subsequent years: Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance
- (5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

- (6) The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.
- (7) The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

### **Rule 33: Value of supply of services in case of pure agent-**

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorization by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

*Explanation.* - For the purposes of this rule, the expression “pure agent” means a person who

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

**For 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.

#### **Rule 34: Rate of exchange of currency, other than Indian rupees, for determination of value-**

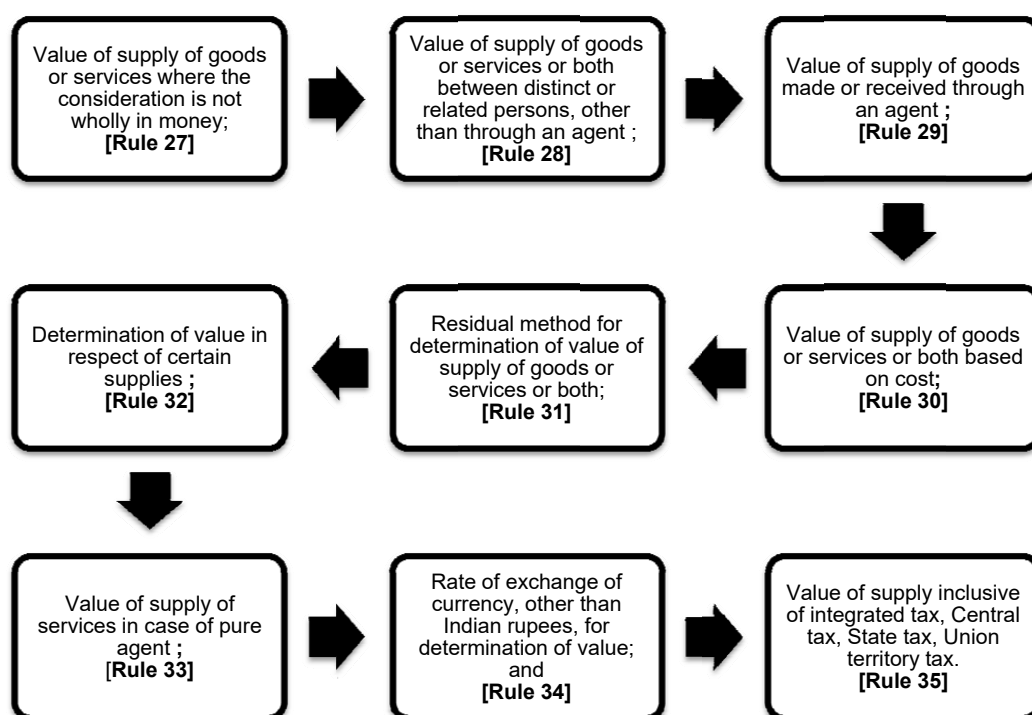
- (1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.
- (2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.

#### **Rule 35: Value of supply inclusive of integrated tax, Central tax, State tax, Union territory tax-**

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,- Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %)

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

- (a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;
- (b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.



### Illustration 16

Nisha Enterprises had made supplies of INR 750,000 to Tee Kay Services. There was a tax levied by Municipal Authorities on such sale of INR 75,000/-. CGST and SGST chargeable on the supply was 37500/-. Packing charges, not included in the price above amounted to INR 15,000.

Nisha Enterprises received a subsidy of INR 30000/- from an NGO on the sale of such goods, and the price mentioned above is after taking into account the subsidy.

Discount offered is @ 1% and that's mentioned on the Invoice.

Determine the Value of Supply.

	Price Charged	7,50,000
Add:	Tax charged by Municipal Authorities	75,000
	Packing Charges	15,000
	Subsidy from NGO	30,000
	Total after all inclusions	8,70,000
Less:	Discount @ 1%	7,500

### Notes

1. CGST and SGST is not included in the determination of value of supply, rather taxed post determination on the same
2. Subsidy since received from a non-governmental body is added back to determine the value of supply
3. Discount on basic price is an exclusion

# **Lesson 4**

## **Input Tax Credit and Computation of GST Liability**

### **LESSON OUTLINE**

- Input Tax Credit
- Job Work
- Input Service Distributor
- Computation of GST Liability

## INPUT TAX CREDIT

Taxes paid on inward supply of inputs, capital goods and services are called input taxes. These may be Integrated GST, Central GST, State GST or Union Territory GST. Taxes paid under reverse charge mechanism are also input taxes.

The credit of the above taxes is called input tax credit, that is, the taxes paid on inputs are available as a set off against the taxes payable on outward taxable supplies.

CGST Act, 2017 contains the provisions relating to ITC, its availment, utilization and conditions and restrictions attached therewith.

Definitions of input tax and input tax credit:

**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;

Input Tax Credit (ITC) is considered as a cornerstone of GST. In the previous tax regime, there was non-availability of credit at various points in supply chain, leading to a cascading effect of tax i.e., tax on tax and therefore increasing the cost of goods and services. This flaw has been removed under GST and a seamless flow of credit throughout the value chain is therefore available consequently doing away with the cascading effect of taxes.

To avail the benefit of ITC, it is required that the person availing such benefit is registered under GST. An unregistered person is not eligible to take the benefit of ITC. Section 155, of the CGST Act, 2017 states that where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

**Section 49(5)** of the CGST Act, 2017 provides for utilization of ITC in Electronic credit ledger for payment of GST.

## ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT [Section 16]

(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;

- (b) he has received the goods or services or both.

To be eligible for ITC he must be in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents and received the goods or services or both.

The registered person need not receive the goods himself. It is sufficient even if the goods are delivered to some other person on his direction.

*Explanation.* – For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment.

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after

- the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or
- furnishing of the relevant annual return

whichever is earlier.

Section 16 of the CGST Act, 2017, states the conditions and eligibility to obtain ITC. Following four conditions are required to be fulfilled by a registered taxable person:

- he should be in possession of tax invoice or debit note or such other taxpaying documents as may be prescribed;
- he should have received the goods or services or both;
- the supplier should have actually paid the tax charged in respect of the supply to the government; and
- he should have furnished the return under section 39.

Where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment.



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.

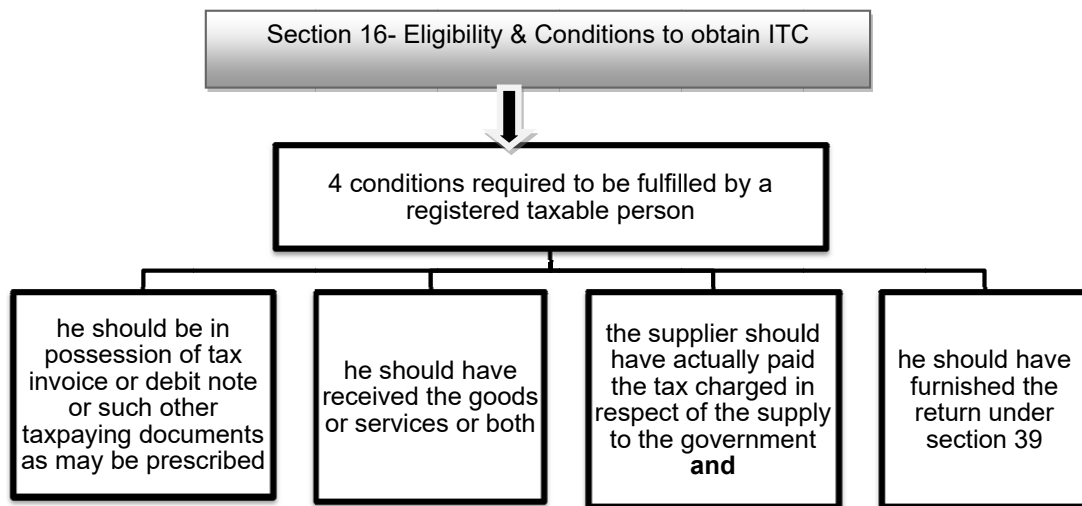
Every registered person is eligible to take credit of GST charged to him for his inward supply of goods/ services if he uses such supplies in the course or furtherance of his business.

Such credit is called input tax credit and the same is to be credited to his electronic ledger.

Payment of tax and filing of return is also necessary to claim ITC. However, Section 41 allows ITC on provisional basis.

Depreciation under Section 32 of the Income Tax Act shall not be claimed on the tax portion on which ITC has been claimed. It is a violation under Income Tax Act also.

*Note: In a financial year, the return for September is to be filed by 20th of October under Section 39 of CGST Act, 2017.*



### Illustration 1

Mr. A orders 30000 tonnes of goods which are to be delivered by the supplier via 3 lots of 10000 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 2017. The ITC is available to Mr. A 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.

### Illustration 2

For an Invoice dated 31st July 2017, the same pertains to the financial year 2017-18.

Hence the return for month of September following the end of the financial year to which such invoice relates is due on 20th October, 2018.

Let's say that the annual return is filed on 12th August, 2018.

The ITC therefore needs to be claimed within 12th August, 2018, which is the earlier of the two dates.

### Apportionment of credit and blocked credits [Section 17]

Goods and Services Tax aims at providing seamless flow of credit throughout the supply chain.

However, below is a list of few situations as mentioned in section 17 of Central GST Act, 2017 where input tax credit will not be available:

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies

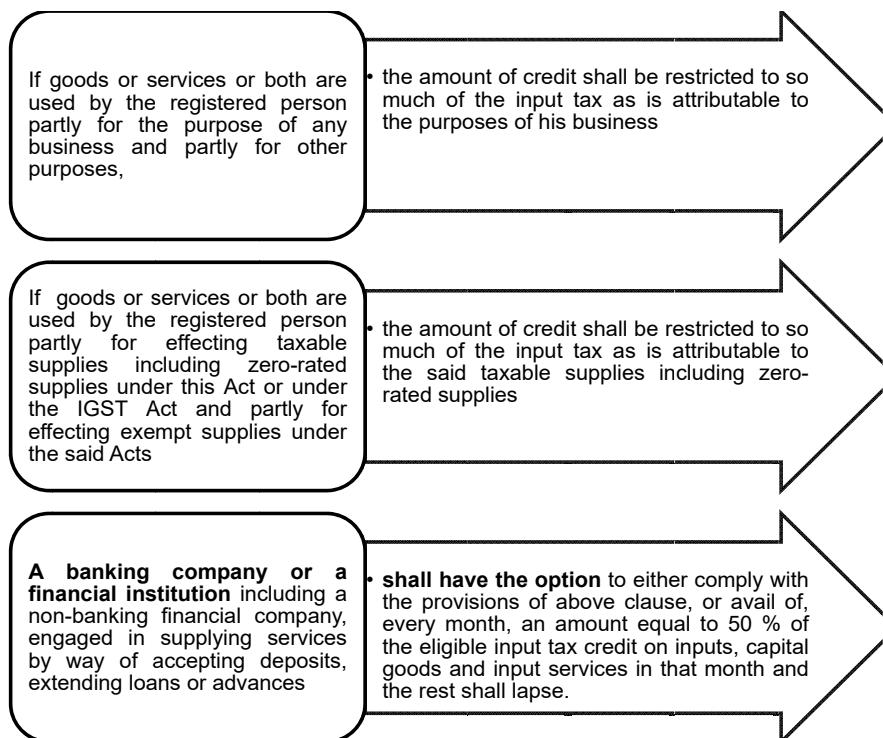
(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to 50 % 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.

Input Tax Credit is available only on those goods and services used for business. Exports and supplies to SEZ fall under the category of zero-rated supplies. ITC is available on zero rated supplies and taxable supplies but not on exempt supplies.



Note :

The value of exempt supply 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.

In Point (3), the option once exercised shall not be withdrawn during the remaining part of the financial year.

In Point (3), 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.

### Illustration 3

Input X is used to produce and supply output 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 out-ward supply is zero rated.

### Blocked Credits [Section 17(5)]

Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:

- (a) motor vehicles and other conveyances except when they are used –
  - (i) for making the following taxable supplies, namely: –
    - (A) further supply of such vehicles or conveyances; or
    - (B) transportation of passengers; or
    - (C) imparting training on driving, flying, navigating such vehicles or conveyances;
  - (ii) for transportation of goods;

*Example:* A car dealer in the business of buying and selling cars is allowed ITC. Cab services engaged in the business of transportation of goods can avail ITC. Training Institutes for Cars / Aircrafts etc. can also avail ITC.

- (b) the following supply of goods or services or both –
  - (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
 

*Example :* A company avails catering services for its annual day function, it can't claim ITC as the inward supplies are not consumed to prepare outward taxable supplies of the same category.
  - (ii) membership of a club, health and fitness center;
  - (iii) rent-a-cab, life insurance and health insurance except where –
    - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
    - (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

*Example:* In Assam, if the Government notification requires all employers to provide home drop in the evening for safety reasons, and the employer consequently avails Rent-a-Cab services, it can claim ITC on such inward supplies.

- (iv) travel benefits extended to employees on vacation such as leave or home travel concession;
- (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 capitalization, to the said immovable property;

- (e) goods or services or both on which tax has been paid under section 10; (Composition Supply Scheme)
- (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. (Recovery Sections)

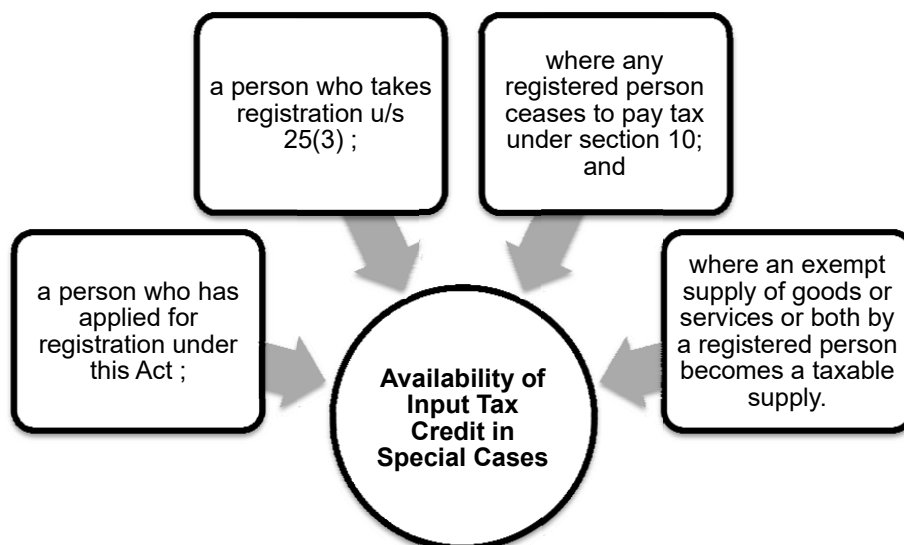
Section 17(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

*Explanation.* – For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises

### Availability of Input Tax Credit in Special Cases [Section 18]

This section deals with eligibility of credit in special cases.



(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.

(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.

*Note: Here, the maximum time limit for availing ITC is one year. Invoices more than one year old are not eligible for taking credit.*

(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.

(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.

(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount

- equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed OR
- the tax on the transaction value of such capital goods or plant and machinery determined under section 15,

whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

The table below summarizes the entitlement of Input Tax Credit (ITC):

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.

#### Illustration 4

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.

### Illustration 5

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.

### Illustration 6

Mr. C acquired a Capital Asset on 1st April, 2016 and used it for production of exempt supplies only. Now, in November 2017, his supplies become taxable. The cost of the asset was INR 250,000 and GST 18% was charged on it.

Hence the ITC applicable is  $\text{INR } 250,000 \times 18\%$ , which is INR 45,000.

Now, number of quarters of usage that have elapsed between April 2016 to November 2017 are: seven.

Hence, there would be a reduction of 5% per quarter for 7 quarters, that is 35%.

Therefore, ITC available would be as under.

Total ITC	45000
Less: Redn for 7 quarters	15750
Net ITC available	29250

Note that this ITC would be available from the date immediately preceding the date from which the supply becomes taxable.

Rule 40(2) of CGST RULES, 2017, states that the amount of credit shall be calculated by reducing the input tax @ 5% for every quarter or part thereof. It shall be calculated from the date of issue of invoice for the capital goods

### Illustration 7

X Ltd. purchased a machine for Rs. 100,000 and brought it on 1-8- 2017 and paid 12% IGST. He availed input tax credit and used the capital goods in his business. On 5-11 2018 he resold it as second-hand machine for 65,000. Find out the amount of tax payable/ ITC reversible in the above case.

Input Tax	12000
Less: 5% per quarter of usage	<u>3600</u>
<b>Net ITC available</b>	<b>8400</b>
Transaction Value	65000
<b>Tax on Transaction Value</b>	<b>7800</b>

Notes:

- 6 quarters have elapsed and therefore  $6 \times 5\%$ , that is 30% would be the reduction for usage
- Tax on Transaction Value @ GST would be computed and compared to the Net ITC available
- The higher of the two would be payable for disposal of Capital Goods
- If the supply is intrastate, it should be payable in two equal parts (4200) to Centre and the concerned State (that is CGST + SGST).
- If it is an interstate supply, Rs. 8,400 is payable as IGST.
- An invoice has to be issued to the recipient with the details of tax amount.



## 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.

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]

Section 19 of the CGST Act, 2017 states that 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.

Although Section 16 of the CGST Act, 2017 specifically states that ITC will be provided only when goods are actually received, but under Job work this condition is exempted and ITC can be availed even if inputs or capital goods are directly sent to the job worker without being first brought to the place of business of Principal.

Taking ITC in respect of inputs and capital goods sent on job work:



- (1) The Principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.
- (2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the Principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.
- (3) Where the normal goods 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.

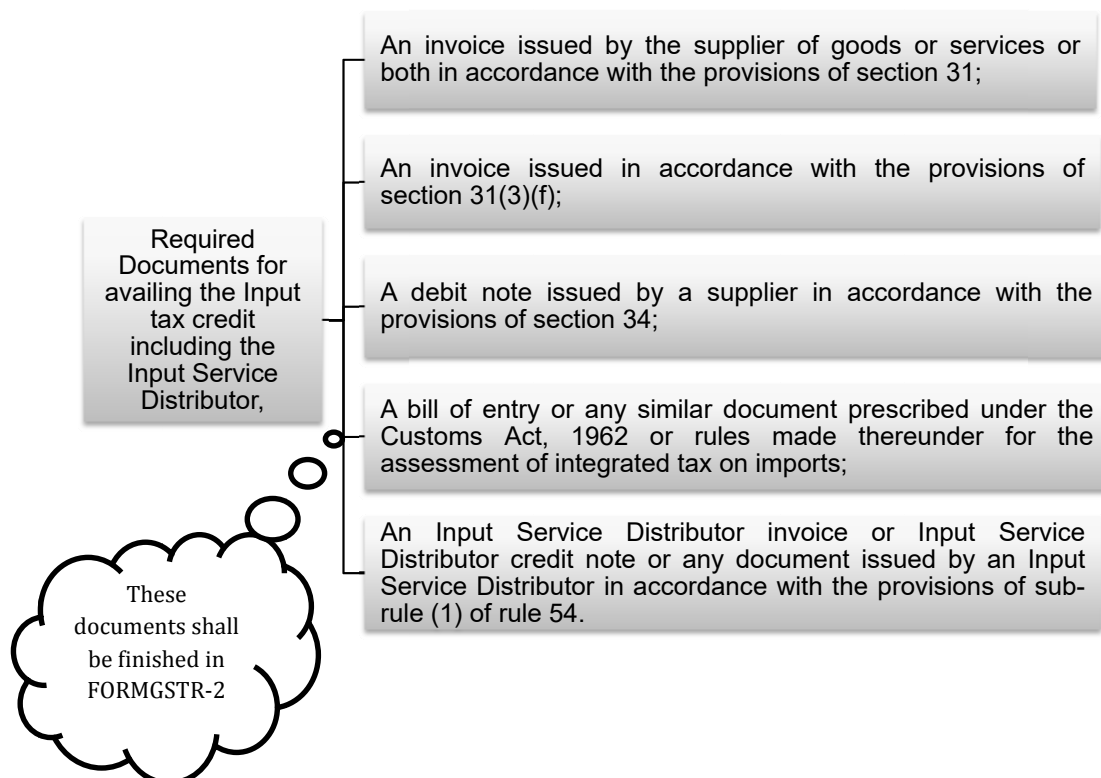
Essentially, it's imperative to note that the Principal can claim ITC in Inputs / Capital Goods and can send these to the Job Worker for further processing without payment of GST under the cover of a prescribed challan but where these are not either sold by the job worker OR returned by the job worker within 1 Or 3 Years as above, then the supply between them is construed as Deemed Supply and tax with interest has to be discharged by the supplier.

## **Input Tax Credit Rules**

### **Rule 36: Documentary requirements and conditions for claiming input tax credit**

- (1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -
  - (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
  - (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;
  - (c) a debit note issued by 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, and the relevant information, as contained in the said document, is furnished in Form GSTR-2 by such person.
- (3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.



### Illustration 8

ABC Ltd., sends T Shirts to its 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.

### INPUT SERVICE DISTRIBUTOR

A company may have a number of units and the GST paid by it on input services received can be distributed to the beneficiary units on the basis of their previous year turnover. The office of the company which distributes the credit is called input service distributor.

**Section 2(61):** "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under Section 31 towards the receipt of input services and issues a prescribed

document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office

### **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 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

### **Manner of distribution of credit by Input Service Distributor [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.

## Utilization of ITC

Input Tax Credit (ITC) is credited to a person's electronic credit ledger. The person may use this to pay his output tax liability.

In terms of Sec. 49(5), the manner of utilization of ITC is as under:

The CGST Liability can be extinguished by utilizing the Input Tax Credit (ITC), in the following sequence	The SGST Liability can be extinguished by utilizing the Input Tax Credit (ITC), in the following sequence	The IGST Liability can be extinguished by utilizing the Input Tax Credit (ITC), in the following sequence
<ul style="list-style-type: none"> <li>•First, ITC standing under CGST</li> <li>•Then, ITC standing under IGST</li> </ul>	<ul style="list-style-type: none"> <li>•First, ITC standing under SGST</li> <li>•Then, ITC standing under IGST</li> </ul>	<ul style="list-style-type: none"> <li>•First, ITC standing under IGST</li> <li>•Then, ITC standing under CGST</li> <li>•Then, ITC standing under SGST</li> </ul>

Therefore, it is clear that there is no offset available between the CGST and the SGST.

## Illustrations 9

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 250,000
Trucks used for transporting materials	INR 125,000
Cakes and Pastries for consumption within factory	INR 12,500

## Treatment

- (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 10

Mr. X has procured a machinery for INR 25,00,000 and paid GST of INR 450,000 (18% GST). He has capitalized the invoice value and will claim depreciation of the entire Invoice Value. Please advise on the availability of ITC.

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 11

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 anyway paid the entire Invoice.

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.

### Illustration 12

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.

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:

	Tax Liability		
	CGST	SGST	IGST
For Current Purchases	40,500	40,500	13,500
Opening	30,000	30,000	70,000
	70,500	70,500	83,500

The following table represents his discharge of liabilities:

	Discharge		
	CGST	SGST	IGST
Liability	81,000	1,08,000	1,08,000
ITC (CGST/SGST)		85,500	85,500
ITC (IGST)	81,000	22,500	15,000
Paid	NIL	NIL	7,500

Section 6 of the IGST Act also contains similar provisions and exemption of IGST is granted on interstate supply.

# **Lesson 5**

## **Procedural Compliance Under GST**

### **LESSON OUTLINE**

- Registration
- Tax Invoice
- Debit & Credit Note
- Account and Record
- Electronic way Bill
- Return
- Payment of Tax
- Refund Procedures
- Audit

## REGISTRATION

Registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail Input Tax Credit for the taxes on his inward supplies. Section 22 of Central Goods & Services Tax Act, 2017 mandates that every person who has an aggregate turnover of more than Rs 20 Lacs in the relevant financial year, is liable to be registered under the Act. It must be noted though that for Jammu & Kashmir & North-East states, the threshold is Rs 10 Lacs.

North-eastern states would include Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura along with hilly areas of Himachal Pradesh and Uttarakhand. If a person has place of business in various states, and one of the branches is in any of the states mentioned above (Jammu & Kashmir/ North Eastern), then the threshold limit for GST registration would be reduced to Rs 10 Lacs.

Aggregate Turnover under the Act includes all taxable supplies, exempt supplies, zero-rated supplies, inter-state supplies, but doesn't include the inward taxable supplies under the Reverse Charge Mechanism. If the person has taxable and exempt supplies as a part of the turnover, example, machine oil and petrol, the turnover from both would be added to determine whether the aggregate exceeds the threshold, and if it does, then registration become mandatory for such supplier. The supplies by the agents on behalf of the principal would be included in the aggregate turnover of both, the principal and the agent. Registration is mandatory at every place of business from wherein a taxable supply has been made.

The registration under GST is Permanent Account Number (PAN) based and state-specific. GST Identification Number (GSTIN) is a 15-digit number and a certificate of registration, incorporating the GSTIN is made available to the applicant upon registration.

- The first two digits of this number will represent the state code
- The next ten digits will be the PAN number of the taxpayer
- The thirteenth digit will be assigned based on the number of registrations within a state
- The fourteenth digit will be Z by default
- The last digit will be for check code

Registration under GST is not tax specific, which means that there is single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses. A given PAN based legal entity would have one GSTIN per State, that means a business entity having its branches in multiple States will have to take separate State wise registration for the branches in different States. But within a State, an entity with different branches would have single registration wherein it can declare one place as principal place of business and other branches as additional place of business. However, a business entity having separate business verticals (as defined in section 2 (18) of the CGST Act, 2017) in a state may obtain separate registration for each of its business verticals.

### Persons liable for Registration [Section 22]

Section 22 and 24 list the persons liable to get registered under the GST Law.

- (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

- (2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.
- (3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.
- (4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

### Persons not liable to register [Section 23]

The Section specific that are not liable to register under the Central Goods & Services Tax Act, 2017:

#### Compulsory Registration

- Casual taxable person ;
- Non-resident taxable person ;
- E-commerce operators ; and
- Persons discharging liabilities under reverse charge mechanism;
- Person who are required to pay tax under sub-section (5) of section 9;
- Persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- Persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- Input Service Distributor;
- 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;
- 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;
- Any other notified by the Government on the recommendations of the Council

#### Persons not liable to register

- Engaged exclusively in the supply of goods / services / both which are not liable to tax ;
- Engaged exclusively in the supply of goods / services / both which are wholly exempt from tax ;
- Agriculturalist to the extent of supply of produce from land cultivation ; and
- Specified categories as may be notified by the Government.



### Procedure for Registration [Section 25]

Every person who is liable to register themselves under the CGST Act, 2017 must do so within thirty days from the date when he becomes first liable or five days prior to commencement of business in case of casual / non-resident taxable person.

If the proper officer doesn't take any action within three days of submission of application along with necessary details and documents, or within seven days of receiving the clarifications so solicited, the application for grant of registration is deemed to be approved.

The effective date of registration is:

- In case the application is submitted within 30 days of the person becoming liable to register, it shall be the date on which the person becomes liable
- And if the application is submitted after 30 days of the person becoming liable to register, it shall be the date on which the registration is granted

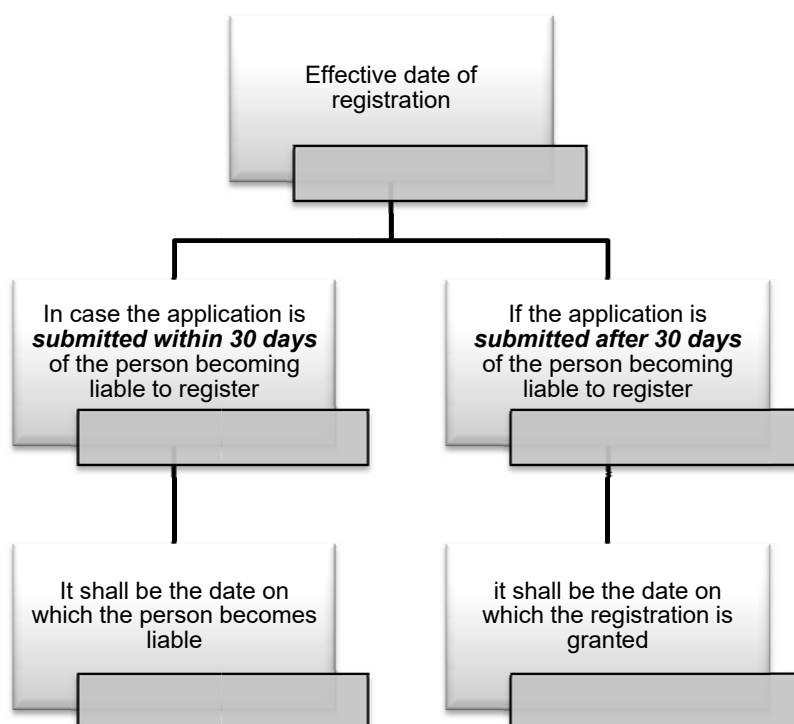
**Section 2(20)** of Central Goods & Services Tax Act, 2017 defines “casual taxable person” as a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business. Thus, a casual taxable person is someone who has a business in a different state, but comes to a different state for a business purpose temporarily.

For example, a footwear dealer registered in Agra comes for an exhibition at Azad Maidan, Mumbai for participating in the exhibition, then such person would need to register as a casual taxable person at Mumbai and he will be granted registration for a maximum period of 90 days.

**Section 2(77)** of Central Goods & Services Tax Act, 2017 defines “non-resident taxable person” as any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India. Hence, a non-resident taxable person is someone who has a business outside India, but comes to a different state for a business purpose temporarily.

For example, a person from Paris, comes to participate in an exhibition at Azad Maidan, Mumbai for participating in the exhibition, then such person would need to register as a non-resident taxable person at Mumbai and he will be granted registration for a maximum period of 90 days.

Registration must be taken state-wise. In case there are several branches within a single state, they can all operate under a single registration so long as one of the places are declared as Principle Place of Business (PPOB) and the remaining are Additional Places of Business (APOB). For composition levy, all businesses under a single PAN mandatorily either can be registered under composition levy or all of them under normal levy and there is no facility of choosing the Composition Scheme for only a few businesses under the Goods & Services Tax Act, 2017.



### Cancellation of Registration [Section 29]

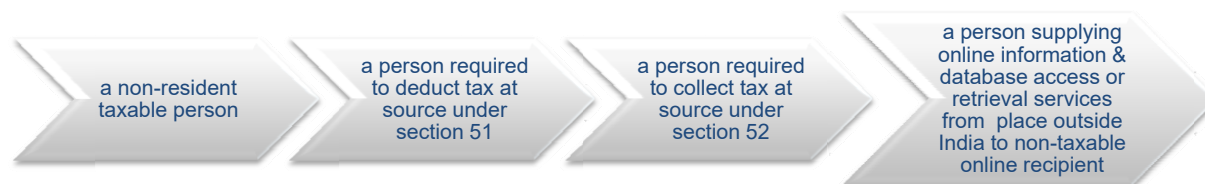
The proper officer may, either himself or on application filed by a registered person, or his legal heirs in case of a death of a registered person, cancel / revoke the registration of such person. This cancellation could be from a prospective / retrospective date as the officer may deem fit. This cancellation would in no way interfere with the liabilities of the said person. A registered person whose registration is cancelled will have to debit the electronic cash ledger or electronic credit ledger, by an amount equal to Input Tax Credit (ITC) so availed or the output tax liability, whichever is higher.

## RULES FOR REGISTRATION [CHAPTER III]

CHAPTER III of Central Goods & Services Tax Act, 2017 deals with the registration provisions.

### Application for registration [Rule 8]

Rule 8(1): Every person other than :



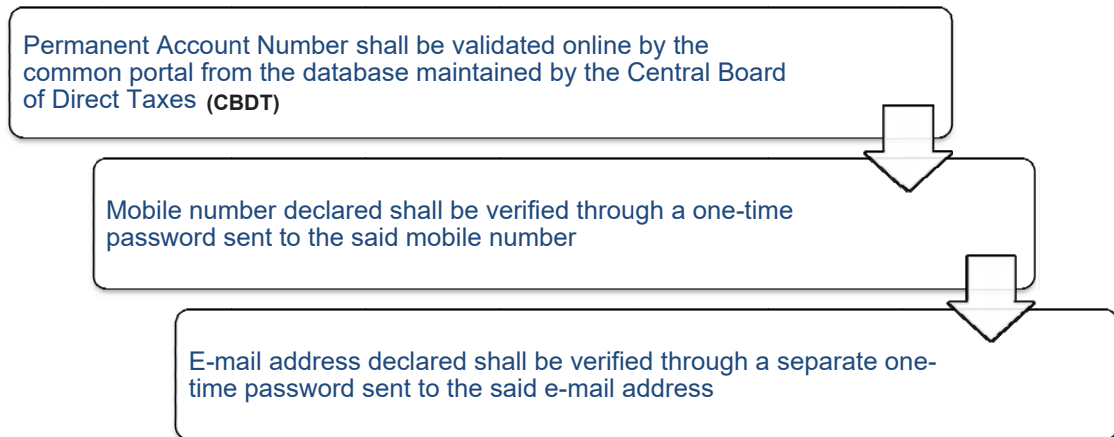
who is liable to be registered under section 25(1) and every person seeking registration under section 25(3) (hereafter in this Chapter referred to as “the applicant”) shall, before applying for registration, declare his:



in Part A of Form GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

A person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from his other units located outside the Special Economic Zone. Every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

Rule 8(2): It lays down the verification of details entered for registration:



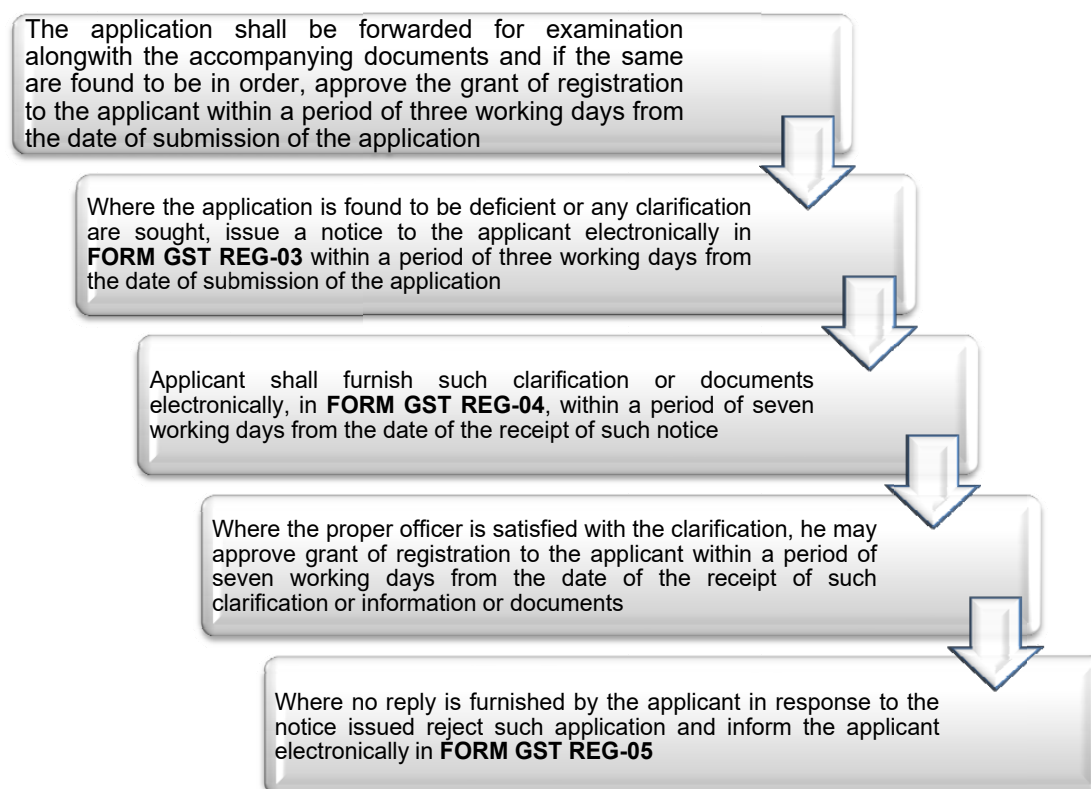
Rule 8(3) lays down that on successful verification of the Permanent Account Number, mobile number and email address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

<b>Rule 8(4)</b>	<ul style="list-style-type: none"> <li>Using the reference number generated, the applicant shall electronically submit an application in <b>Part B of FORM GST REG-01</b>, 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</li> </ul>
<b>Rule 8(5)</b>	<ul style="list-style-type: none"> <li>On receipt of an application, an acknowledgement shall be issued electronically to the applicant in <b>FORM GST REG-02</b></li> </ul>
<b>Rule 8(6)</b>	<ul style="list-style-type: none"> <li>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</li> </ul>

### Verification of the application and approval [Rule 9]

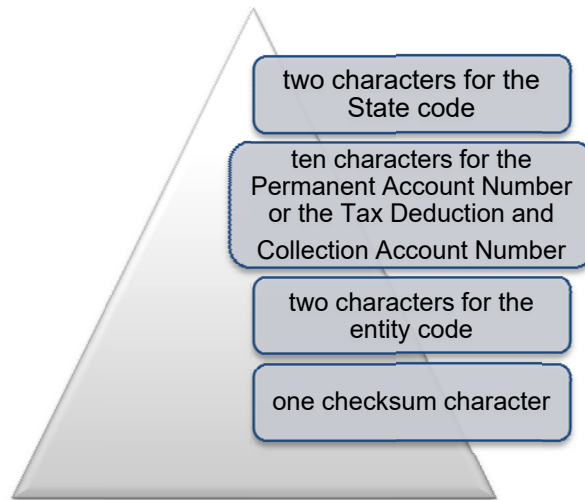
- (1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within three working days from the date of submission of application.
- (2) Where the application submitted under rule 1 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 three working days from the date of submission of application and the applicant shall furnish such clarification, information or documents sought electronically, in FORM GST REG-04, within seven working days from the date of receipt of such intimation.
- (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 seven working days from the date of 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) within the prescribed period or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, 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 three working days from the date of submission of application, or (b) within seven working days from the date of receipt of 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 9 can thus be summarised as under:



### Issue of registration certificate [Rule 10]

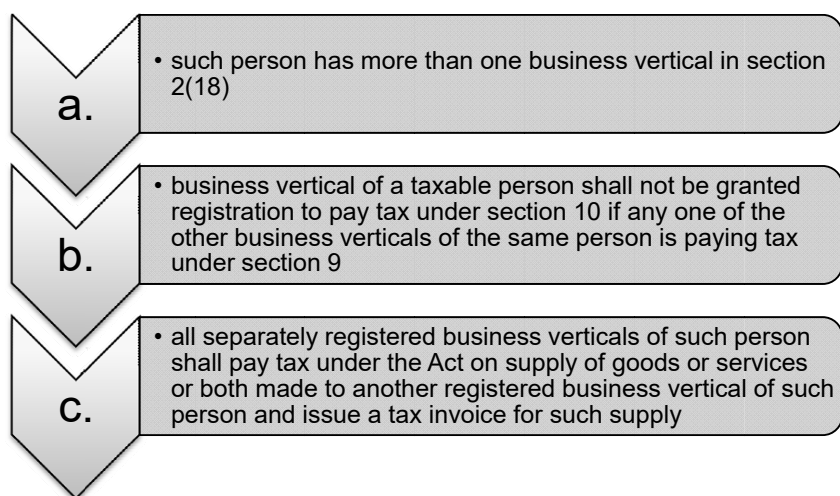
- (1) Subject to the provisions of sub-section (12) of section 25, where the application for grant of registration has been approved under rule 9, a certificate of registration in FORM GST REG-06 showing the principal place of business and additional place(s) of business shall be made available to the applicant on the Common Portal and a Goods and Services Tax Identification Number (hereinafter in these rules referred to as “GSTIN”) shall be assigned in the following format:



- (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 thirty days from such date.
- (3) Where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration under sub-rule (1) or sub-rule (3) or sub-rule (5) of rule 9.
- (4) Every certificate of registration made available on the Common Portal shall be digitally signed 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, shall be made available to him on the common portal within three days after expiry of the period specified in sub-rule (5) of rule 9.

### Separate registration for multiple business verticals within a State or a Union territory [Rule 11]

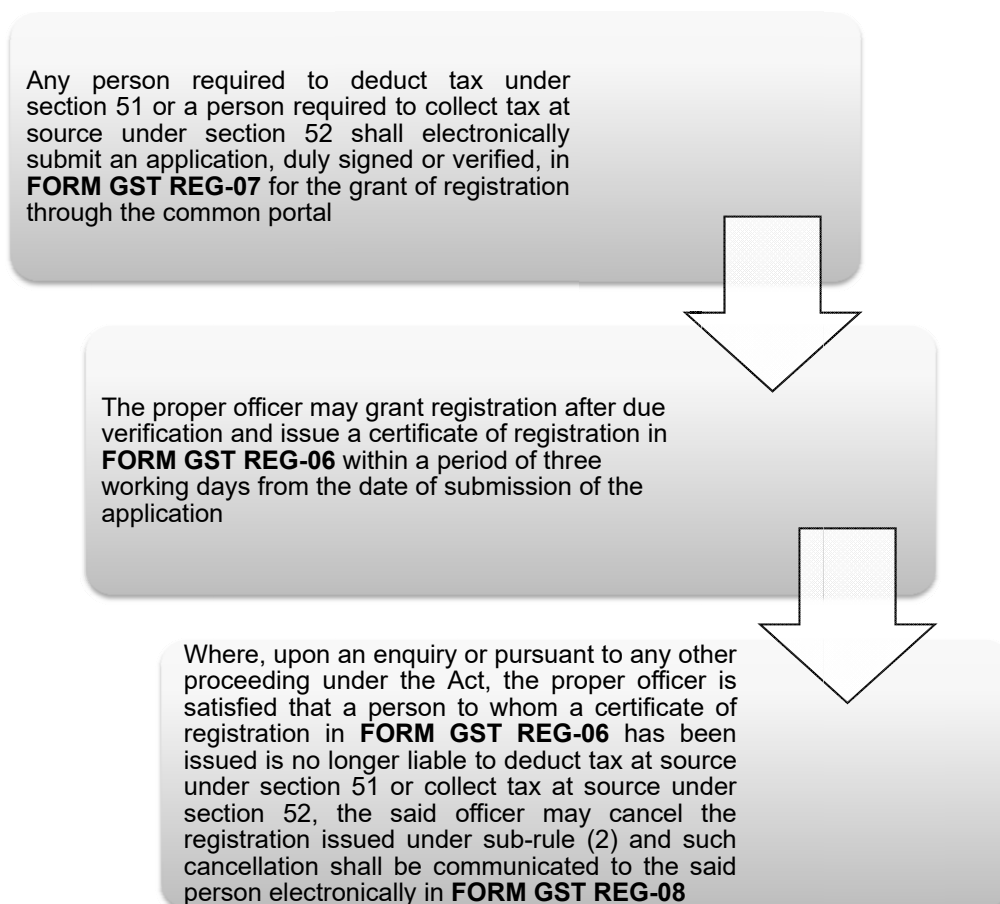
- (1) Any person having multiple business verticals within a State or a Union territory, requiring a separate registration for any of its business verticals under sub-section (2) of section 25 shall be granted separate registration in respect of each of the verticals subject to the following conditions:



- (2) A registered person eligible to obtain separate registration for business verticals may submit a separate application in FORM GST REG-01 in respect of each such vertical.
- (3) The provisions of rule 9 and rule 10 relating to verification and grant of registration shall, mutatis mutandis, apply to an application submitted under this rule.

### Grant of registration to persons required to deduct tax at source or to collect tax at source [Rule 12]

The procedure is as under :



Provided that the proper officer shall follow the procedure prescribed in rule 22 for cancellation of registration.

### Grant of registration to non-resident taxable person [Rule 13]

- (1) A non-resident taxable person shall electronically submit an application, along with a valid passport, for registration, duly signed, 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.
- (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 under section 27 and the acknowledgement under sub-rule (5) of rule 8 shall be issued thereafter.
- (3) The person applying for registration under sub-rule (1) shall make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which registration is sought, as specified in section 27.
- (4) The provisions of rule 8 and rule 9 relating to verification and grant of registration shall mutatis mutandis, apply to an application submitted under this rule.

*Explanation.* – The application for registration made by a non-resident taxable person shall be signed by his authorized signatory who shall be a person resident in India having a valid PAN.

#### **RULE 14-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**

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**

The applicant 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

#### **RULE 15-Extension in period of operation by casual taxable person and non-resident taxable person**

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

The application under sub-rule (1) shall be acknowledged only on payment of the amount specified in sub-section (2) of section 27

### Suo moto registration [Rule 16]

- (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 order granting registration.

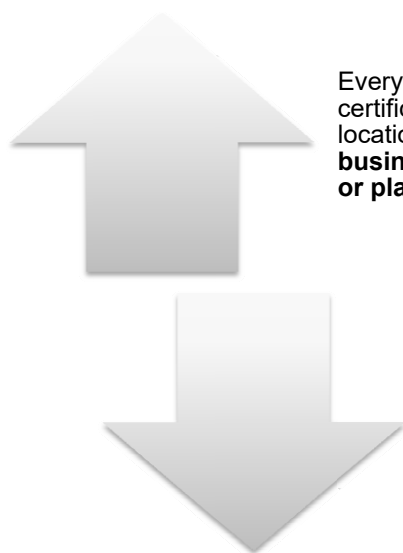


- (3) Every person to whom a temporary registration has been granted under sub-rule (1) shall, within ninety days from the date of the grant of such registration, submit an application for registration in the form and manner provided in rule 8 or rule 12 unless the said person has filed an appeal against the grant of temporary registration, in which case the application for registration shall be submitted within thirty days from the date of issuance of order upholding the liability to registration by the Appellate Authority.
- (4) The provisions of rule 9 and rule 10 relating to verification and issue of certificate of registration shall, mutatis mutandis, apply to an application submitted under sub-rule (3).
- (5) The GSTIN assigned pursuant to verification under sub-rule (4) shall be effective from the date of order granting registration under sub-rule (1).

#### Assignment of unique identity number to certain special entities [Rule 17]

- (1) Every person required to be granted a unique identity number under sub-section (9) of section 25 may submit an application, electronically in FORM GST REG-13, duly signed, in the manner specified in rule 1 at the Common Portal, either directly or through a Facilitation Centre, notified by the Board or 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 (as inserted vide Notification No. 75/2017-Central Tax)
- (2) The proper officer may, upon submission of an application in FORM GST REG-13 or after filling up the said form, assign a Unique Identity Number to the said person and issue a certificate in FORM GST REG-06 within three working days from the date of submission of application.

#### Display of registration certificate and GSTIN on the name board [Rule 18]



Every registered person to display certificate of registration in a prominent location at his **principal place of business** and at every **additional place or places of business**

Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his **principal place of business** and at every **additional place or places of business**.

#### Amendment of Registration [Rule 19]

- (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 REG10 or FORM GST-REG-13, as the case may be, either at the time of obtaining registration or as amended from time to time, the registered person shall, within fifteen days of such change, submit an application, duly signed, electronically in FORM GST REG-14, along with documents relating to such change at the Common



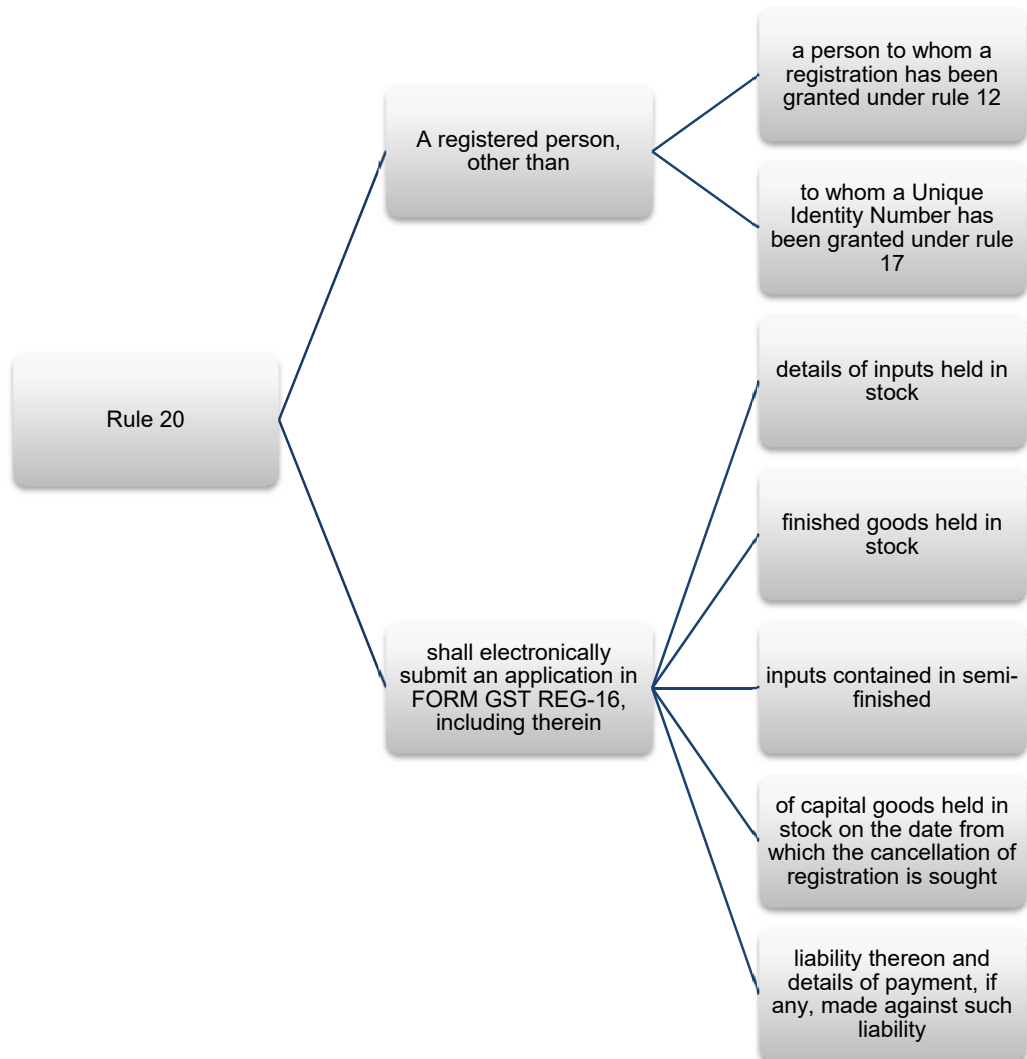
Portal either directly or through a Facilitation Centre notified by the Commissioner.

- (a) Where the change relates to-
  - (i) legal name of business;
  - (ii) address of the principal place of business or any additional place 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 day to day affairs of the business,- which does not warrant cancellation of registration under section 29, the proper officer shall approve the amendment within fifteen working days from the date of receipt of application in FORM GST REG-14 after due verification and issue an order in FORM GST REG-15 electronically and such amendment shall take effect from the date of occurrence of the event warranting 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 these rules on the same PAN.
- (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 that any change in the mobile number or e-mail address of the authorised signatory submitted under rule 1, as amended from time to time, shall be carried out only after online verification through the Common Portal in the manner provided under the said rule.

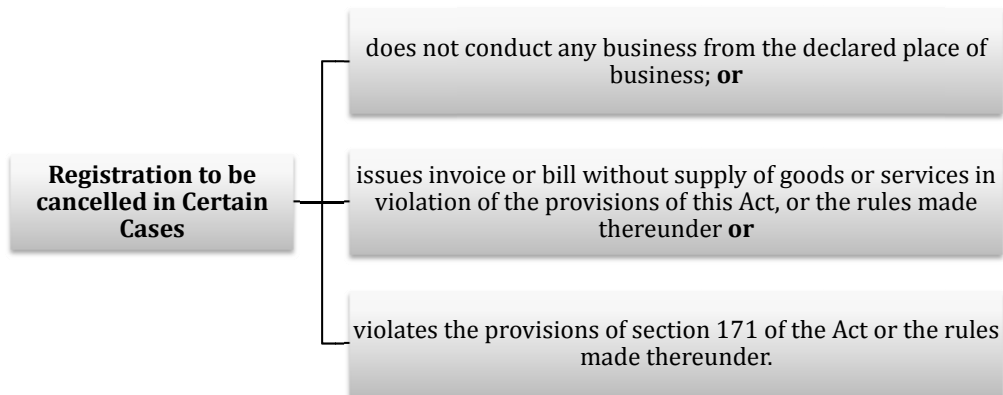
- (2) Where the proper officer is of the opinion that the amendment sought under clause (a) of subrule (2) is either not warranted or the documents furnished therewith are incomplete or incorrect, he may, within fifteen working days from the date of receipt of the application in FORM GST REG-14, serve a notice in FORM GST REG-03, requiring the registered person to show cause, within 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 taxable person shall furnish a reply to the notice to show cause, issued under sub-rule 3, in FORM GST REG-04 within seven working days from the date of the service of the said notice.
- (4) Where the reply furnished under sub-rule (4) is found to be not satisfactory or where no reply is furnished in response to the notice issued under sub-rule (3) within the period prescribed in sub-rule (4), 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 fifteen working days from the date of submission of application, or
  - (b) within seven working days from the date of receipt of 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.

## Application for cancellation of registration [Rule 20]



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]



### Cancellation of registration [Rule 22]

- (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 seven working days from the date of service of such notice as to why his registration should 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 prescribed 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 thirty days from the date of application submitted under rule 20 or, as the case may be, the date of reply to the show cause issued under sub-rule (1), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing 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) is found to be satisfactory, 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 [Rule 23]

- (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, in FORM GST REG-21, to such proper officer, within thirty days from the date of 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 taxable person to furnish returns, unless such returns are filed and any amount due as tax, in terms of such returns has been paid along with any amount payable towards interest, penalties and late fee payable in respect of the said returns.
- (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 thirty days from the date of 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 seven working days from the date of the service of notice in FORM GST REG-24.
- (4) Upon receipt of the information or clarification in FORM GST REG-24, the proper officer may proceed to dispose of the application in the manner specified in sub-rule (2) within thirty days from the date of receipt of such information or clarification from the applicant.

### **Physical verification of business premises in certain cases [Rule 25]**

Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after grant of registration, he may get such verification done and the verification report along with other documents, including photographs, shall be uploaded in FORM GST REG-30 on the Common Portal within fifteen working days following the date of such verification.

### **Method of Authentication [Rule 26]**

- (1) All applications, including reply, if any, to the notices, returns, appeals or any other document required to be submitted under these rules shall be so submitted electronically at the Common Portal with digital signature certificate or through e-signature as specified under the Information Technology Act, 2000 (21 of 2000) or through any other mode of signature notified by the Board in this behalf.
- (2) Each document including the return furnished online shall be signed –
- (a) in the case of an individual, by the individual himself or 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;
  - (f) in the case of any other association, by any member of the association or persons or authorised signatory;
  - (g) in the case of a trust, by the trustee or any trustee or authorised signatory; 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 17 verified by any other mode of signature or verification as notified by the Board in this behalf.

## TAX INVOICES, DEBIT & CREDIT NOTES

Whenever a transaction takes place, different kinds of documents are issued under different circumstances, like invoice, credit note, debit note and bill of supply.

### Tax Invoices

Section 2(66) of Central Goods & Services Tax Act, 2017 mandates “invoice” or “tax invoice” as the tax invoice referred to in section 31. An invoice is a commercial instrument, issued by a supplier of goods / services, to a recipient. It identifies both the parties involved, and lists and describes the items sold / services supplied, quantifies them, exhibits the dates, prices and necessary discounts.

The significance of this document has increased substantially with the advent of GST. Since the invoice matching mechanism has been introduced under GST. The details of the invoice furnished under the statement of outward taxable supplies by the Supplier and that in the inward taxable supplies furnished by the Recipient must match and that's a pre-requisite for the recipient to claim Input Tax Credit. A tax invoice must be issued by a registered person making taxable supplies. There is no format prescribed. Certain fields however are mandatory and they have been specified. The invoices could be manual or electronic.

The time limit for issuing the invoices are of extreme importance as that is a major step influencing the determination of time of supply

In case of supply of taxable goods, the invoice must be issued before or at the time of removal of goods for supply, where the supply involves movement of goods and before or at the time of delivery to the recipient where the supply doesn't involve movement of the goods.

In case of supply of taxable services, the invoice must be issued before or after the provision of service but maximum within 30 days of the provision of service, and this period is 45 days in case of BFSI companies.

In case there is a continuous supply of goods, and where successive Statement of Accounts (SOA) are issued or where successive payments are involved, the invoice must be issued before or at the time of issue of each such SOA / the receipt of each such payment.

In case there is a continuous supply of services

- Where the due date of payment is ascertainable from the contract, the invoice must be issued on or before such due date
- Where the due date of payment is not ascertainable, the invoice must be issued on / before receipt of such payment by the supplier
- Where the payment is linked to the completion of event, the invoice must be issued on / before the completion of that event

### Illustration 1

Meenakshi enterprises, Kolkata makes a supply of goods to Dhirani enterprises, Ghaziabad. The goods were removed from the factory at Kolkata on 3rd May. Hence, the tax invoice must be issued on or before 3rd May.

### Illustration 2

Mohan Ltd. an event management company has provided its services for an event at Photo Film Agencies at Kolkata, on 1st June. The tax invoice must therefore be issued within 30 days, that is, within 30th June.

### Illustration 3

Seema & Co. has entered into an AMC (Annual Maintenance Contract) with Vir Enterprises for one-year effective 1st September, 2017 for the stabilisers installed in the factory. As per contract, the invoice must be issued by 9th September, 2017. In this case, since there is a continuous supply of services where the due date is ascertainable from the contract, the tax invoice must be issued before or on 9th September, 2017.

### Particulars of a tax invoice [Section 31]

- Name, address and GSTIN of the supplier
- A consecutive serial number not exceeding 16 digits, unique for a FY
- Date of issue
- If the recipient is registered, name, address and GSTIN of the Recipient
- Description of goods / services along with HSN Code
- Value of Supply after effecting the necessary discounts
- Rate of Tax (incl. description i.e., CGST/SGST/IGST)
- Amount of Tax
- Value of Invoice
- Place of Supply
- Address of delivery where the same is different from place of supply
- Forward Charge or Reverse Charge
- Signature of supplier / authorised representative

### Modus

In case of supply of goods, the invoice must be issued in triplicate, i.e., original for recipient, duplicate for transporter and triplicate for supplier.

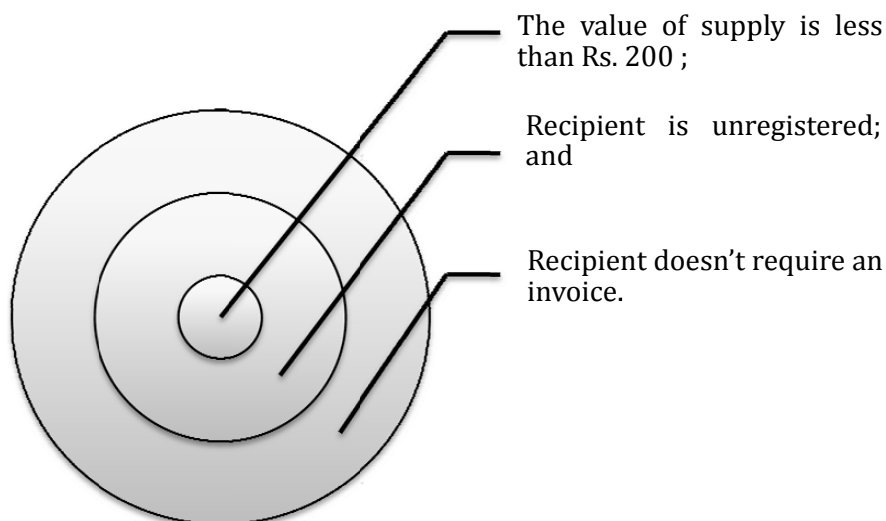
In case of supply of services, the invoice must be issued in duplicate, i.e., original for recipient and duplicate for supplier.

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.

Here, "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier. The Government may, on the recommendations of the Council, by notification, specify the categories of goods or services in respect of which a tax invoice shall be issued or any other document issued in relation to the supply shall be deemed to be a tax invoice.

### Exceptions

It must be noted that no tax invoice is to be issued when:



Instead such registered person shall issue the consolidated tax invoice for such supplies at the close of each day for all such supplies. In case the registered person is making exempted supplies, or he is registered under composition levy, he cannot issue a tax invoice in which case, he will issue a bill of supply.

### Reverse Charge Mechanism

A registered person, who is liable to pay tax under the Reverse Charge Mechanism, shall issue an invoice in respect of the goods / services so received by him from the supplier, who is not registered on the date of receipt of goods / services / both, and he shall issue a payment voucher at the time of making payment to such supplier.

Although all GST taxpayers are free to design their own invoice format, it is required that certain fields as mentioned in the invoice rule be incorporated in all invoices. A draft template of invoice (GST INV-1) under GST is given below:

<b>Government of India/State</b> <b>Department of .....</b>														
<b>Form GST INV-1</b> <b>(See Rule .....</b>														
<b>Application for Electronic Reference Number of an Invoice</b>														
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>1. GSTIN</p> <p>2. Name</p> <p>3. Address</p> <p>4. Serial No. of Invoice</p> <p>5. Date of Invoice</p> <p><b>Details of Receiver (Billed to)</b></p> <p>Name</p> <p>Address</p> <p>State</p> <p>State Code</p> <p>GSTIN/Unique ID</p> </div> <div style="width: 45%;"> <p><b>Details of Consignee (Shipped to)</b></p> <p>Name</p> <p>Address</p> <p>State</p> <p>State Code</p> <p>GSTIN/Unique ID</p> </div> </div>														
Sr. No.	Description of Goods	HSN	Qty.	Unit	Rate (per item)	Total	Discount	Taxable value	CGST		SGST		IGST	
									Rate	Amt.	Rate	Amt.	Rate	Amt.
	Freight													
	Insurance													
	Packing and Forwarding Charges													
	Total													
Total Invoice Value (In figure)														
Total Invoice Value (In words)														
Amount of Tax subject to Reverse Charges														

### Receipt Voucher

When an advance payment is received with respect to any supply of goods or services or both, a receipt voucher is required to be issued by the registered person. Further, if no supply is made and no tax invoice is issued after the issue of receipt voucher, the said registered person may issue to the person who had made the payment, a refund voucher against such payment.

### Credit / Debit Notes

Under Section 2(37) of Central goods & Services tax Act, 2017, “credit note” means a document issued by a registered person under sub-section (1) of section 34.

Under Section 2(38) of Central goods & Services tax Act, 2017, “debit note” means a document issued by a registered person under sub-section (3) of section 34.

Where a tax invoice has been issued for supply of goods / services / both, and where the taxable value in the invoice is greater than the taxable value of supply; the tax charged per invoice is greater than the tax payable in respect of such supply; OR where the goods so supplied have been returned by the recipient OR where the goods / services have been found to be deficient; in these cases, the registered supplier may issue a credit note to the recipient.

Where a tax invoice has been issued for supply of goods / services / both, and where the taxable value in the invoice is less than the taxable value of supply; the tax charged per invoice is less than the tax payable in respect of such supply; the registered supplier may issue a debit note to the recipient.

### Declaration

Any registered person who has issued a credit note, in relation to supply of goods / services / both, must declare the details of such credit note, in the return for the month during which such credit note was issued, but not later than:

- a) September following the end of Financial Year in which the supply was made OR
- b) Date of furnishing the relevant annual return

whichever is earlier.

No reduction in tax liability of the supplier shall be permitted, if the incidence of tax on such supply has been passed on to any other person.

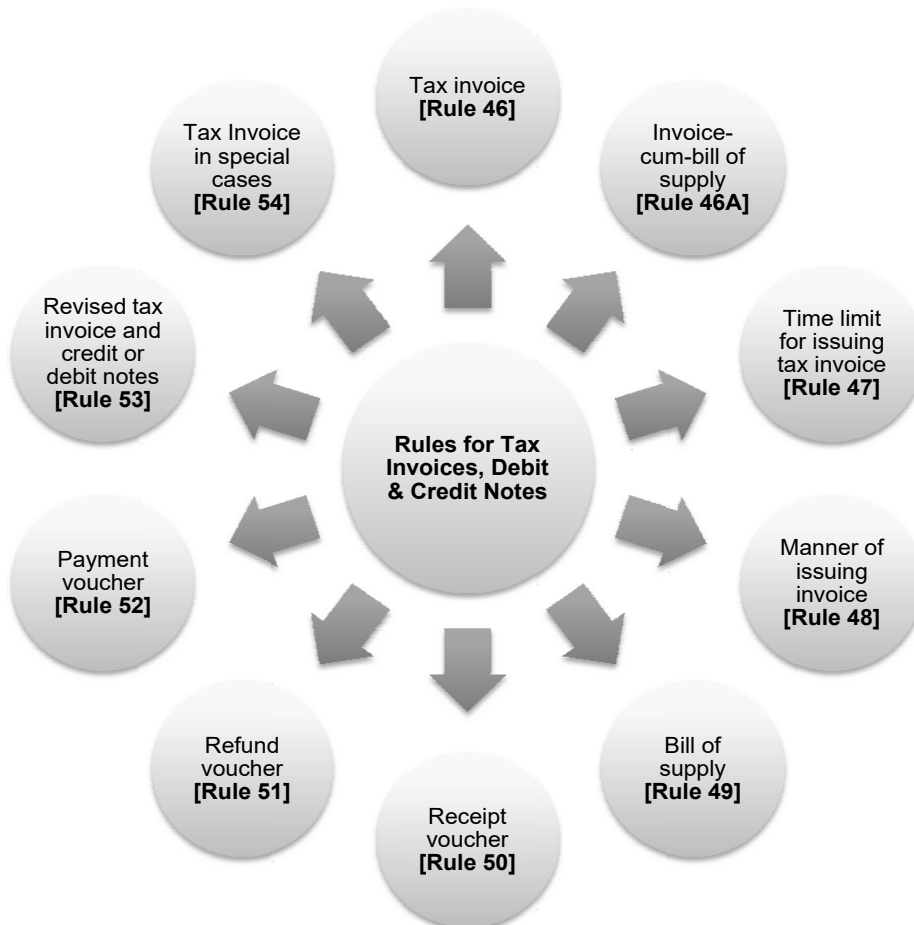
Any registered person who has issued a debit note, in relation to supply of goods / services / both, must declare the details of such debit note, in the return for the month during which such debit note was issued. The tax liability can be adjusted upwards appropriately.



## RULES FOR TAX INVOICES, DEBIT & CREDIT NOTES

Chapter VI contains rules for tax invoices debit & credit notes.

### Tax Invoice [Rule 46]



Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars:-

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;
- (f) HSN code of goods or Accounting Code of services;
- (g) description of goods or services;
- (h) quantity in case of goods and unit or Unique Quantity Code thereof;

- (i) total value of supply of goods or services or both;
- (j) taxable value of supply of goods or services or both taking into account discount or abatement, if any;
- (k) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (l) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (m) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;
- (n) address of delivery where the same is different from the place of supply;
- (o) whether the tax is payable on reverse charge basis; and
- (p) signature or digital signature of the supplier or his authorized representative:

Provided that the Commissioner may, on the recommendations of the Council, by notification, specify -

- (i) the number of digits of HSN code for goods or the Accounting Code for services, that a class of registered persons shall be required to mention, for such period as may be specified in the said notification, and
- (ii) the class of registered persons that would not be required to mention the HSN code for goods or the Accounting Code for services, for such period as may be specified in the said notification

Provided further that in case of exports of goods or services, the invoice shall carry an endorsement "SUPPLY MEANT FOR EXPORT ON PAYMENT OF IGST" or "SUPPLY MEANT FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF IGST", as the case may be, and shall, in lieu of the details specified in clause e), contain the following details:

- (i) name and address of the recipient;
- (ii) address of delivery;
- (iii) name of the country of destination; and
- (iv) number and date of application for removal of goods for export:

Provided also that a registered person 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.

### **Invoice-cum-bill of supply [Rule 46A]**

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.

### **Time limit for issuing tax invoice [Rule 47]**

The invoice referred to in rule 46, in case of taxable supply of services, shall be issued within a period of thirty days from the date of 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 supply of service

Provided further that where the supplier of services is 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 as referred to in Entry 2 of Schedule I, 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.

#### **Manner of issuing invoice [Rule 48]**

- (1) The invoice shall be prepared in triplicate, in case of supply of goods, in the following manner: –
  - (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 case of supply of services, in the following manner: -
  - (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.

#### **Bill of supply [Rule 49]**

A bill of supply referred to in clause (c) of sub-section (3) of section 31 shall be issued by the supplier containing the following details:-

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) HSN Code of goods or Accounting Code for services;
- (f) description of goods or services or both;
- (g) value of supply of goods or services or both taking into account discount or abatement, if any; and
- (h) signature or digital signature of the supplier or his authorized representative:

Provided that the provisos to rule 46 shall, mutatis mutandis, apply to the bill of supply issued under this rule.

#### **Receipt voucher [Rule 50]**

A receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following particulars:

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) description of goods or services;
- (f) amount of advance taken;

- (g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (h) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;
- (j) whether the tax is payable on reverse charge basis; and
- (k) signature or digital signature of the supplier or his authorized representative.

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 [Rule 51]**

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 [Rule 52]**

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.

### **Revised tax invoice and credit or debit notes [Rule 53]**

(1) A revised tax invoice referred to in section 31 and credit or debit notes referred to in section 34 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) nature of the document;
- (d) 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; (e) date of issue of the document;
- (f) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- (g) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
- (h) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply; (i) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
- (j) signature or digital signature of the supplier or his authorised representative.

(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.

(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]**

(1) An ISD invoice or, as the case may be, an ISD credit note issued by an Input Service Distributor shall contain the following details:-

- (a) name, address and GSTIN of the Input Service Distributor;
- (b) a consecutive serial number containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-", "/", respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;

- (d) name, address and GSTIN of the recipient to whom the credit is distributed; (e) amount of the credit distributed; and
- (f) signature or digital signature of the Input Service Distributor or his authorized representative:

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 prescribed above.

(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 or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as prescribed under rule 46.

(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 consignor 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, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also containing other information as prescribed under rule 46.

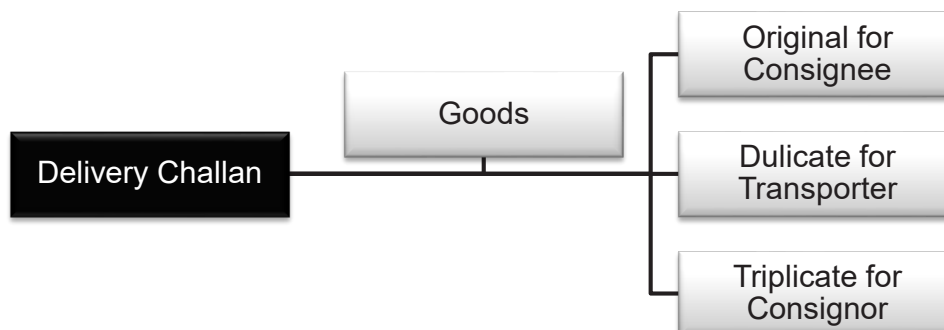
(4) Where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as prescribed under rule 46.

(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.

### Delivery Challan [Rule 55]

Rule 55 few situations where a delivery challan, serially numbered, should be issued instead of invoice. Such situations are as follows:

- supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known
- transportation of goods for job work
- transportation of goods for reasons other than by way of supply, or
- such other supplies as may be notified by the Board



The supplier is required to issue a tax invoice after delivery of goods where tax invoice could not be issued at the time of removal of goods for the purpose of supply.

Where the goods are being transported in a semi knocked down or completely knocked down condition:

- the supplier shall issue the complete invoice before dispatch of the first consignment;
- the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
- each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
- the original copy of the invoice shall be sent along with the last consignment

## **ACCOUNTS RECORDS**

### **Accounts and other Records [Section 35]**

Assessment in GST is substantially focused around self-assessment. Every taxpayer thereby is expected to self-assess the liability, file the returns and pay the tax by the 20th of the following month. The authenticity and completeness of the same is subject to audits, inspection and that casts a responsibility upon the taxpayer to maintain the necessary accounts and records.

Every registered person is expected to maintain the necessary accounts and records at the principal place of business and these records could be electronic or manual.

### **Place of maintenance**

Section 35 of Central Goods & Services Tax Act, 2017 states that every registered person shall maintain books of accounts at his principal place of business and where more than one place of business is specified in the certificate of registration, at every such place of business too.

### **Nature of records**

Section 35 of Central Goods & Services Tax Act, 2017 mandates that the following records must be maintained:

- Production Records
  - o Raw Materials
  - o WIP
  - o Finished Goods
- Inward supplies
- Outward supplies
- Taxes Paid
- ITC availed
- Output tax liabilities

Also, the CGST Rules, 2017 prescribes the following records:

- Goods / services imported
- Supplies attracting payment of taxes under reverse charge mechanism along with all ancillary and related documents
- Names and addresses of persons he has received the goods / services
- Names and addresses of persons to whom he has supplied the goods / services

## Audit requirements

Section 35 of Central Goods & Services Tax Act, 2017 also mandates that every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a Financial Year exceeds Rs. 2 Crores.

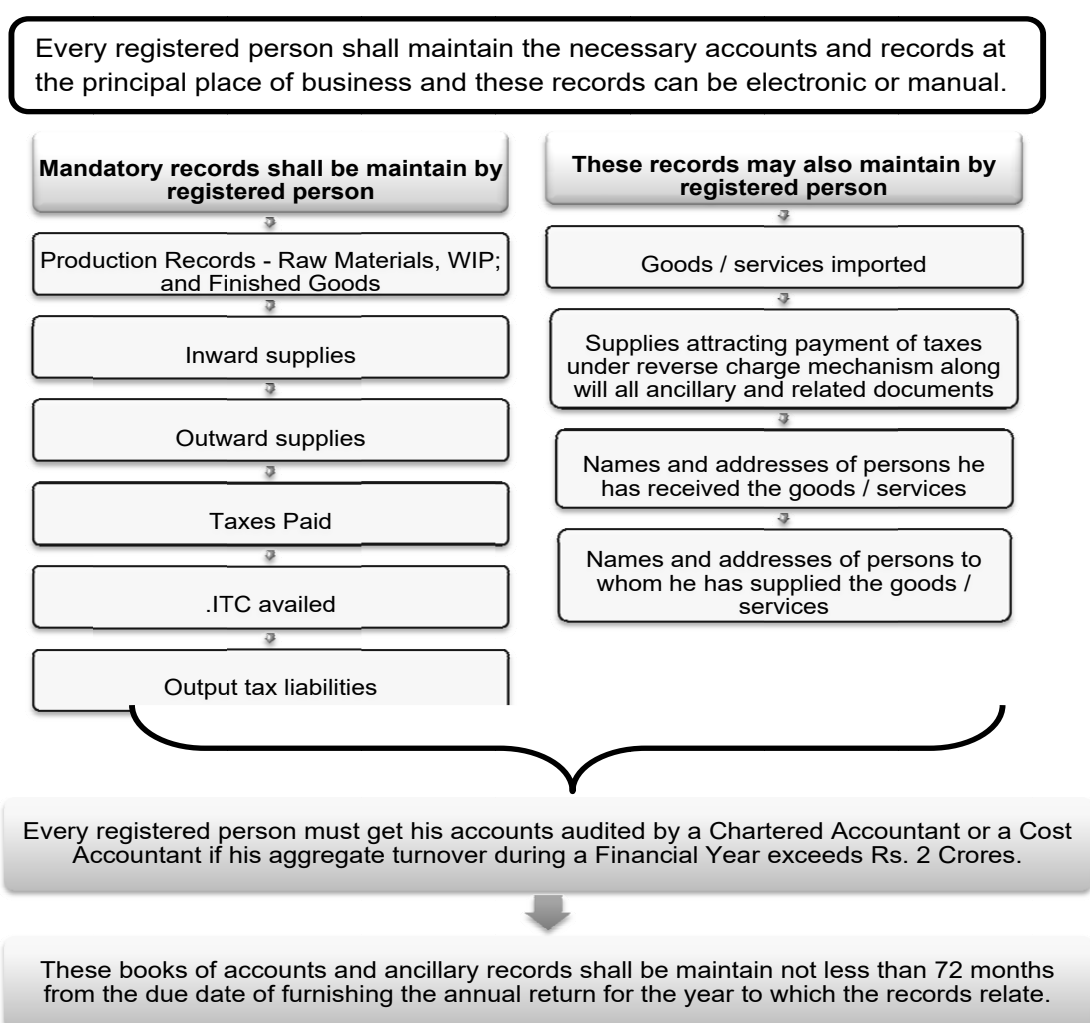
Such person has the additional responsibility of furnishing along with the annual return:

- Audited annual accounts and
- Reconciliation statement duly certified which reconciles the value of supplies declared in the Annual Return with the Annual Audited Financial Statements

## Period of retention of accounts [Section 36]

Every taxpayer shall maintain the books of accounts and ancillary records, until the expiry of 72 months, from the due date of furnishing the annual return for the year to which the records relate.

However, a registered person who is party to an appeal / any other proceedings, before any authority / tribunal, shall have to maintain the accounts and books / records, pertaining to the matters of such appeal for a minimum period of 1 year after disposal of such appeal / revision as the case may be.





## ELECTRONIC WAY BILLS

The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding the prescribed amounts, to carry with himself such documents and devices as may be prescribed.

Where any such conveyance is intercepted by the proper officer, he may require the person in charge of the conveyance to produce the documents & devices for verification and that person then has the duty to cooperate and allow the inspection.

It is for the same reason that Electronic Way Bills (E-way bills) have been prescribed.

CGST Rules, 2017 stipulates as under, with regard to E- Way Bills:

Every registered person who causes movement of goods of consignment value greater than Rs. 50,000 whether for supply or otherwise or due to the inward supply from an unregistered person, shall before commencement of such movement, furnish the necessary information in the prescribed form, electronically on the portal.

Where the E-way bill hasn't been generated and the consignment is handed over to a transporter, the transporter will generate the E-way bill on the basis of information furnished on the portal by the registered person. Upon the generation of the E-way bill, a unique E-way bill number (EBN), is generated and made available to the supplier, the recipient and the transporter. Where multiple consignments are being carried, a transporter may also generate a consolidated E-way bill.

The E-way bill so generated is valid for one day if the distance involved is less than or equal to 100 kms, and one additional day for every 100 kms over and above.

## RETURNS

As per law, a taxpayer is required to file a document with the administrative authority which is commonly known as a "return". There are various types of returns under GST like the First return, Monthly return, Return for Composition Scheme, TDS return, Return for Input Service Distributor Annual return and final return. Under GST, everything is online and is updated and matched regularly. If a business is done from offices in multiple states, the number of returns will go up accordingly. The entire procedure of filling returns can be divided into 5 parts as follows:



## Furnishing details of outward supplies [Section 37]

Section 37 of Central Goods & Services tax Act, 2017 mentions that the details of outward supplies (form GSTR 1), of goods / services / both, are required to be furnished by every registered person, including casual taxable person, but excluding:

- a) Input Service Distributor (ISD)
- b) Non-resident taxable person
- c) Person paying tax under composition scheme
- d) Person effecting TDS
- e) Person effecting TCS

f) Supplier of Online Information and Data Base Access / Retrieval Services (OIDAR)

GSTR 1 of any month has to be filed by 10th of the following month. It is prudent to note that GSTR 1 cannot be filed within 11th to 15th of the month.

Outward Taxable Supplies could be Business to Business (B2B) or Business to Consumer (B2C). In case of B2B supplies, invoice-wise details must be uploaded for all supplies. In case of B2C supplies, if the supplies are intra-state, consolidated details of all supplies need to be uploaded. If the supplies are inter-state, for the Invoices which are greater than Rs. 2,50,000, invoice-wise details need to be uploaded, for the Invoices which are less than Rs. 2,50,000, state-wise details need to be uploaded.

The details of the Outward Taxable Supplies are made available electronically to all the recipients in Form GSTR 2A after the 10th of the following month. This gives the recipient the opportunity to accept or modify or propose necessary changes.

Post the changes, the recipients file the GSTR 2, which is the monthly return for all inward taxable supplies, by the 15th of the following month.

The changes are either accepted or rejected by the supplier and the amended details are reflected in GSTR 3 which is to be filed by the 20th of the following month.

### **Furnishing details of inward supplies [Section 38]**

Section 38 of Central Goods & Services tax Act, 2017 mentions that the details of inward supplies (form GSTR 2), of goods / services / both, are required to be furnished by every registered person, including casual taxable person, but excluding:

- a) Input Service Distributor (ISD)
- b) Non-resident taxable person
- c) Person paying tax under composition scheme
- d) Person effecting TDS
- e) Person effecting TCS
- f) Supplier of Online Information and Data Base Access / Retrieval Services (OIDAR)

GSTR 2 of any month has to be filed within 11th to 15th of the following month.

GSTR 1 signifies the tax liability whilst GSTR 2 signifies the ITC availability.

The timelines can be summarised as under:

<b>Type of taxable person</b>	<b>Form No.</b>	<b>Periodicity</b>	<b>Due Date</b>
Every registered person other than supplier of OIDAR, Composition levy subscribers, NR taxable persons, ISD and persons effecting TDS/TCS	GSTR 3	Monthly	20th of the following month
Composition Levy taxpayers	GSTR 4	Quarterly	18th of the month following end of quarter
NR taxable persons	GSTR 5	Monthly	20th of the following month
Input Service Distributor (ISD)	GSTR 6	Monthly	Before 13th of next month
Persons effecting TDS & TCS	GSTR 7/8	Monthly	By 10th of the following month

Annual Return	GSTR 9		By 31st December of next Financial Year
Final Return	GSTR 10		Within three months of the date of cancellation or date of order of cancellation, whichever is later

The due dates for payment of tax is also the due date of filing the returns, i.e. by 20th of the following month the tax liability must be discharged.

All tax payers filing returns GSTR 1 to GSTR 3 are required to file an annual return, by 31st December of the next financial year. The following are not required to do so:

- a) Casual taxable persons
- b) Non-Resident taxable persons
- c) Input Service Distributor
- d) Persons effecting TDS / TCS

### Matching

The process of ITC matching begins after the due dates for filing the return that is 20th. This is carried out by the portal, GSTN. The details of every inward supply per return filed by recipient vide GSTR 2 is matched with the outward taxable supplies' return filed by supplier vide GSTR 1. Once the details match, the ITC claimed by the recipient is considered valid. Failure to deposit the tax immediately by the taxable person by the due date OR failure to file valid return within time therefore can deny the recipient his timely ITC. Excess ITC claimed is added back to the tax liability of the recipient in the following month.

The concept of revised returns is not provided in the GST return rules and accordingly, the businesses would have to avail and re-avail, the mismatched credit by way of credit notes, debit notes, and supplementary invoices. The return rules have prescribed different forms to be filled by a registered person.

### PAYMENTS

As India is moving towards digitisation, GST have provided an easy and simple way of payment of taxes. Under GST regime, all the taxpayers get three electronic ledgers namely E-cash Ledger, E-credit Ledger & E-liability Ledger through their GST profile.

The Electronic Cash Ledger contains a summary of all payments made by a taxpayer. This ledger is maintained on the GST Portal.

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 there from towards tax, interest, penalty, fee or any other amount.

Thus, payment can be made in cash by debiting the e-cash ledger maintained on the common portal. Money can be deposited in the Cash Ledger by different modes, namely, E-Payment (Internet Banking, Credit Card, Debit Card); Real Time Gross Settlement (RTGS)/ National Electronic Fund Transfer (NEFT); Over the Counter Payment in branches of Banks Authorized (for deposits upto ten thousand rupees per challan per tax period, by cash, cheque or demand draft) to accept deposit of GST.

A challan in FORM GST PMT-06 is required to be generated and the details of the amount to be deposited towards tax, interest, penalty, fees or any other amount will be entered in the challan. Challan in FORM GST PMT-06 generated at the Common Portal shall be valid for a period of fifteen days. On successful credit of the

amount in the Central / State Government account, a Challan Identification Number (CIN) is generated by the collecting bank, which will be indicated on the challan. This amount will then be credited to the Electronic Cash Ledger of the taxable person and on receipt of the CIN from the collecting bank, this amount will then stand credited to the electronic cash ledger of the person on whose behalf the payment was deposited to the credit of the Government. The amount available under any head in the Electronic Cash Ledger (SGST / CGST / IGST) cannot be utilised for discharging the liability under any other head.

Manual Challans are not allowed under the GST Regime and thus, it is mandatory to create the challans online on the GST portal.

### **Payment of tax [Section 49]**

The payments to be made are as under:

- a) For the intra-state supplies, CGST + SGST to be paid in equal proportions
- b) For the inter-state supplies, IGST to be paid

Input Tax Credit as self-assessed vide the monthly returns will be reflected in the Electronic Credit Ledger. Section 49 mandates the sequence of utilisation of ITC in the Electronic Credit Ledger which is as under:

- The CGST Liability can be extinguished by utilising the Input Tax Credit, in the following sequence
  - o First, ITC standing under CGST
  - o Then, ITC standing under IGST
- The SGST Liability can be extinguished by utilising the Input Tax Credit, in the following sequence
  - o First, ITC standing under SGST
  - o Then, ITC standing under IGST
- The IGST Liability can be extinguished by utilising the Input Tax Credit (ITC), in the following sequence
  - o First, ITC standing under IGST
  - o Then, ITC standing under CGST
  - o Then, ITC standing under SGST

Therefore, it is clear that there is no offset available between the CGST and the SGST.

Section 49 also talks of the third type of ledger, called the Electronic Liability Ledger. This is basically a control ledger which sums up all the liabilities of the taxable person in a separate register.

The chronological order of discharge of liabilities of a taxable person would be:

- i. Self-assessed tax and other dues for the previous tax periods will be discharged first
- ii. Self-assessed tax and other dues for the current tax periods will be discharged next
- iii. Post which the amount payable under demand would be extinguished last

### **Interest**

Interest is payable when

- i. There is a delay in payment of tax in part or in full within the prescribed period
- ii. There is undue or excess claim of ITC
- iii. There is undue or excess reduction of Output Tax Liability

The rate of interest would be as notified by the Central Government which shall not exceed 18% in case of delay in payment of tax and 24% in the remaining two scenarios. The period of interest will be from the date following the due date of payment until the date of actual payment of tax.

## **PAYMENT RULES [CHAPTER IX]**

### **Electronic Tax Liability Register [Rule 85]**

- (1) The electronic tax liability register specified under sub-section (7) of section 49 shall be maintained in FORM GST PMT-01 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 tax 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, 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 tax liability register shall be credited accordingly.
- (4) The amount deducted under section 51, or the amount collected under section 52, or the amount payable under sub-section (3) or sub-section (4) of section 9, or the amount payable under section 10, or sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Act or sub-section (3) or sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act any amount payable towards interest, penalty, fee or any other amount under the Act or the Integrated Goods and Services Act shall be paid by debiting the electronic cash ledger maintained as per rule 87 and the electronic tax liability register shall be credited accordingly.
- (5) Any amount of demand debited in the electronic tax 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 tax 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 [Rule 86]**

- (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 section 49.

- (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 subrule (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.
- (5) Save as provided in these rules, 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.

### **Electronic Cash Ledger [Rule 87]**

- (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.

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 do so through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax from the date to be notified by the Board.

- (3) The deposit under sub-rule (2) shall be made through any of the following modes:
  - (i) Internet Banking through authorized banks;
  - (ii) Credit card or Debit card through the authorised bank;
  - (iii) National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) from any bank;
  - (iv) Over the Counter payment (OTC) through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft.

Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter (OTC) 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 authorized for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit:

- (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 NEFT or RTGS 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 (CIN) will be generated by the collecting Bank and the same shall be indicated in the challan.
- (7) On receipt of CIN from the authorized 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 (CIN) is generated or generated but not communicated to the Common Portal, the said person may represent electronically in FORM GST PMT-07 through the Common Portal to the Bank or electronic gateway through which the deposit was initiated.
- (9) Any amount deducted under section 51 or collected under section 52 and claimed in FORM GSTR-02 by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger in accordance with the provisions of rule 87 of returns.
- (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.

#### **Identification number for each transaction [Rule 88]**

- (1) A unique identification number shall be generated at the Common Portal for each debit or credit to the electronic cash or credit ledger, as the case may be.
- (2) The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic tax liability register.
- (3) A unique identification number shall be generated at the Common Portal for each credit in the electronic tax liability register for reasons other than those covered under sub-rule (2).

### **REFUNDS**

Refund refers to an amount that is due to the tax payer from the tax administration.



### **Refund of tax [Section 54]**

According to section 54 of the CGST Act, 2017, 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. If there is any balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable may claim such refund in the return furnished under section 39.

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 six months from the last day of the quarter in which such supply was received.

### **Refund of unutilised input tax credit**

Section 54(3) of CGST Act, 2017 states that, subject to the provisions of section 54(10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period, subject to provisions under the section.

While seeking refund, the refund application shall be accompanied by:

Documentary evidence to establish that a refund is due to the applicant and evidence 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 was collected from, or paid by him and the incidence of such tax and interest had not been passed on to any other person.

However, if 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.

Section 54(4), (5) & (7) mandate that after receipt of the application or declaration as the case may be, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order within sixty days from the date of receipt of application and the amount so determined shall be credited to the Consumer Welfare Fund.

### **Interest on delayed refunds [Section 56]**

Section 56 of the CGST Act, 2017 states that if any tax ordered to be refunded under section 54 is not refunded within sixty days from the date of receipt of application 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.

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. Where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under subsection (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).



Refund may be claimed in following situations :

- Goods / Services / both are exported / supplied to a SEZ on payment of IGST and a refund of such IGST so paid is claimed;
- Refund claim for accumulated unutilised ITC, in case of supplies to a SEZ / exports of goods / services/ both;
- Refund claim for accumulated unutilised ITC, in case of supplies on account of an inverted duty structure ;
- Refund of any balance in the electronic cash ledger after payment of tax / interest / penalty; and
- On finalization of provisional assessment if tax becomes refundable to the assessee.

No Refund shall be allowed if :

- The goods so exported are subject to export duty.
- The supplier of goods / services / both has lodged in parallel a duty drawback claims in respect of IGST on the inward imported supplies.

### Time limit

Any person claiming a refund of tax / interest / may make an application before expiry of 2 years from the “Relevant Date”. However, a person claiming a refund of unutilised ITC in case of zero rated supplies, or accumulated ITC in case of inverted duty structures may do so at the end of any tax period.

### Relevant Date

- Where goods are exported by air / sea
  - o Date on which the vessel leaves India
- When goods are exported by land
  - o Date on which the goods pass the frontiers
- When refund of unutilised ITC in case of zero rated supplies, or accumulated ITC in case of inverted duty structures is claimed
  - o End of the Financial Year in which such claim for refund arises
- In case of refund arising out of finalisation of provisional assessment
  - o Date of adjustment of tax after the final assessment
- Any other case
  - o Date of payment of tax

### Application for Refund

Section 54 states that any person claiming a refund may file an application in form GST-RFD-01 electronically through the GST portal.

In case of advance tax deposits made by a casual taxable person OR a non-resident taxable person, the same shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted was in force, filed all the returns under Section 39. Also, the advance tax so paid, after adjusting any liability shall be claimed in the last return so filed.

## Documentation and Declaration

The refund application must be accompanied with the necessary documentation. Additionally, where the amount of refund claimed doesn't exceed INR 200,000, the refund application must be accompanied with a declaration that the incidence of tax has not been passed on to any other person and that therefore there wouldn't be unjust enrichment.

However, where the amount of refund claimed is greater than INR 200,000, a certificate as a part of Form GST-RFD-01 by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment and that the tax incidence has not been passed on to any other person, would be required to be submitted along with the refund application.

## Refund Amount

Rule 89 (4) states that 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, refund of input tax credit shall be granted as per the formula mentioned thereby.

Rule 89(5) states that in case of inverted duty structure supplies of goods / services / both; refund of tax would be granted proportionately, i.e., as per the formula mentioned therein.

## Refund Order

The refund order should be made by the proper officer within 60 days from date of receipt of application, which is complete in all respects.

Where the proper officer is satisfied that amount so refundable is payable to an applicant, he shall make an order in form GST-RFD-06 and the same will then be credited to the account of the applicant.

Where the proper officer is satisfied that amount so refundable is not payable to any applicant per se, he shall make an order in form GST-RFD-06 and the same will then be credited to the Consumer Welfare Fund.

## Interest

Where any tax ordered to be refunded under Section 54, is not refunded to the applicant within 60 days from the date of receipt of application, interest shall be payable to the applicant at the rate of 6% p.a. and the same shall be payable immediately on expiry of 60 days and until the date of refund.

Also, where the refund arises out of an appeal, and the same is not refunded within 60 days from date of receipt of application, interest shall be payable at the rate of 9% p.a., and the same shall be payable immediately on expiry of 60 days and until the date of refund.

## AUDIT

Audit under Goods & Services Tax can be of two types, as discussed under.

### General Audit [Section 65]

Section 65 of Central Goods & Services Tax Act, 2017 states that the Commissioner or any officer so authorised by him, by way of a general or specific order, may undertake the audit of any registered person, at the place of business of such registered person or in their office for a Financial Year or multiples thereof.

### Timelines

A notice of 15 days is required to be given prior to the conduct of the audit, by the proper officer, where it is decided to undertake the audit of a registered person. Commencement of audit would mean later of:

- o Date on which the accounts / records that have been called for inspection / verification, have been made available to them
- o The actual institution of the audit at the place of business of tax payer

The audit is required to be completed within 3 months from the date of commencement of such audit. This period is extendable for another 6 months (maximum) by the Commissioner

### **Procedure**

The proper officer so authorised to conduct the audit, shall with the assistance of the team members assigned to him, verify all the necessary accounts / books / records.

During the course of the audit, the authorised officer may require the registered person, to facilitate the verification of accounts / books / records or to provide such information / details, as the authorities may require for a complete and timely conduct of audit.

The proper officer will then inform the registered person of the discrepancies noticed, and his audit observations to which the registered person will respond to with his factual details, and post which the audit findings will be finalised after evaluation of these responses to the observations.

### **Finalisation**

The proper officer shall within 30 days, informs the registered person, whose accounts and records are being audited, about the findings.

### **Special Audit [Section 66]**

Section 66 of Central Goods & Services Tax Act, 2017 states that where any officer not below the rank of Assistant Commissioner having regard to the complexity of the case and in the interest of revenue, is of the opinion that the liability has not been correctly declared or the Input Tax Credit is availed in excess, he may, with prior approval from Commissioner, issue a direction to the registered person to get his accounts / records audited by a Chartered Accountant / Cost Accountant, as nominated by the Commissioner.

### **Timelines**

The Chartered Accountant / Cost Accountant as nominated by the Commissioner shall submit an audit report duly signed and certified by himself, within 90 days from the date of commencement of such audit, to the Assistant Commissioner. This period is extendable for another 90 days (maximum) by the Assistant Commissioner on reasonable and sufficient grounds upon application.

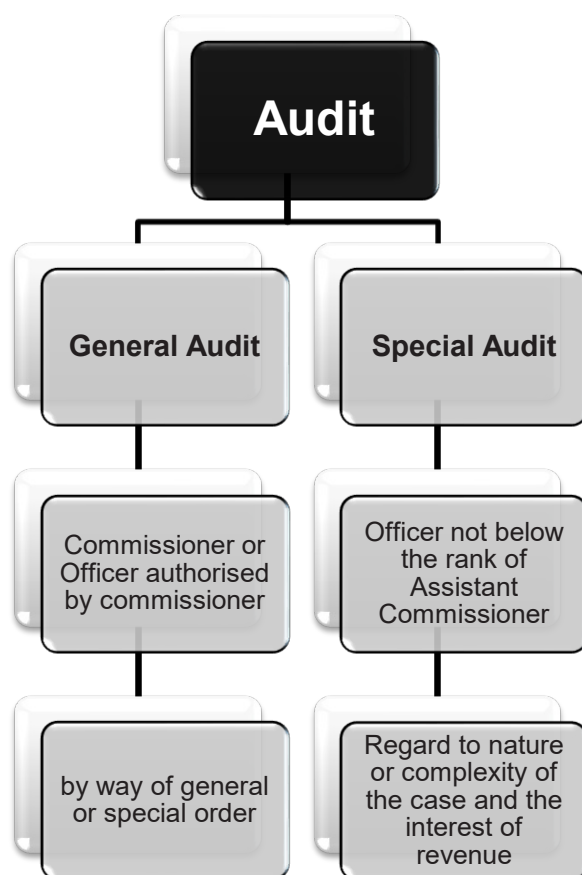
### **Procedure**

The expenses of the audit / examination and the remuneration to the Chartered Accountant / Cost Accountant shall be determined and paid by Commissioner.

### **Finalisation**

The proper officer will then inform the registered person of the discrepancies noticed, and his audit findings of special audit. Where the special audit results in detection of tax not paid / short paid / credit availed in excess, the process of demand / recovery under Section 73, 74 of Central Goods & Services Tax Act, 2017, will be initiated.

Thus, Audit under Goods & Services Tax may be summarised as under:



# **Lesson 6**

## **Basic Overview on IGST, UTGST and GST Compensation to States Act**

### **LESSON OUTLINE**

- An overview on Integrated Goods and Services Tax
- The Union Territory Goods and Services Tax
- Provisions relating to Advance Ruling
- GST Compensation to States
- Frequently Asked Questions

## INTRODUCTION TO IGST

The Integrated Goods and Services Tax Act, 2017 [IGST] was 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 13th April, 2017.

## INTEGRATED GOODS & SERVICES TAX ACT, 2017

IGST is levied and collected by the Centre on inter-state supply of goods and services. Under Article 269A of the Constitution, IGST on supplies in the course of inter-state trade or commerce is 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 sequentially on output supplies

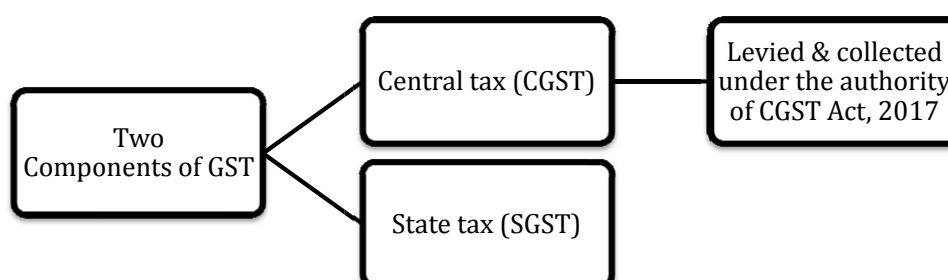
IGST (Integrated Goods & Services Tax) Act, 2017 deals with supplies interstate, import into India and supplies made outside India. The following table illustrates the same.

SUPPLY	TAX / TAXES
Intra state	CGST+ SGST
Intra UT	CGST+ UTGST
Interstate/ import/ SEZ	IGST

IGST is applicable all over India including the state of Jammu & Kashmir.

As per section 5 of IGST Act, 2017 a maximum rate of 40% maybe imposed on interstate supply of goods and/or services.

A “Dual GST” model has been adopted in view of the federal structure of our country. Centre and States simultaneously levy GST on every supply of goods or services or both which, takes place within a State or Union Territory. Thus, there are two components of GST:



## Relevance of IGST

Before discussing the IGST Model and its features, it is important to understand how inter state trade or commerce is being regulated in the present indirect tax system. It is significant to note that earlier the Central Sales Tax Act, 1956 regulated the inter-state trade or commerce (hereinafter referred to as “CST”), the authority for which was constitutionally derived from Article 269 of the Constitution. Further, as per Article 286 of the Constitution of India, no State could levy sales tax on any sales or purchase of goods that took place outside the State or in the course of the import of the goods into, or export of the goods out of the territory of India. Only the Parliament could levy tax on such a transaction.

The Central Sales Tax Act was enacted in 1956 to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-state trade or commerce. The Act also provided for the levy and collection of taxes on sales of goods in the course of inter-State trade. However, CST was collected and retained by the origin State, which was an aberration. Any indirect tax, by definition, is a consumption tax, the incidence of which, is borne by the consumer. Logically, the tax must accrue to the destination State having jurisdiction over the consumer.

Input Tax Credit (hereinafter referred to as ITC) of CST was not allowed to the buyer which, resulted in cascading of tax (tax on tax) in the supply chain.

Moreover, various accounting forms were required to be filed in CST viz., C Form, E1, E2, F, I, J Forms etc. which added to the compliance cost of the business and impeded the free flow of trade.

The IGST model was brought in to remove all such deficiencies. 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. As a result, CGST account and SGST (of, say, Punjab) would have equal amount, whereas, there will not be any amount left in IGST and SGST (of, say, Maharashtra) after the transfer of ITC, in case of inter-state transaction between Puna & Maharashtra.

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, in that order.

It is very important to determine the nature of supply – whether it is inter-State or intrastate, as the kind of tax to be paid (IGST or CGST+SGST) depends on that.

#### (i) **Inter-State Supply**

Subject to the place of supply provisions, 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, such supplies shall be treated as the supply of goods or services in the course of inter-State trade or commerce. Any supply of goods or services in the taxable territory, not being an intra-State supply, shall be deemed to be a supply of goods or services in the course of inter-State trade or commerce.

Also, supplies to or by Special Economic Zones (SEZs) are defined as inter-State supply. Further, the supply of goods imported into the territory of India till they cross the customs frontiers of India or the supply of services imported into the territory of India shall be treated as supplies in the course of inter-State trade or commerce. Also, the supplies to international tourists are to be treated as inter-State supplies.

#### **Inter-State supply :**

Supply of goods from one State or Union Territory to another State or Union Territory

- Supply of services from one State or Union Territory to another State or Union Territory
- Import of goods till they cross customs frontier

- Import of services
- Export of goods or services
- Supply of goods/services to/by SEZ
- Supplies to international tourists
- Any other supply in the taxable territory which is not intra-State supply.

Thus, the nature of the supply depends on the location of the supplier and the place of supply.

- (ii) **Intra-State supply:** It has been defined as any supply where the location of the supplier and the place of supply are in the same State or Union Territory.

### Important Definitions

Section 2 of the IGST Act, 2017 contains the definitions of various terms used at several places in the Act. Some of the important definitions are reproduced as follows:

**Section 2(3)** : “continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

*Explanation* – For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time

**Section 2(5)** : “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India

**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; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8

**Section 2(7)** : “fixed establishment” means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs

**Section 2(10)** : “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India

**Section 2(11)** : “import of services” means the supply of any service, where –

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India

**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 h) 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

**Section 2(16) :** “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

*Explanation.* – For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body, –

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution

**Section 2(19) :** “Special Economic Zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

**Section 2(20) :** “Special Economic Zone developer” shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act;

**Section 2(21) :** “supply” shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;

**Section 2(22) :** “taxable territory” means the territory to which the provisions of this Act apply

### **Levy and Collection Under IGST, ACT 2017 [Section 5]**

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

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the

point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

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

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

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

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

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

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

Provisions for levy are similar for both under CGST & IGST Act. Section 15 of Central Goods & Services Act, 2017 is common to both the charges for valuation. CGST is for intrastate supply and IGST for interstate supply.

CGST rate is 20% maximum whereas under IGST it is 40%, because IGST is a combined tax of CGST + SGST. The following may be noted :

- (1) IGST is imposed on interstate supply
- (2) Value is as determined under Section 15 of CGST Act, 2017
- (3) Alcohol for human consumption is out of IGST
- (4) The maximum rate of levy under IGST is 40%
- (5) Interstate supply includes imports
- (6) IGST is levied on imported goods under Section 3 of Customs Tariff Act
- (7) Such levy is simultaneous with the levy of Basic Customs Duty under section 12 of the Customs Act, 1962
- (8) Petroleum product items will be chargeable under IGST but at a later date to be recommended by the GST Council.

A supply would be treated as import or export, if certain conditions are satisfied as defined.

**Zero rated supply** : Exports and supplies to SEZs are considered as 'zero rated supply' on which no tax is payable. However, ITC is allowed, subject to such conditions, safeguards and procedure as may be prescribed, and refunds in respect of such supplies may be claimed by following either of these options:

- (i) Supply made without the payment of IGST under Bond and claim refund of unutilised ITC or

- (ii) Supply made on payment of IGST and claim refund of the same

**Refund of integrated tax paid on supply of goods to tourists leaving India :** Section 15 of the IGST Act, 2017 provides for refund of IGST paid to an international tourist leaving India on goods being taken outside India, subject to such conditions and safeguards as may be prescribed. An international tourist has been defined as a non-resident of India who enters India for a stay of less than 6 months. IGST would be charged on such supplies, similarly as in the course of export.

**The IGST Rules, 2017** were notified vide Notification No. 4 /2017-Integrated Tax dated 28th June 2017 and further as amended by Notification No. 12/2017-Integrated Tax, dated 15th November, 2017.

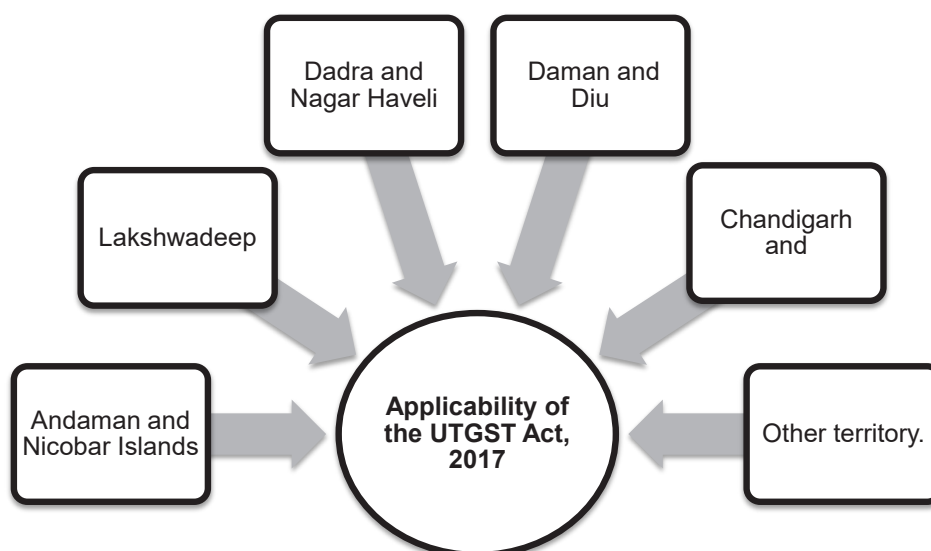
Rule 2 of IGST Rules, 2017 lay down that the Central Goods and Services Tax Rules, 2017, for carrying out the provisions specified in Section 20 of the Integrated Goods and Services Tax Act, 2017 shall, so far as may be, apply in relation to integrated tax as they apply in relation to central tax.

### INTRODUCTION TO UNION TERRITORY GOODS & SERVICES TAX ACT, 2017

The Central GST Act, 2017 will be applicable on all the intra state transactions of supply of goods and/or services and is the revenue of the Central Government. As CGST would be levied on all the transactions of taxable goods and services, and is therefore applicable in all the states and union territories of India. The Integrated GST Act, 2017 will be applicable on all the inter-state transactions of goods and services. It is regulated by the Central Government and therefore will be applicable on all the transactions of goods and services applicable in India or import / export transactions. However, for the purpose of levy and collection of SGST levied on each intra state transactions of goods and services, all the states / union territories of India have their own state / union territory legislation. The Union Territory Goods & Services Tax Act, 2017 intends to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Union Territories and for matters connected therewith or incidental thereto.

### APPLICABILITY OF THE UTGST ACT, 2017

This Act may be called the Union Territory Goods and Services Tax Act, 2017. It would be applicable in the following Union Territories:



Delhi and Puducherry are the other two Union Territories but this Act will not be applicable there as they have their own State Legislature and Government. State GST would be applicable in their case.

Some definitions prescribed in the Act as defined under Section 2 are as follows:

**Definitions :** In this Act, unless the context otherwise requires:

- 1) “appointed day” means the date on which the provisions of this Act shall come into force;
- 2) “Commissioner” means the Commissioner of Union territory tax appointed under section 3;
- 3) “designated authority” means such authority as may be notified by the Commissioner;
- 4) “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be exempt from tax under section 8, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;
- 5) “existing law” means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;
- 6) “Government” means the Administrator or any Authority or officer authorised to act as Administrator by the Central Government;
- 7) “output tax” in relation to a taxable person, means the Union territory tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

#### **ADMINISTRATION & POWERS OF OFFICERS [SECTION 4, 5 & 6]**

The Administrator may, by order, authorise any officer to appoint officers of Union Territory tax below the rank of Assistant Commissioner of Union Territory tax for the administration of this Act. The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.

Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act, 2017 are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

Subject to the conditions specified in the notification issued :

- a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;
- b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.

#### **LEVY AND COLLECTION OF UTGST [SECTION 7]**

As per the provision of Section 7 of the UTGST Act, 2017 there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act, 2017 and at such rates, not exceeding twenty per cent, as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

However, the Union territory tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly

known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Central Government on the recommendations of the Council.

The GST Council has already approved the total tax rates of 0%, 5%, 12%, 18% and 28%. The highest applicable approved rate of UTGST has been prescribed at 20%. Though the highest rate of tax as charges as UTGST would not be more than 14% but an enabling limit of 20% has been prescribed in law to avoid need of changing the law, in case of need to revise the rate of tax in future.

All the provisions of this Act shall apply to a recipient of goods or services or both, notified under reverse charge as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

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

For eg: A registered taxable person receives agricultural produce say paddy from an agriculturist, then such registered taxable person would be liable for payment of tax at the applicable rate on paddy under reverse charge as an agriculturist is not liable for registration.

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

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

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

## **EXEMPTION FROM GST [SECTION 8]**

As per the provisions of Section 8 of the Act, the Central Government on the recommendations of the GST Council, by notification exempt 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 on such supply. In other cases, Central Government in public interest and on recommendation of the Council, by special order, exempt from payment of tax.

The Central Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification or order issued, 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 Section 8(1) or order under Section 8(2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

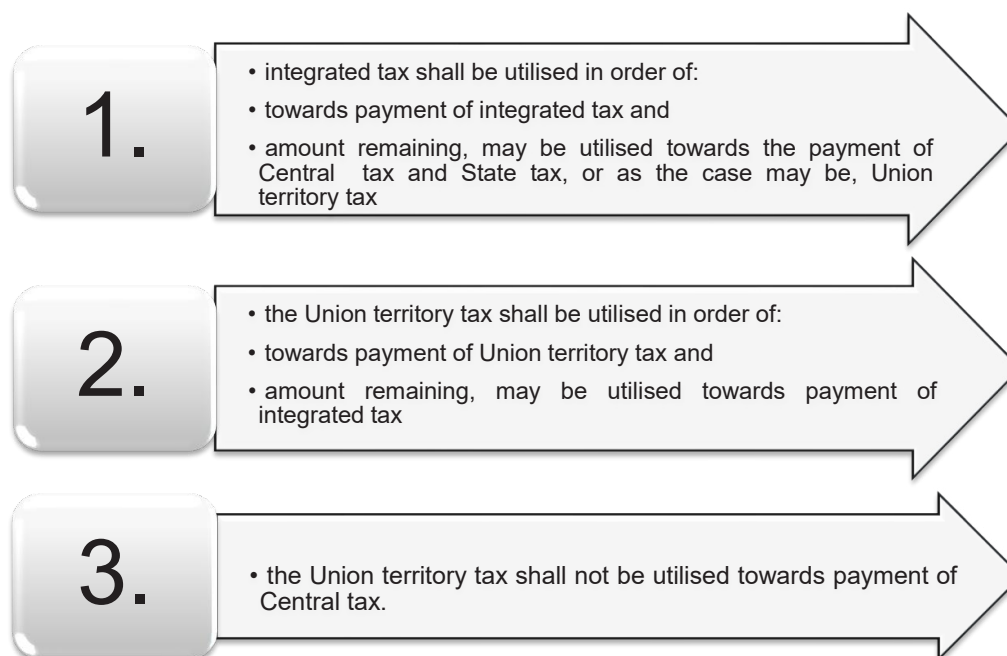
*Explanation* – For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective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

## PAYMENT OF TAX [SECTION 9]

As per the provision of section 9 of the Act, 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 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;
- c) the Union territory tax shall not be utilised towards payment of Central tax.

### The amount of input tax credit available in the electronic credit ledger of the registered person on account of:



## INPUT TAX CREDIT ON INPUT STOCKS [SECTION 18]

The eligible input tax credits in respect of inputs held in stocks, inputs held in semi finished goods and inputs held in stock of finished goods on the day immediately preceding the appointed day will be eligible as input tax credit to be taken as UTGST in the electronic ledger.

The following registered taxable person will be eligible for the input tax credit:

- a) Who was not liable to be registered.
- b) Who was involved in dealing with exempted goods or tax free goods.
- c) Goods which have suffered tax at first point of sale and their subsequent sale was not liable to tax in the Union Territory under the previous law but which are liable to be taxed in GST.
- d) Where a person is entitled to tax at the time of sale.

However, the Input tax credit is available subject to the following conditions:



- i. such inputs or goods are used or intended to be used for making taxable supplies under GST;
- ii. the said registered person is eligible for input tax credit on such inputs under GST;
- iii. the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and
- iv. such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

However, in case such taxable person is not in possession of invoice or taxpaying document, such person can take credit at such rate as may be prescribed. However he would be required to pass the benefit of reduced taxes to his recipients.

Registered taxable person will be eligible for the input tax credit in the following cases	Conditions for availing the Input tax credit
<ul style="list-style-type: none"> <li>•Not liable to be registered</li> <li>•Involved in dealing with exempted goods or tax free goods</li> <li>•Goods which have suffered tax at first point of sale and their subsequent sale was not liable to tax in the Union Territory under the previous law but which are liable to be taxed in GST</li> <li>•Person is entitled to tax at the time of sale</li> </ul>	<ul style="list-style-type: none"> <li>•Used or intended to be used for making taxable supplies under GST</li> <li>•Registered person is eligible for input tax credit under GST law</li> <li>•Said person is in possession of invoice or other prescribed documents evidencing payment of tax</li> <li>•Such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day</li> </ul>

### INPUT TAX CREDIT: TAXABLE AS WELL AS EXEMPTED GOODS

A registered person, who was engaged in the sale of taxable goods as well as exempted goods or tax free goods under the existing law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger the amount of credit of the value added tax and entry tax, if any, carried forward in a return furnished under the previous law by him and the amount of credit of the value added tax and entry tax, if any, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or tax free goods in accordance with the provisions of the Act.

### SWITCH OVER FROM COMPOSITION LEVY

A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the previous law shall be eligible for, credit of value added tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions:

- i. Such inputs or goods were used or intended to be used for making taxable supplies under this Act;
- ii. the said registered person is not paying tax under section 10 of the Central Goods and Services Tax Act;

- iii. the said registered person is eligible for input tax credit on such inputs under this Act;
- iv. the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of inputs; and
- v. such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

A registered person who has paid 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.

Further, 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 the central tax and the Union territory tax payable.

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 central 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 central tax and credit the amount so recovered to the account of the Government under the appropriate head of Union territory tax.

Where the amount recovered is less than the amount due to the Government under this Act and the Central Goods and Services Tax Act, the amount to be credited to the account of the Government shall be in proportion to the amount due as Union territory tax and Central tax.

#### **ADVANCE RULING [SECTION 14]**

“Advance Ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 of the Central Goods and Services Tax Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

“Appellate Authority” means the Appellate Authority for Advance Ruling constituted under section 16;

“Applicant” means any person registered or desirous of obtaining registration under this Act;

“Authority” means the authority for Advance Ruling constituted under Section 15.

The Central Government shall, by notification, constitute an Authority to be known as the (name of the Union territory) Authority for Advance Ruling provided that the Central Government may, on the recommendations of the Council, notify any Authority located in any State or any other Union territory to act as the Authority for the purposes of this Act.

The Authority shall consist of :

- i. one member from amongst the officers of central tax; and
- ii. one member from amongst the officers of Union territory tax, to be appointed by the Central Government.

The qualifications, the method of appointment of the members and the terms and conditions of their service shall be such as may be prescribed.

#### **CONSTITUTION OF APPELLATE AUTHORITY FOR ADVANCE RULING [SECTION 16]**

The Central Government shall, by notification, constitute an Appellate Authority to be known as the (name of the Union territory) Appellate Authority for Advance Ruling for Goods and Services Tax for hearing appeals against



the advance ruling pronounced by the Advance Ruling Authority.

The Appellate Authority shall consist of:

- i. the Chief Commissioner of central tax as designated by the Board; and
- ii. the Commissioner of Union territory tax having jurisdiction over the applicant.

## MISCELLANEOUS

Subject to the provisions of this Act and the rules made thereunder, the provisions of the Central Goods and Services Tax Act, 2017 relating to,

- (i) scope of supply;
- (ii) composition levy;
- (iii) composite supply and mixed supply;
- (iv) time and value of supply;
- (v) input tax credit;
- (vi) registration;
- (vii) tax invoice, credit and debit notes;
- (viii) accounts and records;
- (ix) returns;
- (x) payment of tax;
- (xi) tax deduction at source;
- (xii) collection of tax at source;
- (xiii) assessment;
- (xiv) refunds;
- (xv) audit;
- (xvi) inspection, search, seizure and arrest;
- (xvii) demands and recovery;
- (xviii) liability to pay in certain cases;
- (xix) advance ruling;
- (xx) appeals and revision;
- (xxi) presumption as to documents;
- (xxii) offences and penalties;
- (xxiii) job work;
- (xxiv) electronic commerce;
- (xxv) settlement of funds;
- (xxvi) transitional provisions; and
- (xxvii) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall mutatis mutandis apply.

The above provisions are applicable to IGST Act also.

The Central Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

### **POWER TO MAKE RULES [SECTION 22]**

Section 22 of the UTGST Act, 2017 lays down the powers of Central Government to make rules on the recommendations of the Council. The Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a maximum penalty of ten thousand rupees (Rs.10,000).

### **LAYING OF RULES, REGULATIONS AND NOTIFICATIONS [SECTION 24]**

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

### **POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS [SECTION 25]**

For the purpose of uniformity in the implementation of this Act, the Commissioner may, issue such orders, instructions or directions to the Union Territory tax officers as he may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

### **REMOVAL OF DIFFICULTIES [SECTION 26]**

If any difficulty arises in giving effect to any provision of this Act, the Central Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty. However, no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

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

## **THE GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017**

### **Background**

The GST Council in its 10th meeting held on 18th February, 2017 approved the GST (Compensation to States) Bill that provides for the compensation of loss arising out of introduction of Goods and Services Tax to states in India. The Act which provides for compensation to the states for the loss of revenue arising on account of

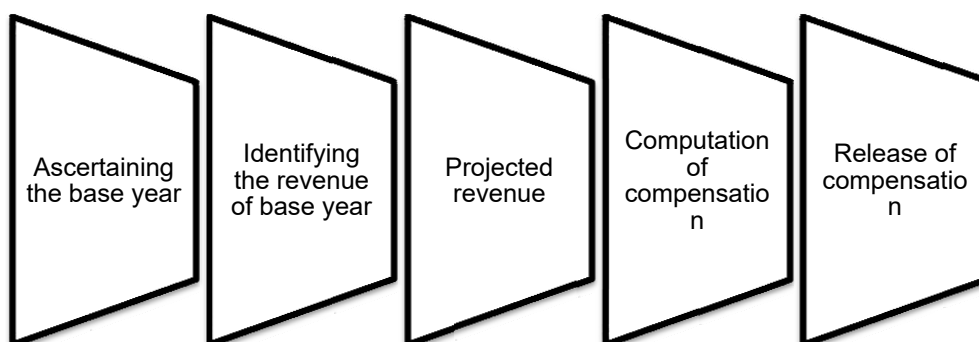
implementation of Goods and Services Tax for a period of five years in pursuance of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, came in force as the Goods & Services Tax (Compensation to States) Act, 2017.

The Union Government presented the Goods and Service Tax (Compensation to States) Bill, 2017 in Lok Sabha on 27th March, 2017 and the same has been passed by Lok Sabha on 29th March, 2017. The Rajya Sabha passed the bill on 6th April, 2017 and was assented by the President on 13th April, 2017.

This Act may be called the Goods and Services Tax (Compensation to States) Act, 2017. It extends to the whole of India.

### **SALIENT FEATURES OF GST (COMPENSATION TO STATES) ACT, 2017**

The GST(Compensation to States) Act, 2017 provides for the manner of ascertaining the amount of compensation that shall be payable to states during the transition period of five years by the Centre on account of revenue loss attributable to levy of Goods and Services Tax in India. It involves the following steps:



The compensation shall be met out from compensation cess for which the provisions in relation to collection, payment return, refund etc. have been provided for in the GST(Compensation to States) Act, 2017.

### **Objectives of the Act:**

1. It provides for the compensation of loss to the states arising due to implementation of Goods and Services Tax in India
2. The financial year 2015-16 shall be taken as base year for the purpose of calculating compensation amount payable to the states.
3. The revenue to be compensated consists of revenues from all the taxes that are levied by the states which have subsumed under Goods and Services Tax, as audited by the Comptroller and Auditor General of India.
4. The projected growth rate of revenue during transition period shall be 14%.
5. The compensation shall be released bi-monthly on a provisional basis and final adjustment shall be made after getting audited accounts of the year from the Comptroller and Auditor General of India.
6. In case of eleven special category states referred to in Article 279A of the Constitution, the revenue forgone on account of exemption of taxes granted shall be counted towards the definition of Revenue for the base year 2015-16 for calculating compensation.
7. The revenues of the states that were not credited to the consolidated fund of states government but were directly collected by "mandi" or "municipality" would also be included in the definition of revenue if these were subsumed in the Goods and Services Tax.
8. To generate revenue to compensate states for five years for loss suffered by the states on account of implementation of Goods and Services Tax, is by levy of a cess on such goods as recommended by the GST Council over and above the GST rate on that item.

9. The proceeds of the cess shall be credited to the fund called Goods and Services Tax Compensation Fund and all the compensation payable to the states as GST compensation shall be paid from this fund. The balance if any left out in the GST compensation fund after five year shall be equally shared between the Centre and the states.

Some definitions prescribed in Section 2 of the Act are as follows:

**Section 2 :** In this Act, unless the context otherwise requires:

- a) “central tax” means the central goods and services tax levied and collected under the Central Goods and Services Tax Act;
- b) “Central Goods and Services Tax Act” means the Central Goods and Services Tax Act, 2017;
- c) “cess” means the goods and services tax compensation cess levied under section 8;
- d) “compensation” means an amount, in the form of goods and services tax compensation, as determined under section 7;
- e) “Council” means the Goods and Services Tax Council constituted under the provisions of article 279A of the Constitution;
- f) “Fund” means the Goods and Services Tax Compensation Fund referred to in section 10;
- g) “input tax” in relation to a taxable person, means,
  - i. cess charged on any supply of goods or services or both made to him;
  - ii. cess charged on import of goods and includes the cess payable on reverse charge basis;
- h) “Integrated Goods and Services Tax Act” means the Integrated Goods and Services Tax Act, 2017;
- i) “integrated tax” means the integrated goods and services tax levied and collected under the Integrated Goods and Services Tax Act;
- j) “prescribed” means prescribed by rules made, on the recommendations of the Council, under this Act;
- k) “projected growth rate” means the rate of growth projected for the transition period as per section 3;
- l) “Schedule” means the Schedule appended to this Act;
- m) “State” means,
  - i. for the purposes of sections 3, 4, 5, 6 and 7 the States as defined under the Central Goods and Services Tax Act; and
  - ii. for the purposes of sections 8, 9, 10, 11, 12, 13 and 14 the States as defined under the Central Goods and Services Tax Act and the Union territories as defined under the Union Territories Goods and Services Tax Act;
- n) “State tax” means the State goods and services tax levied and collected under the respective State Goods and Services Tax Act;
- o) “State Goods and Services Tax Act” means the law to be made by the State Legislature for levy and collection of tax by the concerned State on supply of goods or services or both;
- p) “taxable supply” means a supply of goods or services or both which is chargeable to the cess under this Act;
- q) “transition date” shall mean, in respect of any State, the date on which the State Goods and Services Tax Act of the concerned State comes into force;

- r) “transition period” means a period of five years from the transition date; and
- s) “Union Territories Goods and Services Tax Act” means the Union Territories

The words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act and the Integrated Goods and Services Tax Act shall have the meanings respectively assigned to them in those Acts.

### **PROJECTED GROWTH RATE [SECTION 3]**

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be fourteen per cent (14%) per annum.

### **BASE YEAR [SECTION 4]**

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, the base year shall be Financial Year 2015-16.

### **BASE YEAR REVENUE [SECTION 5]**

Section 5(1) mandates that subject to the provisions of sub-sections (2), (3), (4), (5) and (6), the base year revenue for a State shall be the sum of the revenue collected by the State and the local bodies during the base year, on account of the taxes levied by the respective State or Union and net of refunds, with respect to the following taxes, imposed by the respective State or Union, which are subsumed into GST:

- a) the Value Added Tax ‘VAT’, sales tax, purchase tax, tax collected on works contract, or any other tax levied by the concerned State under the erstwhile entry 54 of List-II (State List) of the Seventh Schedule to the Constitution;
- b) the central sales tax ‘CST’ levied under the Central Sales Tax Act, 1956;
- c) the entry tax, octroi, local body tax or any other tax levied by the concerned State under the erstwhile entry 52 of List-II (State List) of the Seventh Schedule to the Constitution;
- d) Luxuries tax, entertainments tax, amusements, betting and gambling or any other tax levied by the concerned State under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the constitution;
- e) Advertisement tax or any other tax levied by the concerned State under the erstwhile entry 55 of List-II (State List) of the Seventh Schedule to the Constitution;
- f) the duties of excise on medicinal and toilet preparations levied by the Union but collected and retained by the concerned State Government under the erstwhile article 268 of the Constitution;
- g) any cess or surcharge or fee leviable under entry 66 read with entries 52, 54, 55 and 62 of List-II of the Seventh Schedule to the Constitution by the State Government under any Act notified under sub-section (4), prior to the commencement of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

The following amounts shall not be included in the revenue collected during the base year in a State, net of refunds, in the calculation of the base year revenue for that State:

- a) any taxes levied under any Act enacted under the erstwhile entry 54 of List-I (State List) of the Seventh Schedule to the Constitution, prior to the coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;

- b) tax levied under the Central Sales Tax Act, 1956, on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption;
- c) any cess imposed by the State Government on the sale or purchase of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption; and
- d) the entertainment tax levied by the State but collected by local bodies, under any Act enacted under the erstwhile entry 62 of List-II (State List) of the Seventh Schedule to the Constitution, prior to coming into force of the provisions of the Constitution (One Hundred and First Amendment) Act, 2016.

The base year revenue shall include the amount of tax collected on sale of services by the said State Government during the base year in respect of the State of Jammu and Kashmir.

Also, in respect of the States mentioned in sub-clause (g) of clause (4) of article 279A of the Constitution, the amount of revenue foregone on account of exemptions or remission given by the said State Governments to promote industrial investment in the State, with respect to such specific taxes referred to in sub-section (1), shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

The base year revenue shall be calculated as mentioned above and on the basis of the figures of revenue collected and net of refunds given in that year, as audited by the Comptroller and Auditor-General of India.

In respect of any State, if any part of revenues mentioned above are not credited in the Consolidated Fund of the respective State, the same shall be included in the total base year revenue of the State, subject to such conditions as may be prescribed.

## PROJECTED REVENUE FOR ANY YEAR [SECTION 6]

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 =  $100 (1 + 14/100)^3$

## GST COMPENSATION [SECTION 7]

The compensation payable to a State shall be provisionally calculated and released at the end of every two months period, and shall be finally calculated for every financial year after the receipt of final revenue figures, as audited by the Comptroller and Auditor General of India. However, in case any excess amount has been released as compensation to a State in any financial year during the transition period, as per the audited figures of revenue collected, the excess amount so released shall be adjusted against the compensation amount payable to such State in the subsequent financial year.

The total compensation payable for any financial year during the transition period to any State shall be calculated in the following manner:

- a) the projected revenue for any financial year during the transition period, which could have accrued to a State in the absence of the goods and services tax, shall be calculated by applying the projected growth rate over the base year revenue of that state.
- b) the actual revenue collected by a State in any financial year during the transition period shall be :
  - i. the actual revenue from State tax collected by the State, net of refunds given by the said State under Chapters XI and XX of the State Goods and Services Tax Act;

- ii. the integrated goods and services tax apportioned to that State; and
  - iii. any collection of taxes on account of the taxes levied by the respective State under the Acts specified in sub-section (4) of section 5, net of refund of such taxes, as certified by the Comptroller and Auditor-General of India;
- c) the total compensation payable in any financial year shall be the difference between the projected revenue for any financial year and the actual revenue collected by a State referred to in clause (b).

The loss of revenue at the end of every two months period in any year for a State during the transition period shall be calculated, at the end of the said period, in the following manner:

- a. The projected revenue that could have been earned by the State in absence of the goods and services tax till the end of the relevant two months period of the respective financial year shall be calculated on a pro-rata basis as a percentage of the total projected revenue for any financial year during the transition period, calculated in accordance with section 6.

*Illustration:* If the projected revenue for any year calculated in accordance with section 6 is one hundred rupees, for calculating the projected revenue that could be earned till the end of the period of ten months for the purpose of this sub-section shall be  $100 \times (10/12) = \text{Rs. } 83.33$ ;

- b. The actual revenue collected by a State till the end of relevant two months period in any financial year during the transition period shall be:
- i. the actual revenue from State tax collected by the State, net of refunds given by the State under Chapters XI and XX of the State Goods and Services Tax Act;
  - ii. the integrated goods and services tax apportioned to that State, as certified by the Principal Chief Controller of Accounts of the Central Board of Excise and Customs; and
  - iii. any collection of taxes levied by the said State, under the Acts specified in sub-section (4) of section 5, net of refund of such taxes;
- c. the provisional compensation payable to any State at the end of the relevant two months period in any financial year shall be the difference between the projected revenue till the end of the relevant period in accordance point (1) and the actual revenue collected by a State in the said period as referred to in point (2), reduced by the provisional compensation paid to a State till the end of the previous two months period in the said financial year during the transition period.

Where no compensation is due to be released in any financial year, and in case any excess amount has been released to a State in the previous year, this amount shall be refunded by the State to the Central Government and such amount shall be credited to the Fund in such manner as may be prescribed.

## COMPENSATION CESS [SECTION 8]

There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, 2017 and such inter-State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, 2017 and collected on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act, 2017 is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council.

However, no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Services Tax Act, 2017.



The cess shall be levied on such supplies of goods and services as are specified in column (2) of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set forth in the corresponding entry in column (4) of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify;

Where the cess is chargeable on any supply of goods or services or both with reference to their value, the value of such supply shall be determined under section 15 of the Central Goods and Services Tax Act for all intra-State and inter-State supplies of goods or services or both.

The cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975, at the point when duties of Customs are levied on the said goods under Section 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

### **PAYMENTS RETURN AND REFUND [SECTION 9]**

Every taxable person, making a taxable supply of goods or services or both, shall:

- a) pay the amount of cess as payable under this Act in such manner;
- b) furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and
- c) apply for refunds of such cess paid in such form, as may be prescribed.

For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act, 2017 and the rules made thereunder, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of central tax on such supplies under the said Act or the rules made thereunder.

### **CREDITING PROCEEDS OF CESS TO FUND [SECTION 10]**

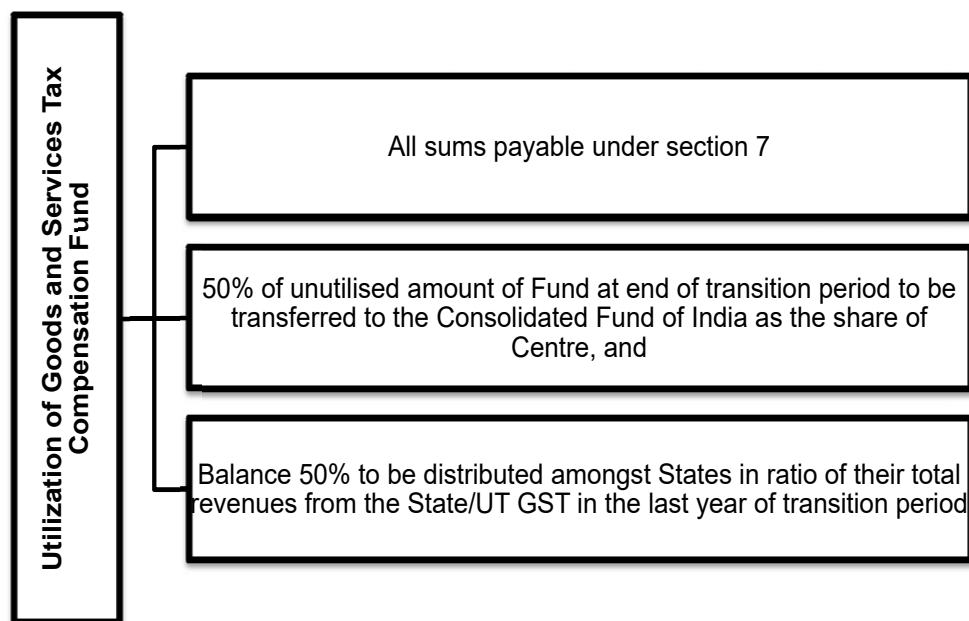
Under this Act, a non-lapsable Fund known as the Goods and Services Tax Compensation Fund shall be created containing the proceeds of the cess and such other amounts as may be recommended by the Council. It shall form part of the public account of India. It shall be utilised for:

- i. All amounts payable to the States under section 7 shall be paid out of the Fund.
- ii. 50% of the amount remaining unutilised in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and
- iii. the balance 50% shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.

The accounts relating to Fund shall be audited by the Comptroller and Auditor-General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor-General of India.

The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament.





### OTHER PROVISIONS RELATING TO CESS [SECTION 11]

The provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Tax Act, 2017, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax and integrated tax on such intra-State supplies under the said Act or the rules made thereunder.

The input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.

### POWER TO MAKE RULES [SECTION 12]

The Central Government shall, on the recommendations of the Council, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:

- a) the conditions which were included in the total base year revenue of the States
- b) the conditions subject to which any part of revenues not credited in the Consolidated Fund of the respective State shall be included in the total base year revenue of the State
- c) the manner of refund of compensation by the States to the Central Government
- d) the manner of levy and collection of cess and the period of its imposition
- e) the manner and forms for payment of cess, furnishing of returns and refund of cess
- f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

### Overview of the IGST Act [Source : [www.cbec.gov.in](http://www.cbec.gov.in)]

#### Q 1. What is IGST?

**Ans.** “Integrated Goods and Services Tax” (IGST) means tax levied under the IGST Act on the supply of any goods and/ or services in the course of inter-State trade or commerce.

**Q 2. What are inter-state supplies?**

**Ans.** A supply of goods and/or services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States, two different union territory or in a state and union territory Further import of goods and services, supplies to SEZ units or developer, or any supply that is not an intra state supply. (Section 7 of the IGST Act).

**Q 3. How will the Inter-State supplies of Goods and Services be taxed under GST?**

**Ans.** IGST shall be levied and collected by Centre on interstate supplies. IGST would be broadly CGST plus SGST and shall be levied on all inter-State taxable supplies of goods and services.

The inter-State seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases. The Exporting State will transfer to the Centre the credit of SGST used in payment of IGST. The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State.

The Centre will transfer to the importing State the credit of IGST used in payment of SGST. The relevant information is also submitted to the Central Agency which will act as a clearing house mechanism, verify the claims and inform the respective governments to transfer the funds.

**Q 4. What are the advantages of IGST Model?**

**Ans.** The major advantages of IGST Model are: a. Maintenance of uninterrupted ITC chain on inter-State transactions; b. No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer; c. No refund claim in exporting State, as ITC is used up while paying the tax; d. Self-monitoring model; e. Ensures tax neutrality while keeping the tax regime simple; f. Simple accounting with no additional compliance burden on the taxpayer; g. Would facilitate in ensuring high level of compliance and thus higher collection efficiency. Model can handle 'Business to Business' as well as 'Business to Consumer' transactions.

**Q 6. How will imports/exports be taxed under GST?**

**Ans.** All imports/exports will be deemed as inter-state supplies for the purposes of levy of GST (IGST). The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete set-off will be available as ITC of the IGST paid on import on goods and services. Exports of goods and services will be zero rated. The exporter has the option either to export under bond without payment of duty and claim refund of ITC or pay IGST at the time of export and claim refund of IGST. The IGST on imports is leviable under the provisions of the Customs Tariff Act and shall be levied at the time of imports along with the levy of the Customs Act (Section 5 of the IGST Act)

**Q 7. How will the IGST be paid?**

**Ans.** The IGST payment can be done utilizing ITC or by cash. However, the use of ITC for payment of IGST will be done using the following hierarchy, - First available ITC of IGST shall be used for • payment of IGST; Once ITC of IGST is exhausted, the ITC of CGST • shall be used for payment of IGST; If both ITC of IGST and ITC of CGST are • exhausted, then only the dealer would be permitted to use ITC of SGST for payment of IGST.

Remaining IGST liability, if any, shall be discharged using payment in cash. GST System will ensure maintenance of this hierarchy for payment of IGST using the credit.

**Q 8. How will the settlement between Centre, exporting state and importing state be done?**

**Ans.** There would be settlement of account between the Centre and the states on two counts, which are as follows :

- *Centre and the exporting state* : The exporting state shall pay the amount equal to the ITC of SGST used by the supplier in the exporting state to the Centre.
- *Centre and the importing state* : The Centre shall pay the amount equal to the ITC of IGST used by a dealer

for payment of SGST on intra- state supplies. The settlement would be on cumulative basis for a state taking into account the details furnished by all the dealer in the settlement period. Similar settlement of amount would also be undertaken between CGST and IGST account.

**Q 9. What treatment is given to supplies made to SEZ units or developer?**

**Ans.** Supplies to SEZ units or developer shall be zero rated in the same manner as done for the physical exports. Supplier shall have option to make supplies to SEZ without payment of taxes and claim refunds of input taxes on such supplies (section 16 of the IGST Act).

**Q 10. Are business processes and compliance requirement same in the IGST and CGST Acts?**

**Ans.** The procedure and compliance requirement are same for processes likes registration, return filing and payment of tax. Further, the IGST act borrows the provisions from the CGST Act as relating to assessment, audit, valuation, time of supply, invoice, accounts, records, adjudication, appeal etc. (Section 20 of the IGST Act)

# Lesson 7

## Overview of Customs Law

### LESSON OUTLINE

- Overview of Customs Law
- Levy and collection of Customs Duties
- Types of Custom Duties
- Classification and Valuation of import and export goods
- Exemptions
- Officers of customs
- Administration of Customs Law
- Import and Export Procedures
- Transportation and Warehousing
- Duty Drawback
- Demand and Recovery
- Confiscation of Goods and Conveyances
- Refund

## OVERVIEW OF CUSTOMS LAW

Customs Duty is an indirect tax, imposed under the Customs Act formulated in 1962. The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, aircrafts, goods, passengers etc., into or outside the country. The Act extends to whole of India.

The Customs Act, 1962, not only regulates the levy and collection of duties, but also, serves equally important purposes, like :

- i) Regulation of Imports & Exports
- ii) Protection of Domestic Industry
- iii) Prevention of smuggling
- iv) Conservation and augmentation of foreign exchange

It may be pertinent to note that it is Section 12 of the Customs Act, 1962 that provides duties of customs to be levied at such rates as may be specified under the Customs Tariff Act, 1975 or other applicable Acts on goods imported into or exported from India.

## Rules & Regulations

The rule making power is delegated to the Central Government while the regulation making power delegated to the Central Board of Excise and Customs (CBEC).

### *Differences between Rules and Regulations*

Parameter	Rules	Regulations
Power to make rules	Section 156	Section 157
Content	Transaction Value; Chargeability of accessories & Repairs & Maintenance Spare Parts; Detention & Confiscation of Goods; Goods mentioned in the shipping bill / Bill of Export but either not exported OR exported and subsequently re-landed;	The form of Bill of Entry; shipping bill; bill of export; import & export manifest; form & manner of making application for refund of duty; conditions for transshipment & removal of good without payment of duty; manner of conducting audit of duty assessment of imported / exported goods

## Definitions [Section 2]

Section 2 of the Customs Act, 1962 contains the definitions of various terms used at various places in the Act.

**Conveyance : Section 2(9) :-** Includes vessels (by sea), an aircraft (by air), and a vehicle (by land).

**Customs Area : Section 2(11) :-** Any customs station or areas in which goods are kept prior to the clearance (warehouse could be one example).

**Customs Station : Section 2(13) :-** Any customs port including Inland Customs Depot (ICD), Customs Airport or land customs station.

**Foreign going Vessel / Aircraft : Section 2(21) :-** Vessel or aircraft for carriage of goods / passengers between any port / airport in India and any port / airport outside India whether touching any intermediary location or not, and includes :

- a) Any naval vessel of any foreign government taking part in any naval exercises;
- b) Any vessel engaged in fishing or any other operations outside the territorial waters of India;
- c) Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

**Import : Section 2(23) :-** Bringing in to India from a place outside India.

**Imported Goods : Section 2(25) :-** Any goods brought in to India from a place outside India but doesn't include Goods which have been cleared for home consumption.

**Importer : Section 2(26) :-** Importer, in relation to any goods, at any time between their importation, and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

**Prohibited Goods : Section 2(33) :-** Any goods, the import or export of which is prohibited by the Customs Act or any law for the time being in force, but doesn't include any goods, in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

**Warehouse : Section 2(43) :-** Public warehouse appointed under section 57 OR Private Warehouse licensed under section 58. A warehouse therefore is a designated area where goods are allowed to be stored after landing, without the payment of duty.

## LEVY & COLLECTION OF CUSTOMS DUTIES

### Levy of and Exemption from Customs Duty

Goods become liable for import OR export duty when Goods are Imported into India OR Exported out of India. Levy is the stage where the declaration of such liability is made and the persons / properties in respect of which the duty is to be levied is identified. If the Central Government is satisfied that it is necessary in the public interest to do so, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (pre-clearance) as may be specified in such notification, goods of the specified description, from the whole or any part of the customs duty leviable thereon. An exemption notification cannot be withdrawn and duty cannot be demanded with retrospective method.

## TYPES OF CUSTOMS DUTIES

### Import Duty

#### a) Basic Customs Duty

- i) Levied as a percentage of value as determined under section 14(1)
- ii) General basic rate of Basic Custom Duty is 10%
- iii) Could be levied at "Standard" OR "Preferential Rates" (where imported from a preferential area as may be specified by the Government)
- iv) Onus is on the person (owner) to substantiate with the supporting evidence that the goods are chargeable with a preferential rate of duty

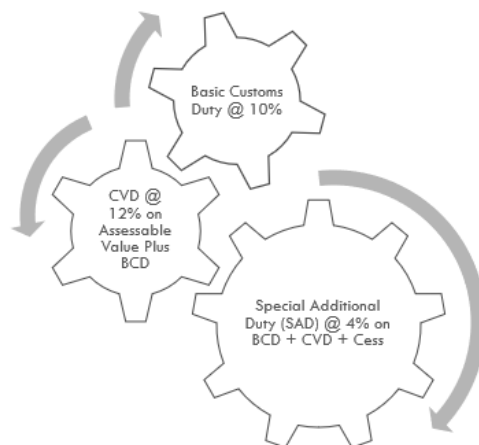
#### b) Additional Customs Duty / Countervailing Duty (CVD)

- i) It is equivalent to the amount of excise duty on like goods manufactured / produced in India
- ii) Under the GST regime, this duty is subsumed under GST and additional duty / IGST is payable on assessable value plus basic customs duty
- iii) In case of alcoholic liquor for human consumption is imported into India, the same is still under state excise which has not been subsumed under GST. Therefore, IGST is not leviable under Import
- iv) In case inward taxable supplies are in the nature of Imported Goods, which have been taxed and have been consumed in the manufacture of outward taxable supplies, Input Tax Credit is available to the extent of IGST paid

### c) Additional Duty / Special Additional Duty (SAD)

- i. It used to be levied to offset the Sales Tax / VAT
- ii. However, this has now been subsumed under GST and as such is leviable only on imported goods for which GST is not applicable (example : Petroleum Products)

## LEGACY RATES



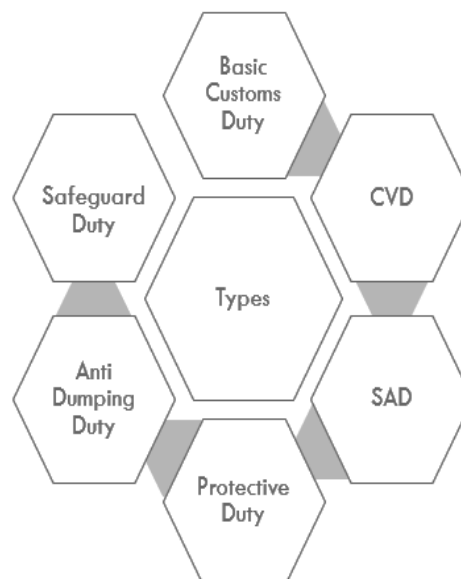
Now CVD & SAD have been subsumed under GST & only BCD is applicable. IGST is applicable on AV+ BCD.

### Provisions under Goods & Services Tax (GST)

The goods imported in to India, are now subject to IGST and not CVD or SAD. However, petroleum is outside the scope of GST, and hence CVD and SAD are applicable to them. IGST is now payable on Assessable Value + Basic Customs Duty.

### Types of Duties

BCD is the Revenue Duty, others were always protective duties to protect the indigenous industry. Schedule I defines the rates for imports and Schedule II defines the rates for Exports (Custom Tariff Act).



## CLASSIFICATION & VALUATION OF IMPORT AND EXPORT GOODS

### Classification

Classification enables categorising the goods into groups / sub-groups, in order to apply a single rate of duty on each group / sub-group. This classification is based on the concept of Harmonised System of Nomenclature (HSN).

HSN is an internationally accepted coding system and the same was formulated and thereby enunciated under the General Agreement on Tariffs & Trade (GATT).

### Customs Tariff Act, 1975

The rates for Customs Duty alongside the classification (Groups / Sub-groups) are laid down as under :

- a) First Schedule : applicable on Imports
- b) Second Schedule : applicable on Exports

### Interpretation Rules under the Customs Tariff Act, 1975

#### General Rule for Classification [Rule 1]

The essence of this rule is that the reference to the rules may be made in case of ambiguity, that is, the reference to the six rules of interpretation is not required when classification of the goods is possible on the basis of description in the heading, sub-heading etc.

#### Unfinished Articles & Mixtures [Rule 2]

- a) Any reference in a heading to an article, shall be deemed to include a reference to that article in an unfinished stage too, as long as in the present stage, the incomplete article exhibits the essential character of that article in complete / finished form

*Example* : Car without tyres or without seats would be still construed as Cars, but not Cars without engines

- b) Any reference in a heading to a material or substance, shall be deemed to include a reference to the mixtures and combinations of that material / substance with other materials / substances

*Example* : natural rubber would include its mixture with synthetic or other forms of rubber

#### Classification of Goods classifiable under more than one head [Rule 3]

- a) "Specific Identification", i.e., the goods shall be classified under the heading which is closest to the specific description

*Example* : Mint Tea is not separately classified, but the classification should be tea as the product is closest to the one under the heading "tea", mint is only a flavour

- b) "Essential Character Principle", i.e., if composite goods cannot be classified as per Rule 3(a), then, shall be classified on the basis of material / substance that defines the essential character

*Example* : If one imports "Liquor Gift Sets" that have both, liquor and glasses, it should be classified under the heading, "Liquor", as the essential character of the composite item is the liquor itself and the glasses are pure ancillaries

- c) "Latter the Better Principle", i.e., when goods can't be classified under rules 3(a) or 3(b), the goods would be classified under the heading that appears last in the numerical order amongst those which equally merit consideration



*Example* : A gift set, which has socks and ties, can be classified under any of the above rules, and therefore should be classified as ties (heading 6117) over socks (heading 6115)

### **Akin Principle [Rule 4]**

This rule states that the goods which cannot be classified in accordance with Rules 1, 2 or 3, shall be classified under the heading which includes goods that are the most “akin or similar”. An example would be anti-glare films used for car windows, venetian blinds, all of these are not separately classified, they would be classified under the heading for “builders’ ware of plastic”, as that’s the closest these fit into.

### **Cases / Containers for packaging of goods [Rule 5]**

Goods which are in the nature of containers / packages such as necklace boxes, camera cases, musical instrument cases, will be classified with the specific article which are generally sold within these packages. However, this is applicable to containers, which are fitted for the article they will contain, are suitable for long term use, protect the article when not in use, and are of a kind normally sold with such articles.

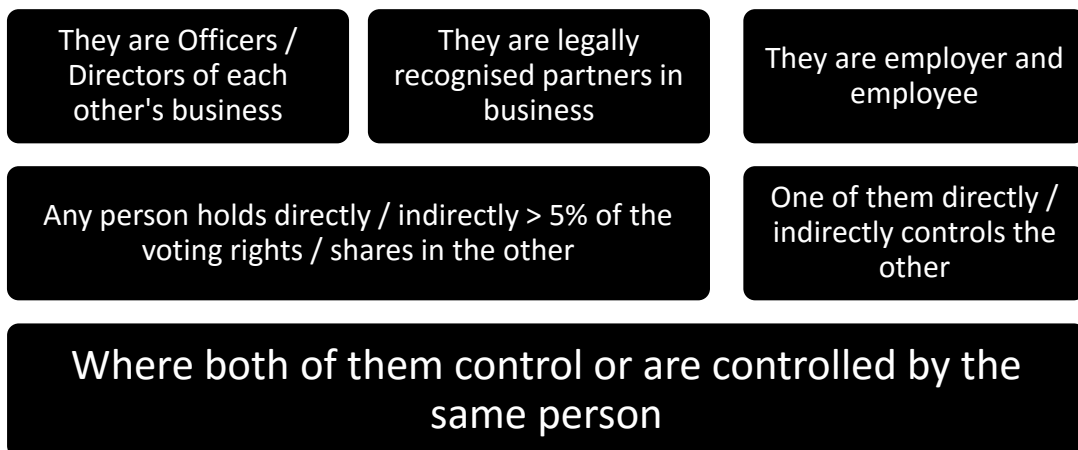
### **Sub-headings [Rule 6]**

Only sub-headings at the same level are comparable.

## **Valuation for Customs Duty**

Valuation for Customs Duty begins with determination of “Transaction Value”. Transaction Value includes the price paid / payable as consideration. In case of transaction between related parties, sale transaction would be examined to ascertain the influence of relationship on the declared value, and whether the same could then be accepted as transaction value (it needs to be at arm’s length)

Parties are said to be related when –



## **Valuation Rules**

The Customs Value fixed as per Section 14 is the value that would be used for calculating the Customs Duty Payable. This is also called Assessable Value.

Criteria for deciding Value –



### Rule 3(1)

Value of Imported Goods shall be the Transaction Value adjusted in accordance with provisions of rule 10; as under :

#### **For Imports**

Price paid / payable for delivery at the time and place of Importation, which essentially implies that the price up to a port in India when goods are imported has to be considered (i.e. C.I.F. Value)

#### **For Exports**

Price paid / payable for delivery at the time and place of Exportation, which essentially implies that the price up to a port in India when goods are exported has to be considered (i.e. F.O.B. Value)

- C.I.F. = F.O.B. + Cost of Transport (Freight) and Insurance
- Freight to be taken at actuals capped to a maximum of 20% of F.O.B.
- Insurance to be taken at actuals capped to a maximum of 1.125% of F.O.B.
- Transaction Value (T.V.) = C.I.F. + 1% of C.I.F. as Landing Charges
- Exchange rate as applicable on date of presentation of a shipping bill or bill of export, as determined by Central Board of Excise & Customs (CBEC) or ascertained in manner determined by CBEC should be considered

If the valuation as above cannot be determined, then sequentially, the following rules will be applied.

### Identical Goods / Comparison Method [Rule 4]

Transaction Value (TV) of identical goods will be used in determining the value of imported goods, only when such identical goods are sold at the same commercial level, and these goods are substantially the same quantity as the goods being valued. TV of goods exported would be based on the transaction value of the goods of like kind and quality exported at or about the same time to the same destination country, or in absence, another destination country.

In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

### Similar Goods for Imports and Computed Value Method for Exports [Rule 5]

The TV for Imported Goods would be based on that of the similar goods (i.e., like characteristics & country of production). The TV of goods exported, would be taken at computed value, i.e., Cost of Production + Charges for design/brand + Reasonable profit.

### Residual Method [Rule 6]

For exports, the TV would then be arrived at by reasonable and consistent means by Customs Officer. For Imports, Rule 7 and 8, as below would be invoked.

### Deductive Value [Rule 7]

Unit price at which the imported goods (or) identical (or) similar imported goods are sold in the greatest aggregate quantity

Less : - Commission, Selling Expenses, and Profit made, Transport & Insurance & Taxes within India.

The goods at or about same time can be considered, if not at the earliest date of importation but before the expiry of 90 days after such importation

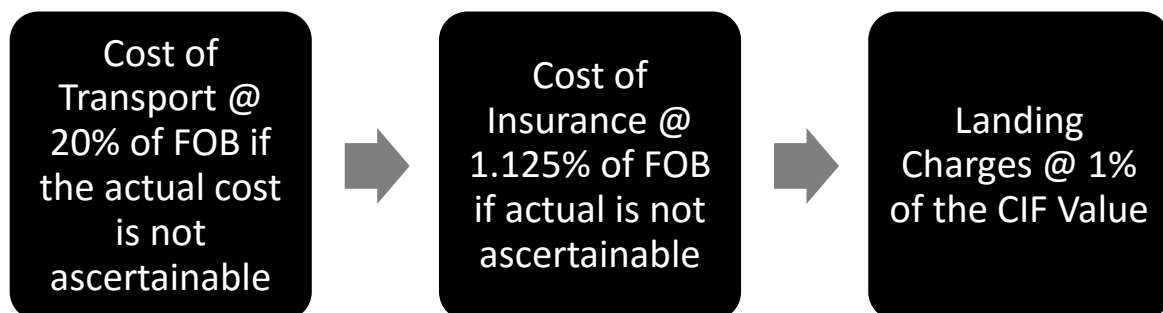
### Computed Value [Rule 8]

This would be the cost of materials used in producing the imported goods, including fabrication costs, and usual profits commensurate with sale of goods of same class in India, including specific additions as per Rule 10 (i.e., Insurance, Freight and Landing Charges)

### Valuation Terminologies

**FOB** : This is also known as “Free on Board” OR “Freight on Board”. It signifies the cost of delivering the goods to the nearest port and thereafter the Buyer is responsible to ship from there to the buyer’s address.

**CIF** : This is known as “Cost, Insurance & Freight” Value. This would add on the Insurance and Freight to the FOB Values, as explained below.



## Specific Additions

These would include expenses incurred by the buyer and not included in the price. Any payments made to the seller as a condition of sale

## Template for Calculation of Import Duties

Assessable Value (AV)	100	
BCD	10	taken @ 10%
EC & HEC	0.3	taken @ 3%
Anti Dumping Duty	50	
Safeguard Duty	75	
Total for IGST	235.3	
IGST	42.354	taken @ 18%
GST Compensation Cess	23.53	taken @ 10%
Total Duties & Taxes	201.184	

Note :

- BCD is calculated on AV
- Education Cess (EC) & Secondary Higher Education Cess (SHEC) is calculated on BCD
- IGST is calculated on all (AV Plus all Customs Duties)
- GST Compensation Cess, like IGST is calculated on (AV Plus all Duties)

## Illustration 1

Use the information appended below to find out the assessable value.

Item No.	Description	USD
1	Cost of Machine at the factory of the US Exporter	17500
2	Transport Charges from the said factory until the sea port for onward shipment	2500
3	Handling Charges at the Port of Shipment	200
4	Buying Commission paid by Importer	50
5	Freight Charges until the Indian Port	2500
	Please use an exchange rate of \$1=63.84 INR	

Description	USD	INR
Cost of Machine at the factory of the US Exporter	17,500	
Transport Charges from the said factory until the sea port for onward shipment	2,500	
Handling Charges at the Port of Shipment	200	
F.O.B. Value	20,200	
Insurance Charges @ 1.125%	227	
Freight Charges @ 20%	2,500	
Buying Commission paid by Importer	-	
C.I.F. Value	22,927	
Landing Charges at 1% of C.I.F. Value	229	
Assessable Value	23,157	14,78,312

**Notes :**

- 1) All costs up to the Port of Shipment will be included in the F.O.B. Value
- 2) Insurance Charges shall be added on @ 1.125% of F.O.B. Value as the value of Insurance Charges as it is not ascertainable
- 3) The actual freight charges of USD 2500 are included as it is within the maximum that can be added on is USD 4040 (which is 20% of F.O.B. Value)
- 4) Buying Commission is not to be included in the computation

**Illustration 2**

Ms. Nisha imported 2500 Tonnes of goods and materials valued at USD 50 per tonne (C.I.F.). Exchange Rate per notification (CBEC) was \$1= INR 63.84. The Basic Customs Duty was chargeable @ 10% and over and above, there was an anti-dumping duty levied on the goods, which was the differential between the amount so calculated as the Landed Value Incl. Basic Customs Duty and Cess and INR 100,00,000/-. Calculate the Anti-Dumping Duty.

Description	Tonnes	Rate	USD	INR
C.I.F. Value	2,500	50	1,25,000	79,80,000
Landing Charges at 1% of C.I.F. Value				79,800
<b>Assessable Value</b>				<b>80,59,800</b>
Basic Customs Duty @ 10%				8,05,980
Cess @ 3%				24,179
<b>Landed Value</b>				<b>88,89,959</b>
<b>Landed Value per Notification</b>				<b>1,00,00,000</b>
Anti Dumping Duty				11,10,041

*Note :* Anti-Dumping duty is levied to promote the local industry and to curb imports, and to ensure that India is not used as a dumping ground, which could otherwise have serious repercussions on the economic growth of the Nation. This Anti-dumping duty is continued even under the GST regime.

**Illustration 3**

XYZ imports Pan Masala into India and the C.I.F value is INR 500/-. The rates of tax for Pan Masala (HSN Code 21069020) are Basic Customs Duty 37.5%; IGST 28% and Compensation Cess 60%.

Compute Total Import Duty.

Description	INR	
C.I.F. Value	500	
Landing Charges at 1% of C.I.F. Value	5	
<b>Assessable Value</b>	<b>505</b>	
Basic Customs Duty @ 37.5%	189	A
Education & Secondary Higher Education Cess	6	B
<b>AV + BCD + Cess 700</b>		
IGST @ 28%	196	C
Cess @ 60%	420	D
<b>Total Import Duty Payable (A+B+C+D)</b>	<b>811</b>	
Total Value incl. Import Duty	1,316	

*Note : The CBEC notified rate of exchange in force as on the date on which the bill of entry is filed, is what will be applied for computation of assessable value. Note also, that the above cess, Compensation Cess is leviable under GST and hence applicable on the same base; i.e. AV + BCD, like IGST.*

#### Illustration 4

M/s XYZ Chemicals Ltd. imported a machine from ABC Inc. at USA (Boston). The price of the machine was contracted at USD 12500 and the machine was shipped on 1st February, 2009. Meanwhile XYZ Chemicals, renegotiated a price reduction owing to the past relationship, and this price reduction was agreed vide an e-mail and a fax on 15th February, 2009. The machine arrived in India (Mumbai Port) on 1st March, 2009.

The assessing authorities claimed that the duty would be payable basis the Original Contracted price, pre-shipment.

Please advise your stand as a Tax Consultant to XYZ Chemicals Ltd.

The stand taken by the Customs Authorities is factually incorrect and can be challenged under the Law. The basic reason is that the Transaction Value is considered at the time and place of importation. Hence, it was contended that the Import is complete only when the Goods become a part of the Country. Here, in the present case, the price was mutually revised while the Goods were still in transit. Hence, the revised price could be considered for arriving at the Assessable Value and the same was also enunciated under the case law : *Gujarat Heavy Chemicals v. Commissioner of Customs, Ahmedabad 2004*.

#### Illustration 5

Calculate the total import duty payable if :

- F.O.B. Value is GBP 18000
- Freight Charges incurred (actual) are GBP 7500
- Design & Development Charges incurred at UK are GBP 2500
- Selling Commission at India paid to a local agent @ 2% of F.O.B. Value
- Date of Bill of Entry : 24th Oct 2017 (Rate of Basic Customs Duty is 20% and Exchange Rate as notified by CBEC is INR 68 to 1 GBP)
- Date of Entry Inward : 20th Oct 2017 (Rate of Basic Customs Duty is 18% and Exchange Rate as notified by CBEC is INR 70 to 1 GBP)
- IGST @ 18%
- Insurance Charges could not be ascertained

Item	GBP	INR	
F.O.B	18,000		
Design & Development	2,500		
Insurance	203		
Freight	3,600		
C.I.F.	24,303	16,52,570	
Local Commission		24,480	
C.I.F. Value (Adj.)		16,77,050	
Landing Chgs.		16,771	
Assessable Value		16,93,821	

Basic Customs Duty		3,38,764	A
Education & Secondary Higher Education Cess		10,163	B
Total for IGST (AV + All Customs Duties)		20,42,748	
IGST		3,67,695	C
<b>Total Import Duty</b>		<b>7,16,622</b>	<b>A+B+C</b>

Notes :

- Insurance is taken @ 1.125% of F.O.B. value, as the charges aren't ascertainable
- Freight can be taken at actuals but capped to 20% of F.O.B.
- Selling Commission is paid in Indian Rupees to local agents appointed by exporters to usher their sales in India and hence included in C.I.F. Value
- The Exchange Rate in force per CBEC notification, on the date when the Bill of Entry is presented is to be considered
- IGST is levied on Assessable Value + All Customs Duties
- Cess is levied on BCD @ 3%

### Safeguard Duty

Safeguard duty is a duty paid on import of goods into India. This is levied on goods imported into India, when such goods are already manufactured in India, but the costs are higher as compared to import prices. It is levied to ensure that the Indian manufacturers don't suffer owing to import of cheaper goods from outside and therefore aims to create a level playing field for the Indian manufacturers and importers, thereby with the intent of safeguarding the National interest. The main difference with Anti-dumping duty being, while the Anti-dumping duty prevents the predatory pricing measures / discriminatory pricing, that could be unfair for the local goods and markets, Safeguard duties promote enabling a fair ground for the local manufacturers.

### Illustration 6

Determine the Customs Duty payable including the safeguard duty of 20%, for Goods with Assessable Value of INR 50,00,000 considering BCD @ 10%, IGST @ 18%?

Item	INR	
Assessable Value	50,00,000	
Basic Customs Duty	5,00,000	A
Education Cess & Secondary Higher Education Cess	15,000	B
Safeguard Duty	10,00,000	
Total for IGST (AV + All Customs Duties)	65,15,000	C
IGST	11,72,700	D
<b>Total Duty &amp; Taxes Payable (A+B+C+D)</b>	<b>26,87,700</b>	

## EXEMPTIONS

### Exemptions under the Customs Act

If the Central Government is satisfied that it is necessary in the public interest to do so, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification,

which would need to be fulfilled before / after clearance, goods of the specified description from the whole or any part of the duty of customs.

It may, by special order, exempt from duty, any goods, on which duty is leviable only under exceptional circumstances. Further, no duty is to be collected, if the amount of duty leviable is less than or equal to INR 100.

Both the general and specific exemptions mentioned above, may be granted by providing for the levy of duty at a rate expressed in a form which is different from the statutory rate.

An exemption notification cannot be withdrawn and the duty cannot be demanded with retrospective effect.

## OFFICERS OF CUSTOMS LAW

### Power of Customs Officers

The Customs Officers are authorised to :

- a) Declare warehousing stations
- b) Allow setting up warehouses (Public / Private)
- c) Power to search any vessel / conveyance / person
- d) Power of Seizure of Goods
- e) Power to Arrest

## ADMINISTRATION OF CUSTOMS LAW

Person in Charge : Master (in case of a Vessel), Commander or Pilot (in case of an aircraft), Conductor, guard or any other person having the chief direction of the train (in case of a train), Driver or other person in charge of the conveyance (any other conveyance).

### Responsibilities of a Person In Charge (PIC)

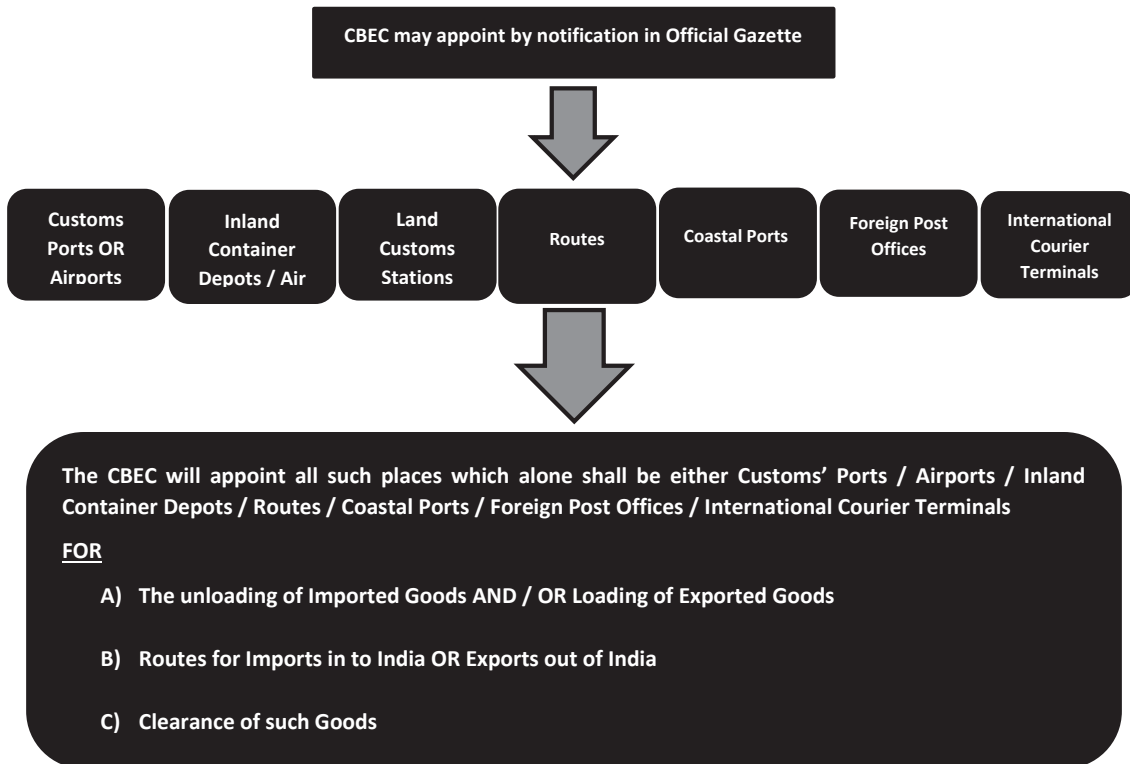
Submitting the Import / Export Manifest	
Ensuring that the conveyance comes through the proper route	
Ensuring that the conveyance lands at the appropriate place	
Ensure that the Goods are loaded / unloaded only after proper permissions / orders	

The *Import Manifest* means the report which is required to be delivered under section 30, which states that the PIC, in the case of a vessel / an aircraft, shall deliver to the proper officer an import manifest PRIOR to the arrival of vessel / aircraft and in case of a vehicle, within 12 hours post the arrival at the customs station, in the prescribed format.

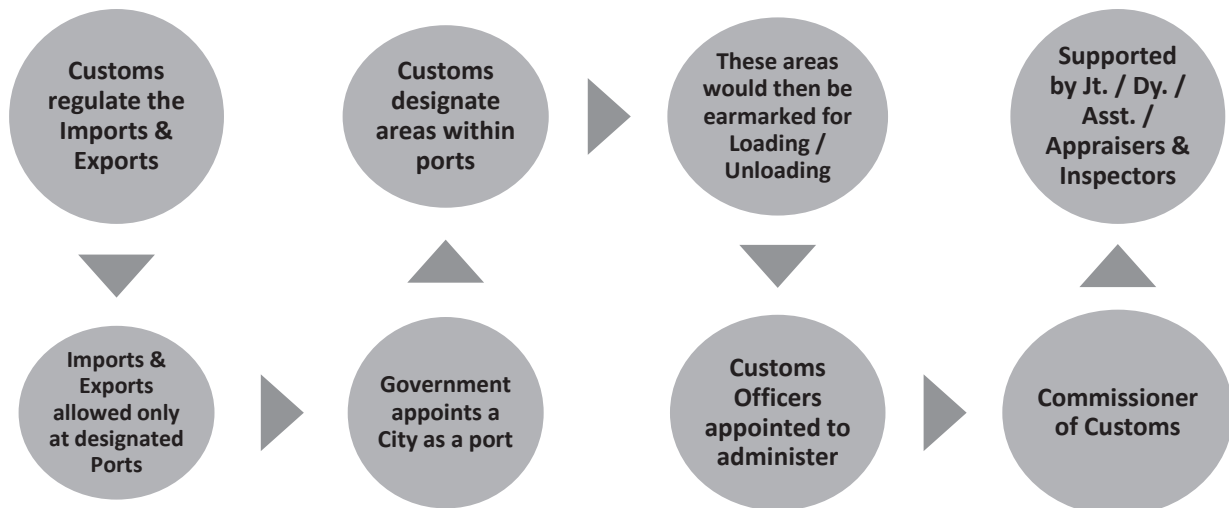
Also, it's imperative to note that the import is completed only when the goods so imported are cleared for home consumption.



## Establishment under Customs



## Administration



## Types of Ports

- a) Sea Ports
- b) Airports
- c) Land Customs Stations (LCS)
- d) Inland Container Depots (ICD)
- e) Container Freight Stations (CFS) attached to ports

## Mode of Clearance

- a) Regular Cargo
- b) Courier
- c) Foreign Post Office
- d) Baggage

## IMPORT & EXPORT PROCEDURES UNDER CUSTOMS LAW

### Procedure for Import through Sea Route (Cargo Clearance)

#### For the Carrier

**Section 30** : Filing the Import General Manifest (IGM) prior to the arrival of the vessel

IGM is generally filed on the basis of Bill of Lading / Airway Bill and is issued by the Carrier. It contains details around the shipper, consignee, no. of packages, description of goods, date, vessel details etc.

**Section 31** : Entry Inward granted by the Customs

It acts as permission for unloading the Goods. The date herein would be construed as the relevant date for arrival of goods in India

#### For the Custodian

**Section 45** : Custodian is appointed by the Customs

The custodian would be responsible for keeping proper record of unloaded goods. The custodian is also responsible to ensure that the goods don't leave the customs area (that is clearance) without proper authorisation from the Customs Officer

#### For the Importer

**Section 46** : The importer needs to submit the bill of entry. This Bill of Entry needs to be signed by the Importer. The Bill of Entry contains the details of goods along with :

- Bill of Lading
- Invoice
- Packing List
- Product Literature
- Licence
- Import Permit
- GATT declaration form duly signed by the Importer

#### For the Customs

The Customs Authorities note the Bill of Entry by assigning a number and date stamp. This date is then construed as the date of presentation of Bill of Entry.

Post the above procedures, the assessment as described above is undertaken, and once the assessed duty is paid vide TR6 Challan, this Challan is submitted as evidence of payment to the Customs authorities, and the Out of Charge Order is issued, and on the basis of this Order, the Custodian allows the Clearance of Goods from the Customs Area.

Demurrage is the charges levied by the port authorities, if not cleared within 3 days of unloading.

## Procedure for Export through Sea Route (Cargo Clearance)

### For the Carrier

**Section 41** : Filing the EGM prior to the departure of the vessel

Export General Manifest (EGM) is generally filed on the basis of Bill of Lading / Airway Bill and is issued by the Carrier. It contains details around the shipper, consignee, number of packages, description of goods, date, vessel details etc.

**Section 39** : Entry Outward granted by the Customs

It acts as permission for loading the Goods. The date herein would be construed as the relevant date for exportation of goods out of India

### For the Exporter

**Section 50** : The Exporter needs to submit the Shipping Bill. This Shipping Bill needs to be signed by the Exporter. The Shipping Bill contains the details of goods along with :

- Invoice
- Packing List
- Product Literature
- Licence
- Export Permit
- Softex / other compliances

### For the Customs

The Customs Authorities note the Shipping Bill by assigning a number and date stamp. This date is then construed as the *date of presentation of Shipping Bill*.

Post the above procedures, the assessment as described above is undertaken, and once the assessed Duty is paid vide TR6 Challan, this Challan is submitted as evidence of payment to the Customs authorities, and the Let Export Order is issued, and post that the loading can commence.

## TRANSPORTATION & WAREHOUSING

### Transit and Transshipment

A conveyance/vessel may reach a port but may not unload the goods at that port. It may halt at the port for any other purpose such as repairs, replenishment of supplies, refuelling etc. Once the purpose is over, it may start sailing to the destination port. In this case two ports are involved :-

- 1) the halting port (known as transit port) and
- 2) the destination port (called as port of clearance).

Such a phenomenon of temporary stay at a port other than a destination port is called transit.

In transit; the goods remain in the same vessel and consequently reach the port of clearance.

In transshipment, however, the vessel after reaching an intermediate port, transfers the goods to another vessel and the second vessel into which the goods are transferred (loaded) from the first vessel, carries the goods to the destination port.

### Transit of Goods without payment of duty [Section 53]

**Section 53 :** Accordingly, any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, for transit in the conveyance to any place outside India or any Customs station may be allowed to be so transited without payment of duty, subject to such conditions, as may be prescribed.

### Transshipment of Goods without payment of duty [Section 54]

In case any goods imported into a Customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form.

However, where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in the prescribed form.

Where any goods imported into a Customs station are mentioned in the Import Manifest or import report as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.

#### Differences between Transit & Transshipment

Transit	Transshipment
Goods remain in the same vessel at the intermediate port	Goods are transferred to a different vessel at the intermediate port
Only import manifest has to be submitted for entry	Bill of Transshipment / declaration is also required to be submitted
No supervision is required at the Intermediate Port	Transshipment process is conducted under the supervision of the Customs Officer
The same vessel reaches the destination port	A different vessel reaches the destination port

### Warehousing

Warehouses allow goods to be stored and thus deferment of duty. The Goods are to be released from the Warehouse, subject to "clearance"; i.e.; post assessment and payment of Duty.

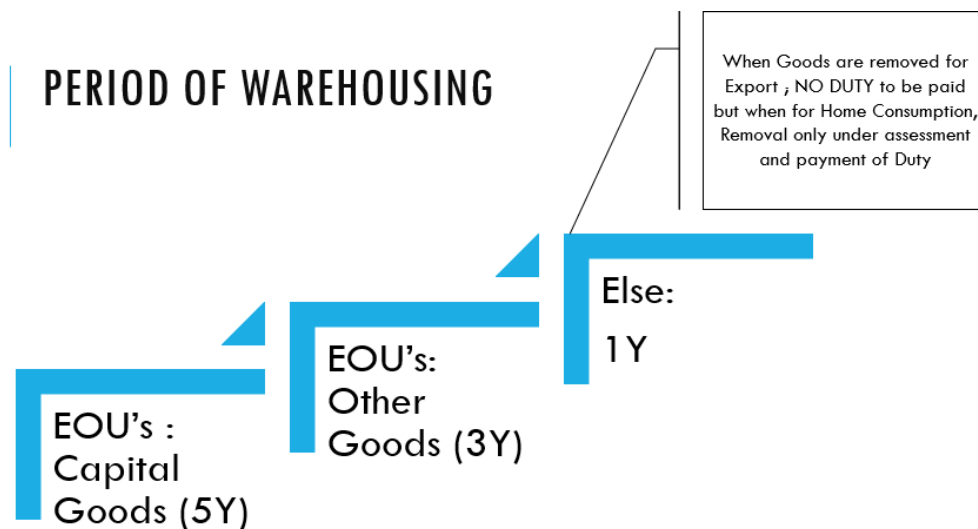
#### Public Bonded Warehouse

- 1) These are owned and managed by Government / Governmental Bodies / Agencies
- 2) Only dutiable goods can be warehoused therein
- 3) Availability of space certificate from the warehouse keeper would be required
- 4) A double duty bond would also be required to be furnished for deposit of goods
- 5) Also, the person seeking warehousing would need to pay rental / warehousing charges to the warehouse keeper

#### Private Bonded Warehouse

- 1) These are owned and managed by private entities
- 2) These aren't generally allowed where the public bonded warehouses are available
- 3) Only dutiable goods can be warehoused therein
- 4) Availability of space certificate from the warehouse keeper would not be required in this case
- 5) Double bond duty would still be required but, customs officers would need to be posted at the expense of the warehouse keeper

The Goods so warehoused, can vary, depending on whether these are for 100% Export Oriented Units (EOU's) or otherwise, as explained by the diagram below (up to a period of 5 years / 3 years / 1 year) :



## DUTY DRAWBACK

### Duty Drawback

This enables the Exporter to obtain a refund of the Import Duties (Customs Duty) paid on inputs, which are processed for manufacture of goods to be exported.

The Central Government is empowered to grant duty drawback (Section 74 & Section 75).

This benefit is available not only on the re-export of the duty paid goods (Section 74), but also, on imported materials used in the manufacture of Goods which are exported (Section 75).

These goods should be entered for export within 18 months.

The procedure is as under :

- ✓ At the time of export, the Exporter shall endorse the shipping bill to the Proper Customs Officer
- ✓ Necessary forms like ARE1 are submitted
- ✓ Customs Officer makes an order permitting clearance for exportation (Section 51)
- ✓ If an amount of drawback, and interest paid to the exporter turns out to be higher than what he is eligible to, this amount would have to be repaid back to the Customs authorities
- ✓ If there is a drawback which is made to an exporter, who eventually cannot realise the Invoice (export proceeds) within the period(s) specified by FEMA, such drawback could be recovered from the exporter

An exporter could opt for drawback as per the All Industry Rate (AIR) or the Brand Rate. The AIR's are fixed annually by the Directorate of Drawback, but the brand rates are for special products.

Where the goods are not put into use after import, 98% of Duty Drawback is admissible under Section 74 of the Customs Act, 1962. In cases where the goods have been put into use after import, Duty Drawback is granted on a sliding scale basis depending upon the extent of use of the goods. No Duty Drawback is available if the goods are exported 18 months after import. Application for Duty Drawback is required to be made within 3 months from the date of export of goods, which can be extended up to 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

If the imported goods are used before re-export, the drawback will be allowed at a reduced percentage. If the goods were in possession of the importer, they might be treated as used by the importer. As per the rules framed by Central Government, the table is as follows : (a) use up to 6 months; 85% (b) 6 months to 12 months : 70% (c) 12 months to 18 months : 60% (d) 18 months to 24 months : 50% (e) 24 months to 30 months : 40% (f) 30 months to 36 months : 30% (g) over 36 months : Nil.

Drawback is allowed if the use is over 24 months only with permission of Commissioner of Customs if sufficient cause is shown.

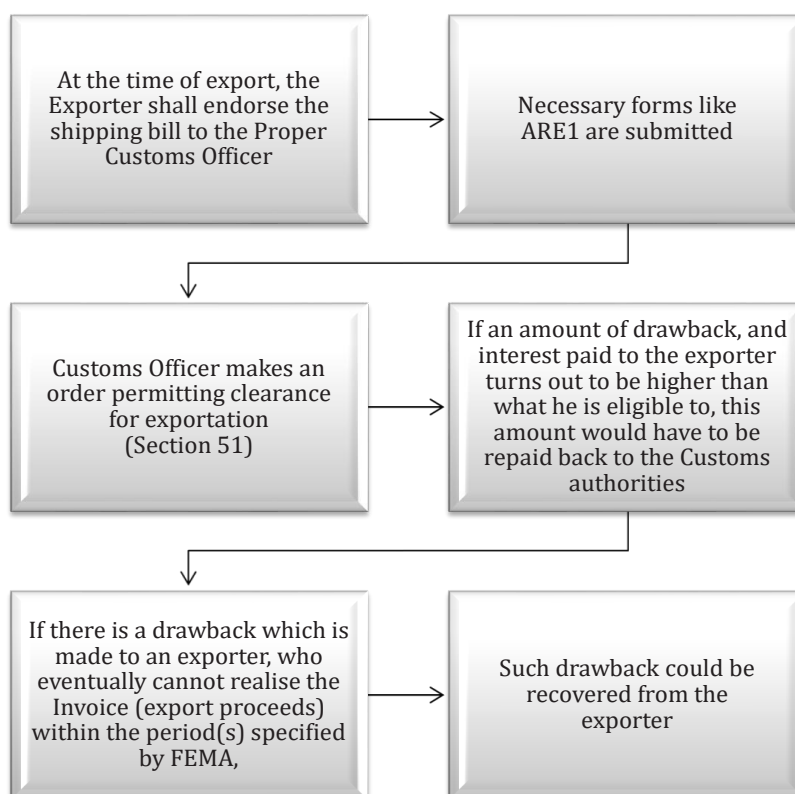
The Customs Act, 1962 lays down certain limitations and conditions for grant of Duty Drawback. No Duty Drawback shall be admissible where :

- I. The Duty Drawback amount is less than Rs.50/-.
- II. The Duty Drawback amount exceeds one third of the market price of the export product.
- III. The Duty Drawback amount is less than 1% of FOB value of export (except where the amount of Duty Drawback per shipment exceeds Rs.500/-).
- IV. Where value of export goods is less than the value of imported material used in their manufacture. If necessary, certain minimum value addition over the value of imported materials can also be prescribed by the Government.

The duty drawback needs to be paid, within 1 month, and if not paid, interest is payable to the claimant, at a specified rate.

Also, where drawback has been paid to the claimant in excess of what he is eligible to, the claimant has a time period of 2 months, to repay the excess, else, interest would be charged on the exporter from the date of payment of drawback until the date of recovery.

Duty Drawback is a scheme that encourages exports and thereby accelerates aggregate demand. It is intended to propel the economic growth of the nation and thereby accelerates the GDP.



## DEMAND & RECOVERY

### Demand of Duty

The notice of demand, must be served in writing, clearly mentioning the reasons, and providing the party an opportunity of being heard.

Generally, the Show Cause Notice, should be served within 1 year from the relevant date; that is; 1 year from the date of assessment / payment of duty.

However, in specific cases, where the duty or interest is not paid, or short paid, by reason of collusion, wilful suppression of facts, or misstatement, then the notice could be served within a period of 5 years.

The demand of duty provisions also calls for attachment of property for upto 6 months, for protection of interest of revenue and that could be extended for another period of 6 months, but the attachment period cannot exceed 2 years.

Post which the duty must be collected, in the name of customs duty and paid to the credit of the Government.

## CONFISCATION OF GOODS & CONVEYANCES

### Confiscation of Goods

Confiscation would generally tend to connote the forceful seizure / repossession of goods by the Government, without any compensation to the owner, as the possession of the goods was contrary to the law.

- ✓ **Section 111** states that the following improperly imported goods, shall be liable to confiscation
  - those which are imported by sea / air and offloaded / attempted to be offloaded in a port other than the appointed customs' port
  - those which are imported by land / inland water, through a route other than a specified route
  - any dutiable / prohibited goods brought in to any bay / creek / gulf etc. for the purpose of being landed at a place other than customs' port
  - any dutiable / prohibited goods, found concealed in a conveyance
  - any dutiable / prohibited goods which should have been disclosed in the Import General Manifest but were not
  - any dutiable / prohibited goods removed / attempted to be removed from a warehouse / customs station, without permission
  - goods which do not match the description in the documents, vis-à-vis value / any other particulars
  - any goods, which were exempted from duty subject to a condition, which was eventually not met
- ✓ **Section 112** states that the following improperly exported goods, shall be liable to confiscation
  - those which are exported by sea / air and loaded / attempted to be loaded in a port other than the appointed customs' port
  - those which are exported by land / inland water, through a route other than a specified route
  - any dutiable / prohibited goods brought near any bay / creek / gulf etc. for the purpose of being exported from a place other than customs' port
  - any dutiable / prohibited goods, found concealed in a conveyance
  - any goods loaded in a wrongful manner without necessary permissions

- goods which do not match the description in the documents, vis-à-vis value / any other particulars
- any goods, on which import duty wasn't paid and entered for export under a claim for drawback
- ✓ **Section 115** deals with Conveyances which are liable to confiscation
  - Any vessel which has been within the Indian customs waters, any aircraft in India, or any vehicle, which has been adapted or fitted or structured in a manner that it purports or enables the concealment of goods
  - Any conveyance from which the goods are destroyed to prevent seizure
  - Any conveyance which had to stop / land but didn't do so except for sufficient cause
  - Any vessel from which goods which have been cleared for exportation, under a claim for drawback, were unloaded without necessary permissions
  - Any conveyance which carried goods into India, but which were later missing without any account for the loss
  - Any conveyance / animal used for smuggling
- ✓ **Section 118** deals with confiscation of packages
  - Where the goods imported / exported are liable to confiscation, the packages within which they are cased and carried, are also liable for confiscation
- ✓ **Section 119** states that any goods used to conceal the smuggled goods are also liable to confiscation
- ✓ **Section 120 & 121** state that where the smuggled goods undergo a change in their physical form, post smuggling, even then they would be liable for confiscation (example : gold bars, later converted to ornaments). Also, where the smuggled goods are mixed in a manner with other goods such that they are inseparable, entire goods would be liable to confiscation, and if the smuggled goods are sold off, the sale proceeds thereof are liable to confiscation
- ✓ **Section 122** states that the adjudicating authorities shall be give an opportunity of being heard to the party concerned
- ✓ **Section 123** clearly states that if goods are seized, the onus is on the owner to prove that they were not smuggled
- ✓ **Section 124** clearly states that before confiscation, it is necessary that a show cause notice (SCN) is issued to the owner, citing grounds and he should be given an opportunity to make a representation / of being heard. The SCN can be issued by a person not below the rank of Assistant Commissioner of Customs
- ✓ **Section 125** states that the authorised officer may allow the owner an option to pay fine in lieu of confiscation
- ✓ **Section 126** mentions that confiscated goods vest with the Central Government
- ✓ **Section 127** clarifies that any award of confiscation / penalty shall not interfere with or prevent the owner from being punished under any other provisions of this or any other law for the time being in force.

## REFUND

### Refund of Export Duty

Where on the export of goods; any duty has been paid, such duty shall be refunded to the person by whom or



on whose behalf it was paid, if -

- (a) the goods are returned to such person otherwise than by way of re-sale;
- (b) the goods are re-imported within one year from the date of exportation; and

An application for refund of such duty is made within 6 months from the date on which the proper officer makes an order for the clearance of the goods when they are imported back.

### **Refund of Import Duty**

Where on the import of any goods, duty has been paid upon clearance for home consumption, such duty can be refunded to the person by whom or on whose behalf it was paid, if -

- a) The goods are found to be defective or not in conformity with the specifications
- b) The importer does not claim any duty draw back with respect to these goods
- c) If the goods are exported back / importer relinquishes his title to the goods / they are destroyed in the presence of the proper officer

An application for refund of duty is to be made within 6 months from the relevant date, i.e.,

- a) The date when the proper officer makes an order for clearance of goods when they are exported back
- b) Date of relinquishment if the importer relinquishes his title to the goods
- c) Date of destruction, where the goods are destroyed

Moreover, for all general refunds of duty, apart from the ones covered above, have a limitation period of 1 year, that is, the refund application must be filed within 1 year from the date of payment of such duty.

## **MISCELLANEOUS**

### **Assessment of Duty [Section 17]**

Section 17 of the Customs Act, prescribes the method for self-assessment of duty. The importer and exporter must self-assess the duty if any leviable on such goods. These self-assessed goods may be verified, examined or tested by the proper officer.

For verification, the proper officer may require the importer, exporter or any other person to produce any document or information, on the basis of which the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall be bound to produce such document or furnish such information.

Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, re-assess the duty leviable on such goods.

Where any re-assessment so done is contrary to the self-assessment done by the importer or exporter with respect to valuation of goods, classification, or concessions of duty availed and where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment.

Where the importer or exporter is unable to make self-assessment and makes a request in writing to the proper officer for assessment; or where the proper officer deems it necessary for any reason whatsoever, the officer may direct that the duty leviable on such goods be subject to provisional assessment if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed.

When the duty leviable on such goods is assessed finally or reassessed by the proper officer in accordance with the provisions of this Act, then (a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of the duty finally assessed, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be; and (b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order, at the rate fixed by the Central Government from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

If any refundable amount is not refunded within 3 months from the date of assessment of duty finally or reassessment of duty, as the case may be, there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government until the date of refund of such amount.

### Prohibitions

Central Government may prohibit, either absolutely or subject to such conditions specified in the notification, the import / export of goods of the specified description, for :

- a) Maintenance of national security
- b) Maintenance of public order / decency
- c) Prevention of smuggling
- d) Conservation of exchange
- e) Safeguarding the balance of payments
- f) Protection of human lives / animals
- g) Protection of national treasures
- h) Protection of Patents & Trade Marks
- i) Prevention of contravention of any laws or in the interest of the public

### Offences

The following would constitute offences under the Act.

- a) Any mis-declaration in respect of the goods vis-à-vis its value or description or weight or origin
- b) Violation of allied acts, example, Violation of wild life, Drug & Cosmetics Act, Food laws etc.
- c) Landing of Goods at unauthorised ports

Such offences could result in civil or criminal liabilities or both and both could run simultaneously. Criminal prosecution could result in imprisonment + fines, and civil prosecution could result in alienation of wealth and penalties.

### Criminal Liabilities

- ✓ Punishment up to 7 years
- ✓ Offences involving duty evasion of more than INR 50 Lakhs, or prohibited goods, are non-bailable
- ✓ Fraudulent duty drawback claims, exceeding INR 50 Lakhs is also non bailable

### Civil Liabilities

- ✓ Recovery of duties short paid
- ✓ Interest charge
- ✓ Penalties
- ✓ Confiscation of import / export goods
- ✓ Confiscation of conveyances used for smuggling
- ✓ Up to 200% duty for unaccounted goods
- ✓ Up to 5 times the value of goods for forged documents

The normal limit for the above prosecution is one year, whereas for intended fraud, the time limit is 5 years.

### Advance Ruling

This refers to the determination, by the authority, of a question of law / fact specified in the application, regarding the liability to pay duty in relation to an activity proposed to be undertaken by an applicant.

In the context of Customs Act, the activity above in the definition would imply import / export.

The application is made in quadruplicate with the fees specified, and can be withdrawn within 30 days of the application. It is imperative to note that, for matters already pending before the Tribunal / Court, would not be admissible under Advance Ruling separately.

The ruling must be made within 90 days of the application.

### Settlement Commission

The cases can be referred by applicants with the Commission. However, no application for determining the classification can be filed. Even outright fraud cases cannot be referred.

Once the case is submitted before it, it enjoys exclusive jurisdiction over it and then can consequently perform the functions of a customs officer, and thereafter the customs officer cannot investigate, adjudicate or issue notice / corrigendum.

The application will be disposed effectively and suitable orders would be issued by the Commission.

The orders of the Commission are non – appealable, however, amenable to writ jurisdiction of High Court.

The appellants can also take the route of Tribunal / High Court and Supreme Court under the litigation mode.