

GST : Practitioner's Perspective



Committee for Members in Practice (CMP)
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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First Edition : January, 2021

Committee : Committee for Members in Practice (CMP), the Institute of Chartered Accountants of India (ICAI)

E-mail : ccbcaf@icai.in

Website : www.icai.org, www.icai.org.in

Published by : Committee for Members in Practice (CMP), ICAI

Printed by : Committee for Members in Practice (CMP), ICAI

Message from President, ICAI

In a major transformational taxation reform, Goods and Services Tax (GST) which is a comprehensive tax on supply of goods or services or both has been implemented in India from 1st July, 2017. The implementation of GST integrates State economies and boost overall growth with an objective of unified Indian market on the principle of “One Nation, One Tax, One Market”.



As per the CGST Act, Practising CAs may render their services as GST Practitioner, which defines the expression ‘GST Practitioner’ as any person who has been approved under section 48 (1) and which empowers him to act as such practitioner with respect to furnishing of returns of the registered taxable person. ICAI plays a crucial role in GST knowledge dissemination amongst all stakeholders by way of technical publications, newsletters, webcasts, conferences, etc. In view of the above, the Committee for Members in Practice (CMP) of ICAI has come up with this e-book on ‘GST: Practitioner’s Perspective’ which compiles Charge of Tax, Meaning and Scope of Supply, Meaning of Goods and Services, Exempt Supplies, Payment under Reverse Charge, Time of Supply, Valuation, Place of Supply, Composition Levy, Electronic Commerce Operator and Collection of tax at source, Tax deduction at source, Registration, Tax Invoice, Debit and Credit Notes, GST e-invoicing, Classification of goods and services, Input Tax Credit, GST returns, Payment of tax and interest, Refund of taxes, Assessment and Audit, Demand, Recovery and Adjudication, Accounts and other records, Advance Ruling, Appeals, Offences and Penalties, Inspection, Search and Seizure, Arrest, Prosecution and Compounding & E-way Bill. This book is intended to provide knowledge and guidance on GST as a whole to the CAs in Practice.

I congratulate CA. Satish Kumar Gupta, Chairman, CA. Prasanna Kumar D., Vice Chairman and all other members of the Committee for Members in Practice of ICAI for taking this initiative for the benefit of members.

I am sure that the said e-book will be a great aid for Practising Members & CA firms in their professional pursuits and will help them to discharge professional services to all stakeholders more efficiently.

CA. Atul Kumar Gupta
President, ICAI

Message from the Chairman, CMP, ICAI

Dear Professional Colleagues,

We are delighted on behalf of the Committee for Members in Practice (CMP) to present the E-book on “GST: Practitioner’s Perspective” on the various aspects GST Practice for the Members in Practice which will be provided free of cost to all the Members of ICAI through the Institute’s website www.icai.org.



Over a period of time, the Indirect Taxes have become a significant source of revenue for the government. The system relating to indirect taxation has undergone major transformation since 1991 with the country embracing liberalisation and globalisation as the themes for growth. This journey continued with introduction of service tax at central level, value added tax at state level, and is still continuing by way of various amendments made in the indirect tax laws. GST practitioners are governed by section 48 of the CGST Act, 2017 and Rules 83 and 84 CGST Rules, 2017 which provide for conduct, procedure, functioning etc of GST practitioners. Section 48 of CGST Act, 2017 provides for the authorisation of a CA in Practice person to act as approved GST practitioner. A registered person may authorise an approved GST practitioner to furnish information, on his behalf, to the Government. In other words, GST practitioner shall provide services to any registered person. The aforesaid E-book is a perfect tool which will provide the practitioners with all requisite information with regard to GST to the Practitioners

I am indebted to the CA. Atul Gupta, President, ICAI & CA. Nihar Niranjana Jambusaria, Vice President, ICAI for the tremendous support that they have given since the instigation of the aforesaid book. I also wish to acknowledge the contributions made by CA. Prasanna Kumar D., Vice Chairman, CMP, ICAI for the said publication. I deeply appreciate the efforts of CA. Mohd. Salim, contributor and Yash Dhadda, contributor for reviewing the said book contributed in his best way for preparing the aforesaid book for Members in Practice & CA Firms. The aforesaid book has been put together through the selfless efforts of CA. Prasanna Kumar D., Vice Chairman, CMP, ICAI, My Council Colleagues, Co-opted Members of the Committee who have drawn on years of valuable experience to present the same in best possible way. I also appreciate the efforts put in by Dr. Sambit Kumar Mishra, Secretary, CMP, ICAI and other officials of the Committee.

CA. Satish Kumar Gupta
Chairman, Committee for Members in Practice, ICAI

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Introduction

1.1 Background

The earlier system of indirect taxation had multiplicity of taxes levied by the Centre and the State which had led to a complex and conflicting principles in indirect tax structure, adding to the multiple compliance and administrative costs. There was no uniformity in tax rates and structure across States. There was cascading of taxes due to 'tax on tax'. There were too many restrictions on seamless credit availability, i.e., credit of excise duty and service tax paid at the stage of manufacture was not available to the traders while paying the State level sales tax or VAT, and vice-versa. Further, no credit of State taxes paid in one State could be availed in other States. (CST)

Finally, India has moved into Goods and Services Tax (GST) regime from 1-7-2017. Under GST regime large number of Central and State taxes have been subsumed into a single tax viz GST, and is meant to mitigate the cascading effect of taxes, provide near seamless credit and make way for a common market.

1.2 What is GST (Goods and Service Tax)?

GST is a destination based tax and levied at a single point at the time of supply of goods or services. GST is based on the principle of value added tax. GST law emphasizes on voluntary compliance and on accounts based reporting and monitoring system. It is a comprehensive levy where uniformity of tax (same Tax rate for a given commodity throughout the Country) is accomplished.

The Destination based tax implies that tax accrues to the taxing authority which has jurisdiction over the place of consumption which is termed as place of supply. Under the GST law the tax is shared between the Central Government and the State Government or Union territory where the place of supply of goods or services or both exists. Usually the place of supply is the place where the goods or services are consumed.

Internationally, GST was first introduced in France and now more than 160 countries have introduced GST. Most of the countries, depending on their

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own socio-economic formation, have introduced National level GST or Dual GST.

Definition of Goods and Services Tax (GST) - The term GST is defined in Article 366 (12A) of the Constitution to mean “*any tax on **supply** of goods or services or both except taxes on supply of the alcoholic liquor for human consumption*”.

It may be noted here that the taxable event under GST is ‘supply’ for goods as well as services. The term ‘supply’ is the wider term than ‘sale’, due to which stock transfers, branch transfers will come under ambit of GST. For discussion on what constitutes a supply and what is meaning of ‘goods’ and ‘services’ please refer to **Chapter 2**.

1.3. Dual GST model

India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the Division of Powers prescribed in the Constitution for which they need to raise resources. Accordingly a dual GST model has been incorporated in the GST law keeping with the Constitutional requirement of Fiscal Federalism.

It is important to note here that many countries in the world have a single unified GST system. However in federal countries like Brazil and Canada, a dual GST system is prevalent whereby GST is levied by both the Federal and State or Provincial Governments

Under the dual GST model the Centre and States would be simultaneously levying tax on a common tax base. The GST to be levied by the Central Government on intra-State (within the State) supply of goods and / or services would be called the Central Tax (Central goods and services tax) and that to be levied by the States/ Union territory would be called the State / Union Territory Tax (State /Union territory goods and services tax). Similarly, Integrated Tax (Integrated goods and services tax) which will be equivalent to the State / Union Territory Tax and Central Tax, will be levied and administered by Centre on every inter-State (outside State) supply of goods and services.

As per Article 246A(1) of the Constitution of India, the powers to levy GST have been given to Centre and States concurrently and both are empowered to levy GST on supply of services in the cases of intra State supplies.

Further as per Article 269A(1) of Constitution, GST on supplies in the course of inter- State Trade or commerce shall be levied and collected by Govt. of India and apportioned between Union and States in the prescribed manner.

1.4. Concept of inter-State and intra-State supply

Inter-State supply means supply of goods or services or both where the location of the supplier and the place of supply are in two different States / Union territories or in a State and a Union territory. It also includes Export and imports and supply to or by a SEZ Developer or SEZ unit.

Intra-State supply means supply of goods or services or both where the location of the supplier and the place of supply are in the same State / Union territory and excludes supply to or by a SEZ Developer or SEZ unit.

The above definitions are given under Section 7 and 8 of the IGST Act, 2017. For detailed discussion please refer to **Chapter 2**.

1.5. Applicable taxes under GST law

Under GST law following taxes are charged :

- (a) **Central Tax:** It means Central goods and services tax levied under Section 9. (**Section 2(21) of CGST Act**)

This tax is levied on intra-State supply of goods or services or both and collected by the Central Government under CGST Act.

- (b) **State Tax:** It means the tax levied under any State Goods and Services Tax Act (**Section 2(104) of CGST Act**).

This tax is levied under respective SGST Act on intra-State supply of goods or services or both and collected by State Government/ Union Territory with legislature.

- (c) **Integrated Tax:** It means the Integrated goods and services tax levied under the Integrated Goods and Services Tax Act / this Act. (**Section 2(58) of CGST Act / Section 2(12) of IGST Act**).

Integrated tax is levied on Inter-State supply of goods or services or both and collected by Central Government under IGST Act. The tax rate of integrated tax would be equivalent to the total of Central Tax and State Tax.

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- (d) **Union Territory Tax:** It means the Union territory goods and services tax levied under Union Territory Goods and Services Tax Act/ this Act. **(Section 2(115) of CGST Act/ Section 2(9) of UTGST Act).**

This tax is levied under UTGST Act on supply of goods or services or both Intra Union territory which are without Legislature and collected by such Union Territory. This would be equivalent to State Tax.

1.6. Governing Acts of GST

The levy of GST would currently be governed by thirty four Acts which are as under:-

- (a) **Central Goods and Services Tax (CGST) Act, 2017:** It contains 21 chapters and 174 sections and the purpose of this Act is to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and the matters connected therewith or incidental thereto. This Act is the primary law for GST and contain the main definitions and provisions relating to Administration, levy and collection of tax, time and value of tax, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, returns, payment of tax, refunds, assessment, audit, inspection, search, seizure and arrest, demands and recovery, liability to pay in special cases, advance ruling, appeals and revisions, offences and penalties, transitional provisions and other miscellaneous provisions.

For implementation of the provisions of CGST Act, 2017, CGST Rules, 2017 have also been notified which contains 19 Chapters and 162 Rules.

- (b) **Integrated Goods and Services Tax (IGST) Act, 2017:** It consists of 9 chapters and 25 sections and purpose of this Act is to make a provision for levy and collection of tax on inter-State supply of goods or services or both by the Central Government and the matters connected therewith or incidental thereto. This Act contains certain definitions not mandated in CGST Act and also contains the provisions related to administration, levy and collection of tax. Further it contains the provisions which do not exist in CGST Act viz determination of nature of supply, place of supply of goods or services or both, refund of integrated tax to international tourist, zero rated supply,

apportionment of tax and settlement of funds and other miscellaneous provisions. Further Section 20 of this Act mandates about application of provisions of CGST Act in regard to relevant provisions which have not been incorporated in this Act.

For implementation of the provisions of IGST Act, 2017, IGST Rules, 2017 have also been notified which contains 19 Chapters and 162 Rules.

- (c) **Union Territory Goods and Services Tax (UTGST) Act, 2017:** It contains 9 chapters and 26 sections and the purpose of this Act is to make a provision for levy and collection of tax on inter-State supply of goods or services or both by the Union territories (without Legislature) and the matters connected therewith or incidental thereto. This Act contains the definitions and provisions relating to Administration, levy and collection of tax, payment of tax, inspection, search, seizure and arrest, demands and recovery, advance ruling, transitional provisions and other miscellaneous provisions. This Act has been promulgated by the Central Government for the five Union Territories without legislature viz Andaman and Nicobar Islands, Lakshwadeep, Dadra and Nagar Haveli and Daman and Diu, Ladakh and Chandigarh. Further Section 21 of this Act mandates about application of provisions of CGST Act in regard to relevant provisions which have not been incorporated in this Act.

For implementation of the provisions of UTGST Act, 2017, UTGST Rules, 2017 have also been notified which contains 19 Chapters and 162 Rules.

- (d) **GST (Compensation to States) Act, 2017:** It consists of 14 sections and a Schedule and the purpose of this Act is to provide for compensation to the States for the loss of revenue arising on account of implementation of goods and services tax in pursuance of the provisions of the Constitution (101st Amendment) Act, 2016. It contains the definitions and provisions regarding the calculation and release of compensation, levy and collection of cess, returns, payments and refunds etc. Further this Act contains a Schedule indicating the maximum rate at which GST compensation cess may be collected in respect to supply of goods or services or both.
- (e) **Thirty State Goods and Services Tax (SGST) Acts** (i.e. SGST Act of each of the 28 States and 3 Union territories with Legislature i.e. Delhi,

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Puducherry and Jammu & Kashmir which will be prefixed by the name of respective State / UT). These SGST Acts are a mirror image of CGST Act.

For implementation of the provisions of SGST Act(s), 2017, SGST Rules, 2017 have also been notified by each States which are based on CGST Rules, 2017 and thus contains 19 Chapters and 162 Rules.

1.7. What are the taxes subsumed and not subsumed into GST?

State taxes

Subsumed	Not subsumed
Value Added Tax	Mandi Tax
Purchase Tax	Stamp Duty
Entry Tax, Octroi, Local Body Tax	Profession Tax
Sales Tax	Motor Vehicle Tax
Entertainment Tax (other than the taxes levied by Local bodies)	Electricity Duty
Luxury Tax	Sale tax on five petroleum products namely Petroleum Crude, Motor Spirit (petrol), High Speed Diesel, Natural Gas and Aviation Turbine Fuel for a period of time. GST Council would decide the date of including them in GST.
Betting, Gambling and Lottery Tax	Road & Passenger Tax
Surcharges and State Cesses	Toll Tax

Central taxes

Subsumed	Not subsumed
Central Excise Duty (barring five petroleum products namely Petroleum Crude, Motor Spirit (petrol), High Speed Diesel, Natural Gas and Aviation Turbine Fuel for a period of time)	Customs Duty.

Additional Duties of Excise	
Excise on Medicinal and Toiletries Preparation Act	
Additional Customs Duty (CVD) – equal to central excise on like goods manufactured in India	
Special Additional Duty – Supposed to be equal to CST which was earlier 4%. Not changed inspite of drop in CST rate to 2%.	
Surcharge and Cesses on aforesaid duties and taxes	
Central Sales Tax	
Service Tax	

1.8 Input Tax Credit allowed under GST

GST is based on the VAT system and thus it shall be levied at every stage with applicable set offs in respect of tax remitted at previous stages

GST is basically a tax on final consumption. Accordingly under GST law only value addition is taxed as credit referred to as "Input Tax Credit" (ITC) is allowed in respect of taxes paid at previous stages provided the same was paid for business purposes / for taxable supplies. However there are certain blocked credits prescribed under Section 17(5) of the CGST Act, 2017 against which credit cannot be availed.

The burden of tax is to be borne by the final consumer. In Central excise/ service tax law there is similar arrangement by name of "CENVAT Credit". However no credit of VAT paid by a service provider against the service tax liability is presently allowed which leads to cascading of taxes. This situation would be corrected under GST regime.

1.9. Rates of GST

Central Tax and State / Union Territory Tax or Integrated Tax would be levied at rates to be mutually agreed upon by the Centre and the States under the aegis of the Goods & Services Tax Council. However the maximum rate of Central Tax and State / Union Territory Tax as incorporated in the respective

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Acts is 20%, whereas maximum rate for integrated tax is 40%. The rates of GST on services have five slabs of rate namely Nil, 5%, 12%, 18% or 28%.

The CGST rates applicable on supply of goods are prescribed in Notification No.1/2017-Central Tax (Rate) dated 28-6-2017 (as amended).

The CGST rates applicable on supply of services are prescribed in Notification No.11/2017-Central Tax (Rate) dated 28-6-2017 (as amended).

1.10. Goods and service tax compensation cess

Under GST regime “goods and services tax compensation cess” is levied by Central Government as per GST (Compensation to States) Act, 2017. This cess is levied so that Centre can give compensation to the States for the loss of revenue arising on account of implementation of GST in the initial five years. The maximum rates of cess that can be levied for various goods or services have been provided in the Schedule to GST (Compensation to States) Act, 2017 and it is basically applicable on luxury or sin goods.

The cess rates on supply of goods have been notified vide Notification No. 01/2017-Compensation Cess (Rate), dated. 28-06-2017 as amended from time to time.

The cess rates on supply of services have been notified vide Notification No. 02/2017-Compensation Cess (Rate), dated. 28-06-2017 as amended from time to time.

1.11 Goods and Services tax Council

A GST Council has been constituted under Article 279A (1) of the Constitution, comprising the Union Finance Minister (who will be the Chairman of the Council), the Minister of State (Revenue) and the State Finance/Taxation Ministers to make recommendations to the Union and the States on :-

- (i) the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed under GST;
- (ii) the goods and services that may be subjected to or exempted from the GST;

- (iii) the date on which the GST shall be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel;
- (iv) model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;
- (v) the threshold limit of turnover below which the goods and services may be exempted from GST;
- (vi) the rates including floor rates with bands of GST;
- (vii) any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster;
- (viii) special provision with respect to the North- East States, J&K, Himachal Pradesh and Uttarakhand; and
- (ix) any other matter relating to the GST, as the Council 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 (One Hundred and First Amendment) Act, 2016 that the GST Council, in its discharge of 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.

The Constitution (One Hundred and First Amendment) Act, 2016 provides that every decision of the GST Council shall be taken at a meeting by a majority of not less than 3/4th of the weighted votes of the Members present and voting. The vote of the Central Government shall have a weightage of 1/3rd of the votes cast and the votes of all the State Governments taken together shall have a weightage of 2/3rd of the total votes cast in that meeting. One half of the total number of members of the GST Council shall constitute the quorum at its meetings. Thus practically, any decision in GST Council cannot be taken without the consent of the Central Government.

As on 31-10-2020, 42 meetings of GST Council have been held.

1.12. GST Portal

www.gst.gov.in is GST portal developed and maintained by Goods & Services Tax Network (GSTN).

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This portal facilitates numerous services for taxpayers ranging from obtaining GST registration, filing of GST returns, refund applications, to the time a taxpayer applies for the cancellation of the GST registration. The important aspect of the GST regime is that the tax administration must have a strong backing of technology. This means that the taxpayers will no longer be required to visit the tax departments in person for assessments and submit the applications or returns, although Facilitation Centres are present across India. The GST portal allows all communications to be done on it, such as approving, rejecting, or responding to applications. It includes intimation of notices by the Department and window to respond to the same by taxpayers

Also there is a portal for generation of e-way bill viz <https://ewaybill.nic.in/> wherein e-way bills for tracking movement of goods in a motorized conveyance can be generated. The sender or receiver of goods can generate e-way bill through given portal.

Apart from GST portal we also have Invoice Registration Portal (IRP) viz <https://einvoice1.gst.gov.in/> wherein the tax payers having aggregate turnover above Rs 500 cr need to report their B2B invoices to. On reporting, IRP returns the e-invoice with a unique 'Invoice Reference Number (IRN)' after digitally signing the e-invoice and adding a QR Code. Then, the invoice can be issued to the receiver (along with QR Code). A GST invoice will be valid only with a valid IRN.

Chapter-2

Charge of Tax

2.1. Introduction

Identification of “charge of tax” is of critical importance in every tax statute as any tax can be levied on any activity or transaction only when charge of tax is attracted as per the charging section of such tax statute.

As per the charging section of GST Acts tax is levied on supplies of services. Thus the taxable event under GST is supply of service instead of provision of service, which was the taxable event under service tax law.

The provisions regarding charge of tax under GST Law are discussed in the succeeding paras.

2.2. Contents of the Chapter

- a) When charge arises. (See Para 2.3)
- b) What is meaning of ‘goods’ and ‘Services’ (See Para 2.4)
- c) Who is liable to pay tax. (See Para 2.5)
- d) Taxable supply, exempt and non-taxable supply. (See Para 2.6)

2.3. When charge arises

Like any other tax law, the charge of tax under GST law is governed by the charging section of the respective GST Act(s).

The charging Section of CGST Act / SGST Act(s) / UTGST Act / IGST Act is discussed in a tabular manner below for ease of understanding of the readers:

Section 9(1) of CGST Act / SGST Act and Section 7(1) of UTGST Act	Section 5(1) of IGST Act	Remarks
Subject to the provisions of sub-	Subject to the provisions of sub-	sub-section (2) is in regard to petroleum products, the taxes

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section (2),	section (2),	on which are not currently subsumed under GST and the GST on which shall be levied on future date as may be notified by the Government upon recommendation of GST Council.
there shall be levied a tax called the central goods and services tax/ state goods and services tax / Union Territory tax	there shall be levied a tax called the integrated goods and services tax.	There are four type of taxes under GST laws namely central tax (CGST), state tax (SGST), Union Territory tax (UTGST) and Integrated taxes (IGST). We have discussed about these taxes in Chapter 1 .
on all intra-State supplies of goods or services or both	on all inter-State supplies of goods or services or both	GST is levied on supply of services. Further CGST and SGST / UTGST in levied in cases of intra-State supplies whereas IGST shall be charged in cases of inter-State supplies. The Discussion on supply, intra-State and inter-State supplies is made at para 2.4 .
except on the supply of alcoholic liquor for human consumption	except on the supply of alcoholic liquor for human consumption	Supply of alcoholic liquor for human consumption will not be exigible to GST and the taxes being levied in pre GST regime continue to be levied on same. It is a non-GST supply.
on the value determined under section 15 of CGST Act	on the value determined under section 15 of CGST Act	The value of a supply is to be determined under Section 15 of CGST Act read with GST Valuation Rules. The provisions regarding Valuation are discussed at Chapter-8 .

Charge of Tax

<p>and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council</p>	<p>and at such rates, not exceeding forty per cent, as may be notified by the Government on the recommendations of the Council</p>	<p>In case of intra-State supply CGST and SGST / UTGST will apply the maximum rate of which is 20% each. Thus maximum tax incidence is 40%. Under inter-State supply, IGST shall be levied wherein the maximum rate of tax is also 40%.</p> <p>There are five slabs of rates of GST for services namely NIL, 5%, 12%, 18% and 28%.</p> <p>The CGST rates applicable on supply of goods are prescribed in Notification No.1/2017-CT (Rate) dated 28-6-2017 (as amended).</p> <p>The CGST rates applicable on supply of services are prescribed in Notification No.11/2017-CT(Rate) dated 28-6-2017 (as amended).</p>
<p>and collected in such manner as may be prescribed</p>	<p>and collected in such manner as may be prescribed</p>	<p>The manner prescribed is detailed in the various Rules which will be discussed in relevant Chapters.</p>
<p>and shall be paid by the taxable person.</p>	<p>and shall be paid by the taxable person.</p>	<p>As per the charging section the GST is required to be paid by the Taxable person. Provisions in this regard are discussed at para 2.7.</p> <p>Taxable person here means a person who is registered or liable to be registered under Section 22 or Section 24 i.e. supplier.</p>

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In view of above charging section of GST Acts it can be said that the charge of tax under GST is on the supply of services. Further the tax can only be levied in cases the services has been supplied in the territory to which the relevant GST Act extends which is referred to as the taxable territory i.e. India.

The place where the service has been supplied shall be determined by applying Section 12 and 13 of IGST Act which governs the determination the place of supply. The provisions regarding place of supply of services are discussed in detail in **Chapter 9**.

Central Tax and State / Union Territory Tax would be levied simultaneously on every transaction of intra-State supply services. Further both taxes shall be levied on the same price or value. Integrated Tax would be levied on every transaction of Inter-State supply services.

The Important terms in regard to charge of tax is discussed in the succeeding paras:

- a) Scope of supply. (See **Para 2.3.1**)
- b) Composite and mixed supplies. (See **Para 2.3.2**)
- c) Meaning of inter-State supply. (See **Para 2.3.3**)
- d) Meaning of intra-State supply. (See **Para 2.3.4**)
- e) Supplies where the location of supplier or place of supply is in territorial waters (See **Para 2.3.5**)

2.3.1 Scope of supply

Taxable event under GST is SUPPLY of goods or services or both. For discussion on meaning and scope of supply please refer to **Chapter 3**.

2.3.3 Meaning of inter-State Supply

Section 7 of the IGST Act contains provisions regarding when a supply would be regarded as inter-State supply.

The provisions in regard to services are discussed in subsequent paras.

- a) Supplies within India (See **Para 2.3.3 a**)
- b) Import of services (See **Para 2.3.3 b**)
- c) When supplier is located in India and place of supply is outside India

(See **Para 2.3.3 c**)

- d) Supply of services to or by a SEZ developer or a SEZ unit (See **Para 2.3.3 d**)

2.3.3 a. Supplies within India

Section 7 (3) of the IGST Act provides that subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

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

Example: An architect located in New Delhi provides services in regard to an immovable property located in Mumbai. In this case the location of the supplier is Delhi whereas the place of supply is Mumbai i.e. State of Maharashtra. Thus it is a case of supply of services where the location of supplier and the place of supply are in a State and Union territory and it would be regarded as inter- State supply of services and would be subjected to Integrated Tax (IGST).

For discussion on the place of supply kindly refer to **Chapter 9** .

2.3.3 b. Import of Services

Section 7(4) of IGST Act provides that supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce. In such cases the location of supplier of service is located outside India and place of supply is in India. Import of services would be subjected to IGST which is to be paid by the recipient of service under reverse charge mechanism.

2.3.3 c. When supplier is located in India and place of supply is outside India

As per Section 7(5)(a) of the IGST Act supply of services when a supplier is located in India and place of supply is outside India is treated to be a supply of services in the course of inter-State trade or commerce and thus would be

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subject to payment of IGST. However in cases where such supply satisfies the conditions stipulated in Section 2(6) of IGST Act it would be regarded as export of services and will be a zero-rated supply under Section 16(1) of IGST Act.

In this regard it is important to understand the three terms namely “supplier is located in India”, “place of supply is outside India” and “India” which are discussed below:

(i) Supplier is located in India

In light of Section 2(15) of IGST Act the supplier of service shall be regarded as located in India in the following cases-

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

For the meaning of terms ‘place of business’, ‘fixed establishment’ and ‘usual place of residence’ please refer to **Chapter 9**.

(ii) Place of supply is outside India

The place of supply will be determined as per provisions mandated in Section 12 and 13 of IGST Act. For detailed discussion on the same kindly refer to **Chapter 9**.

(iii) India

The term “India” has been defined in Section 2(56) of CGST Act as follows:

(56) “India” means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental

Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;

2.3.3 d. Supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

As per Section 7(5)(b) of the IGST Act supply of services to or by a Special Economic Zone Developer or a Special Economic Zone Unit is treated to be a supply of services in the course of inter-State trade or commerce. It may be noted here that supply of services to / by SEZ Unit / Developer will always be regarded as inter-State supply irrespective of the location of such SEZ Unit / Developer and place of supply.

Thus in cases where SEZ Unit / Developer is providing / receiving services in/ from the same State / Union territory then also it will be regarded as inter-State supply and in such cases it not required that the location of supplier and place of supply of service should be in different State / Union territory. In this regard to reinforce the above, Proviso of Section 8 (2) mandates that intra- State supplies shall not include supply of services to or by a SEZ Developer or SEZ Unit.

2.3.4 Meaning of intra-State Supply

Section 8 of the IGST Act contains provisions regarding when a supply would be regarded as intra-State supply. The provisions in regard to services are discussed in subsequent paras.

- a) Supplies within same State / Union territory (See **Para 2.3.4 a**)
- b) Supply of services to or by a SEZ developer or a SEZ unit (See **Para 2.3.4 b**)

2.3.4 a Supplies within same State / Union Territory

Section 8 (2) of IGST Act provides that subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in the same State or same Union Territory shall be treated as intra-State supply.

Example: A Chartered Accountant located in New Delhi provides audit services whose place of supply is in New Delhi. In this case as the location of the supplier and place of supply is in same Union Territory i.e. Delhi.

Accordingly it would be regarded as intra- State supply of services and would be subjected to Central tax (CGST) and State tax (SGST).

2.3.4 b. Supply of services to or by a Special Economic Zone Developer or a Special Economic Zone Unit.

As per proviso to section 8(2) of IGST Act the intra- State supplies shall not include supply of services to or by a SEZ Developer or SEZ Unit. Thus even if such supplies are made within a State or Union Territory they will be regarded as inter-State supply. We have already discussed this aspect at **para 2.3.2 d.**

2.3.5 Supplies where the location of supplier or place of supply is in territorial waters

Section 9 of IGST Act provides that 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.

Thus if any supply of service is made in the territorial water, nearest point of the appropriate base line will decide the State where the supplier is located or where there is place of supply of such service.

Example: Service of inspection of any vessel is provided in the sea nearby Vishakapatnam. In this case the place of supply will be considered as Andhra Pradesh. In case the location of supplier is also in Andhra Pradesh, it would be regarded as intra-State supply and Central tax and State tax will be applicable. If in the instant case the supplier is located outside Andhra Pradesh it would be regarded as inter-State supply and integrated tax would be levied on such supply.

2.3.6 Practical example of taxes levied on inter and intra-State supplies

The practical application of levy of taxes under GST is illustrated as under:-

Charge of Tax

Supply of	Location of Supplier	Place of Supply	Type of supply (Tax levied)
Goods / Services	Pondicherry	Kerala	Inter-State (Integrated tax)
Goods / Services	Chandigarh*	Chandigarh*	Intra-State/UT (Central tax + Union Territory tax)
Goods / Services	Chandigarh*	Punjab	Inter-State (Integrated tax)
Goods / Services	Punjab	Chandigarh*	Inter-State (Integrated tax)
Goods / Services	Delhi**	Delhi**	Intra-State (Central tax + State tax)
Goods / Services	Rajasthan	Rajasthan	Intra-State (Central tax + State tax)
Goods / Services	Andaman and Nicobar island	Chandigarh	Inter-State (Integrated tax)

Notes

*Chandigarh is a UT without Legislature: UTGST Act shall prevail in case of intra State supplies;

**As per Section 2(103) of CGST Act the term "State" includes a Union Territory (UT) with Legislature (Of the 8 UTs, Delhi, Pondicherry and Ladakh are the only 3 UTs with Legislature).

2.4 What is meaning of Goods and Services

GST is levied on supply of goods or services. For meaning of 'goods' and 'services' please refer to **Chapter 3**.

2.5 Who is liable to pay tax

As per the GST Acts generally the supplier referred to as "taxable person" is liable to pay tax. However in certain cases the tax is required to be paid by the recipient under reverse charge mechanism. Further in case of notified services supplied through electronic commerce operators the person liable to pay tax would be such electronic commerce operator.

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The above provisions are discussed in the succeeding paras:

- a) Taxable person is liable to pay tax : **Para 2.5.1**
- b) Recipient is liable to pay tax in certain cases: **Para 2.5.2**
- c) Electronic commerce operator to be person liable to pay tax: **Para 2.5.3**

2.5.1 Taxable person is liable to pay tax:

As per the charging Sections of GST Acts the applicable tax i.e. CGST, SGST, UTGST or IGST as the case may be, shall be paid by the taxable person.

As per Section 2(107) of CGST Act “taxable person” means a person who is registered or liable to be registered under Section 22 or Section 24;

As per the provisions of Section 22(1) it is stipulated that a person is liable to take registration if the aggregate turnover exceeds Rs 20 lakhs (Rs 10 Lakhs in case of special category States) in a financial year. Accordingly any person whose aggregate turnover is below said threshold exemption limit is not required to take registration and therefore would not be covered under the ambit of definition of a ‘taxable person’ and thus would also not be required to pay tax.

However the persons covered under section 24 viz persons engaged in inter-State supply, persons required to pay GST under reverse charge etc are mandatorily required to obtain registration and thus would be regarded as taxable person and will be liable to pay tax irrespective of their turnover.

For detailed discussion in regard to threshold exemption and aggregate turnover please refer to **Chapter 13**.

2.5.2 Recipient is liable to pay tax in certain cases

As per Section 9(3) of the CGST / SGST Acts, Section 5(3) of IGST Act and Section 7(3) of UTGST Act, tax is required to be paid on reverse charge basis in respect of goods / services which have been notified by the Government by the recipient of such goods / services.

Further as per Section 9(4) of the CGST / SGST Acts, Section 5(4) of IGST Act and Section 7(4) of UTGST Act, tax in respect of supply of specified categories of goods / services by a unregistered supplier, to specified class of registered person shall be paid by such person as recipient on reverse charge basis.

For detailed discussion in regard to payment of tax under reverse charge along with the list of goods and services covered under reverse charge please refer **Chapter- 6**.

2.5.3 Electronic commerce operator to be person liable to pay tax

Section 9(5) of CGST / SGST Act provides that the Government may by notification specify categories of services the tax on supplies of which shall be paid by the electronic commerce operator if such services are supplied through it and it shall be regarded as person liable to pay tax.

In this regard three services have been notified.

Provisions in this regard are discussed in **Chapter 11**. The same may be referred to.

Meaning and Scope of Supply

3.1 Introduction

Goods and services tax is levied on 'supply' and therefore the taxable event under GST is 'supply'. In case any transaction or activity is not supply, GST will not be applicable on such a transaction / activity.

The provisions in regard to meaning and scope of supply as mandated under GST law are discussed in the succeeding paras.

3.2 Meaning of supply

The term supply has been defined under Section 7 of CGST Act/ SGST Acts. There are three sub-sections in Section 7 and six clauses and three Schedules to CGST Act / SGST Acts viz Schedule I, II and III, each of which will be discussed below. It is important to note here that these provisions are also applicable to IGST Act and UTGST Act.

Sl. No	Section	Description
1.	7(1)(a)	All forms of supply of goods or services made or agreed to be made for a consideration by a person in the course or furtherance of business.
2.	7(1)(b)	Import of services for a consideration whether or not in course or furtherance of business
3.	7(1)(c)	The Activities specified in Schedule I, made or agreed to be made without a consideration.
4.	7(1)(A)	Activities which qualify as supply, to be treated as supply of goods or services as referred to in Schedule -II
5.	7(2)(a)	Activities or transactions specified in Schedule III shall not be treated as supply of services.
6.	7(2)(b)	Notified activities / transactions undertaken by Government / local authority as public authorities shall not be treated as supply of goods / services.

7.	7(3)	Government may notify transactions that are treated as supply of goods/ services and not supply of services / goods.
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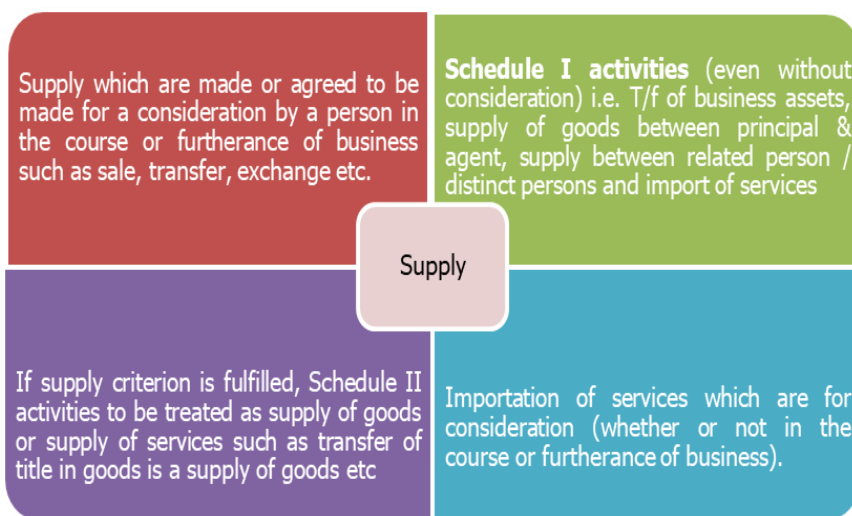
The above Sections are discussed in succeeding paras along with the concept of composite supply and mixed supply.

3.2.1 Scope of supply

Taxable event under GST law is SUPPLY. Meaning and scope of supply taxable under GST can be understood in terms of following parameters, which serve as litmus test for any transaction / activity to be regarded as supply:

- In order to be a supply there should be two persons in transaction viz supplier and a recipient.
- Supply should be of goods or services.
- Supply should be made for a consideration (4 situations given in Schedule I is an exception).
- Supply of goods or services or both between related persons or between distinct persons as specified in section 25 and other activities / transactions as listed in Schedule I, will qualify as supply even if without consideration, provided it is made in the course or furtherance of business. *(This is new law under GST regime as under erstwhile indirect tax regime, transactions without consideration were not subject to tax).*
- Supply should be made in the course or furtherance of business. (Import of services is an exception)
- Supply should be made by a taxable person (person who is GST registered or is liable for GST Registration).
- Supply should be a taxable supply.

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Section 7(1)(a)	Section 7(1)(b)	Section 7(1)(c)	Section 7(1)(A)
<p>All forms of supply of goods and / or services, made or agreed to be made,</p> <ul style="list-style-type: none"> - for a consideration - in the course or furtherance of business <p>such as:</p> <ul style="list-style-type: none"> - sale, - transfer, - barter, - exchange, - license, - rental, - lease or - disposal 	<p>Importation of service,</p> <ul style="list-style-type: none"> - for a consideration - whether or not in the course or furtherance of business 	<p>Supplies specified*</p> <ul style="list-style-type: none"> - To be treated as supplies <i>made without a consideration</i> <p>*Schedule I:</p> <ol style="list-style-type: none"> 1. Permanent transfer / disposal of business assets for which ITC is availed 2. Supplies between related persons/ distinct persons in the course or furtherance of business (gifts of less than Rs. 	<p>Where certain activities or transactions constitute supply, they shall be treated as supply of goods or supply of services – Sch II</p> <hr/> <p>Section 7(2) - Activities not be considered as supply:</p> <p>Specified in Sch-III</p> <p>such activities or transactions undertaken by the Central</p>

Meaning and Scope of Supply

		<p>50,000 in value in a FY by employer to employee not to be treated as supply)</p> <p>3. Supply of goods by / to principal to / by agent</p> <p>where agent undertakes to supply / receive such goods on behalf of principal</p> <p>4. Importation of service from a person or from any of his other establishments outside India, in the course or furtherance of business.</p>	<p>Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendation s of the Council,</p> <hr/> <p>Section 7(3)</p> <p>By Notification on recommendation of GST Council treat activity as Supply of goods and not service</p> <p>Supply of service and not Goods</p>
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3.2.1-a. For a supply there should be supply by one person to another person viz a supplier and a recipient.

For treating a transaction / activity as supply, there should be at least two persons viz a supplier and a recipient of such supply. However this is subject to certain exceptions viz supply between deemed distinct persons which through part of same organization (same PAN) but treated as distinct entities under GST law.

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(i) Meaning of person

As per Section 2(84) of CGST Act / SGST Acts “person” includes—

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

It is important to note here that the term “Central Government or State Government” as stated above in Clause (k) will include the Council Ministers of Central Government and State Governments and also include its Departments viz Department of Revenue, Department of Economic Affairs, RTO etc. However it may be noted that the public sector undertakings / Government companies would not be covered under the term Government.

Further the residual clause is (e) which includes every artificial juridical person, not falling within any of the above. Example: Liquidator appointed by Court who is charging fee for the entire process.

(ii) Meaning of supplier

Section 2(105) of the CGST Act provides that “supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

(iii) Meaning of recipient

Section 2(93) of the CGST Act provides that “recipient” of supply of goods or services or both means—

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

3.2.1-b. Supply should be for a consideration

GST is a advaloram tax and is payable on the value of supply of service which is referred to as transaction value under GST law. Generally the consideration received by the supplier would be regarded as the transaction value. Section 2(31) of the CGST provides that “consideration” in relation to the supply of goods or services or both includes—

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

Further the Proviso to Section 2(31) mandates that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

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In order to understand the above definition let us break it into the following components and analyse each of them:

1. Payment made or to be made whether in money or otherwise
2. The Monetary value of any act or forbearance
3. In respect of, in response to, or for the inducement of, the supply of goods or services or both
4. Whether by the recipient or by any other person.
5. Shall not include any subsidy given by the Central Government or a State Government;
6. Deposit given in respect of the supply of services shall be included only if supplier applies such deposit as consideration for the said supply.

1. Payment made or to be made whether in money or otherwise

This means that the consideration includes any payment made in money i.e. monetary consideration and otherwise i.e. non- monetary consideration.

Monetary consideration means any consideration received in the form of money.

Non-monetary consideration essentially means compensation in kind such as the following:

- Supply of goods or services in return for supply of services.
- Doing or agreeing to do an act in return for supply of service.

Example: If A agrees to dry clean B's clothes and in return B agrees to click A's photograph. In such a case non-monetary consideration is flowing and thus both the services will be regarded as supply.

2. The monetary value of any act or forbearance

The act or forbearance basically refers to the non-monetary consideration and will be included within the term consideration. Forbear means to abstain or to desist from. It means foregoing one's legal right or claim.

Example: If A agrees to design B's house and in return B agrees not to object to construction of A's house in his neighborhood. Here the forbearance on part of B to not to object construction of A's house will be a non-monetary consideration provided by B to A.

3. In respect of, in response to, or for the inducement of, the supply of services

This means that any amount payable by the recipient should be in response to, or for inducement of, the supply of services i.e. the consideration should have a nexus with the supply of the service. Thus if the recipient of supply has the obligation to pay an amount to the supplier or to a third person under the contract of supply, the same will be considered as consideration for the supply received by him.

Example: Mr X supplies certain services to Mr Y for Rs 25,000/- with a condition that Mr Y will gift an amount of Rs 10,000/- to wife of Mr X. In this case the amount of Rs 10,000/- paid by Mr Y to wife of Mr X is y reason of supply of services. Therefore Rs 35,000/-(Rs 25,000 plus Rs 10,000) will be considered as consideration for supply of services in hands of Mr X.

4. Whether by the recipient or by any other person

The consideration need not be paid by recipient only and can be also be paid by any other person.

Example: In case of service of a vehicle during warranty, the service is provided by the authorized dealer to the owner of the vehicle, but payment is made to the authorized dealer by the vehicle manufacturer. Such amount would be regarded as consideration and thus is chargeable to tax.

5. Shall not include any subsidy given by the Central Government or a State Government.

Any subsidy if any given by the Central Government or State Government will not be regarded as consideration.

Example: Subsidy received by the fertilizer companies from Government to sell fertilizers at subsidized rates. In such a case such subsidy will not be regarded as consideration for supply.

However in case any subsidy is received from any person other Government then it shall be included in consideration if it is in connection for such supply.

Example: X Limited supplied certain services to B Limited for Rs 1 lakh. Against such supply B Ltd apart from paying Rs 1 lakh had also paid Rs 2 lakh as subsidy to X Ltd. In this case the amount of Rs 2 lakhs of subsidy will also be included in consideration and thus the total consideration for the said supply of services would be Rs 3 lakhs.

6. Deposit given in respect of the supply of services shall be included only if supplier applies such deposit as consideration for the said supply

deposit given in respect of the supply of services shall be included only if supplier applies such deposit as consideration for the said supply i.e. the amount of deposit is adjusted against supply. The Deposit here also includes the security deposits as well.

Further here the accounting entries passed in the books would be relevant to decide whether the amount is adjusted against supply or not. In case the deposit is shown separately as liability in the books of the supplier it would not be considered as part of the consideration. However in case such a deposit is depicted as an income and has the connection / nexus with such supply, it would be included in the consideration.

3.2.1-c. Supply should be in the course or furtherance of business

As per Sec 7(1)(a) of the CGST Act only the supplies made in course or furtherance of business will be regarded as supply.

Section 2(17) of CGST Act / SGST Acts provides that “business” includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has

been accepted by him in the course or furtherance of his trade, profession or vocation;

- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

In order to understand what is meant by in the course or furtherance of business we may refer to the Q No 9 of FAQs on GST as issued by CBEC on 31/03/2017 which is reproduced below:

What do you mean by “supply made in the course or furtherance of business”?

Ans. “Business” is defined under Section 2(17) include any trade, commerce, manufacture, profession, vocation etc. whether or not undertaken for a pecuniary benefit. Business also includes any activity or transaction which is incidental or ancillary to the aforementioned listed activities. In addition, any activity undertaken by the Central Govt. or a State Govt. or any local authority in which they are engaged as public authority shall also be construed as business. From the above, it may be noted that any activity undertaken included in the definition for furtherance or promoting of a business could constitute a supply under GST law.

3.2.1-d Import of services for a consideration whether or not in course or furtherance of business

As per Section 7(1)(b) of CGST Act / SGST Acts, import of services for a consideration whether or not in course or furtherance of business is included within the ambit of supply.

In order to understand the above we need to analyse the following:

- (a) Import of services
- (b) For a consideration (refer Para **3.2.1-b**)
- (c) Whether or not in the course of furtherance of business

(a) Import of services

As per Section 2(11) of IGST Act “import of services” means the supply of any service, where—

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

The supplier of service is located outside India

One of the criterion for determining import of service is that the supplier of service should be located outside India.

In light of Section 2(15) of IGST Act the supplier of service shall be regarded as located outside India in following cases-

- (a) The place of business from where a supply is made is outside India.
- (b) Where a supply is made from a place other than the place of business (a fixed establishment elsewhere), and such fixed establishment is located outside India;
- (c) Where a supply is made from more than one establishment, whether the place of business or fixed establishment, and the location of the establishment most directly concerned with the provision of the supply is outside India.
- (d) In absence of such places, the usual place of residence of the supplier is outside India.

The recipient of service is located in India

In view of provisions mandated in Section 2(14) of IGST Act the recipient of service shall be regarded as located in India in following cases-

- (a) where a supply is received at a place of business in India for which the registration has been obtained.
- (b) where a supply is received at a place other than the place of business for which registration has been obtained i.e. a fixed establishment elsewhere located in India.
- (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 is located in India.
- (d) in absence of such places, the usual place of residence of the recipient is located in India.

The place of supply of service is in India

The principles for determining the place of supply of services are contained in Section 12 and 13 of IGST Act. Section 12 is applicable in cases where the location of supplier and recipient is in India whereas Section 13 will be operative in situations where the location of supplier or location of recipient is outside India. Accordingly for determining whether a supply of service is an import or not we will have to apply Section 13 of IGST Act.

(c) Whether or not in the course or furtherance of business

We have already discussed about what does we mean by “in course or furtherance of business” at Para **3.2.1-c** We had seen that as per Section 7(1)(a) only the supplies, which are made in the course or furtherance of business are regarded as supply. But in complete contrast under Sec 7(1)(b) all import of services would be regarded as supplies irrespective of fact that such import is in course or furtherance of business or not. Thus even personal import of services would be regarded as supply and in such cases the recipient will be required to pay tax under reverse charge and to adhere to other GST compliances.

3.2.1-e Transaction with related persons and deemed distinct persons treated as supply even if without consideration:

As per Schedule I supplies between related persons / distinct persons will be regarded as supply, even if the supply without any consideration. Therefore it is important to know the meaning of related persons and distinct persons is under GST law.

(a) Meaning of Related Persons:

Explanation to Section 15 of the CGST Act stipulates that persons (including legal persons) shall be deemed to be “related persons” if—

- such persons are officers or directors of one another’s businesses;
- such persons are legally recognized partners in business;
- such persons are employer and employee;
- 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;

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- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person; or
- they are members of the same family.
- Sole agent or sole distributor or sole concessionaire.

Gift to employees

Employees being the related person any supply of goods or services or both to such employee even without consideration if made in furtherance of business would be regarded as supply. However it has been provided at Sl. No 2 of Schedule I of CGST Act that gifts (involuntary payments) not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

The words used here are gifts by an employer to an employee and not employees and thus it can be said that this limit is a per employee limit and gifts to an employee in excess of Rs 50,000/- in value in a financial year would be regarded as supply by employer to employee and tax will be levied on such supply.

Payments / facilities provided to employees which are part of CTC and as per employment terms are not gifts and thus not subject to GST.

Supply of service by HO or one branch / division to another is taxable

It has been held by **Maharashtra AAR in case of Cummins India Ltd** that supply of service by one branch / division to another will be subject to GST, if there are distinct GST registration numbers. In such case valuation will be as per Rule 30 of the CGST Rules i.e. 110% of cost.

Service supplied by establishment of a person in India to own establishment out of India exempt- Service supplied by establishment of a person in India to own establishment out of India is exempt, if place of India is out of India- Sr No. 10E of Notification No. 9/2017-IT(Rate) dated 28-6-2017 as inserted w.e.f. 27-7-2018.

Free samples – Free samples to unrelated persons will not be subject to GST but input tax credit will have to be reversed. However, free samples given to related persons will be subject to GST (and then ITC will be available)- Para A of CBIC Circular No. 92/11/2019-GST dated 7-3-2019.

(b) Meaning of distinct persons

Further, Following are deemed distinct persons

**(i) Deemed Distinct Persons in Case of Multiple Registrations-
Section 25(4)**

A person who has either already obtained or is required to obtain more than one registration under this Act shall be treated as distinct persons in respect of each such registration. It is immaterial whether the aforesaid multiple registrations have been obtained or are required to be obtained in one State or more than one State.

Example- Mr. Ravi is engaged in supply of professional services as Chartered Accountant. He has obtained a registration in the State of West Bengal in respect of his head office. In addition, he has obtained registration in the State of Delhi in respect of his branch.

In the above case, in respect of each registration at West Bengal and Delhi, Mr. Ravi shall be treated as distinct person.

**(ii) Deemed Establishments of Distinct Persons in case of Multiple
Registration in Different States –Section 25(5)**

An establishment of a person who has either obtained or is required to obtain registration in a State and any of his other establishments in another State shall be treated as establishment of distinct persons for the purposes of this Act.

Example -Raj Ltd. is engaged in supply of specified goods. It has obtained a Registration in the State of Haryana in respect of its head office. In addition, it has obtained registration in the State of Punjab in respect of its branch located at Jalandhar.

In the above case, the establishment in Haryana and establishment in Punjab shall be treated as establishments of distinct persons.

3.2.1-f. Where certain activities or transactions constitute supply, the following supplies shall be treated as supply of goods or supply of services:

Schedule II	Supply of
Transfer	
Transfer of the title in goods	Goods
Transfer of right in goods or of undivided share in goods without the transfer of title thereof	Services
Transfer of title in goods under an agreement which stipulates that property in Goods shall pass at a future date upon payment of full consideration as agreed	Goods
Land and Building	
Any lease, tenancy, easement, licence to occupy land	Services
Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly,	Services
Treatment or process	
Any treatment or process which is applied to another person's goods	Services.
Transfer of business assets	
Goods forming part of business assets are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets	Goods
Goods held/used for business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, by/under directions of person carrying on the business	Services
Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless— (i) the business is transferred as a going concern to another person; or	Goods

Meaning and Scope of Supply

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.	
Supply of services	
Renting of immovable property	Services
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.	
Temporary transfer or permitting the use or enjoyment of any intellectual property right	
Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software	
Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act	
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 supply	
Works contract (“ works contract ” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract)	Services
Supply, by way of or as part of any service or in any other manner whatsoever, of Goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for Cash, deferred payment or other valuable consideration.	

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Supply of Goods	
Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	Goods

It may be noted that above activities are by itself not regarded as supply, rather they should qualify as supply under Section 7(1) of the CGST Act, 2017 and thereafter only the above Schedule shall come into play. In case any activity is not a supply as per Section 7(1), this Schedule will not apply.

3.2.1-f Activities or transactions which shall be treated neither as a supply of goods nor a supply of services (Schedule-III):

1. Services by an employee to the employer in the course of or in relation to his Employment.
2. Services by any court (includes District Court, High Court and Supreme Court) or Tribunal established under any law for the time being in force.
3. (a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) The duties performed by any person who holds any post in pursuance of the Provisions of the Constitution in that capacity; or
(c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the Deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods* to any person before clearance for home consumption;
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

**Warehoused goods shall have the same meaning as assigned to it in the Customs Act, 1962.*

3.3. Composite and Mixed Supplies

As GST is a tax on supply of goods or services or both thus when supply consists of two or more items (of either goods or services or both), which are supplied together, concept of Composite and mixed supplies comes into picture.

3.3.1 Meaning of Composite Supply [Sec 2(30)] under GST

A composite supply would mean a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, **which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply:**

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

Principal supply [Sec 2(90) of the CGST Act] means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

3.3.1-a How to determine whether a supply is naturally bundled

As per the definition, any combination supply can be regarded as composite supply, in cases where the goods or services are naturally bundled. Now the question arises as to how to determine whether a supply is naturally bundled or not.

In this regard we can take guidance from Para no 9.2.4 of the Education Guide (Service Tax) of CBEC which provides that the following factors may be considered in determining if the services are bundled in the ordinary course of business i.e. naturally bundled:-

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

- (i) The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.
- (ii) Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- (iii) The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service of laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are :-

There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.

- The elements are normally advertised as a package.
- The different elements are not available separately.
- The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

3.3.2 Meaning of Mixed Supply [Sec 2(74)] under GST

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

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

3.3.3 Taxation of Composite and Mixed Supply

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

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

3.3.3-a Time of supply in case of composite supply

If the composite supply involves supply of services as principal supply, such

composite supply would qualify as supply of services and accordingly the provisions relating to time of supply of services would be applicable. Alternatively, if composite supply involves supply of goods as principal supply, such composite supply would qualify as supply of goods and accordingly, the provisions relating to time of supply of goods would be applicable.

3.3.3-b Time of supply in case of mixed supplies

The mixed supply, involving supply of a service liable to tax at higher rates than any other constituent supplies, would qualify as supply of services and accordingly the provisions relating to time of supply of services would be applicable. Alternatively, the mixed supply, involving supply of goods liable to tax at higher rates than any other constituent supplies, would qualify as supply of goods and accordingly the provisions relating to time of supply of services would be applicable.

Note-

As per Section 7(1A) of the CGST Act, 2017 read with Para 6 of the Schedule II of said Act, two types of composite supplies are be treated as a supply of services. Thus in such cases we are not required to identify principal supply. Rather in such cases the legislature has itself treated such composite supplies as supply of services. These instances are work contract services and restaurant / outdoor catering.

Meaning of Goods and Services

4.1 Introduction

As discussed in earlier Chapters that GST is levied on supply of goods or services or both, it is important to know what exactly are goods or services under GST law. In case a transaction of activity does not involve goods or services, it cannot be subjected to GST.

4.2 Meaning of Goods

In terms of Section 2 (52) of the CGST Act “Goods” means *every kind of movable property other than money and securities but includes actionable claims, growing crops, grass and other things attached to or forming part of land which are agreed to be severed before supply or under a contract of supply.*

The definition of goods has essentially been borrowed from Sale of Goods Act, 1930 with two major variations i.e. actionable claims are included in the definition and securities have been excluded.

Although under GST Law tax is levied on goods or services or both but still the classification of an activity / transaction as good or service is of utmost importance as there are separate rules for determination of time of supply and place of supply for goods and services.

4.2.1 What are actionable claims?

As per section 3 of the Transfer of Property Act, 1893 actionable claims means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent. Illustrations of actionable claims are –

- Unsecured debts
- Right to participate in the draw to be held in a lottery.

4.3 Meaning of Services

In terms of Section 2(102) of the CGST Act “Services” means anything other than goods, money and securities but includes *activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.*

The words used in the definition are “anything other than goods, money and securities” and thus it can be said that the term services has been defined in a residual manner. This definition is too wide and virtually sky is the limit for the Government to levy tax on services.

It may be noted here that even the immoveable property has not been excluded from the definition of service which was specifically excluded from the definition of service as provided in Section 65B(44) of Finance Act, 1994. However in order to obviate any dispute in this regard the Sale of land and completed building is not regarded as supply as per Schedule III of CGST Act.

4.4 Meaning of money

As per Section 2 (75) of CGST Act “money” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

As the transaction in money is excluded from the definition of goods as well as services they will not be exigible to GST.

Examples of transactions in money are:

- The principal amount of deposits in or withdrawals from a bank account.
- Advancing or repayment of principal sum on loan to someone.
- Conversion of Rs 1,000 currency note into one rupee coins to the extent amount is received in money form.

4.5 Meaning of securities

Securities have been defined in Section 2(101) of the CGST Act as having the same meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 Of 1956) in terms of which 'securities' includes –

- Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.
- Derivative.
- Security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- Units or any other such instrument issued to the investors under any mutual fund scheme.
- Any certificate or instrument (by whichever name called), issued to any investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
- Government securities;
- Such other instruments as may be declared by the Central Government to be securities.
- Rights or interest in securities.

As the definition of services as well as goods under GST Law excludes securities, activities that are in the nature of only transfer of title by way of sale, redemption, purchase or acquisition of securities on principal-to-principal basis, excluding services of dealers, brokers or agents in relation to such transactions, are outside the ambit of 'services. However activities which are not in the nature of transfer of title in securities (for example a person agreeing not to exercise his right in a security for a given period of time for a consideration) would be regarded as a 'service.

4.6 Components of goods and services: At a glance

The components of goods and services as per aforesaid definitions at a glance is given below:

Particulars	Whether Goods?	Whether Services?
Every kind of movable property	Yes	No
Growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or contract of supply	Yes	No
Anything other than goods	No	Yes
Money	No	No
Activity relating to use / conversion of money for which a separate consideration is charged	No	Yes
Actionable Claims*	Yes	No
Securities	No	No

*Actionable claims other than lottery, betting and gambling is not treated as supply as per Para 6 of Schedule –III of the CGST Act, 2017. Thus only lottery, betting and gambling is subject to GST. Other actionable claims are not subject to GST. Examples of such actionable claims are insurance policy, claims for arrear of rent, unsecured loans.

Exempt Supplies

5.1 Introduction

The Central Government / State Government has the power to grant exemption from tax under Section 11 of CGST Act /SGST Act, Section 6 of IGST Act and Section 8 of UTGST Act. Each of the said Sections have three sub-sections which we shall discuss in this Chapter.

5.2 Meaning of Exempt supply

As per Section 2 (47) of CGST / SGST Act exempt supply means supply of goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under Section 11, or under Section 6 of the IGST Act, and includes non-taxable supply.

Thus exempt supply is a wide term and includes non-taxable supply.

As per Section 2(78) of CGST / SGST Act “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the IGST Act. Examples of non-taxable are the five petroleum products and alcoholic liquor which are kept outside ambit of GST.

5.3 Exemption in Public Interest by Notification – Section 11(1)

The Central Government may exempt goods and/or services of any specified description from the tax leviable thereon. However, following cumulative conditions need to be satisfied:

- (a) Exemption is to be granted in public interest only;
- (b) Exemption is to be granted on the recommendation of the GST Council;
- (c) Exemption is to be granted by a Notification in the Official Gazette;
- (d) Exemption to be granted either absolutely [i.e. without any condition] or subject to specified conditions;
- (e) Exemption can be from the whole or any part of the tax leviable thereon; and

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- (f) The effective date of exemption may either be from the date of issue of notification or any date subsequent thereto as may be specified in the relevant Notification.

5.3.1 Absolute i.e. unconditional exemption (wholly or partly) is compulsory

In terms of Explanation to Section 11(3) of the CGST / SGST Act, 2017, 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.

There is an identical provision in Explanation to Section 6 of IGST Act.

Thus, in case of unconditional exemption, the supplier cannot pay GST on such goods or services in excess of effective rate of GST. Thus availing of absolute exemption is not optional.

5.3.2 Notifications issued for Exemption pursuant to under Section 11(1)/6(1)

The Notification exempts intra/inter State supplies of goods/services from whole GST, unconditionally.

Nature of Supply	Goods/Service	Notification No
Intra-State Supplies of	Goods	Notification No. 02/2017-Central Tax (Rate), dt. 28-06-2017 as amended from time to time (under CGST Act) and similar Notifications issued under UTGST Act and SGST Act(s) of respective States.
	Services	Notification No. 12/2017-Central Tax (Rate), dt. 28-06-2017, as amended from time to time (Under IGST Act) and similar Notifications issued under UTGST Act and SGST Act(s) of respective States.
Inter-State	Goods	Notification No. 02/2017-Integrated

Exempt Supplies

Supplies of		Tax (Rate), dt. 28-06-2017 as amended from time to time.
	Services	Notification No. 09/2017-Integrated Tax (Rate), dt. 28-06-2017 as amended from time to time.

5.3.3 Brief List of exempt goods

Although The exemption list is long and you need to refer to the exemption Notification. However just for reference of our readers a list of some of the goods which have been exempted from levy of GST is given below:

Types of goods	Examples
Live animals	Asses, cows, sheep, goat, poultry, etc.
Meat	Fresh and frozen meat of sheep, cows, goats, pigs, horses, etc.
Fish	Fresh or frozen fish
Natural products	Honey, fresh and pasteurized milk, cheese, eggs, etc.
Live trees and plants	Bulbs, roots, flowers, foliage, etc.
Vegetables	Tomatoes, potatoes, onions, etc.
Fruits	Bananas, grapes, apples, etc.
Dry fruits	Cashew nuts, walnuts, etc.
Tea, coffee and spices	Coffee beans, tea leaves, turmeric, ginger, etc.
Grains	Wheat, rice, oats, barley, etc.
Products of the milling industry	Flours of different types
Seeds	Flower seeds, oilseeds, cereal husks, etc.
Sugar	Sugar, jaggery, etc.
Water	Mineral water, tender coconut water, etc.
Baked goods	Bread, pizza base, puffed rice, etc.
Fossil fuels	Electrical energy

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Drugs and pharmaceuticals	Human blood, contraceptives, etc.
Fertilizers	Goods and organic manure
Beauty products	Bindi, kajal, Kumkum, etc.
Waste	Sewage sludge, municipal waste, etc.
Ornaments	Plastic and glass bangles etc.
Newsprint	Judicial stamp paper, envelopes, rupee notes, etc.
Printed items	Printed books, newspapers, maps, etc.
Fabrics	Raw silk, silkworm cocoon, khadi, etc.
Hand tools	Spade, hammer, etc.
Pottery	Earthen pots, clay lamps, etc.

5.3.4 Brief List of exempt services

The exemption list for services also is long and you need to refer to the exemption Notification. However just for reference of our readers a list of some of the services which have been exempted from levy of GST is given below:

List of some of the GST exempted services are as follows:

Types of services	Examples
Agricultural services	Cultivation, supplying farm labour, harvesting, warehouse related activities, renting or leading agricultural machinery, services provided by a commission agent or the Agricultural Produce Marketing Committee or Board for buying or selling agriculture produce, etc.
Government services	Postal service, transportation of people or goods, services by a foreign diplomat in India, services offered by the Reserve Bank of India, services offered to diplomats, etc.
Financial Services	Interest or discount of loan, advances and deposit.
Transportation services	Transportation of goods by road, rail, water, etc., payment of toll, transportation of passengers by air,

	transportation of goods where the cost of transport is less than prescribed amount.
Legal services	Services offered by an arbitral tribunal, a partnership firm of advocates, individual advocates to an individual or business entity whose aggregate turnover is below threshold exemption limit for purpose of GST registration.
Educational services	Transportation of faculty or students, mid-day meal scheme, examination services, services offered by IIMs, etc.
Health care services	Services offered by ambulance, charities, veterinary doctors, medical professionals, etc.
Organizational services	Services offered by exhibition organisers for international business exhibitions, tour operators for foreign tourists, etc.
Other services	Services offered by GSTN to the Central or State Government or Union Territories, admission fee payable to theatres, circuses, sports events, etc. which charge a fee up to Rs. 500

For complete list of exemptions the readers are requested to refer to the exemption Notifications as referred to in Para 3.3.2.

5.3.4 a Services specifically exempted only under IGST exemption Notification

It may be noted here that the goods / services as exempted by CGST / SGST Notifications are similar to that exempted under IGST Notifications. However some services which in all cases be regarded as inter-State supplies have additionally been exempted under the IGST exemption Notification considering such supplies are in course of inter-State supplies and thus cannot be subject to CGST + SGST.

For ready reference of the readers the services which are exempted only under IGST exemption Notification viz Notification No. 9/2017 IT (R) dated 28.06.2017 are as under:

- 1) Services received from a provider of service located in a non- taxable territory by –

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- (a) the Central Government, State Government, Union territory, a local authority, a Governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
- (b) an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities; or
- (c) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of-
 - (i) pre-school education and education up to higher secondary school or equivalent; or
 - (ii) education as a part of an approved vocational education course;
- (d) a person located in a non-taxable territory.

However, the exemption shall not apply to –

- (i) online information and database access or retrieval services received by persons specified in Entry (a) or Entry (b); or
 - (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the Entry.
- 2) Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).
 - 3) Services received by the RBI, from outside India in relation to management of foreign exchange reserves.
 - 4) Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.

5.3.5 Exemption in Public Interest by Special Order under Circumstances of an Exceptional Nature– Section 11(2)

The Central Government may exempt from payment of tax any goods and/or services on which tax is leviable. However, following cumulative conditions need to be satisfied:

- (a) Exemption is to be granted in public interest only;
- (b) Exemption is to be granted on the recommendation of the GST Council;
- (c) Exemption is to be granted by a special order in each case; and
- (d) Exemption is to be granted under circumstances of an exceptional nature to be specified in the aforesaid special order.

It may be noted that it is not necessary to publish the order in Official Gazette.

5.3.5 Insertion of an Explanation in the Notification or Order – Section 11(3)

The Government may insert an Explanation in the Notification or Order issued under Section 11(1) or Section 11(2) respectively. However, following conditions need to be satisfied cumulatively:

- (a) Explanation is to be inserted only if the Government considers it necessary or expedient to do so;
- (b) Explanation is to be inserted with a view to clarify the scope or applicability of any Notification or Order; and
- (c) Explanation is to be issued within one year of issue of the Notification or Order. Further, such Explanation shall have the effect as if it had always been the part of the original /first relevant Notification or Order.

5.3.6 Difference between exempt supply, Nil rate supply, zero rated supply and non GST Supply:

Supply Name	Description
Zero Rated	<p>Zero rated supplies have been defined in Section 16(1) of the IGST Act and covers the following supplies:</p> <ul style="list-style-type: none"> — Exports — Supplies made to SEZ or SEZ Developers. <p>Such supplies can be made without payment of GST under LUT / bond or against payment with subsequent refund of tax paid. Also refund of ITC can be availed.</p>
Nil Rated	Supplies that are not covered in exemption notification

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	but under rate notification with a declared rate of 0% GST. Example: Agricultural operations...
Exempt	Supplies that are covered under exemption Notification and thus do not attract GST. Example: Fresh milk, Fresh fruits, Curd, Bread, interest on loan, health care services etc.
Non-GST	These supplies do not come under the purview of GST law. Example: Alcohol for human consumption, Petrol etc.

Payment under Reverse Charge

6.1 Introduction

As per the charging section of GST Acts, the tax is required to be paid by the taxable person, which is generally the supplier. However in some situations the tax is to be paid by the recipient of supply. Such provisions have been incorporated in GST law as Government finds it administratively more convenient and easy to collect tax from the recipient of service in cases where the suppliers of service are situated in non-taxable territory or are illiterate or unorganized or are in large numbers.

As per Section 2(98) of the CGST Act “reverse charge” means the liability to pay tax by the recipient of supply of services instead of supplier of such services under sub-section (3) or sub-section (4) or under sub-section (3) or sub-section (4) of section 5 of IGST Act. The provisions regarding reverse charge also exist under SGST Act and UTGST Act.

The provisions regarding reverse charge have been inspired from service tax and under GST law its ambit has been enlarged. The provisions regarding reverse charge are discussed in succeeding paras.

6.2 Contents of the Chapter

- (a) Reverse charge on notified goods (**Para 6.3**)
- (b) Reverse charge on notified services (**Para 6.4**)
- (c) Reverse charge on notified supplies by unregistered person to registered person (**Para 6.5**)

6.3 Reverse charge on notified goods

In regard to services, sub-section (3) of Section 9 of CGST /SGST Act(s) provides that the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods, the tax on which shall be paid on reverse charge basis by the recipient of such services 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 services.

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Similar provisions also exist under the IGST Act and UTGST Acts.

It may be noted that tax under reverse charge is to be paid in cash and cannot be adjusted against the input tax credit. However input tax credit of the amounts paid under reverse charge can be claimed subject to fulfillment of conditions.

6.3.1 List of goods notified for reverse charge:

The supply of goods which are under ambit of reverse charge mechanism (RCM) has been notified vide Notification No. 4/2017-Central Tax (Rate) dated 28-6-2017 (as amended) under Section 9(3) of the CGST Act, 2017.

The list of goods that are under reverse charge from 01.07.2017 (unless mentioned otherwise) as notified by the Central Government is given below. These goods are also notified for reverse charge under other GST Acts(s).

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person
4.	5004 to 5006-	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
4A	5201	Raw Cotton	Agriculturist ²	Any registered person (RCM applicable from 15.11.2017)

Payment under Reverse Charge

5	-	Supply of lottery.	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Explanation.- For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of sub section 1 of section 11 of the Lotteries (Regulations) Act, 1998 (17 of 1998).
6	Any Chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a local authority ¹	Any registered person (RCM applicable from 13.10.2017)
7	Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person (RCM applicable from 28.05.2018)

6.3.1-a Purchase of goods from Agriculturist

Out of eight goods wherein reverse charge is applicable on five goods, if purchased by registered person from an agriculturist. Thus, it is important to understand the meaning of the word 'Agriculturist'.

Meaning of Agriculturist:

As per Section 2(7) of the CGST Act,2017 'agriculturist' means an individual or a Hindu Undivided Family who undertakes cultivation of land—

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

It may be noted that no definition of term 'agriculture' has been given in GST law and definition of term 'agriculturist' is available. Normally, in commercial parlance, the word 'agriculture' is understood in a very wide manner to include post-harvesting operations also. Further agriculture should also cover Floriculture, Horticulture and Sericulture. However it does not include rearing of animals.

6.3.1-b Supply of lottery tickets

'Lottery tickets', is actionable claim and is classified as 'goods', under GST. However, an actionable claims other than lottery, betting and gambling has been kept outside scope of supply as per Schedule III of the CGST Act.

Hence, the sale of lottery tickets would be considered to be the supply of taxable goods and will attract GST.

Payment of GST under reverse charge:

In the case of lottery run by State Government, the tickets are sold by the State Government to lottery distributor /selling agent. The selling agent is required to pay tax under **reverse charge**.

Subsequently, when the selling agent supplies such tickets to sub-agent/customer, no tax is required to be paid. The local sub-agent is also not required to pay any tax. Thus, a tax is levied at single – point under reverse charge in case of lottery run by State Government.

However, in the case of lottery authorised by State Government, the tax is to be paid under the forward charge by the lottery selling agent (i.e. Supplier). A tax must also be paid at each stage of supply.

Uniform rate of GST of 28% is applicable on all lotteries.

6.3.1-c Priority Sector Lending Certificate (PSLC)

What is the Priority Sector Lending Certificate (PSLC)?

Priority Sector lending certificate (PSLCs) are tradable instruments issued as certificates against priority sector lending by banks. The certificates help banks to meet their lending goals specified for the priority sector. Buyers of PSLC are generally those banks who are not able to meet their required target of lending priority sector. Thus, banks moving ahead of their targets issue PSLC to non-achievers to balance the flow of lending and credit.

It may be noted here that these certificates are issued only between banks and the risk on account of credit made by over-performing banks, does not transfer with the issue of certificates to other banks.

The Four specified types of PSLC include :

PSLC Agriculture: PSLC issued for agriculture sub lending target.

PSLC Micro Enterprises: PSLC issued for micro-enterprises sub lending target

PSLC SF/MF: PSLC issued for small and marginal farmers sub lending target

PSLC General: PSLC issued for correspondingly balancing the overall lending target.

PSLCs issued by banks does not transfer any risk, loan assets, interest or any right, hence, PSLC does not fall under the definition of securities. They have an intrinsic value of their own and are to be taxed at normal rates like other taxable goods under GST.

Levy of GST on PSLC

As per CBIC Circular No.62/36/2018-GST dated 12.09.2018 clarified that GST on PSLCs starting from period 1.7.2017 to 27.05.2018 will be paid by the seller bank on a forward charge basis at the rate of 12%. whereas from 28.05.2018 onwards, the charge would be paid by the buyer bank on reverse charge mechanism ("RCM").

The trade of PSLCs among banks will be considered as an Inter-State supply, accordingly Integrated Tax ("IGST") is payable on such transactions.

6.4 Reverse Charge Mechanism on supply of services

In accordance to the powers conferred under Section 9(3) of CGST Act, 2017 and under Section 5(3) of IGST Act, 2017, Notification No. 13/2017-Central Tax (Rate) dated 28-6-2017 and Notification No. 10/2017-Integrated Tax (Rate) dated 28-6-2017 (RCM Notifications) have been issued by Govt, notifying the situations wherein certain supply of services would be under ambit of reverse charge mechanism.

Following are Supply of **services** covered under RCM from 01.07.2017 (unless specifically mentioned) as per section 9(3) are:

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

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	<p>any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person.</p>		<p>the CGST/IGST/SGST/UTGST Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory. (RCM applicable from 01.07.2017, however from 22.08.2017, RCM is applicable only where GTA has not paid CGST & SGST @ 6% each or IGST @ 12%).</p>
2	<p>Services supplied by an individual advocate including a senior advocate or firm of advocates by</p>	<p>An individual advocate including a senior advocate or firm of advocates.</p>	<p>Any business entity located in the taxable territory.</p>

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	<p>way of legal services, directly or indirectly.</p> <p>Explanation: “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.”.</p>		
3	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal	Any business entity located in the taxable territory.
4	Services provided by way of sponsorship to anybody corporate or partnership firm.	Any person	Anybody corporate or partnership firm located in the taxable territory.
5	<p>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, -</p> <p>(1) renting of immovable property, and</p> <p>(2) services specified below-</p> <p>(i) services by the Department of Posts by way of speed post,</p>	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

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	<p>express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p>		
5A	<p>Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).</p>	<p>Central Government, State Government, Union territory or local authority</p>	<p>Any person registered under the CGST Act, 2017. (RCM applicable from 25.01.2018).</p>
5B	<p>Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for</p>	<p>Any person</p>	<p>Promoter (RCM applicable from 01.04.2019)</p>

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	construction of a project by a promoter.		
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any person	Promoter (RCM applicable from 01.04.2019)
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
7	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
9	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.

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	of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.		
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	<p>Publisher located in the taxable territory. RCM will NOT be applicable from 01.10.2019 where:-</p> <p>(i) the author has taken registration under the CGST Act, 2017, and filed a declaration, in form at Annexure I of RCM notification(s), within the time limit prescribed therein, with the jurisdictional CGST or SGST commissioner, that he exercises the option to pay central tax on such service, in accordance with Section 9 (1) of the CGST Act, 2017 under forward charge, and to comply with all the provisions of</p>

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			<p>CGST Act, 2017 as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;</p> <p>(ii) the author makes a declaration, as prescribed in Annexure II of RCM notification(s) on the invoice issued by him in Form GST Inv-I to the publisher.</p>
10	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India. RCM applicable from 13.10.2017
11	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a non-banking financial company, located in the taxable territory. RCM applicable from 27.07.2017

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12	Services provided by business facilitator (BF) to a banking company.	Business facilitator (BF)	A banking company, located in the taxable territory. (RCM applicable from 01.01.2019)
13	Services provided by an agent of business correspondent (BC) to business correspondent (BC).	An agent of business correspondent (BC).	A business correspondent, located in the taxable territory. (RCM applicable from 01.01.2019)
14	Security Services (services provided by way of supply of security personnel) provided to a registered person	Any person other than a body corporate.	A registered person, located in the "taxable territory." RCM shall NOT be applicable to,- (i)(a) a Department or Establishment of the Central / State Govt. or Union territory; or (b) local authority; or (c) Government agencies; which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax under Sec 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under composition scheme. (RCM applicable from 01.01.2019)

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15	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6% to the service recipient.	Any body corporate located in the taxable territory”. (RCM applicable from 01.10.2019)
16.	Services of lending securities of Securities under Lending Scheme, 1997 (Scheme). Securities and Exchange Board of India (SEBI), as amended.	Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme of SEBI.	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI). (RCM applicable from 01.10.2019)

It may be noted here that the tax is to be paid under reverse charge mechanism on all the above 20 services in case the supply is made by specified persons to specified persons as prescribed under RCM Notifications.

The tax will be paid under CGST Act as well as SGST Act viz CGST + SGST in case such supplies are intra-State supplies as defined under Section 8 of the IGST Act, 2017. However IGST will be required to paid under reverse charge where such supplies of services are inter-State as defined under Section 7 of the IGST Act, 2017.

However in regard to inter-State supplies, apart from above 20 services the following two additional services has been notified by the Central Government vide Notification No. 10/2017-Integrated Tax (Rate) dated 28-6-2017 wherein whole of the tax viz IGST shall be payable by the recipient on services under Section 5(3) of IGST Act, 2017 on Reverse charge basis.

Payment under Reverse Charge

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

6.5 Reverse charge on notified supplies by unregistered person to registered person

In terms of Section 9(4)/5(4) of the CGST / IGST Act, 2017, the Government has powers to specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply.

In exercise of the powers conferred by Section 9(4) of the CGST Act, 2017, the Central Government has issued Notification No. 07/2019- Central Tax (Rate) dated 29-03-2019 wherein GST will be required to be paid w.e.f. 1st April, 2019, by the promoter (builder) on procurement of goods or services from unregistered suppliers.

Under the aforesaid Notification, the promoter shall be liable to pay GST under reverse charge mechanism (RCM) on three kinds of supplies from unregistered suppliers. The supplies are briefly discussed as under:

6.5.1. RCM on Input and input Service for Construction of Project

If 'Promoter' purchases input goods and services used for construction of

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project from the unregistered person, then he is liable to pay GST under reverse charge mechanism (RCM) on such supplies under Section 9(4) of CGST Act, 2017, if such purchase is less than 80% of total value of inputs and input services.

Notification No. 07/2019- Central Tax (Rate) dated 29.03.2019 prescribes that RCM is to be paid on following supplies from unregistered suppliers:

“Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended”

The term used in the notification “shortfall from the minimum value of goods or services or both required to be purchased by a promoter” means, minimum 80% of the total value of input and input services or both are required to be procured by a promoter from a registered person and balance 20% can be procured from an unregistered person. In case this condition is not fulfilled promoter will have to pay RCM on the shortfall from 80% threshold.

Minimum value for the purpose is prescribed as 80% of the value of input & input services. However, value of input Services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI) are excluded for calculating 80% procurement limit.

GST Rate: The GST Rate is 18% even if the actual rate of GST in case of some of inputs or input services is lower than 18% – (Sr No. 452Q of Schedule III of Notification No. 08/2019-CT (R) dated 28-6-2017 as inserted w.e.f. 1-4-2019.)

6.5.2. RCM on Purchase of Cement

Notification No. 07/2019- Central Tax (Rate) dated 29.03.2019 as amended vide Notification No. 24/2019-Central Tax (Rate) dated 30.09.201 prescribes GST will be payable under RCM on following supply from an unregistered suppliers

“Cement falling in Chapter Heading 2523 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

It may be noted here that RCM will be applicable on any amount of purchase of ‘Cement’ by the “promoter” from an unregistered supplier for the construction of project during the financial year, irrespective of the condition of 20%/80%, as in case of input goods and services at point 1 above. Thus no grace is allowed to promoter and in order to avoid RCM he need to purchase entire Cement from registered supplier.

On Cement purchases from unregistered supplier, the promoter will be required to pay GST @ 28% i.e. currently applicable rate on Cement.

6.5.3. RCM on Purchase of Capital goods

Notification No. 07/2019- Central Tax (Rate) dated 29.03.2019 prescribes RCM will be applicable on following supply from an unregistered supplier:

“Capital goods falling under any Chapter in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.”

Thus as per above Notification a “promoter” is liable to pay GST under RCM for purchase of any capital goods from any unregistered supplier.

Time of Supply

7.1 Introduction

The determination of time when the incidence of tax arises is of critical importance under every statute. Such determination is even more important in regard to taxation of services where it is difficult to identify the time when they have been rendered as services are intangible in nature.

Time of supply is nothing but a different name for “point of taxation” which was used under service tax law and denotes the time when the charging event has occurred. Provisions regarding determination of time of supply are mandated under Section 12 for Goods and Section 13 for Services. Section 14 of the CGST Act, 2017 comes into play for determining the time of supply of goods as well as services in cases of change in rate of tax.

The provisions of Section 12, 13 and 14 of the CGST Act are also applicable to IGST and UTGST Act. Further SGST Acts of respective States and two Union Territories also contains the similar provisions they being the mirror image of CGST Act.

7.2 Importance of time of supply

The importance of time of supply can gauged from the fact that as per Section 12(1) / 13(1) of CGST Act, 2017 liability to pay tax on goods / services arises at the time of supply, as determined in accordance with the provisions of Section 12 and 13. Accordingly any delay in determining of time of supply would result in delay in payment of tax and consequential levy of interest which may affect the business margins and cash flows adversely.

Further the time of supply determines the ‘rate of tax’ applicable on any supply. It also determines the due date of filing of GST returns as well as due date of payment of tax.

The time of supply also plays key role in determining the rate of exchange applicable for determination of value of supply in light of Rule 34 of the CGST Rules, 2017 which is briefed as under:

- For Goods: Applicable rate of exchange as notified by CBIC u/s 14 of

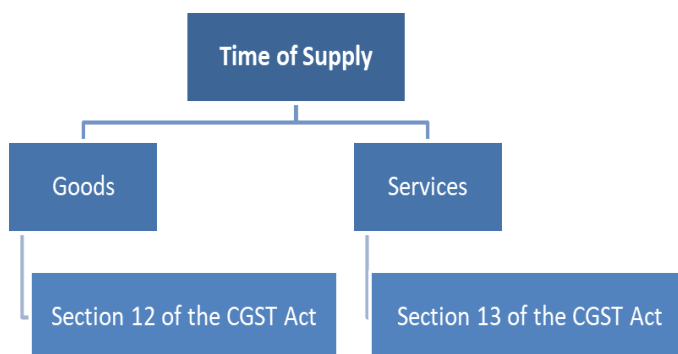
the Customs Act, 1962 for the date of time of supply of such goods u/s 12 of the CGST Act. *(Rule 34(1) of the CGST Rules)*.

- For Services: Applicable rate of exchange determined as per generally accepted accounting principles (GAAP) for the date of time of supply of such services in terms of Sec 13 of the CGST Act. *(Rule 34(2) of the CGST Rules)*.

7.3 Statutory provisions relating to Time of Supply: At a glance

For ready reference the statutory provisions relating to time of supply are tabulated below:

Sl. No	Provision of CGST Act	Principles for determination of :
1.	Section 12(2)	Time of supply of goods in general (Refer Para 7.4)
2.	Section 12(3)	Time of supply in respect of payment of tax on reverse charge basis on goods (Refer Para 7.5)
3.	Section 13(2)	Time of supply of services in general (Refer Para 7.6)
4.	Section 13(3)	Time of supply in respect of payment of tax on reverse charge basis on services (Refer Para 7.7)
8.	Section 12(4) / 13 (4)	Time of supply is case of supply of vouchers of goods or services. (Refer Para 7.8)
9.	Section 12(5) / 13 (5)	Time of supply in cases when it is not possible to determine it under provisions of Section 12(2) / 13(2), 12(3) / 13(3) and 12(4) / 13(4)- Residual Clause. (Refer Para 7.9)
10.	Section 12(6) / 13 (6)	Time of supply of receipt of interest, late fee, penalty for delayed payment of any consideration. (Refer Para 7.10)
11.	Section 14	Time of supply is case of change in rate of tax in respect of supply of goods or services.(Refer Para 7.11)



7.4 Time of Supply of Goods in normal forward charge cases

As per **Section 12(2) of the CGST Act, 2017**, the time of **supply of goods** would be earlier of the following dates:

- (a) Date of issue of invoice by the supplier or the last date on which he is required to issue the invoice with respect to the supply u/s 31 [i.e., Due date of issue of invoice]; or
- (b) the date of receipt of payment by the supplier.

Thus as per above provision GST was payable even in case of receipt of advance for supply of goods. However relief in this regard has been provided as discussed in the succeeding para.

7.4.1 No Tax on receipt of payment

The registered person who did not opt for the composition levy under section 10 shall pay the central tax on the outward supply of goods at the time of supply as specified in section 12(2)(a) i.e. the date of issue of invoice by the supplier or the last date on which he is required, under section 31(1), to issue the invoice with respect to the supply. Therefore, no GST is payable on advances received against supply of goods w.e.f 15.11.2017 (Notification No. 66/2017-Central Tax dated 15.11.2017).

Earlier by Notification No.40/2017- Central Tax dtd.13.10.2017, this benefit was granted to only small assesses whose turnover in the preceding financial year or in the year in which he obtained registration does not exceed or is not likely to exceed Rs 150 Lakhs.

7.4.2 What is due date of issue of invoice of goods

Normal supply of Goods:

Section 31(1) of CGST Act prescribes due date of issue of invoice i.e. time limit within which invoice is to be raised in case of supply of goods.

According to the Section the invoice is to be raised before or at the time of,-

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods, or
- (b) delivery of goods or making available thereof to the recipient, in any other case.

Continuous supply of goods:

As per Section 31(4) of the CGST Act, in case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

Sale on approval basis:

Section 31(7) of the CGST Act mandates that where the goods being sent or taken on approval for sale or return basis are removed before the supply takes place, the invoice shall be raised before or at the time of supply or six months from the date of removal, whichever is earlier.

In other words in cases of sale on approval or return basis the invoice should be issued at time when approval is conveyed by the recipient or six months from removal of goods, whichever is earlier.

7.4.3 What is date of receipt of payment

Date receipt of payment by the supplier shall be

- the date on which the payment is entered in his books of account or
- the date on which the payment is credited to his bank account,

whichever is earlier.

Though as discussed above GST is now not applicable on advances received towards supply of goods and thus the computation of date of receipt of payment has become irrelevant as far as determination of time of supply is concerned. However it may still be relevant for composition dealers which are paying tax under Section 10 of the CGST Act, 2017.

7.5 Time of supply of goods in reverse charge cases

As per Section 12(3) of the CGST Act, in case of supplies of goods in respect of which tax is paid or liable to be paid on reverse charge basis (tax is to be paid by recipient of the supply), the time of supply shall be the earliest of the following date, namely: -

- (a) the date of receipt of goods, or
- (b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (c) the date immediately following 30 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier (31st day from date of invoice).

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

For details regarding the goods which are subject to payment under reverse charge please refer to **Chapter 6** of this book.

7.6 Time of Supply of services in normal forward charge cases

Time of supply in case of supply of services as per Section 13(2) of the CGST Act shall be as under: -

Situation	Time of Supply
Invoice is issued within prescribed time	The date of issue of invoice by the supplier or date of receipt of payment, whichever is earlier
Invoice is not issued within prescribed time	The date of provision of service or date of receipt of payment whichever, is earlier

In cases where time of supply cannot be arrived as above, the time of supply shall be the date on which the recipient shows the receipt of services in his books of account.

It may be noted that advances received towards supply of services are taxable and no relief, as in case of goods has been provided. It is pertinent to mention here that advances towards services were earlier also subjected to service tax since 01.07.2011.

As per proviso to section 13(2) where the supplier of taxable goods /Services receives an amount up to Rs 1000/- in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

7.6.1 What is prescribed time for issue of invoice for services

Normal supplies:

Section 31(2) of CGST Act read with Rule 47 of the CGST Rules, provides that invoice towards supply of service should be issued within 30 days [45 days in case of insurance cos./banking and financial institutions including NBFCs] from the date of supply of services.

Continuous Supply of Services:

The provisions as contained in Section 31(5) of the CGST Act are tabulated below:

Situation	Description	Invoice to be issued on or before
Payment not linked to completion of an event	Due date of payment is ascertainable from the contract	Due date of payment
Payment not linked to completion of an event	Due date of payment not ascertainable from the contract	Actual receipt of payment.
Payment linked to completion of an event.	–	Date of completion of the event.

7.6.2 What is date of receipt of payment

Date of receipt of payment shall be the date on which the payment is entered

in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

7.7 Time of Supply of reverse charge on services

As per Section 13(3) of the CGST Act in case of supplies of services in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier (61st day from invoice).

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

7.7.1 Special provision for import of services from associated enterprises

Import of services is subject to payment under reverse charge mechanism. In case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the:

- Date of entry in the books of account of the recipient of supply or
- the date of payment,

whichever is earlier.

7.8 Time of Supply of Vouchers of goods / services (Section 12(4) / 13(4))

In case of supply of vouchers by a supplier of goods or services, the time of supply shall be—

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

7.8.1 Meaning of Voucher

As per Section 2(118) of the CGST Act 'voucher' means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

7.9 Time of Supply of goods / services in residual cases (Section 12(5) / 13(5))

Where it is not possible to determine the time of supply under the provisions of sub-section (2), (3) or (4) of Section 12 or 13, the time of supply shall—

- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- (b) in any other case, be the date on which the tax is paid.

Time of supply under this residuary provision is applicable only when the other provisions are found to be inapplicable and not merely when there is some difficulty in determining the facts that are sought for by the relevant provision.

7.10 Time of Supply for interest, late fee or penalty for delayed payment of consideration:

The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration for goods or services shall be the date on which the supplier receives such addition in value.

7.11 Change in rate of tax in respect of supply of goods or services (Section 14)

The provisions of Section 14 of the CGST Act will be applicable only in cases where there is change in rate of GST of goods / services and the three events viz date of supply, date of issue of invoice and date of receipt of payment are scattered before and after the date of change in rate of tax.

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It may be noted that in cases all the three events take place before or after the change in rate of tax, this Section will not apply and time of supply will be determined as per Section 12 (for goods) and Section 13 (for services) as discussed in preceding paras.

Issue of Invoice	Receipt of Payment	Time of supply
<i>Where Goods or services or both have been supplied before the change in rate of Tax</i>		
After	After	Date of issue of invoice or date of receipt of payment, whichever is earlier
Before	After	Date of Issue of invoice
After	Before	Date of receipt of payment
<i>Where Goods or services or both have been supplied after the change in rate of tax,</i>		
Before	After	Date of receipt of payment
Before	Before	Date of issue of invoice or date of receipt of payment, whichever is earlier
After	Before	Date of issue of invoice

7.11.1 What is date of receipt of payment

The date of receipt of payment shall be the:

- date on which the payment is entered in the books of account of the supplier or
 - the date on which the payment is credited to his bank account,
- whichever is earlier.

However 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.

Chapter 8

Valuation

8.1 Introduction

As per the charging section of GST Acts, GST shall be levied on the value determined under Section 15 of CGST Act/ SGST Act. Although contained in the CGST Act/ SGST Acts, the valuation method provided in this section applies to UTGST and IGST also. Section 15 prescribes the provisions for arriving at value of taxable supply of service, which generally is the “transaction value”. However in certain situations the transaction value is not considered for valuation and such cases the value is determined as per the Valuation Rules provided in CGST Rules.

The provisions regarding valuation under GST law as given in Section 15 and Valuation Rules contained in CGST Rules are discussed in the succeeding paras.

8.2 Statutory provisions regarding Valuation

Sl. No	Description	Provision of CGST / SGST Act / CGST / SGST Rules
1.	Value to be the transaction value in certain cases.	Section 15(1)
2.	Inclusions in the value.	Section 15(2)
3.	Exclusions from value.	Section 15(3)
4.	Value of supply of goods / services shall be determined by Rules, where it cannot be computed under 1 above.	Section 15(4), Rule 27 to 31.
6.	Value of supply of services in relation to purchase or sale of foreign currency, including money Changing	Rule 32(2)
7.	Value of supply of services in relation to booking of air tickets by an air travel agent.	Rule 32(3)

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8.	Value of supply of services in relation to life insurance business.	Rule 32(4)
9.	Value of token, or a voucher, or a stamp (other than postage stamp).	Rule 32(6)
10.	Value of taxable services provided by notified class of service providers.	Rule 32(7)
11.	Value of supply of goods / services in cases of pure agent	Rule 34
12.	Rate of exchange of currency, other than Indian rupees, for determination of value	Rule 35

8.3 Value of supply of service shall be the Transaction Value

Section 15(1) of the CGST /SGST Act(s) provides that the value of supply of services shall be the transaction value, which is the price actually paid or payable for the said supply of services where the supplier and recipient of the supply are not related and the price is the sole consideration for the supply.

In order to understand the above provision we need to learn the following:-

- (a) Price actually paid or payable for the said supply of services. (Para 8.3.1)
- (b) Supplier and recipient of supply are not a related person. (Para 8.3.2)
- (c) Price is the sole consideration of supply. (Para 8.3.3)

8.3.1 Price actually paid or payable for the said supply of services

The phrase “price actually paid or payable” has been taken from the definition of transaction value as mandated in Section 4(3)(d) of the Central Excise Act. The amount actually paid or payable shall be determined based on the contract entered into between the supplier and recipient of services. The contract will indicate the amount payable by the recipient for the supply of services which shall be regarded as price actually paid or payable.

The CBEC vide the FAQs on GST has clarified as follows with regard to transaction value.

Q 4. Is contract price not sufficient to determine valuation of supply?

Ans. *Contract price is more specifically referred to as 'transaction value' and that is the basis for computing tax. However, when the price is influenced by factors like relationship of parties or where certain transactions are deemed to be supply, which do not have a price, the value has to be determined in accordance with the GST Valuation Rules.*

Accordingly the contract price will be regarded as transaction value and GST shall be levied on such value where the supplier and recipient of the supply are not related and the price is the sole consideration for the supply.

8.3.2 Supplier and recipient of supply are not a related person

The Explanation to section 15 of the CGST Act defines the term related person as under:-

- (a) persons shall be deemed to be "related persons" if—
 - (i) such persons are officers or directors of one another's businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee
 - (iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) the term "person" also includes legal persons; viz Companies, partnership firms etc.
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

8.3.2-a Meaning of control

As per the Blacks Law Dictionary, control means:

To exercise restraining or directing influence over; regulate; restrain; dominate; curb; to hold from action; overpower; court, tract; govern. To control a thing is to have the right to exercise a directing or governing influence over it. It is the Power or authority to manage, direct, superintend, restrict, regulate, direct, govern, administer, or oversee.

Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists. Generally one person is deemed to control the other when the former is legally or operationally in a position to exercise restraint or direction over the latter.

The meaning of control is very important in finding whether the conditions of related person as provided in clause (v), (vi) and (vii) of the definition of related person as stated above are fulfilled or not. In case the conditions are met then supply made to such person would be regarded as supply to a related person and the transaction value in such cases would be ignored and valuation shall be made as per CGST Rules, discussed later in the Chapter.

8.3.2-b Meaning of same family

As per Section 2(49) of CGST Act, family means –

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

Thus the spouse and children would always be regarded as member of same family irrespective of fact whether they are dependent or not. However the parents, grand-parents, brothers and sisters would be regarded as member of same family only if they are dependent on said person i.e. the supplier.

It is important to note here that in case supply is made to a member of same family which is included in the definition of related person under clause (viii), the transaction value shall be ignored and the valuation will be made as per CGST Rules, discussed later in the Chapter.

8.3.3 Price is the sole consideration for the supply

This means that the price will be accepted as transaction value only if such

price is the sole consideration for the supply. Accordingly if any additional consideration for the supply is received whether in form of monetary consideration or non-monetary consideration then such additional consideration will be regarded as consideration for such supply and thus would form part of the value of supply.

Generally we would be able to identify from the Contract about the flow of any additional consideration.

It may be noted here that in case the price is not the sole consideration of supply the transaction value shall be ignored and the valuation will be made as per the Valuation Rules. The value of supply of services where consideration is not wholly in money is determined as per CGST Rules, discussed later in the Chapter.

8.4 Inclusions in Value

Section 15(2) of CGST mandates about five inclusions to be made in the value of supply. These are discussed below:

- (a) Taxes other than GST (**Para 8.4.1**)
- (b) Amount paid by recipient on behalf of supplier (**Para 8.4.2**)
- (c) Incidental expenses and other charges (**Para 8.4.3**)
- (d) Interest, late fee, penalty (**Para 8.4.4**)
- (e) Subsidy linked to supply (**Para 8.4.5**)

8.4.1 Taxes other than GST

As per clause (a) of Section 15(2) of CGST Act the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier.

It is interesting to note that IGST has not been mentioned in the above clause. However it may be noted here that as per section 20(iii) of IGST Act the provisions of CGST Act relation to value of supply shall mutatis mutandis apply so far as may be in relation to integrated tax as they apply to Central tax as if they are enacted under this Act. Thus considering the above provisions we may say that the amount of IGST shall also be excluded from the value of supply.

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Accordingly CGST / SGST / UTGST / IGST shall not be charged upon such GST amounts. Thus there would be no tax on tax and thus there will be no cascading of taxes the abolition of which was one of the objectives of implementation of GST. However in case the supplier charges any tax other than GST separately, such amount of tax will be included in the value for levy of GST.

8.4.2 Amount paid by recipient on behalf of supplier

Clause (b) of Section 15(2) provides that the value of supply shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.

Example: X Limited awarded a work contract to Y & Co in regard to construction of a immoveable property. As per the contract the work is to be executed on turnkey basis with the material as well labour of the supplier. This work contract being related to immoveable property would be treated as service. Now if the contract amount is Rs 10 crore. if suppose X Limited provides cement bags of Rs 50 lakhs to Y & Co and then Y & Co issues the invoice of Rs 9.50 crore plus GST. In this particular case X Limited was liable to pay for the cement bags and same has not been included in the invoice of Rs 9.50 crore issued. Thus in this case the amount of Rs 50 lakhs incurred by X Ltd on behalf of Y & Co would be included in transaction value, which will be Rs 10 crore in this case and on which GST shall be levied.

8.4.3 Incidental expenses and other charges

As per clause (c) of Section 15(2) the value of supply shall include 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.

Normally this clause has greater application on goods however if any incidental expenses or any amount is charged by the supplier from the recipient at the time of, or before supply of services same would be included in the transaction value.

8.4.4 Interest, late fee, penalty

Clause (d) of Section 15(2) provides that the value of supply shall include

interest or late fee or penalty for delayed payment of any consideration for any supply.

This means that if an interest, late fee or penalty is charged by the supplier of service from the recipient for delayed payment of consideration for any supply by such recipient then such interest, late fee or penalty will be included in the value of supply. Thus the value in such a case would be the value of the supply of service plus the interest, late fee or penalty as charged from the recipient.

In this regard it is important to note here that tax is required to be on interest, late fee or penalty only when they are received by the recipient in view of Rule 13 (6) of CGST Act, which determined the time of supply in such cases.

Example: A Chartered Accountant supplied audit services to a Company for an agreed audit fee of Rs 1 lakh. Due to delay in payment of audit fee by the Company the Chartered Accountant levied penal interest of Rs 5000/-. In this case the value shall include Rs 5000/- also and thus the total value on which GST shall be levied will be Rs 1,05,000/-. However as discussed above tax would be paid on Rs 5000/- only when it is received.

8.4.5 Subsidy linked to supply

Clause (e) mandates that subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments will be included in the transaction value.

Further Explanation to Sec 15(2) describes that for the purposes of this subsection, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

It is important to note here that on similar lines the term 'consideration' has been defined under section 2(31) of CGST Act, which also excludes any subsidy given, by the Central Government or State Government.

Normally this clause may be mainly applicable in case of goods. However in case any subsidy linked to supply of services is received other than from the Central Government / State Government the same shall be included in the value of the supply of the supplier who receives the subsidy.

8.5 Exclusions from Value

Section 15(3) of CGST Act provides that the value of the supply shall not include any discount which is given—

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- (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- (b) after the supply has been effected, if—
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

Generally various types of discount are offered to the customer like cash discount, turnover discount, off-season discount, clearance discount etc. All such types of discounts would be excluded from the value of taxable supply provided the conditions stipulated in Section 15(3) are fulfilled.

Further the supplier can take adjustment of the discounts passed on to the recipient after supply has been effected by means of issue of credit note provide the relevant input tax credit should also be reversed by the recipient. In this regard it may be noted that a time period has also been prescribed for issuance of credit note under GST law.

8.6 Circumstances where transaction value cannot be computed: Recourse to CGST Rules

Section 15(4) of CGST Act provides that 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.

Where the transaction value cannot be determined in terms of Section 15 of the CGST Act, reference to CGST Rules related to valuation is permitted. Hence, recourse to the Valuation Rules would be required in the following circumstances:

- Supplier and recipient of supply are related
- Price is not the sole consideration

8.6.1 Valuation Rules

Rule No. of CGST/SGST Rules	Particulars	How Value of supply will be computed
27	Value of Supply when consideration is not solely in money	(a) 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
28	Value of supply of goods or services or both between distinct or related persons, other than through an agent	(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

		<p>value as determined by the application of rule 30 or rule 31, in that order:</p> <p>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:</p> <p>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.</p> <p>In terms of Explanation to section 15 of the CGST Act - Persons shall be deemed to be "related persons" if-</p> <ol style="list-style-type: none">i. such persons are officers or directors of one another's businesses;ii. such persons are legally recognised partners in business;iii. such persons are employer and employee;iv. any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;v. one of them directly or indirectly controls the other;vi. both of them are directly or
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		<p>indirectly controlled by a third person;</p> <p>vii. together they directly or indirectly control a third person; or</p> <p>viii. they are members of the same family;</p> <ul style="list-style-type: none"> - Where-“person” also includes legal persons. - 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.
29	Value of supply of goods made or received through an agent	<p>Open market value of the goods being supplied, or at the option of the supplier, 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.</p> <p>Note-In case, value cannot be determined under (a) then following values have to be taken sequentially to determine the taxable value:</p> <ul style="list-style-type: none"> i. Value of supply based on cost i.e. cost of supply plus 10% mark-up [Rule 30] ii. Value of supply determined by using reasonable means consistent with principles & general provisions of GST law. (Best judgement method) [Rule 31]

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30	Value of supply of goods or services or both based on cost	110% of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such service
31	Residual method for determination of value of supply of goods or services or both	<p>The residual method consists of determination of value by using reasonable means consistent with the principles and general provisions of section 15 and these rules.</p> <p>The supplier of goods needs to sequentially follow rules 27 to 30 before valuing goods as per this residual rule 31. Service providers, however, have the option of valuing services as per rule 30 or rule 31 after sequentially following rules 27 to 29.</p>

Note-

- **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;
- **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.

8.7 Rule 32 : Optional method to determine taxable value of specified supplies

(A)	Value of supply of services in relation to the	Option-1	
		Transaction where one	Taxable value shall be equal to the difference in the buying

	purchase or sale of foreign currency, including money changing <i>Rule 32(2) of the CGST Rules</i>	of the currencies exchanged is Indian Rupees	rate or the selling rate, as the case may be, and RBI reference rate for that currency at the time of exchange multiplied by total units of foreign currency. If RBI reference rate for a currency is not available, 1% of the gross amount of Indian Rupees provided or received by the person changing the money
		Transaction where neither of the currencies exchanged is Indian Rupees	1% of the lesser of the two amounts the person changing the money would have received by converting (at RBI reference rate) any of the two currencies into Indian Rupee
		Option-2	
		Upto Rs. 1,00,000/-	One percent of the gross amount of currency exchanged subject to minimum amount of Rs. 250/-
		Upto Rs. 10,00,000/-	1000+0.5% of amount exchanged exceeding Rs. 1,00,000/-
	Amount exceeding 10,00,000/-	5500+0.1% of amount exchanged subject to maximum of Rs. 60,000/-	
(B)	Value of service of booking of tickets for air travel by an air travel agent	Taxable value is Domestic travel 5% of basic fare International Travel - 10% of basic fare Where, Basic fare means that part of the air fare on which commission is normally paid to the air	

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	<i>Rule 32(3) of the CGST Rules</i>	travel agent by the airline.
(C)	Value of service in relation to life insurance business (Not applicable where entire premium paid by the policy holder is only towards the risk cover in life insurance) <i>Rule 32(4) of the CGST Rules</i>	(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), 10% of single premium charged from the policy holder; or (c) in all other cases, 25 % 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:
(D)	Value of buying and selling of second hand goods where no ITC has been availed <i>Rule 32(5) of the CGST Rules</i>	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 5% points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such Repossession
(E)	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	Money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp

services or both <i>Rule 32(6) of the CGST Rules</i>	
	<p>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.</p> <p><i>Rule 32(7) of CGST Rules. It may be noted here that no class of service providers has yet been notified under said Rule.</i></p>

8.8 Value of supply of services in case of pure agent (Rule 33)

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

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

Where - "pure agent" means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and

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

Illustration. Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the companies 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.

8.9 Rate of exchange for determining value of taxable supply

As per Rule 34(1) of the CGST Rules 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.

Further as per Rule 34(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.

8.10 Valuation of supply inclusive of GST

As per Rule 35 of the CGST Rules where value of supply is inclusive of IGST/ CGST/ SGST/ UTGST the tax amount will be determined as under:

Tax amount = (Value inclusive of taxes x GST tax rate in %) / (100 + sum of GST tax rates in %).

Example: A supplier of services supplied services to another State and charged Rs 1000 including IGST. The rate of IGST is 18%. In this case the tax (IGST) amount would be worked out by applying Rule 35 as under:

First we work out the value of taxable supply as under:

$$1000 \times 100 / 118 = \text{Rs } 847.45$$

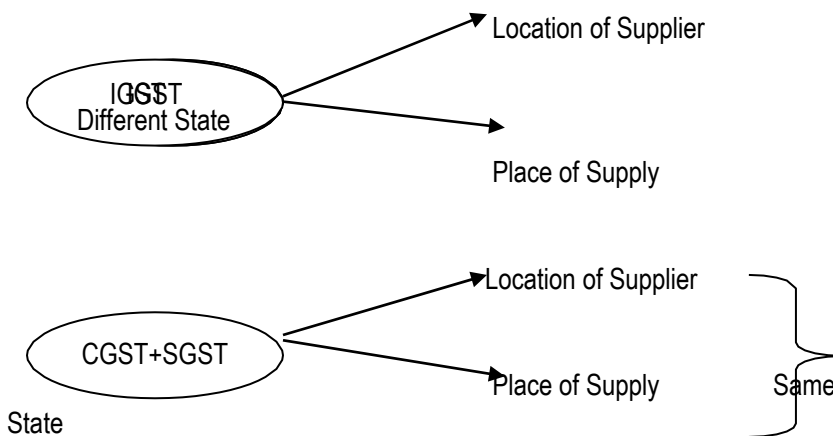
$$\text{Tax amount} = 847.45 \times 18\% = 152.55$$

In above case if we add the value + tax i.e Rs 847.45 + Rs 152.55 the total amount comes to Rs 1000/- which has been charged in this case.

Place of Supply

9.1 Introduction

Determination of place of supply of service is of critical importance under GST law as the place of supply of goods / services together with the location of supplier determines whether the supply is inter-State in which case IGST would be levied or intra State in which case CGST and SGST both will be applicable.



Further the location of supplier and place of supply would also determine whether tax is required to be paid on supply of good / service or not as in case the place of supply of such goods / services is outside India it would be regarded as export of goods / services subject to fulfilment of certain conditions. Export of goods / services under GST law is a zero rated supply under GST Law.

GST is a destination based tax and share of tax accruing to the State where consumption of service took place. Accordingly each State Officer will verify properly to ascertain that the place of supply has been properly determined by the taxable person so that respective State gets their SGST or the share out of IGST.

As per Section 2(86) of CGST / SGST Acts "place of supply" means the place of supply as referred to in Chapter V of the IGST Act.

9.2 Contents of the Chapter

- a) Meaning of location of supplier of services (**Para 9.4**)
- b) Meaning of location of recipient of services (**Para 9.5**)
- c) Place of supply of goods (other than import and exports) (**Para 9.6**)
- d) Place of supply of import and export of goods (**Para 9.7**)
- e) Place of supply of services where location of supplier and location of recipient is in India (**Para 9.8**)
- f) Place of supply of services where location of supplier or location of recipient is outside India (**Para 9.9**)

9.4 Location of the Supplier of Services

As discussed *supra* location of supplier and place of supply will determine the nature of supply viz intra-State or inter-State. Thus determining of same is of critical importance.

In terms of Section 2(15) of the IGST Act, 2017 “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

9.4.1 Meaning of supplier

As per Section 2(105) of CGST Act “supplier” in relation to any goods or services or both, shall mean the ‘person’ supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

9.4.2 Meaning of ‘supply is made’

The clauses of above definition uses the phrase “supply is made” and thus identification of the place from where supply is made is of critical importance. Normally the place where supply is made can be identified from the contract entered between supplier and the recipient. The purchase order mentions the address of the supplier along with other details viz address of recipient, nature of service, consideration etc .Thus is normal situations we can say that the address of supplier of service mentioned in the contract shall be considered as place from which supply is made.

9.4.3 Meaning of place of business

As per clause (a) of Section 2(15) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business would be regarded as location of supplier of service.

As per 2(85) of the CGST Act “place of business” includes—

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

The above definition starts with phrase “includes’ and thus the places or locations listed in the definition are illustrative and not exhaustive. Further each of the three clauses makes a reference to ‘taxable person’ which means that place of business is relevant only in regard to a taxable person i.e a person who is already registered or is liable to take registration.

9.4.4 Meaning of fixed establishment

As per clause (b) of Section 2(15) 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 would be regarded as location of supplier of service.

Section 2(50) of CGST Act describes that “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

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and technical resources to supply services, or to receive and use services for its own needs.'

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

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

The following points need to be noted:

- A fixed establishment refers to a place of business which is not registered;
- The person should undertake supply of services or should receive and use services for own needs in such place;
- Not every temporary or interim location of a project site or transit-warehouse will become a fixed establishment of the taxable person.

In regard to the meaning of 'fixed establishment' we may seek guidance from the Para 5.2.6 of the Education Guide published by CBEC in regard to service tax. The said para is reproduced as under:-

5.2.6 What is the meaning of a "fixed establishment"?

A "fixed establishment" is a place (other than the business establishment) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to provide the services that are to be supplied by it, or to enable it to receive and use the services supplied to it for its own needs.

Temporary presence of staff by way of a short visit at a place cannot be called a fixed establishment. Also, the number of staff at a location is not important. What is relevant is the adequacy of the arrangement (of human and technical resources), to carry out an activity for a consideration, or to receive and use a service supplied. Similarly, it will be important to evaluate the permanence of the arrangement i.e. whether it is capable of executing the task.

9.4.5 Meaning of usual place of residence

As per clause (d) of Section 2(15) in absence of places as stated in clause

(a), (b) and (c), the location of the usual place of residence of the supplier would be regarded as location of supplier of service.

Section 2(113) of CGST Act describes that usual place of residence means–

- (a) in case of an individual, the place where he ordinarily resides i.e. residential address.
- (b) in other cases, the place where the person is incorporated or otherwise legally constituted;

The Clause (b) of Section 2(113) provides that usual place of residence in case a person other than individual shall be the place where the person is incorporated or otherwise constituted.

The CBEC in regard to identification of usual place of business at Para 5.2.8 of the Education Guide in regard to service tax has clarified as under:-

5.2.8 What does “usual place of residence” mean?

The usual place of residence, in case of a body corporate, has been specified as the place where it is incorporated or otherwise legally constituted.

The usual place of residence of an individual is the place (country, state etc) where the individual spends most of his time for the period in question. It is likely to be the place where the individual has set up his home, or where he lives with his family or is in full time employment. Individuals are not treated as belonging in a country if they are short term, transitory visitors (for example if they are visiting as tourists, or to receive medical treatment or for a short term educational course). An individual cannot have more than one usual place of residence.

In addition, in the case of telecommunication services, it has been prescribed that the usual place of residence of the receiver shall be the billing address. This in effect means the address that is available in the records of the service provider for billing the receiver of the telecommunication service. This provision will be applicable to individual customers (generally referred to as subscribers) of a telecommunication service, who are provided a subscriber identification module (commonly referred to as SIM card, which may be post-paid or pre-paid) and a unique identification number (10-digit or 8-digit, as the case may be) by the service provider.

9.5 Location of the Recipient of Services

While determining the place of supply in many situations, the location of recipient of services is regarded as place of supply and thus it is important to go through its definition.

In terms of Section 2(14) of the IGST Act, 2017 “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

9.5.1 Meaning of Recipient

Section 2(93) inter alia provides that “recipient” of supply of services means—

- (a) where a consideration is payable for the supply of services, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

In view of the above definition, the person liable to pay the consideration for the supply would be regarded as recipient of supply irrespective of fact whether the service was rendered to such person or not. However where no consideration is payable, the recipient will be the person to whom the service is rendered. It is pertinent to mention here Schedule I of CGST Act provides that certain activities would be treated as supply even if made without consideration.

We have already discussed the meaning of terms place of business, fixed establishment, usual place of business in the preceding para.



9.6 Place of Supply of Goods (Other than import and export) (Section 10 of IGST Act)

Section	Particulars	Place of Supply
10(1)(a)	Where the supply involves the movement of goods, whether by the supplier or the recipient or by any other person	Place of supply where movement of goods terminates for delivery to the recipient
10(1)(b)	Supply on direction of a third person (acting as an agent or otherwise)	Place of supply of goods shall be the principal place of business of such third person. This clause basically covers the 'Bill to Ship to' transactions and would also cover sale in transit by transfer of documents of title and where goods are sent to job worker on the instructions of principal.
10(1)(c)	Supply does not involve movement of goods	Place of supply shall be the location of such goods at the time of the delivery to the recipient

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10(1)(d)	Goods are assembled, or installed at site	Place of supply shall be the place of such installation or assembly
10(1)(e)	Goods are supplied on board a conveyance, including a vessel, an Aircraft, a train or a motor vehicle	Place of supply shall be the location at which such goods are taken on board
10(2)	Where the place of supply of goods cannot be determined in terms of the above provisions	It shall be determined in such manner as may be prescribed. This is the residual provision.

9.7 Place of supply of Goods imported into, or exported from India (Section 11 of IGST Act)

Particulars	Place of Supply
Imported into India	Location of the importer
Exported from India	Location outside India

9.8 Place of Supply (POS) of Services where location of supplier and recipient is in India (Section 12 of IGST Act)

Section	Particulars	Place of Supply
12(2)	General Provisions	Supply made to a Registered person- POS is Location of recipient Unregistered person- Location of recipient if address on record exists ▪ Location of supplier if address not available
12(3)	Immovable property related-services including accommodation in	POS is the location at which the immovable property or boat or vessel, is located or intended to be located

Place of Supply

	hotel/boat/ vessel	<ul style="list-style-type: none"> ▪ If located outside India: location of the recipient
12(4)	a) Restaurant and catering b) Personal grooming c) Fitness d) Beauty treatment e) Health service including cosmetic and plastic surgery	Location where the services are actually performed
12(5)	Training and performance appraisal	Registered person- POS is location of recipient Unregistered person- Location where services are actually performed
12(6)	Supply of services for admission to: <ul style="list-style-type: none"> ▪ Cultural ▪ Artistic ▪ Sporting ▪ Scientific ▪ Educational ▪ Entertainment event ▪ Amusement Park ▪ Any other place and services ancillary to above 	Place where the event is actually held or where the park or such other place is located.
12(7)	Supply of: a) Organising cultural, arts, sports,	Registered recipient: Location of recipient Unregistered recipient: Location where the event is actually held

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	<p>educational, scientific, entertainment, conference, fair exhibition or similar events</p> <p>b) Services ancillary to above</p>	<p>If the event is held outside India: Location of the recipient</p>
12(8)	<p>Services by way of transportation of goods, including by mail or courier</p>	<p>Registered Recipient: Location of recipient</p> <p>Unregistered Recipient: Location where goods handed over for transportation</p>
12(9)	<p>Passenger transportation service (Return journey treated as separate journey)</p>	<p>Registered recipient: Place of registered recipient</p> <p>Unregistered recipient: Place where passenger embarks on the conveyance for a continuous journey</p>
12(10)	<p>On board a conveyance, including a vessel, an aircraft, a train or a motor vehicle,</p>	<p>First scheduled point of departure of that conveyance for that journey</p>
12(11)	<p>Supply of telecommunication services including data transfer, broadcasting, DTH, cable etc.</p>	<p>Services involving fixed line, circuits, dish antenna etc: Location of such fixed equipment</p> <ul style="list-style-type: none"> ▪ Post-paid mobile/ internet services: Location of billing address of the recipient ▪ Sale of pre-paid voucher: Place of sale of such vouchers <p>In case payment is made through internet banking: Location of recipient as per the record of the supplier</p>

Place of Supply

		<ul style="list-style-type: none">Other cases: Address of the recipient in records If such address is not available: Location of supplier
12(12)	Supply of banking and other financial services, including stock broking Services	<ul style="list-style-type: none">Location of recipient in supplier's recordsIf not available, then location of supplier
12(13)	Supply of insurance services	Registered recipient: Location of recipient Unregistered recipient: Location of recipient in supplier's records
12(14)	Advertisement Services to Government, etc.	<ul style="list-style-type: none">Each of States/Union Territory where the advertisement is broadcasted/displayed/runProportionate value in case of multiple States (<i>Rule 3 of the IGST Rules</i>).

9.9 Place of Supply (POS) of Services in cases of Location of supplier or recipient is outside India (Section 13 of IGST Act)

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Location where the services actually performed	<ul style="list-style-type: none"> • 1.Services supplied in respect of goods which are required to be made physically available.* • 2.Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of services* (Sec 13(3))
Location where the goods are situated at the time of supply of services	<ul style="list-style-type: none"> • 3.Services supplied in respect of goods but from a remote location by way of electronic means* (Sec 13(3))
Location of such immovable property is located or intended to be located	<ul style="list-style-type: none"> • 4.Services supplied directly in relation to immovable property including accommodation in hotel/ boat/ vessel* (Sec 13(4))
Place where the event is actually held	<ul style="list-style-type: none"> • 5. Service by way of admission to / organising an event, etc. and ancillary services* (Sec 13(5))
Location of supplier	<ul style="list-style-type: none"> • Services supplied by a banking company, or a financial institution, or a NBFC to account holders • Intermediary services, • Services consisting of hiring of means of transport (including Yachts)(other than aircraft and vessels) upto 1 month (Sec 13(8))
Place of Destination of such goods	<ul style="list-style-type: none"> • Transportation of goods ,other than by way of mail / courier (Sec 13(9))
Place where passenger embarks on the conveyance for a continuous journey	<ul style="list-style-type: none"> • Passenger transportation service (Sec 13(10))
First scheduled point of departure of that conveyance for that journey	<ul style="list-style-type: none"> • Service provided on board a conveyance (Sec 13(11))
Location of recipient	<ul style="list-style-type: none"> • Online information and database access or retrieval (OIDAR) services (Sec 13(12))
(A) Location of the recipient; <i>If (A) not available in the ordinary course of business then location of supplier</i>	<ul style="list-style-type: none"> • Residuary--DEFAULT RULE (Section 13(2))
Place of effective use and enjoyment of a service	<ul style="list-style-type: none"> • <u>To prevent double taxation / non-taxation of the supply of a service</u>, or for the uniform application of rules, CG has power to notify services/ circumstances

***Notes:**

1. The provisions of place of supply in respect of service at Sl. No 1 and 3 above are not applicable in case of goods that are temporarily imported into India for repairs and exported after repairs.
2. Where these services at Sl. No 1,2,3,4 and 5 above are supplied at:
 - a) more than one location, including a location in the taxable territory, then place of supply shall be the location in the taxable territory **(Section 13(6))**
 - b) more than one State or Union territory, then the place of supply shall be each such State or Union territory in proportion to the value of services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed. **(Section 13(7))**

Composition Levy

10.1 Introduction

Small taxpayers do not possess sufficient knowledge, expertise and manpower to comply with the GST compliances including the detailed accounting and paper work involved. Accordingly, for such tax payers, an optional simplified composition scheme has been prescribed, vide Section 10 of the CGST Act, 2017.

The provisions regarding the composition levy are contained in Section 10 of CGST Act and Composition Rules. It is important to note here that Section 10 starts with a non obstante clause and is having an overriding effect over the charging Section 9(1) of the CGST Act / SGST Act which provides that CGST / SGST shall be levied at such rate as may be notified by the Central / State Government on the value determined under Section 15.

10.2 Who is eligible for Composition Scheme

As per **Notification No. 14/2019 - Central Tax, dated 7th March 2019** taxpayers having aggregate turnover of upto Rs 150 lakhs (limit of Rs 100 lakhs upto 31-3-2019) in the preceding financial year are eligible to avail composition scheme, if they are located in India except States of (i) Arunachal Pradesh, (ii) Manipur, (iii) Meghalaya, (iv) Mizoram, (v) Nagaland, (vi) Sikkim, (vii) Tripura and (viii) Uttrakhand.

However in case of tax payers located in the States of (i) Arunachal Pradesh, (ii) Manipur, (iii) Meghalaya, (iv) Mizoram, (v) Nagaland, (vi) Sikkim, (vii) Tripura and (viii) Uttrakhand, their aggregate turnover of preceding financial year should not exceed Rs 75 lakhs, otherwise they will become ineligible to avail the Composition Scheme. (Proviso to Notification No. 14/2019 - Central Tax, dated 7-3-2019 effective from 1-4-2019)

These limits were applicable with effect from 1st April 2019.

In terms of Section 10(3), the **Composition Levy Scheme shall stand withdrawn** from the day when the aggregate turnover of the registered taxable person during a financial year exceeds threshold limit of composition levy i.e., 1.50 crore (75 lakh in case of certain States as discussed above.)

Hence, Composition Scheme once granted, the eligibility would be valid unless the permission is cancelled or is withdrawn or the person becomes ineligible for the Scheme.

If the aggregate turnover in financial year exceeds Rs 100 lakhs / Rs 75 lakhs, as the case may be, the Composition Scheme will not be available in next financial year.

10.2.1 Meaning of aggregate turnover

As per Section 2(6) of the CGST Act,2017, “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes taxes (CGST, SGST, UTGST and IGST).

Aggregate turnover will not include the value of value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (*Explanation 1 to Section 10 of the CGST Act effective from 1-1-2020*).

10.3 Who are not eligible to avail the Composition Scheme

The composition levy **cannot** be opted for by a taxable person-

- who is engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II (service of supply of food for human consumption). However, supplier of goods can supply services upto 10% of turnover of previous financial year or Rs 5 lakhs, whichever is higher
- who makes any supply of goods or services which are not leviable to tax under the CGST Act/ SGST Act/ UTGST Act like petrol, diesel, alcohol liquor for human consumption, etc.
- who is engaged in making any inter-State outward supplies of goods or services ; or
- who is engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; or

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- who is a manufacturer of such goods as may be notified on the recommendation of the Council. In this regard, following goods have been notified:
 - Ice cream and other edible ice, whether containing cocoa
 - Pan masala
 - All goods, i.e. tobacco and manufactured tobacco substitutes
- Who is a casual taxable person or a non-resident taxable person.

Where more than one registered persons are having the same PAN, the registered person shall not be eligible to opt for Composition Scheme unless all such registered persons opt to pay tax under Composition Scheme. (*Proviso to Section 10(2) of the CGST Act, 2017*).

Hence, registered taxable person, having the same PAN has obtained more than one Registration, whether in the same State or in two different States as Head Office and Branch, then the Head Office and Branch cannot opt for composition levy Scheme in isolation. Both will have to opt for composition levy.

10.4 Rates under Composition Scheme

Concessional tax rates have been prescribed for composition tax payers which are given as under:

1. Tax payable by manufacturer - (a) 0.5% CGST plus 0.5% SGST/UTGST (total 1%) of turnover in State or Union territory in case of a manufacturer [The rate was 1% plus 1% upto 31-12-2017. It is 0.5% plus 0.5% w.e.f. 1-1-2018].

2. Tax on food in restaurant - 2.5% CGST plus 2.5% of SGST/UTGST (total 5%) of turnover in State or Union territory in case of persons engaged in making supplies referred to in Para 6(b) of Schedule II of CGST Act [service of supply of food for human consumption].

The suppliers of food will be eligible for Composition Scheme even if they supply exempted services including service of extending deposits or loans and receiving interest - Removal of Difficulties Order No. 1/2017-CT, dated 13-10-2017.

Thus, the Composition Scheme is available even if the taxable person receives interest, which is an exempted service.

3. Tax payable by traders supplying services upto 10% of turnover - 0.5% CGST plus 0.5% SGST/UTGST (total 1%) of turnover of taxable supplies in State or Union Territory in case of other suppliers [i.e. traders] [The words 'and services' has been added w.e.f. 1-2-2019]. The traders can supply services upto 10% of turnover or Rs 5 lakhs in a year whichever is higher and still will be eligible for Composition Scheme w.e.f 1-2-2019.

10.4.1 Meaning of 'turnover in a State or Union Territory'

Tax is payable by manufacturer / supplier of food viz restaurant / outdoor caterer on the amount of turnover in State or Union territory.

As per Section 2(112) of the CGST Act, 'turnover in State' or 'turnover in Union territory' means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Thus tax at fixed rate is payable on 'exempt supplies also'. However the traders are required to pay tax on taxable supplies only w.e.f. 1-1-2018 [Till 31-12-2017, the traders were liable to pay tax on 'turnover in State' which include exempt supplies also].

Note: For the purposes of determining the tax payable under Composition Scheme, turnover in State or turnover in Union territory shall not include the value of following supplies, namely:—

- (i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and
- (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. (Explanation 2 to Section 10 of the CGST Act).

10.5 Other Conditions / restrictions

The registered person may opt to pay tax under Composition Levy Scheme subject to satisfaction of the following conditions and restrictions:

- he is not entitled to input tax credit

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- he is neither a casual taxable person or a non-resident taxable person.
- he shall pay tax under Section 9(3) or 9 (4) of the CGST Act (reverse charge) on inward supply of goods or services or both (tax to be paid at normal rates and not concessional rates).
- he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him; and
- 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.

The registered person paying tax under Section 10 may not file fresh intimation every year. He may continue to pay tax under said section subject to the provisions of the Act and these Rules (Rule 5(2) of the CGST Rules, 2017).

In terms of Section 10(4) of the CGST Act, a taxable person who pays tax under Composition Levy shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

It is also worth noting here that in terms of Section 10(5) if the proper officer has reasons to believe that a taxable person was not eligible to pay tax under Composition Levy Scheme, the concerned taxable person shall be liable to pay the following:

- (a) Any tax which may be payable by him under other provisions of the Act; and
- (b) Penalty;
- (c) Provision of Section 73 and 74 for shall apply for determination of tax and penalty

10.6 Composition scheme not applicable for tax payable under RCM

It is important to note that, a taxable person opting for Composition Scheme will be required to pay tax on supplies taxable under RCM at regular rates and not the composition rate. Further, such person shall not be eligible to claim Input tax credit of tax so paid under reverse charge mechanism.

10.7 Application or exercising option to pay tax under composition

Taxable person should make an application exercising his option to pay tax under Composition scheme. There are three possibilities in which such option can be exercised:

- Taxable Person migrating from old registration to GST registration
- Taxable Person obtaining new registration under GST laws
- Taxable Person paying tax under normal levy in one financial year and wants to opt for Composition Scheme in next financial year, under the GST regime

10.8 Switching from Composition Scheme to normal scheme of payment of tax

Section 18(1)(c) of CGST Act states that if taxable person switches over from Composition Scheme to normal scheme, he is 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 of CGST Act.

Following persons will shift from Composition Scheme to normal scheme - (a) who has furnished an intimation under rule 6(2) or (b) filed an application for withdrawal under rule 6(3) or (c) a person in respect of whom an order of withdrawal of option has been passed in Form GST CMP-07 under rule 6(5) rule of CGST Rules, 2017.

A person switching to normal scheme will have to file 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. The statement should be filed 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 applicable - Rule 6(6) of CGST Rules, 2017.

10.9 Switching from normal scheme to Composition Scheme of payment of tax

If taxable person who has availed ITC intends to switch over to the Composition Scheme, he is required to reverse ITC in respect of inputs held in stock, inputs contained in semi-finished goods held in stock and on capital goods, as if supply is made attracts provisions of section 18(4) of CGST Act and Rules made thereunder. Thus, person who intends to shift to the Composition Scheme suppose w.e.f. 1-4-2020 is required to pay an amount equal to ITC on stocks of inputs, WIP and capital goods in stock as on 31-3-2020. After payment of such amount, if there is balance of ITC in electronic credit ledger, it will lapse.

10.10 Composition Scheme for small service providers having turnover upto Rs 50 lakhs

A simplified scheme was introduced vide Notification No. 2/2019-CT (rate) dated 7-3-2019 w.e.f 1-4-2019 for small service providers (and those who are supplier of goods as well as services exceeding 10% of turnover within State / UT) whose aggregate turnover during the previous year did not exceed Rs 50 lakhs.

In line with above, Section 10(2A) of the CGST Act, 2017 has been introduced vide Finance (No.2) Act,2019 with effect from 1-1-2020.

The taxable person opting for this scheme is required to pay CGST @ 3% plus SGST / UTGST @ 3% on first supplies of goods or services upto Rs 50 lakhs, made on or after 1-4-2019.

Conditions:

- The aggregate turnover in previous financial year should not exceed Rs 50 lakhs (all taxable persons having same Income Tax PAN).
- The registered person should not be eligible for the Composition Scheme under section 10(1) of CGST Act.
- He should not be engaged in making any supply which is not leviable to tax under CGST Act (petroleum products).
- He should not be engaged in making inter-state supplies.

- He is neither a casual taxable person nor a non-resident taxable person.
- He should not be making supplies through e-commerce operator who is required to collect tax at source under section 52 of CGST Act.
- He should not be engaged in supply of ice cream, pan masala and tobacco products.
- He should not collect GST from customers. He shall pay 6% tax (3% CGST + 3% SGST) from his pocket.
- He shall issue bill of supply (and not tax invoice), as per provision of section 31(3) (c) of CGST Act.
- In case of inward supplies where reverse charge is applicable under section 9(3) or 9(4) of CGST Act, he should pay the normal tax applicable on such supplies.
- CGST Rules, as applicable to person paying tax under section 10 of CGST Act (Composition Scheme) shall apply to pay person paying tax under this simplified scheme.

Electronic Commerce Operator and Collection of Tax at Source

11.1 Introduction

In the last decade a major revolution that has taken place is in regard to the supply of goods and services through electronic commerce operators. Nowadays numerous buyers and sellers buy / sell goods or services from the electronic commerce operator platform and the business through electronic commerce operators has grown manifold in last few years.

Specific provisions in regard to definition of electronic commerce operator, liability of electronic commerce operator to pay tax in case of notified services provided through them and collection of tax at source have been incorporated under GST Law which are discussed in the succeeding paras.

11.2. Contents of the Chapter

The contents of this Chapter are as under:-

- (a) Meaning of electronic commerce operator (**Para 11.3**)
- (b) Payment of taxes (**Para 11.4**)
- (c) Payment of taxes by electronic commerce operator (Para 11.5)
- (d) Collection of Tax at source (Para 11.6)
- (e) Registration (Para 11.7)

11.3. Meaning of Electronic Commerce Operator

Specific definitions of 'electronic commerce' and 'electronic commerce operators' and has been provided in section 2(44) and 2(45) of the CGST Act.

As per Section 2(44) "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

Further as per Section 2(45) "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

Electronic Commerce Operator and Collection of Tax at Source

If we analyse the definitions of the electronic commerce and electronic commerce operator the following essential ingredients of electronic commerce operator appears:

- (a) Supply over digital or electronic network. In cases of electronic commerce physical presence of buyer and seller is not required at a single place and the deal is struck over the digital or electronic network through website or mobile applications.
- (b) The person should own, operate or manage the platform. The electronic commerce operator should own, operate or manage the digital or electronic facility of platform.
- (c) It should be used for electronic commerce which is defined in Section 2(45) to mean the supply of goods or services or both, including digital products over digital or electronic network.

As per Wikipedia, e-commerce is a transaction of buying or selling online. Electronic commerce draws on technologies such as mobile commerce, electronic funds transfer, supply chain management, Internet marketing, online transaction processing, electronic data interchange (EDI), inventory management systems, and automated data collection systems. Modern electronic commerce typically uses the World Wide Web for at least one part of the transaction's life cycle although it may also use other technologies such as e-mail. E-commerce businesses may employ some or all of the following:

- Online shopping web sites for retail sales direct to consumers
- Providing or participating in online marketplaces, which process third-party business-to-consumer or consumer-to-consumer sales
- Business-to-business buying and selling
- Gathering and using demographic data through web contacts and social media
- Business-to-business (B2B) electronic data interchange
- Marketing to prospective and established customers by e-mail or fax (for example, with newsletters)
- Engaging in pretrial for launching new products and services
- Online financial exchanges for currency exchanges or trading purposes

11.4 Payment of Taxes

Normally in cases where the services are supplied by a supplier through electronic commerce operator the tax will be required to be paid by such supplier in view of Section 9(1) of CGST Act and other charging sections of GST Acts according to which the tax is to be paid by a taxable person. However in regard to services it is important to note that under Section 9(5) of the CGST Act the Government is empowered to notify certain services which if supplied through Electronic Commerce Operator the tax on which will be paid by the electronic commerce operator and not by the supplier of such service.

11.5 Payment of taxes by electronic commerce operator

Section 9(5) of CGST / SGST Act(s) and Section 5(5) of IGST Act provides that the Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State / 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 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.

It is thus evident that GST is payable by electronic commerce operator if such operator has office in taxable territory. In case he does not have office in taxable territory the tax will be paid by any person having office in taxable territory representing such operator for any purpose. Otherwise the electronic commerce operator shall appoint a person in taxable territory for the purpose of paying GST and such person shall be liable for payment of tax.

In terms of Section 9(5), the Central Government may specify categories of services the tax on which shall be paid by the electronic commerce operator if such services are supplied through it.

The actual supplier of services is a third party who provides such supplies to the customer through e-commerce operator. Instead of levying tax on such actual supplier, the law has imposed levy on e-commerce operator. Consequently, all the provisions of the CGST Act shall apply to such electronic commerce operator as if he is the person liable for paying the tax in relation to supply of such services.

11.5.1 Payment of taxes by the electronic commerce operator is not under reverse charge

Under GST law as per definition of reverse charge as given in Section 2(98) of CGST Act it covers situations where the recipient is liable to pay tax and as the electronic commerce operator is not a recipient and thus the payment of tax by such operator under Section 9(5) of CGST Act will not be regarded as payment under reverse charge.

11.5.2. Notified services

As per Section 9(5) the liability to pay tax dwelves upon electronic commerce operator only in cases of notified services. In this regard government has notified following services as per Notification No. 17/2017- Central Tax (Rate) dated 28-6-2017 (as amended). Similar Notifications have also been issued under other GST Acts also:

- (1) services by way of transportation of passengers by a radio-taxi, motor cab, maxicab and motor cycle;
- (2) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under read with section 22(1) of the CGST Act.
- (3) services by way of house-keeping, such as plumbing, carpentering etc., except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act.

11.6 Collection of Tax at source

TCS refers to the tax which is collected by the electronic commerce operator when a supplier supplies taxable goods or services through its portal and the payment for that supply is collected by the electronic commerce operator. Example of e-commerce operators in India are Amazon, Flipkart, Jabong, etc. These operators display on their portal goods as well as services which are actually supplied by some other person to the consumer.

The goods or services belonging to other suppliers are displayed on the portals of the operators and consumers buy such goods/services through these portals. On placing the order for a particular good/service, the actual supplier supplies the selected good/ service to the consumer but the price/consideration for the good/service is collected by the operator from the consumer and passed on to the actual supplier after the deduction of commission by the Operator.

Now through the TCS provisions as mandated under Section 52 of the CGST Act, which are effective from 01-10-2018, the Government has placed the responsibility on the operator to collect the 'tax' at a rate of 1% from the supplier. This shall be done by the operator by paying the supplier, the price of the product/ services, less the tax, calculated at the rate of 1%. The said amount will be calculated on the net value of the goods/services supplied through the portal of the operator.

It may be noted that the collection of tax at source as given under Section 52(1) is different from the provisions in regard to payment of tax by electronic commerce operator under Section 9(5) as in later the operator becomes the person liable to pay tax and is required pay full GST on supply whereas in case of collection of tax at source such operator is not regarded as person liable to pay tax as it only required to collect 1% tax and deposit the same. Further collection of tax at source is required in case of all supplies (except those notified under section 9(5)) whereas the payment of tax under Section 9(5) is required only in cases of notified supplies.

11.6.1 Meaning of net value of taxable supplies

As per Section 52(1) collection of tax source is required at the rate not exceeding 1% as may be notified of the net value of taxable supplies made through it by other suppliers where consideration with respect to such supplies is to be collected by the operator.

Thus it is important to understand the meaning of 'net value of taxable supplies'.

As per Explanation to Section 52(1) the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of Section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Thus the net value of taxable supplies in case of services would mean the aggregate value of taxable supplies of services as reduced by the services notified under Section 9(5) (refer **para 9.5.2**). It may be noted here that as Explanation the value of taxable supplies returned to the suppliers is also to be excluded from net value of taxable supplies, however this exclusion is applicable only to goods and may not apply to services.

11.6.2 When tax is to be collected

Section 52(1) mandates that electronic commerce operator shall collect tax at source of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is **to be** collected by the operator.

It may be noted here that the said section does not provide that tax shall be collected at the time of credit of the amount in the account of operator or the account of supplier. Rather it states that tax is to be collected in respect of consideration to be collected by the operator. This means that net value of taxable supply is to be computed in the manner prescribed as discussed in preceding para on monthly basis and any supply made in respect of which consideration has not been received would also be included in such value.

11.6.3 Which tax is to be collected

Under GST Law, CGST and SGST / UTGST is levied on intra-State supply of services whereas IGST is applicable in case of inter-State supplies. Now the question arises that under which tax head would the tax collected at source be deposited by electronic commerce operator. In this regard it may be noted that the tax head under which collection of tax is to be made will be the tax charged by the supplier in its invoice. In case supplier has charged IGST, the entire amount of TCS shall be deposited in IGST and if the supplier has charged CGST and SGST, the deposition of tax collected at source will also be bifurcated in the ratio of CGST and SGST.

11.6.4 When the tax collected is required to be deposited

As per Section 52(3) of CGST Act the amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

11.6.5 Filing of Statement

Section 52 (4) of CGST Act provides that every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

11.6.6 Form and manner of submission of statement of supplies by an e-commerce operator

As per Rule 67 (1) of the CGST Rules every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in Form GSTR-8 electronically through the Common Portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.

Further as per Rule 67(2) the details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers in Part D of Form GSTR-2A on the Common Portal after the due date of filing of Form GSTR-8.

Further Rule 60(7) of CGST Rules also provides that the details of tax collected at source furnished by an e-commerce operator under section 52 in Form GSTR-8 shall be made available to the concerned person in Part D of Form GSTR - 2A electronically through the Common Portal and such taxable person may include the same in Form GSTR-2.

11.6.7 Rectification of omission or inaccurate particulars in the Statement

As per Section 52 (6) of CGST Act if any operator after furnishing a

statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

11.6.8 Matching of details

As per Section 52(8) of CGST Act the details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

In this regard Rule 78 of the CGST Rules is relevant which provides that the following details relating to the supplies made through an e-commerce operator, as declared in **Form GSTR-8**, shall be matched with the corresponding details declared by the supplier in **Form GSTR-1**-

- (a) GSTIN of the supplier;
- (b) GSTIN or UIN of the recipient, if the recipient is a registered person;
- (c) State of place of supply;
- (d) Invoice number of the supplier;
- (e) Date of invoice of the supplier;
- (f) Taxable value; and
- (g) Tax amount:

Provided that for all supplies where the supplier is not required to furnish the details separately for each supply, the following details relating to such supplies made through an e-Commerce operator, as declared in **Form GSTR-8**, shall be matched with the corresponding details declared by the supplier in **Form GSTR-1**-

- (a) GSTIN of the supplier;

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- (b) State of place of supply;
- (c) Total taxable value of all supplies made in the State through e-commerce portal; and
- (d) Tax amount on all supplies made in the State:

Provided further **that** where the time limit for furnishing Form **GSTR-1** under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

11.6.9 Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier

As per Section 52 (9) of CGST Act where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

As per Rule 79 (1) any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to the supplier electronically in Form **GST MIS-5** and to the e-commerce portal electronically in Form **GST MIS-6** through the Common Portal on or before the last date of the month in which the matching has been carried out.

Rule 79 (2) of CGST Rules provide that a supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

Further as per Rule 79(3) an operator to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.

11.6.10 Implication of non-rectification

As per Section 52 (10) the amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the

operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

Further Section 52 (11) provides that the concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

In this regard Rule 79 (4) of the CGST Rules provides that where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in **Form GSTR-3** for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the Common Portal in **Form GST MIS –5**.

11.6.11 Annual Statement

Section 52(5) of CGST Act provides that every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

11.6.12 Claim of Credit by the supplier

As per Section 52 (7) of CGST Act the supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

As per Rule 67(2) the details furnished by the operator under Rule 67(1) shall be made available electronically to each of the suppliers in Part D of Form GSTR-2A on the Common Portal after the due date of filing of Form GSTR- 8 and accordingly tax collected at source by electronic commerce operator shall be auto populated in GSTR 2A and credit of same can be taken by the supplier.

11.6.13 Notice to electronic commerce operator

In respect to services, section 52(12) of CGST Act provides that any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to supplies of services effected through such operator during any period as may be specified in the notice.

Further as per sub-section (13) every operator on whom a such a notice has been served shall furnish the required information within fifteen working days of the date of service of such notice.

Section 52 (14) mandates that in case any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

*Explanation.—*For the purposes of this section, the expression “concerned supplier” shall mean the supplier of services making supplies through the operator.

11.7 Registration

As per Section 24(x) of CGST Act, it is mandatory for the electronic commerce operator (who is required to collect tax at source under section 52) to obtain registration irrespective of its aggregate turnover.

Accordingly any person who is selling his own goods / himself providing services from its website, will be eligible to get threshold exemption limit of aggregate turnover for the purpose of GST registration.

In this regard as per Rule 12 of the CGST Rules is relevant which inter alia states that any person required collect tax at source in accordance with the provisions of section 52 shall electronically submit an application, duly signed or verified through EVC, in Form **GST REG-07** for grant of registration through the Common Portal, either directly or from a Facilitation Centre notified by the Commissioner. The proper officer may grant registration after due verification and issue a certificate of registration in Form **GST REG-06** within three working days from the date of submission of application.

11.8 Consequences of not complying with TCS provisions

Sl. No	Default made	Consequence of default
1.	TCS not collected or inaccurate particulars given.	Interest to be paid along with the TCS amount; else the amount shall be determined and recovered as per the law.
2.	TCS collected but not paid to the Government or paid later than 10 th of the succeeding month	Interest to be paid along with the TCS amount; else the amount shall be determined and recovered as per the law.
3.	TCS default	Penalty of Rs 10,000/- or an amount equivalent to the tax not collected under section 51 or short collected or collected but not paid to the Government, whichever is higher. (Section 122(1)(v))
4.	Not furnishing the details called for by Department.	Any person who fails to furnish the information required by the notice served under section 52(12) shall, without prejudice to any action that may be taken under section 122 be liable to a penalty which may extend to Rs 25,000/-. (Section 52(14))

Tax Deducted at Source

12.1 Introduction

The provisions regarding tax deduction at source are mandated in Section 51 of the CGST / SGST Act(s). Further this section also has applicability to IGST and UTGST Acts also. The provisions in regard to tax deduction at source are discussed in the succeeding paras.

12.2. Effective date of applicability of TDS provisions

As per Notification No. 50/2018 Central Tax dated 13-09-2018 the effective date of applicability of TDS provisions is 01-10-2018. Accordingly, tax will be required to be deducted by specified persons on payments made or credited to suppliers on or after 01-10-2018.

12.3 TDS provisions under GST Law – At a Glance

The provisions in respect to deduction of tax source are contained in the Section 51 of the CGST Act, 2017. Similar provisions exist in SGST Acts of respective State Governments. Further such provisions are also applicable to IGST Act, 2017 in terms of Section 20(x) of IGST Act, 2017 and to UTGST Act, 2017 as per Section 21(xi) of the UTGST Act, 2017. Further apart from Section 51 of the CGST / SGST Acts certain other provisions of such Acts will also be applicable in regard to TDS. In addition to above the machinery provisions in regard to compliance to TDS provisions are contained in CGST / SGST Rules, 2017.

For ready reference, the matrix of provisions of GST Law relevant in regard to deduction of tax at source is tabulated below:

Tax Deducted at Source

Sl. No	Description	Section of CGST Act/ SGST Act	Rule of CGST Rules/ SGST Rules	GST Forms
1.	Transitional provisions	142(13)		
2.	Persons liable to deduct, conditions, time and rate of deduction.	Section 51(1)		
3.	Compulsory requirement for registration as tax deductor	Section 24 (vi)		
4.	Application for registration	Section 25	Rule 12(1)	GST REG-07
5.	Grant of Registration Certificate		Rule 12(2)	GST REG-06
6.	Cancellation of Registration Certificate		Rule 12(3) read with Rule 22	GST REG-08
7.	Payment of Tax deducted at source	Section 51(2) read with Section 39(7)	Rule 85(4)	GST PMT-05
8.	Payment of interest on delayed payment.	Section 51(6) read with Section 50(1)		
9.	Filing of TDS Return	Section 51(5) read with Section 39(3)	Rule 66(1)	GSTR-7
10.	Late fee for delay in filing of TDS return	Section 47(1)		
11.	Issue of TDS Certificate	Section 51(3)	Rule 66(3)	GSTR-7A
12.	Late fee for late furnishing of TDS certificate	Section 51(4)		

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13.	Claim of credit of tax deducted by deductee	Section 51(5)	Rule 66(2) read with Rule 87(9)	
14.	Penalty on TDS default	Section 122(1)(v)		
15.	Demand of TDS	Section 51(7) read with Section 73 or 74		
16.	Refund of TDS	Section 51(8) read with Section 54		

12.4 Overview of TDS under GST law

For benefit of readers, a brief overview on important provisions relating to TDS under GST Law are given below.

12.4.1 Persons required to deduct tax

As per Section 51(1) of the CGST Act, 2017 read with Notification No. 50/2018 – Central Tax dated 13-09-2018 following persons (deductors) need to deduct tax at source.

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) 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 51% or more participation by way of equity or control, to carry out any function;
- (e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;
- (f) public sector undertakings.

12.4.2 Quantum and rate of tax deduction

The tax would be deducted @1% (CGST and SGST each for intra-State supply) and @ 2% (IGST for inter-State supply) of the payment made to the supplier (the deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds Rs 2,50,000/- (excluding the amount of Central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice).

12.4.3 no tax deduction required in some cases

No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State, or as the case may be, Union territory of registration of the recipient. Further tax is also not required to be deducted in case the preconditions of tax deduction as laid down under Section 51(1) are not fulfilled. *Example:* Payment of exempt supplies, taxable supplies where contract value does not exceed Rs 2.50 lakh etc.

12.4.4 Registration of TDS deductors

A TDS deductor has to compulsorily register without any threshold limit. The deductor has a privilege of obtaining registration under GST without having required to obtain PAN. He can obtain registration using his Tax Deduction Account Number (TAN) issued under the Income tax Act, 1961.

12.4.5 Payment of TDS

The amount of tax deducted at source should be deposited to the Government account by the deductor by 10th of the succeeding month. The deductor would be liable to pay interest if the tax deducted is not deposited within the prescribed time limit.

12.4.6 Filing of TDS Return

The deductor is also required to file a return in Form GSTR-7 within 10 days from the end of the month. The details of tax deducted at source furnished by the deductor in Form GSTR-7 shall be made available to each of the suppliers in Part C of Form GSTR-2A electronically through the Common Portal and the said supplier may include the same in Form GSTR-2. The amounts deducted by the deductor get reflected in the GSTR-2 of the supplier (deductee). The supplier can take this amount as credit in his electronic cash register and use the same for payment of tax or any other liability.

12.4.7 TDS Certificate

A TDS certificate is required to be issued by deductor (the person who is deducting tax) in Form GSTR-7A to the deductee (the supplier from whose payment TDS is deducted), within 5 days of crediting the amount to the Government, failing which the deductor would be liable to pay a late fee of Rs. 100/- per day from the expiry of the 5th day till the certificate is issued. This late fee would not be more than Rs. 5000/-

It may be noted that Section 51(4) which prescribed for levy of late fee as above has been omitted w.e.f 1.1.2021 and accordingly late fee would not be levied for delay in issuance of TDS certificate.

12.4.8 Availment of credit by supplier

The TDS deducted and deposited by deductor in the Government account shall be reflected in the electronic cash ledger of the supplier (i.e. deductee) who would be able to use the same for payment of tax or any other amount.

12.4.9 Consequences of not complying with TDS provisions:

Sl.No	Default made	Consequence of default
1.	TDS not deducted	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.
2.	TDS certificate not issued or delayed beyond the prescribed period of five days	
3.	TDS deducted but not paid to the government or paid later than 10th of the succeeding month	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.
4.	Late filing of TDS returns	Late fee of Rs. 100/- for every day during which such failure continues subject to a maximum amount of five thousand rupees.

Further in case of TDS default, penalty of Rs 10,000/- or an amount equivalent to the tax not deducted under section 51 or short deducted or deducted but not paid to the Government, whichever is higher.

Registration

13.1 Introduction

As per the charging sections of GST Acts, the applicable tax is paid by the taxable person.

In terms of Section 2(107) 'taxable person' means a person who is registered or required to be registered under Section 22 or 24 of the CGST Act.

Thus both the terms i.e taxable person and registration are connected and are of critical importance.

One who is required to obtain multiple registrations in different States or within one State would be considered as *distinct person* in each State.

13.2 Registration to be obtained if turnover exceeds prescribed limit

Section 22(1) of the CGST Act,2017 provides that every supplier shall be liable to be registered under this Act in the State or Union territory from where he makes a taxable supply of goods or services or both if his aggregate turnover in a financial year breaches a prescribed threshold. Various thresholds have been prescribed depending upon State from which supply is being made / goods or services being supplied.

For ready reference the threshold limit of aggregate turnover applicable in various situations along with legal references is tabulated below:

Sl. No	Supplier of:	State / UT from which supply is made	Threshold exemption limit of aggregate turnover	Legal reference
1.	Goods or services or both	Entire India, except Nagaland,	Rs 20 lakh	i)Section 22(1) ii) Second proviso to Sec

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		Tripura, Manipur and Mizoram.		22(1).
2.	Goods or services or both	States of Nagaland, Tripura, Manipur and Mizoram.	Rs 10 lakh	i) Section 22(1) ii) First proviso to Sec 22(1).
3.	Only supply of goods, except Ice Cream and other edible ice, whether or not containing cocoa pan masala All goods i.e. Tobacco and manufactured tobacco substitutes	Entire India, except in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand	Rs 40 lakh (to be computed excluding interest on deposits, loans and advances*).	i) Section 22(1) ii) Third Proviso to Section 22(1) (inserted by Finance Act, 2019, w.e.f. 1-1-2020 vide Notification No. 10/2019-Central Tax, dated 07.03.2019. iii) Explanation to Sec 22(1)

* No such reduction to be made while computing aggregate turnover of Rs 20 lakh / 10 Lakh.

For ease of understanding the State / UT wise threshold limit for GST registration is tabulated below:

Name of State / UT	Person engaged exclusively in supply of goods	Person engaged exclusively in supply of services or supply of goods and services both
Entire India (except the States/UTs of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand)	Rs 40 lakh	Rs 20 lakh

Puducherry, Arunachal Meghalaya, Uttarakhand	Telangana, Pradesh, Sikkim,	Rs 20 lakh	Rs 20 lakh
Manipur, Mizoram, Nagaland, Tripura		Rs 10 lakh	Rs 10 lakh

13.2.1 Meaning of Aggregate turnover

The term aggregate turnover is defined under Section 2(6) of CGST Act as follows:-

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

Aggregate turnover’ means value of all outward supplies (taxable supplies + exempt supplies + exports + inter-State supplies) of a person having the same PAN and computed on all India basis minus Central tax (CGST), State tax (SGST), Union territory tax (UTGST), integrated tax (IGST) and compensation cess.

Non-taxable supply viz supply of alcoholic liquor and the 5 petroleum products currently outside GST, will be included in aggregate turnover as same are covered under the definition of exempt supply.

Also, the value of inward supplies on which tax is payable under reverse charge is not taken into account for calculation of ‘aggregate turnover’. Further activities / transactions included in Schedule III of CGST Act, 2017 will also not be included in aggregate turnover.

It shall include supply made by an agent on behalf of its principal in cases where invoice is issued by him in his name. Further in case a person is engaged solely in supply of goods (barring few goods), the aggregate turnover shall not include interest on deposits, loans and advances.

13.3 Persons not be liable to register even if aggregate turnover exceeds prescribed limit

As per Section 23 of the CGST Act, 2017, following persons need not obtain GST registration even if their aggregate turnover exceeds the prescribed limit.

- (a) An agriculturist, to the extent of supply of produce out of cultivation of land.
- (b) Any person engaged exclusively in the business of supplying goods and/ services that are not liable to tax or wholly exempt from tax under the CGST Act or under IGST Act
- (c) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

The Government has specifically granted exemption from registration, to the following persons:

- (a) Persons engaged in rendering taxable services which are liable to GST under reverse charges are not required to take registration - (Notification No. 5/2017–Central Tax, dated 19.06.2017)
- (b) Job-workers engaged in making inter-State supply of services to a registered person except those who are liable to be registered under section 22(1) of the CGST Act, 2017 or persons opting for voluntary registration or persons engaged in making supply of services in relation to jewellery, goldsmiths' and silversmiths' wares and other articles (w.e.f. 14.09.2017) - Notification No. 7/2017–Integrated Tax, dated 14.09.2017 as amended vide Notification No. 2/2019-Integrated Tax, dated 29-Jan-2019, w.e.f. 1-Feb2019.
- (c) Persons effecting inter-State supplies of taxable services – where the aggregate value of supplies on PAN-India basis does not exceed Rs 20 Lakhs in a year (Rs 10 Lakhs for special category States- Manipur, Mizoram, Nagaland and Tripura) (w.e.f. 13.10.2017) - Notification No. 10/2017–Integrated Tax, dated 13.10.2017 as amended vide Notification No. 3/2019-Integrated Tax, dated 29-Jan-2019, w.e.f. 1-Feb-2019.

- (d) Categories of persons effecting inter-State taxable supplies of handicraft goods – where the aggregate value of supplies on PAN-India basis does not exceed Rs 20 Lakhs in a year (Rs 10 Lakhs for special category States- Manipur, Mizoram, Nagaland and Tripura) - (w.e.f. 22.10.2018) - Notification No. 3/2018–Integrated Tax dated 22.10.2018. This notification has superseded Notification No. 8/ 2017-Integrated Tax, dated 14.09.2017
- (e) Persons providing services through an e-commerce who is required to collect tax at source, provided their aggregate turnover does not exceed Rs 20 lakh (Rs 10 lakh in special category States-Manipur, Mizoram, Nagaland and Tripura) (w.e.f. 15.11.2017). - Notification No. 65/2017–Central Tax, dated 15.11.2017 as amended vide Notification No. 6/2019-Central Tax, dated 29-Jan-2019, w.e.f. 1-Feb-2019
- (f) Categories of casual taxable persons making taxable supplies of handicraft goods where the aggregate value of supplies on PAN-India basis does not exceed Rs 20 Lakhs in a year (Rs 10 Lakhs for special category States-Manipur, Mizoram, Nagaland and Tripura) - (w.e.f. 23.10.2018) – Notification No. 56/2018-Central Tax, dated 23.10.2018. This notification has superseded Notification No. 32/ 2017-Central Tax, dated 15.09.2017.

13.4 Compulsory Registration irrespective of quantum of aggregate turnover

In terms of Section 24, following persons are required to be compulsorily registered under CGST Act even if their aggregate turnover is below the specified exemption limit and are exempt from registration under section 22(1)

- (a) Person making any inter-state taxable supply (Subject to two exemptions i) Inter State supplies of taxable services (Notification No. 10/2017–Integrated Tax, dated 13.10.2017 amended vide Notification No. 3/2019-Integrated Tax, dated 29.01.2019, w.e.f. 1-Feb-2019) and ii) handicraft goods except when their turnover exceeds threshold limit (Notification No.3/2018– Integrated Tax, dated 22.10.2018 which superseded Notification No. 8/ 2017- Integrated Tax, dated 14.9.2017))

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- (b) Casual Taxable Persons making taxable supply (subject to exemption of Casual taxable persons making taxable supplies of handicraft goods if the aggregate turnover does not exceed Rs 20 lakhs (Notification No. 56/2018-Central Tax, dated 23.10.2018 which superseded Notification No. 32/ 2017–Central Tax, dated 15.9.2017)).
- (c) Persons liable to pay GST under reverse charge.
- (d) Electronic commerce operator in respect of specified categories of services if such services are supplied through it [where the provision of Section 9(5) of CGST Act apply].
- (e) Non-resident taxable persons making taxable supply.
- (f) Persons who are required to deduct tax at source, whether or not separately registered under GST Act(s) [Separate registration required for TDS purposes by Govt Deptt / PSUs]
- (g) Every electronic commerce operators who is required to collect tax at source under section 52.
- (h) Persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise. (Though not expressly mentioned, 'agents' will become liable to compulsory registration only if their transactions fall in Schedule I).
- (i) Input Service Distributor, whether or not separately registered under GST Act(s) [Separate registration required for ISD purposes]
- (j) Persons who supply goods or services or both (other than supplies specified under section 9(5)) through such electronic commerce operator who is required to collect tax at source under section 52.

However, persons who are suppliers of service and supplying services through e-commerce operator are not required to register under GST under GST if their aggregate turnover is less than Rs 20 lakhs per annum (Rs 10 lakhs in case of specified States)- Notification No. 65/2017 – Central Tax dated 15.11.2017. This exemption is not available to supplier of goods.

- (k) Every person supplying Online Information and Database Access or Retrieval Services (OIDAR Services) from a place outside India to a person in India, other than a registered taxable person.

13.5 Other GST Registration provisions:

- A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.
- One person who supplies goods or services from different States or different Union territories is required to get registered in each of such State or from different Union Territories.
- In case of registrations other than casual taxable person or non-resident taxable person every person shall apply within 30 days from the date on which he becomes liable to registration.
- However, casual taxable person and non-resident taxable person are required to get registration at least five days prior to the commencement of business. Certificate of registration issued to them will be valid for a period of 90 days and the designated officer can further extend this period by 90 days, provided a reasonable cause is provided by the taxable person. A casual taxable person is required to make an advance deposit of tax in an amount equivalent to the estimated tax liability for the period for which registration is sought.
- A non-resident taxable person needs to electronically submit a duly signed application, along with a self-attested copy of his valid passport, for registration, using the FORM GST REG-09, at least five days prior to the commencement of business on the Common Portal. He will be given a temporary reference number electronically by the Common Portal for making an advance deposit of tax in his electronic cash ledger and an acknowledgment will be issued thereafter.
- If case, all the information in the application is submitted properly along with necessary documents then, registration shall be granted from seven days from submitting the documents and the clarification, if any.
- Registration shall be granted from the date of application if the same is made within thirty days of becoming liable to registration. Otherwise, if application is made beyond 30 days of becoming eligible, then from the date of grant of registration.
- Once registration is done, Goods and Services Tax Identification

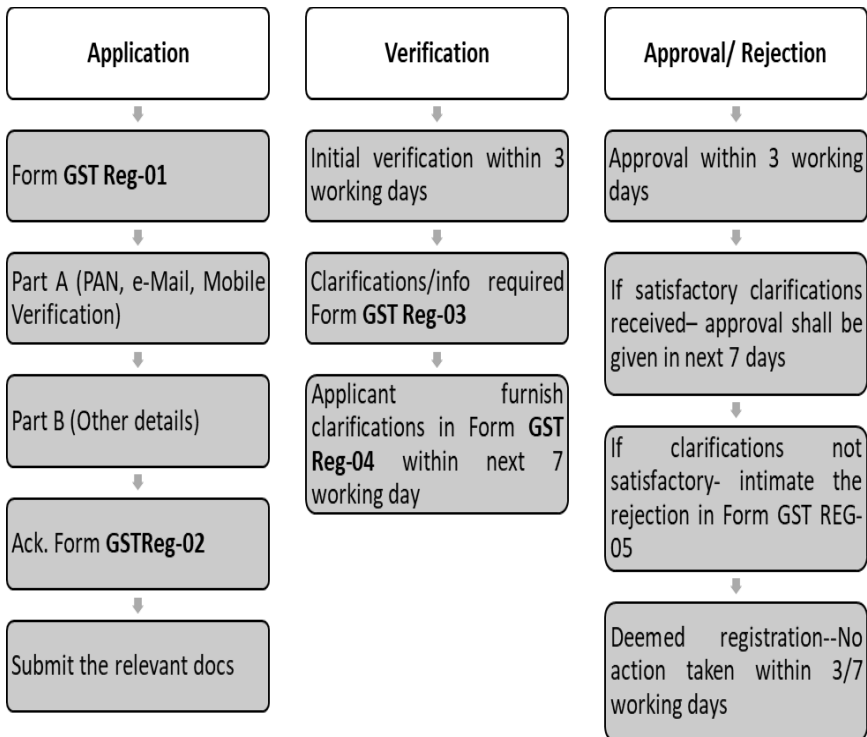
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Number (GSTIN) will be allotted in the following format.

- (a) Two characters for the State code;
 - (b) Ten characters for the PAN or the Tax Deduction and Collection Account Number;
 - (c) Two characters for the entity code; out of this the first code is no. of registration within same State and second is “z”, kept reserve for future use.
 - (d) One checksum character.
- Every registered person shall display his GSTIN on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.

13.6 GST Registration Procedure

Section 25 of the CGST Act, 2017 read with Rule 8 to 26 of the CGST Rules, 2017 related to registration provides a detailed road map on the procedural aspects of the registration. Every person before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union Territory in Part A of FORM GST REG-01. The Permanent Account Number shall be validated online by the common portal from the database maintained by the CBDT. The mobile number and e-mail id shall be verified through a one-time password sent to the said Mobile number and e-mail id.



13.7 Aadhaar authentication for new GST registrations

For the new Goods and Services Tax (GST) registration, authentication by Aadhaar has been enabled from 21-8-2020. This mode of authentication removes the need for physical verification and the new GST registration will be issued within 3 working days of verification. This aims to streamline and expedite the process.

However, those who still opt for other modes of verification will get the GST registration only after 21 days as physical verification of the business premises or verification of document has to be completed first. It will also increase genuine taxpayers while eliminating any fraudulent or fake entities.

For physical verification of business premises, additional documents, instead of the pre-registration, may be sought by the officer in view of the Covid-19 pandemic. This feature can be availed by all Indian citizens.

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The entities who are not required to do this are the following: non-resident taxpayers, taxpayers who have a Unique Identification Number (UIN), tax collectors, tax deductors, etc. It is also not required for Online Information Database Access and Retrieval services (OIDARs).

However, in both cases, the concerned officer has to complete the process within the specified timeframe of 3 working days for Aadhaar authentication cases and 21 days for non-Aadhaar authentication cases.

13.8 Effective date of Registration

Where an applicant submits application for registration	Effective date of registration is
Within 30 days from the date he becomes liable to registration	the Date on which he becomes liable to registration
After 30 days from the date he becomes liable to registration	Date of grant of registration

13.9 Aadhaar Authentication for existing Taxpayers

Functionality for Aadhaar authentication and e-KYC where Aadhaar is not available, has been deployed on GST Common Portal w.e.f. 6th January, 2021, for existing taxpayers.

All taxpayers registered as regular taxpayers (including casual taxable person, SEZ Units/Developers), ISD and composition taxpayers can do their Aadhaar authentication or e-KYC on GST Portal. This is not applicable for Government Departments, public sector undertakings, Local Authorities and Statutory Bodies.

13.9.1 What is Aadhaar Authentication or e-KYC

- a) If Aadhaar is available, the primary authorized signatory and 1 person who is Proprietor/Partner/Director /Managing Partner/ Karta of the entity registered can go for the Aadhaar authentication.
- b) In absence of Aadhaar, they can upload any of the following documents to undergo e-KYC:

Aadhaar Enrolment Number

Passport

EPIC (Voter ID Card)

KYC Form

Certificate issued by Competent Authority

Others

13.9.2 How to do Aadhar Authentication/ e-KYC on Portal

- a) When an existing registered taxpayer would login, a pop-up with Question will be shown “Would you like to authenticate Aadhaar of the Partner/Promotor and Primary Authorized Signatory “ with the two options “Yes, navigate to My Profile” and “Remind me later”.
- b) If taxpayer clicks on “Remind me later” pop up will be closed and user can navigate anywhere on the GST portal.
- c) If taxpayer clicks on “Yes, Navigate to My Profile”, system will navigate to My Profile. In MY PROFILE, a new tab “Aadhaar Authentication status” has been shown from where link for Aadhaar Authentication to the Primary Authorized Signatory and one of promoters/partners as selected by him will be sent.

Note: If same person is Primary Authorized Signatory and Partner/Promoter, Aadhaar authentication is only required to be done for that person.

- d) On the My profile page, in addition to SEND AADHAAR AUTHENTICATION LINK, UPLOAD E-KYC DOCUMENTS option would also be displayed to taxpayer from where they can upload the e-KYC documents on Portal. In this case, the process of e-KYC authentication would be subject to approval of uploaded e-KYC documents by Tax Official.

Tax Invoice and Debit / Credit Note

14.1 Introduction

Every taxable person is required to issue a tax invoice for every supply of goods or services made by him. Further for making adjustment in value as shown in the tax invoice issued a debit or credit note is required to be issued. The provisions in regard to tax invoice, credit and debit notes are contained in Chapter VII, Sections 31 to 34 of CGST Act and such provisions are applicable in other GST Acts also. Further the procedural aspects in this regard are mandated in Rule 46 to 55A of the CGST Rules.

14.2 Contents of the Chapter

- (a) Meaning of invoice (refer Para 14.3)
- (b) Issue of invoice and other documents (refer Para 14.4)
- (c) Issue of credit note and debit notes (refer Para 14.5)

14.3 Meaning of Invoice

As per Section 2(66) of CGST Act “invoice” or “tax invoice” means the tax invoice referred to in Section 31.

Generally invoice is issued by the seller or provider of a service and indicates the items / services supplied and the amount receivable by the supplier from the recipient. An invoice is usually issued on or after the completion of supply of goods or services.

Invoice includes revised invoice

Explanation to Section 31 provides that for the purposes of this section, the expression “tax invoice” shall include any revised invoice issued by the supplier in respect of a supply made earlier.

14.4 Tax Invoices and other documents

The provisions regarding issuance of tax invoices / invoices and other documents are contained in Section 31 to 33 of the CGST Act. Further the

aspects regarding contents, time limits of issuance etc are mandated in Rule 46 to 55A CGST Rules.

It may be noted that under GST Law apart from issue of tax invoice several other documents are required to be issued viz. bill of supply, receipt voucher, refund voucher are required to be made by supplier which were not required under service tax law. Further the recipient of supply in case reverse charge is applicable need to issue invoice in respect of goods / service received (from unregistered supplier) and payment voucher in case advance payment is made by him.

14.4.1 Issue of invoice of supply

Goods: As per Section 31(1) of the CGST Act a registered person supplying taxable goods shall, before or at time of:

- (a) Removal of goods for supply to the recipient, where supply involves movement of goods; or
- (b) Delivery of goods or making available thereof to the recipient, in any other case.

Services: Section 31(2) of CGST Act provides that a registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed.

It may be noted that tax invoice is required to be issued in regard to supply of taxable goods / services on which tax is levied. Thus in case the services supplied are exempt supplies / non-taxable supplies, tax invoice is not required to be issued. However in cases of exempt supply, bill of supply will be issued provisions in regard to which we will be discussing later in this Chapter.

14.4.1-a Time limit of issue of tax invoice of services

As Rule 47 of the CGST Rules the tax invoice in case of taxable supply of services shall be issued within a period of 30 days from the date of supply of service.

However as per Proviso to Rule 47 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 45 days from the date of supply of service.

14.4.1-b Supplies to distinct persons

Second Proviso to Rule 47 provides that an insurer or a banking company or a financial institution, including a NBFC, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

14.4.1-c Contents of invoice

Rule 46 of the CGST Rules provides that the tax invoice issued under Section 31 by a registered person in respect to supply of goods / services shall contain the following particulars:

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is Rs 50,000/- or more;
- (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is less than fifty thousand rupees or more and the recipient requests that such details be recorded in the tax invoice.
- (g) HSN Code for goods or services;
- (h) description of goods or services or both;
- (i) quantity in case of goods and unit or Unique Quantity Code thereof;

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

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

(i) name and address of the recipient; (ii) address of delivery; and (iii) name of the country of destination:

14.4.2 Tax invoice in special cases

Rule 54 of the CGST Rule mandates provisions in regard to issue of tax invoice in special cases which are discussed below:

14.4.2-a Input service distributor (ISD)

As per sub-rule (1) to Rule 54 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 not exceeding sixteen characters, in one

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or multiple series, 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:

Further 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.

14.4.2-b Insurer or a banking company or a FI including NBFC

As per sub-rule (2) to Rule 54 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 shall issue a tax invoice or any other document in lieu thereof, by whatever name called, whether issued or made available, physically or electronically whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as prescribed under rule 46.

As per sub-section (5) the above provision shall also applicable on issue of bill of supply, receipt voucher, refund voucher, payment voucher and revised tax invoice and credit or debit notes. The provisions in regard to these documents are discussed later in this Chapter.

14.4.2-c Goods Transport Agency

As per sub-rule (3) to Rule 54 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.

14.4.2-d Passenger transport service

Sub-rule (4) to Rule 54 mandates that 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.

As per sub-section (5) the above provision shall also be applicable on issue of bill of supply, receipt voucher, refund voucher, payment voucher and revised tax invoice and credit or debit notes. The provisions in regard to these documents are discussed later in this Chapter.

14.4.3 Manner of issuing invoice

As per Rule 48(1) of the CGST Rules 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; and
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER.
- (c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.

As per Rule 48(2) of the CGST Rules 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.

Further as per sub-section (3) the serial number of invoices issued during a tax period shall be furnished electronically through the Common Portal in FORM GSTR-1.(Table -14). While perusing this table it is evident that a taxable person can have many series of invoices without obtaining any permission from the Department.

14.4.4 Issue of invoices in cases of continuous supply

Continuous supply of Goods:

As per Section 2(30) of the CGST Act “continuous supply of goods” means a supply of goods which is provided, continuously or on recurrent basis, under a contract, whether or not by means of wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify.

Time limit of issue of invoice:

As per **Sec 31(4) of the CGST Act, 2017**, in case of continuous supply of goods, where successive statement of accounts or successive payments are involved, the invoice is required to be issued before or at the time:

- each such statement is issued **or**,
- as the case may be each such payment is received.

Thus the due date of issue of invoice boils down to the contract entered in regard to the continuous supply of goods. In case the contract provides that a statement on account shall be prepared by the supplier on monthly / quarterly basis, the invoice is required to be issued along with issuance of such a statement of account.

Continuous supply of Services:

As per Section 2(31) of the CGST Act “continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

Time limit of issue of invoice:

Sub-section (5) of Section 31 mandates that subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—

- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

- (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

The said sub-section starts with the words “subject to provisions of clause (d) of sub-section (3)” which means that in case any advance amount is received against the supply of continuous supply of services the receipt voucher as provided in said clause is required to be issued.

It may be noted here that the 30 days / 45 days period for issuance of invoice as laid down in Rule 47 of the CGST Rules, 2017 is applicable for normal supplies and is not applicable in case of continuous supply of services.

14.4.5 Special provisions for notified category of services

As per First Proviso to Section 31(2) of CGST Act the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which —

- (a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
- (b) tax invoice may not be issued.

No notification in this regard has been issued till date.

14.4.6 Issue of invoice in respect of period prior to registration

As per clause (a) of Section 31(3) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.

In regard to above as per Rule 53(2) of CGST Rules, 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

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from the effective date of registration till the date of issuance of certificate of registration:

However 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:

Further in 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 recipients located in a State, who are not registered under the Act.

14.4.7 Non-issuance of invoice of less than Rs 200/-

As per Clause (b) of Section 31(3) of CGST Act a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than Rs 200/- subject to such conditions and in such manner as may be prescribed.

In this regard as per Fourth Proviso to Rule 46 provides 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.

14.4.8 Issue of bill of supply

As per Clause (c) of Section 31(3) of CGST Act a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 (i.e. Composition Scheme) shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed.

14.4.8-a Contents of Bill of supply

Rule 49 of CGST Rules provides that a bill of supply referred to in section 31(3)(c) shall be issued by the supplier containing the following details:-

- (a) name, address and GSTIN of the supplier;

- (b) a consecutive serial number not exceeding sixteen characters, in one or more 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 for goods or services;
- (f) description of goods or services or both;
- (g) value of supply of goods or services or both taking into account discount or abatement, if any; and
- (h) signature or digital signature of the supplier or his authorized representative:

The Provisos to Rule 46 shall, mutatis mutandis, apply to the bill of supply issued under this rule.

It may be noted that any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as bill of supply for the purposes of the Act.

14.4.8-b Non-issuance of bill of supply of less than Rs 200/-

As per Proviso to clause(c) of Section 31(3) of CGST Act the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than Rs 200/- subject to such conditions and in such manner as may be prescribed. This provision is identical to that contained in Section 31(3)(b) as mandated in regard to issue of invoice.

14.4.9 Issue of receipt voucher

Clause (d) of Section 31(3) of CGST Act mandates that a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment.

It may be noted here that as per the provisions of time of supply in case any advance towards supply of service has been received but service has not yet

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been supplied, time of supply will be attracted and tax would be required to charged and deposited on such advance amount received.

14.4.9-a Contents of receipt voucher

As per Rule 50 of the CGST Rules a receipt voucher referred to in section 31(3)(d) shall contain the following particulars:

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as “-” and “/”respectively, and any combination thereof, unique for a financial year
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) 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 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.

14.4.10 Issue of refund voucher

Section 31(3)(e) of CGST Act mandates that a where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment.

14.4.10-a Contents of refund voucher

As per Rule 51 of CGST Rules a refund voucher referred to in clause (e) 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 not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as “-” and “/”respectively, and any combination thereof, unique for a financial year
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) number and date of receipt voucher issued in accordance with 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 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 authorized representative.

14.4.11 Issue of self-invoice by recipient under reverse charge

As per Clause (f) of Section 31(3) of CGST Act a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of Section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both.

It may be noted that such self-invoice is only to be raised where any supply which is subject to reverse charge is received from an unregistered supplier.

The provisions regarding reverse charge and the services on which tax is required to be paid by the recipient of service under reverse charge mechanism is discussed at **Chapter 6**.

Further the contents of the invoice to be issued by the recipient would be as per Rule 46 which we had discussed at Para 14.4.2.

14.4.12 Issue of payment voucher by recipient

Clause (g) of Section 31(3) of CGST Act mandates that a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

The payment voucher will be issued in cases where advance payment is made by the recipient to supplier towards supply of service in cases where reverse charge provisions are attracted. In such cases the tax is required to be paid on such advance payment as time of supply is triggered as per the provisions of Section 13 of CGST Act.

14.4.12-a Contents of payment voucher

As per Rule 52 of the CGST Rules, a payment voucher referred to in clause (g) of sub-section (3) of section 31 shall contain the following particulars:

- (a) name, address and GSTIN 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 GSTIN 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 authorized representative.

14.4.13 Ceasing of contract

Sub-section (6) of section 31 mandates that in a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

14.4.14 Sale on return or approval basis

As per Section 31(7) of the CGST Act 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.

In other words, in such cases the invoice shall be issued when the customer communicates its acceptance of the goods or six months from date of removal, whichever is earlier.

14.4.15 Prohibition of unauthorized collection of tax

As per Section 32 (1) a person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.

Further sub-section (2) provides that no registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

14.4.16 Amount of tax should be shown

As per Section 33 of CGST Act notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

Accordingly the amount of tax charged viz CGST and SGST / UTGST or IGST as the case may be should be separately indicated on the invoice. In case the consideration is inclusive of tax the amount of value and tax may be computed by reverse working.

14.5 Issue of Credit / Debit note

Section 34 of the CGST Act mandates the provisions regarding issue of credit and debit notes. It may be noted here that the details of the credit / debit notes need to be uploaded on to the common portal in the specified table given in Form GSTR-1. Upon issuance of credit / debit note the tax liability of the taxable person will be increased or decreased based on the information contained and amount involved in the credit and debit notes uploaded onto the common portal.

14.5.1 Issue of Credit Note

As per Section 34 (1) of the CGST Act, where one or more tax invoices have been issued for supply of any goods or services, one or more credit notes can be issued by the supplier who is a registered person, in the following cases:-

- (a) the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or
- (b) goods supplied are returned by the recipient
- (c) where services supplied are found to be deficient, the registered person, who has supplied such goods or services or both.

14.5.1-a Limitation period for issue of credit note

As per sub-section (2) to Section 34 any registered person who issues a credit note in relation to a supply of goods or services or both shall declare

the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.

14.5.1-b Incidence of tax should not be passed

As per Proviso to Section 34(2) no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person. Therefore before issuing the credit note, the taxable person must satisfy / ensure that he has borne the incidence of tax and has not passed on the same onto the recipient. This condition is based on the principle of unjust enrichment.

14.5.2 Issue of Debit Note

As per Section 34(3) of CGST Act where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed. As per Explanation to Section 34 the expression "debit note" shall include a supplementary invoice.

It may be noted here that no limitation period for issue of debit note has been prescribed.

Further as per sub-section (4) any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

14.5.3 Link with the original invoice not required

When GST regime was introduced the debit / credit note must contain the invoice number vide which the original supply of services was made. The details of debit / credit note need to be declared in return FORM GSTR-1. If we see the return form the format of the table given therein clearly indicates the declaration of the invoice number against each debit / credit note. Therefore it was required to be ensured that each debit / credit note must be linked to the invoice and the invoice number must appear in the debit / credit note.

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However now delinking has been made between original invoice and debit / credit note and now in GSTR-1 the original invoice reference is no longer required to be give,

14.5.4 Contents of revised tax invoice

As per Rule 53(1) of the CGST Rules a revised tax invoice referred to in Section 31 shall contain the following particulars -

- (a) the word "Revised Invoice", wherever applicable, indicated prominently;
- (b) name, address and GSTIN of the supplier;
- (c) (omitted)
- (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 GSTIN or UIN, if registered, of the recipient;
- (g) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
- (h) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;
- (i) (Omitted) ; and
- (j) signature or digital signature of the supplier or his authorized representative:

14.5.5 Contents of debit note / credit note

As per Rule 53(1A) of the CGST Rules a credit note / debit note as referred to in section 34 shall contain the following particulars -

- (a) name, address and GSTIN of the supplier;
- (b) nature of the document;
- (c) a consecutive serial number not exceeding sixteen characters, in

one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as “-” and “/”respectively,, and any combination thereof, unique for a financial year;

- (d) date of issue of the document;
- (e) name, address and GSTIN or UIN, if registered, of the recipient;
- (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
- (g) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;
- (h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
- (i) signature or digital signature of the supplier or his authorized representative:

14.5.6 Adjustment in tax liability

The issue of credit note will reduce the tax liability of the taxable person as the value of supply is reduced to the extent of the value of credit note. Every taxable person is required to declare the details of outward supply made by him in Form GSTR-1. The tax amount payable for each supply is also required to be declared in the return. The credit of tax paid is auto-populated to the account of the recipient. Therefore, it is essential that the recipient reduces the credit.

As provided in Proviso to Section 34(2) that no reduction in output tax liability due to issuance of credit note will be allowed if the incidence of tax on such supply has been passed on to any other person. Accordingly tax liability of the supplier will be reduced only when the recipient has reduced input tax credit availed by the recipient.

As regards the debit note is concerned it increases the tax liability of the person. The Section 34(3) of the GST Act does not provide any time limit for issuance of debit note. The differential tax on increase in value of supply is payable whenever the amount is increased and details of debit notes needs to be given separately in Form GSTR-1.

GST e-invoicing

15.1 Introduction

The GST Council, in its 37th meeting on 20th September 2019, had recommended introduction of electronic invoice ('e-invoice') in GST in a phased manner.

GST e-invoice system is a path-breaking initiative which is going to revolutionize the way businesses interact with each other. It will be yet another milestone in India's journey in enhancing ease of doing business.

'e-invoicing' essentially involves reporting details of specified GST documents to a Government-notified portal and obtaining a reference number.

e-invoicing has many advantages for businesses such as standardisation, interoperability, auto-population of invoice details into GST return and other forms (like e-way bill), reduction in processing costs, reduction in disputes, improvement in payment cycles and thereby improving overall business efficiency.

Huge advancements in technology sophistication, increased penetration of internet along with availability of computer systems at reasonable cost has made 'e-invoice', a popular choice worldwide.

15.2 What is 'e-invoicing'?

As per Rule 48(4) of CGST Rules, notified class of registered persons have to prepare invoice by uploading specified particulars of invoice (in FORM GST INV-01) on Invoice Registration Portal (IRP) and obtain an Invoice Reference Number (IRN). After following above 'e-invoicing' process, the invoice copy containing inter alia, the IRN (with QR Code) issued by the notified supplier to buyer is commonly referred to as 'e-invoice' in GST. Because of the standard e-invoice schema (INV-01), 'e-invoicing' facilitates exchange of the invoice document (structured invoice data) between a supplier and a buyer in an integrated electronic format. Please note that 'e-invoice' in 'e-invoicing' doesn't mean generation of invoice by a Government portal.

Registered persons will continue to create their GST invoices on their own Accounting/Billing/ERP Systems. Necessary changes on account of e- invoicing requirement (i.e. to enable reporting of invoices to IRP and obtain IRN), will be made by ERP/Accounting and Billing Software providers in their respective software. They need to get the updated version having this facility.

The invoices will now be reported to 'Invoice Registration Portal (IRP)'. On reporting, IRP returns the e-invoice with a unique 'Invoice Reference Number (IRN)' after digitally signing the e-invoice and adding a QR Code. Then, the invoice can be issued to the receiver (along with QR Code). A GST invoice will be valid only with a valid IRN.

It may be noted that besides tax invoices, credit notes and debit notes as issued under Section 34 of the CGST Act are also covered under GST e- invoicing. However bill of supply is not covered as it is issued for exempt supplies on which no GST is charged.

15.3 Businesses for which, e-invoicing is mandatory

For Registered persons whose aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards, is more than prescribed limit i.e. Rs 500 crore, e-invoicing is mandatory. Further this turnover limit is reduced to Rs 100 Cr for e-invoicing compliance from 1st January,2021.

Thus tax payers having turnover exceeding Rs 100 Cr would be required to do GST e-invoicing from 01-01-2021.

However it may be noted that following entities are not required to do GST e-invoicing:

- a. Special Economic Zone Units
- b. insurer or a banking company or a financial institution, including a non-banking financial company
- c. goods transport agency supplying services in relation to transportation of goods by road in a goods carriage
- d. Suppliers of passenger transportation service
- e. Suppliers of services by way of admission to exhibition of cinematograph films in multiplex screens

15.4 Supplies presently covered under e-invoicing

Supplies to registered persons (B2B), supplies to SEZs (with/without payment), Exports (with/without payment), deemed exports, by notified class of taxpayers are currently covered under e-invoicing. It may be noted that reporting B2C invoices by notified persons is not applicable/allowed currently.

e-invoicing is not applicable for import bills of entry.

15.5 Applicability of GST e-invoicing on reverse charge

If the invoice issued by notified person is in respect of supplies made by him but attracting reverse charge under Section 9(3), e-invoicing is applicable.

For example, a taxpayer (say, a firm of advocates having aggregate turnover in a FY is more than Rs. 100 Cr.) is supplying services to a company (who will be discharging tax liability as recipient under RCM), such invoices have to be reported by the notified person to IRP.

On the other hand, where supplies are received by notified person from (i) an unregistered person (attracting reverse charge under Section 9(4)) or (ii) through import of services, e-invoicing doesn't arise / not applicable.

15.6 Invoice Registration Portal

Invoice Registration Portal (IRP) is the website for uploading/reporting of invoices by the notified persons. Vide notification no. 69/2019-Central Tax dated 13.12.2019, ten portals were notified for the purpose of preparation of the invoice in terms of Rule 48(4).

The first Invoice Registration Portal (IRP) is active and can be accessed at: <https://einvoice1.gst.gov.in/> Other portals will be made available in due course.

15.7 Generation of e-invoice

A system/utility to report e-invoice details in JSON format to IRP and to receive signed e-invoice in JSON format from the Portal.

For Entities not having their own ERP/Software solutions, they can use the free offline utility ('bulk generation tool') downloadable from the e-invoice

portal. Through this, invoice data can be easily reported to IRP and obtain IRN/signed e-invoice.

15.8 Modes for generation of e –invoice

Multiple modes are available so that taxpayer can use the best mode based on his/her need

- a. API based (integration with taxpayer's system directly)
- b. API based (integration with taxpayer's system through GSP/ASP)
- c. Free Offline Utility ('Bulk Generation Tool', downloadable from IRP)
Web-based / mobile app-based modes will also be provided in future.

15.9 E-invoice - Schema / Contents

'Schema' simply means a structured template or format. 'E-invoice' schema is the standard format for electronic invoice. It is notified as 'Form GST INV-1'.

Presently, businesses are preparing/generating invoices in their respective ERPs/Accounting/Billing Software. All these software have their own format of storing the data of invoice. Thus, the e-invoice generated by one system is not understood by the other, thereby necessitating data entry efforts and consequent errors and reconciliation problems.

'Schema' acts as uniform standard for ERP/ Billing/Accounting software providers to build utility in their solution/package to prepare e-invoice in notified standard thereby ensuring e-invoice generated by any ERP/Accounting and Billing Software is correctly understood by another ERP/Accounting software. This is also required for ensuring uniformity in reporting to IRP.

Further Schema ensures e-invoice is 'machine-readable' and 'inter-operable', i.e. the invoice/format can be readily 'picked up', 'read', 'understood' and further processed by different systems like Oracle, Tally, SAP etc.

E-invoice Schema is based on PEPPOL/Universal Business Language (UBL) with certain customizations to cater to Indian business practices and legal requirements.

Invoice details in prescribed Schema (INV-01) have to be reported to IRP in JSON format. 'JSON' stands for JavaScript Object Notation. It can be

thought of as a common language for systems/machines to communicate between each other and exchange data. As the ERP or Accounting software will generate it, taxpayer need not worry about it. This format is also used in GST system for reporting all data to GST System.

15.9.1 Fields in e-invoice Schema?

Various types of fields in e-invoice schema are :

- a. Data for fields marked as 'Mandatory' have to be provided compulsorily.
- b. A mandatory field not having any value can be reported as NIL.
- c. Fields marked as 'Optional' may or may not be filled up. Many of these are relevant for specific businesses (e.g. Batch No., Attributes etc.) and to cater to specific scenarios (e.g. export, e-way bill etc.).
- d. Some sections in the Schema are marked as 'Optional'. But, if this section is selected, some of the fields may be mandatory. For example, the section 'e-way Bill Details' is marked as optional. But, if this section is chosen, the field, 'Mode of Transportation' is mandatory.

15.10 Generation of IRN

Invoice Reference Number (IRN) is not same as Invoice number. Invoice no. (e.g. ABC/1/2019-20) is assigned by supplier and is internal to business. Its format can differ from business to business and also governed by relevant GST rules. IRN, on other hand, is a unique reference number (hash) generated and returned by IRP, on successful registration of e-invoice.

IRN is a unique 64-character hash, e.g. 35054cc24d97033afc24f49ec4444dbab81f542c555f9d30359dc75794e06bbe.

15.10.1 Rejection of Invoice by IRP

It may be noted here that IRP can reject an invoice. IRP will check whether the invoice was already reported and existing in the GST System. (This validation is based on the combination of Supplier's GSTIN-Invoice Number Type of Document-Fin. Year, which is also used for generation of IRN). In case the same invoice (document) has already been reported earlier, it will be rejected by IRP. Certain other key validations will also be performed on portal. In case of failure, registration of invoice won't be successful, IRN won't be generated and invoice will be rejected along with relevant error

codes (which give idea about reasons for rejection.)

15.10.2 Signed JSON provided by IRP in case of successful registration of invoice

IRP will return only the signed JSON. No PDF will be returned. On receipt of signed JSON, it is for the respective ERP or Accounting & Billing software system to generate PDF, if needed. Upon successful registration of invoice on IRP, it will return a signed e-invoice JSON to the supplier with IRN and QR Code.

15.11 Printing of Invoice / IRN / QR Code.

Once the IRP returns the signed JSON, your ERP/Accounting/Billing System it into PDF and printed, if required. Businesses who don't have their own ERP/Accounting Software, will be downloading and using the free offline utility ('bulk generation tool') to upload invoice data on einvoice portal and obtain signed invoice (in JSON). In this scenario also, there is a facility on e-invoice portal to generate 'human-readable' PDF copy of invoice (for save/print/e - mail etc.).

Printing IRN on the invoice is optional. IRN is anyway embedded in the QR Code which is one of the mandatory particulars on invoice as per Rule 46 of the CGST Rules, 2017.

Further the QR code is part of signed JSON, returned by the IRP. It is a string (not image), which the ERP/accounting/billing software shall read and convert into QR Code image for placing on the invoice copy.

The QR code (containing, inter alia, the IRN) which comes as part of signed JSON from IRP, shall be extracted and printed on the invoice. This is one of the mandatory particulars of invoice under Rule 46 of CGST Rules. However, printing of QR code on separate paper is not allowed.

While the printed QR code shall be clear enough to be readable by a QR Code reader, the size and its placing on invoice is upto the preference of the businesses.

15.11.1 Issue of invoice in triplicate / duplicate

Where e-invoicing is applicable, there is no need of issuing invoice copies in triplicate/duplicate. This is clearly specified in Rule 48(6).

15.11.2 Period of retention/storage/archival, in case of e-invoicing

As per Rule 56(16) of CGST Rules, “Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in Section 36...”

The same applies to e-invoicing also.

15.11.3 Penal provisions

The penal provisions for not issuing invoice in accordance with GST law/rules are provided in Section 122 of CGST/SGST Act read with CGST Rules.

15.12 e-invoice - Sending to Receiver

Upon receiving signed JSON from the IRP, it is for the supplier to share the e-invoice (along with QR Code etc.) in agreed format to the receiver. A suggested mechanism may be to exchange the PDF of the JSON received from IRP, (including QR code) as the best authenticated version of the e-invoice for business transactions. However, a mechanism to enable system-to-system exchange of e-invoices through ecosystem partners will be made available in due course.

As per Rule 138A(2) of CGST Rules, where e-invoicing is applicable, “the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer, in lieu of the physical copy of such tax invoice.” Thus carrying of physical / hard copy is not required.

15.13 e-invoice - Amendment / Cancellation

Amendments of details of a reported invoice for which IRN has already been generated are not possible on IRP. Any changes in the invoice details reported to IRP can be carried out on GST portal (while filing GSTR-1). In case GSTR-1 has already been filed, then using the mechanism of amendment as provided under GST. However, these changes will be flagged to proper officer for information.

15.13.1 Cancellation of IRN / Invoice reported to IRP

The cancellation request an IRN/invoice reported to IRP can be triggered through 'Cancel API' within 24 hours from the time of reporting invoice to IRP. However, if the connected e-way bill is active or verified by officer during transit, cancellation of IRN will not be permitted. In case of cancellation of IRN, GSTR-1 also will be updated with such 'cancelled' status.

It may be noted that once an IRN is cancelled, the concerned invoice number cannot be used again to generate another e-invoice/IRN (even within the permitted cancellation window). If it is used again, then the same will be rejected when it is uploaded on IRP. This is because IRN is a unique string based on supplier's GSTIN, document number, type of document & financial year.

Further no partial cancellation of reported e-invoice allowed. Cancellation of invoices is governed by Accounting Standards and other applicable rules/regulations.

15.14 E-invoice – Linkage with e-way bill / GST Return

With the introduction of e-invoicing, while transporting goods, wherever the e-way bill is needed, the requirement continues to be mandatory.

15.14.1 Auto generation of e-way bill

In case both Part-A and Part-B of e-way bill are provided while reporting invoice details to IRP, they will be used to generate e-way bill. In case Part-B details are not provided at the time of reporting invoice to IRP, the same will have to be provided by the user through 'e-way bill' tab in IRP log in or e-way bill Portal, so as to generate e-way bill.

15.14.2 Auto generation of GSTR-1 / GSTR-2B

On successful reporting of invoice details to IRP, the invoice data (payload) including IRN, will be saved in GST System. The GST system will auto-populate them into GSTR-1 of the supplier and GSTR-2A / GSTR-2B of respective receivers. With source marked as 'e-invoice', IRN and IRN date will also be shown in GSTR-1 and GSTR-2A.

For further details on GST e-invoicing the e-invoice portal i.e. <https://einvoice1.gst.gov.in> may be referred to.

Classification of Goods / Services

16.1 Introduction

GST law does not contain a commodity classification tariff but a look at the notifications issued reveals the classification of goods and services are contained within the notification which prescribes the rate of tax. Classification in terms of HSN in case of goods and SAC in case of services is to be made by the assessee so as to arrive at the rate of tax at which tax is to be paid.

The Harmonized System of Nomenclature (HSN), issued by the World Customs Organization, Brussels, could be adopted for classification of goods. This would integrate Indian trade and industry with global trade even at each State level. Further it would ensure that there is uniformity amongst Union and the States in the matter of classification of goods. It is a combination of different sections, further drilled down to Chapters, which are further classified into Headings and Sub-headings. The HSN structure contains 21 Sections, with 99 Chapters, about 1,244 Headings, and 5,224 Sub-headings. It is a six-digit uniform code that classifies more than 5,000 products and is accepted worldwide.

Similar to the International HSN Codes, India has adopted a Service Accounting Code (SAC) for all its services. GST will subsume the service tax, which covers all kinds of services. Since GST is a combination of goods or services or both, an equitable classification for services is also required. SAC will remain the same under the GST regime.

It may be noted that Classification is not only required to determine the rate of tax applicable but also examine the availability of exemptions.

The classification at higher rates than the correct rate may lead to assessee being uncompetitive.

The Classification at lower rate can severely damage the business when the demand for several years with interest and penalty is raised.

Therefore, it is important that classification is not done in a hurry and done accurately and in case of doubt reference to the entry, HSN, case laws be

examined in an independent manner. It may be noted that the Apex court has held that exemptions are to be construed strictly.

16.2 Digits of HSN Code required to be mentioned on tax invoice

Central Government vide Notification No. 12/2017-Central Tax dated 28-06-2017 has w.e.f 1st July 2017 notified the following number of digits of Harmonized System of Nomenclature (HSN) Codes which are required to be mentioned in a tax invoice issued by a registered person having prescribed annual turnover:

S. No.	Annual Turnover in the preceding Financial Year	Number of Digits of HSN Code
1	Upto Rs. 1.5 crore	Nil
2	More than Rs. 1.5 crore and upto Rs. 5 crores	2
3	More than Rs. 5 crores	4

Similar requirement for mentioning HSN Codes in tax invoice has been prescribed under IGST Act, 2017 vide Notification No. 05/2017-Integrated Tax, dt.28-06-2017.

16.2.1 Amendment effective from 01.04.2021

Notification No. 78/2020- Central Tax dated 15-10-2020 has been issued by the Central Government wherein changes have been made in the Notification No 12/2017- Central tax dated 28-6-2017 with effect from 1st April, 2021.

For ready reference of our readers the comparative position of use of HSN / SAC is tabulated below:

Sl. No	Annual Turnover in the preceding year	No. of digits of HSN Code (Existing)	No. of digits of HSN Code (To be effective from 1st April,2021)
1.	Upto Rs 1.50 Crores	Nil	4*
2.	More than Rs 1.50 Crore and upto Rs 5 crore.	2	4*
3.	More than Rs 5 crores	4	6

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* As per Proviso given in Notification No. 78/2020- Central Tax dated 15-10-2020 a registered person having aggregate turnover up to Rs 5 Cr in the previous FY may not mention the number of digits of HSN Code in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons. i.e. B2C supplies. Currently no distinction between B2B and B2C supplies exists for purpose of disclosure of HSN/ SAC Codes.

Apart from above it may be noted that the Government has the power to notify 8 digit HSN on the notified class of supplies by all taxpayers. Further reference of only HSN is here and thus 8 digit HSN disclosure will be required only for supply of goods and not for services, which is in line with current position where HSN codes of 8 digits are mandatory only in case of export and imports of goods.

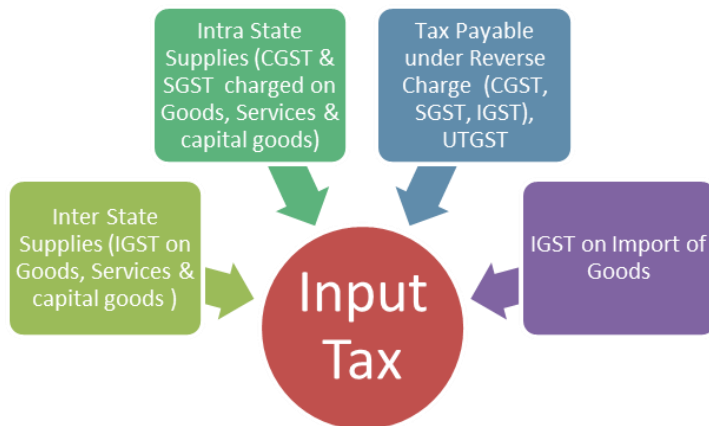
Input Tax Credit

17.1 Introduction

Input tax credit is based on the concept of value added tax (VAT). The concept of VAT provides that the indirect taxes paid in the earlier point of time are allowed to be set off against the tax payable at later point of time. This means that only value addition is taxed as credit is allowed in respect of taxes paid at previous stages. The burden of tax is eventually to be borne by the final consumer.

The concept of VAT was introduced in order to avoid cascading effect of taxes and is worldwide found to be an excellent and transparent indirect tax collection system, which reduced tax evasion, ensures better tax compliance and increases tax revenue of the Government.

The set off scheme talked about above is presently governed by the CENVAT Credit Rules, 2004, which is common to both the assesseees under the Central Excise as well as Service Tax. These Rules are in force from 10-9-2004 and were historic in a way as the credit of service tax as well as excise duty was extended across goods and services which resulted in integration of goods and service tax.



As per Section 16 (1) of the CGST Act every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner

specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

17.2 Contents of the Chapter

- (a) Meaning of input tax and input tax credit (refer Para 17.3)
- (b) Input tax credit- Important provisions (refer Para 17.4)
- (c) ITC restriction under Rule 36(4) of the CGST Rules (refer Para 17.5)
- (d) Blocked input tax credit (refer Para 17.6)
- (e) Order of utilization of input tax credit (refer Para 17.7)

17.3 Meaning of input tax and input tax credit

The CGST Act provides the definition of input tax and input tax credit which are given below:

17.3.1 Input Tax

As per 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;

Thus as per said definition input tax basically means GST charged by the supplier on supply of goods or services or both from a registered person who is the recipient of such supply. It also includes the tax paid under reverse

charge mechanism on the notified services as well as supplies received from unregistered person. It further includes the IGST charged on import of goods. However, it does not include tax paid under composition levy.

17.3.2 Input tax credit

As per Section 2(63) “input tax credit” means the credit of input tax.

The Input tax has been defined under Section 2(62), which we have already discussed in the preceding para.

17.3.3 Type of taxes under GST for which credit is allowed

As provided in Section 2(62) input tax means the Central tax, State tax, Integrated tax or Union Territory tax charged from the recipient of supply of goods or services or both. Thus it is important to understand about levy of such taxes. The discussion in this regard is as under:-

Under GST law following taxes would be charged:-

- (a) **Central Tax:** It means Central Goods and Services Tax levied under Section 9. (**Section 2(21) of CGST Act**)

This tax is levied on intra-State supply of goods or services or both and collected by the Central Government under CGST Act.

- (b) **State Tax:** It means the tax levied under any State Goods and Services Tax Act (**Section 2(104) of CGST Act**).

This tax is levied under respective SGST Act on intra-State supply of goods or services or both and collected by State Government/ Union Territory with Legislature.

- (c) **Integrated Tax:** It means the Integrated goods and services tax levied under the Integrated Goods and Services Tax Act / this Act. (**Section 2(58) of CGST Act / Section 2(12) of IGST Act**).

Integrated tax is levied on Inter-State supply of goods or services or both and collected by Central Government under IGST Act. The tax rate of integrated tax would be equivalent to the total of Central Tax and State Tax.

- (d) **Union Territory Tax:** It means the Union Territory goods and services tax levied under Union Territory Goods and Services Tax Act/ this Act. (**Section 2(115) of CGST Act/ Section 2(9) of UTGST Act**).

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This tax is levied under UTGST Act on supply of goods or services or both Intra Union territory which are without legislature and collected by such Union Territory. This would be equivalent to State Tax.

Burden of proof on taxable person availing input tax credit:

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 155 of the CGST Act*).

17.4 Input Tax Credit- Important provisions at a glance

<p>Pre-requisites for availment of input tax credit by registered person (<i>Section 16(1) / (2)</i>)</p>	<ul style="list-style-type: none">• The person claiming must be a person registered under GST. (Unregistered person cannot avail input tax credit).• Goods or services or both are used or intended to be used in the course or in the furtherance of business.• Possession of tax invoice/ debit note / tax-paying document issued by a registered supplier.• Received the goods or services or both (includes deemed receipt of goods / services in cases where the goods are delivered by supplier to other person on direction of the registered person and where the services are provided by the supplier to any person on the direction of and on account of such registered person).• If the inputs are received in lots, he will be eligible to avail the credit only when the last lot of the inputs is received.• No ITC on GST paid with advances for supply of services. (No GST applicable on advances for goods).• Subject to section 41 (claim of ITC and provisional acceptance thereof), the supplier has paid the said amount of tax (as charged in
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	<p>the invoice) to appropriate Government in cash or by way of utilization of input tax credit, as admissible.</p> <ul style="list-style-type: none"> • The registered person has furnished its return under Section 39 (GSTR-3B) for availing the credit (by this the ITC amount is credited to the electronic credit ledger and can be utilized against payment of outward tax liability) • Reversal of ITC on non-payment of consideration: • Where recipient of goods or service or both has not paid the supplier within 180 days from date of invoice, the amount of input tax credit availed of proportionate to such amount not paid to supplier along with the interest will be added to output liability of the recipient. Such non-payment of the value of invoice must be admitted in the GSTR-3B for the month immediately following the period of 180 days from the date of issue of invoice. In case part payment has been made, proportionate credit would have to be reversed. However, this condition does not apply for supplies which are payable under reverse charge basis. <i>(Second Proviso to Section 16(2) of the CGST Act).</i> • The said input tax credit can be re-availed on payment of value of supply and tax payable thereon. <i>(Third Proviso to Section 16(2) of the CGST Act).</i>
<p>Time limit of availing of ITC: <i>(Section 16(4) of the CGST Act)</i></p>	<ul style="list-style-type: none"> • A registered person cannot take ITC in respect of any invoice or debit note for supply of goods or services after the due date for furnishing the return under Section 39 (GSTR-3B) for the month of September following the end of financial year to which such invoice/invoice

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	<p>relating to debit note pertains or furnishing of the relevant annual return, whichever is earlier.</p> <ul style="list-style-type: none"> • So, The upper time limit for taking ITC was 20th/22nd/24th October, 2020 (i.e. due date of furnishing GSTR-3B for September,2020) in regard to availing of ITC pertaining to any invoice of FY 2019-20, considering that annual return filing for said year is not in question as of now. <p>As stated above the time limit for availing Input Tax Credit against a debit note was linked with the date of invoice against which such debit note was issued.</p> <p>However now amendment in Section 16(4) has been made effective from 1.1.2021 and now the time limit for availing of ITC in respect of a debit note has been delinked from the date of invoice and time limit for availing of ITC shall be determined considering the date of the debit note. Thus, ITC on debit notes issued after 6 months from the end of the financial year to which invoice pertains can be availed post amendment.</p>
<p>ITC on Capital Goods</p>	<p>ITC is available for capital goods under GST. However, ITC is not available for-</p> <ol style="list-style-type: none"> Capital goods used exclusively for making exempted goods Capital goods used exclusively for non-business (personal) purposes <p><i>(Section 16(1) and 17(2) of the CGST Act).</i></p> <p>No ITC will be allowed if depreciation has been claimed on tax component of capital goods. <i>(Section 16(3) of the CGST Act).</i></p>
<p>ITC on goods sent for job work Job Work <i>(Section 19 of the CGST Act)</i></p>	<ul style="list-style-type: none"> • ITC will be allowed when inputs / capital goods are sent to job worker in both the cases i.e when these are sent from principal's place of business or when such inputs / capital goods are directly sent to a job worker for job work without being

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	<p>first brought to his place of business.</p> <ul style="list-style-type: none"> • However, in case the goods sent are not received back by the principal within 1 year (3 years for capital goods) it shall be deemed that inputs / capital goods had been supplied by the principal to the job worker on the day the said inputs / capital goods were sent out. This will not apply to moulds and dies, jigs and fixtures or tools sent out to a job worker for job work.
<p>Manner of distribution of credit by Input Service Distributor (ISD) <i>(Section 20 / 21 of the CGST Act).</i></p>	<ul style="list-style-type: none"> • An input service distributor (ISD) can be the head office (mostly) or a branch office or registered office of the registered person under GST. ISD collects the input tax credit on all the purchases made and distribute it by issue of an ISD invoice, to the concerned recipients (branches) under different heads like CGST,SGST/UTGST, IGST or cess. • Credit to be distributed pro rata of basis of turnover in a State / UT, during the relevant period, to the aggregate of the turnover of all such recipients to whom such ITC is attributable. • The amount of credit distributed cannot exceed the amount of credit available for distribution. • Excess ITC distributed can be recovered from all recipients along with interest, as per provisions of Section 73 and 74.
<p>Transfer of ITC on sale, merger, amalgamation, lease or transfer of a business <i>(Section 18(3) of the CGST Act).</i></p>	<p>This applies in cases of amalgamations/mergers/ transfer of business. The transferor will have available ITC which will be passed to the transferee at the time of transfer of business. Transferor to file FORM GST ITC-02 <i>(Rule 41 of the CGST Rules)</i>.</p>
<p>Reversal of Input Tax Credit</p>	<p>ITC can be availed only on goods and services for business purposes. If they are used for non-business (personal) purposes, or for making exempt</p>

	<p>supplies ITC cannot be claimed. Apart from these, there are certain other situations where ITC will be reversed.</p> <p>ITC will be reversed in the following cases-</p> <ol style="list-style-type: none"> 1) Non-payment of invoices in 180 days- ITC will be reversed for invoices which were not paid within 180 days of issue. 2) Credit note issued to ISD by seller- This is for ISD. If a credit note was issued by the seller to the HO then the ITC subsequently reduced will be reversed. 3) Input / input services partly for business purpose and partly for exempted supplies or for personal use – This is for businesses which use input / input services for both business and non-business (personal) purpose. ITC used in the portion of input goods/services used for the personal purpose must be reversed proportionately. (Pro rata reversal to be made as per <i>Section 17(1) / (2) read with Rule 42 of the CGST Rules</i>) 4) Capital goods partly for business and partly for exempted supplies or for personal use. Prorata reversal to be made as per <i>Section 17(1) / (2) read with Rule 43 of the CGST Rules.</i>
<p>ITC in respect of banking companies <i>(Section 17(4) of the CGST Act read with Rule 38 of the CGST Rules).</i></p>	<ul style="list-style-type: none"> • A banking company or a financial institution including a non-banking financial company engaged in supply of services by way of accepting deposits or extending loans or advances (making partly exempt supplies and partly taxable supplies) would either avail proportionate credit (Rule 42 / Rule 43 of CGST Rules) or avail 50% of the eligible input tax credit and rest shall lapse. • Option once exercised shall not be withdrawn during the remaining part of the financial year. • However, input tax will not be restricted to 50%

	<p>in respect of supply made by one registered person to another registered person having the same Permanent Account Number viz deemed distinct persons.</p>
<p>Reconciliation of ITC</p>	<p>ITC claimed by the person has to match with the details specified by his supplier in his GST return. It may be noted that on basis of GSTR-1 filed by supplier the ITC details will be reflected in GSTR-2A of the recipient. As per Rule 36(4) of the CGST Rules, a registered person can avail ITC in a month to the extent of only 110% of the eligible tax credits reflected in GSTR-2A.</p> <p>Thus reconciliation is must in order to locate invoices whose credit is not reflected in GSTR-2A so that follow up can be made with the supplier to file its GSTR-1 and pay tax.</p> <p>In case the invoices not reflected in GSTR-2A exceeds 10% of eligible ITC as per GSTR-2A, the person will not be able to avail credit beyond 10% and will have to review position while filing GSTR-3B of next month and if fresh credits are reflected, credit thereof can be availed.</p> <p>The grace limit of 10% has been reduced to 5% with effect from 1.1.2021. Further this limit is to be seen with reference to the new auto drafted ITC statement GSTR-2B which is to be downloaded from GST portal on 12th of next month. i.e. GSTR-2B for January, 2021 can be downloaded by taxpayer on 12th February, 2021, which can then be used to reconcile ITC and at maximum 105% of eligible credit as GSTR-2B can be availed by taxpayer subject to maximum of eligible ITC as per books.</p> <p>For detailed discussion along with illustration on practical application of Rule 36(4), please refer to para 17.5.</p>

17.5 ITC restriction under Rule 36(4) of the CGST Rules

As per Rule 36(4) of the CGST Rules inserted from 09.10.2020 vide Notification No. 49/2019 Central Tax, dated 09-10-2019, restriction has been introduced in regard to invoices not uploaded by suppliers in their GSTR-1 and thus not reflected in recipients GSTR-2A.

For ready reference the sub-rule in CGST Rules, 2017, is reproduced as below:-

“(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”

Vide Notification No. 75/2019 – Central Tax 26-12-2019 amendment was carried out in the Rule 36(4) (w.e.f. 01.01.2020) whereby for the figures and words “20 per cent.”, the figures and words “10 per cent.” were substituted. This meant that the ITC cushion available towards availing of credit in respect of invoices not reflected in GSTR 2A was reduced from 20% to 10%.

In simple words, the input tax credit availed by a registered person (w.e.f. 09.10.2020) in its GSTR-3B shall comprise of eligible credit as uploaded by supplier in its GSTR 1 (statement of outward supply) which is then auto populated in the GSTR 2A of the recipient.

Further in regard to invoices not uploaded by suppliers and thus not reflected in GSTR 2A of the recipient, such recipient can at maximum avail input tax credit upto 20% of eligible credit (10% from 01.01.2020) as uploaded by supplier and reflected in its GSTR 2A. Needless to mention here that we are discussing about invoices of B2B supplies here, as anyways B2C supplies are made to ultimate consumers which being not GST registered are not eligible to take input tax credit.

Later on considering Corona outbreak, relief was accorded whereby it was prescribed that Rule 36(4) will not apply while filing of returns (GSTR-3B) for the period February to August, 2020 and will be applicable on cumulative basis for these months, while filing of return for September, 2020.

The Rule 36(4) of the CGST Rules, 2017 has recently been amended vide Notification No. 94/2020-Central Tax dated 22-12-2020 whereby the percentage of provisional credit to the eligible credit that can be availed has further been reduced from 10% to 5% w.e.f. 1st January, 2020.

Further new auto drafted ITC Statement in Form GSTR-2B is being made available to the taxpayer on 12th of succeeding month. The computation of Rule 36(4) should accordingly now be based on Form GSTR-2B.

17.5.1 How to compute ITC to be availed after applying Rule 36(4)

Let's understand computing the ITC to be availed after applying Rule 36(4) with help of an example of availing of ITC in GSTR-3B in the month of January, 2021. The impact of Rule 36(4) can also be gauged by the example:

(Amount in Rs)

SI No	Particulars	In case Rule 36(4) was not enacted	After applying Rule 36(4)
A	Eligible ITC* available as per Books of Accounts for January, 2021	1,00,000	1,00,000
B	Eligible ITC** available in the GSTR-2B of January, 2021	70,000	70,000
C	ITC that can be claimed on provisional basis	30,000	3,500 (70,000*5%)
D=B+C	Total ITC that can be claimed in the GSTR-3B	1,00,000	73,500
E=A-D	ITC not allowed in the GSTR-3B of January 2021 (Impact of Rule 36(4))	Nil	26,500

**Eligible ITC as per books refers to the credit of invoices which have been recorded in the books, which can be availed as per GST law i.e. such credit is related to any expense incurred for business purposes or for taxable supply of goods or services or both. It would also exclude the blocked credits covered under Section 17(5) of the CGST Act.*

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*** The GSTR-2B would bifurcate credit into eligible and ineligible. However Still GSTR-2B could contain ineligible ITC reflecting that relates to expenses such as food, club memberships, personal expenditure, etc or even ITC mistakenly reflecting due to the wrong GSTIN entered by a supplier. Hence, only eligible ITC should be considered by tax payer while calculating the limit for 5% provisional credit.*

Lets understand how eligible credit is computed with help of an example:

Table 1: Computation of Eligible ITC as per Books of Accounts

(Amount in Rs)

A	Total ITC appearing in the books for Jan 2021	1,20,000
B	ITC relating to non-business / private purposes (Ineligible)	10,000
C	Blocked credit under Section 17(5) (Ineligible)	10,000
D=A-B-C	ITC relating to business purposes for Jan 2021 (eligible ITC that can be availed as per books for Jan, 2021	1,00,000

Table 2: Computation of Eligible ITC to be availed in GSTR-3B as per Rule 36(4) after considering GSTR-2B

A	ITC appearing in the GSTR-2B for Jan 2021	80,000
B	ITC relating to non-business / private purposes (Ineligible)	8,000
B= A-B	ITC relating to business purposes* for Jan 2021 (eligible ITC that can be claimed in GSTR-3B for January, 2021	72,000
A (Table 1) – A (Table 2)	Total ITC difference (between the books and the GSTR-2B) not reflecting in the GSTR-2B for Jan 2021	40,000 (1,20,000-80,000)
D (Table 1) – D (Table 2)	Eligible ITC difference (between the books and the GSTR-2B) not reflecting in the GSTR-2B for Jan 2021	28,000 (Rs.1,00,000-Rs.72,000)

*Each and every invoice to be checked and to be seen that credit of same is eligible. It is not to be taken as balancing figure.

In absence of Rule 36(4) of the CGST Rules, the taxpayer could have claimed the entire Rs.28,000 (Rs.1,00,000 – Rs.72,000) as provisional credit. However upon notification of Rule 36(4) and reduction of provisional credit limit to 5% of eligible credit, such taxpayer can avail ITC of only Rs.3,600 (Rs.72,000*5%) in his GSTR-3B of January 2021 thus impacting taxpayer by Rs 24,400 (Rs 28,000 – Rs 3600) .

17.5.2 When can the balance ITC be claimed?

The balance ITC that has not been claimed as provisional ITC due to restriction laid down by Rule 36(4) can be claimed in the succeeding months once details have been actually uploaded by the suppliers and amount is reflected in GSTR-2B of the subsequent months . If a supplier has only uploaded part of the pending invoices in a later period, the taxpayer will be able to claim ITC only proportional up to 5% of these pending invoices uploaded.

Let us understand how provisional ITC is calculated in a later tax period with help of following Example:

(Amount in Rs)

Computation of Provisional ITC on Pending Invoices of January 2021 uploaded in February, 2021

Sl. No.	Particulars	Case I	Case II
A	Provisional ITC claimed in Jan, 2021 (as per example given above)	3,500	3,500
B	Provisional ITC of Jan, 2021 remaining to be claimed (as per the example above)	26,500	26,500
C	Eligible ITC uploaded by suppliers (for month of Jan, 2021) in the month of Feb 2021	20,000	26,500
D=C*5%	Provisional ITC which can be claimed for the month of Feb 2021	1,000 (20,000*5%)	NIL*
E=C+D	Total ITC that can be claimed in Feb 2021 (ITC reported by suppliers + provisional ITC)	21,000	26,500*
F=B-E	Balance eligible ITC of Jan, 2021 still not allowed in Feb 2021	5,500	Nil

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**Provisional ITC cannot exceed the total eligible ITC available. As the total eligible ITC available is Rs.1,00,000 and Rs.73,500 had already been claimed in the month of Jan 2021, accordingly only the balance Rs.26,500 can be claimed in GSTR-3B of February, 2021.*

17.6 Blocked Input Tax Credit

Though the one of the pillars of GST is free flow of credits in order to eliminate cascading of taxes, input tax credit is not available in respect of certain inward supply of goods or services as per Section 17(5) of the CGST Act, 2017. It is important to note here that clause (a) and (b) of Section 17(5) were substituted for clauses (a), (aa), (ab) and (b) by CGST (Amendment) Act, 2018 which has been made effective from 01-02-2019. The updated provisions of Section 17(5) of the CGST Act, 2017 is tabulated below:

Clause of Section 17(5)	Blocked Credit	When ITC is available and not blocked	Remarks
(a), b(i)) & (ab)	Motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver) including leasing, renting or hiring thereof. Services of general insurance, servicing, repair and maintenance of aforesaid motor vehicles	When such motor vehicles are used for i) further supply of such vehicles or ii) transportation of passengers or iii) imparting training on driving of such motor vehicles. ITC would further be admissible for leasing, renting or hiring of motor vehicles when such motor vehicles are used for above said purposes or where the recipient is engaged in the	Earlier ITC was prohibited for all motor vehicles and now seating capacity criteria has been inserted in new clause. Further specific prohibition for ITC on services of general insurance, servicing, repair and maintenance of motor vehicles was not there in old clause and in new clause it has specifically been prohibited to avoid disputes in this regard. Although Normally tax payers

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		manufacture of such motor vehicles or in the supply of general insurance services in respect of such motor vehicles insured by him.	were not availing ITC on such services.
(aa), b(i) & (ab)	Vessels and Aircraft including leasing, renting or hiring thereof. Services of general insurance, servicing, repair and maintenance of aforesaid vessels and aircrafts.	When such Vessels and Aircraft are used for i) further supply of such Vessels and Aircraft or ii) transportation of passengers or iii) imparting training on navigating / flying such vessels / aircraft. iv) transportation of goods. ITC would be admissible for leasing, renting or hiring of vessels or aircraft when such vessels or aircraft are used for above said purposes or where the recipient is engaged in the manufacture of such vessels or aircraft or in the supply of general	Specific prohibition for ITC on services of general insurance, servicing, repair and maintenance of vessels and aircraft was not there in old clause and in new clause it has specifically been prohibited to avoid disputes in this regard. Although normally tax payers were not availing ITC on such services.

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		insurance services in respect of such vessels or aircraft insured by him.	
b(i)	Supply of food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance and health insurance	ITC would be available when 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;	ITC would be admissible where it is obligatory for an employer to provide such supplies to its employees under any law for the time being in force.
b(ii)	Membership of a club, health and fitness centre;	-	
b(iii)	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	-	The term “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of

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	service for further supply of works contract service;		capitalisation, to the said immovable property; Further 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—
(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.	-	(i) land, building or any other civil structures; (ii) tele-communication towers; and (iii) pipelines laid outside the factory premises
(e)	Goods or services or both on which tax has been paid under section 10 i.e. Composition Scheme	-	It may noted here that under Composition Scheme the tax cannot be charged by supplier from the recipient and accordingly question ITC

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			availability by recipient does not arise.
(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;	-	ITC is admissible only in respect of supplies taken for business purposes. Thus supplies received for personal purposes are blocked.
(h)	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;	-	Such goods being not used for providing taxable supplies, the ITC thereon is blocked u/s 17(5).
(i)	Any tax paid in accordance with the provisions of sections 74 (Tax not / short paid due to fraud etc), 129 (Detention, seizure and release of goods and conveyance in transit) and 130 (confiscation of goods or conveyance and levy of penalty).	-	As in such cases tax was not paid with intention to evade tax the ITC thereon has been prohibited in order to penalize such assesseees.

17.7 Order of utilization of Input Tax Credit (Rule 88A)

As per the Circular No: 98/17/2019 dated 23 April 2019, it has been clarified that-

As per the provisions of Section 49 of the CGST Act, credit of integrated tax has to be utilised first for payment of integrated tax, then Central tax and then State tax, in that order mandatorily. This led to a situation, in certain cases, where a taxpayer has to discharge his tax liability on account of one type of tax (say State tax) through electronic cash ledger, while the input tax credit on account of other types of tax (say Central tax) remains unutilised in electronic credit ledger.

The Rule 88A as inserted in the CGST Rules allows utilisation of input tax credit of integrated tax towards the payment of Central tax and State tax, or as the case may be, Union Territory tax, in any order subject to the condition that the entire input tax credit on account of integrated tax is completely exhausted first before the input tax credit on account of Central tax or State/Union Territory tax can be utilised.

It is clarified that after the insertion of the said rule, the order of utilisation of input tax credit will be as per the order (of numerals) given below:

Input tax credit on account of	Output liability on account of Integrated tax	Output liability on account of Central tax	Output liability on account of State tax
Integrated tax	(I)	(II) – In any order in any proportion	
(III) Input tax credit on account of Integrated tax to be completely exhausted mandatorily			
Central tax	(V)	(IV)	Not permitted
State tax/Union Territory tax	(VII)	Not permitted	(VI)

With the new rules in place, it is mandatory to utilise the entire IGST available in electronic credit ledger before utilising ITC on CGST or SGST. The order of setting off ITC of IGST can be done in any proportion and any order towards setting off the CGST or SGST output after utilising the same for IGST output.

17.8 Restricting use of ITC amount for discharging output tax liability in GST

The latest amendment has been made in the CGST Rules, 2017 vide **notification no. 94/2020-Central Tax Dated 22-12-2020** (CGST (Fourteenth Amendment) Rules, 2020.) Amongst the various changes made vide above Notification is insertion of **new Rule 86B** (Restriction on use of input tax credit for discharging the output liability). It may be noted that as per Notification said Rule will be effective from 1st January 2021.

Highlights of New Rule 86B:

For ready reference the Highlights of the new Rule is being discussed as under:

(a) Rule 86B has an overriding effect over other rules: This rule starts with the non-obstante clause and has an overriding impact on any other provision of the Rules. Accordingly restriction in use of ITC will be applicable even if such ITC otherwise can be freely used as per other Rules.

(b) Rule lays down restriction on use of ITC while discharging output tax liability-The New rule 86B lays down restriction on registered person that he shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of limit prescribed.

(c) Output tax liability cannot be discharged in excess of 99% by utilising input tax credit. The main highlight of the new Rule 86B is laying down limit of 99% of output tax liability for using the ITC. This means that suppose if the output tax liability is Rs 100/- and ITC available is Rs 150/- such person can use ITC upto maximum of Rs 99/- (99%) and will have to pay tax of Rs 1 /- in cash.

(d) New Rule is applicable for specified registered persons: It is important to note that new rule is not applicable across the board but is applicable on the **registered person whose value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees.**

It is important to note here that the expression 'in a month' has been used in the Rule which means this limit of Rs 50 lakh is not to be seen with respect to preceding financial year but same is to be checked for each month for which GSTR-3B is being filed.

Accordingly, in cases where turnover of taxable supply is less than 50 Lakh in a month the restriction of Rule 86B would not apply. However such checking with turnover of taxable supply needs to be carried out each month to determine as to whether the ITC restriction would apply or not and whenever this threshold is transgressed the ITC restriction for that month shall be applicable.

(e) Situations where new Rule 86B shall not be applicable: Proviso to Rule 86B mandates situations where the ITC restriction shall not be applicable. These situations are discussed below:

- 1. Payment of Income Tax of more than Rs 1 lakh-** Rule 86B would not be applicable in cases wherein the persons mentioned herein below have **deposited amount of more than one lakh rupees as income tax under the Income-tax Act, 1961**–
 - the said registered person or
 - the proprietor or karta or the managing director of the registered person or
 - any of the two partners, whole-time directors, members of Managing Committee of Associations or Board of Trustees of the registered person, as the case may be,

The above payment of income tax needs to be checked in each of the last two financial years for which the time limit to file return of income under section 139(1) of the said Act has expired.

- 2. Refund of ITC towards Zero Rated Supplies of Goods or services or both-** Rule 86B would not be applicable in cases wherein registered person has **received a refund amount of more than Rs 1 lakh in the preceding financial year** on account of unutilised input tax credit **under clause (i) of First Proviso of Section 54(3) i.e. zero rated supplies made without payment of tax.**
- 3. Refund of Input Tax Credit due to Inverted Duty Structure-** The ITC restriction shall not be applicable in case the registered person has

received a refund amount of more than Rs 1 lakh in the preceding financial year on account of unutilised input tax credit under clause (ii) of First Proviso of Section 54(3) i.e. inverted duty structure.

4. **Cumulative discharge of tax liability of more than 1% during the financial year-** restriction in Rule 86B is not applicable wherein cumulatively upto the said month in the current financial year registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability. Therefore, while filing return for each month, taxpayer need to check whether his cumulative discharge of tax liability of output tax through electronic cash ledger is more than 1% upto the month of filing of return.
5. **Specified Registered persons-**Restriction under Rule 86B is not applicable in cases wherein the registered person is
 - i) Government Department; or
 - ii) a public sector undertaking; or
 - iii) a local authority; or
 - iv) a statutory body.

It appears that as these bodies will not resort to tax evasion and thus have been kept out of the new Rule.

6. **Commissioner or an office authorised by him empowered to remove the restriction-**The rule empowers the Commissioner or an officer authorised by him in this behalf to remove the said restriction after such verifications and such safeguards as he may deem fit.

GST Returns

18.1 Introduction

A registered person will have to file returns either monthly (normal supplier) or quarterly basis (Supplier opting for Composition Scheme). An ISD will have to file monthly returns showing details of credit distributed during the particular month. A Person required to deduct tax (TDS) and persons required to collect tax (TCS) will also have to file monthly returns showing the amount deducted/collected and other specified details. A non-resident taxable person will also have to file returns for the period of activity undertaken.

Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of Section 10 or Section 51 or Section 52 (i.e. normal registered taxpayer) having aggregate turnover in the preceding or current financial year more than Rs.1.5 Crore has to file the monthly return [GSTR-1] of outward supplies specifying details like outward supplies to registered persons, outward supplies to unregistered persons (consumers), details of credit/debit notes, zero rated, exempted and non-GST supplies, exports, and advances received in relation to future supply. And Other suppliers whose annual turnover is upto Rs. 1.5 Crore, are required to file quarterly return of outward supplies.

18.2 Statement of Outward Supply (GSTR-1)

Outward supply means the supply of services made by made by a supplier to another person i.e. recipient.

The term outward supply has also been defined under Section 2(83) of CGST Act as follows:

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

As per Section 37 (1) of CGST Act every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying

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tax under the provisions of Section 10 (composition levy) or Section 51 (TDS) or Section 52 (TCS), shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or **before the tenth day of the month succeeding the said tax period** and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed.

It may be noted that no rectification of error or omission in respect of the details furnished in GSTR-1 shall be allowed after furnishing of GSTR-3B for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

For example the return for the month of say October, 2018 could have been rectified upto furnishing of return for the month of September, 2019 i.e. 20th October, 2019 (or furnishing of annual return for FY 2018-19 (extended due date is 31/12/2020), whichever is earlier.

Explanation below Section 37 mandates that for the purposes of this Chapter, the expression “details of outward supplies” shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period. For details regarding these documents please refer to **Chapter 12**.

18.2.1 Form and manner of furnishing details of outward supplies

As per Rule 59 (1) of the CGST Rules every registered person (other than a person referred to in Section 14 of the IGST Act, 2017 i.e. supplier of online information and data base access or retrieval services) required to furnish the details of outward supplies of goods or services or both under Section 37, shall furnish such details in **Form GSTR-1** electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner.

Sub-rule (2) mandates that the details of outward supplies of goods or services or both furnished in **Form GSTR- 1** shall include, *inter alia*, –

- (a) invoice wise details of all -
 - (i) inter-State and intra-State supplies made to registered persons;
and

- (ii) inter-State supplies with invoice value more than two and a half lakh rupees made to unregistered persons;
- (b) consolidated details of all -
 - (i) intra-State supplies made to unregistered persons for each rate of tax; and
 - (ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;
- (c) debit and credit notes, if any, issued during the month for invoices issued previously.

Sub-rule (3) provides that the details of outward supplies furnished by the supplier shall be made available electronically to the concerned registered persons (recipients) in **Part A** of **Form GSTR-2A**, in **Form GSTR-4A** and in **Form GSTR-6A** through the Common Portal after the due date of filing of **Form GSTR-1**.

18.3 GSTR-3B

As per Rule 61(5) of the CGST Rules, where time limit for furnishing of GSTR-1 / GSTR-2 has been extended, instead of filing of GSTR-3 return under Section 39(1) of the CGST Act, the Commissioner may by notification, specify GSTR-3B may be filed under Section 39(1) of the CGST.

It may be noted that GSTR-2 and GSTR-3 didn't see the light of day since inception of GST regime and thus not being discussed. Further now GSTR-3 has been postponed and its intermediate replacement is GSTR-3B. Let's discuss GSTR-3B

GSTR-3B is a monthly self-declaration to be filed by a registered GST dealer with payment of GST. It is a simplified return to declare the output tax liability and availing / utilizing the input tax credit which is filed every month along with payment of net tax liability in cash after utilizing eligible input tax credit.

It may be noted here that you have to file GSTR-3B even when there has been no business activity (nil return). You cannot revise/amend GSTR-3B and you have to file a separate GSTR 3B for every GSTIN you have.

All taxpayers, including those with **nil returns** are required to file this GST return form on a monthly basis. However NIL return filers can file GSTR-3B by SMS.

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However, there are a few exceptions:

- Input Service Distributors & Composition Dealers
- Suppliers of OIDAR (Online Information Database Access and Retrieval Services)
- Non-resident taxable person

The above are exempted from filing return in using the 3B form under existing rules.

18.3.1 Quarterly filing of GSTR-3B and monthly payment – New QRMP Scheme

As a trade facilitation measure and in order to further ease the process of doing business, the GST Council in its 42nd meeting held on 05.10.2020, had recommended that registered person having aggregate turnover up to Rs 5 crore may be allowed to furnish return (GSTR-3B) on quarterly basis along with monthly payment of tax, with effect from 01.01.2021.

In line with the Government has issued notifications to implement the Scheme of quarterly return filing along scheme with monthly payment of taxes (referred to as “QRMP Scheme”).

The governing provisions of QRMP are as under:

Sl. No.	Section / Rule / Notification	Remarks
1.	Proviso to Section 39(1) of the CGST Act, 2017	Notified vide Notification No. 81/2020-Central tax, dated 10.11.2020 w.e.f 10 th November, 2020. Proviso provides power to Central Govt. to notify certain class of persons for QRMP scheme.
2.	First Proviso to Section 39(7) of the CGST Act, 2017	Notified vide Notification No. 81/2020-Central tax, dated 10.11.2020 w.e.f 10 th November, 2020 Proviso is regarding payment of tax due under QRMP scheme.
3.	Rule 67A of the	Inserted vide Notification No. 82/2020-Central

	CGST Rules, 2017	tax, dated 10.11.2020 w.e.f 10 th November, 2020 for prescribing manner of opting for furnishing quarterly return.
4.	Notification No. 84/2020- Central Tax dated 10.11.2020	Notifies class of persons eligible for QRMP scheme under Proviso to Section 39(1) of the CGST Act for furnishing of GSTR-3B starting from quarter starting from 1 st January,2021.
5.	Notification No. 85/2020- Central Tax dated 10.11.2020	Contains special procedure for making payment of tax liability in the first two months of the quarter. Effective from 1 st January,2021.

FAQs on QRMP Scheme

Q.1 What is QRMP Scheme?

Ans: Currently the periodicity of filing GSTR-3B return along with payment of GST is monthly. Under QRMP Scheme, in order to facilitate small tax payers they will be allowed to file GSTR-3B return on quarterly basis, however payment of GST will be required to be made on monthly basis.

This new Scheme will be effective from 01.01.2021 and it is an optional scheme. The eligible tax payers can opt for the scheme or may also not opt it and continue with the normal monthly filing of GSTR-3B.

Q.2 Who are eligible for QRMP Scheme?

Ans: In terms of notification No. 84/2020- Central Tax, dated 10.11.2020, a registered person who is required to furnish a return in Form GSTR-3B, and who has an aggregate turnover of up to 5 crore rupees in the preceding financial year, is eligible for the QRMP Scheme.

The aggregate annual turnover for the preceding financial year shall be calculated in the Common Portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year.

In case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

Q.3 When I can opt for QRMP Scheme?

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facility to avail the Scheme on the Common Portal would be available throughout the year. In terms of rule 61A of the CGST Rules, 2017, a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter.

In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option.

Example: A registered person intending to avail of the Scheme for the quarter 'July to September' can exercise his option during 1st of May to 31st of July. If he is exercising his option on 27th July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 22/24th July.

Q.4 Do I need to exercise option every quarter?

Ans: Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

Q.5 Does I also require to opt for the QRMP Scheme for the first quarter of its implementation i.e. January, 2021 to March, 2021

Ans: For the first quarter of the Scheme i.e. for the quarter January, 2021 to March, 2021, in order to facilitate the taxpayers, all the registered persons, whose aggregate turnover for the FY 2019-20 is up to Rs 5 crore and who have furnished the return in Form GSTR-3B for the month of October, 2020 by 30th November, 2020, shall be migrated on the Common Portal as below:

Sl. No.	Class of registered person	Default Option*
1	Registered persons having aggregate turnover of up to Rs 1.5 crore who have furnished GSTR-1 on quarterly basis in the current financial year	Quarterly return
2	Registered persons having aggregate turnover of up to Rs 1.5 crore who have furnished GSTR-1 on monthly basis in the current financial year	Monthly Return
3	Registered persons having aggregate	Quarterly return

	turnover more than Rs 1.5 crore and up to Rs 5 crore in the preceding financial year	
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*Registered persons are free to change the default option as above, if they so desire, from 05.12.2020 to 31.01.2021.

If you want default migration as above you should ensure that you furnish GSTR-3B of October, 2020 positively by 30.11.2020, else you will not be migrated to the Scheme and you will be able to opt for the Scheme once the Form GSTR-3B as due on the date of exercising option has been filed.

Q.6 Whether after opting for QRMP Scheme, can I later opt out?

Ans: The facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.

Example: A registered person intending to opt out of the Scheme for the quarter 'April to June' can exercise opting out during period 1st of February to 30th of April.

Q.7 What will happen if my turnover exceeds Rs 5 crore?

Ans: Any registered person, whose aggregate turnover crosses Rs 5 crore during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the Common Portal, from the succeeding quarter. In other words, in case the aggregate turnover exceeds Rs 5 crore during any quarter in the current financial year, the registered person shall not be eligible for the QRMP Scheme from the next quarter.

Q.8 Can I opt QRMP for some GSTIN and normal scheme for other GSTINs under the same PAN?

The option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

Q.9 I have opted for QRMP Scheme, Should I continue to file GSTR-1 on quarterly basis?

Ans: Yes, the registered persons opting for the Scheme would be required to furnish the details of outward supply in Form GSTR-1 quarterly as per the Rule 59 of the CGST Rules.

Q.10 What is IFF facility under QRMP scheme?

For each of the first and second months of a quarter, the registered person who has opted for QRMP scheme will have the facility (Invoice Furnishing Facility- IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month.

The said details of outward supplies shall, however, not exceed the value of Rs 50 lakhs in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th day of the succeeding month.

The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the Form GSTR-2A and Form GSTR-2B of the concerned recipient.

For example, a registered person who has availed the Scheme wants to declare two invoices out of the total ten invoices issued in the first month of quarter since the recipient of supplies covered by those two invoices desires to avail ITC in that month itself. Details of these two invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in Form GSTR-1 of the said quarter.

The two invoices furnished in IFF shall be reflected in Form GSTR-2B of the concerned recipient of the first month of the quarter and remaining eight invoices furnished in Form GSTR-1 shall be reflected in Form GSTR-2B of the concerned recipient of the last month of the quarter. The said facility would however be available, say for the month of July, from 1st August till 13th August. Similarly, for the month of August, the said facility will be available from 1st September till 13th September.

The details of invoices furnished using the said facility in the first two months are not required to be furnished again in Form GSTR-1. Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices furnished using IFF for each of the first two months and the details of invoices furnished in Form GSTR-1 for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in Form GSTR-1 only, without using the IFF.

Q.11 How do I require to make payment of GST under QRMP scheme?

The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in Form GST PMT-06, by 25th of the succeeding month.

While generating the challan, taxpayers should select “Monthly payment for quarterly taxpayer” as reason for generating the challan.

There are two options viz fixed sum method and self-assessment method, for monthly payment of tax during the first two months of a quarter.

Q.12 What are the options for making payment of tax under QRMP Scheme?

There are two options for monthly payment of tax during the first two months which are discussed below:

(a) Fixed Sum Method: A facility is being made available on the portal for generating a pre-filled challan in Form GST PMT-06. The challan will be generated for following amount:

Situation	Tax required to be paid in first two months of the quarter
I. Where tax payer had filed GSTR-3B of previous quarter on quarterly basis.	35% of tax paid (CGST / SGST/ IGST/ UTGST/ Cess) in cash.
II. Where tax payer had filed GSTR-3B of previous quarter on monthly basis.	equal to the tax paid in cash in the last month of the immediately preceding quarter

It may be noted here that the quarter Jan – March, 2021 will be first quarter of the Scheme and as GSTR-3B for the period till December,2020 will have been filed on monthly basis, thus the taxpayer opting for fixed sum method will be governed under Situation II above and he will have to pay the amount of tax equal to tax paid in December,2020.

It may be noted that monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month. A complete tax period means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

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(b) Self-Assessment Method: The Persons can also pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in Form GST PMT-06.

In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in Form GSTR2B, for every month.

The registered person is free to avail either of the two tax payment methods in any of the two months of the quarter.

Q.13 Do I need to deposit GST under QRMP scheme even if balance in my electronic cash / credit ledger is adequate?

Ans: No, In case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.

Q.14 I have deposited excess tax in first two months of the quarter. Can I claim refund?

Ans: Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in FORM GSTR-3B for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter.

Q.15 How and when I need to file my GSTR-3B returns?

The Registered persons opting for QRMP scheme would be required to furnish Form GSTR-3B, for each quarter, on or before 22nd / 24th day of the month succeeding such quarter (based on State / UT where its place of business is located).

In Form GSTR-3B, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein. The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability

furnished in that quarter's FORM GSTR-3B. However, any amount left after filing of that quarter's FORM GSTR-3B may either be claimed as refund or may be used for any other purpose in subsequent quarters.

Q.16 I have cancelled my GST registration in mid of quarter. Do I need to file GSTR-3B after end of quarter?

In case of cancellation of registration of a person who had opted for QRMP scheme, during any of the first two months of the quarter, he is still required to furnish return in Form GSTR-3B for the relevant tax period.

Q.17 I have opted for fixed sum method for payment of GST. There was shortfall in payment of GST in first two months of the quarter. Do I need to pay interest for the shortfall?

Ans: No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount by the due date. In other words, if while furnishing return in Form GSTR-3B, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made /received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the Form GSTR-3B of the quarter by the due date.

As discussed earlier the due date of payment of challan in first two months is 25th of next month and that of GSTR-3B for the quarter is 22nd / 24th of the next month. Thus if payment of taxes is made by above dates, no interest will be payable.

If system generated challans not paid by due date

In case such payment of tax by depositing the system calculated amount in Form GST PMT-06 is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing Form GST PMT-06 till the date of making such payment.

If GSTR-3B for the quarter is filed after due date

In case Form GSTR-3B for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

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Illustration:

A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December.

Description of Tax	Amount paid in quarter Oct to Dec,2020	Amount paid (35%) in first 2 quarters of Jan-March, 2021 (fixed sum)	Actual tax liability after ITC for Jan	Actual tax liability after ITC for Feb
CGST	100	35	45 (shortfall Rs 10)	40 (shortfall Rs 5)
SGST	100	35	45 (shortfall Rs 10)	40 (shortfall Rs 5)
IGST	160	56	60 (shortfall Rs 4)	62 (shortfall Rs 6)

Situation I: Monthly payment of tax and GSTR-3B is filed by due dates

In above case if the person has deposited challan for fixed sum for first two months by 25th February and 25th March and also discharged entire tax liability for the quarter in GSTR-3B by due date i.e. 22nd / 24th April,2020, no interest will be applicable on amount of shortfall is payment of tax in the first two months.

Situation II: If GSTR-3B is filed late

In his GSTR-3B for the quarter, it is found that total liability for the quarter net of available credit was Rs 120/- for CGST and SGST each and Rs 200 for IGST. Suppose he filed its GSTR-3B on 30th April instead of due date of 24th April.

In such a case interest would be payable @ 18% p.a. on Rs. 50 for CGST and SGST each [Rs. 120 – Rs. 70 (deposit made in cash ledger in first two months)] and Rs 88 for IGST [Rs. 200 – Rs. 112 (deposit made in cash ledger in first two months)] for the period of 6 days i.e. from 24th April to 30th April.

Situation III: Monthly payment of tax is not on time

In this case interest would be payable @ 18% p.a., from the due date of furnishing Form GST PMT-06 till the date of making such payment.

Thus, if payment for the month of January is made on 28th February, interest need to be paid on Rs 35/- for CGST and SGST and Rs 56 for IGST for a period of 3 days [due date of payment i.e. 25th Feb to date of payment i.e. 28th February].

Q.18 I have opted for self-assessment method for payment of GST. There was shortfall in payment of GST in first two months of the quarter. Do I need to pay interest for the shortfall?

For registered person making payment of tax by opting self-assessment method interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter.

Thus, in self-assessment case the person will be required to pay interest in case any shortfall arises in payment of tax in the first two months of the quarter.

Q.19 How interest will be required to be paid?

Ans: Interest payable, if any, shall be paid through Form GSTR-3B.

Q.20 In case there is delay in payment of tax in first two months of a quarter. do I need to pay late fee?

Late fee is applicable for delay in furnishing of return / details of outward supply as per the provision of Section 47 of the CGST Act. As per the scheme, the requirement to furnish the return under the Proviso to sub- section (1) of Section 39 of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return / details of outward supply.

Accordingly, no late fee is applicable for delay in payment of tax in first two months of the quarter. However late fee of Rs 200/- per day (CGST + SGST) subject to maximum of Rs 10,000/- (CGST + SGST) will be applicable in case the quarterly GSTR-3B is not filed by due date i.e. 22nd / 24th of month succeeding the quarter.

18.4 Return to be filed by person under Composition Scheme

Sub-section (2) provides that a registered person paying tax under the provisions of section 10 (composition levy) shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid **within eighteen days after the end of such quarter.**

18.4.1 Form and manner of submission of quarterly return by the composition supplier

As per Rule 62 (1) of the CGST Rules every registered person paying tax under section 10 shall, on the basis of details contained in **Form GSTR-4A**, and where required, after adding, correcting or deleting the details, furnish the quarterly return in **Form GSTR-4** electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner.

Sub-rule (2) provides that every registered person furnishing the return under sub-rule (1) shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger.

As per Rule 62(3) the return furnished under sub-rule (1) shall include, *inter alia*,-

- (a) invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons; and
- (b) consolidated details of outward supplies made.

Further sub-rule (4) mandates that a registered person who has opted to pay tax under section 10 from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under rule 59, rule 60 and rule 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

Explanation. – The person shall not be eligible to avail of input tax credit on receipt of invoices or debit notes from the supplier for the period prior to his opting for the Composition Scheme.

Also sub-rule (5) states that a registered person opting to withdraw from the Composition Scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish the details relating to the period prior to his opting for payment of tax under Section 9 in **Form GSTR-4** till the due date of furnishing the return for the quarter ending September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

18.5 Return to be filed by person deducting tax at source

As per Section 39 (3) of CGST Act every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made **within ten days** after the end of such month.

18.5.1 Form and manner of submission of return by a person required to deduct tax at source

As per Rule 66 (1) of the CGST Rules every registered person required to deduct tax at source under section 51 shall furnish a return in **Form GSTR-7** electronically through the Common Portal either directly or from a Facilitation Centre notified by the Commissioner.

Sub-rule (2) states that the details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the deductees on the Common Portal after the due date of filing of **Form GSTR-7** for claiming the amount of tax deducted in his electronic cash ledger after validation.

Further as per sub-rule (3) the certificate referred to in sub-section (3) of Section 51 shall be made available electronically to the deductee on the Common Portal in **Form GSTR-7A** on the basis of the return furnished under sub-rule (1).

18.6 Return to be filed by Input Service Distributor

As per Section 39 (4) every taxable person registered as an Input Service

Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, **within thirteen days** after the end of such month.

18.6.1 Form and manner of submission of return by an Input Service Distributor

As per Rule 65 of the CGST Rules every Input Service Distributor shall, on the basis of details contained in Form **GSTR-6A**, and where required, after adding, correcting or deleting the details, furnish electronically the return in Form **GSTR-6**, containing the details of tax invoices on which credit has been received and those issued under section 20, through the Common Portal either directly or from a Facilitation Centre notified by the Commissioner.

18.7 Return to be filed by non-resident taxable person

As per Section 39 (5) of CGST Act every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

18.7.1 Form and manner of submission of return by non-resident taxable person

As per Rule 63 of the CGST Rules, every registered non-resident taxable person shall furnish a return in Form **GSTR-5** electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, including therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or these Rules within twenty days after the end of a tax period or within seven days after the last day of the validity period of registration, whichever is earlier.

18.8 Return of tax collection at source by e-commerce operator

The statement is required to be furnished by e-commerce operator on Form GSTR-8. The details are discussed at **Chapter 11**.

18.9 Extension of time limit

Sub-section (6) provides that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein. However, any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner and vice-versa.

18.10 NIL return to be filed

As per Section 39 (8) every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period. Accordingly the non-resident persons and persons required to deduct tax at source are not required to file returns in case of NIL information.

It may be noted that now Nil GSTR-1 / GSTR-3B can be filed through SMS from Mobile.

18.11 Rectification of error or omission

Sub-Section (9) provides that subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act.

However no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

18.12 Return cannot be filed if previous returns not filed

As per sub-section (10) a registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

18.13 First Return

As per Section 40 of CGST Act every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

It may be noted here that no separate format for filing of the first return has been provided in the CGST Rules.

18.14 Annual Return

As per Section 44 (1) of CGST Act every registered person, other than an Input Service Distributor, a person paying tax under Section 51 or Section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

Further as per sub-section (2) every registered person who is required to get his accounts audited in accordance with the provisions of Section 35(5) shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

18.14.1 Annual return

As per Rule 80(1) of the CGST Rules every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return as specified under section 44(1) electronically in **Form GSTR- 9** through the Common Portal.

It may be noted here that a person paying tax under section 10 (Composition tax payers) shall furnish the annual return in **Form GSTR-9A**.

Sub rule (2) provides that every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in **Form GSTR -9B**.

Sub rule (3) mandates that every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under section 35(5) and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **Form GSTR-9C**, electronically through the Common Portal.

Note: It may be noted here that for FY 2017-18 and 2018-19 furnishing of GSTR-9 has been made optional for tax payers whose aggregate turnover does not exceed Rs 2 Crore. Further GSTR-9C is also made optional for FY 2018-19 and 2019-20 for taxpayers having aggregate turnover of upto Rs 5 Crore.

18.15 Final Return

As per Section 45 of CGST Act every registered person who is required to furnish a return under sub-section (1) of Section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

18.15.1 Procedure as per Rules

As per Rule 81 of the CGST Rules every registered person required to furnish a final return under Section 45, shall furnish such return electronically in **Form GSTR-10** through the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

18.16 Levy of late fee

As per Section 47 (1) of CGST Act any registered person who fails to furnish the details of outward or inward supplies required under Section 37 or Section 38 or returns required under Section 39 or Section 45 by the due date shall pay a late fee of Rs 100/- (plus Rs 100/- for SGST i.e. total Rs 200/-) for every day during which such failure continues subject to a maximum amount of Rs 5000/- (plus Rs 5000/- for SGST i.e. total Rs 10,000/-)

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Further sub-section (2) provides that any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of Rs 100/- (plus Rs 100/- for SGST i.e. total Rs 200/-) for every day during which such failure continues subject to a maximum of an amount calculated at a 0.25% (plus 0.25% for SGST i.e. total 0.50%) of his turnover in the State or Union territory.

18.17 GST Return Due Dates : At a Glance

Latest GST return filing due dates as per recent Notifications / provisions of GST law are as under:

Assessee	Form No	Due Date
Details of outward supplies of taxable goods or services or both by registered persons having aggregate turnover of up to Rs 1.5 crore in the preceding FY or the current FY	GSTR-1 (quarterly)	13th of Month succeeding the end of quarter.
Details of outward supplies of taxable goods or services or both by Registered persons having aggregate turnover of more than Rs 1.5 crore in the preceding FY or the current FY	GSTR-1 (quarterly)	11 th of next month.
Payment of tax / availing ITC and filing of Return for taxpayers having an aggregate turnover > Rs 5 Cr in the preceding FY.	GSTR-3B	20 th of next month
Payment of tax / availing ITC and filing of Return for taxpayers in Group-A* States having an	GSTR-3B	22 nd of next month

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aggregate turnover upto Rs 5 Cr in the preceding FY.		
Payment of tax / availing ITC and filing of Return for taxpayers in Group B* States having an aggregate turnover upto Rs 5 Cr in the preceding FY.	GSTR-3B	24 th of next month
For registered persons opting for composition levy	GSTR-4 (Quarterly Return)	18 th of the month succeeding the quarter
For non-resident taxable person	GSTR-5	20 th of the next month or within 7 days after expiry of registration, whichever is earlier
Input Service Distributor (ISD)	GSTR 6 (Monthly Return)	13 th of the next month
Monthly Return for TDS	GSTR 7 (Monthly Return)	10 th of the next month
E-commerce operator	GSTR-8 (Monthly Return)	10 th of Next Month
Annual Return by Normal tax payer	GSTR 9 (Annual Return)	31 st December of next FY (Due date extended till 28.02.2021 for FY 2019-20, Due date for FY 2018-19 was 31.12.2020) Note: Filing made optional for FY 2018-19 and 2019-20 for tax payers having aggregate turnover upto Rs 2 Cr.

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Annual return by composition supplier	GSTR-9A	31st December next FY (Due date extended till 28.02.2021 for FY 2019-20, Due date for FY 2018-19 was 31.12.2020)
Annual Return by e-commerce operator	GSTR-9B	31st December next FY
Audit certificate and reconciliation statement by Normal tax payer having aggregate turnover of more than Rs. 2 crores	GSTR-9C	31st December next FY (Due date extended till 28.02.2021 for FY 2019-20, Due date for FY 2018-19 was 31.12.2020) Note: Filing made optional for FY 2018-19 and 2019-20 for tax payers having aggregate turnover upto Rs 5 Cr.
Taxable Person whose registration has been surrendered or cancelled	GSTR-10 (Final Return)	Within three months of the date of cancellation or date of order of cancellation, whichever is later.
Return to be filed by persons having Unique Identity Number and claiming refund on inward supplies	GSTR-11	To be submitted along with refund application

*Group A: Chhattisgarh, Madhya Pradesh, Gujarat, Daman and Diu Dadra and Nagar Haveli, Maharashtra, Karnataka, Goa ,Lakshadweep, Kerala

,Tamil Nadu, Puducherry, Andaman & Nicobar island, Telangana Andhra Pradesh.

*Group B: Jammu and Kashmir, Ladakh, Himachal Pradesh, Punjab, Chandigarh, Haryana, Delhi Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Uttarakhand.

Note: In case QRMP Scheme is adopted (refer para **18.3.1**) GSTR-3B will be required to be filed on quarterly basis by 22nd / 24th of month succeeding the quarter.

Payment of Tax and Interest

19.1 Introduction

Though as per GST law it was mandated that a taxpayer would be required to file GSTR-1 and GSTR-2 and on basis of which GSTR-3 will be auto populated and necessary payment of tax will be made while filing GSTR-3.

However due to system issues GSTR-2 and GSTR-3 along with the matching mechanism of credit couldn't see the light of the day and since inception the taxpayers are required to file GSTR-3B instead of GSTR-3 and payment of tax is also required to be made while filing of GSTR-3B.

It may be noted that Section 49 of CGST Act makes provision for interest, penalty and other amounts. Section 50 provides for payment of interest on delayed payment of taxes. The provision relating payment of tax and interest are discussed in the succeeding paras.

19.2 Due dates for payment of tax

Under GST law there is no separate provisions regarding the due date of payment of tax. However as per Section 39(7) of the CGST Act every taxable person who is required to furnish a return shall pay the amount not later than the last date on which he is required to file the return.

The due dates for filing the return are specified in sub-sections (1), (2), (3) & (5) of Section 39 of CGST Act which provides for various due dates for filing of different returns and accordingly the due date of payment of tax in such cases will also hinge of such dates.

For due dates of filing of various GST returns which are also the due dates of making of payment of GST, please refer to **para 18.17**.

19.3 Electronic tax liability register

As per Section 49(7) of the CGST Act all liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.

As per Rule 85(1) of the CGST Rules the electronic liability register specified under section 49(7) 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. Form GST PMT-01 has two parts, Part I is regarding the return related liabilities and Part II, which is for other than return related liabilities.

In Part I of GST PMT-01 we need to provide the details of return related liabilities like date, reference number, ledger used for discharging liability, description, type of transaction [(Debit(DR) (Payable) / (Credit (CR) (Paid))], Amount debited / credited of various taxes / cess with separate columns for tax, interest, penalty, fee and other payments. Further the last columns are in regard to the Balance (payable) towards such sums.

Further Part II of GST PMT-01 is regarding other than return related liabilities wherein we need to provide the details like date, reference number, tax period, ledger used for discharging liability, description, type of transaction [(Debit(DR) (Payable) / (Credit (CR) (Paid), Reduction (RD/ Refund(RF))], Amount debited / credited of various taxes / cess with separate columns for tax, interest, penalty, fee and other payments. Further the last columns are in regard to the balance (payable) towards such sums. Part II would cover the reduction or enhancement in the amount payable due to decision of appeal, rectification, revision, review etc. Further payment against shown cause notice or any other payment made voluntarily shall be shown in the register at the time of making payment through credit or cash ledger. Thus debit and credit entry in Part II of GST PMO-01 will be created simultaneously.

19.3.1 Amount Debited

In Column 6 of Part I of Form GST PMT-01 the Debit (DR) amount means the amount payable by the taxable person on the onward supplies including exports and tax payable under reverse charge. As per clause (a) of Rule 85(2) of the CGST Rules the electronic liability register of the person shall be debited by the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person. Further amount payable other than the return related liabilities like enhancement in the amount payable due to decision of appeal, rectification, revision, review etc would be shown as debit in Column 7 of Part II.

19.4 Payment of Amount

The taxable person can pay the tax by utilizing the credit or depositing the amount in electronic cash ledger. The payment made by utilizing the credit or electronic cash ledger will also be reflected in GST PMT-1. The Column 6 (Part I) or column 7 (Part II) in case payment of dues made will indicate "CR". It is further provided in CGST Rules that identification number will be generated by common portal for each of the entries made in electronic register.

It is important to note here that as per Section 49(4) of the GST Act, the amount available in electronic credit ledger shall be used for making any payment towards output tax payable under the provisions of the Act.

As per Section 2(82) of CGST Act and 2(8) of the IGST Act output tax in relation to a taxable person, means the tax / integrated tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis.

Thus output tax is a tax payable for taxable supplies of goods or services. It is clearly provided that it excludes the tax payable by him on reverse charge basis. Therefore, the tax payable under reverse charge will not be regarded as output tax payable. Therefore the balance in the credit ledger cannot be utilized for the purpose of payment of GST on reverse charge.

19.5 Electronic Credit Ledger

The Electronic credit ledger is defined in section 2(46) of the CGST Act very briefly as follows:-

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

As per Section 49 (2) of CGST Act the input tax credit as self-assessed in the return viz Form GSTR -2 of a registered person shall be credited to his electronic credit ledger, in accordance with Section 41 which provides that every registered person can take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger. Further such credit can be utilised only for payment of self-assessed output tax as per the return in Form GSTR-2.

The Form GST PMT-02 shall be maintained at the common portal and shall contain the details like date, reference number, tax period, description

(Source of credit & purpose of utilization), transaction type (Debit(DR) / Credit(CR)) and Credit / Debit amounts relating to input tax credits of Central tax, State tax, UT tax, Integrated tax and cess in each column separately along with balance of provisional credit under each of these heads. Further the entries in Form GSTR-2 shall be matched with the details of input credits as auto populated from the details of supplies as disclosed in the outward supply returns filed by the suppliers and in case any mismatch is there the amounts thereof along with tax period will be shown separately in **Form GST PMT-02**.

The Column 5 of GST PMT-04 relating to description will include sources of credit and utilization thereof towards liability related to return or demand etc.

19.5.1 Amount Credited to electronic credit ledger

As per Rule 86(1) of the CGST Rules every claim of input tax credit under the Act shall be credited to the electronic credit ledger. Further all type of credits as per return, credit on account of merger, credit due on account of pre-registration inputs etc credit due to opting out from Composition Scheme, transition etc will be recorded in the credit ledger.

19.5.2 Amounts Debited to electronic credit ledger

As per Rule 86(2) the electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with Section 49 i.e. for payment of tax. As discussed earlier that balance in electronic credit ledger can only be used for making payment towards output tax only and thus cannot be used for making payment of tax liability under reverse charge.

19.5.3 Refund of any unutilized amount of credit

As per Rule 86(3) of the CGST Rules 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.

However if the refund so filed is rejected, either fully or partly, the amount debited under sub- rule (3), to the extent of rejection, shall be **re-credited** to the electronic credit ledger by the proper officer by an order made in **Form GST PMT-03**.

Explanation to Rule 86 provides that for the purpose of this rule, 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.

19.5.4 No other Entry

As per Rule 86(5) of the CGST Rules unless specified in these rules, no entry shall be made directly in the electronic credit ledger under any circumstance. Accordingly in case any correction is required to be made, the registered person shall apply to jurisdictional officer in Form **GST-PMT-04**.

19.5.5 Correction in Electronic Credit Ledger

As per Rule 86(5) of the CGST Rules 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**.

19.6 Electronic Cash Ledger

The Electronic cash ledger is defined in Section 2(43) of the GST Act as follows:-

"(43) electronic cash ledger" means the electronic cash ledger referred to in sub-section (1) of section 49.

Sub-section (1) of Section 49 mandates that every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the **electronic cash ledger** of such person to be maintained in such manner as may be prescribed.

As per the Rule 87 of the CGST Rules, the electronic cash ledger mentioned under section 49(1) shall be maintained in common portal in Form **GST PMT-5**.

The Form GST PMT-05 shall contain details of date and time of deposit, Reporting date (by bank), Reference No, tax period, description, type of transaction [(Debit (DR) / Credit (Cr)], Amount debited / credited and balance (Central tax, State tax/ UT Tax/Integrated tax/cess / Total) under the heads of Tax, Interest, Penalty, Fee, Others and Total.

The heading column-8 of GST PMT-05 is "Type Transaction [Debit (DR)/Credit (CR)] The mention of CR in column means that the amount has been deposited by the taxable person. The mention of DR in column 8, means the amount has been utilised for payment of dues.

19.6.1 Deposit of amount

As per Rule 87(2) of the CGST Rules 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.

Further as per sub-rule (3) the amount can be deposited 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:

Provided further that the challan in Form **GST PMT-06** generated at the Common Portal shall be valid for a period of fifteen days.

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19.6.1-a Commission to be borne by payer

Explanation to Rule 87(3) provides that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.

19.6.1-b Meaning of Authorized Bank

As per sub-rule (3) payment can be made by internet banking / credit or debit card through authorized banks.

The term “authorized Bank” has been defined in Section 2(14) as follows;

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

19.6.2 Payment by un-registered person

As per sub rule (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.

19.6.3 Payment through NEFT or RTGS

Sub-rule (5) provides that 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.

It may be noted here that the payment through NEFT / RTGS can be made through any bank and necessarily from an authorized bank.

19.6.4 Challan Identification Number (CIN)

As per Rule 87(6) of the CGST Rules 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.

As per sub Rule (7) on receipt of CIN from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on

whose behalf the deposit has been made and the Common Portal shall make available a receipt to this effect.

Sub-rule (8) provides that 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.

19.6.5 Refund

As Section 49(6) of CGST Act the balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the Rules made thereunder may be refunded in accordance with the provisions of Section 54.

As per Rule 87(10) of the CGST Rules 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. However as per sub-rule (11) in case the refund so claimed is rejected, either fully or partly, the amount debited 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**.

19.6.6 Utilisation

As per Section 49(3) of CGST Act the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

Rule 87(1) of the CGST Rules also provides that payments towards tax, interest, penalty, fee or any other amount shall be debited from the electronic cash ledger.

19.7 Mode of payment

Rule 85(3) of the CGST Rules provides that 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 liability register shall be credited accordingly.

19.7.1 Sequence of adjustment of payment

As per Section 49(8) of CGST Act every taxable person shall discharge his tax and other dues under this Act or the Rules made thereunder in the following order, namely:—

- (a) self-assessed tax, and other dues related to returns of previous tax periods;
- (b) self-assessed tax, and other dues related to the return of the current tax period;
- (c) any other amount payable under this Act or the Rules made thereunder including the demand determined under Section 73 or Section 74.

The above provisions specifies the manner in which the amount paid by a taxable person will be adjusted in case the amount paid is less than the total demand / tax payable. In such cases against the amount paid the tax dues relating to previous periods will be adjusted and in case after that some balance is left it would be used for payment of the current dues and any balance amount thereafter shall be used for payment of demands confirmed by the Department under Section 73 and 74 of the CGST Act. It may be noted here that irrespective of the details mentioned in the challan, adjustment will always be made as per the provisions mandated in Section 49(8) of CGST Act.

19.7.1-a Meaning of tax and other dues.

As per Explanation (b) to Section 49 of CGST Act the expression,—

- (i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and
- (ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

19.8 Utilization of Credit

The provisions regarding utilization of credit are contained under sub-section (4) and (5) of Section 49 of CGST Act.

For further details refer to **para 17.7**.

19.9 Interest on delayed payment

Sub-section (1) of Section 50 provides that every person who is liable to pay tax in accordance with the provisions of this Act or the Rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, *not exceeding 18%*, as may be notified by the Government on the recommendations of the Council. Thus, both Central Government as well as State Government will issue the notification specifying the rate interest leviable for delay in making payment which shall not exceed 18%.

Further it has been provided in sub-section (2) that interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid i.e. the due date.

Thus, interest shall be levied from the day succeeding the due date of payment of tax.

19.9.1 Undue / excess claim of Credit / reduction in liability

Sub-section (3) of Section 50 provides that a taxable person who makes an undue or excess claim of input tax credit under Section 42(10) or undue or excess reduction in output tax liability under Section 43(10), shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate *not exceeding 24% per cent*, as may be notified by the Government on the recommendations of the Council.

Section 42(10) is in regard to claim of input tax credit which does not match the corresponding details of outward supply furnished by the supplier, whereas Section 43(10) is in regard to reduction in output liability due to issuance of credit note which does not match with the corresponding reduction in the claim for input tax credit by the recipient. In such cases of mismatch the said amount is added to the output tax liability of the recipient and in such cases maximum interest upto 24% p.a shall be levied.

19.10 Passing of incidence

Sub-section (9) of Section 49 provides that every person who has paid the tax on goods or services shall be deemed to have passed on the full

incidence of tax to the recipient of goods or services. Thus deeming provision has been made in this section that the incidence of tax paid on any supply has been recovered from the recipient. Therefore, the onus of proof is on the supplier of goods to substantiate by evidence that the incidence of tax has not been passed to the customer. Otherwise in case any refund is due such taxable person the refund amount will be credited to consumer welfare fund. This is based on the doctrine of unjust enrichment.

19.11 Identification number for each transaction

It will be observed from above that the electronic tax liability register, electronic credit ledger and electronic cash ledger will have various entries. These entries are made for various purposes. All the three registers have column for types of transactions which can be Debit (DR) or Credit (CR). The Rule 88 of the CGST Rules provides that the unique identification number shall be generated at the common portal for debit or credit in each of the register. Thus, the entries will be recognized by unique identification number.

19.12 Inter Branch transfer not possible

As it is evident from the discussion made in preceding paras that the adjustment of the tax paid in **GST PMT-01** will be made electronically. Therefore, the taxable person while making payment should enter the correct registration number on challan as it may happen that such taxable person may have multiple registration and the payment of tax may be made centrally by head office. In such a case if the registration number is wrongly mentioned while making payment, the amount may get credited to other branch. There are no provisions in the GST Acts for transfer of such amount from one branch to another. This problem may specifically arise from service providers who are not accustomed to multiple registrations, as under current service tax regime centralized registration was available.

19.13 Transfer from one head to another possible

GST Network (GSTN) has recently developed a new functionality on the portal through which taxpayers can now transfer amount available under one head to another in the electronic cash ledger. Form **GST PMT-09** provides flexibility to taxpayers to make multiple transfers from more than one head (major or minor) to another head (major or minor) and helps with the intra-head or inter-head transfer of amount available in electronic cash ledger.

Payment of Tax and Interest

The 'major' heads are Central GST, State or Union Territory GST, Integrated GST and cess, whereas the 'minor' heads defined in the law are Tax, Interest, Late Fee, Penalty and Others.

Refund of Taxes

20.1 Introduction

Sections 54 to 58 of the CGST Act makes the provisions for granting of refund of Tax, interest on delayed refunds, crediting of refund to Consumer Welfare Fund and utilisation of such Fund. Further the procedural aspects of refund are contained in the CGST Rules. As per the provisions of GST law the refund of taxes can be claimed in different circumstances. The provisions contained in these sections briefly are discussed below.

20.2 Refund of tax and interest

Normally, refund provisions apply in case of (a) tax paid / unutilized input tax credit (ITC) on zero rated supplies (exports and supplies to SEZ) and b) Inverted duty structure i.e. input tax credit more than tax payable on output supply (but not in case of exempted supply or supply with Nil rate of tax). (Section 54(3) of the CGST Act).

However, refund of unutilized ITC shall not be allowed if:

- the goods exported out of India are subjected to export duty;
- the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

In such cases, upon refund, the amount refunded shall be debited to electronic credit ledger.

Refund can also be claimed by a registered person, if he has paid excess tax by mistake.

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 in that regard to the proper officer before the expiry of two years from the relevant date in the prescribed form and manner (Section 54(1) of the CGST Act).

20.3 Refund of balance in Electronic cash ledger

Refund from the balance in the electronic cash ledger can be made without

any time limit as money is lying in your ledger only in nature of deposit. Further as you have not collected this amount from anyone the principle of unjust enrichment does not apply.

Upon refund, the amount refunded shall be debited to the electronic cash ledger.

20.4 Application and procedure of refund

The application of refund shall be accompanied by:

- (a) Such documentary evidence as may be prescribed to establish that a refund is due to the applicant.
- (b) Evidence that the incidence of tax has not been passed on by him to any other person (CA certificate). However, where the amount claimed as refund is less than Rs 2 lakhs, self-declaration based on documents available with him is sufficient. (Section 54(4) of the CGST Act).

Rule 89(2) of the CGST Rules, 2017 provides the documents to be filed with refund claim.

20.5 Scrutiny of refund claim and passing of order

If, on receipt of any such application, the proper officer is satisfied that whole or part of amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to "Consumer Welfare Fund" except where taxable person proves that he has not passed on burden of tax to another person. (Section 54(5))

The proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons (excluding some notified categories), **refund on a provisional basis**, 90% of the total amount so claimed, excluding the amount of ITC provisionally accepted, and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant. (Section 54(6) of the CGST Act).

20.5.1 Time limit for deciding refund cases

The proper officer shall issue the order refusing or accepting refund claim within 60 days from the date of receipt of application complete in all respects (Section 54(7) of the CGST Act).

20.5.2 No refund if amount is less than Rs 1000/-

No refund shall be paid, if the amount is less than Rs 1000/- (Section 54(14) of the CGST Act,2017)

20.6 Application for refund of tax, interest, penalty, fees or any other amount

Any person, except the persons covered under notification issued under Section 55 (UN agencies, Embassies), claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in Form GST RFD-01 (Rule 89(1) of CGST Rules).

20.7 Refund in electronic cash ledger

Any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of Section 49(6) may be made through the return furnished for the relevant tax period in Form GSTR-3 or Form GSTR-4 or Form GSTR-7, as the case may be. (First Proviso to Rule 89(1) of CGST Rules).

20.8 Refund application in case of supply of goods to SEZ

In respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone. (Second Proviso (a) to Rule 89(1) of CGST Rules).

20.9 Refund application in case of supply of goods to SEZ

In respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone. (Second Proviso (b) to Rule 89(1) of CGST Rules).

20.10 Refund claim in case of deemed export

In respect of supplies regarded as deemed exports, the application may be filed by, - (a) the recipient of deemed export supplies; or (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund. (Third Proviso to Rule 89(1) of CGST Rules).

20.11 Refund of advance tax by casual or non-resident taxable person

Refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under Section 27 at the time of registration, shall be claimed in the last return required to be furnished by him. (Fourth Proviso to Rule 89(1) of CGST Rules).

20.12 Procedure after submitting refund application:

If the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in Form GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in Section 54(7) shall be counted from such date of filing. (Rule 90(1) of CGST Rules)

The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of 15 days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4) of Rule 89, an acknowledgement in Form GST RFD- 02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in Section 54(7) shall be counted from such date of filing. (Rule 90(2) of CGST Rules)

If any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in Form GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies. (Rule 90(3) of CGST Rules).

20.12.1 Intimation under SGST also means intimation under CGST and *vice versa*

Where deficiencies have been communicated in Form GST RFD-03 under the SGST, 2017, the same shall also be deemed to have been communicated under this rule along with the deficiencies communicated under Rule 90(3). (Rule 90(4) of CGST Rules).

20.13 Order sanctioning refund

If upon examination of the application, the proper officer is satisfied that a refund under Section 54(5) is due and payable to the applicant, he shall make an order in Form GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under Section 54(6), amount adjusted against any outstanding demand under the Act or under any existing law (excise, VAT, service tax) and the balance amount refundable. (Rule 92(1) of the CGST Rules).

In cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of Form GST RFD-07. (Proviso to Rule 92(1) of the CGST Rules).

Refund order will be passed in Form RFD-04/06/07 as applicable.

20.14 Show cause Notice of whole or part of refund is not admissible

If the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in Form GST RFD-08 to the applicant, requiring him to furnish a reply in Form GST RFD-09 within a period of 15 days of the receipt of such notice and after considering the reply, make an order in Form GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of Rule 92(1) shall, mutatis mutandis, apply to the extent refund is allowed. (Rule 92(3) of the CGST Rules).

No application for refund shall be rejected without giving the applicant an opportunity of being heard (Proviso to Rule 92(3) of the CGST Rules).

20.15 Refund order or adjudication order after SCN and hearing

If the proper officer is satisfied that the amount refundable under Rule 92(1) or Rule 92(1A) Or Rule 92(2) is payable to the applicant under Section 54(8), he shall make an order in Form GST RFD-06 and issue a payment order in Form GST RFD-05 for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice. (Rule 92(4) of the CGST Rules).

The order issued in Form GST RFD-06 shall not be required to be revalidated by the proper officer (First Proviso to Rule 92(4) of the CGST Rules).

The payment order in Form GST RFD-05 shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued. (Second Proviso to Rule 92(4) of the CGST Rules).

The Central Government shall disburse the refund based on the consolidated payment advice issued under Rule 92(4). (Third Proviso to Rule 92(4) of the CGST Rules).

If the proper officer is satisfied that the amount refundable under Rule 92(1) or Rule 92 (1A)] or Rule 92 (2) is not payable to the applicant under Section 54(8), he shall make an order in Form GST RFD-06 and issue a payment order in Form GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund. (Rule 92(5) of the CGST Rules).

20.16 Credit of the amount of rejected refund claim

Where any deficiencies have been communicated under Rule 90(3), the amount debited under Rule 89(3) shall be re-credited to the electronic credit ledger. (Rule 93(1) of the CGST Rules).

Where any amount claimed as refund is rejected under Rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in Form GST PMT-03. (Rule 93(2) of the CGST Rules).

For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal. (Explanation to Rule 93 of the CGST Rules).

20.17 Order sanctioning interest on delayed refunds

Where any interest is due and payable to the applicant under Section 56, the proper officer shall make an order along with a payment order in Form GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund. (Rule 94 of the CGST Rules).

20.18 Withholding of refund or deduction from refund in certain cases

Where any refund is due under Section 54(3) of CGST Act to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may:

- (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
- (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law. (Section 54(10) of CGST Act).

The expression 'specified date' shall mean the last date for filing an appeal under this Act.

20.19 Withholding refund by order by Commissioner, if matter is in appeal

If an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to

adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine. (Section 54(11) of CGST Act).

Where a refund is withheld under Section 54(11), the taxable person shall, notwithstanding anything contained in Section 56, be entitled to interest at such rate not exceeding 6% as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund. (Section 54(12) of CGST Act).

Rate of interest notified from 1-7-2017 is 6%.

20.20 Time limit for filing refund claim

Any person claiming refund of any tax, interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of 2 years from the 'relevant date' in such form and manner as may be prescribed.

A registered person may claim refund of any unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure can be claimed at the end of any tax period.

The relevant date is different in every case. Here are the relevant dates for various refund cases as mandated under Explanation 2 to Section 54 of the CGST Act.

Situation for claiming GST Refund	Relevant date
Refund is in respect of goods exported outside India (or on inputs/ input services used in such goods)	
(i) By sea	Date on which the ship or the aircraft in which such goods are loaded, leaves India
(ii) By Air	
(iii) By land	Date on which such goods pass the frontier
(iv) By post	Date of dispatch of goods by the concerned Post Office to a place outside India

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Refund in respect of deemed exports	Date on which the return relating to such deemed exports is filed	
Refund is in respect of services exported (or on inputs/ input services used in such services)	Where supply of service completed prior to receipt of payment	Date of receipt of payment in convertible foreign exchange
	Where payment for service received in advance	Date of issue of invoice
Tax becomes refundable as a consequence of: (i) Judgment (ii) Decree (iii) Order (iv) Direction of Appellate Authority, Appellate Tribunal or any Court	Date of communication of such judgment, decree, order or direction	
Refund of unutilized input tax credit	End of the financial year in which such claim for refund arises	
Tax is paid provisionally under this Act or the rules made thereunder	Date of adjustment of tax after the final assessment thereof.	
In case of a person other than the supplier	Date of receipt of goods or services by such person	
In any other case	Date of payment of tax	

20.21 Interest on Delayed Refund

If any tax ordered to be refunded under Section 54(5) to any applicant is not refunded within 60 days from the date of receipt of application under section 54(1), interest @ 6% p.a. shall be payable in respect of such refund from the date immediately after the expiry of 60 days from the date of receipt of application under the said sub-section till the date of refund of such tax. (Section 56 of the CGST Act).

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 60 days from the date of receipt of application filed consequent to such order, interest @9% shall be payable in respect of such refund from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund. (proviso to Section 56 of the CGST Act).

Where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of Section 54(5), the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the Section 54(5). (Explanation to Section 56 of the CGST Act).

20.22 Refund to taxable person instead of depositing in consumer welfare fund

Refund once sanctioned, should be deposited with Consumer Welfare Fund. However in following cases, the refundable amount, shall, instead of being credited to the Fund, be paid to the applicant (Section 54(8) of CGST Act) :

- (a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;
- (b) refund of unutilised input tax credit under Section 54(3);
- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) refund of tax in pursuance of Section 77 (IGST paid instead of CGST / SGST or vice versa);
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

20.23 No refund except in aforesaid cases

Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of section 54(8) (Section 54(9) of the CGST Act).

20.24 Refund to casual taxable person or non-resident taxable person only after he files all returns

Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under Section 27(2), shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under Section 39. (Section 54(13) of the CGST Act).

Assessment and Audit

21.1 Introduction

The Assessment of taxes payable is one of the most critical and important aspects in the levy and collection of taxes. It is the process by which the proper officer confirms the correctness of payment of taxes. The provisions relating to self-assessment, provisional assessment, scrutiny of returns and other related provisions in regard to assessment are contained in Section 59 to 64 of the CGST Act. Further Sections 65 and 66 of the CGST Act make provisions relating to audit of records of the registered person at the premises of such person.

The above provisions in regard to assessment and audit are discussed in this Chapter.

21.2 Meaning of Assessment

Assessment means determining the tax liability. The word 'assessment' can comprehend the whole procedure for ascertaining and imposing liability upon the tax payer *Kalavati Devi v, CIT AIR 1968 SC 162 66 ITR 680 (SC)*.

As per Section 2(11) of CGST Act "assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;

21.3 Self Assessment

As per Section 59 of CGST Act every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39. A registered person is a person who has obtained registration under GST laws as per requirement of Section 22 or 24 of the CGST Act.

It is important to note here that the registered person or an authorized person on its behalf certifies the assessment of tax made by him in the return Form GSTR-3B and payment of tax by utilizing the balance in electronic cash ledger or electronic credit ledger is true and correct. Thus it is evident that

such person makes a self-assessment of tax liability and details of payment made by him. Such type of declarations are required under other return forms also and thus it can be said that all the returns under the GST law are self-assessed.

21.4 Provisional Assessment

As per Section 60(1) of CGST Act where the taxable person is unable to determine the value of services or determine the rate applicable thereto, he may request the proper officer in writing giving reasons for payment tax on provisional basis and the proper officer shall pass an order allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

21.4.1 Bond with security

Sub-section (2) of Section 60 mandates that the payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

21.4.2 Final assessment within six months

Sub-Section (3) mandates that the proper officer shall, within a period not exceeding six months from the date of the communication the order issued under sub-section (1), pass the final assessment order after taking in account such information as may be required for finalizing the assessment.

However as per Proviso to said sub-section the above period may, on sufficient cause the shown and for reasons to be recorded in writing, be extended by Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

21.4.3 Interest payable if tax payable after final assessment is more than tax paid

As per sub-Section (4) the registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of

section 39 or the rules made thereunder, at the rate specified under sub-section (1) of Section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

21.4.4 Refund if tax payable was less

Sub-Section (5) provides that where the registered person is entitled to a refund consequent to the order of final assessment under sub-Section (3), subject to the provisions of sub-section (8) of Section 54, interest shall be paid on such refund as provided in Section 56.

21.4.5 Procedure mandated in Rules

Rule 98 of the CGST Rules prescribes the detailed procedure in regard to the provisional assessment.

As per Rule 98(1) every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of Section 60(1) shall furnish an application in Form GST ASMT-01, along with the documents in support of his request, electronically through the Common Portal.

(2) The proper officer may, on receipt of the application under sub-rule (1), issue a notice in Form GST ASMT-02 requiring the registered person to appear in person or furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in Form GST ASMT-03.

(3) The proper officer shall issue an order in Form GST ASMT-04, either rejecting the application, stating the grounds for such rejection or allowing payment of tax on provisional basis indicating the value or the rate or both on the basis of which the provisional assessment is to be made and the amount for which the bond is to be executed and security to be furnished not exceeding 25% of the amount covered under the bond.

(4) The registered person shall execute a bond in accordance with the provisions of Section 60(2) in Form GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub rule (3):

Provided that a bond furnished to the proper officer under the CGST / SGST Act or IGST Act shall be deemed to be a bond furnished under the provisions of this Act and the Rules made thereunder.

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Explanation.- For the purposes of this rule, the term “amount” shall include the amount of integrated tax, Central tax, State tax or Union territory tax and cess payable in respect of such transaction.

(5) The proper officer shall issue a notice in Form GST ASMT-06, calling for information and records required for finalization of assessment under section 60(3) and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in Form GST ASMT-07.

(6) The applicant may file an application in Form GST ASMT- 08 for release of security furnished under sub-rule (4) after issue of order under sub-rule (5).

(7) The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in Form GST ASMT-09 within a period of seven working days from the date of receipt of the application under sub-rule (6).

21.5 Scrutiny of returns

As per Section 61 (1) the proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto. Further as per sub-section (2) in case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

21.5.1 Action if no satisfactory explanation

As per sub-Section (3) in case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under Section 65 or Section 66 or Section 67, or proceed to determine the tax and other dues under Section 73 or Section 74.

21.5.2 Procedure mandated in Rules

The procedure regarding scrutiny of returns is contained under Rule 99 of the CGST Rules. The said Rule is given below:

As per Rule 99(1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of Section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in Form GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding fifteen days from the date of service of the notice, as may be specified in the notice and also quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

Sub-rule (2) provides that the registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in Form GST ASMT-11 to the proper officer.

As per sub-rule (3) where the explanation furnished by the taxable person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform the registered person accordingly in Form GST ASMT-12.

21.6 Best Judgment Assessment of non-filers of returns

As per Section 62 (1) notwithstanding anything to the contrary contained in Section 73 or Section 74, where a registered person fails to furnish the return under Section 39 or Section 45, even after the service of a notice under Section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

Further as per sub-section (2) where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of Section 50 or for payment of late fee under Section 47 shall continue.

21.6.1 Procedure mandated in Rules

Rule 100(1) of the CGST Rules *inter-alia* provides that the order of assessment made under sub-section (1) of Section 62 shall be issued in Form GST ASMT-13 and summary thereof shall be uploaded electronically in Form GSTR DRC-07.

21.7 Best Judgment Assessment of unregistered persons

As per Section 63(1) of CGST Act notwithstanding anything to the contrary contained in Section 73 or Section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of Section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

21.7.1 Procedure mandated as per Rules

As per sub-rule (2) to Rule 100 of the CGST Rules the proper officer shall issue a notice to an unregistered taxable person in accordance with the provisions of Section 63 in Form GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in Form GST ASMT- 15.

21.7.2 Principles behind best judgment assessment

Best judgment assessment is normally used as one of the tools to harass taxable persons. However, best judgment assessment cannot be on basis of whims and fancies. The few landmark judicial pronouncements in this regard are cited below.

It has been held that though best judgment is an estimate and involves guess assessment or material work, the estimate must relate to some and it Raghubar must be something more than mere suspicion – *Raghubar Mandal v. State of Bihar* (1957) 8 STC 770 (SC) AIR 810 = AIR 1957 SC 810.

Even a best judgment assessment must be made reasonably and not surmises- *Kathyaini Hotels v. ACCT* (2004) 135 STC 77 (SC).

In *State of Kerela v. C. Velukutty* – (1966) 17 STC 465= 60 ITR 239 (SC), it was held that best of judgment' means it does not depend on arbitrary caprice. Though there is element of guesswork, it shall have reasonable nexus to the available material and circumstances of the case.

There is no doubt that authorities should try to make an honest and fair estimate of the income even in best judgment assessment and should not act arbitrarily, there is always a certain degree of guess work in best judgment assessment. If assessee did not maintain proper books of account, he himself has to be blamed for such assessment - *Kachwala Germs v. JCIT*(2007) 158 Taxman 71 (SC).

In *Dhakeswari Cotton Mills v. CIT* AIR 1955 SC 65 = (1954) 26 ITR 775 (SC 5 member), it was held that technical rules of evidence and pleadings are not applicable in best judgment assessment', but it cannot be pure guess. There must be something more than mere suspicion to support assessment.

The best judgment assessment should be based on some material and basis must be disclosed to dealer. Dealer's explanation has to be considered. *S Mohammed v. CCT* (1999) 116 STC 28 (Karn. HC DB) *Dwijendra Kumar v. Suptd. of Taxes* (990) 78 STC 393 (Gau HC) *Sankar Trading v. State of Tripura* (1991) 92 STC 22 (Gau HC DB)

In *New Vishwakarma Engg. Works v. STC* (Allahabad HC) it was held that even in case of best judgment assessment principles of natural justice required to be followed. dealer should informed of the material on which charge was going to be imposed and dealer must be given opportunity to rebut the effect of material, if he can.

Estimate of turnover on the basis of particulars available in dealer's books is not a best judgment assessment - *Arul Constructions v. State of Tamil Nadu* (2011) 43 VST 157 (Mad HC DB)

21.8 Summary assessment in certain special cases

The proper officer may, on any evidence showing a tax liability of a person coming to his notice, the permission of Additional Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of Revenue and issue an assessment order. (Section 64(1) of CGST Act).

Such summary assessment order can be passed if proper officer has sufficient grounds to believe that any delay in doing so will adversely affect the interest of Revenue.

21.8.1 Withdrawal of order

As per sub-Section (2) on an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in Section 73 or Section 74.

21.8.2 Procedure mandated as per Rules

As per Rule 100 (3) of the Assessment and Audit Rules the order of summary assessment under sub-section (1) of Section 64 shall be issued in Form GST ASMT-16 and summary of the order shall be uploaded electronically in Form GST DRC-07.

Sub-rule (4) provides that the person referred to in sub-section (2) of Section 64 may file an application for withdrawal of the summary assessment order in Form GST ASMT-17.

Further as per sub-rule (5) the order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of Section 64 shall be issued in Form GST ASMT-18.

21.9 Meaning of Audit

As per section 2(13) of CGST Act “audit” means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the Rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the Rules made thereunder.

The provisions of audit are contained under Section 65 and 66 of the CGST Act which are discussed in succeeding paras.

21.10 Audit by Tax Authorities

As per Section 65 (1) the Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered

person for such period, at such frequency and in such manner as may be prescribed.

Thus audit under said section can be made of any registered person i.e. a person who has obtained registration as required under Section 22 or 24 of CGST Act.

Further sub-section (2) mandates that the officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

The place of business is defined under Section 2(85) of CGST Act. Further Section 35 of CGST Act mandates that every registered person shall keep and maintain at principal place of business as mentioned in the certificate of registration, true and correct account of outward supply of services, input credit availed, output tax payable etc. Thus normally the audit will be conducted at the principal place of business of the registered person.

21.10.1 Period of Audit as per Rule

As per Rule 101 (1) the period of audit to be conducted under section 65(1) shall be a financial year or multiples thereof.

21.10.2 Notice of audit

As per Section 65(3) of CGST Act the registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

21.10.2-a Procedure mandated in Rules

As per Rule 101(2) of the CGST Rules where it is decided to undertake the audit of a registered person in accordance with the provisions of Section 65, the proper officer shall issue a notice in Form GST ADT-01 within the time specified in sub-section (3) of the said section.

21.10.3 Time limit for Audit

Section 65 (4) mandates that the audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

However where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the

reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Further the Explanation to said section states that the expression “commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

21.10.4 Afford / furnish necessary facility / information.

As per Section 65 (5) during the course of audit, the authorised officer may require the registered person,—

- (i) to afford him the necessary facility to verify the books of account or other documents as he may require;
- (ii) to furnish such information as he may require and render assistance for timely completion of the audit.

21.10.4-a Procedure mandated in Rules

As per Rule 101(3) of the CGST Rules the proper officer authorised to conduct audit of the records and books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilized, refund claimed, and other relevant issues and record the observations in his audit notes.

Further as per sub-Rule (4) the proper officer may inform the registered person of the discrepancies, if any, noticed as observations of the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

21.10.5 Conclusion of Audit

As per Section 65 (6) of CGST Act on conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

21.10.5-a Procedure mandated in Rules

As per sub-rule (5) of Rule 101 of CGST Rules on conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of Section 65(6) in Form GST ADT-02.

21.10.6 Demand for differential tax

As per Section 65 (7) of CGST Act where the audit conducted under sub-section (1) results in detection of

- a) tax not paid or
- b) short paid or
- c) erroneously refunded, or
- d) input tax credit wrongly availed or utilised,

the proper officer may initiate action under Section 73 or Section 74.

21.11 Special Audit

As per Section 66 (1) of CGST Act if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner.

Further as per Rule 102(1) of CGST Rules where special audit is required to be conducted under Section 66, the officer referred to in the said section shall issue a direction in Form GST ADT-03 to the registered person to get his records audited by the Chartered Accountant or Cost Accountant specified in the said direction.

21.11.1 Meaning of Chartered Accountant

As per Section 2(23) of CGST Act “Chartered Accountant” means a Chartered Accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949.

As per above referred clause of Chartered Accountants Act 'Chartered Accountant' means a person who is the Member of the Institute. A person shall be regarded as Member if his name appears in the register of members prepared by the Institute of Chartered Accountants of India.

21.11.2 Meaning of Cost Accountant

As per Section 2(35) "Cost Accountant" means a Cost Accountant as defined in clause (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;

As per above referred clause of Cost and Works Accountants Act 'Cost Accountant' means a person who is the Member of the Institute.

21.11.3 Audit report within 90 days with further extension of 90 days

As per Section 66 (2) of CGST Act the Chartered Accountant or Cost Accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

However, the Assistant Commissioner may, on an application made To Him In This Behalf By The Registered Person Or The Chartered Accountant Or Cost Accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

21.11.4 Special audit in addition to any other audit

Section 66(3) provides that the provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.

From plain reading of above provision it appears that even if the audit has been conducted by the Department under Section 65 for a period, Special audit can still be conducted for the same period.

21.11.5 Opportunity of hearing to taxable person

Section 66(4) of CGST Act provides that the registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the Rules made thereunder.

Therefore the registered person can refute any objection raised by a Chartered Accountant / Cost Accountant in its report.

Further as per Rule 102(2) of CGST Rules on conclusion of special audit, the registered person shall be informed of the findings of special audit in Form GST ADT-04.

21.11.6 Expenses of special audit

As per Section 66(5) the expenses of the examination and audit of records under sub-section (1), including the remuneration of such Chartered Accountant or Cost Accountant, shall be determined and paid by the Commissioner and such determination shall be final.

Therefore the expenses on special audit are not required to be paid by the registered person of whose special audit is being conducted.

21.12.7 Demand notice on basis of special audit report

As per Section 66 (6) of CGST Act where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or Section 74.

21.13 Audit of Accounts from a Chartered Accountant

Every registered person whose turnover during a financial year exceeds the prescribed limit (2 crore) will get his accounts audited by a Chartered Accountant or a Cost Accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under section 44(2) and such other documents in such form and manner as prescribed under Rule 80 of the CGST Rules. (Section 35(5) of the CGST Act).

In terms of Rule 80(3) of the CGST Rules “every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of Section 35 and he shall furnish a copy of the audited annual accounts and a reconciliation statement, duly certified, in GSTR 9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner”.

It may be noted here that for FY 2018-19 and 2019-20 the audit of accounts

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as above is optional for tax payers having aggregate turnover upto Rs 5 Crore (instead of Rs 2 Crore).

combined reading of the Section 35(5), 44(2) along with the notified forms, give rise to two situations, namely,

- (a) entities not required to be audited under any other statute in which case audit has to be carried out in terms of Section 35(5) and reconciliation statement to be drawn under Section 44(2) duly certified and
- (b) entities that are required to be audited under any other statutes like the Companies Act, Income-tax Act, Co-operative Societies Act, etc.,

When the records of the entity are audited under any other statute, reconciliation statement can be drawn up by the same auditor, who will also certify the same or different auditor. Where the financials are audited (under any other law), then there is no requirement to conduct yet another audit of the same financials for GST purposes. GST audit exercise can proceed with the remainder of the exercise to prepare the reconciliation statement as required in Part A and certify as required in Part B.

Where the financials are (somehow) not audited under any law, then these financials need to be audited for GST purposes apart from the exercise in Part A and Part B of GSTR 9C. Please note that there no guidance as to the 'terms of reference' for such a case. Given that this is a case that has come before a Chartered Accountant, his expertise will come to bear in providing a suitably audited financial statement to proceed with the Part A and Part B exercise in GSTR 9C.

21.13.1 Documents to be furnished upon completion of Audit

It can be seen that Section 35(5) read with Section 44(2) of the CGST Act provides that the following documents shall be furnished electronically by the assessee upon conclusion of the audit:

- (a) Annual Return;
- (b) Copy of the audited annual accounts;
- (c) Reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement in Form GSTR 9C, duly certified;

- (d) Such other particulars, as may be prescribed Vide Rule 80(3) the reconciliation statement shall be furnished in the GSTR 9C.

The provisions of Section 44(2) require reconciliation of the figures declared in 'return furnished for the financial year' with the 'audited financial statement'. It appears that the return furnished for the financial year refers to the annual return furnished in Form GSTR 9.

21.13.2 Audit not required of Govt. Department

Any Department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the C&AG or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force, is not required get the audit of accounts done under GST law.

21.13.3 Important points to be seen while conducting GST Audit under Section 35(5)

1. Reconciliation of Income & Receipts as per P & L account and as per GST Returns.

This one is the basic exercise wherein the incomes as per P&L Account for the FY 2018-19 should be reconciled with the income streams on which GST has been paid under GSTR-3B / GSTR-9 or not paid being exempt / non-GST supplies.

Reasons for differences between the turnover could be due to unbilled revenue in books, which though booked as income is not subject to GST as time of supply has not been triggered. Another reason for difference could be unadjusted advances of services as year end which though are subject to payment of GST, but same are not booked as income in P&L Account. Further there could be foreign exchange fluctuations which may be adjusted in P&L Account but same are not subject to GST.

It is recommended that every transaction reflected in 'Other Income' ledger is checked to confirm as to whether GST is applicable on any such transaction for which tax invoice is not prepared. For example, late payment interest received etc. Further credit in expenditure accounts should also be checked to catch the reimbursement of expenses and whether GST is paid thereon in cases where such reimbursement is not as pure agent.

The reconciliation of the turnover declared in the audited financial statement with turnover declared in GSTR9 is to be mentioned in Part II of GSTR-9C.

2. Supply of services free of cost to branches located to other States

As per Section 25 of the CGST Act, 2017 read with para 2 of Schedule – I to the CGST Act, 2017, any transfer of goods / support services given by head office / branch to other branches / factory is to be treated as ‘outward supply’ even if it is without consideration and accordingly, IGST will be applicable.

Thus such cases should be checked, to ensure payment of due GST on the value determined as per CGST Rules, 2017.

3. Verification of 'place of supply' to check whether correct GST is charged

It should be checked that place of supply has correctly been determined and indicated in the tax invoice raised. Such compliance should specifically be checked in “bill to – ship to” cases where the place of supply of goods is not the place where goods are sent but the place where the person on whose direction the goods are sent, is located (registered).

Any wrong determination of place of supply may result in wrong payment of tax i.e. CGST + SGST instead of IGST and *vice versa*.

4. Rate of outward supply to be checked based on HSN/SAC

The rate of GST applicable on outward supplies as charged and paid by auditee should be checked based upon HSN / SAC Code in order to ensure the correctness of rate applied. It may be noted here that in Part III of GSTR-9C we need to give the reconciliation of tax paid wherein the bifurcation of tax value is to be given GST rate wise viz 5%, 12%, 18% or 28%.

5. Outward supplies claimed as exports to be checked

Outward supplies claimed as exports to be checked on the basis of provisions of Sec. 2(5) & 2(6) of IGST Act, 2017. Whether such supplies satisfy all conditions or not.

Like as per Section 2(6) a supply will be regarded as export of service inter-alia only if the payment of such service has been received by the supplier of service in convertible foreign exchange. Thus, even if recipient is located abroad and place of supply is also abroad, such supply of service would not be regarded as export if payment is received in Indian Rupees.

Also, it should be checked that if exports are made without payment of GST, LUT has duly been submitted.

6. Checking valuation of supply is as per GST law:

It should be ensured that all expenses recovered by the supplier incurred on behalf of recipient like transit insurance, freight etc. are included in taxable value and GST is paid thereon.

Further adjustment of any discounts given is strictly as per the provisions of Sec. 15(3) of CGST Act, 2017 wherein only the discounts recorded on invoice or allowed subsequently as per agreement (by issue of credit note) are allowed. For rest of discounts no adjustment of GST is allowed, however a financial credit note of basic value can be issued without any GST implications.

8. Expenses liable to RCM including the foreign payments.

As a GST Auditor another important area to check is whether compliance of reverse charge provisions has been made by auditee or not. Here also the auditor can check the ledger accounts of expense heads like renting of motor vehicles, legal services, sponsorship expenses, freight payments to GTA, security expenses etc and a reconciliation may be obtained thereof with amounts on which GST has been paid under reverse charge mechanism.

The Foreign payments towards import of services are also subject to RCM, the amounts thereof can be checked from 15CA / 15CB / notes to accounts in case of Companies and payment of GST be ensured.

9. Reconciliation of ITC declared in Annual Return with ITC availed on expenses as per P&L A/c

The Auditor should check the expense heads in ledger accounts on which ITC is being availed. This will ensure accuracy of ITC availed. Such reconciliation is to be given at Table 14 of GSTR-9C, However same has been made optional for the FY 2018-19. However, It is suggested that such statement should be kept as part of working papers of the audit.

Further it should be checked that the documentary evidences as laid down under Rule 36 of the CGST Rules, 2017 is available and condition for availing of ITC as per Section 16 of the CGST Act are fulfilled.

Also, by logic, the ITC closing balance as on March 31, 2019 should match with ITC balance reflected on the GST portal under the input tax credit ledger.

10. Ensure blocked ITC covered in Sec. 17(5) has not been availed

While checking the ITC availed by the auditee, it should be checked that ITC which is blocked under Section 17(5) of the CGST Act, 2017 has not been availed.

Examples of blocked credits are GST paid on passenger transportation vehicles or renting thereof including insurance, R&M etc (subject to some exceptions), work contract services for construction of immovable property, goods / services received for construction of immovable property (other than P&M) on his own account etc.

11. Checking that payment to creditors is made within 180 days, else ITC to be reversed

As per Second Proviso to Section 16(2) of the CGST Act, 2017 where a recipient fails to pay to the supplier (other than in RCM cases) the value of supply along with tax payable thereon within a period of 180 days from the invoice date, the corresponding ITC will be added in output tax liability. In case partial payment is made, partial ITC will be added.

Here it is important to note that words used are “fails to pay” and thus in our view the cases where retention money is deducted from bill, as per contract terms, reversal of ITC as above is not required. For further details [Click Here](#).

12. Reversal of ITC on any value of goods written off in the books

As per Section 17(5)(h) of the CGST Act, 2017 in case any goods (raw material, WEIP or finished goods) are written off in the books, the respective ITC thereon should be reversed. Compliance of this may be checked.

13. Reversal of ITC in case of exempted / non-GST supply;

In accordance to Section 17(1) and 17(2) of the CGST Act, 2017 read with Rule 42 of the CGSt Rules, 2017 taxpayers are required to reverse input tax credit in respect of common goods / services used in providing taxable as well as exempt supplies. It should be checked that such reversal is made as per formula given in Rule 42 of the CGST Rules, 2017 which speaks of pro rata reversal.

Further the exempt supply for purpose of above ITC reversal is to be computed after certain adjustment. For further details [Click here](#).

14. Ensure Tax invoices/ debit or credit notes/ self invoices/ payment voucher/ refund voucher are issued

It should be checked that the supplier has issued tax invoice as per provisions of Section 31 of the CGST Act, 2017 containing all the required particulars as mandated under Rule 46 of the CGST Rules, 2017. Further debit / credit notes are issued in compliance to Section 34 and Rule 53.

Further issuance of self invoice is to be made as per Section 31(3)(f) of the CGST Act, 2017 in cases where supplies are received from unregistered suppliers. This invoice is most important in availing of ITC of tax paid under RCM in view of fact that as per Rule 36 the documentary requirement for availing of ITC in such cases is this self invoice.

A receipt voucher is to be issued upon receipt of advance as per Section 31(3)(e) and payment voucher as per Section 31(3)(g) is to be issued at time of making payment to the supplier in cases where payment is required to be made under RCM.

15. To check compliances in regard to Goods Sent to Job Work

It should be checked whether the conditions are fulfilled for claiming input tax credit on goods (including capital goods) sent for job work. Also whether the Principal has sent goods to the job worker under the cover of delivery challans. Further it should be checked whether the registered person has furnished Form ITC 04 for the quarters in which goods were sent out for job work.

It should also be ensured that in case the registered person has supplied goods directly from the place of business of job worker, whether he has satisfied the conditions laid down in Proviso to Section 143 (1) of GST Act. Further in case the job worker is unregistered, and such job worker has supplied any waste/ scrap generated during the job work from his place of business directly, it should be checked whether the registered person has paid tax on such supply.

It should also be checked that any goods sent for job work are returned within specified time viz one year for inputs and three years for capital goods. Else the sending of such goods would be treated as supply on the day such goods were sent and thus GST would become payable with interest.

Demand, Recovery and Adjudication

22.1 Introduction

The verification of records during the assessment and audit may result in identification by the Department of any case of non-payment, short payment, wrong availment or utilization of input tax credit or erroneous refund of taxes by or to a taxable person. Accordingly, in such cases the above amounts need to be recovered by the Department from such person. The provisions in regard to recovery of taxes are contained in Section 73 to 84 of CGST Act. Identical provisions are there in SGST Acts and further these provisions are also applicable to IGST Act and UTGST Act also in view of specific mandation in this regard in such Acts.

22.2 Contents of the Chapter

- (a) Demands for tax short paid or not paid or erroneously refunded (Refer Para 22.3)
- (b) Demand when no charge of fraud, wilful mis-statement or suppression of facts (Refer Para 22.4)
- (c) Demand when fraud, wilful mis-statement is or suppression of facts is alleged by Department (Refer Para 22.5)
- (d) Meaning of fraud or any wilful-misstatement or suppression of facts to evade tax (Refer Para 22.6)
- (e) Tax collected but not paid to Government (Refer para 22.7)
- (f) Central tax / State tax or Union territory tax paid when Integrated tax payable and vice versa (Refer para 22.8)
- (g) Recovery of tax (Refer Para 22.9)
- (h) Payment of tax and other amount in instalments. (Refer Para 22.10)
- (i) Transfer of property to be void in certain cases. (Refer Para 22.11)
- (j) Tax to be first charge on property. (Refer Para 22.12)
- (k) Provisional attachment to protect revenue in certain cases (Refer Para 22.13)

- (l) Continuation and validation of certain recovery proceedings (Refer Para 22.14)

22.3 Demands for tax short paid or not paid or erroneously refunded

Since taxes under the GST Acts is payable on self-assessment basis, it is possible that the taxable person may not have correctly paid the tax or may not have paid the tax at all. It is also possible that the taxable person might have claimed refund and got refund of tax or input tax credit which is wrongful. In such cases, as per the provision of GST Acts the department can issue show cause notice and adjudicate the demand. In normal cases, such order is required to be passed within three years from the relevant date (refer Para 22.4.7). However, if the non-payment was on account of fraud, wilful mis-statement or suppression of facts to evade tax, the order can be passed within five years from relevant date (refer Para 22.5.7). These provisions apply to recovery of interest as well.

22.4 Demand when no charge of fraud, wilful mis-statement or suppression of facts

As per Section 73(1) where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax the proper officer shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, who has wrongly availed or utilized input tax credit. The notice should require him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 and penalty leviable under the provisions this Act or the Rules made thereunder.

The provisions apply to recovery of interest also.

22.4.1 Time limit for issue of SCN

As per Section 73(2) of CGST Act the proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified under sub-section (10) for issuance of order. The time limit of issuance of order is discussed at Para 18.4.7.

22.4.2 Statement if SCN on same issue was issued for earlier period

Once a show cause notice (SCN) has been issued, repeat notices / statements are required till matter is finally adjudicated. As per Section 73(3) of CGST Act where a notice has been issued for any earlier period under Section 73(1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under earlier SCN, on the person chargeable with tax. Thus such Statements would be issued on the same issues but for subsequent period i.e. periods not covered by SCN.

Further In this regard Section 73(4) of CGST Act provides that the service of such statement shall be deemed to be service of notice on such person, if the grounds relied upon for such tax periods are the same as are mentioned in the earlier notice.

The above provision has been incorporated in order to save paper work at Department, where show cause notice on same grounds was issued for earlier period.

22.4.3 Taxable Person can pay tax on own before issue of SCN

As per Section 73(5) of CGST Act the person chargeable with tax may, before service of notice or statement pay the amount of tax along with interest payable thereon under Section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

Section 73(6) stipulates that the proper officer, on receipt of such information, shall not serve any show cause notice or the Statement in respect of the tax so paid or any penalty leviable under the provisions of this Act or the Rules made thereunder.

The above provision is to promote voluntary compliance and reduce litigation.

Further it may be noted that “Shall” not serve show cause notice or the Statement means it is a mandatory provision. The issue has to be closed any notice even for penalty or late fee etc cannot be issued.

22.4.4 Show cause notice if amount short paid.

As per Section 73(7) where the proper officer is of the opinion that the amount paid under Section 73(5) falls short of the amount actually payable, he shall proceed to issue the show cause notice under Section 73(1) in respect of such amount which falls short of the amount actually payable.

22.4.5 No penalty if tax with interest paid within 30 days from issue of SCN

As per section 73(8) where any person chargeable with tax under the SCN (73(1)) or statement (73(8)) pays the said tax along with with interest payable under Section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said tax shall be deemed to be concluded.

It is important to note here that the period of thirty days is counted from date of 'issue' of SCN and not date of receipt of SCN. Further all proceeding in respect of the said tax shall be deemed to be concluded means any further notice even to co-noticee for penalty, late fee etc cannot be issued.

22.4.6 Demand with maximum 10% penalty

In case a taxable person does not voluntarily pay the tax and interest, the proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty not exceeding ten per cent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order. (*Section 73(9) of CGST Act*)

The words used in above sub-section are 'penalty not exceeding 10%' which means lower penalty can be imposed.

22.4.7 Time limit for issue of order

As per Section 73(10) the proper officer shall issue the order under section 73(9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

It is important to note here that the above time limit is for issue of demand order and not for issuing show cause notice. However, if the SCN was kept

pending and transferred to call book as Department had filed appeal against an order adverse to Revenue in some other proceedings on same issue, that period shall be excluded under Section 75 (11) of CGST Act.

Further as discussed at Para 22.4.1 that SCN is required to be issued at least three months prior to time limit specified in sub-section (10) for issuance of order.

22.5 Demand when fraud, wilful mis-statement is or suppression of facts is alleged by Department

As per Section 74(1) of CGST Act where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under Section 50 and a penalty equivalent to the tax specified in the notice.

22.5.1 Time limit for issue of SCN

As per Section 74(2) of CGST Act the proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified under sub-section (10) for issuance of order. The time limit of issuance of order is discussed at Para 18.5.7.

22.5.2 Statement if SCN on same issue was issued for earlier period

Once a show cause notice (SCN) has been issued, repeat notices / statements are required till matter is finally adjudicated. As per Section 74(3) of CGST Act where a notice has been issued for any earlier period under Section 74(1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under earlier SCN, on the person chargeable with tax. Thus such statements

would be issued on the same issues but for subsequent period i.e. periods not covered by SCN.

Further in this regard Section 74(4) of CGST Act provides that the service of such statement shall be deemed to be service of notice on such person, if the grounds relied upon for such tax periods are the same as are mentioned in the earlier notice.

22.5.3 Taxable Person can pay tax with 15% of tax as penalty on own before issue of SCN

As per Section 74(5) of CGST Act the person chargeable with tax may, before service of notice or statement pay the amount of tax along with interest payable thereon under Section 50 and a penalty equivalent to fifteen percent of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

Section 74(6) stipulates that the proper officer, on receipt of such information, shall not serve any show cause notice or the statement in respect of the tax so paid or any penalty leviable under the provisions of this Act or the Rules made thereunder.

The above provision is to promote voluntary compliance and reduce litigation.

Further it may be noted that “Shall” not serve show cause notice or the Statement means it is a mandatory provision. The issue has to be closed any notice even for penalty or late fee etc cannot be issued.

22.5.4 Show cause notice if amount short paid.

As per Section 74(7) where the proper officer is of the opinion that the amount paid under Section 74(5) falls short of the amount actually payable, he shall proceed to issue the show cause notice under Section 74(1) in respect of such amount which falls short of the amount actually payable.

22.5.5 25% Penalty if tax with interest paid within 30 days from issue of SCN

As per section 74(8) where any person chargeable with tax under the SCN (74(1)) or statement (74(8)) pays the said tax along with interest payable under Section 50 and a penalty equivalent to twenty-five percent of such tax

within thirty days of issue of show cause notice, all proceedings in respect of the said tax shall be deemed to be concluded.

It is important to note here that the period of thirty days is counted from date of 'issue' of SCN and not date of receipt of SCN. Further all proceeding in respect of the said tax shall be deemed to be concluded means any further notice even to co-noticee for penalty, late fee etc cannot be issued.

22.5.6 Demand with penalty equal to tax, in case of willful- misstatement or suppression of facts etc.

In case a taxable person does not voluntarily pay the tax and interest, the proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty due from such person and issue an order. (*Section 74(9) of CGST Act*)

There is no discretion with the officer to reduce penalty in case of fraud, suppression of facts or willful mis-statement. However as per Section 74(11) if the taxable person pays tax, interest and penalty equivalent to 50% of such tax within thirty days of communication of order, all proceedings in respect of said notice shall be deemed to be concluded i.e. balance 50% penalty will stand waived.

22.5.7 Time limit for issue of order

As per Section 74(10) the proper officer shall issue the order under section 74(9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

It is important to note here that the above time limit is for issue of demand order and not for issuing show cause notice. However, if the SCN was kept pending and transferred to call book as Department had filed appeal against an order adverse to Revenue in some other proceedings on same issue, that period shall be excluded under Section 75 (11) of CGST Act.

Further as discussed at Para 18.5.1 that SCN is required to be issued at least six months prior to time limit specified in sub-section (10) for issuance of order.

22.5.8 Meaning of fraud or any wilful-misstatement or suppression of facts to evade tax

Time limit for raising demand and penalty amount increases if there is charge of fraud or any wilful misstatement or suppression of facts to evade tax. Hence, this issue becomes litigation prone

However, Explanation 2 below Section 74 of CGST Act states that for the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the Rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

For ready reference the summary of important judicial pronouncements is given below:

22.5.8-a Suppression should be wilful

Supreme Court in *Rainbow Industries v. CCE*- 1994 (74) ELT 3 (SC) 1994 (6) SCC 563 AIR 1994 SC 2783 = 1994 AIR SCW 4465 have held that in order for the extended period to apply, two ingredients must be present wilful suppression, mis declaration etc., and the intention to evade duty. The dictum laid in above judgment has been followed in *ONGC v. CCE*-1995 (79) ELT 117 (CEGAT). Same view in *Tamil Nadu Housing Board v. CCE*-1995 Suppl (1) SCC 50 = 74 ELT 9 (SC). In this case, it was held that the powers to extend period from one year to 5 years are exceptional powers and hence have to be construed strictly.

Intention to evade payment of duty is not mere failure to pay duty. It must be something more, i e. that assessee must be aware that duty was leviable and he must deliberately avoid payment of duty. ‘Evade’ means defeating the provision of law of paying duty. It is made more stringent by the use of word ‘intent’. In other words, the assessee must deliberately avoid payment of duty payable under the law. Where there was scope of doubt whether duty was payable or not, is not intention to evade duty. *Tamilnadu Housing Board v. CCE 1995 Supp (1) SCC 50=1994(74) ELT 9(SC)=55 ECR 7*. In this case it was held that the powers to extend period from one year to 5 years are exceptional powers and hence have to be construed strictly.

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22.5.8-b No suppression if all facts were disclosed

If all facts have been disclosed to Department, extended period is not applicable - *Nestler Boilers (P) Ltd. v. Collector* 1990 (50) ELT 613 (CEGAT), *National Rifles v. CCE* 1999 (112) ELT 483 (CEGAT), *P R Rolling v. CCE* (2010) 249 ELT 232 (CESTAT), *Alumeco India Extrusion v. CCE* (2010) 249 ELT 577 (CESTAT), *Delhi Public School Society v. CST* (2014) 43 GST 421=41 taxmann.com 377=75 VST 350(CESTAT), *CC v. A S Moloobhoy and Sons* (2015) 51 GST 110= 57 taxmann.com 297 (SC)

22.5.8-c Mere inaction or mere non-disclosure is not suppression of Facts

Suppression means not providing information which the person is legally required to state, but is intentionally or deliberately not stated.

Hon. Supreme Court, in *Collector v. Chemphar Drugs* 40 ELT 276 = 1989 (2) SCC 127 = AIR 1989 SC 832, has held that mere inaction or failure on part of manufacturer will not amount to suppression of facts. Conscious or deliberate withholding of information when the manufacturer knew otherwise, is required to be established, before saddling the manufacturer with liability for extended period (3) [reiterated in *Lubri-Chem Industries Ltd v. Collector* 1994 (73) ELT 257 SC = 1994 (2) Supp. SCC III 258= 1994 AIR SCW 3672 = AIR 1994 SC 2604 = 1994 (4) RLT 239 (SC)].- Same view in *M K Kotechav CCE AIR 2005 SC 1147=179 ELT 261(SC 3 Member Bench)*, *Nestle India v. CCE* (2009) 235 ELT 577 (SC).

In the case of *Padmini Products v. CCE* - 1989 (43) ELT 195 (SC)= (1989) 4 SCC 275 = AIR 1989 SC 2278 = 25 ECR 289 = (1990) 76 STC 411 (SC), it has been held by Apex Court that mere non-declaration is not sufficient to invoke larger period but some more positive act is required. It was held that mere failure or negligence on part of manufacturer to take license or pay duty in case where there was scope for doubt as to whether goods were dutiable or not, could not attract the extended limitation. In this case the assessee did not obtain excise license under belief that the goods are exempt from duty. There was a scope of doubt regarding liability of duty. Hence, demand for period beyond period of one year (that time six months) was set aside - followed in *Jaiprakash Industries v. CCE* 2002 AIR SCW 4840 = (2003) 1 SCC 67 = 146 ELT 481 (SC 3 Member Bench). *Cadila Laboratories v. CCE* 2003 AIR SCW 1115 = 152 ELT 262 (SC) CCE 2005 (188) ELT 251 (SC 3

Member Bench), *Gopal Zarda udyog v. CCE* 2005 (188) ELT 251 (SC 3 Member Bench), *Uniworth Textiles v CCE* (2013) 9 SCC 753=39 STT58 = 31 taxmann.com 67=288 ELT 161(SC), *Escorts Limited v CCE* (2015) 9 SCC 109= 319 ELT 406 (SC).

Mere omission to give correct information did not constitute suppression unless that omission was made wilfully in order to evade duty. Suppression would mean failure to disclose full and true information with the intent to evade payment of duty - *CCE v Ballarpur Industries Ltd.* (2007) 11 STT 6 (SC) - Same view in *Continental Foundation Jt Venture v. CCE* (2007) 10 SCC 337 = 216 ELT 177 (SC), *Anand Nishikawa Co. Ltd. v. CCE* 2005 (188) ELT 149 = 2 STT 226 =(2005) 7 SCC 749 (SC) - quoted with approval in *CCE v Damnet Chemicals* (2007) 216 ELT 3 (SC) *UOI v. Rajasthan Spinning & Weaving Mills* (2009) 20 STT 481 180 Taxman 609 = 238 ELT 3 (SC) - *Escorts Ltd. v. CCE* (2015) 9 SCC 109 = 319 ELT 406 (SC).

A mere omission or negligence would not constitute a deliberate act of suppressioveri or suggestiofalsi - *Dilip N Shroff v. Jt CIT* (2007) 161 Taxman 218 = 291 ITR 519 (SC) - quoted in *CWT v. Smt Shakuntala Devi Dalmia* (2008) 172 Taxman 162 (All HC DB) - *CIT v Cafco Syndicate Shipping Co* (2008) 174 Taxman 406 (Mad HC DB)

22.5.8-d No suppression if facts not required to be disclosed are not disclosed

There can be no suppression of facts if facts which are not required to be disclosed are not disclosed - *Smt. Shirisht Dhawan v. Shaw Brothers* -1992 (1) SCC 534 = 1992 AIR SCW 1549 =AIR 1992 SC 1555' *CCE v. Ranka Wires* (2015) 322 ELT 410 (SC)

22.5.8-e No suppression of facts if assessee had a bona fide belief

If a party bona fide believes in a legal position (e.g. that no duty is payable or no licence is required in his case) and if there is scope for such belief and doubt, penal provisions of section 11A will not apply. - *Padmini Products v. CCE* – 1989 (43) ELT 195 (SC) =1989 (4) SCC 275 = 1989 (25) ECR 289 (SC) = AIR 1989 SC 2278 - *CCE v. Surat Textile Mills* 2004 (167) ELT 379 (SC 3 Member Bench) *Gopal Zarda udyog v. CCE* 2005 (188) ELT 251 (SC 3 Member Bench) - *CCE v. ITC Ltd.* (2010) 257 ELT 514 (Kar HC DB)

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22.5.8-f No suppression if **D**epartment aware of facts

extended period of five years is not applicable for any omission on part of assessee, unless it is a deliberate attempt to escape from payment of duty. When facts were known to the Department, extended period of five years is not applicable- *Pushpam Pharmaceuticals Co v. CCE* 1995 Supp 3 SCC 462 =78 ELT 401(SC) - quoted with approval in *Sarabhai M Chemicals v. CCE* AIR 2005 SC 1126 = (2005) 2 SCC 168=179 ELT 3 (SC 3 Member Bench). - *Anand Nishikawa Co Ltd v CCE* 2005 (188) ELT 149 = 2 STT 226 = (2005) 7 SCC 749 (SC).

22.5.8-g Wilful Misstatement

False statement becomes 'wilfull' if it is deliberate or intentional. It is not wilfull if statement is accidental or inadvertent. A statement will not be misstatement only because full facts were not disclosed. "Wilful" means 'with intent to evade duty'.- *Cosmic Dye Chemical v. CCE* 95 STC 604 = 75 ELT 721 = (1995) 6 SCC 117 (SC 3 Member Bench)- quoted with approval in *Uoi v. Rajasthan Spinning & Weaving Mills* (2009) 238 ELT 3 (SC).

Misstatement must be wilful to invoke extended period of limitation- *Continental Foundation Jt Venture v. CCE* (2007) 10 SCC 337 = 216 ELT 177 (SC) - quoted with approval in *UOI v. Rajasthan Spinning Weaving Mills* (2009) 20 STT 481=180 Taxman 609 = 238 ELT 3 (SC).

22.5.8-h Fraud

basic element of fraud is deceit. Section 17 of Contract Act states that fraud means making a suggestion, as a fact, which the person does not believe it be true. Fraud also means active concealment of fact. Generally, 'fraud' means deceit, trickery or misrepresentation. Intention to evade duty is built into the words 'fraud' and 'collusion' - *Cosmic Dye Chemical v. CCE* 95 STC 604 = (1995) 6 SCC 117 = 75 ELT 721 (SC 3 Member Bench). In *Dr. Vimla v. Delhi Administration* AIR 1963 SC 1572 = 1963 Supp 2 SCR 585, it as observed that "defraud" includes an element of deceit.

In *UOI v. Jain Shudh Vanaspati* 1996 (86) ELT 460 (SC), it was observed 'fraud', if established, unravels all.

No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

The Court is careful not to find fraud unless it is distinctly pleaded and proved ; but once it is provide, it vitiates judgements, contracts and all transactions whatsoever - *Lazarus Estate v. Berly* (1956) 1 All ER 341 (CA) quoted with approval in *Ram Preeti Yadav v. U P Board of High School and Intermediate Education* 2003 AIR SCW 4912 = (2003) 8 SCC 311= AIR 2003 SC 4268, where it was observed, 'In *SP Chengalvaraya Naidu v. Jagannath* AIR 1994 SC 853 = (1994) 1 SCC 1 = 1994 AIR SCW 243, this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal'- Same view in *CC v. Aafloat Textiles* (2009) 235 ELT 587 (SC) - *State of Uttar Pradesh v. Ravindra Kumar Sharma* (2016) 4 SCC 791.

Fraud is proved when it is shown that a false representation has been made (i) knowingly or (ii) without belief in its truth or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the Court - *Ashok Leyland Ltd v. State of Tamil Nadu* 2004 AIR SCW 1001 = 2004 (3) SCC 1 (SC 3 Member Bench) -Same view in *Derry v Peek* (1886-90) All ER 1 = (1889) 14 AC 337 (HL) *State of AP v. T Suryachandra Rao* (2005) 6 SCC 149 = AIR 2005 SC 3110- *State of Orissa v. Harapriya Bisoi* AIR 2009 SC 2991.

Suppression of a material document would also amount to fraud on Court - *Gowrishankar v. Joshi Amba Shankar Family Trust* 1996 (3) SCC 310 = 1996 AIR SCW 2684 = AIR 1996 SC 2202

Concealment of relevant and material facts, which should have been declared before Arbitrator, is an act of fraud and is against public policy of India - Fraud being of 'infinite variety' may take many forms -- Fraud - in the contemplation of a civil court of justice, may be said to include properly all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another- *Venture Global Engineering v. Satyam Computer Services* (2010) 8 SCC 660.

Fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is cheating intended to get an advantage - *S P Chengalvaraya Naidu v. Jagannath* AIR 1994 SC 853 = (1994) 1 SCC 1 =1994 AIR SCW 243.

In *CC v. Essar Oil Ltd* (2004)172 ELT 433 (SC), all important case law on 'fraud' was discussed, and it was observed, "By 'fraud' is meant an intention

to deceive; whether it is from any expectation of advantage to party itself or from the ill will towards other is immaterial. 'Fraud' involves two elements, deceit and injury to the person deceived. Injury will include any harm whatever caused to any person in body, mind, reputation or such others [see *Dr. Vimla v. Delhi Administration* AIR 1963 SC 1572 = 1963 Supp 2 SCR 585 and *Indian Bank Association v. Satyam Fibres* 1996 (5) SCC 550 = 1996 AIR SCW 3228 = AIR 1996 SC 2592].

Misrepresentation itself amounts to fraud - *Devendra Kumar v. State of Uttaranchal* (2009) 9 SCC 363.

Fraus et jus nunquam cohabitant - Fraud and justice never dwell together - *Meghmala v. G Narasimha Reddy* (2010) 8 SCC 383.

However, mere silence is not fraud, unless it is the duty of the person to speak or silence itself is equivalent to speech.

22.6 General provisions relating to demand of tax

The following provisions apply to both types of demands i.e. the demands under Section 74 wherein the charge of fraud, wilful mis-statement or suppression of facts to evade tax has been invoked and demand under Section 73 without such charge.

22.6.1 Period of stay to be excluded for computing period of three/five years

As per Section 75(1) of CGST Act where the service of notice or issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of three years or five years.

22.6.2 If charge of suppression, fraud not established

Section 75(2) of CGST Act provides that if Appellate Authority or Tribunal or Court concludes that the notice issued under Section 74(1) is not sustainable for the reason that the charge of fraud or any wilful mis-statement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if notice was issued under Section 73(1) i.e. period of limitation for issue of order within three years shall apply in such cases instead of five years. Further the date upto which SCN can be issued will be computed accordingly. (refer Para 22.4.7).

22.6.3 Time limit of issue of order in pursuance to direction of Appellate Authority etc.

As per Section 75(3) of CGST Act where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a Court, such order shall be issued within two years from the date of communication of the said direction.

22.6.4 Opportunity of personal hearing

Section 75(4) mandates that an opportunity of personal hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

22.6.5 Maximum of three Adjournments from hearing can be given

As per Section 75(5) of CGST Act the proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to such person and adjourn the hearing for reasons to be recorded in writing. However no adjournment shall be granted for more than three times to a person during the proceedings.

Thus under GST law maximum three adjournments can be given. This provision has been incorporated in order to speed up the disposal of notices.

22.6.6 Issue of order with reasons

Section 75(6) states that the proper officer in his order, shall set out the relevant facts and the basis of his decision. Thus the order issued by the proper officer should be a speaking order.

22.6.7 Demand cannot be more than specified in notice and cannot be confirmed on other ground

As per Section 75(7) the amount of tax, interest and penalty demanded the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on grounds other than the grounds specified in the notice.

22.6.8 Interest penalty gets automatically modified

Section 75(9) provides that where the Appellate Authority or Appellate

Tribunal or Court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

This is due to fact that computation of interest and penalty hinges upon the amount of tax and in cases where the tax amount has been modified pursuant to an order of Authority/ Tribunal / Court the corresponding amount related to interest and penalty shall also be recomputed based upon the revised tax demand.

22.6.9 Interest mandatory even if not specified in order

Section 75(10) provides that interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

Thus, Interest is mandatory and would be levied as per Section 50 of CGST Act.

22.6.10 Adjudication concludes if order not issued within three/five years

As per Section 75(11) the adjudication proceedings shall be deemed to be concluded if the order is not issued within three/five years i.e. the time limit of issuance of order under section 73(10) or 74(10) of CGST Act.

The adjudication in such cases would be deemed to be concluded as issuance of order in such cases would become time barred as the limitation period of three / five years has expired.

Exclusion of Time: As per Section 75(11) if on any issue either Appellate Authority or Appellate Tribunal or High Court has given decision prejudicial to the interest of Revenue, and the Revenue has filed appeal to next higher appellate authorities viz Appellate Tribunal or High Court or Supreme Court, the time taken for decision rendered by such appellate authorities will be excluded in computing the period of three or five years in cases the proceedings are initiated by way of issue of SCN.

22.6.11 If Penalty imposed u/s 73 or 74, penalty cannot be imposed under other provisions

As per Section 75(13) where any penalty is imposed under Section 73 or 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of the GST Act(s).

22.7 Tax collected but not paid to Government

Section 76(1) mandates that every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

In such cases as per sub-section (2), (3) and (5) of Section 76 the proper officer can issue show cause notice to him and confirm demand through an order after considering the representation of such person and giving him personal hearing in case request is received in writing from the person to whom SCN has been issued.

As per sub-section (8) the order issued by proper officer shall be a speaking order i.e. it shall set out in his order the relevant facts and the basis of his decision. Further the order shall not travel beyond the SCN for the purpose of confirming the liability.

Further as per sub-section (4) such person shall be liable to pay interest at the rates specified in Section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

It is important to note here that sub-section (1) states that SCN in cases of tax collected but not paid to Government can be issued in regard to payment of tax, interest and penalty. However specific provision of levy of interest only in such cases has been provided in sub-section (4) and no provision in regard to levy and quantum of penalty exists in Section 76 of CGST Act.

22.7.1 Time limit of issue of order

As per Section 76(6) the proper officer shall issue an order within one year from the date of issue of notice. The period of stay in regard to issue of order by an order of court of Appellate Tribunal shall be excluded in computing the said period of one year.

It may noted here that no limit for issuance of notice under Section 76(1) has been laid down and it can be issued by the proper officer at any time for any period. However once such SCN has been issued then provision has been mandated in law for completion of the adjudication and issue order within one year from date of issue of such notice.

22.7.2 Surplus credited to Fund or refunded

As per sub-section (9) and (10) of Section 76 the amount paid under sub-section (1) or (3) shall be adjusted against the tax payable, if any, by the person in relation to supplies referred to in sub-section (1) i.e. for which tax was collected. Where any surplus is left after such adjustment the amount of such surplus shall either be credited to the Fund or refunded to the person who borne the incidence of such amount.

Further as per Section 73(11) the person who has borne the incidence of the amount may apply for the refund of the same and for such refund provisions of unjust enrichment will apply. Accordingly refund cannot be claimed by a person who has passed on the incidence of the tax onto the other person.

22.8 Central tax / State tax or Union territory tax paid when Integrated tax payable and vice versa

Section 77 of CGST Act / SGST Act, Section 19 of IGST Act and Section 12 of UTGST Act lays down the provisions in regard to cases where the tax is wrongfully collected and paid to Central Government or State Government.

For ready reference the above provisions are given below in a tabular presentation.

Section 77 of CGST / SGST Acts	Section 19 of IGST Act	Section 12 of UTGST Act
77. (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be	19. (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to	12. (1) 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

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refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.	such conditions as may be prescribed.	subject to such conditions as may be prescribed.
(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax / State tax payable.	(2) A registered person who has paid Central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.	(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of the central tax and the Union territory tax payable.

22.9 Recovery of tax

As per Section 78 if the demand raised in any order passed under GST Acts is not paid within a period of three months from the date of service of such order, Department can start recovery proceedings.

Further the above period of three months can be reduced by proper officer if considered expedient in the interest of the Revenue for reasons to be recorded in writing.

Section 79 lays down the provisions in regard to recovery of tax and such provisions as relevant to suppliers of services are given below:-

79. (1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the

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proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

- (a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;
- (b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;
- (c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
(ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;
- (iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;
- (iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;
- (v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment

under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

- (vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;
- (vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;
- (d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;
- (e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

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(f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

22.10 Payment of tax and other amount in installments

As per Section 80 on an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under Section 50 and subject to such conditions and limitations as may be prescribed:

Further as per Proviso to Section 80 where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

22.11 Transfer of property to be void in certain cases

As per Section 81 of CGST Act where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Further as per Proviso to said Section, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

22.12 Tax to be first charge on property.

Section 82 of CGST Act mandates that notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

22.13 Provisional attachment to protect Revenue in certain cases

As per Section 83 (1) of CGST Act where during the pendency of any proceedings under Section 62 or Section 63 or Section 54 or Section 67 or Section 73 or Section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

However it has been provided in sub-section (2) that every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

22.14 Continuation and validation of certain recovery proceedings

Section 84 of CGST Act provides that where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then—

- (a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;
- (b) where such Government dues are reduced in such appeal, revision or in other proceedings—
 - (i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;
 - (ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;
 - (iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Accounts and Other Records

23.1 Introduction

Assessment in GST is mainly focused on self-assessment by the taxpayers themselves. Every taxpayer is required to self-assess the taxes payable and furnish a return for specified tax periods i.e. the period for which return is required to be filed. The compliance verification is done by the Department through scrutiny of returns, audit and/or investigation. Thus, the compliance verification is to be done through documentary checks rather than physical controls. This requires certain obligations to be cast on the taxpayer for keeping and maintaining accounts and records.

23.2 Registered required to keep and maintain certain accounts / records

As per Section 35(1) of the CGST Act every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid; and
- (f) such other particulars as may be prescribed.

Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business. (First Proviso to Section 35(1) of the CGST Act).

The registered person may keep and maintain such accounts and other particulars in electronic form in such manner as prescribed in Rule 57 of the CGST Rules. (Second Proviso to Section 35(1) of the CGST Act).

23.3 Maintenance of accounts by transporter and owner / operator of godown:

Section 35(2) of the CGST Act mandates that it is the responsibility of the following persons to maintain records of the consignor, consignee and other relevant details of the goods as prescribed in Rule 58 of the CGST Rules, 2017.

- The owner or Operator of warehouse or godown or any other place used for storage of goods
- Every transporter

23.4 Power of Commissioner in regard to maintenance of accounts

The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein. (Section 35(3) of the CGST Act).

Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed. (Section 35(4) of the CGST Act).

23.5 Failure to account for goods / services

Subject to the provisions of Section 17(5)(h)(i.e. goods lost, stolen, destroyed, written off etc), where the registered person fails to account for the goods or services or both in accordance with the provisions of Section 35(1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of Section 73 or Section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.(Section 35(6) of the CGST Act).

23.6 Period of retention of accounts

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of section 35(1) shall retain

Accounts and Other Records

them until the expiry of 72 months (6 years) from the due date of furnishing of annual return for the year pertaining to such accounts and records. (Section 36 of the CGST Act)

If a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later. (Proviso to Section 36 of the CGST Act).

Advance Ruling

24.1 Introduction

The broad objective for incorporating the provisions of advance ruling under the GST law were to setting up such an authority were to provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant, attract foreign direct investment (FDI), reduce litigation, pronounce ruling expeditiously in transparent and inexpensive manner. The provisions of advance ruling were made long ago in 1993 in Income Tax Act vide sections 245N to 245R.

Section 95 to Section 106 of the CGST Act makes provisions relating to advance ruling. The provisions contained in these sections are quite different from the provisions contained in other fiscal statutes, in as much as it provides for advance ruling, appellate authority and also permits the advance ruling in respect of the activities which are being undertaken by the applicant. Similar provisions in regard to advance ruling exist under the service tax law.

The provisions contained in the above sections of CGST Act which are also part of SGST Act and applicable to IGST Act and UTGST Act also are discussed in this Chapter.

24.2 Meaning of Advance Ruling

As per clause (a) of section 95 of CGST /SGST Act and section 12 of UTGST Act, 'advance ruling' means a decision provided by the authority or the Appellate Authority to an applicant on matters or on questions specified in section 97(2) or 100(1) of CGST/SGST Act as the case may be, in relation to the supply of goods or services or both proposed to be undertaken or being undertaken by the applicant.

It is evident from the above that Advance Ruling means a decision provided by either Original Authority or Appellate Authority on the issues specified in Section 97(2) or Section 100(1). Thus before proceeding head it is important to go through the issues on which advance ruling can be sought.

As per Section 97(2) of CGST Act Advance Ruling can be sought for the following questions:

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under provisions of the GST Act(s);
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services under the Act;
- (f) whether applicant is required to be registered under the Act;
- (g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

From above it is evident that Advance Ruling can only be in respect of these issues mentioned in Section 97(2) of CGST Act. Further the definition of advance ruling as discussed supra mentions of Section 100(1) also. In this regard it may be noted that Section 100(1) provides for filing appeal against the Order passed under section 98 of the Act. Therefore the appeal under section 100 of the Act will also be in respect of issues stipulated in Section 97(2) of the Act.

It may be seen that the issues specified in Section 97 (2) may be in relation to supply of goods or services proposed to be undertaken or being undertaken by the applicant.

24.4 Constitution of original Authority and Appellate Authority and the powers thereof

Section 96 and 99 of CGST Act provides for constitution of original Authority for Advance Ruling and for Advance Ruling respectively and also powers of Authority. These discussed below:

24.4-1 Original Authority

Section 96 of the CGST Act provides that the Authority for Advance Ruling constituted under the provisions of SGST Act or UT-GST Act, shall be deemed to be the Authority for Advance Ruling in respect of that State or Union Territory under this Act also. The State Government or the Government in Union Territory will constitute the advance ruling authority.

The State authority will also decide the advance ruling in respect of CGST Act and IGST Act

24.4-2 Appellate Authority

Section 99 of the CGST Act provides that the Appellate Authority constituted under the SGST Act or UTGST Act shall be deemed to be the Appellate Authority in respect of that State or Union Territory under this Act also. Thus, as mentioned above, the State Government or Government in the Union Territory will constitute the Appellate Authority for that State. The same authority will also be considered as Appellate Authority for CGST Act and IGST Act.

24.4-3 Powers of Authority and Appellate Authority

Section 105 of the CGST Act provides that the Authority or the Appellate Authority shall have the powers of civil court under the Code of Civil Procedure, 1908 for the purpose of exercising its powers regarding:

- (a) Discovery and inspection;
- (b) Enforcing the attendance of any person and examining him on oath
- (c) Issuing commissions and compelling production account other records.

It may be noted that the Authority can issue summons to any person for this purpose.

Section 105(2) of the CGST Act provides that the Authority or the Appellate Authority shall be considered as a civil court for the purposes of Section 195 and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196, of the Indian Penal Code.

24.5 Application for Advance Ruling

As per Section 97(1) of the CGST Act, the applicant shall make an application in such form and manner and accompanied by such fees as may be prescribed.

The term 'applicant' has been defined in Section 95(b) of the Act to mean any person registered or desirous of obtaining registration under Act. Accordingly any person who is registered or desirous to obtain the same i.e who is not registered presently can make an application for obtaining Advance Ruling.

24.6 Procedure on receipt of Application

Section 98 of the CGST Act specifies the procedure to be followed by Authority after the receipt of application. The following steps are specified in said section.

24.6.1 Forward copy to officers

As per Section 98(1), the authority shall forward a copy of the application received along with all the enclosures to concerned officers. The authority can also request to furnish the relevant records. The records shall be returned as early as possible.

24.6.2 Accepting or rejecting of Application

The authority after examining the application, records and after hearing the applicant or authorized representative by order shall admit or reject the application. The Proviso further provides that the application shall not be admitted where the questions raised in the application already pending in any proceeding or decided in any proceeding under any provisions of this Act in case of an applicant.

The Second Proviso provides that the application should not be rejected without providing an opportunity of personal hearing.

In case of rejection of the application the Order shall give the reasons for such rejection.

As per sub section (3), the copy of the admission order and the rejection order shall be forwarded to the applicant and prescribed officers.

24.6-3 Procedures after admission

The authority shall examine the material as may be placed before him or obtained by the authority. The authority shall provide an opportunity of hearing to the applicant the authorized representative the appellant as well as to concerned officer or his authorized representative. Thereafter the Authority shall pronounce its advance ruling on the specified issues.

24.6-4 Difference of Opinion

Where the Members of the Authority shall differ on any question on which the Advance Ruling is sought, they shall state the point on which they differ and make reference to Appellate Authority for its decision. If the Members of the

Appellate Authority also differ on any point, it shall be deemed that no Advance Ruling can be issued in respect of questions covered by reference application.

24.6-5 Time Limit

Section 117(6) of CGST Act provides that the Authority or, as the case may be the Appellate Authority shall pronounce its Advance Ruling in writing within 90 of the receipt of application.

24.6-5 Copy of Order

A copy of Advance Ruling pronounced by Authority duly signed by members and certified in such manner shall be sent to the applicant and jurisdictional Officer as soon as possible, after the pronouncement.

24.7 Appeal to the Appellate Authority and orders

Section 100 and 101 of the CGST Act provides for filing of appeal against the Order pronounced by authority under sub-section (4) of Section 98. The order by authority under Section 98(4) is made after the application is admitted. If the application is not admitted, but rejected for admission then no appeal can be filed against the order of rejection. The following steps in this regard are discussed below:

24.7-1 Time Limit

As per Section 100 (2) of the CGST Act, the appeal shall be filed within a period of 30 days from the date on which the Advance Ruling sought to appealed against, is communicated to the applicant or jurisdictional officer.

24.7-2 Form and the Manner of filing Appeal

The form and the manner of filing the appeal will be specified in the rule as an when notified.

24.7-3 Order of the Appellate Authority

The Appellate Authority after hearing shall pass such order as it thinks fit, confirming or modifying the ruling appealed against. The said order shall be passed within 90 days from the date of filing the appeal under section 100 or 98(5). If the Members of the Appellate Authority differ on any points referred to in appeal or reference, it shall be deemed that no Advance Ruling can be issued under appeal or reference. The copy of the Advance Ruling Order duly

signed by the Members and certified in such manner shall be sent to the applicant or the jurisdictional Officer after its pronouncement.

24.7-4 Writ Petition

There is no provision of appeal against decision of Appellate Authority. However, writ petition is maintainable. Similar provisions regarding Advance Ruling is made under the Central Excise Act, 1944 and the Income tax Act, 1961. No appeal is provided against the order of Advance Ruling Authority. It has been held when there is no appeal, writ petition can be filed. The ratio of the following judgment should apply in GST Act also.

In *Columbia Sportswear v 25 taxmann.com 470-210Taxman ELT 321 (SC)* it was held that Authority for Advance Ruling (AAR) is a Tribunal. writ petition against the decision of AAR can be filed before High Court.

In this regard the FAQs on GST issued by CBEC on 31/03/2017 is important, Q.19 (Chapter 17) of which is reproduced below:

Q 19. Whether Appeal can be filed before High Court or Supreme Court against the ruling of Appellate Authority for Advance Rulings?

Ans. *The CGST /SGST Act do not provide for any appeal against the ruling of Appellate Authority for Advance Rulings. Thus no further appeals lie and the ruling shall be binding on the applicant as well as the jurisdictional officer in respect of applicant.*

However, writ jurisdiction may lie before Hon'ble High Court or the Supreme Court.

24.8 Rectification of Advance Ruling

Section 102 of the CGST Act provides that the Order passed by Authority or Appellate Authority may be amended to rectify any error apparent on the face of the record. If such error is noticed by the Appellate or by Authority on its own accord, or is brought to notice by jurisdiction officer or applicant within a period of six months from the date of order, then such orders can be rectified. The Proviso further provides that no rectification which has the effect of enhancing the tax or reducing the amount of admissible amount of credit shall be made, unless notice is given to the applicant and such applicant is provided with reasonable opportunity of hearing.

24.9 Binding Nature

As per section 103(2), the Advance Ruling is binding on the applicant and also binding on concerned officer or jurisdictional officer in respect of the applicant (i.e., not in respect of others). The Advance Ruling will continue to be binding unless there is change in law or facts the basis on which Advance Ruling was given.

In this regard to the question whether the Advance Ruling is applicable on persons other than applicant the FAQs on GST issued by CBEC on 31/03/2017 is important, Q.11 (Chapter 17) of which is reproduced below:-

Q11. Whether the *Advance Ruling* have precedent value of a judgment of the High Court or the Supreme Court?

Ans. No, the *Advance Ruling* is binding only in respect of the matter referred. It has no precedent value. However, even for persons other than applicant, it does have persuasive value.

24.10 Order void in certain circumstances

As per Section 104 of the CGST Act where an Advance Ruling pronounced by the Authority has been obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, the authority can declare the ruling to be *void ab initio*. Thereupon, all the provisions of the Act shall apply to the applicant as if such ruling had never been made. Copy of such order declaring the ruling *void ab initio* shall be sent to concerned officer or jurisdictional officer.

If Authority for Advance Rulings find that the Advance Ruling was obtained by fraud or misrepresentation of facts, the Authority can de ruling as *void ab initio*.

The Proviso further provides that no order shall be issued unless the opportunity has been given to the applicant of hearing.

24.11 Procedure of original Authority and Appellant Authority

Section 106 of CGST Act provides that original Authority and Appellate Authority have power to regulate its own procedure in all matters under the Act. Thus, the Original Authority and Appellate Authority will issue public notice or circular for the purpose of laying down the procedure on various issues including manner of granting personal hearing etc.

25.1 Introduction

Someone has rightly said that 'Powers corrupts and absolute power corrupts absolutely'. Uncontrolled power is much more likely to be misused than controlled power. Hence all Statutes generally provide for right of appeal against an adverse decision. Accordingly provisions regarding appeals and revision are provided under GST Law and are contained under Section 107 to 121 of CGST Act. Further these provisions are mirrored under the SGST Acts of the respective State Govt / Union territory with Legislature. Thus we can say that there are identical provisions regarding appeals and revision under CGST and SGST Acts. These provisions are also applicable to IGST Act / UTGST Act. The provisions contained in Section 107 to 121 of CGST / SGST Act(s) are discussed in the succeeding paras.

25.2 Appeals under GST Law : At a glance

For ready reference of the readers the appeal provisions are tabulated as under:

APPEALS UNDER GST

S. No.	Types of Appeals	When to file a Appeal	Time Limit for filing appeal	Procedure for filing Appeal			
1.	Appeals to Appellate Authority	Any person aggrieved by any decision or order passed under CGST /SGST/UTGST Act by an Adjudicating Authority Dept.- The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union Territory tax, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under CGST /SGST/UTGST Act, for the purpose of satisfying himself as to the legality or	aggrieved assessee may prefer an appeal within 3 months from the date on which the said decision or order is communicated to such person. For the department (Revenue), the time limit is 6 months Appellate Authority is empowered to condone the delay in filing appeal upto 1 month.	<ol style="list-style-type: none"> 1. aggrieved assessee may prefer an appeal in prescribed Form-GST APL-01 (The grounds of appeal and form of verification must be duly signed) / Department may file application for appeal in Form GST APL-03 along with the other documents either electronically or otherwise as may be notified by the Commissioner against a provisional acknowledgement. 2. Thereafter a certified copy of the decision or order appealed against shall be submitted within 7 days of filing the appeal. 3. In case the appeal is filed by assessee, a final acknowledgement indicating the appeal number shall be issued in Form GST APL-02 by the said authority. 4. <table border="1" style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 15%; text-align: center;">If</td> <td style="width: 35%; text-align: center;">Certified</td> <td style="width: 50%; text-align: center;">Date of filling appeal shall be</td> </tr> </table>	If	Certified	Date of filling appeal shall be
If	Certified	Date of filling appeal shall be					

		propriety of the said decision or order and may, by order, direct any Officer subordinate to him to apply to the Appellate Authority		copy is filed	
				Within 7 days	Date on which the provisional acknowledgement stands issued
				After 7 days	Date of submission of Certified copy
				<p>The appeal shall be treated to be filed only when the final acknowledgement, indicating the appeal number is issued.</p> <p>5. No appeal can be filed by appellant unless the following is paid:</p> <ul style="list-style-type: none"> - Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and - Pre-deposit of sum equal to 10% of remaining amount of tax in dispute. <p>6. On payment of above amount, the recovery proceedings for balance amount are deemed to be stayed</p> <p>7. Appellate authority need to hear and decide the appeal, wherever possible, within a period of 1 year from the date of filing. Such Order with a summary in Form GST APL-04, clearly</p>	

				indicating the final amount of demand confirmed needs to be sent to the appellant, the respondent, the adjudicating authority, jurisdictional Commissioner of CGST, SGST and UTGST
2.	Appeals to Appellate Tribunal	Any person aggrieved by any decision or order passed under Section 107 or 108 of CGST Act or the SGST or the UTGST Act Dept.- Commissioner may, on his own motion or upon request from the Commissioner of State Tax or Union Territory Tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under CGST /SGST/UTGST Act for the purpose of satisfying himself as to the	aggrieved assessee may prefer an appeal within three months from the date on which the order sought to be appealed against is communicated. For the Department (Revenue), the time limit is 6 months Memorandum of Cross objection is to be filed by the assessee within 45 days from the receipt of notice of appeal filed by the Department. Appellate Tribunal is	<ol style="list-style-type: none"> 1. Appeal shall be preferred in prescribed Form GST APL-05 along with the other documents either electronically or otherwise as may be notified by the Registrar against a provisional acknowledgement. 2. Memorandum of cross-objections to the Appellate Tribunal shall be filed in Form GST APL-06. 3. A cross appeal or appeal by Revenue to the Appellate Tribunal shall be made electronically, in Form GST APL-07. 4. A certified copy of the decision or order appealed against along with specified fees shall be submitted within 7 days of filing of the appeal & a final acknowledgement indicating the appeal no. shall be issued in Form GST APL-02.

		<p>legality or the propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal</p>	<p>empowered to condone the delay in filing appeal by assessee for a further period of 3 months or memorandum of cross objection for a further period of 45 days.</p>	<p>5.</p> <table border="1" data-bbox="1033 325 1559 605"> <tr> <td data-bbox="1033 325 1197 408">If Certified Copy is filed</td> <td data-bbox="1197 325 1559 408">Date of filing appeal shall be</td> </tr> <tr> <td data-bbox="1033 408 1197 525">Within 7 days</td> <td data-bbox="1197 408 1559 525">Date on which the provisional acknowledgement stands issued</td> </tr> <tr> <td data-bbox="1033 525 1197 605">After 7 days</td> <td data-bbox="1197 525 1559 605">Date of submission of Certified copy</td> </tr> </table> <p>An appeal shall be deemed to be filed only on generation of the final acknowledgement number.</p> <p>6. Appeal to be filed in prescribed form duly verified in prescribed manner along with prescribed fees and</p> <p>7. Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and pre-deposit of sum equal to 20% of remaining amount of tax in dispute in addition to amount deposited during filling appeal before Appellate Authority</p> <p>8. On payment of above amount, the recovery proceedings for balance amount are stayed till the disposal of appeal.</p>	If Certified Copy is filed	Date of filing appeal shall be	Within 7 days	Date on which the provisional acknowledgement stands issued	After 7 days	Date of submission of Certified copy
If Certified Copy is filed	Date of filing appeal shall be									
Within 7 days	Date on which the provisional acknowledgement stands issued									
After 7 days	Date of submission of Certified copy									

				<ol style="list-style-type: none">9. The fees for filing and restoration of appeal shall be Rs. 1,000/- for every Rs. 1 lakh of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of Rs. 25,000/-.10. Appellate Tribunal to pass the order confirming, modifying or annulling the decision or order appealed against or remand the case back to the appellate authority or the Revisional authority or the original adjudicating authority.11. The Appellate Tribunal is empowered to amend its order to rectify any mistake apparent from record.12. The Appellate Tribunal to hear and decide the appeal, as far as possible, within a period of 1 year from the date of filing and send the copy of order to appellate authority / Revisional authority / original adjudicating authority, the appellant, the jurisdictional Commissioner,
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				<p>Commissioner of State Tax or Union Territory Tax.</p> <p>13. The jurisdictional officer shall issue a statement in Form GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.</p>
3.	Appeals to High Court (HC)	Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal	<p>Appeal shall be filed within 180 days from the date on which the order appealed against is received by the aggrieved person</p> <p>HC is empowered to condone the delay in filing appeal.</p>	<p>1. Appeal to be preferred in Form GST APL 08, precisely stating the substantial question of law involved, along with the prescribed fee.</p> <p>2. On being satisfied that substantial question of law is involved in the case, HC shall formulate a substantial question of law.</p> <p>3. Appeal to be heard only on the question so formulated and the respondent shall be allowed to argue that the case does not involve such question.</p> <p>4. The HC may hear the appeal on any other substantial question of law not formulated by it after satisfying, for reasons to be recorded, of involvement of such question in the case.</p> <p>5. The HC may determine any issue which has not been determined or has been wrongly</p>

				<p>determined by the State Bench or Area Benches.</p> <p>6. Appeal to be heard by a Bench of not less than 2 Judges of HC and shall be decided in accordance with the majority of opinion of such Judges.</p> <p>7. Difference of opinion on any point shall be referred to one or more of the other Judges of HC and such point shall be decided according to the opinion of majority of Judges who have heard the case including those who first heard it.</p> <p>8. The effect of judgment of HC shall be given on the basis of a certified copy of the judgment.</p> <p>9. The jurisdictional officer shall issue a statement in Form GST APL-04 clearly indicating the final amount of demand confirmed by the HC</p>
4.	Appeals to Supreme Court (SC)	Appeal shall lie to the SC- From any order passed by the National Bench or the Regional Benches of the	Immediately after passing of the judgment or order, the HC certifies to be a fit one for appeal	The jurisdictional officer shall issue a statement in Form GST APL-04 clearly indicating the final amount of demand confirmed by the SC

		Appellate Tribunal; Or From any judgment or order passed by HC in an appeal made under section 117, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved	to the SC.	SC is empowered to frame any substantial question of law not formulated by any lower authority if it is satisfied that the case before it involves such question of law
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25.3 Appeal before Appellate Authority-

109A. (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –

- (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;
- (b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent,

within three months from the date on which the said decision or order is communicated to such person. (Rule 109A(1) of the CGST Rules).

An officer directed under sub-section (2) of Section 107 to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –

- (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;
- (b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or the Superintendent,

within six months from the date of communication of the said decision or order.

(Rule 109A(2) of the CGST Rules).

25.4 Notice to person and order of revisional authority in case of revision.

Where the revisional authority decides to pass an order in revision under Section 108 which is likely to affect the person adversely, the revisional authority shall serve on him a notice in Form GST RVN-01 and shall give him a reasonable opportunity of being heard. (Rule 109B(1) of the CGST Rules).

The revisional authority shall, along with its order under sub-section (1) of Section 108, issue a summary of the order in Form GST APL-04 clearly indicating the final amount of demand confirmed. (Rule 109B(2) of the CGST Rules).

Offences and Penalties

26.1 Introduction

Compliance of any law is of utmost importance. In order to reinforce the compliance of the various provisions in any law the offences as well as consequential penalties that can be levied on the persons contravening the provisions of such Act, are contained in the relevant statute itself.

The provisions regarding offences and penalties are contained in Section 122 to 131 of the CGST Act, which will be discussed in this Chapter.

26.2 Offences and Penalties in GST : At a glance

S. No.	Nature of Default	Amount of Penalty
1.	<p>Penalty for certain offences: Where a taxable person who-</p> <p>(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;</p> <p>(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder;</p> <p>(iii) Collects any amount as tax/ any tax in contravention of the provisions of the CGST Act but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due</p>	<p>Shall be liable to pay Penalty equivalent to higher of Rupees 10,000/- or tax evaded/ tax not deducted/ collected or short deducted/collected or tax deducted/collected but not paid or ITC availed of or passed on or distributed irregularly or refund claimed fraudulently, whichever is higher</p>

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	<ul style="list-style-type: none">(iv) fails to deduct/ collect tax u/s 52/51 or deducted/collected an amount which is less than the amount required to be deducted/collected or fails to pay to the Government the amount deducted /collected(v) takes or utilizes input tax credit without actual receipt of goods/services or both either(vi) fully or partially, in contravention of the provisions of this Act or takes or distributes ITC in contravention of section 20, or the rules made thereunder;(vii) Fraudulently obtains refund of tax(viii) Takes or distributes inout tax credit in contravention of section 20, or rules made thereunder(ix) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;(x) Fails to obtain registration (if liable to be registered under GST) or furnishes any false information regard to registration particulars, either at the time of applying for registration, or subsequently;(xi) obstructs or prevents any	
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	<p>officer in discharge of his duties</p> <p>(xii) transports any taxable goods without the cover of specified documents</p> <p>(xiii) suppresses turnover leading to evasion of tax</p> <p>(xiv) fails to keep, maintain or retain books of account and other documents;</p> <p>(xv) fails to furnish information or documents called for by an officer or furnishes false information or documents during any proceedings</p> <p>(xvi) supplies, transports or stores any goods which has reason to believe are liable to confiscation</p> <p>(xvii) issues any invoice or document by using the registration number of another registered person;</p> <p>(xiv) tampers with, or destroys any material evidence or document;</p> <p>(xv) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;</p> <p><i>Section 122(1) of the CGST Act</i></p>	
<p>1A.</p>	<p>Penalty on ultimate beneficiary of the fraud transactions and the person at whose direction the fraud transaction has been conducted.</p> <p>“(1A) Any person who retains the</p>	<p>Shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.</p>

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	benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted,	
2.	<p>Penalty where tax has not been paid / short paid / erroneously refunded</p> <p>Any registered taxable person who supplies any goods or services or both by whom any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax. <i>(Section 122(2)(a) of the CGST Act)</i></p>	Shall be liable to a penalty of Rs. 10,000/- or 10% of the tax due, whichever is higher.
3.	<p>Penalty where tax has not been paid / short paid / erroneously refunded</p> <p>Any registered taxable person who supplies any goods or services or both by whom any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized for any reason, for reason of fraud or any willful misstatement or suppression of facts to evade tax. <i>(Section 122(2)(b) of the CGST Act)</i></p>	Shall be liable to a Penalty equal to Rs 10,000/- or the tax due from such person, whichever is higher shall be imposed
4.	<p>Penalty for certain offences:</p> <p>Any person who:</p> <ol style="list-style-type: none">1. aids or abets any of the	Shall be liable to a Penalty which may extent to Rs. 25000/-

	<p>offences specified in Section 122 (1)</p> <ol style="list-style-type: none"> 2. acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation; 3. receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the Rules made thereunder; 4. fails to appear before the officer of Central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry 5. fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account. <p><i>Section 122(3) of the CGST Act</i></p>	
<p>4.</p>	<p>Penalty for failure to furnish information return If the person who is required to file an 'information return' as</p>	<p>Shall be liable to pay penalty of Rs. 100/- for each day for which the failure continues but not exceeding Rs. 5000/-</p>

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	prescribed under Section 150 has not filed the return within the stipulated period of 90 days from the date of issue of show cause notice. (<i>Section 123 of the CGST Act</i>)	
5.	Fine for failure to furnish statistics: If any person required to furnish any information or return under section 151,— (a) without reasonable cause fails to furnish such information or return as may be required under that section, or (b) willfully furnishes or causes to furnish any information or return which he knows to be false. (<i>Section 124 of the CGST Act</i>)	Shall be punishable with a fine which may extend to Rs. 10,000/- and in case of a continuing offence to a further fine which may extend to Rs. 100/- for each day after the first day during which the offence continues subject to a maximum limit of Rs. 25,000/-.

26.3 General i.e. residual penalty

As per Section 125 of CGST Act any person, who contravenes any of the provisions of this Act or any Rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty, which may extend to twenty-five thousand rupees.

26.4 General disciplines related to penalty

The general principles of imposing penalty are given in Section 126 of the CGST Act, which are discussed in the succeeding paras.

26.4.1 No penalty for minor breaches

As per sub-Section (1) no officer under this Act shall impose any penalty for 'minor breaches' of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

A breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees. Further an omission or mistake in documentation shall be considered to be 'easily rectifiable' if the same is an error apparent on the face of record.

26.4.2 Penalty to be commensurate with severity of breach

Section 126 (2) mandates that the penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

26.4.3 No penalty without hearing

Sub-section (3) provides that no penalty shall be imposed on any person without giving him an opportunity of being heard. This is based on the principle of natural justice.

26.4.4 Reason to be given for imposing penalty

As per Section 126 (4) of CGST Act the officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified. Thus the order levying penalty should be a speaking order.

26.4.4 Lower penalty if breach voluntarily disclosed

Sub-Section (5) provides that when a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

26.4.5 Provisions not apply when law specifies fixed penalty

Sub-Section (6) mandates that the provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

26.4.6 Penalty may not be levied in case of bona fide belief or technical lapses

important judicial pronouncements in regard to existing statutes which would also be relevant under GST regime also are stated below for the judicial approach / inclination in cases of levy of penalty

The Hon'ble Supreme Court in *Hindustan Steel Ltd v State of Orissa* AIR 1970 SC 253 = 25 STC 211 = 83 ITR 26 = (1969) 2 SCC 627 = 2 ELT (J159) (SC) observed as follows:

The discretion to exercised impose penalty must be exercised judicially. A penalty will be imposed in case where party acts deliberately in defiance of law, but not in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a *bona fide* belief that the offender not liable under the Act....An order imposing penalty for failure to carry out a statutory obligation is the result of quasi-judicial proceeding. Penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Penalty will not be imposed merely because it is lawful to do so. Even if a minimum penalty is prescribed, the authority will be justified in refusing to impose penalty, when there is a technical or venial breach of the Act or where breach flows from a *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute--- Quoted with approval in *Shiv Dutt Fateh Chand v. UOI* (1983) 53 STC 289 (SC) = AIR 1984 SC 1194=148 ITR 564 (SC).

In *Bharjativa Steel Industries v. CST* (2008) 11 SCC 617 = 13 VST 514 (SC), it was held that when assessing authority has been conferred with a discretionary jurisdiction to levy penalty, by necessary implication, the authority may not levy penalty. If it has discretion not to levy penalty, existence of *mens rea* is a relevant factor. In *Cement Marketing Co of India v. Asstt. Commissioner of Sales Tax* (1980) 1 SCC 71 = (6) ELT 295 (SC) = 124 ITR 15 = 4 Taxman 44 = (1980) 45 STC 197 (SC) = AIR 1980 SC 346 also, it was held that even if a minimum penalty is prescribed, the authority will be justified in refusing to impose a penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from a *bona fide* belief that the offender is not liable to act in the manner prescribed in the statute. In this case, it was held that 'falsely represents' postulates *mens rea* in that the representation should be something which in fact and to

his knowledge is false, and this element would be excluded if the person acted in *bona fide* belief that his representation is true.

In *D Navinchandra v. UOI* -1987 (29) ELT 492 (SC) = 1987 (3) SCC 56 and *B. Vijay Kumar v. UOI* –AIR 1987 SC 1794 also, it has been held that bona fides must be considered while imposing penalty.

No penalty if party has *bona fide* belief – EID Parry v. ACCT 2000 AIR SCW 86=117 STC 457=AIR 2000 SC 551.

26.5 Power to impose penalty in certain cases

As per Section 127 where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under Section 62 or Section 63 or Section 64 or Section 73 or Section 74 or Section 129 or Section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

For ready reference the proceedings under these sections are as follows;-

Section of CGST Act	Nature of proceedings
62	Assessment of non-filers of return
63	Assessment of un-registered person
64	Summary assessment in certain special cases
73	Show cause Notice for recovery of tax etc
74	Show cause Notice for recovery of tax etc on account of suppression, or willful mis-statement.
129	Detention, seizure and release of goods and conveyance in transit
130	Confiscation of goods or conveyances or levy of penalty

26.6 Powers to reduce or waive penalty with the Government

As per Section 128 of **CGST Act** the Government may, by notification, waive in part or full, any penalty referred to in Section 122 or Section 123 or Section 125 or any late fee referred to in Section 47 (on late filing of return) for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

Inspection Search and Seizure

27.1 Introduction

GST Act(s) provides power to the officers for inspection of the records to ascertain the proper payment of tax. Such provisions are mandated to prevent evasion of tax. Such provisions are contained in all the fiscal statutes like Income Tax Act, Central Excise Act, Customs Act etc. The provisions regarding inspection, search and seizure are contained in Section 67 to 72 of CGST Act. The above provisions are mirrored in SGST Acts of the respective State Governments / Union territory with Legislature. Further these provisions laid down in said Sections are also applicable to IGST and UTGST Act also.

The provisions of the above sections as relevant to suppliers of services are discussed in this Chapter.

27.2 Access to place of business

Section 71 (1) provides that any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of Revenue.

Sub-section (2) of said section provides that every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

- (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
- (ii) trial balance or its equivalent;
- (iii) statements of annual financial accounts, duly audited, wherever required;

- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
- (vi) any other relevant record,

for the scrutiny by the officer or audit party or the Chartered Accountant or Cost Accountant within a period not exceeding *fifteen working days* from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

27.3 Power to Inspection, Search and Seizure

The power of the authorized person to inspect, search and seizure are provided in Section 67 of the CGST Act. These are discussed in the succeeding paras.

27.3.1 Power to inspection

Section 67(1) of CGST Act provides that where the proper officer, not below the rank of Joint Commissioner, has *reasons to believe* that—

- (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of Central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

Thus an officer can inspect where he has reason to believe about suppression of information leading to suppression of tax amount.

27.3.1-a Meaning of reason to believe

This word is used in other Acts also like Income Tax Act and judicial pronouncements in regard to said Act can be helpful for us in understanding the term reason to believe.

Under ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC) it was held that the words “has reason to believe” in Section 132(1) of Income Tax Act, 1961 postulate belief and existence of reason for that belief. The belief must be held in good faith; it cannot be merely a pretence. It does not mean a purely subjective satisfaction of the officer.

It is settled principle of law that ‘reason to believe’ is not synonymous to ‘reason to suspect’ (See *Dr Pratap Singh and another v. Director of Enforcement, FERA and others* AIR 1985 SC 989 para 10)

27.3.2 Search and Seizure

Section 67(2) of the CGST Act provides that where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of Central tax to search and seize or may himself search and seize such goods, documents or books or things.

Where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. (*First proviso to Section 67(2) of the CGST Act*).

It has further been provided that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act. (*Second proviso to Section 67(2) of the CGST Act*).

Sub-section (4) mandates that the authorized officer shall have the power to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any accounts, registers or documents of the person are suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

Further as per sub-section (5) the person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

As per sub-section (6) the goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

Further as per sub-section (7) where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

27.3.2-a Special provisions for perishable goods

As per Section 67(8) of the CGST Act, the Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be.

Further as per sub-section (9), where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

It may be noted that no perishable / hazardous goods have been notified by the Government under the above provisions.

27.3.2-b Return of documents, books etc.

As per sub-section (3) the documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable

person or any other person, which have not been relied upon for the issue of notice under this Act or the Rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

It may be noted here the notices which are being referred to in this sub-section are the show cause notices issued under Section 73 and 74.

However it has been provided in sub-section (11) that where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution. Thus in such cases there is no time limit for refund of the accounts, register or documents.

27.3.2-c Applicability of Code of Criminal Procedure

As per Section 67(10) the provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of Section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

27.4 Power to summons to give evidence

As per Section 60 (1) of CGST Act the proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

Further as per sub-Section (2) of CGST Act every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code.

27.5 Power to arrest

Section 69 of CGST Act provides that the Commissioner can arrest the person, if he has reason to believe that the person has committed an offence punishable under clause (i) or (ii) of Section 132(1) or Section 132(2).

27.6 Others officers to assist

As per Section 72 (1) all officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.

As per sub-section (2) the Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

27.7 Inspection of Goods in Movement

As per Section 68 of the CGST Act, the person in charge of a vehicle carrying goods exceeding Rs. 50,000 is required to carry the following documents:

- Invoice or bill of supply or delivery challan
- Copy of e-way bill (hard copy or via RFID)

The proper officer has the power to intercept goods in transit and inspect the goods and the documents.

If the goods are in contravention to the GST Act then the goods, related documents, and the vehicle carrying them will be seized. The goods will be released only on payment of tax and penalty.

Before confiscating the goods, the tax officer shall give an option of paying a fine instead of confiscation.

Arrest, Prosecution and Compounding

28.1 Introduction

Law without stringent provisions for punishment is like lion without teeth. Accordingly, in order to ensure compliance, GST law provides for penalties, arrest and prosecution for violation of law. Section 132 to 138 of CGST Act contains the provision regarding prosecution. Further Section 138 makes provisions for compounding of offences. Further the procedure for arrest in respect of certain offences are mandated in Section 69 of CGST Act. The above provisions are mirrored in SGST Acts of the respective State Governments / Union territory with Legislature. Further these provisions laid down in said Sections are also applicable to IGST and UTGST Act also.

The provisions of the above sections are discussed in this Chapter.

28.2 Punishment for certain offences

As per Section 132 (1) whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences* , namely:—

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the Rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill*
- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due.
- (e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d)*;
- (f) falsifies or substitutes financial records or produces fake accounts or

Arrest, Prosecution and Compounding

documents or furnishes any false information with an intention to evade payment of tax due under this Act;

- (g) obstructs or prevents any officer in the discharge of his duties under this Act;
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

shall be punishable as under:

Amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken	Above 100-200 lakhs	Above 200-500 lakhs	Above 500 lakhs
Imprisonment	Upto 1 year	Upto 3 years	Upto 5 year
Fine	In all three cases		

In cases where tax payer commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

*As amended w.e.f. 1.1.2021.

28.2.1 Repeat Conviction

Sub-section (2) of Section 132 mandated that where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

28.2.2 Minimum punishment

Sub-section (3) provides that the imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

28.2.3 Offence cognizable and non bailable only in specified cases

Sub-Section (4) provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non- cognizable and bailable.

Sub-section (5) prescribes that the offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

Thus if in case of following offences the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees such offences shall be cognizable or non-bailable.

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using such invoice or bill referred to in clause (b);
- (d) collects any amount as tax but fails to pay the same to the

Government beyond a period of three months from the date on which such payment becomes due;

- (e) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due.

It may be noted that in cases of all the other offences or the above offences where the tax evaded amount is upto Rs 500 lakhs will be non-cognizable and bailable.

28.2.4 Meaning of tax

As per Explanation to Section 132 for the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

28.2.5 Prosecution with permission of Commissioner

As per sub-Section (6) a person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

28.3 Cognizance of offences

As per Section 134 no court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

28.4 Power to arrest and grant of bail

As per Section 69 (1) of CGST Act where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of Section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of Central Tax to arrest such person.

We have already discussed about the above offences in the preceding para.

28.4.1 Production before a magistrate within 24 hours

Sub-section (2) provides that where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

28.4.2 Procedure regarding Bail

As per Section 69 (3) subject to the provisions of the Code of Criminal Procedure, 1973,—

- (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of Section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
- (b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

28.5 Presumption of culpable mental State

As per Section 135 of CGST Act in any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Further Explanation to said section states that for the purposes of this section,—

- (i) the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
- (ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

28.6 Relevancy of statements under certain circumstances

As per Section 136 of CGST Act a statement made and signed by a person on appearance in response to any summons issued under Section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

28.7 Offences by Companies and certain other persons

Section 137 (1) of CGST Act provides that where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Sub-section (2) mandates that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

28.7-1 Offence committed by certain other persons

Sub-section (3) provides that where an offence under this Act has been

committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or *karta* or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, *mutatis mutandis*, apply to such persons.

28.7-2 No offence if no knowledge and due diligence exercised

As per section 137 (4) nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

28.7-3 Meaning of company and director

As per Explanation below Section 137 for the purposes of this section,—^[S]

- (i) “company” means a body corporate and includes a firm or other association of individuals; and
- (ii) “director”, in relation to a firm, means a partner in the firm.

28.8 Compounding of offences

As per Section 138(1) of CGST Act any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

28.8-1 Offences which cannot be compounded

As per First Proviso to Section 138(1) nothing contained in this section shall apply to—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of Section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any SGST Act or the UTGST Act or the IGST Act in respect of supplies of value *exceeding one crore rupees*;

- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and
- (f) any other class of persons or offences as may be prescribed.

28.8-2 Compounding does not affect proceedings under other law

As per Second Proviso to Section 138(1) any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law.

28.8-3 Meaning of Compounding

Fine and imprisonment can be imposed only by competent criminal Court. However, instead of going to Court, the offender may agree to pay composition amount. Order for paying composition money can be made by quasi-judicial authorities. This is called "compounding of offences".

'Compounding' is essentially a compromise arrangement between administrator of the enactment and person committing an offence. Compounding crime consists of receipt of some consideration (termed as compounding fees) in return for an agreement not to prosecute one who has committed an offence - Reliance Industries, in re- (1997) 24 CLA 214 (CLB).

'Compounding' means that the accused and the complainant have come to terms and the dispute between the parties has been settled amicably or adjusted by agreement and the complainant agrees not to prosecute the accused. If the case is pending, the accused and the complainant then make a joint application to the Court that the parties have come to terms and the case may not be proceeded with.

Thus, in compounding, there is a compromise or agreement, while in case of imposition of fine under provisions of an Act, there is no agreement as such. Section 320 of Criminal Procedure Code permits compounding of various offences under Indian Penal Code.

Such compounding can be done either before or after institution of prosecution. After payment of such composition amount, prosecution will not be launched, or if it was launched, it will be withdrawn.

28.8.3-a Full and bona fide disclosure required for compounding of offense

In *UOI v. Anil Chanana* (2008) 4 SCC 175 = 222 ELT 481 (SC), it was held that compounding of offences is based on the principle of disclosure. If there are demonstrable contradictions or inconsistencies or incompleteness, application for compounding cannot be entertained. Applicant cannot hoodwink the authority. Applicant has to be a one-time evader. He has to make a clean breast of his affairs. Otherwise, offense should not be compounded. Compounding should be allowed only in case of doubtful benefit to the Revenue and to prevent needlessly proliferating litigation and holding up of collection.

28.8.3.-b Compounding means acquittal

As per section 320 of Cr PC, composition will have the effect of acquittal of accused. It is not mere discharge. Thus, if offence is compounded, the person is to deemed to be acquitted, and hence does not become ineligible to be appointed as a Director. [confirmed in Circular No. 5/23 dated 28-4-1993 of Department of Company Affairs].

In *Maharashtra Power Development Corpn Ltd. v. Dabhol Power Company* (2004) 52 SCL 224 (Bom HC DB), it was held that if offence is compounded, it is as if no offence had even been committed in the first place.

28.8-4 Compounding only after tax, interest and penalty paid

Third Proviso to Section 138(1) mandates that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

28.8-5 Amount for compounding of offences

Sub-section (2) provides that the amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or 50% of the tax involved, whichever is higher, and the maximum amount not being less than Rs 30,000/- or 150% of the tax, whichever is higher.

28.8-6 Discharge after paying compounding fee

Section 138(3) of CGST Act provides that on payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

procedure for compounding of offences is contained in Rule 162 of the CGST Rules.

E-Way Bill

29.1 Introduction

As mandated by the Government in terms of Section 68 of the CGST Act read with Rule 138 of the CGST Rules, e-way bill is a document that is required to be carried by custodian of the goods while the goods are in transit. It can be generated from the Common Portal www.ewaybillgst.gov.in before commencement of movement of goods.

E-way bill is required for movement of goods from one State to another from 1-4-2018 all over India. For intra-State movement of goods, the provision is applicable from 3-6-2018, in all States.

29.2 General Rule for E-way Bill

The basic rule in regard to e-way bill is Rule 138(1) of the CGST Rules, 2017 which reads as under:

“Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—

- (i) in relation to a *supply*; or
- (ii) for reasons *other than supply*; or
- (iii) due to *inward supply from an unregistered person*,

shall, before commencement of such movement, furnish information relating to the said goods in Part A of Form GST EWB-01, electronically, on the common portal along with such other information as may be required at the common portal and a unique number will be generated on the said portal.”

29.3 E-way bill cannot be generated, if supplier or recipient has not filed two consecutive returns

As per Rule 138E of the CGST Rules, effective from 21-11-2019 (refer Notification No. 22/2019-CT dated 23-4-2019, as amended on 20-8-2019), if the supplier or recipient or transporter or e-commerce operator or courier has

not filed returns for consecutive months (normal taxable person) or two consecutive periods (composition supplier), Part A of e-way bill cannot be generated by supplier, recipient, transporter, e-commerce operator or a courier agency.

Further, the registered person, other than a person paying tax under Section 10 (composition supplier), who has not furnished the Form GSTR-1 for any two months, or quarters shall not be allowed to generate e-way bill (Rule 138E(c) of the CGST Rules, inserted w.e.f. 11-1-2020.

Jurisdictional Commissioner of GST (of taxable person who has not filed the returns) can grant special permission to file e-way bill in such cases, for which application has to be made in form GST EWB-05. The Commissioner can refuse permission or grant permission with conditions after giving personal hearing, by issuing order in form GST EWB-06.

29.4 E-way Bill provisions at a glance

E Way Bill General Rule	Registered person causes movement of goods value > Rs. 50,000, or inward supply from unregistered person: <ul style="list-style-type: none"> – Before movement of goods – Furnish information in Part A of GST EWB-01 on common portal
Special Cases	Any interstate movement irrespective of value: <ul style="list-style-type: none"> – Any goods, from Principal to Job Worker – Handicraft goods from person exempted from registration
Who is liable to generate	Registered person, transporter, principal / registered job worker or person exempted from registration on case to case basis
Furnishing information on behalf of registered person / consignor	Part A of GST EWB-01 can be filled, on an authorisation: <ul style="list-style-type: none"> – From: Registered Person, By: Transporter – From: Consignor, By: E Commerce operator
For whom it is optional	Unregistered person until they are covered under special cases

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From where to generate	www.ewaybillgst.gov.in, Android App, SMS, ASP Integration with web portal, using GST Suvidha Provider
Which form	EWB 01, which contains two parts: Part A – Details of goods moved Part B – Detail of vehicle – After filling Part A unique number gets generated. – Only after filling Part A and Part B both, E Way Bill no. (EBN) can be generated
Validity of e way bill	Normal Cargo : 1 Day for first 100 Km thereafter for every 100 Km or part thereof additional 1 day Odd Dimension Cargo : 1 Day for first 20 Km thereafter for every 20 Km or part thereof additional 1 day Each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill Rule 138 has been amended and w.e.f. 1.1.2021, e-way bill will be valid for 1 day for every 200 km of travel, as against 100 km earlier, in cases other than over dimensional cargo or multimodal shipment in which at least one leg involves transport by ship. For every 200 km. or part thereof thereafter, one additional day will be allowed.
Documents required to generate e way bill	– Invoice / bill of supply / delivery challan for consignment of goods – Transport by road through transporter : Transporter ID or Vehicle number – Transport by road through owned / hired vehicle: Vehicle number – Transport by Rail / Air / Vessel : Transport document number, date of document
Documents / Devices required to	– the Invoice or bill of supply or delivery challan, as the case may be

<p>carry during Transit</p>	<ul style="list-style-type: none"> - a copy of the e-way bill or the EBN, either physically or - where notified by the Commissioner, EBN mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance
<p>Exemption from e way bill</p>	<ul style="list-style-type: none"> - Goods specified in Annexure to E Way rules - Goods transport form non motorised vehicle - Goods transport from port, airport, aircargo complex and land customs station to Inland container depot or Container Freight Station for Custom clearance - Transport in notified areas (till date no notification) - All goods other than de-oiled cake as specified in the Schedule appended to notification No. 2/2017- Central tax (Rate) dated the 28th June, 2017 as amended from time to time - Alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel - Goods being transported are treated as no supply under Schedule III of the Act - Goods transported under Customs Bond from <ul style="list-style-type: none"> - Inland Container Depot or a Container Freight Station TO – Customs Port, Airport, Aircargo complex and Land Customs Station or Under – Customs Bond, FROM – One Customs Station or Port, TO – Another Customs Station or Port or Under – Customs supervision or seal - Goods being transported are transit cargo from or to Nepal or Bhutan - Goods being transported are exempt from tax under: <ul style="list-style-type: none"> Notification No. 7/2017-Central Tax (Rate)- Supplies by CSD to Unit Run Canteens and

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	<p>supplies by CSD / Unit Run Canteens to authorised customers notified under section 11 (1) and section 55 CSD, and</p> <p>Notification No. 26/2017 – Central Tax (Rate)– Exempt certain supplies to NPCIL</p> <ul style="list-style-type: none">– Movement of goods caused by defence formation under Ministry of Defence as a consignor or consignee– Consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail– Empty cargo containers are being transported– Goods are being transported upto a distance of twenty kilometres: from- place of the business of the consignor, to- weighbridge for weighment OR from- weighbridge, to- place of the business of the said consignor subject to that movement of goods is accompanied by a delivery challan issued in accordance with rule 55 CGST Rules
What are other forms	<p>EWB-02 : Consolidated e way bill (for transporter, multiple consignment in single vehicle)</p> <p>EWB-03 : Summary report of Inspection by department of goods in transit</p> <p>EWB-04: Intimation by transporter if vehicle is detained for more than 30 minutes</p> <p>GST INV- 1 : For generating Invoice Reference Number (IRN)</p>

29.5 Salient features of E-way bill

- Central Government has notified www.ewaybillgst.gov.in [EWB system for short] as common portal for furnishing e-way bill - Notification No. 9/2018-CT dated 23-1-2018.
- Generation of e-way bill is three step process - (a) Part A of GST EWB-01 electronically by supplier/recipient (or transporter) and

generation of unique number by system (b) Part B by transporter/supplier/recipient (c) Generation of e-way bill by GSTN with e-way bill number and date and its validity period.

- The provisions apply when value of a consignment exceeds Rs 50,000. Generation of e-way bill for value less than Rs 50,000 is optional.
- The movement may be in relation to a supply or for reasons other than supply [like (a) Sending cranes, bulldozers, cement mixers to site (b) Sending construction material to and from site (c) Own use by taxable person elsewhere (d) Exhibition and fair].
- In following cases, e-way bill should be generated for inter-State movement, even if value of consignment is below Rs 50,000 –
 - (a) Sending material by Principal inter-State for job work
 - (b) Handicraft goods transported inter-State under exemption if turnover of person below 20/10 lakhs.
- In case of inter-State movement of goods, e-way bill is required if consolidated value of all consignments in conveyance exceed Rs 50,000, even if value of individual consignment is less than Rs 50,000 - Rule 138(7) of CGST Rules.
- Consignor, consignee or transporter, as the case may be, is required to get registered on the EWB system even if he has GSTIN. After filling the GSTIN, he will get OTP and then can generate username and password. It is advisable to have same username and password as used for GSTN.
- Transporters or suppliers can create multiple sub-users and allocate roles to them. The Large transporters can declared their various offices or business places as sub-users. Three sub-users can be generated for each registered place of business - CBI&C Press Release dated 1- 4- 2018.
- EWB system allows creation of Masters - client master, Transporter

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Master, master and Product Master with HSN code. This will make data entry easy and quick. The Masters can be uploaded on system.

- A transporter not having GSTIN is required to enrol on the EWB system. Both Income Tax PAN and Aadhaar of any person in organisation is essential. If PAN and Aadhaar details do not match, the transporter is 'Niradhar'.
- consignor who is registered is required to upload information in Part A of form GST EWB-01, electronically, before movement of goods commences. At that time, a Unique Number is generated by GSTN network which is valid only for 15 days for updation of part B in GST EWB-01.- Second Proviso to Rule 138(9) of CGST Rules [This is not an e-way bill number].
- The e-way bill can be generated through various modes like Web (online), Android App, SMS, using bulk upload tool and API bases site to site integration – CBI&C press release dated 1-4-2018.
- In case of 'bill to ship to' or 'Bill from dispatch from' transactions, there should be one e-way bill but details are required to be filled in the appropriate columns of part A of e-way bill.
- If the consignee or recipient refuses to take delivery, transporter can get one more e-way bill generated with the help of supplier or recipient showing its as 'sale return' and return to supplier.
- The value to be indicated is total value as per section 15 of CGST Act and should be inclusive of GST.
- If consignor is not registered but consignee is registered, the consignee is required to upload the details of Part A electronically on EWB system [Rule 138(1)(iii) of CGST Rules].
- Uploading information by SMS through registered mobile is permissible for which App is required. The procedure is given in 'User Manual for SMS Operations' which is available on EWB system.
- Bulk generation of Part A of e-way bill is possible. JSON file can be generated offline and uploaded for generation of e-way bills. Each JSON file should not contain more than 500 requests. The procedure is given in 'User Manual - Offline Tool' which is available on EWB system.

- Taxable persons generating more than 1,000 e-way bills in a day or update 1,000 vehicle numbers in a day can have API interface with EWB system to generate e-way bill online from system to system. The procedure is given in 'User Manual for API Interface' which is available on EWB system.
- If goods are transported in own conveyance, the consignor/consignee is also required to generate e-way bill in form GST EWB-01 electronically on the common portal after furnishing information in Part B of form GST EWB-01 - rule 138(2) of CGST Rules.
- If goods are transported by railway, air or vessel, the e-way bill will indicate serial number and date of railway receipt, Air Consignment Note of Bill of Lading, as the case may be [Proviso to Rule 138(2) of CGST Rules]. This should be added after goods are booked with railway, air or vessel. If goods are transported by rail, delivery of goods will be given only on production of e-way bill.
- However, in case of booking of parcels through registered leaseholders, Part B of e-way Bill will be prepared by registered leaseholder and not by supplier who is preparing e-way bill.
- The transporter will upload the information after filling part B of Form GST EWB-01. [Rule 138(3) of CGST Rules].
- The vehicle number should be entered without space in between. The last number is required to be of four digits. Any middle number is required to be of two digits. For example, UP 1 345 should be entered as UP010345. AP 5 P 23 should be entered as AP05P0023. TN 10 DE 45 should be entered as TN10DE0045. Defence vehicle number should start with DF. Temporary RC vehicle should start with TR. Bhutan vehicle should start with 'BP'. Nepal vehicle should start with BP [seems to be mistake in FAQ]. It seems it should be 'NP'.
- On submission of information in Parts A and B, a unique e-way bill number (EBN) will be generated by system. This will be available to supplier, recipient and transporter on common portal [Rule 138(4) of CGST Rules].
- E-way bill is valid only when both Parts A and B are filled in - Explanation 2 to Rule 138(3) of CGST Rules.
- If single consignment is transported in more than one vehicles, copy of invoice should be with one vehicle and delivery challan with other

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vehicles with copy of invoice. Each vehicle should have separate e-way bill. Original invoice will be with last consignment.

- One e-way bill is required for each consignment i.e. each invoice or delivery challan or bill of supply. If there are more than one consignments in a vehicle, separate e-way bill is required for each consignment.
- E-way Bill once generated cannot be changed. Only transport details can be changed. If there is mistake, only option is to cancel the e-way bill within 24 hours and generate fresh one.
- If the transport is less than 50 Kms from place of supplier to place of transporter, details of conveyance may not be furnished by transporter [Third Proviso to Rule 138(3) of CGST Rules]. If distance is more than 50 Kms, e-way bill is required to e-generated.
- Similarly, when transporter delivers goods to ultimate consignee at destination within State where distance is less than 50 Kms, details of conveyance may not be furnished in GST EWB-01 [Proviso to rule 138(5) of CGST Rules].
- If goods are transshipped from one conveyance to other, details have to be submitted in Form GST EWB-01 [rule 138(5) of CGST Rules]
- The e-way bill can be assigned to another transporter for filling Part B. However, once Part B is filled in, the e-way bill cannot be assigned - Rule 138(5A) of CGST Rules.
- If consignments are consolidated in one conveyance by transporter, consolidated e-way bill in Form GST EWB-02 should be generated [Rule 138(6) of CGST Rules]
- The e-way bill generated is valid for one day if transport of goods is less than 100 Km. Further, one additional day is allowed for every 100 Kms after first 100 Km. If goods could not be transported within that period, fresh e-way bill should be generated. For oversized cargo, the validity is 20 Kms per day [Rule 138(10) of CGST Rules]
- Rule 138 has been amended and w.e.f. 1.1.2021, E-way bill will be valid for 1 day for every 200 km of travel, as against 100 km earlier, in cases other than over dimensional cargo or multimodal shipment in which at least one leg involves transport by ship.

- For every 200 km. or part thereof thereafter, one additional day will be allowed.
- One day means upto midnight of following day - Explanation 1 to rule 138(10) of CGST Rules.
- Under circumstances of an exceptional nature, if the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill after updating the details in Part B of form GST EWB-01 [Second Proviso to Rule 138(10) of CGST Rules]. It is not clear who is to determine that the circumstances are of an exceptional nature.
- E-way bill generated in one State is valid in all other States [Rule 138(13) of CGST Rules].
- Details of e-way bill are supplied to recipient when information is uploaded by supplier or transporter. Similarly, details of e-way bill are supplied to supplier when information is uploaded by recipient or transporter [Rule 138(11) of CGST Rules].
- If the supplier/recipient does not communicate his rejection within 72 hours, or the time of delivery of goods, whichever is earlier, the details are deemed to have been accepted by him [Rule 138(12) of CGST Rules].
- Exemptions have been provided from provisions of e-way bill in specified cases [Rule 138(14) of CGST Rules].
- Invoice Reference Number can be generated by uploading invoice and then physical copy of invoice may not be carried. This number will be valid for 30 days [Rule 138A(2) of CGST Rules]. If such invoice number is generated, carrying physical invoice is not required. At present, this is optional.
- Transporters may be asked to obtain unique Radio Frequency Identification Device (RFID) [Rule 138A(4) of CGST Rules]
- Road checks may be made and reporting of road checks has been provided [Rule 138C of CGST Rules].
- If a vehicle is intercepted and detained for more than 30 minutes, the transporter may upload the said information in form GST EWB-04 on the common portal [Rule 138D of CGST Rules]. This will be treated as grievance on the detention.

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- If goods are transported without valid documents, these can be detained. These can be seized. The goods and conveyance can be released on provisional basis on bond and security - Section 129 of CGST Act.
- The offending goods and conveyance can be confiscated. These can be released on payment of redemption fine - Section 130 of CGST Act.

Few suggested inclusions

- Anti Profiteering
- Job Work

Anti-Profiteering in GST

30.1 Introduction

Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit should have been passed on to the recipient by way of commensurate reduction in prices. However it has been the experience of many countries that when GST was introduced there has been a marked increase in inflation and the prices of the commodities. This happened in spite of the availability of the tax credit right from the production stage to the final consumption stage which should have actually reduced the final prices. This was obviously happening because the supplier was not passing on the benefit to the consumer and thereby indulging in illegal profiteering.

National Anti-profiteering Authority has therefore been constituted by the central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him, this is to ensure that the consumer is protected from arbitrary price increase in the name of GST.

The provisions of anti-profiteering are given under Section 171 of the CGST Act, 2017 and Chapter XV (Rule 122 to 137) of the CGST Rules, 2017.

As per Section 171(1) any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

30.2 Constitution and Power to determine methodology of National Anti-profiteering Authority

The National Anti-Profiteering Authority shall be a five Member Committee consisting of a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and four Technical Members who are or have been Commissioners of State tax or Central tax for at least one year or have held an equivalent post under existing laws. An officer not below the

rank of Additional Commissioner (working in the Directorate General of Anti - profiteering) shall be the Secretary to the Authority.

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

30.3 Duties of the Authority:

The Authority would have the following duties:

- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- (iii) to order,
 - (a) reduction in prices;
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;
 - (c) imposition of penalty; and
 - (d) cancellation of registration.
- (iv) to furnish a performance report to the Council by the tenth day of the close of each quarter.

30.4 Application to the Authority

All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee constituted in each State by the State Governments consisting of an officer of the State Government, to be nominated by the Commissioner, and an officer of the Central Government, to be nominated by the Chief Commissioner.

The Screening Committee on being satisfied that the supplier has not passed on the benefit of reduction in rate of tax on any supply of goods or services or the benefit of input tax credit on to the recipient by way of commensurate reduction in prices, will forward the application with its recommendations to the Standing Committee on Anti profiteering, which shall consist of such officers of the State Government and Central Government as may be nominated by the GST council, for further action. If the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation.

30.5 Investigation

The Director General of Anti-profiteering shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter) containing, inter alia, information on the following, namely: -

- (a) the description of the goods or services in respect of which the proceedings have been initiated;
- (b) summary of the statement of facts on which the allegations are based; and
- (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

The evidence or information presented to the Director General of Anti-profiteering by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided

will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.

The Director General of Anti-profiteering can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Director General of Anti-profiteering, or an officer authorised by him will have the power to summon any person necessary either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry shall be deemed to be a judicial proceeding.

The Director General of Anti-profiteering will complete the investigation within a period of three months or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as allowed by the Authority and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

30.6 Order of the Authority

The Authority shall (after granting an opportunity of hearing to the interested parties if so requested) within a period of three months from the date of the receipt of the report from the Director General of Anti-profiteering determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

If the Members of the Authority differ in opinion on any point, the point shall be decided according to the opinion of the majority.

Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

- (a) reduction in prices;
- (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

- (c) the deposit of an amount equivalent to fifty per cent of the amount determined under the above clause in the Consumer Welfare Fund and the remaining fifty per cent of the amount in the Consumer Welfare Fund of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;
- (d) imposition of penalty (*As per Section 171(3A) penalty @ 10% of the profiteered amount can be levied, however no penalty will be levied if profiteered amount is deposited within 30 days of passing order by Authority*) ; and
- (e) cancellation of registration

Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the IGST Act or the CGST Act or the UTGST Act or the SGST Act of the respective States, as the case may be.

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

31.1 Introduction

Job work sector constitutes a significant industry in Indian economy. It includes outsourced activities that may or may not culminate into manufacture. The term Job-work itself explains the meaning. It is processing of goods supplied by the principal. The concept of job work already exists in Central Excise, wherein a principal manufacturer can send inputs or semi-finished goods to a job worker for further processing. Many facilities, procedural concessions have been given to the job workers as well as the principal supplier who sends goods for job work.

The whole idea is to make principal responsible for meeting compliances on behalf of the job worker on the goods processed by him (job worker), considering the fact that typically the job- workers are small persons who are unable to comply with the discrete provisions of the law. The GST Act makes special provisions with regard to removal of goods for job-work and receiving back the goods after processing from the job worker without payment of GST. The benefit of these provisions shall be available both to the principal and the job worker. \

The provisions in regard to job work are contained under Section 143 of the CGST Act, 2017 and Rule 45 of the CGST Rules, 2017.

31.2 Meaning of Job work

Section 2(68) of the CGST Act, 2017 defines job work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. The one who does the said job would be termed as 'job worker'. The ownership of the goods does not transfer to the job worker but it rests with the principal. The job worker is required to carry out the process specified by the principal, on the goods.

31.3 Procedural aspects related to job work

Certain facilities with certain conditions are offered in relation to job work, some of which are as under:

- a) A registered person (principal) can send inputs/ capital goods under intimation and subject to certain conditions without payment of tax to a job worker and from there to another job worker and after completion of job work bring back such goods without payment of tax. The principal is not required to reverse the ITC availed on inputs or capital goods dispatched to job worker.
- b) principal can send inputs or capital goods directly to the job worker without bringing them to his premises, still the principal can avail the credit of tax paid on such inputs or capital goods.
- c) However, inputs and/or capital goods sent to a job worker are required to be returned to the principal within 1 year and 3 years, respectively, from the date of sending such goods to the job worker.
- d) After processing of goods, the job worker may clear the goods to-
 - (i) Another job worker for further processing;
 - (ii) Dispatch the goods to any of the place of business of the principal without payment of tax;
 - (iii) Remove the goods on payment of tax within India or without payment of tax for export outside India on fulfilment of conditions.

The facility of supply of goods by principal to the third party directly from the premises of the job worker on payment of tax in India likewise with or without payment of tax for export may be availed by the principal on declaring premise of the job worker as his additional place of business in registration. In case the job worker is a registered person under GST, even declaring the premises of the job worker as additional place of business is not required.

Before supply of goods to job worker, principal would be required to intimate the Jurisdictional Officer containing the details of description of inputs intended to be sent by the principal and the nature of processing to be carried out by the job worker. The said intimation shall also contain the details of another job worker, if any.

The inputs or capital goods shall be sent to the job worker under the cover of a challan issued by the principal. The challan shall be issued even for the inputs or capital goods sent directly to the job worker. The challan shall contain the details specified in rule 10 of the Invoice Rules.

The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

31.4 Input Tax credit on goods supplied to job worker

Section 19 of the CGST Act, 2017 provides that the principal (a person supplying taxable goods to the job worker) shall be entitled to take the credit of input tax paid on inputs sent to the job-worker for the job work. Further, the Proviso also provides that the principal can take the credit even when the goods have been directly supplied to the job worker without bringing into the premise of the principal. The principal need not wait till the inputs are first brought to his place of business.

31.5 Time Limits for return of processed goods

As per Section 19 of the CGST Act, 2017, inputs and capital goods after processing shall be returned back to principal within one year or three years respectively of their being sent out. Further, the provision of return of goods is not applicable in case of moulds and dies, jigs and fixtures or tools supplied by the principal to job worker.

31.6 Extended meaning of input

As per the explanation provided in Section 143 of the CGST Act, 2017, where certain process is carried out on the input before removal of the same to the job worker, such product after carrying out the process to be referred as the intermediate product. Such intermediate product can also be removed without the payment of tax. Therefore, both input and intermediate product can be cleared without payment of duty to job worker.

31.7 Waste clearing provisions

Pursuant to section 143 (5) of the CGST Act, 2017, waste generated at the premises of the job worker may be supplied directly by the registered job worker from his place of business on payment of tax or s such waste may be cleared by the principal, in case the job worker is not registered.

31.8 Relevant Circulars in regard to Job work

Movement of goods from the principal to the job worker and the documents and intimation required therefor:

- (i) **Where goods are sent by principal to only one job worker** - The principal shall prepare in triplicate, the challan in terms of Rules 45 and 55 of the CGST Rules, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal. The Form GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act, 2017.
- (ii) **Where goods are sent from one job worker to another job worker** - In such cases, the goods may move under the cover of a challan issued either by the principal or the job worker. In the alternative, the challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers.
- (iii) **Where the goods are returned to the principal by the job worker** - The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the job work.
- (iv) **Where the goods are sent directly by the supplier to the job worker** - In this case, the goods may move from the place of business of the supplier to the place of business/premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (i.e. the principal) wherein the job worker's name and address should also be mentioned as the consignee, in terms of Rule 46(o) of the CGST Rules. The buyer (i.e., the principal) shall issue the challan under Rule 45 of the CGST Rules and send the same to the job worker directly in terms of para (i) above. In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/premises of the job worker with a copy of the Bill of

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Entry and the principal shall issue the challan under Rule 45 of the CGST Rules and send the same to the job worker directly.

- (v) **Where goods are returned in piecemeal by the job worker** - In case the goods after carrying out the job work, are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh challan is required to be issued by the job worker.
- (vi) **Submission of intimation** - It is the responsibility of the principal to include the details of all the challans relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom. The Form GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act.—*Circular No. 38/12/2018, dated 26-3-2018, as amended by, Circular No. 88/7/2019, dated 1-2-2019.*

Supply of goods by the principal from job worker's place of business/premises - The supply of goods by the principal from the place of business/premises of the job worker will be regarded as supply by the principal and not by the job worker as specified in section 143(1)(a) of the CGST Act.—*Circular No. 38/12/2018, dated 26- 3-2018, as amended by, Circular No. 88/7/2019, dated 1-2-2019.*

Violation of conditions laid down in section 143 - As per the provisions contained in Section 143 of the CGST Act, if the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) are neither received back by the principal nor supplied from the job worker's place of business within the specified time period, the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) would be deemed to have been supplied by the principal to the job worker on the day when such inputs or capital goods were sent out to the first job worker. If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the Rules made thereunder. Further, there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.— *Circular No. 38/12/2018, dated 26-3-2018, as amended by, Circular No. 88/7/2019, dated 1-2-2019.*

Job work provisions applicable to a registered person - The provisions of Section 143 of the CGST Act are applicable to a registered person. Thus, it is only a registered person who can send the goods for job work under the said provisions. It may also be noted that the registered person (principal) is not obligated to follow the said provisions. It is his choice whether or not to avail or not to avail of the benefit of these special provisions.— *Circular No. 38/12/2018, dated 26-3-2018, as amended by, Circular No. 88/7/2019, dated 1-2-2019.*

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Contact Us:

Dr. Sambit Kumar Mishra, Secretary, Committee for Members in Practice (CMP), ICAI
ICAI Bhawan, A-29, First Floor, Administrative Building, Sector-62, Noida-201309, UP India
Ph.: 0120-3045994; E-mail : sambit.mishra@icai.in