FINAL
Paper 19

Indirect Tax Laws and Practice

Study Notes
SYLLABUS 2022

The Institute of Cost Accountants of India

CMA Bhawan, 12, Sudder Street, Kolkata - 700 016

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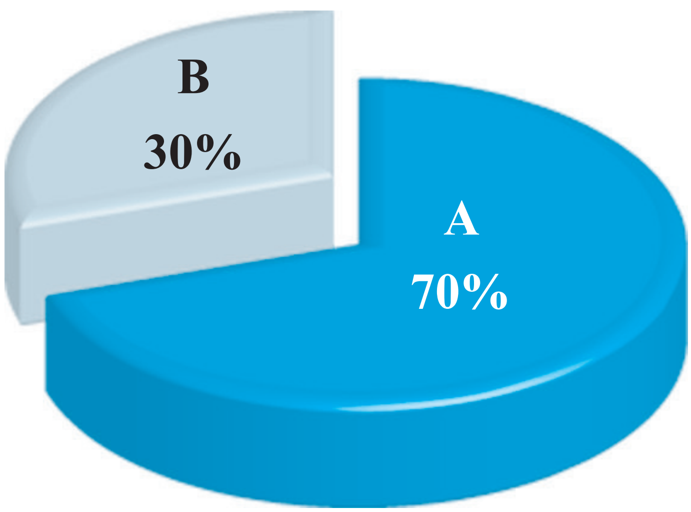
PAPER 19 : INDIRECT TAX LAWS AND PRACTICE

Syllabus Structure:

The syllabus in this paper comprises the following topics and study weightage:

Module No.	Module Description	Weight
Section A: Goods and Services Tax Act & Rules		**70%**
1	Supply under GST - A Refresh	
2	Time of Supply (Advanced)	
3	Place of Supply	
4	Valuation (Advanced)	
5	Input Tax Credit (Advanced)	
6	Zero Rated Supplies and Deemed Exports	
7	TDS & TCS under GST	
8	E-way Bill	
9	GST Refunds- Inverted Duty Structure and Zero-rated Supplies	
10	GST Returns	
11	Accounts and Records	
12	GST Annual Return and GST Audit Return	
13	Transition to GST (Transitional Provisions)	
14	Dispute Resolution Mechanism under GST	
15	Inspection, Search, Seizure, Arrest and Prosecution	
16	Anti-profiteering	
17	Walkthrough of GSTN Portal	
Section B: Customs Act and Rules		**30%**
18	Valuation and Related Party Transactions	
19	Customs Procedures - Baggage & Courier / Post	
20	Manufacture in Bond	
21	Duty Drawback	

Module No.	Module Description	Weight
22	Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017	
23	Remission of Duties	
24	Refund	
25	Trade Facilitation Measures	
26	Export Promotion Schemes under Foreign Trade Policy	
27	Special Economic Zone Scheme (With Amended SEZ Rules)	



Learning Environment – Paper 19

Subject Title	**INDIRECT TAX LAWS AND PRACTICE**
Subject Code	**ITLP**
Paper No.	**19**
Course Description	The paper focuses on providing an in-depth knowledge about important indirect taxes operating in India. Accordingly, the paper attempts to explain various aspects of Goods and Services Tax (GST) including valuation , accounts and records, filing returns and dispute resolution. The paper also tries to provide an thorough understanding on various provisions of Customs Act and Rules including valuation, duty drawback, remission and refund etc.
CMA Course Learning Objectives (CMLOs)	1. Interpret and appreciate emerging national and global concerns affecting organizations and be in a state of readiness for business management. a. Identify emerging national and global forces responsible for enhanced/varied business challenges. b. Assess how far these forces pose threats to the status-quo and creating new opportunities. c. Find out ways and means to convert challenges into opportunities 2. Acquire skill sets for critical thinking, analyses and evaluations, comprehension, syntheses, and applications for optimization of sustainable goals. a. Be equipped with the appropriate tools for analyses of business risks and hurdles. b. Learn to apply tools and systems for evaluation of decision alternatives with a 360-degree approach. c. Develop solutions through critical thinking to optimize sustainable goals. 3. Develop an understanding of strategic, financial, cost and risk-enabled performance management in a dynamic business environment. a. Study the impacts of dynamic business environment on existing business strategies. b. Learn to adopt, adapt and innovate financial, cost and operating strategies to cope up with the dynamic business environment. c. Come up with strategies and tactics that create sustainable competitive advantages. 4. Learn to design the optimal approach for management of legal, institutional, regulatory and ESG frameworks, stakeholders' dynamics; monitoring, control, and reporting with application-oriented knowledge. a. Develop an understanding of the legal, institutional and regulatory and ESG frameworks within which a firm operates. b. Learn to articulate optimal responses to the changes in the above frameworks. c. Appreciate stakeholders' dynamics and expectations, and develop appropriate reporting mechanisms to address their concerns. 5. Prepare to adopt an integrated cross functional approach for decision management and execution with cost leadership, optimized value creations and deliveries. a. Acquire knowledge of cross functional tools for decision management. b. Take an industry specific approach towards cost optimization, and control to achieve sustainable cost leadership. c. Attain exclusive knowledge of data science and engineering to analyze and create value.

<table>
<tr><td>Subject Learning Objectives [SLOB(s)]</td><td>1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit. (CMLO 4 a, b)
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance. (CMLO 4 a, b)
3. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules. (CMLO 4 c)
4. To facilitate strategic decision making by appropriate management of various indirect tax issues. (CMLO 3 c)</td></tr>
<tr><td>Subject Learning Outcome [SLOC(s)] and Application Skill [APS]</td><td>SLOC(s):
1. Students will be able to address various issues relating to valuation and duty/tax determination relating to GST and Customs.
2. They will be able to facilitate strategic decision making by the management by providing necessary indirect tax related inputs.
3. They will be able to help the management in ensuring better compliance with indirect tax laws.
APS:
1. Students will acquire necessary skills relating to maintenance of accounts and records and filing of GST returns.
2. Students will be able to compute tax liability under GST and Customs.</td></tr>
</table>

<table>
<tr><th colspan="4">Module wise Mapping of SLOB(s)</th></tr>
<tr><th>Module No.</th><th>Topics</th><th>Additional Resources (Research articles, books, case studies, blogs)</th><th>SLOB Mapped</th></tr>
<tr><td colspan="4">Section A: Goods and Services Tax Act and Rules</td></tr>
<tr><td>1</td><td>Supplyunder GST-ARefresh</td><td rowspan="13"></td><td rowspan="13">1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
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14	Dispute ResolutionMechanismunder GST		better compliance. 3. To facilitate strategic decision making by appropriate management of various indirect tax issues.
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Contents as per Syllabus

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SECTION- A

GOODS AND SERVICES TAX (GST) ACT & RULES

Supply under GST-A Refresh 1

This Module Includes

Supply under GST-A Refresh

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand the taxable event under GST
- Analyse and identify scope of supply, supply includes and excludes
- Classify the transactions which are exempted from GST
- Explain the composite and mixed supply
- Understand the composition scheme and its application in practice
- Identify levy and collection of tax
- Understand reverse charge mechanism

Introduction

1.1

Under the old regime of Indirect Tax Laws, there was no concept of Supply. The 'Central Excise Duty and State Excise Duty' was charged on goods manufactured. Likewise, 'Service Tax' was levied based on the 'point of taxation' rules, for services rendered. The Value Added Tax (VAT) would be levied on sale of goods or provision of services.

The new regime of Indirect Tax Laws has merged all taxes to maintain a single taxable event under GST by incorporating the vital term 'Supply'. The term Supply is considered as 'taxable event' for charging tax under GST. The liability to pay tax arises at the 'time of supply of goods or services or both'. Before knowing about scope of supply under GST, let us focus on fundamentals of GST.

GST is a cure for ills of old regime of Indirect Tax Laws. As a result, India adopted a dual GST where tax imposed concurrently by the Central and States.

DUAL GST Model

SGST
- **State GST**
- **Collected by the State Govt.**

CGST
- **Central GST**
- **Collected by the Central Govt.**

IGST
- **Integrated GST**
- **Collected by the Central Govt. on inter-state supply of Goods and service**

GST extend to whole of India including the State of Jammu and Kashmir. Since appointed day (W.e.f. 1-7-2017) GST has mitigated cascading effects and created unified national market and resulted into elimination of multiple taxes and double taxation. Thus, we can say that GST is truly one nation one tax.

UTGST – in Union territories without Legislature:

Supplies within such Union territory, Central GST will apply to whole of India and hence, it would be applicable to all Union territories, with or without Legislature.

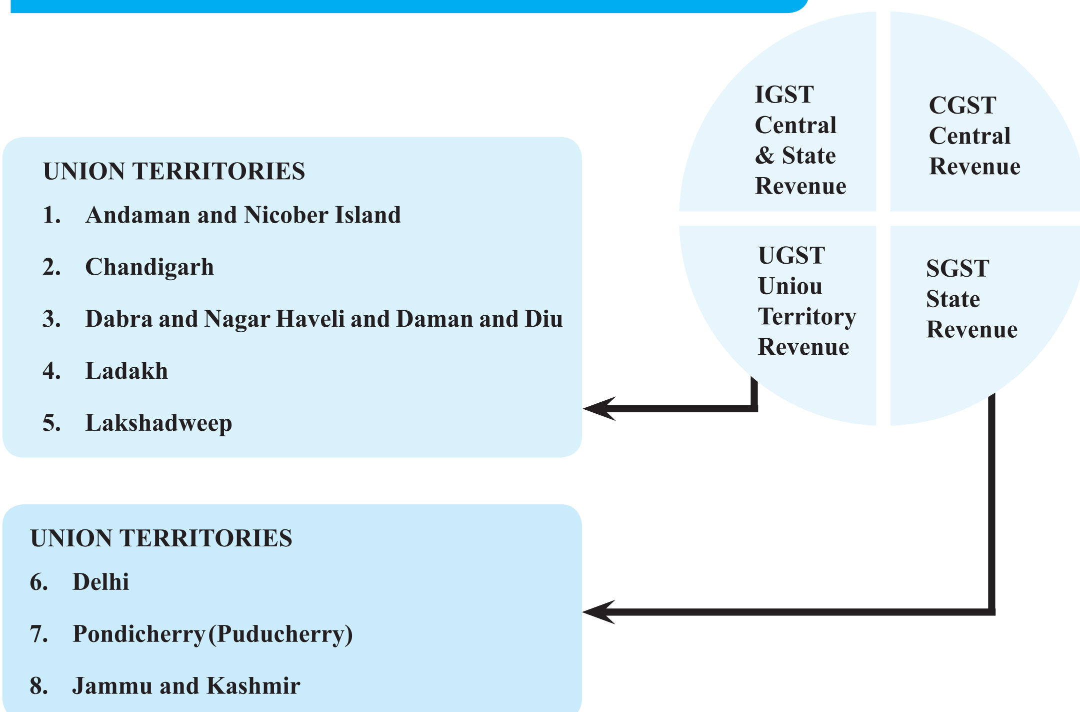
To replicate the law similar to State GST to Union territories without Legislature, the Parliament has the powers under Article 246(4) to make such laws. Alternatively, the President of India may use his general powers to formulate such laws.

Hence, same law as like State GST can be formulated for Union territory without Legislature, by the Parliament.

The following are Union Territories without Legislature:

1. Lakshadweep
2. Daman and Diu and Dadra and Nagar Haveli
3. Andaman and Nicobar Islands
4. Ladakh
5. Chandigarh.

Revenue source to Central and State Government



GST Council:

As per Article 279A of the Constitution of India, the President of India is empowered to constitute Goods and Services Tax Council. The President of India constituted the GST Council on 15th September 2016.

The GST Council shall consist of Union Finance Minister as a Chairperson, Union Minister of State in charge of Finance as a member, the State Finance Minister or State Revenue Minister or any other Minister nominated by each State as a member of the Council. The GST Council shall select one of them as Vice Chairperson of Council.

The mechanism of GST Council would ensure harmonization on different aspects of GST between the Centre and the States as well as among States. It has been provided in the Constitution (101st Amendment) Act, 2016 that the GST Council, in 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.

Functions of the GST Council

GST Council is to make recommendations to the Central Government and the State Governments on—

- tax rates,
- exemptions,
- threshold limits,
- dispute resolution,
- GST legislations including rules and notifications etc.

VOTING RIGHTS	
The Central Govt. shall have a weightage of 1/3rd of the votes cast	The votes of all State Govt. together shall have a weightage of 2/3rd of the total votes cost.

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. One half pf the total number of members of the GST shall constitute the quorum at its meetings.

Taxable Event

Taxable event under GST law is supply of goods or services or both. It means no supply then no GST.

The term, "supply" has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.
6. Supply should be made within the taxable territory

Exceptions:

(1) Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration.

(2) Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

Scope of supply (Section 7 of CGST Act, 2017)

As per Section 7(1) Supply includes	As per Section 7(2) Supply excludes
(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration (w.r.e.f. 1-7-2017, inserted in the Finance Act, 2021) (b) import of services for a consideration whether or not in the course or furtherance of business; **('and' w.e.f. 29th Aug., 2018 inserted retrospectively from 1.7.2017)** (c) the activities specified in **Schedule I**, made or agreed to be made without a consideration; **(w.e.f. 29th Aug., 2018 'and' omitted retrospectively from 1.7.2017)** (1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II."	(a) activities or transactions specified in **Schedule III**; or (b) such activities or transactions undertaken by the Central Government, a State Government or **(Union territory w.e.f. 27th June, 2018)** any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, **Note: Activities specified in Schedule III (i.e. Negative list):** 1. Services by employee to employer in the course of or in relation to his employment. 2. Services by court or Tribunal 3. Services by Member of Parliament and others 4. Services by funeral, burial etc. 5. Sale of land/Building 6. Actionable claim other than lottery, betting and gambling. **w.e.f. 1-2-2019:** 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."; **Explanation 1:** For the purpose of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.
	Explanation 2: For the purpose of this paragraph, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962

As per Section 7(1) Supply includes	As per Section 7(2) Supply excludes
As per Section 7(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as— (a) a supply of goods and not as a supply of services; or (b) a supply of services and not as a supply of goods.	

Case Studies and Illustrations on Supply - Taxable, Non-taxable, Exempted, Deemed Supplies, Reverse Charge

1.2

Supply made in the course or furtherance of business:

In the course of business: Every person carries out certain activities regularly for running trade or commerce.

Example 1

CMA Mr. Ram a practicing Cost Accountant carries out the activity of Accounting, Auditing, filing returns, Certifying documents and so on so forth. These activities can be considered as performed in the course of business.

Furtherance of business: Every business person uses to think how to develop his business or carrying out new activities. Such activities called as furtherance of business.

Example 2

M/s X Ltd. manufacturing of motor cars. Company use to sell a greater number of cars in Southern India. In view of demand in Southern India, company intends to establish manufacturing unit in Chennai. M/s X Ltd. appointed Mr. Y as a consultant for searching, evaluating and shortlisting places for prospective targets. Finally, company decided to establish unit at Ambattur Industrial Estate Chennai. Hence, Mr. Y carried out various activities is in furtherance of business of M/s X Ltd.

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act.

Sale of goods or service even as a vocation is a supply under GST. Therefore, even if a famous politician paints painting for charity and sells the paintings even as a one-time occurrence, the sale would constitute supply.

1.2.1 Section 7(1)(a) of CGST Act, 2017

All forms of supply of goods or services or both such as—

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

made or agreed to be made for a consideration by a person in the course or furtherance of business;

Note: The above activities are specified as an example as they are preceded by words 'such as'.

(i) Sale: The term sale is defined under various states VAT laws. Sale means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge.

Sale involves transfer of property in goods from one person to another person for consideration.

Under CGST law sale is treated as supply leviable to GST. However, the definition of Sale has not been provided under the GST Law.

Note: mortgage, hypothecation, charge or pledge is not supply and hence GST will not be levied.

Example 3

Mr. X sold laptop worth ₹1,00,000 and issued invoice in favour of Mr. Y. Now ownership in laptop transferred to Mr. Y. Such transaction shall be covered in sale. It is a supply of goods leviable to GST.

Example 4

Illegal Activity vs Prohibited Activity:

1. Mr. T a thief has stolen motorbike and sells the motorbike to Mr. Q. It is illegal to steal a motorbike. Sale of motorbike considered as supply of goods liable to be taxed.
2. Mr. T sold Narcotic drugs and psychotropic substances, to Mr. Q for ₹3 Lakhs. These goods are prohibited goods. Such activity cannot constitute supply. Mr. T is punishable under the law.

Example 5

Mr. X is an official liquidator provided various services like valuation of assets with the help of valuers, inviting and evaluating the tenders, selling assets, making payment to borrowers/creditors and so on. Activities of Mr. X are treated as supply of service and the commission earned by him is subject to GST.

Example 6

Mr. A being a dealer of furniture deliver the goods to the branch office of M/s X Ltd., upon directions of M/s X Ltd., head office. The contract to supply furniture is between Mr. A and M/s X Ltd., head office. Mr. A is liable to pay GST on the consideration received from M/s X Ltd. head office.

(ii) Transfer: the term transfer means, where the ownership may not be transferred but the right in the goods is transferred.

Illustration 1

Goods sent for a demonstration on returnable basis. Is it supply?

Solution: No. It would not be considered supply, as there is no transfer of title involved.

Example 7

Mr. A is the owner of Xerox machine. He transferred the right to operate the Xerox machine to Mr. B for a consideration of ₹10,000 per month for four months. Hence, ownership of the machine is not transferred but the right in the machine is transferred. It is supply of service leviable to GST.

(iii) Barter: it means, the exchange of goods and productive services for other goods and productive services, without the use of money.

Example 8

Mr. C a practicing Cost Accountant provided services to M/s XYZ Ltd., dealer of laptops, in return M/s XYZ Ltd., given to Mr. C two laptops. Here, two-way supply takes place. Mr. C is making taxable supply of service and M/s XYZ Ltd., is making taxable supply of goods. Hence, tax is payable by both.

Example 9

Mr. A a dealer in laptops. He supplied a laptop for ₹40,000 to Mr. B along with a barter of printer. The value of the printer known at the time of supply is ₹4,000 but the open market value of the laptop is not known, the value of the supply of laptop is ₹44,000. Hence, Mr. A is liable to pay GST on ₹44,000. At the same time Mr. B is also is liable to pay GST on ₹4,000 if he is registered person.

(iv) **Exchange:** when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an exchange.

Exchange offers on products such as televisions, mobile phones and refrigerators are leviable under GST.

Example 10

Mr. A is a dealer of new phones. He supplied for ₹20,000 to Mr. B along with exchange of an old phone and if the price of the new phone without exchange is ₹24,000, the open market value of the new phone is ₹24,000. Mr. A is liable to pay GST on ₹24,000. Mr. B also liable to pay GST on ₹4,000 if he is registered person.

Example 11

Mr X is a dealer of new cars. He sells new cars for ₹8,25,000, agrees to reduce ₹1,25,000 on surrendering of old car. Mr. Y who intends to buy new car worth ₹8,25,000 agreed to exchange his old car with new car.

Under GST law, it will be treated as Mr. Y has made supply of old car to dealer Mr. X and Mr. X has made supply of new car to Mr. Y.

If Mr. Y is registered person, he will be liable to pay GST on ₹1,25,000. Mr. X will be liable to pay GST on ₹8,25,000 whether Mr. Y is a registered person or not.

(v) **Licence:** Where one-person grants to another, or to a definite number of other persons, a right do or continue to do in or upon the movable property or immovable property of the granter, the right is called a licence.

Example 12

Mr. X a developer of information technology software and holder of licence thereon. License to use software was given to different clients: ₹18 lakhs; hence, Mr. X is liable to pay GST whether he transfer such right permanently or temporarily as the case may be.

Example 13

A Chennai based company has been awarded mineral exploration contract for 18 months in respect of specific sites in Mumbai by a Mumbai based corporation (i.e. local authority). As a result, Chennai based company got licence to extract mineral exploration for a period of 18 months. Mumbai based company supplied taxable services. GST is liable to pay by Chennai based company on licence fee paid to supplier under Reverse Charge.

(vi) **Rentals:** Periodical payment for use of another's property. Rent is to pay on monthly.

Example 14

Mr. A owns a residential building in a prime commercial locality. Large vacant land in the backyard is given on rent of ₹1,80,000 per month to a parking contractor, Mr. B who has set up a parking facility on the said land. It is a taxable supply of service and hence, Mr. A is liable to pay GST.

Example 15

Mr. X the owner of a residential building in a commercial locality, Ground Floor is given on rent to Mr. C for a monthly rent of ₹60,000. Mr. Y uses the same as his residence. It is a supply of service. However, specifically exempted from GST. Hence, Mr. X is not liable to pay GST.

(vii) Lease: A lease is an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time. A lease may be financial lease or operating lease.

Example 16

M/s X Bank Ltd., given an asset under financial lease to M/s Y Ltd. Repayment of financial lease made by the customer to the bank ₹80 lakhs which includes a principal amount of ₹50 lakhs.

Financial leases shall be taxed as supply of services. M/s X Bank Ltd. is liable to pay GST.

(viii) Disposal: Disposal normally considered as selling of assets when the organization is about to close down, and various assets are required to be disposed of. Such transactions will also be considered as supply of liable to tax under GST Law.

Consideration:

As per Section 2(31) of the CGST Act, 2017 "consideration" in relation to the supply of goods or services or both includes—

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

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

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

Donation or charity does not attract GST:

Supply of Service without Consideration (i.e. Donation. Hence, no GST)

Example 17

Akbar Travels Pvt. Ltd., a travel agent books ticket for a customer Mr. X. Travel agent raises invoice on customer Mr. X for transportation of passenger by air of ₹10,000 and his commission of ₹500. The entire amount of ₹10,500 is not his consideration. The amount of ₹500 retained by the air travel is to be considered as his consideration.

Example 18

M/s X Ltd., being an authorized dealer of the TATA brand, rendered services to buyer of car, but payment is made to authorized dealer by the TATA Company. It is called as consideration is given by third person. Therefore, it is treated as supply of service and liable to tax in the hands of M/s X Ltd.

Example 19

Consideration includes non-monetary consideration.

Aggregate of payments received in money and monetary value of the act or forbearance will constitute consideration:

Example 20

A Sports Club agrees to hire services of cricket player Mr. B for a consideration of ₹2 crores. In addition to this, the agreement provides that the player shall be provided with the car valued for ₹20 lakhs. The entire value of ₹2.20 crores will be considered as consideration and subject to tax.

Example 21

Mr. X sells office furniture to Mr. Y on the condition that donation of ₹10,000 is payable by Mr. Y to a trust. The amount of ₹10,000 is paid by Mr. Y is by reason of purchase of furniture. Hence, ₹10,000 will be treated as consideration for sale of furniture. Thereby Mr. X is liable to pay GST on ₹10,000 in addition to the value of furniture.

Example 22

M/s Lakshman Ltd. agreed to sell its business to M/s Ram Ltd., for a consideration of ₹50,00,000. M/s Lakshman Ltd. further agrees that it will not conduct same or similar business for a period of 10 years, for which M/s Ram Ltd., paid ₹20,00,000. Hence, M/s Lakshman Ltd., consideration is ₹70,00,000.

No consideration:

Example 23

Mr. Rajesh during long drive with his wife Manju violated traffic rules and was imposed fine of ₹1,000. The amount received as fine or penalty for violation of statutory provisions will not be considered as consideration.

Example 24

The following generally not considered as consideration:

- Grant of pocket money;
- Gift or reward (which has not been given in terms of reciprocity); or
- Amount paid on alimony for divorce.

Example 25

Subsidy given by the Government to benefit the farmers cannot be considered an additional consideration:

The Government provides subsidy, for the benefit of farmers but it is given to the manufacturer of fertilizers will not be considered as consideration.

Example 26

Deposits: If refunded then, it is not a consideration. Therefore, the same does not attract GST. If tax has already been paid the taxpayer would be entitled to refund.

If not refunded then, it is relating to a service, attract service tax.

Clarifications of the CBIC:

Illustration 2

Equipment and instruments sent to manufacturers' factory for repairs and calibration within India on a returnable basis. Is it supply?

Solution: It is not a supply. Since, no sale has taken place. It is enough to issue a challan for movement of goods without supply.

Illustration 3

X Ltd. supplied spare parts freely to replace during warranty period. Is it supply and chargeable to GST?

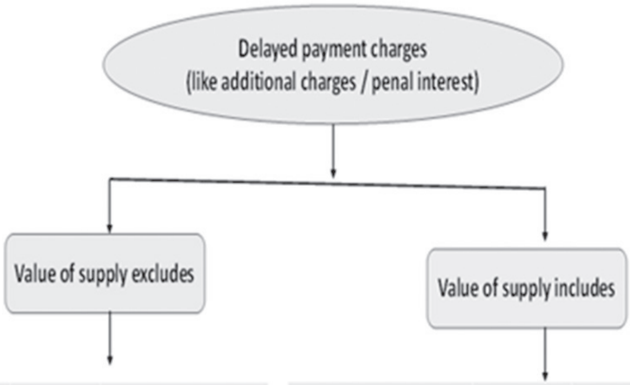
Solution: It is not supply.

GST is not chargeable if free replacement is provided by a business to customers without consideration under warranty.

Illustration 4

Penalties levied on late or delayed payment of loans and advances are taxable supply?

Solution: No. These are exempted supply under GST (Circular No. 102/21/2019-GST, dated 28.06.2019)

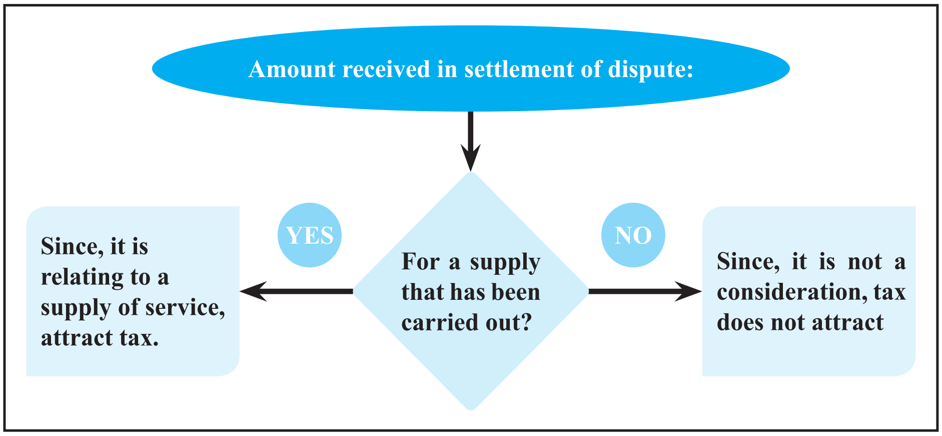


Nature of supply	Value in ₹	Taxability
Loan given by Bank	Xxxx	Not taxable
Interest on loan	Xxx	Exempted supply
Penal interest on delay in repayment of loan	Xxx	Exempted supply

Nature of supply	Value in ₹	Taxability
Goods sold or supplied services on credit basis	Xxxx	Taxable supply
Interest charged by supplier of goods or services on periodic payment	Xxx	Taxable supply
Penal interest on delay in repayment of value of goods or services	Xxx	Taxable supply

[Circular No. 102/21/2019-GST dated 28.06.2019]

Example 27: Amount received in settlement of dispute:



Services provided by the members of the Joint Venture (JV) to the JV and vice versa or between the members of the JV:

JV (an unincorporated temporary association constituted for the limited purpose of carrying out a specified project) and the members of the JV are treated as distinct persons and therefore, taxable services provided for consideration, by the JV to its members or vice versa and between the members of the JV are taxable [Circular No. 35/9/2018-GST, dated 5th March, 2018].

If cash calls are merely a transaction in money, they are excluded from the definition of service and not taxable.

If cash calls are not merely a transaction in money, they are included in the definition of service and hence taxable.

Illustration 5

There are 4 members in the JV including the operating member and each one contributes ₹100 as part of their share. A total amount of ₹400 is collected. The operating member purchases machinery for ₹400 for the JV to be used in oil production.

Solution: In given case, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

It will not be the subject matter of 'GST'.

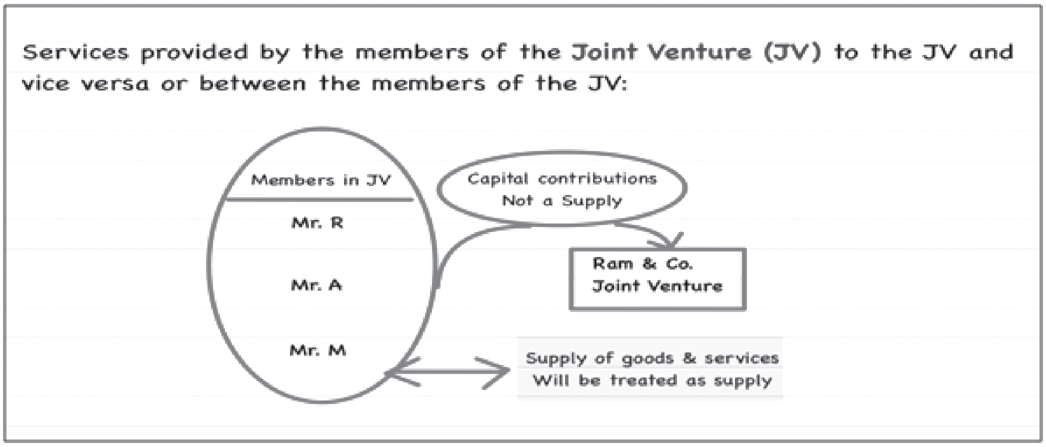
Illustration 6

There are 4 members in the JV including the operating member and each one contributes ₹100 as part of their share. A total amount of ₹400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

Solution: The operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

Therefore, it will attract GST in the hands of operating member.

Conclusion: any transaction involving supply of goods or services or both without consideration is not a supply unless it is deemed to be a supply under GST Law (i.e. Schedule I of the CGST Act, 2017, Activities to be treated as supply even if made without consideration).



GST on Slump Sale:

Slump sale contains the following conditions:

1. Sale of one or more undertakings,
2. No individual value should be assigned to assets and liabilities, and the same to be sold for a lump sum consideration, and
3. All assets and liabilities of the undertaking must be transferred.

Slump sale treated as supply of service. It shall be inferred that transfer of a going concern as a whole or a part thereof or transfer of business as a going concern is exempt under GST. Therefore, no GST on slump sales.

1.2.2 Section 7(1)(aa) of CGST Act, 2017, Supply of goods, by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

Example 28

(a) A club has opened up a shop. The members can purchase various goods from such sops. It is a supply of goods.

(b) A local association supplies tea and snacks to its members during its meeting for a nominal payment. It is also called as supply of goods.

1.2.3 Section 7(1)(b) of CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business:

(a) it is applicable only for services and not for goods

(b) It should be import of service (as referred under Section 2(11) of IGST Act, 2017), where

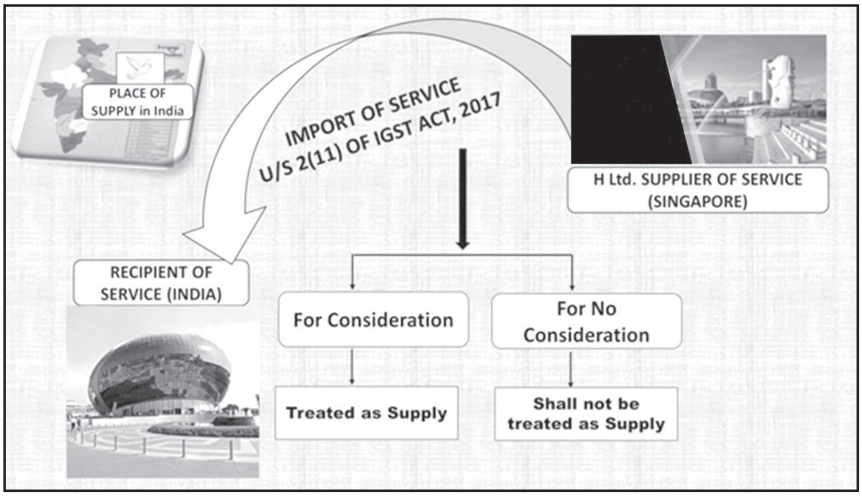
  (i) The supplier of service is located outside India;

  (ii) The recipient of service is located in India; and

  (iii) The place of supply of service is in India.

(c) Services shall be provided with consideration

(d) Services may be in the course or furtherance of business or not in the course or furtherance of business.



Section 7(1)(b) vs Section 7(1)(c) of CGST Act, 2017

Section	Nature of Service	Consideration	Business Test
Section 7(1)(b) of CGST	Import of service	Necessarily required	Not required
Section 7(1)(c) of CGST	Import of services by a taxable person from a related person or from any of his other establishments outside India (i.e. distinct person).	Not Required	Necessarily required.

Important Points:

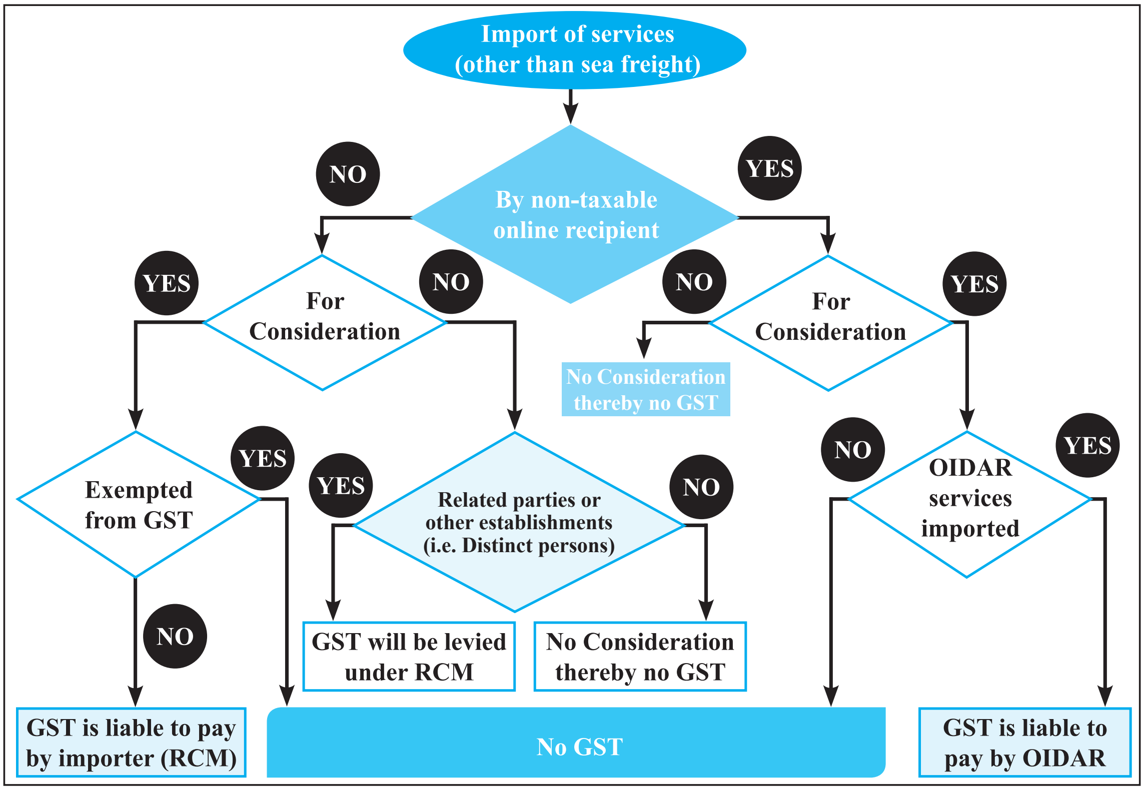
(1) As per the provisions contained in Section 21 of the IGST Act, 2017, all imports of services made on or after the appointed day (i.e. 1st July 2017) will be liable to IGST regardless of whether the transactions for such import of services had been initiated before the appointed day.

(2) If the tax on such import of services had been paid in full under the existing law (i.e. as per Service Tax Finance Act, 1994), no tax shall be payable on such import under the IGST Act.

(3) In case the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under the IGST Act.

Section 7(1)(b) and Section 7(1)(c) read with Para 4 of Schedule I of the CGST Act, 2017:

Simplified Approach:



Example 29

Suppose a supply of service for ₹1 crore was initiated prior to the introduction of GST, a payment of ₹20 lacs has already been made to the supplier and service tax has also been paid on the same, then IGST shall have to be paid on the balance ₹80 lacs.

Illustration 7

Online information and data base access or retrieval services, where import of free services from Google and Facebook by Mr. Ram located in India, without any consideration. Is it subject to GST?

Solution: These are not considered as supply and hence not attract GST.

Note: GST will be levied only when services are provided with consideration.

Illustration 8

Import (Downloading) of a song for consideration for personal use by Mr. Bharath. Is it supply of service?

Solution: Yes. It is supply of service and IGST will be levied.

Note: Services may be in the course or furtherance of business or not.

Illustration 9

Mr. Chini of Chennai paid fees for on-line coaching obtained from a teacher located in USA for coaching of Accountancy course for his son.

Is it supply? If so who is liable to pay GST.

Solution:

Yes, it is supply. Even if receipt of this service is not for business or furtherance of business.

Mr. Chini is not liable to pay GST under reverse charge mechanism.

It is exempt from GST. Since, it is not OIDAR service.

Illustration 10

M/s X Apparels in Chennai, Tamil Nadu, avails fashion designing services of ₹50,00,000 from Suresh Designs in Singapore.

Is it supply? If so, who is liable to pay GST?

Solution: Yes. It is supply (i.e. import of service).

Ramesh Apparels in Chennai being recipient of service is liable to pay IGST.

Illustration 11

Import of some services by an Indian branch from their parent company, in the course or furtherance of business, without consideration. Is it taxable supply in India?

Solution:

Yes. It is a taxable supply in India and hence IGST will be levied.

Note: Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business will be subject to GST even if made without consideration (as per Schedule I of CGST Act, 2017 i.e. point no. 4).

1.2.4 Section 7(1)(c) of the CGST Act, 2017 the activities specified in Schedule I, made or agreed to be made without a consideration:

SCHEDULE I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

   Provided that gifts not exceeding ₹50,000/- in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—

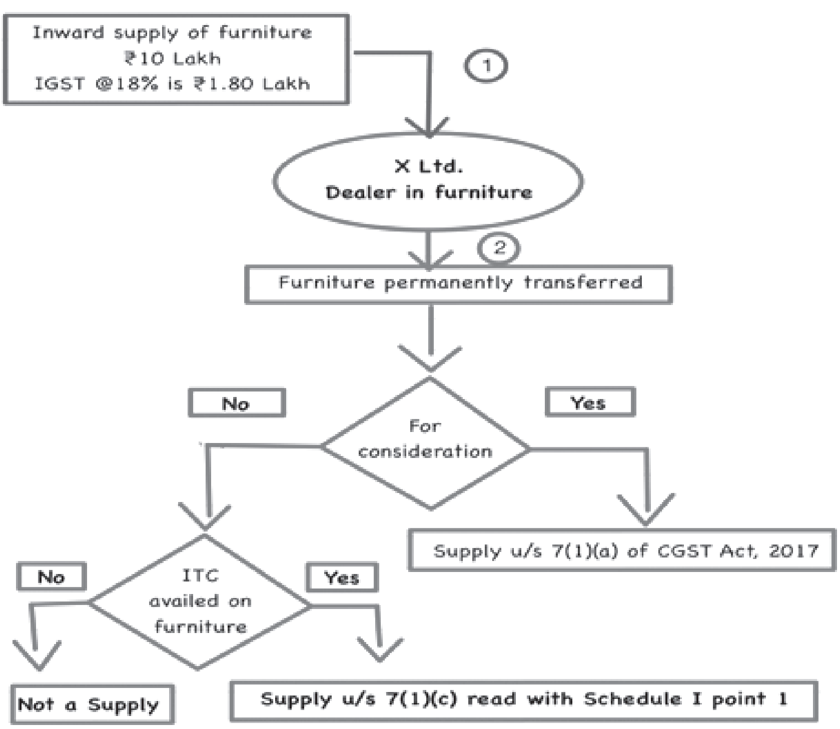
   (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

   (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Permanent transfer/disposal of business assets:

All kind of disposal or transfer of business assets made by an entity on permanent basis even without consideration will be treated as supply provided input tax credit has been availed on such assets.

Example 30



Example 31

M/s X Ltd., upgrades the computer system. The existing computers and laptops, which do not support the upgraded version, donated to a Trust. This amounts to permanent transfer of business assets. The same will be treated as supply of goods and liable to GST in the hands of X Ltd., provided if company availed input tax credit on such computers and laptops.

Example 32

M/s Peter England Pvt. Ltd., being a trader in clothes permanently transfers 50% of its stock to a Society free of cost. In this case, transfer of business stock would amount to supply if the company had availed input tax credit on purchase of clothes.

Illustration 12

Mr. Raj purchased a car for personal use and after a year sold it to a car dealer for ₹2 lac. Will the transaction be a supply in terms of GST Act?

Solution: This transaction is not a supply. Moreover, supply is made by the individual is not in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use.

Illustration 13

Mr. Rahim purchased a car for Business use and after 2 years transferred car for personal consumption to use at home. Will the transaction be a supply in terms of GST Act?

Note: ITC not availed by Mr. Rahim.

Solution: No, because supply is not made by the individual in the course or furtherance of business. Further, input tax credit will not be admissible on such car at the time of its acquisition and it is not be a supply under GST as per Schedule I.

Illustration 14

M/s A & Co., a sole proprietor, is in the business of selling furniture. Its owner took a set of furniture to furnish his house permanently. Will the transaction be a supply in terms of GST Act?

Note: ITC on such furniture not availed.

Solution: No, the transfer of the furniture by the owner without consideration is not a supply of goods, because credit is not allowed in case of personal consumption of business assets under section 17(5)(g) of CGST Act.

Illustration 15

M/s B Ltd., is in the business of Hotel. He purchases AC for business purpose and after 2 years, he transfers the AC to director without consideration. Will the transaction be a supply in terms of GST ACT?

Note: AC machines on which ITC availed.

Solution: Yes, it shall be a deemed supply (as per schedule I).

Supply between related persons or distinct persons:

As per Explanation to Section 15 persons shall be deemed to be “related persons” if—

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

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

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;

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

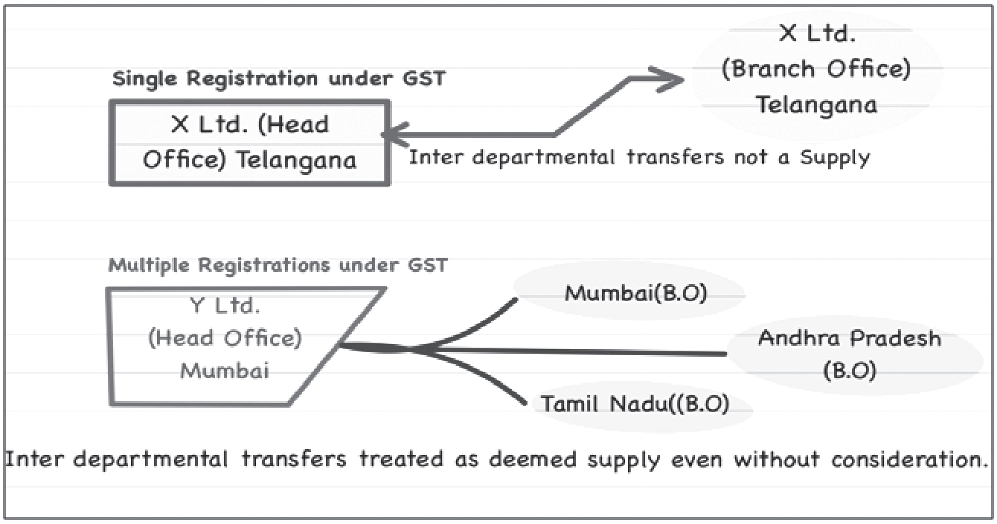
(vi) both of them are directly or indirectly controlled by a third person;

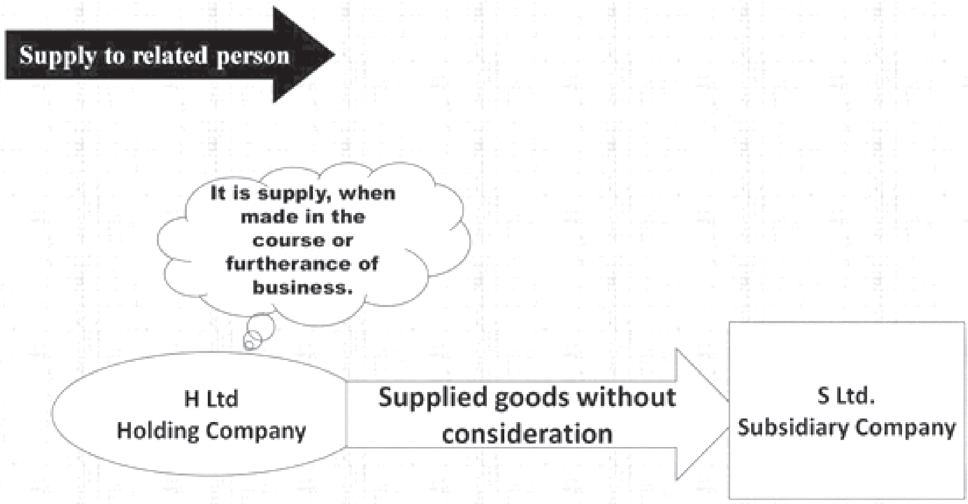
(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(a) the term "person" also includes legal persons;

(b) 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.





Example 33

Any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them:

M/s Ram & Co., holds 30,000 shares in M/s X Ltd. and 25,000 shares in Y Ltd.

Share Capital of M/s X Ltd: 1,00,000 Equity Shares of ₹10 each.

Share Capital of M/s Y Ltd: 80,000 Equity Shares of ₹10 each.

Since, M/s Ram Ltd., holds more than 25% of the share in the company X Ltd and Y Ltd, they will be considered as related persons.

Example 34

Reliable group has three companies namely M/s A Ltd., M/s B Ltd., and M/s C Ltd., as group companies and M/s Reliable Ltd., as a parent company. M/s Reliable Ltd., holds 25% of the shares in each group company. Therefore, A, B & C companies will be considered as related persons.

Supply to agents or by agents:

Supply of goods by the principal to an agent or by the agent to principal will be considered as a supply even if without consideration. The said transactions are leviable under GST.

The term "agent" has been defined under sub-section (5) of section 2 of the CGST Act as follows:

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

Example 35

M/s X Ltd., registered person located in Cochin and having a godown in Cochin transfers the goods to clearing and forwarding agent (C&F Agent) located in Chennai. Such activity of transfer shall be considered as supply even if there is no consideration for such transfer and hence, leviable to GST.

Example 36

Sundaram & Co. engages Honda Cars Ltd. as an agent to sell cars on its behalf. Honda Cars Ltd. has supplied 50 cars to the showroom of Sundram & Co., located in Chennai. Supply of cars by Honda Cars Ltd. to Sundaram & Co., will qualify as supply and the same is leviable to GST.

Illustration 16

M/s M Ltd. being a garment manufacturer appoints Mr. Ram as an agent, who stores garments manufactured by M Ltd. and sends to dealers whenever M Ltd. asks Mr. Ram to do so. Is it a supply?

Solution:

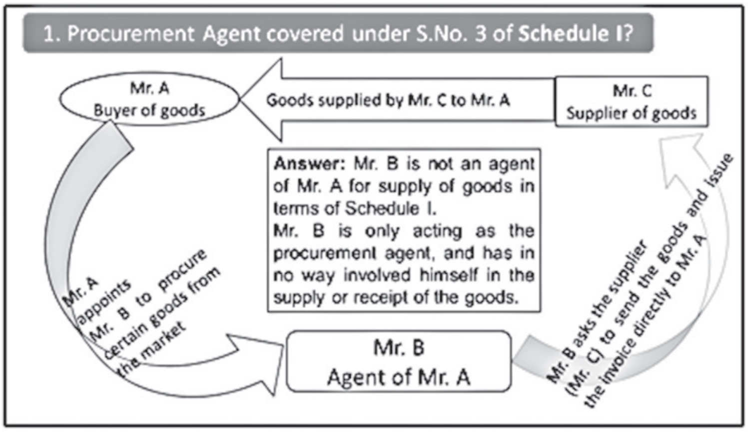
Yes. Transfer of garments from M Ltd. to Mr. Ram is taxable supply under GST.

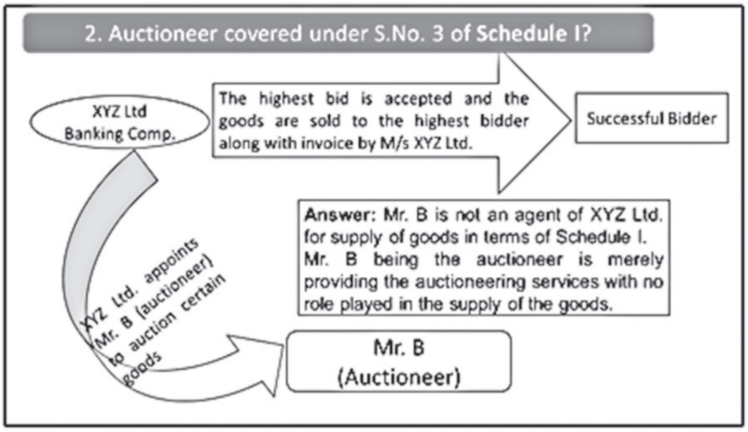
GST will be levied.

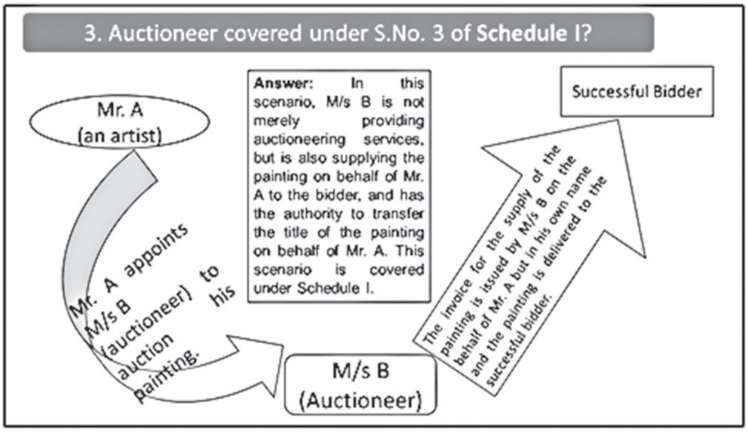
Circular No. 57/31/2018-GST, dated 4th September, 2018:

Scope of Principal-agent relationship in the context of Schedule I of the CGST Act, 2017

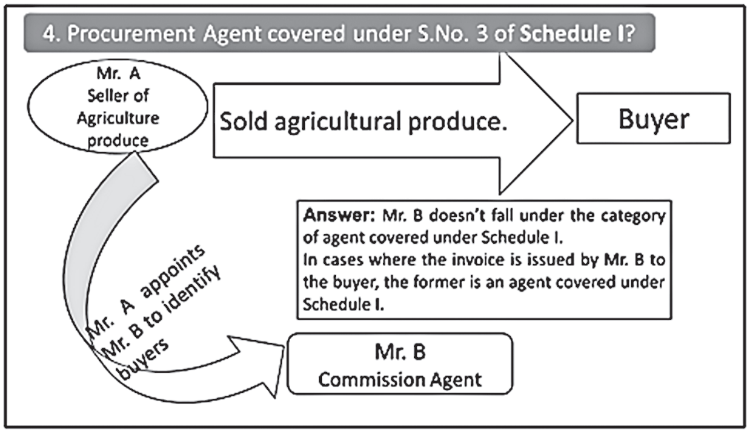
Simplified approach:







Note: A similar situation can exist in case of supply of goods as well where the C&F agent.



Summary:

The key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.

However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule-I of the CGST Act, 2017.

Importation of Services:

Import of services by a person from a related person or from his establishments located outside India, in the course or furtherance of business shall be treated as "supply".

Example 37

Apte & Apte Ltd is located in India and holding 51% of shares of Wilson Ltd, a USA based company. Wilson Ltd provides Business Auxiliary Services to Apte & Apte Ltd., will be treated as supply.

Example 38

Sparsh Ltd. of Mumbai imports business support services from its head office located in USA. The head office has rendered such services free of cost to its branch office. Services received by Sparsh Ltd. will qualify as supply even though the head office has not charged anything from it.

Illustration 17

Ram is an architect in Chennai. His brother who is settled in London is a well -known lawyer. Ram has taken legal advice from him free of cost with regard to his family dispute. Examine whether the said activity would amount to supply under section 7 read with Schedule I of the CGST Act.

Would your answer be different if in the above case, Ram has taken advice in respect of his business unit in Chennai?

Solution:

Import of Services by a person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. In the given case Ram and his brothers are not related persons. Since Ram's brother who is not wholly or mainly dependent on Mr. Ram.

Therefore, services provided by Ram's brother to him would not be treated as supply under section 7 read with Schedule I of the CGST Act, 2017.

In the above case, if Ram has taken advice with regard to his business unit, services provided by Ram's brother to him still not be treated as supply under section 7 of the CGST Act, 2017 read with Schedule I, as although the same are provided in course or furtherance of business, such services have not been received from a related person.

Section 7(1A) w.e.f. 29th Aug., 2018, applicable retrospectively from 1.7.2017:

Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II."

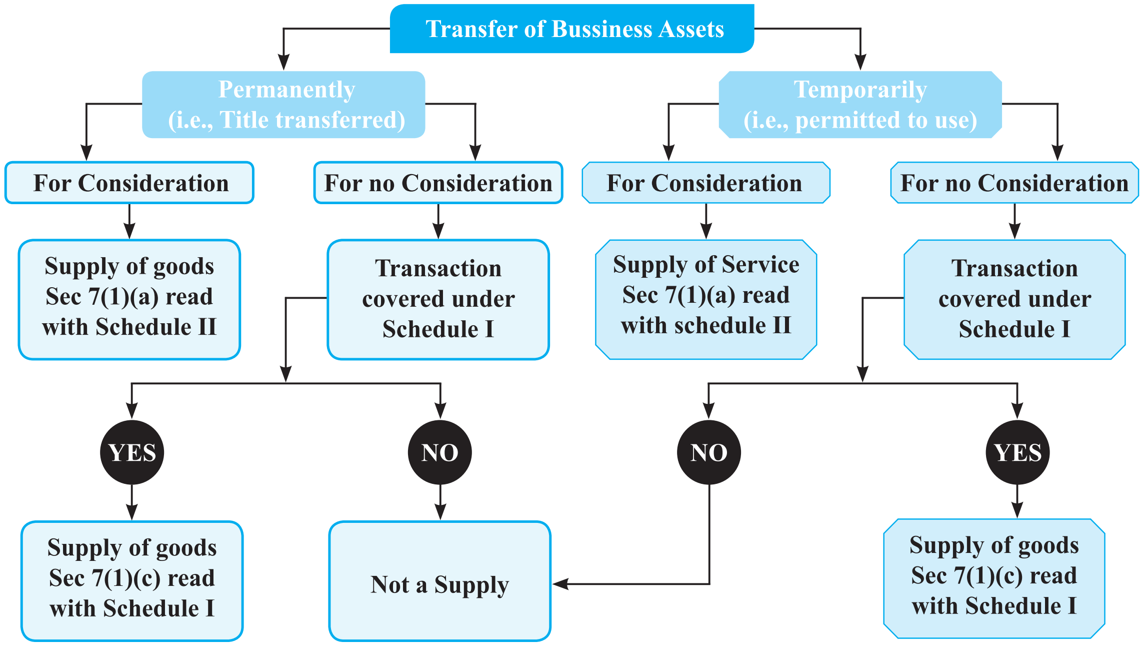
Schedule II of the CGST Act, 2017 has certain ACTIVITIES or w.e.f. 29th August, 2018 the term TRANSACTIONS inserted retrospectively w.e.f. 1st July 2017) transactions clearly classified as goods or services under GST to avoid any such confusion.

Sl. No.	Transaction	Supply of Goods	Supply of Service
1	**Transfer**		
	(a) Transfer of the title in goods.	Yes	No
	(b) Transfer of right in goods or share (undivided) in goods without the transfer of title.	No	Yes
	(c) 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	Yes	No
2	**Land and Building**		
	(a) Lease, tenancy, easement, licence to occupy land	No	Yes
	(b) Lease or letting of any building including for business or commerce. (Building might be a commercial, industrial or residential complex rent out wholly or partly)	No	Yes
3	**Treatment or process**		
	Any treatment or process which is applied to another person's goods	No	Yes
4	**Transfer of business assets**		
	(a) Goods forming part of business are transferred or disposed off by the owner whether or not for a consideration. These words "whether or not for a consideration" have been omitted retrospectively effect from 1-7-2017 (as per Finance Act, 2020). **Example 56:** M/s Ram & Co taxable person has availed ITC of furniture. After 2 years, he donated same to a Trust. This activity amounts to supply (ITC availed business asset disposed of (without consideration) Sec 7(1)(c) + Schedule I (Para 1)) (b) The owner (person carrying on business) uses or allows to use business assets for personal use whether or not for a consideration. These words "whether or not for a consideration" have been omitted retrospectively effect from 1-7-2017 (as per Finance Act, 2020).	Yes	No

Sl. No.	Transaction	Supply of Goods	Supply of Service
	This covers use of property or taxable person like motor vehicles, residence premises, guest house, telephone, laptops etc. for private use of partners/ directors/executives/employees.	No	Yes
	(c) If the owner ceases to be a taxable person then business assets will be assumed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person. This is not applicable when:— (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person.	Yes	No
5	**Supply of services**		
	(a) Renting of immovable property (however, residential dwelling is exempted from GST)	No	Yes
	(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	No	Yes
	(c) Temporary transfer or permitting the use or enjoyment of any intellectual property right;	No	Yes
	(d) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;	No	Yes
	(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act	No	Yes
	(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	No	Yes
6	**Composite supply**		
	(a) Works contract services;	No	Yes
	(b) Supply by way of or as part of any other 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)	No	Yes
7	**Supply of Goods (omitted by Finance Act, 2021, w.e.f. 1-7-2017)**		
	Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	Yes	No

As per the Finance Act, 2010

Schedule II Point 4(a) & (b): Whether or not for consideration Omitted with effect from 1-7-2020 retrospectively.



Un-divided share in goods

Example 39

A shopping complex owned by M/s X Ltd and M/s Y Ltd. At a later date M/s X Ltd. sold his share in shopping complex to M/s Z Ltd. and hence, ownership is not transferred to M/s Z Ltd., but only share in property is transferred to M/s Z Ltd. It is a supply of service.

Transfer of title in future:

Example 40

Mr. A provides machine to Mr. B and he permits Mr. B to use the machine, provided Mr. B pays for the machine after two months, when the property of goods will be transferred to Mr. B. It will be considered as a transaction in goods and service. Therefore, it is a supply of goods.

Example 41

If a residential premise is used for residential purposes as well as for some business purpose, the said activity of leasing of residential complex would be covered in the definition of supply and exigible to GST.

Such activities could be:

- coaching by teacher at his residence or
- carrying out professional activities from the residence of an Advocate or Cost Accountant or even storing of business goods in the residential premise.

Tenancy rights taxability under GST – CBIC Circular No. 44/18/2018-CGST, dated 2-5-2018):

Illustration 18

You are required to answer the following:

(i) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?

(ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

Solution:

(i) The activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.

However, renting of residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt.

(ii) As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

Note: The applicable rate of GST 18%.

Illustration 19

Kushi Singh is the lawful owner of a residential house situated in Chennai. The property has four floors constructed on it. Out of the four floors in his house, first and second floor are self-occupied and third and fourth floor have been let out for residential purposes. Rana Singh, who is a tenant on third floor, has surrendered his tenancy rights to Raja Singh for a tenancy premium of ₹8,00,000 on 1st June. Raja Singh has paid the applicable stamp duty and registration charges on transfer of tenancy rights. Moreover, Raja Singh will pay a monthly rent of ₹1,50,000 to Kushi Singh from June.

Determine the value of taxable supply, in the given case, for the month of June in the hands of Kushi Singh and Rana Singh.

Solution:

Value of taxable supply in the hand of Kushi Singh is nil. Since, rent from residential deweeling is exempt from GST.

Value fo taxable supply in the hands of Rana Singh (outgoing tenant) is ₹8,00,000/-.

Job work:

Example 42

Any activity carried out on the product whether for bringing change in the product or not will be considered as processing of the product.

(a) Job-work performed by a job worker like cleaning and painting.

(b) Job-work performed by a job worker like converting raw material into finished goods.

Illustration 20

Mr. A, a trader of steel articles purchases steel bars of 10 meters for ₹1,00,000. He gave these steel bars to Mr. B (job worker) for cutting the bars. Mr. B charged ₹20,000 as his job work charges. Mr. B seeks clarification whether he will be liable to pay GST on the cut bars if so find the value?

Soltion:

Mr. B being a job worker is liable to pay GST. Value of job work charges is ₹20,000. It is called as supply of service.

Illustration 21

Crown Beers India Pvt Ltd., supplies raw material to a job worker Kareena Ltd. for manufacture of alcoholic liquor for human consumption. After completing the job-work, the finished product of 5,000 beer bottles are returned to Crown Beers India Pvt Ltd., putting the retail sale price as ₹200 on each bottle (inclusive of duties and taxes). Kareena Ltd., charged ₹100 per bottle as job work charges of carrying out of intermediate production process of alcoholic liquor for human consumption from Crown Beers India Pvt. Ltd.

Find the GST liability if rate is 18% (CGST 9% and SGST 9%) any in the hands of Kareena Ltd.

Solution:

Carrying out of intermediate production process of alcoholic liquor for human consumption on job work basis attract GST.

CGST	=	₹ 45,000
(5,000 bottles × ₹100 × 9%)		
SGST	=	₹ 45,000
(5,000 bottles × ₹100 × 9%)		
Total tax liability of Kareena Ltd.	=	₹ 90,000

Note: GST does not attract on manufacture of alcoholic liquor. Since, it is the State subject, which will attract State Excise Duty.

Illustration 22

Mr. J, a registered person supplied the following goods to Miss N for further processing on job work basis:

S.No.	Goods	Particulars
1	A	Taxable goods under GST
2	B	Exempted vide an exemption notification under CGST Act,2017
3	C	Non-taxable under GST

You are required to examine whether the provisions of job work will be applicable to all categories of goods.

Solution:

S.No.	Goods	Particulars	Job work provisions
1	A	Taxable goods under GST	Applicable
2	B	Exempted vide an exemption notification under CGST Act, 2017	Not applicable
3	C	Non-taxable under GST	Not applicable

Transfer of business assets:

Example 43

Sale of office computers or furniture is supply of goods.

Example 44

Free samples freely supplied to others are also supply of goods.

Illustration 23

Mr. Raj purchased a car for Business use and after one year sold it to a car dealer for ₹2 lac. Will the transaction be a supply in terms of GST Act?

Solution:

Transfer for a consideration shall be supply of goods, even if credit is not claim (as per Schedule II).

Business assets used for personal purpose:

Schedule I of the CGST Act, 2017 does not provide that use of goods for private or personal purpose, whether without consideration will be considered as supply. Hence, no GST is payable on use of the goods for private or personal purpose. However, ITC proportionately will be denied.

Example 45

Mr. A is engaged in the business of transportation of passengers. He provides vehicle for the marriage of his Accounts Manager free of cost. It is supply of service, but no GST is payable (provided business not claiming Input Tax Credit).

If Mr. A charged ₹2,500 it will be subject to GST.

Example 46

Mr. X is engaged in the business of selling furniture. He organizes function in his house. As a result, he used business furniture for the function. It is supply of service. Since, there is no consideration and hence no GST will be levied provided business not claiming ITC.

Example 47

M/s X Ltd. provided car to one of its directors for his personal purposes and charge fee ₹30,000 per month. It is supply of service and the same is taxable under GST.

Example 48

A director takes a computer home for his private use. This computer is the company's business asset.

It is supply of service.

GST is accountable on the use of the computer based on its cost.

However, if the company chose not to claim input tax on the computer purchased, the private use of the computer will not attract GST.

Example 49

A director uses the company's car for his family outing.

It is supply of service.

The company was not entitled to claim the input tax incurred on the purchase of the car as it is disallowed.

The company does not need to account for GST on the private use of the car as no input tax was claimed.

Example 50

X Ltd. and Y Ltd. are related companies. Y Ltd. uses X Ltd.'s business asset, namely, large format printer to print high-resolution architectural plans for its client.

GST is accountable on the use of the printer based on its cost.

However, if X Ltd. chose not to claim input tax on the asset purchased, the use of this asset by another person will not attract GST.

Business Discontinued:

Example 51

M/s Ravan & Co a partnership firm decided to dissolve the partnership firm. Goods left in stock taken over by partners. Taking over of goods by partners will be considered as a supply of goods. Since, business is not continued further.

Exceptions:

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

In both the above cases, the business is continued. Therefore, it will not be considered as supply of goods.

Illustration 24

Mr Raj being an owner of shop is a registered person under GST. He has decided to close the business. At the time of deregistration, he has closing stock of ₹15,00,000. Mr. Raj final GST return will show his supplies made during the last taxable period plus Stock in hand of ₹15,00,000 during the deregistration. Find the amount of supply. It is supply of goods or services?

Solution:

Amount to supply = ₹15,00,000

It is treated as supply of goods.

Note:

(1) Mr. Raj has to pay GST on ₹15 lac.

(2) However, Mr. Raj is not required to pay to GST on closing stock of ₹15 lac, provided ITC not availed on such stock.

Renting of Immovable Property:

Illustration 25

Renting of vacant land to a stud farm for ₹1,50,000. It is a supply of service. GST will be leviable.

Solution:

It is supply of service.

GST is liable to pay.

Illustration 26

Leasing of vacant land to a poultry farm for ₹76,000. It is a supply of service. However, specifically exempted from GST. It is an agricultural activity.

Solution:

It is a supply of service.

However, specifically exempted from GST.

Note: It is an agricultural activity.**Construction Service:**

Example 52

Construction service where land value is included – GST liability:

<table>
<tr><td>Builder obtained completion certificate from GHMC on 31st March</td><td rowspan="3">Fist Floor:
Occupied by Mr. A on 1st Feb.
Entire consideration received on 1st Feb.
No GST.
Second Floor:
Part amount paid by Mr B during construction.
GST will be levied on the entire value.
Third Floor:
No one occupied till 31st March.
On 1st April sold to Mr. C.
No GST.
Fourth Floor:
Occupied by Mr. D on 3rd April.
However, part payment is paid on 3rd Feb.
No GST.</td></tr>
<tr><td></td></tr>
<tr><td>The GST will only apply to amount paid for flats under construction. If a person buys a ready to move in flat, GST is not applicable.</td></tr>
</table>

Illustration 27

A builder has entered into agreement to sale a flat (carpet area 1900 sq ft) to customer. The additional information is as follows:

(a) Price of flat (including apportioned value of cost of land): ₹42,00,000 (includes Prime Location Charges namely charges for getting sea view ₹2,00,000).

(b) Charges for providing space for covered parking: ₹1,25,000.

(c) Stamp duty paid for ₹3,60,000.

The builder received part payment before construction was completed and balance amount was received after obtaining completion certificate from the Corporation. Find the GST liability (CGST 6% and SGST 6%)?

Solution:

It is supply of service. Builder is liable to pay GST.

CGST = ₹ 2,81,100

(₹42,00,000 + 1,25,000 + 3,60,000) × 6%

SGST = ₹ 2,81,100

(₹42,00,000 + 1,25,000 + 3,60,000) × 6%

Total liability = ₹ 5,62,200

Note: Stamp duty is form part of value of supply u/s 15(2)(a) of CGST Act, 2017

Information Technology software:

The issue was raised whether software is a goods or services. Clause 5(d) Schedule II of the CGST Act provides that development, design, programming, customization, adaptation, up-gradation, enhancement, implementation of Information Technology **software shall be treated as service**. This explanation removes the uncertainty as to whether such software is goods or service.

As Information Technology software has been **declared as service**, place of supply of IT software can easily be determined. Place of supply of software shall always be the location of the recipient.

Illustration 28

M/s. ABC Ltd. provides the following relating to information technology software. Compute the value of taxable service and GST liability (Rate of CGST 9% and SGST 9%)?

(a) Development and Design of information technology software: ₹15 lakhs;

(b) Sale of pre-packaged software, which is put on media: ₹52 lakhs.

Solution:

Value of Taxable supply of service is ₹15 Lakhs.

CGST is ₹1.35 lakhs

[i.e. ₹15 Lakhs × 9%].

SGST is ₹1.35 lakhs

[i.e. ₹15 Lakhs × 9%].

Note: Pre-packaged software, which is put on media treated as supply of Goods.

Value of Taxable supply of goods is ₹52 Lakhs.

Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act

Example 53

M/s X Ltd. paid penalty under section 73(9) of the CGST Act, 2017, ₹2,00,000 to the Department in the month of October 20XX. Is it taxable under the GST law?

Solution:

It is not a supply of service. The fine or penalty chargeable by Government or local authority imposed for violation of statute, byelaws, rules or regulations are not leviable to GST. Such fines or penalty are not recovered for tolerating non-performance of a contract.

Refrain means restricting oneself to do or not to do one act:

Example 54

Mr. C is a Practicing Cost Accountant given appointment to a client Mr. B representing the company for 10AM on Tuesday. Mr. B cancels the appointment at 9AM on Tuesday (i.e. one hour before appointment time). Advance paid by Mr. B for seeking the appointment is forfeited by Mr. C for cancelling the appointment.

In the given case Mr. C, refraining from entering any other person at the given appointment time. This is called as supply of service. Therefore, forfeited amount is leviable to GST.

Illustration 29

ABC Consultancy, registered in Delhi, supplies technical consultancy services to its clients. It has been providing technical services to CBA Ltd., Delhi since, past two years. Consideration is settled by CBA Ltd. assignment wise. CBA Ltd. paid ₹45 lakh to ABC Consultancy on 10th January, 20XX and ABC consultancy agreeing to not provide similar technical services to any other entity in India or abroad for a period of 8 years. ABC Consultancy is of the view that ₹45 lakh is not chargeable to GST.

You are required to examine whether the view taken by ABC Consultancy is valid in law. Calculate GST liability of ABC Consultancy, if any. The technical services provided by ABC Consultancy is otherwise chargeable to GST at the rate of 18%. It may be noted that CBA Ltd. is not ready to pay any further amount to ABC Consultancy in addition to the amount already agreed.

Solution:

The view taken by ABC Consultancy of Delhi is not valid in law.

As per the paragraph 5(e) of Schedule II provides that agreeing to the refrain from an act, or to tolerate an act or a situation, or to do an act is treated as supply of service.

Thus, any consideration received for agreeing to the obligation to refrain from an act, is subject to GST.

Since, GST is not separately collected, it will be assumed that it is included in ₹45 lakh.

Rule 35 of CGST Rules, 2017 provides that where the value of supply is inclusive of GST, the tax amount is determined in the following manner.

Value of Taxable Supply	
₹45 lakhs × 100/118	= ₹38,13,559/-
GST liability	CGST = ₹45 lakhs × 9/118 = ₹3,43,220/-
	SGST = ₹45 lakhs × 9/118 = ₹3,43,220/-

Tolerate an act or a situation:

Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; is exempted from GST.

Illustration 30

A contract awarded by Bombay Municipal Corporation (BMC) for repair of a particular road to M/s B Ltd., with terms and conditions that the entire work should be completed within 30 days. However, there is a delay of 10 days to complete the work. BMC charged liquidated damages of ₹1,20,000 and the same recovered from M/s B Ltd. Applicable rate of CGST 9% and SGST 9%. Previous year turnover of M/s B Ltd. ₹2 crores.

Find the following:

(a) who is liable to pay GST on what amount?

(b) total tax liability if any?

Solution:

(a) It is supply of service.

(b) M/s B Ltd. being recipient of service is liable to pay GST on ₹1,20,000 (i.e. Reverse Charge applicable). Since, the contractor has performed the contract, but there is a delay of 10 days.

Note:

(i) It appears the liquidated damages recovered by local authority for delay in performance in contract will not be covered under exemption list of GST. The contract has been performed in such cases, GST will be payable on the same.

(ii) Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; is exempted from GST.

Transfer of the right to use any goods for any purpose

In the case of Bharat Sanchar Nigam Ltd. v Union of India 2006 (2) STR 161 (SC), transfer of right to use goods is not transaction of service but transaction of sale of goods. However, the clause 5(f) of Schedule II of CGST Act, 2017 specifically provides that transfer of right to use goods for any purpose shall constitute supply of service. As a result, the above judgment will not be helpful under GST.

Illustration 31

Shyam has given his tempos on hire to Mohan Brothers for transportation of foodstuff for ₹40,00,000. He has also transferred the right to use such tempos to Mohan Brothers. Discuss whether Shyam is liable to pay GST on the said transaction.

Solution: It is treated as supply of service. Shyam is liable to pay GST.

Composite supply:

(a) Works contract.

(b) Supply of food or any other article for human consumption (other than alcoholic liquor for human consumption).

Section 2(119) of CGST Act, 2017 "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;

Illustration 32

Shambhu Pvt. Ltd. was awarded a contract in July 2017 for providing flooring and wall tiling services in respect of a building located in Delhi by Nath Ltd. As per the terms of contract, Shambhu Pvt. Ltd. was to provide all the required material for execution of the contract. However, Nath Ltd also provided a portion of the material.

Whether the services provided by Shambhu Pvt. Ltd. are subject to GST? If yes, determine the GST liability of Shambhu Pvt. Ltd. from the following particulars—

	Particulars	**(₹)**
(i)	Gross amount charged by the Shambhu Pvt. Ltd.	6,00,000
(ii)	Fair market value of the material supplied by Nath Ltd.	1,00,000

(iii) Amount charged by Nath Ltd. for the material [included in (i) above] 60,000

Note: CGST 9% and SGST 9%.

Solution: Works contract is treated as supply of service.

Gross amount charged by the Shambhu Pvt. Ltd.	6,00,000
Add: Fair market value of the material supplied by Nath Ltd.	1,00,000
Less: Amount charged by Nath Ltd. for the material	(60,000)
Total value subject to GST	6,40,000

CGST 9% × 6,40,000	=	₹ 57,600
SGST 9% × 6,40,000	=	₹ 57,600
Total GST liability	=	₹ 1,15,200

Note: The value would have to be in tune with Section 15(4) of CGST Act, 2017 read with Rule 27 of CGST Rules, 2017(i.e. open market value of service) as consideration is not in monetary terms.

Supply of food or any other article for human consumption (other than alcoholic liquor for human consumption).

Example 55

Food supplied in a restaurant has the facility of air-conditioning:

Particulars	Amount (₹)
Total Food Bill	1,000
Service charges @10%	100
Total bill (before GST)	1,100
Add: CGST 2.5% on ₹1,100 (rounded off)	28
Add: SGST 2.5% on ₹1,100 (rounded off)	28
Total Bill payable by customer (rounded off)	1,156

Note: Supply of alcoholic liquor for human consumption will not be considered as a service. It will continue to be taxed by the State in the manner currently being taxed.

Section 7(2)(a) of CGST Act, 2017, Activities Specified in Schedule III (i.e. Negative List):

Supply excludes the following:

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by 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 Legislatures, 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.

Analysis of the Schedule III:

1. Services by an employee to the employer in the course of or in relation to his employment:

Employee to the employer:

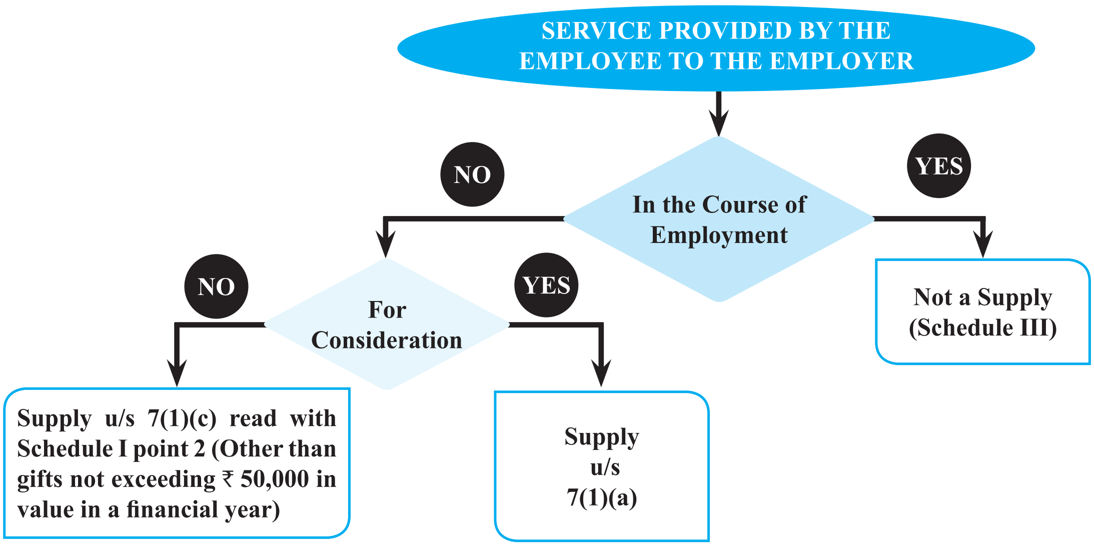


Illustration 33

Pragyan has received a sum of ₹5,00,000 from his employer on premature termination of his contract of employment. Pragyan needs your advice as to whether such receipts are liable to GST.

Solution:

It is not a supply. As per Section 7(2)(a) of CGST Act, 2017 supply excludes services provided by the employee to the employer in the course of employment (covered under Schedule III of CGST Act, 2017).

Hence, amounts so paid would not be chargeable to GST.

Illustration 34

Mr. Raju, an employee provides his service on contract basis to an associate company of Vikram Enterprises, the employer.

The above activity is being carried out in lieu of specific monetary consideration. Is it supply? If so, who is liable to pay GST?

Solution:

Yes. It is supply of service.

Liable to pay GST by Mr. Raju.

Note: Since, Mr. Raju supplied services for consideration to associate company of Vikram Enterprises but not to his employer.

Illustration 35

Salary paid to partners by partnership firm is liable to GST?

Solution:

No. It is not supply.

It is merely an appropriation of profit.

Illustration 36

Raman & Co., (a CMA firm) employer who is represents his employee before the Income Tax authorities but does not charge any professional fee in respect of the same. Is it supply? Liable to GST?

Solution:

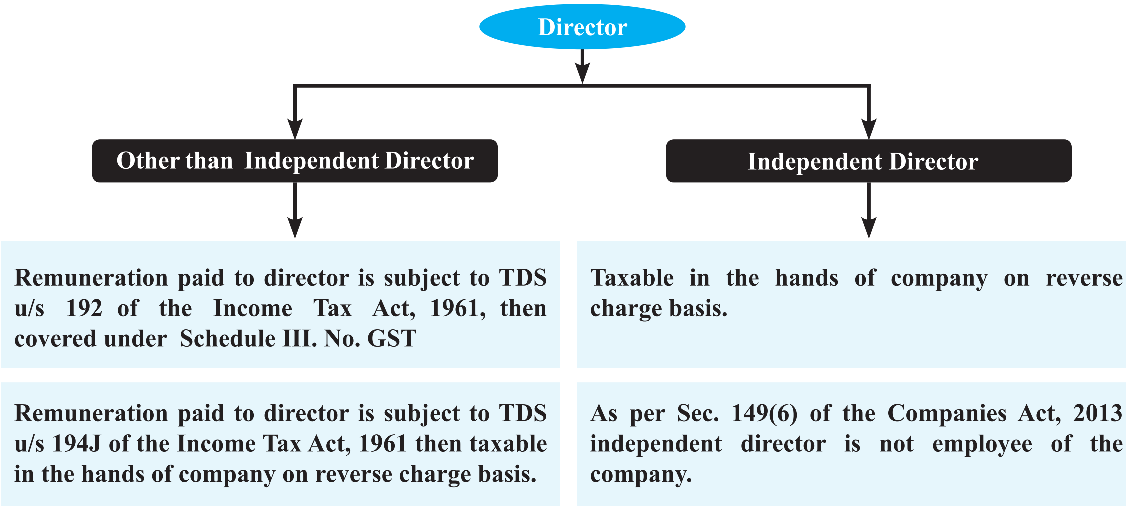
It would constitute a taxable supply under GST and be subject to levy and collection of taxes.

Whether all the directors including managing director is an employee of the company?

Directors	Contractual relationship of master and servant	GST is liable to pay	Who is liable to pay
Managing Director	No	Yes	Company (under RCM)
Whole-time Director	Yes	No	Nil
Executive Director	Yes	No	Nil
Non-executive Directors	No	Yes	Company (under RCM)
Independent Directors/Nominee Director	No	Yes	Company (under RCM)

Director Remuneration (CBIC Circular No. 140/10/2020-GST, dated 10-6-2020):

Remuneration paid to Director (Circular No. 140/10/2020 - GST, dated 10-6-2020):



Fringe benefits - GST

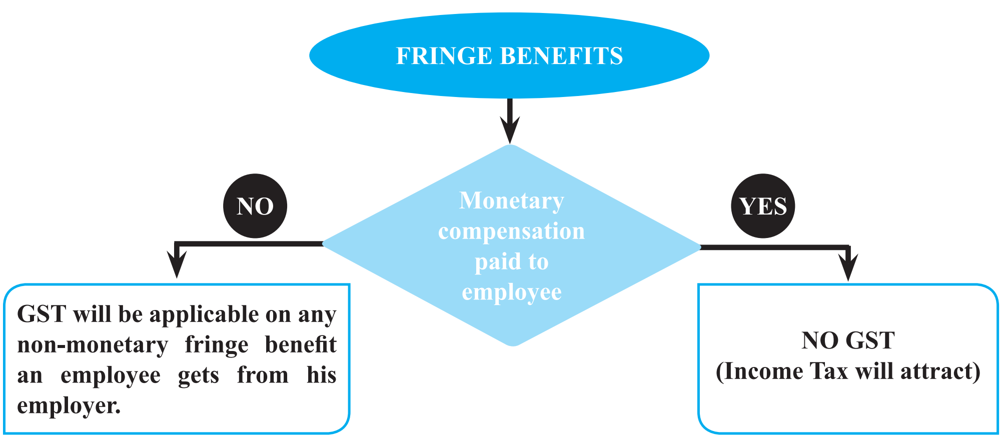
"The compensation to employees in the form of money is not a supply.

However, fringe benefits are supply of goods or services and are liable to tax if not exempted," as per the CBIC clarification.

The fringe benefits are transactions in furtherance of business. "Even if supplied without consideration, the same are deemed supply" and will attract GST.

Fringe Benefits:

Reimbursement to staff is an expense in the course or furtherance of business and if same is against a taxable supply will attract GST.



Section 2(49) of CGST Act, 2017, 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.

Illustration 37

Mr. J has a proprietorship firm in the name of Best & Sons in Jaipur. The firm, registered under GST in the State of Rajasthan, manufactures taxable products. The firm also provides taxable consultancy services.

Mr. J has provided the consultancy service to his brother - Mr. A (located in USA) without any consideration. The products manufactured by Mr. A are similar to the ones manufactured by Mr. J. Mr. J charges Rs. 3,00,000 for providing similar consultancy services to other independent customers located in USA.

Compute the GST liability, if any, in the given case assuming the rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.

Solution:

Since, there is no consideration GST will not be leived in the given case.

Mr. J and Mr. A are not related parties as dedfined under section 2(49) of CGST Act, 2017.

Distinct persons specified under section 25 of CGST Act, 2017:

Every place of business of a person where separate registration is obtained for output supply will be considered as distinct person.

Section 25(4), A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

Section 25(5), Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

Example 56

Mr. CMA Rahim, a Practicing Cost Accountant, has a registered head office in Chennai. He has also obtained registration in the State of Andhra Pradesh in respect of his branch office. Mr. CMA Rahim shall be treated as distinct persons in respect of registrations in Tamil Nadu and Andhra Pradesh. Transactions between head office and branch office will be considered as supply of service even though there is no consideration.

Example 57

Mr. C of Chennai makes taxable supply of services from Tamil Nadu exceeds ₹20 lakhs. Therefore, Mr. C will be required to obtain registration in Tamil Nadu. Such person may have establishment is the State of Telangana where no taxable supplies are made but only the establishment in Telangana helps in handling of materials like procuring and storing. Hence, establishment in Tamil Nadu and establishment in Telangana will be considered as distinct person even when establishment in Telangana is not registered (Section 25(5) of CGST Act, 2017).

Illustration 38

M/s ABC Ltd. has 3 branches A, B & C in different states. A in Telangana has run out of stock and B from Andhra Pradesh transfers its excess stock.

Is it supply of goods? GST will be levied?

Solution:

Yes. It is supply of goods and liable to IGST.

Gifts not exceeding ₹50,000/- in value in a financial year by an employer to an employee:

Services by employee to an employer in the course of or in relation to his employment shall not be treated as supply of services (Schedule III).

However, Gift not exceeding ₹50,000 in value in a financial year by an employer to employee shall not constitute supply of goods or services or both.

Example 58

M/s Know Academy Pvt. Ltd., gives Diwali Gifts to each employee worth ₹75,000/-. Since, an employee and employer are considered to be related persons, such gift treated as supply and would be leviable to GST on the entire value.

Supply of goods by the principal to an agent or by the agent to principal will be considered as a supply even if without consideration. The said transactions are leviable under GST.

Illustration 39

Skyfly provided gifts in the form of air tickets to 10 of its employees based at its head office for an amount equivalent to ₹70,000 each. No amount was recovered from the employees for such air tickets. Find the GST liability of Skyfly? Applicable rate of GST 18%.

Solution:

GST liability = (₹70,000 × 10) × 18% = ₹1,26,000/-

2. Services by court or Tribunal established under any law for the time being in force:

Illustration 40

Is GST leviable on the fee/amount charged in the following situations/cases: –

(1) A customer pays fees while registering complaints to Consumer Disputes Redressal Commission office and its subordinate offices. These fees are credited into State Customer Welfare Fund's bank are account.

(2) Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required.

(3) When a person files an appeal to Consumers Disputes Redressal Commission against order of District Forum, amount equal to 50% of total amount imposed by the District Forum or ₹ 25,000/- whichever is less, is required to be Paid.

Solution:

As per CBIC Circular No. 32/06/2018-GST, dated 12th February 2018, fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST. Any penalty imposed by or amount paid to these Commissions will also not attract GST.

Thus, GST will not be levied in case of (1), (2) and (3) above.

3. (a) The functions performed by the Members of Parliament, Members of State Legislatures, 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.

Example 59

- Right to recover insurance money,
- Claim for arrears of rent,
- Unsecured debentures or unsecured loans,
- Bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipts etc.

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:

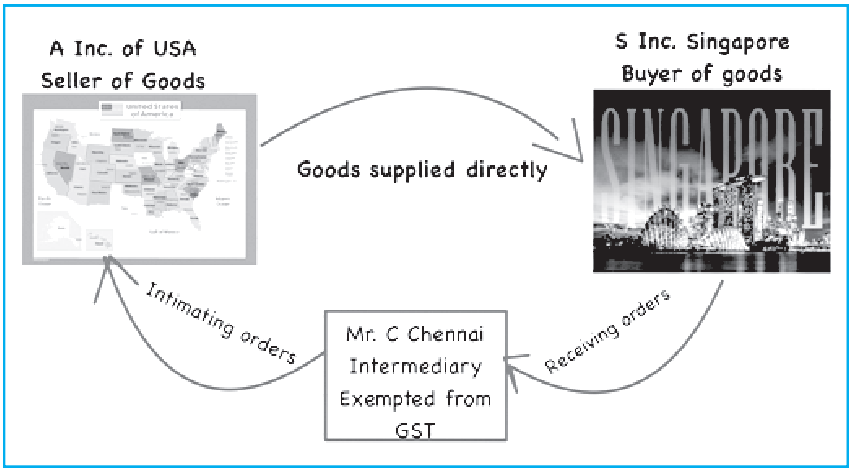
Illustration 41

Mr. Zombi, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US. With reference to the provisions of GST law, examine whether the said activity of supply of goods by Mr. Zombi to customer in US is taxable under GST. If yes, determine the place of supply of the same.

Solution:

w.e.f. 1-2-2019 it is treated as supply exclude "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".

It is pertinent to note that in case of supply of service "services provided by an intermediary when location of both supplier and recipient of goods are outside the taxable territory" is also exempt from GST w.e.f. 1-10-2019 vide Notificaito No. 20/2019 (IT Rate) date September 30, 2019).



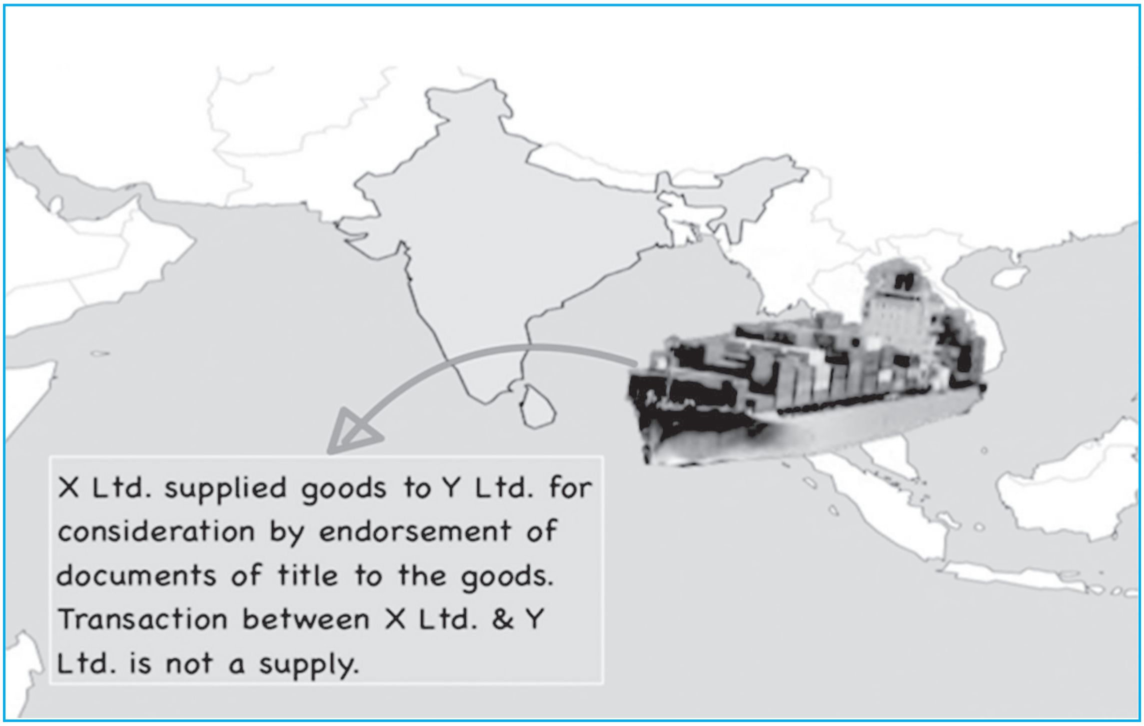
8. (a) Supply of warehoused goods to any person before clearance for home consumption;

Example 60

X Ltd. supplied warehoused goods to Y Ltd. for consideration before clearance for home consumption.

Transaction in between X Ltd. and Y Ltd. is not a supply.

8. (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption:



Solved Case 1

Mr X is working as a Manager in a company M/s ABC Pvt Ltd. On the basis of his past year's performance, the Director of the company Mr. D provided him with free housing facility for which, Mr X will not have to pay anothing in return. Will this trasaction be subjected to GST and termed as supply of service to Mr X ?

Solution:

In the given scenario, it is understood that for covering a transaction under GST, first we need to identify whether the conditions of supply is satisfied or not. For a transaction to be covered under the definition of supply of service, we need to check that condisition in Section 7 is satisfied which states that activity which involved supply of of goods or services and must have consideration in it.

Here Mr X has received free housing facility from his employer without any consideration. Thus it is not covered under the term supply and thus GST is not applicable.

Apart from above, it is to be also stated that terms of contract with Mr X of M/s ABC Pvt Ltd is that of employer and employee and is part and parcel of the cost of the company. Thus, the provisions of GST shall not be applicable in the given case.

Composite and Mixed Supplies (Section 8 of CGST Act, 2017)

Composite supply is when two or more taxable supplies of goods or services or both are sold in a combination, it becomes difficult to identify the rate of tax to be levied. For such goods or services, CGST Act, 2017 has provided with two terms:

(i) Composite supply; and

(ii) Mixed supply.

Composite supply is similar to the concept of "bundled service" as under service tax laws in the existing regime. Both Composite supply and Mixed supply consist of two or more taxable supplies of goods or services or both but the main difference between the two is that Composite supply is naturally bundled i.e., goods or services are usually provided together in normal course of business and cannot be separated. Whereas in Mixed supply, the goods or services can be sold separately.

Composite Supply

Composite supply consists of two or more goods/services, which is naturally supplied with each other in the ordinary course of business and one of them is a principal supply. The items cannot be supplied separately.

Note: Principal supply means the supply of goods or services, which constitute the predominant element of a composite supply and to which another supply is ancillary/secondary.

Following two conditions are necessary for composite supply:

(a) Supply of two or more goods or services together, AND

(b) It should be a natural bundle and they cannot be separated

Example 61

Booking of Air Tickets which involves cost of the meal to be provided during travel will be Composite supply and tax will be calculated on the principle supply which in this case is transportation passengers through flight.

Example 62

M/s X Ltd. entered into a contract with M/s Y Ltd. for supply of goods. 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.

Example 63

A Five-star hotel provides four days and three-night package, with breakfast. This is a composite supply as the package of accommodation facilities and breakfast is a natural combination in the ordinary course of business for a hotel. In this case, the hotel accommodation is the principal supply, and breakfast is ancillary to the hotel accommodation.

The hotel accommodation attracts 18% tax and the restaurant service attracts 28% tax. As per the example, hotel accommodation is the principal supply, and the entire supply will be taxed at 18%.

Illustration 42

Mr. Ram being a dealer in laptops. Sold a laptop bag along with the laptop to a customer, for ₹55,000. CGST and SGST for laptop @18% and for laptop bag @28%. What would be the rate of tax leviable? Also find the GST liability.

Solution:

If the laptop bag is supplied along with the laptop in the ordinary course of business, the principal supply is that of the laptop and the bag is an ancillary.

Therefore, it is a composite supply and the rate of tax would that as applicable to the laptop.

Hence, applicable rate of GST 18% on ₹55,000.

CGST is ₹4,950 and SGST is ₹4,950

Mixed supply

In Mixed supply two or more individual supplies combination of goods or services with each other for a single price. Each of these items can be supplied separately and is not dependent on each other. In other words, the combination of goods or services are not bundled due to natural necessities, and they can be supplied individually in the ordinary course of business.

For tax liability purpose, mixed supply consisting of two or more supplies shall be treated as a supply of that item which has the highest tax rate.

Example 64

Diwali gift hamper which consist of different Items like sweets, chocolates, cakes, dry fruits packed in one pack is Mixed supply as these items can be sold separately and it shall be treated as a supply of that particular item which attracts the highest rate of tax.

Example 65

M/s X Ltd. a dealer, offers combo packs of shirt, watch, wallet, book and they are bundled as a kit and this kit is supplied for a single price and the supply of one item does not naturally necessitate the supply of other elements. Hence the supply is a mixed supply. Tax rate for a shirt, watch, wallet and book are 12%, 18%, 5% and Nil respectively. In this case, watch attracts the highest rate of tax in the mixed supply i.e., 18%. Hence, the mixed supply will be taxed at 18%.

Illustration 43

Mr. A booked a Rajdhani train ticket, which includes meal. Is it composite supply or mixed supply?

Solution:

It is a bundle of supplies. It is a composite supply where the products cannot be sold separately. The transportation of passenger is, therefore, the principal supply.

Rate of tax applicable to the principal supply will be charged to the whole composite bundle.

Therefore, rate of GST applicable to transportation of passengers by rail will be charged by IRCTC on the booking of Rajdhani ticket.

Illustration 44

Big Bazar offers a free bucket with detergent purchased. Is it composite supply or mixed supply? Assume rate of GST for detergent @ 28% and bucket @18%.

Solution:

This is a mixed supply. These items can be sold separately.

Product which has the higher rate, will apply on the whole mixed bundle.

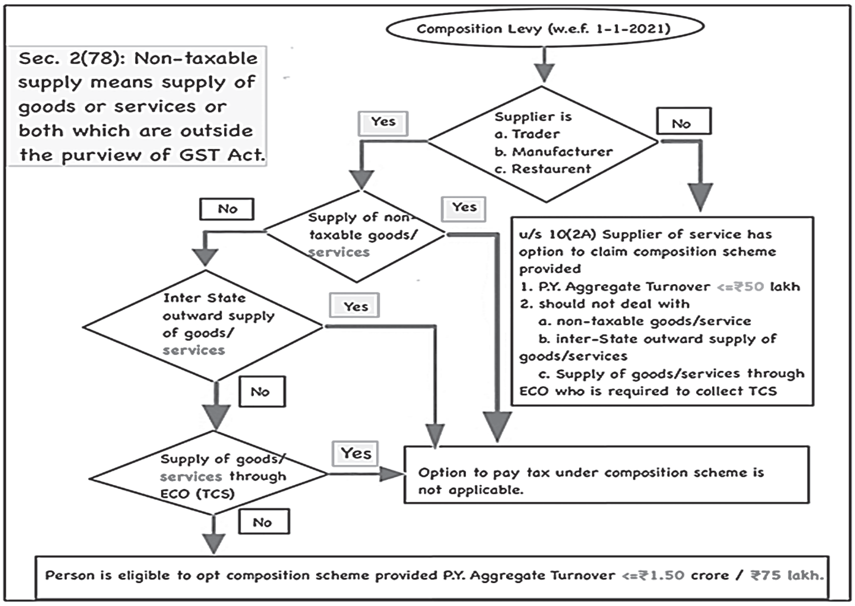
Indicators for determining whether the supply is a Composite or Mixed

Particulars	Composite Supply	Mixed Supply
Naturally Bundled	Yes	No
Supplied Together	Yes	Yes
Can be supplied separately	No	Yes
One is predominant supply of receipient	Yes	No
Other supply is not aim in itself of receipient	Yes	No
Each supply priced separately	No	No
All supplies are goods	Yes	Yes
All supplies are services	Yes	Yes
One supply is goods and other supply is services	Yes	Yes

Composition Scheme

The Government of India provides for simplified and easy of doing business scheme for payment of taxes and filling of returns to certain categories of taxable person. As a result, such taxable person is not required to maintain elaborate records and filing detailed returns. Section 10 of the CGST Act, provides for composition levy to such person.

Person eligible for Composition Levy u/s 10 of CGST



Provided further that a person (i.e. Manufacturer, Trader or Restaurent service supplier) who opts to pay tax under composition scheme may supply services (other than restaurant services) of value not exceeding 10% of turnover in the State or Union Territory in the preceding financial year or ₹5,00,000, whichever is higher.

For the purpose of determination of 10% of turnover in a State or UT in the preceding financial year or ₹5,00,000 whichever is higher:

w.e.f. 1-8-2019, explanation inserted with regard to turnover:—

the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or UT.

Illustration 44

Ram & Co. being a trader of cell phones registered under GST in the State of Tamil Nadu and furnished the following information relating to preceding financial year:

Particulars	Value (₹ in lakhs)
Intra-State supply of taxable goods	120
Intra-State supply of exempted goods	10
Intra-State Supply of taxable services	5
Intra-State supply of exempted services	3
Interest earned on deposits/loans/advances	15.50

Whether Ram & Co. is eligible for composition scheme in the current financial year?

Solution:

Aggregate turnover of Ram & Co. of Ram & Co. in the preceding financial year:

Particulars	Value (₹ in lakhs)	Remarks
Intra-State supply of taxable goods	120	Addable into the aggregate turnover
Intra-State supply of exempted goods	10	-do-
Intra-State Supply of taxable services	5	-do-
Intra-State supply of exempted services	3	
Interest earned on deposits/loans/advances	Nil	Not addable into the aggregate turnover
Aggregate turnover	138	Not exceeded ₹150 lakh.

Value of services not exceeded 10% of turnover or ₹5,00,000 whichever is higher:

Value of taxable output supply of service = ₹ 5 lakh

Add: value of exempted output supply of service = ₹ 3 lakh

Total value of services = ₹ 8 lakh

Supply of service as % on turnover = (₹8 lakh / ₹138 lakh) × 100 = 5.80%

Permissible limit:

10% of turnover = ₹13.80 lakh (i.e. ₹138 lakh × 10%)

w.e.f. 1-8-2019, Interest earned on deposits/loans/advances shall not be taken into account for determining the value of turnover in a State or UT.

Or

₹5 lakh

Whichever is higher

Therefore, the value of service upto ₹ 13.80 lakh can be supplied by Ram & Co.

In the given case supply of services (excluding interest earned on deposits/loans/advances) did not exceed the permissible limit and hence, Ram & Co. is eligible for compositin scheme in the current financial year

w.e.f. 1-4-2019 Extension in the limit of threshold of aggregate turnover for availing Composition Scheme to ₹1.5 crores:

The Central Government vide Notification No. 14/2019-Central Tax, dated 7th March, 2019 notified that an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed ₹1.5 Crores, may opt to pay tax under Composition scheme. However, the said aggregate turnover shall be ₹75 lakh in case of persons registered under following States: —

1. Arunachal Pradesh
2. Manipur
3. Meghalaya
4. Mizoram
5. Nagaland
6. Sikkim
7. Tripura
8. Uttarakhand

Aggregate turnover as per Section 2(6) of CGST Act, 2017:

The term "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 includes	Aggregate turnover excludes
The value of exported goods/services	Inward supplies on which the recipient is required to pay tax under Reverse Charge Mechanism (RCM).
Exempted goods/services or both which attracts nil rate of tax or wholly exempt from tax and includes non-taxable supply.	• Central tax (CGST), • State tax (SGST), • Union territory tax and • Integrated tax (IGST)

Aggregate turnover includes	Aggregate turnover excludes
Inter-State supplies between distinct persons having same PAN	• Compensation Cess
Supply on own account and on behalf of principal.	

Important points:

(i) The turnover will be computed PAN wise.

(ii) The partner and partnership firm will have different PAN Nos. Thus, the turnover of the partner and partnership firm will not be aggregated.

(iii) The HUF and individual coparcener of the family have different PAN Nos. Hence, turnover of Karta of HUF in his individual capacity and turnover of Karta as a Karta of HUF will not be aggregated.

(iv) Supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143 of the CGST Act, 2017, and the value of such goods shall not be included in the aggregate turnover of the registered job worker. It will be included in the turnover of turnover of principal.

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

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

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

and

(b) 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.

Persons not entitled to avail Composition Scheme:

The Section 10(2) of the CGST Act, 2017 specifies the benefit of composition scheme shall not be granted if a taxable person is:

(a) engaged in the supply of services (other than restaurant and outdoor catering service), except supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding 10% of turnover in a State or Union territory in the preceding financial year or ₹5,00,000, whichever is higher;

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

(c) engaged in making any inter-State outward supplies of goods;

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

(e) a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Illustration 45

M/s X Ltd. being a manufacturer of laptops has five factories in Chennai, Salem, Coimbatore and Madurai.

Place	P.Y. Turnover ₹ in lakhs (Including Taxes @ 18%)
Chennai I	57.91
Salem	12.00
Coimbatore	8.00
Madurai	30.00
Chennai II	43.60
Total	151.51

M/s X Ltd is eligible for composition levy in the current year.

Solution:

Aggregate turnover = 151.51 × 100/118 = ₹128.39831 lakhs

Note: Since, Aggregate turnover in the preceding financial year does not exceed ₹1.50 crore and hence, M/s X Ltd. is eligible for Composition Scheme.

Illustration 46

M/s Y Ltd. being a trader of laptops has two units in Chennai and in Mumbai.

Place	P.Y. Turnover ₹ in lakhs (Excluding taxes)
Chennai	52.00
Mumbai	12.00

You are required to answer the following:

(a) M/s Y Ltd is eligible for composition levy in the current year.

(b) If so, M/s Y Ltd can opt composition scheme for Chennai location and normal scheme for Mumbai.

(c) Need to give separate intimations for opting composition scheme in each State.

Solution:

(a) Yes. M/s Y Ltd is eligible to avail the composition scheme in both the States namely Tamil Nadu and Maharashtra.

Since, M/s Y Ltd. has same PAN, and his aggregate turnover does not exceed ₹1.50 crore is eligible for composition levy, even though the company has multiple registrations under GST.

(b) No. M/s Y Ltd cannot opt composition scheme for one location normal scheme for another location.

Where more than one registered person are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) of Section 10 of CGST Act, 2017 unless all such registered persons opt to pay tax under that sub-section.

(c) Intimation to opt composition scheme in respect of any place of business in any State or Union Territory shall be deemed to be intimation in respect of all other places of business registered on the same Permanent Account Number (PAN).

Illustration 47

M/s X & Co., sells electrical cables, motors and wires. Company also undertake repair of switches, motor sets. Turnover during preceding financial from sale of goods is ₹59 lakhs, whereas repairing unit is ₹1 lakh.

M/s X & Co., is eligible for composition scheme. Advice.

Solution:

Yes.

Since, supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding 10% of turnover in a State or Union territory in the preceding financial year or ₹5,00,000, whichever is higher.

Therefore, the benefit of composition scheme will be extended to M/s X & Co.

Working Note:

Value of service = ₹1 L/60 L × 100 = 1.67%

Illustration 48

Mr. A is a paper merchant own 5,000 sq ft., shop at Chennai. Mr. A offered extra space available in their shop to supplier to put up their advertisement. His turnover in the previous year from sale of goods ₹20 lakhs and advertising services ₹2 lakhs. Mr. A is eligible for composition scheme in the current year

Solution:

Yes.

Value of service = ₹2 L/₹22 L × 100 = 9.09%

Mr. A being a paper merchant whose supply of services do not exceed 10% of total supply or ₹5 L whichever is higher. Hence, the benefit of composition scheme is allowed.

Illustration 49

Hotel King Pvt., Ltd. provider of restaurant services in New Delhi. They also serve beer, whisky and so on. Turnover in the preceding previous year is ₹67 lakhs. Hotel King Pvt. Ltd. is eligible for composition scheme in the current year.

Solution:

Hotel King Pvt. Ltd., is not eligible for composition scheme. Since they are supplying the product, which is not levied to GST (namely beer, whisky called as non-taxable supply).

Illustration 50

Mr. C of Chennai is a retailer dealing with cell phones. He supplies goods to the person located in Chennai and Pondicherry. Aggregate turnover in the preceding financial year is ₹45 lakhs. Mr. C wants to opt for composition scheme in the current financial year.

Solution:

No. When the person makes inter-State supply of goods benefit of composition scheme is prohibited. Therefore, Mr. C will not be entitled to the benefit of composition scheme.

Illustration 51

Peter England is a trader who sells his ready-made clothes online on Amazon India (an Electronic Commerce

Operator). He received an order for ₹12,00,000 in the previous year. Peter England also supplied goods from there out lets. Aggregate turnover of the company in the previous year was ₹21,00,000.

Peter England is eligible for composition scheme.

Solution:

No. Peter England engaged in making supply of goods through an electronic commerce operator who is required to collect tax at source under section 52 of CGST Act, 2017. Hence, Peter England is not eligible for composition scheme.

Illustration 52

Hot Breads Pvt. Ltd is the supplier of bakery products registered in the current financial year (2022-23) w.e.f. 1st Oct. 2022. In the month of Oct. 2022 total taxable supplies ₹88 lakhs.

Note:

Answer the following:

(a) Company is eligible for Composition Scheme?

(b) If so company wants to pay tax @1% being a trader. However, the Deputy Commissioner of Central Tax contended that the assessee is liable to pay tax @5% under the Food and Restaurant Services category? Advise.

Solution:

(a) Hot Breads Pvt. Ltd. is eligible for composition levy in the current year.

(b) The supply of food and restaurant services category is the only service included under the composition scheme. For a business to be categorised as food and restaurant services, there needs to be an element of service involved.

In the given case, supply of bakery products, there is only a supply of goods i.e. food items but there is no element of supply of service. Hence supply of bakery products is eligible to pay GST @1%, under the Traders category and not Food and Restaurant Services category.

Therefore, department contention is not correct.

Illustration 53

Hotel King Pvt. Ltd. is a registered person under GST. P.Y. turnover was ₹100 lakhs. Applicable GST 18%. Inputs cost ₹7,80,000 (exclusive of GST 18%). Profit margin is 40% on cost. Find the invoice price and advice the best option to pay tax if any. There is no opening balance and closing balance for the tax period.

Solution:

Composition Levy		Normal provision	
Particulars	**Value in (₹)**	**Particulars**	**Value in (₹)**
Cost of inputs	7,80,000	Cost of inputs	7,80,000
Add: GST 18% on inputs	1,40,400	Add: GST 18% on inputs	Not cost
Total cost	9,20,400	Total cost	7,80,000
Add: Profit margin 40%	3,68,160	Add: Profit margin 40%	3,12,000

Composition Levy	
Invoice Price	12,88,560
CGST 2.5%	32,214
SGST 2.5%	32,214
Total GST liability	64,428

Normal provision		
Add: GST 18% CGST & SGST	1,96,560	
Invoice Price	12,88,560	
	CGST 9%	SGST 9%
Output tax	98,280	98,280
Less: ITC	-70,200	-70,200
Let Liability	28,080	28,080
Total Tax is ₹56,160		

Advise:

Normal scheme is economical.

Illustration 54

Love is running a consulting firm and also a fancy store in the State of Karnataka and registered under the same PAN number. Turnover of the fancy store is ₹65,00,000 and receipt of consultancy firm is ₹10,00,000 in the preceding financial year.

You are required to provide answers with supporting explanatory note for each answer to the following questions:

(i) Is Love eligible for composition scheme under CGST Act?

(ii) Whether it is possible for Love to opt composition scheme only for fancy store?

(iii) If Love is running a restaurant with turnover of ₹65,00,000 instead of consultancy firm as well as a fancy store, would he be eligible for composition scheme?

Solution:

(i) As per section 10(2)(a) of CGST Act, 2017 if a taxable person is engaged in the supply of services (other than restaurant and outdoor catering service) is not eligible for Composition Scheme under CGST Act, 2017 except supply of services (other than restaurant and outdoor catering service), of value not exceeding 10% of turnover in a State or Union territory in the preceding financial year or ₹5,00,000, whichever is higher;

10% of ₹75,00,000/- is ₹7,50,000/- which is exceeded the permissible limit.

Therefore, Love is not eligible for composition scheme.

(ii) If a business is ineligible to opt for composition, then all other business registered under the same PAN shall automatically ineligible for the composition scheme. So Love is not eligible for composition scheme only for fancy store.

(iii) Restaurant services and fancy store are eligible for the composition scheme provided the aggregate turnover does not exceeds ₹1.50 crore.

Hence, Love is eligible for Composition Scheme. Since, his aggregate turnover is ₹65 lakhs (i.e. not more than ₹1.50 crore).

Illustration 55

M/s ABC & Co., made the following supplies during the month of October 20XX:

(a) Restaurant, mobile dealership and textile manufacturing unit.

(b) Rework, in the following restaurant, supply of mobile through an ecommerce operator.

Solution:

(a) Yes. M/s ABC & Co., is eligible for composition scheme in the current year

(b) No. M/s ABC & Co., is not eligible for composition scheme in the current year

Conditions and Restrictions for Composition Levy (Rule 5 of Chapter II of the CGST Rules, 2017):

(a) The person opting for the scheme must neither be a casual taxable person nor a non-resident taxable person.

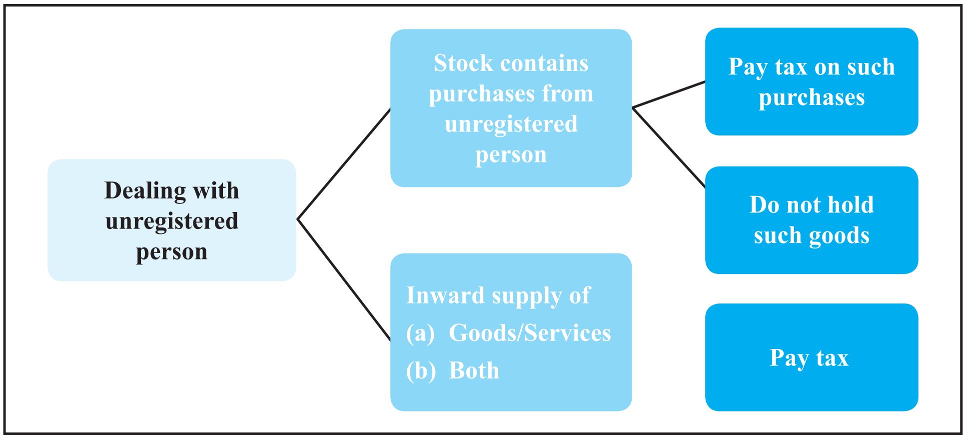
(b) The goods held in stock by him on the appointed day have not been—

- purchased in the course of inter-State trade or commerce or
- imported from a place outside India or
- received from his branch situated outside the State or
- from his agent or principal outside the State, where option is exercised under rule 3(1) of the CGST Rules,2017 (i.e. who opted composition scheme at the time of migrating into GST).

(c) The goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under reverse charge (i.e. Section 9(4) of CGST).

(d) He shall pay tax as per normal rates, in case of inward supply of goods and services or both received under Section 9(3) or (4) of CGST Act, 2017. These sub-sections provide for payment of tax by recipient of goods or services.

Where the taxpayers deal with unregistered person, tax must be paid or not stock must be held.



(e) He was not engaged in the manufacture of goods as notified u/s 10(2)(e) of the CGST Act, 2017 during the preceding financial year.

The registered person shall not be eligible to opt for composition levy under clause (e) of sub-section (1) of section 10 of the said Act if such person is a manufacturer of the following goods:

Sl. No.	Tariff item, sub-heading, or heading or Chapter	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa.
2	2106 90 20	Pan masala
3	24	All goods, i.e. Tobacco and manufactured tobacco substitutes
4	2202 10 10	w.e.f. 1-10-2019 AERATED WATER

a registered person making supplies of the above goods is also not eligible to pay concessional tax under the said notification (i.e. traders who deals with above goods are also not eligible for composition scheme).

(f) Mandatory display on invoices of the words "composition taxable person, not eligible to collect tax on supplies".

(g) Mandatory display of the words "Composition Taxable Person" on every notice and signboard displayed at a prominent place.

Effective date for opting composition Scheme:

Assessee filing intimation	Effective date of composition levy
Form GST CMP-01	Appointed Date
Registered person	Beginning of financial year
Form GST REG-01	Effective date shall be from the date fixed under Rule 10(2) or Rule 10(3) of Chapter III of CGST Rules, 2017. Rule 10(2) provides that if person has applied for registration within 30 days from the date when he is liable to obtain registration, the effective date is when he is liable to be registered. **Example 123:** If a person is liable to be registered on 1st Oct. 2017 and he has applied for registration on 17th Oct. 2022, the date of registration will be 1st Oct 2022. As a result, effective date of registration for composition levy is 1st Oct 2022. Rule 10(3) provides that the applicant has submitted an application for registration after the expiry of 30 days from the date of his becoming liable to registration; the effective date of registration shall be the date of the grant of registration. **Example 124:** If a person is liable to be registered on 1st Oct. 2022 and he has applied for registration on 17th Nov. 2022. Registration granted on 20th Nov. 2022. The effective date of registration will be the date of grant of registration (i.e. 20th Nov. 2022). As a result, effective date of registration will be effective date for opting for composition scheme (i.e. 20th Nov 2022).

Summary:

Effective date for Composition Levy

For persons already registered under pre-GST regime Effective Date: **Appointed Date**	**Registered Person** Beginning of the financial year, where the intimation is filed prior to the commencement of the financial year. If switch over during financial year then effective date is the date of filling intimation	**For persons who** applied for fresh register under GST to opt scheme: **Effective Date:** Option to pay tax under Composition Scheme shall be effective from: • Where the application for registration has been submitted within thirty days from the day it becomes liable for registration, such date. **Otherwise, actual date of grant of registration.**

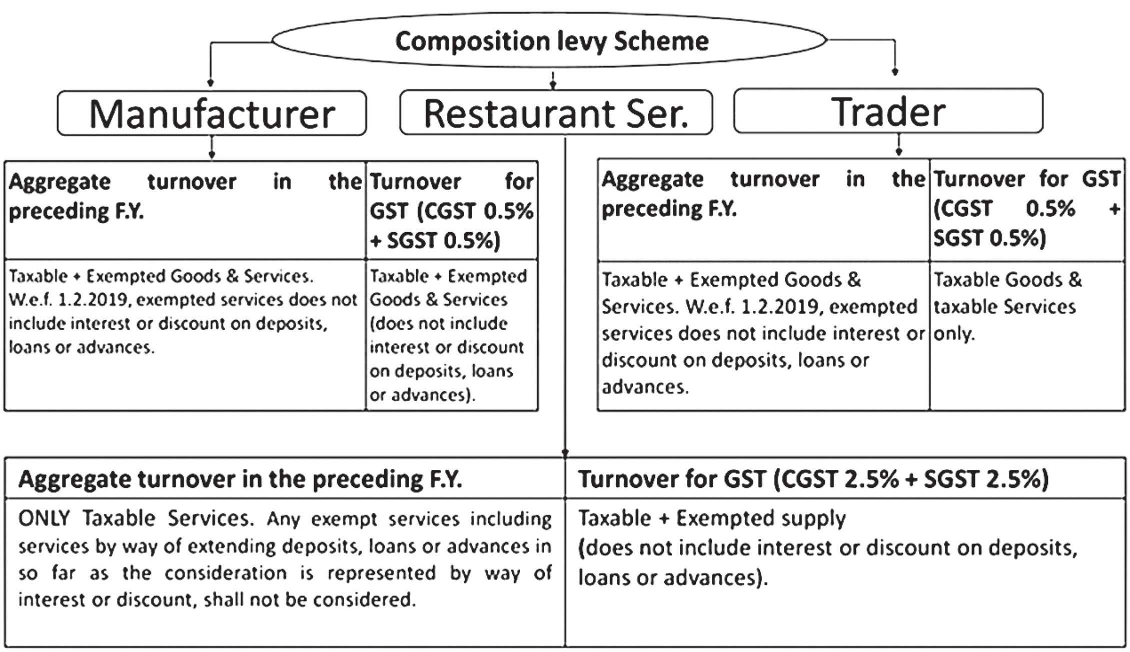
Intimation for composition levy:

Persons already registered under Pre-GST regime who opts to pay tax under section 10 (i.e. composition scheme)	**Any registered person who opts to pay tax under section 10 of CGST Act, 2017 (i.e. composition scheme)**	**Any Persons who applied for registration**
Shall electronically file an intimation in **FORM GST CMP-01**, prior to the appointed day, but not later than 30 days after the said day, or such further period as may be extended by the Commissioner in this behalf:	**Switches from Normal Scheme to Composition Scheme:** shall electronically file an intimation in **FORM GST CMP-02**, prior to the commen-cement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in **FORM GST ITC-03** in accordance with the provisions of subrule (4) of rule 44 within a period of **60 days** from the commencement of the relevant financial year.	Option to pay tax under section 10 in Part B of FORM GST REG-01, which shall be considered as an intimation to pay tax under the said section.
where the intimation in **FORM GST** CMP-01 is filed after the appointed day, the registered person • shall not collect any tax from the appointed day • shall issue bill of supply for supplies made after the said day	**NT. No. 30/2020-CT, dated 03.04.2020 w.e.f. 31.03.2020:** [Provided that any registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in **FORM GST CMP-02**, on or before **30th day of June, 2020** and shall furnish the statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (4) of rule 44 upto the **31st day of July, 2020.**]	

shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in **FORM GST CMP-03** within a period of **90 days** from the date on which the option for composition levy is exercised		

Section 10(3)	Lapse of Option availed by Composition dealers	Option availed u/s 10(1)/(2A) by a composition dealer wrt composition levy shall stands lapsed wef date on which his aggregate turnover exceeds the specified limits. If such date falls between 20.3.20 to 30.06.2020, there shall be no extension for such person for switching to regular person.

Composition Rate of Tax



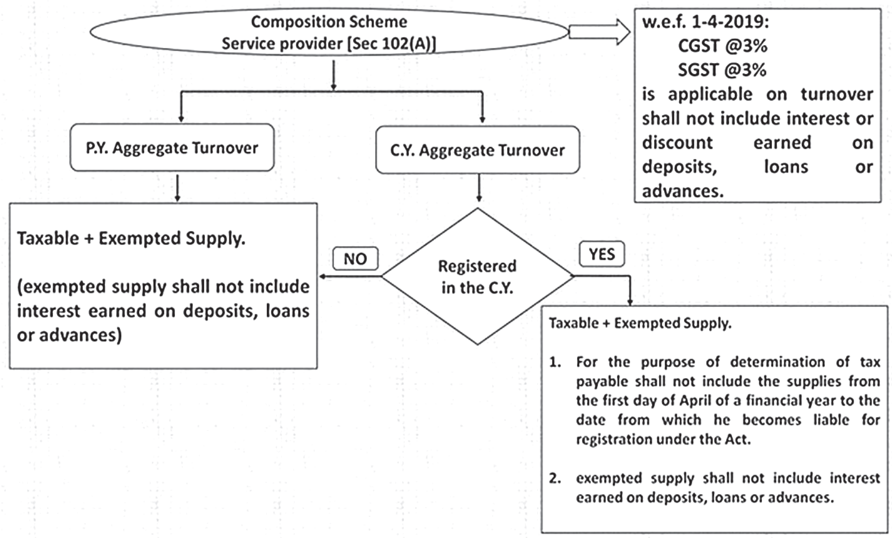


Illustration 56

X & Co. being a supplier of taxable and exempted services registered under GST law in the State of Maharashtra and furnished the following information pertaining to the preceding financial year:

Particulars	Value (₹ in lakh)
Intra-State supply of taxable output services	22
Intra-State supply of exempted supplies	28
Interest earned on deposits/loans/advances	5

Turnover during 1st quarter of the current financial year of X & Co. is as follows:

Particulars	Value (₹ in lakh)
Intra-State supply of taxable output services	2
Intra-State supply of exempted supplies	8
Interest earned on deposits/loans/advances	5

Find the following:

(a) X & Co. is eligible to opt composition scheme in the current financial year?

(b) If so, find the CGST & SGST liability of X & Co. for the 1st quarter of the current financial year?

Solution:

w.e.f. 1-8-2019

(1) For the purpose of computing aggregate turnover of a person for determining his eligibility to pay tax under section 10(2A) of CGST Act, 2017, shall not include the value of exempted 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.

(2) For the purpose of determining the tax payable by a person under Section 10(2A) of the CGST Act, 2017 on "turnover" shall not include the value of exempt supply of services provided by way of extending deposits, loans, or advances in so far as the consideration is represented by way of interest or discount.

In the given case turnover in the preceding financial year is as follows:

Particulars	Value (₹ in lakh)
Intra-State supply of taxable output services	22
Intra-State supply of exempted supplies	28
Aggregate turnover	50

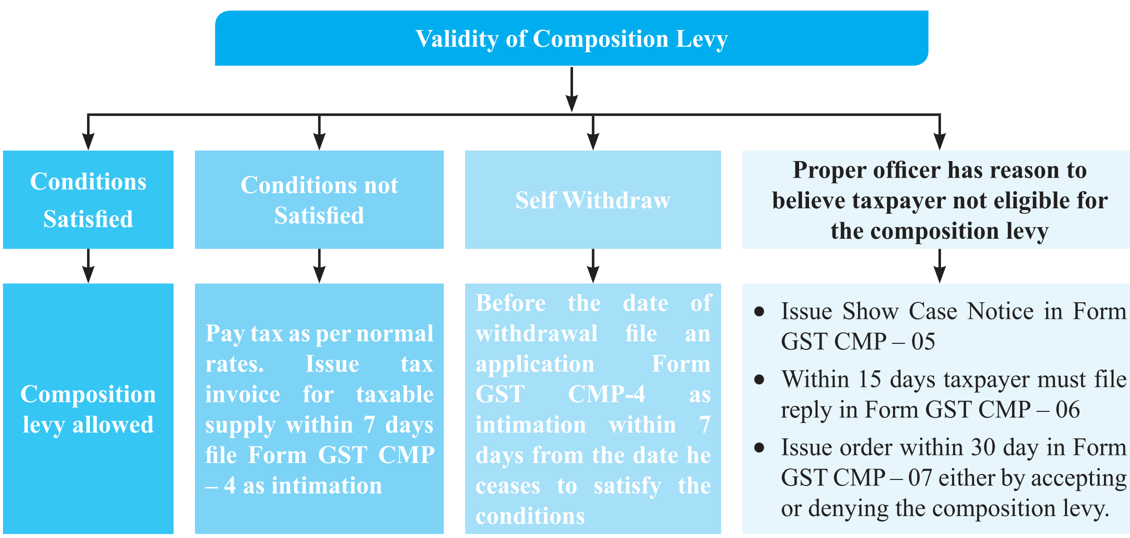
(a) Since, aggregate turnover in the preceding financial year did not exceed ₹50 lakh, X & Co. may opt to pay tax under composition scheme in the current financial year.

(b) GST liability of X & Co., during the 1st quarter of the current financial year:

Particulars	Value (₹ in lakh)
Intra-State supply of taxable ouput services	2
Intra-State supply of exempted supplies	8
Aggregate turnover	10
CGST 3% on ₹10 lakh	0.30
SGST 3% on ₹10 lakh	0.30

Validity of Composition Levy

As per Rule 6 of Chapter II of CGST Rules, 2017 provides that option exercised by the person to pay tax on composition basis remain valid as long as he satisfies the conditions.



Various Forms for Composition levy assessee:

Composition Scheme Rules under GST-Compliance

Sl. No.	Form Required	Purpose	Due date
1.	Form GST CMP-01	To opt for scheme by provisional registration holder	Prior to appointed date or within 30 days of the said date
2.	Form GST CMP-02	Intimation of willingness to opt for scheme by registered person	Prior to the Commencement of Financial Year
3.	Form GST CMP-03	Details of stock and inward supplies from unregistered person	Within 90 days of excise of option
4.	Form GST CMP-04	Intimation of withdrawal from scheme.	Within 7 days of occurring of event. Details of stock and capital goods, are required to file in FORM GST ITC-01 within 30 days of occurring of event.
5.	Form GST CMP-05	SCN on contravention of rules or Act, issued by Proper Officer	On contravention
6.	Form GST CMP-06	Reply to show cause notice	Within 15 days
7.	Form GST CMP-07	Issue of order	Within 30 days
8.	Form GST CMP-08	w.e.f. 1-4-2019: Details of payment of self-assessed tax	18th day of the month scucceeding such quarter

The amended rule 62 whose heading has been changed to "Form and manner of submission of statement and return" provides as under:

(i) Every registered person paying tax under section 10 or paying tax by availing the benefit of Notification No. 02/2019-CT (R), dated 07.03.2019 shall electronically furnish -

  (a) a statement in the prescribed form (i.e. w.e.f. 1-4-2019 FORM GST CMP-08) containing details of payment of self-assessed tax, for every quarter (or part of the quarter), by 18th day of the month succeeding such quarter; and

  (b) a return (GSTR 4) for every financial year (or part of the financial year), on or before 30th day of April following the end of such financial year.

(ii) Every registered person furnishing the statement under sub-rule (1) shall discharge his liability towards tax or interest payable by debiting the electronic cash ledger.

(iii) The return furnished under sub-rule (1) shall include the- (a) invoice wise inter- State and intra-State inward supplies received from registered and un-registered persons; and (b) consolidated details of outward supplies made.

(iv) A registered person who has opted to pay tax under section 10 or by availing the benefit of Notification No. 02/2019-CT(R) dated 07.03.2019 from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under rules 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

Here, the person shall not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme or paying tax by availing the benefit of Notification No. 02/2019-CT(R), dated 07.03.2019.

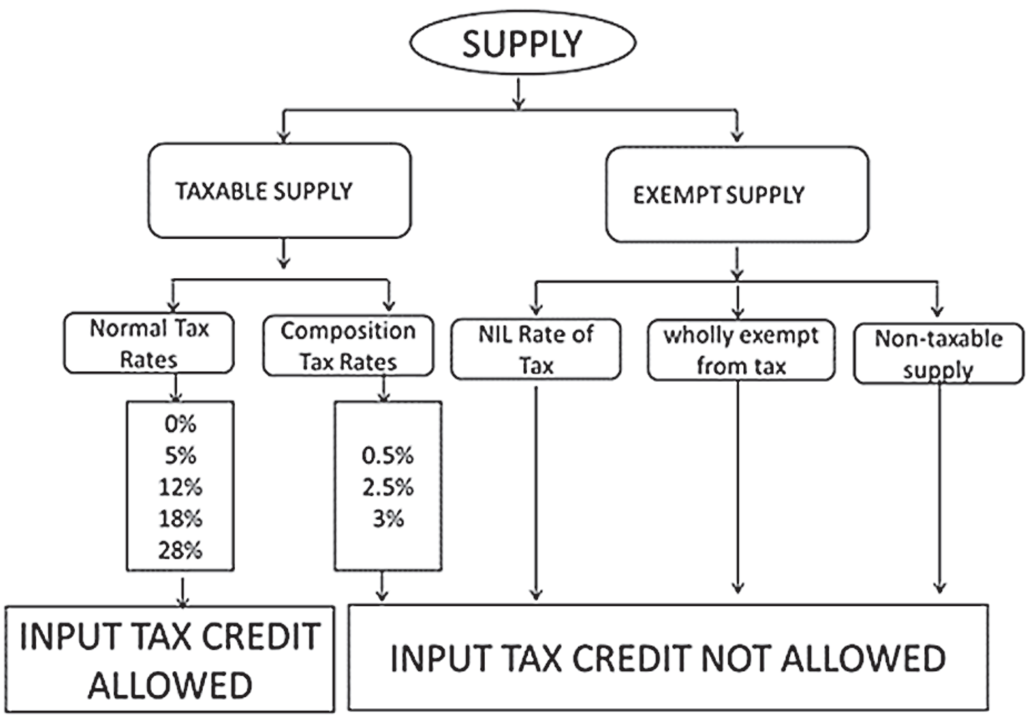
(v) A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax under the composition scheme till the 18th day of the month succeeding the quarter in which the date of withdrawal falls and furnish GSTR 4 for the said period till the 30th day of April following the end of the financial year during which such withdrawal falls.

(vi) A registered person who ceases to avail the benefit of Notification No. 02/2019-CT(R), dated 7.03.2019, shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax by availing the benefit under the said notification till the 18th day of the month succeeding the quarter in which the date of cessation takes place and furnish GSTR 4 for the said period till the 30th day of April following the end of the financial year during which such cessation happens.

[Notification No. 20/2019-CT, dated 23.04.2019]

Exemptions:

Taxable Supply vs Exempted Supply



Power to grant exemption from tax:

CGST Act, 2017	IGST Act, 2017	Provision
Section 11(1)	Section 6(1)	Power to grant exemption with the Central Government by Notification; • General exemption • Absolute exemption • Conditional exemption Upon recommendation of the GST Council
Section 11(2)	Section 6(2)	Exemption by special order
Section 11(3)	Section 6(3)	Explanation in such notification issued u/s 11(1) or 6(1) of CGST or IGST or order issued u/s 11(2) or 6(2) of CGST or IGST as the case may be.

As per Section 11 of the CGST Act, 2017 and Section 6 of the IGST provides power to Central Government of India to exempt on recommendation of the GST Council either absolutely or subject to such condition, as may be specified goods or services of specified description from the whole or any part of the tax leviable thereon.

Exempt Supply:

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

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

(a) Supply attracting nil rate of tax;

(b) Supplies wholly exempt from tax;

(c) Non-taxable supply;

General Exemptions:

As per section 11(1) of the CGST Act, 2017 and section 6(1) of the IGST Act, 2017 the Government of India on the recommendations of the GST Council by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

Example 66

(1) General exemption granted where supply is in relation to supply of Indian National Flag [vide Notification No.2/2017-Central Tax (Rate), dated 28-6-2017]. It is called as absolutely exempt. GST rate is Nil.

(2) Services provided by a goods transport agency, by way of transport in a goods carriage of - agricultural produce where exempted from GST [videNotification No. 12/2017-Central Tax (Rate), dated 28-06-2017]. It is called as General exemption subject to such condition where supply of service is in the nature of transport of agricultural produce.

Absolute Exemption vs Conditional Exemption:

Absolute Exemption	Conditional Exemption
The taxable person must avail all the benefits of notification, which are absolute (i.e. without any condition). **Example 67:** Applicability of section 9(3) of CGST Act, 2017 where RCM is mandatory.	In case of conditional exemption, this is upto the registered person to avail or not to avail the benefit. **Example 68:** Applicability of section 10 of CGST is at the option of the eligible assessee.

Exemption by Special Order:

As per section 11(2) of the CGST Act, 2017 and section 6(2) of the IGST Act, 2017 the Government of India on the recommendations of the GST Council by Special Order, in each case, under circumstances of an exceptional nature to be stated in such order, exempt from the payment of tax any goods or services or both on which tax is leviable.

Example 69

Exemption granted by special order to all assesses registered in one State, from payment of GST by reason, earthquake or assesses are affected in tsunami. Such special order can be issued only in exceptional nature to be stated in such order.

Explanation in such notification or order:

As per section 11(3) of the CGST Act, 2017 or section 6(3) of the IGST Act, 2017, Government is empowered to clarify the scope of applicability of any notification or special order by inserting an explanation in such notification or order. Such clarification shall only be issued by notification within ONE year of issuing of notification or special order and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Example 70

Assume a notification issued on 28th June 2017 may specify that it will be effective from 1st July 2017. In such case an explanation is inserted (i.e. subsequently) within one year reckoned from 1st July 2017 but not from 28th June 2017. If so such an explanation is effective from 1st July 2017.

Sec. 11(3) of CGST Act, 2017

[Circular No. 120/39/2019-GST, dated 11.10.2019]:

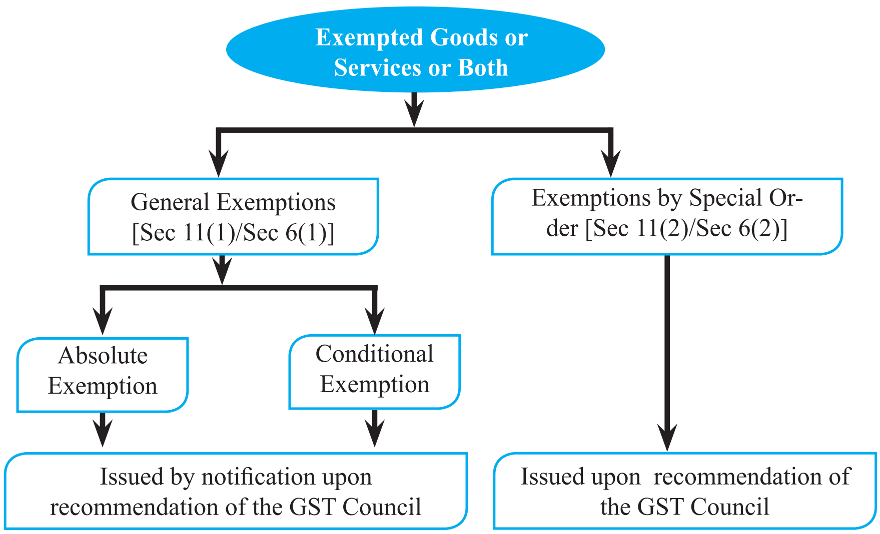
Section 11(3) of CGST Act provides that the Government may insert an explanation in any notif ication issued under section 11, for the purpose of clarifying its scope or applicability, at any time within 1 year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.

It is hereby clarified that the explanation having been inserted under section 11(3) of the CGST Act, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective.

Example 71

The principal Notification No. 11/2017 CT (R) dated 28.06.2017 came into force with effect from 1.07.2017. Thereafter, a new entry - **Entry no. 10(A) is inserted w.e.f. 21.09.2017**. Subsequently, an explanation is also inserted with respect to entry no. 10(A) on 26.07.2018. Although the effective date mentioned in the notification which inserted said explanation is 27.07.2018, said explanation will be effective from the inception of entry in notification i.e. **21.09.2017** and not 27.07.2018.

Summary:



Ambiguity on interpretation of the exemption notification must be in favour of revenue

The Supreme Court in case of Commissioner of Customs (Import) Mumbai v M/s Dilip Kumar and Company (2018-TIOL-302-SC-CUS-CB), held that in case of ambiguity in a charging provision, benefit must be necessarily go in favour of assesse but the same is not true for an exemption notification. When there is ambiguity in exemption notification which is subject to the strict interpretation, the benefit of such ambiguity cannot be claimed by the assesse and it must be interpreted in favour of the revenue. The view taken in this case, has overruled the judgment given in the case of Sun Export Corporation, Bombay v Collector of Customs, Bombay (2002-TIOL-118-SC-CX-LB), where the benefit of the ambiguity on the interpretation of the exemption notification was conferred in favour of the assesse.

In this case, it is observed that the Exemption notification should be interpreted strictly and the burden of proving applicability would be on the assesse to show that his case comes within the parameters of the exemption clause or exemption notification. Also, when there is an ambiguity in the exemption notification which is subject to strict interpretation, the benefit of such ambiguity shall be made available to the revenue, unlike the taxing provisions where the benefit of ambiguity goes in favour of the assesse.

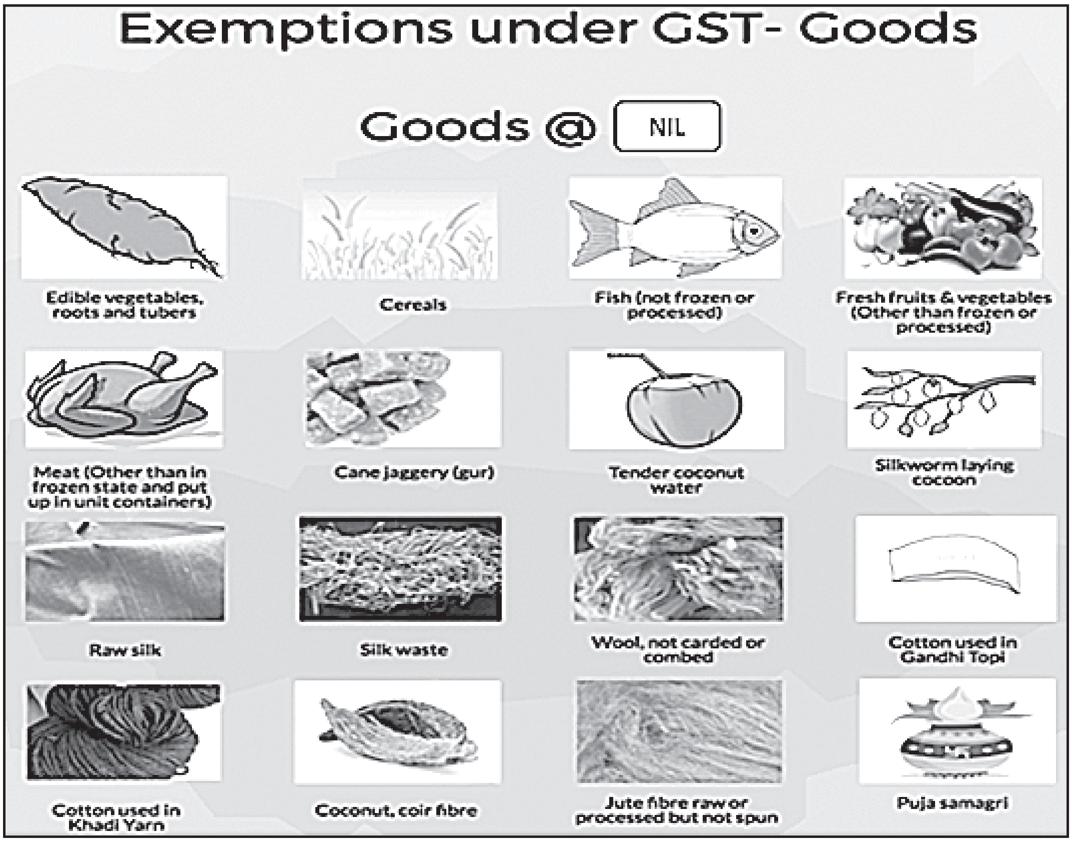
However, under GST regime also, the assessees are required to be more careful while claiming the benefit of the exemption notification.

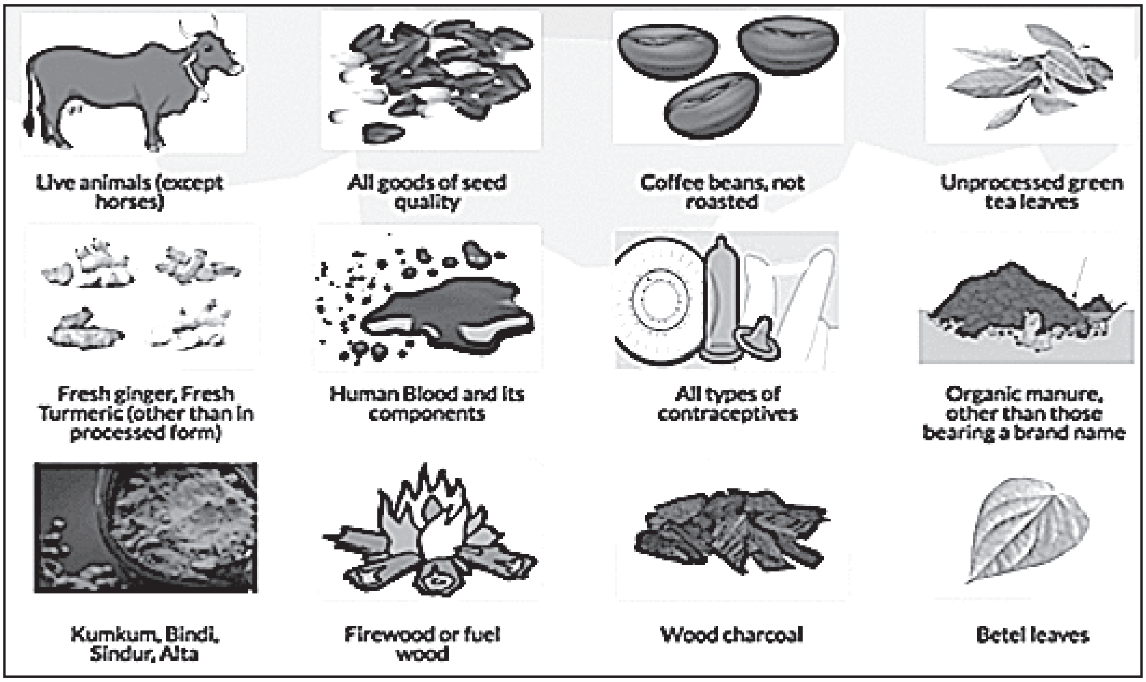
Notifications on Exempted Supplies

1.3

The following goods exempted from GST:

Illustrative list from Notification No. 2/2017-Central Tax (Rate), dated 28-06-2017):




Live animals (except horses)
All goods of seed quality
Coffee beans, not roasted
Unprocessed green tea leaves
Fresh ginger, Fresh Turmeric (other than in processed form)
Human Blood and its components
All types of contraceptives
Organic manure, other than those bearing a brand name
Kumkum, Bindi, Sindur, Alta
Firewood or fuel wood
Wood charcoal
Betel leaves

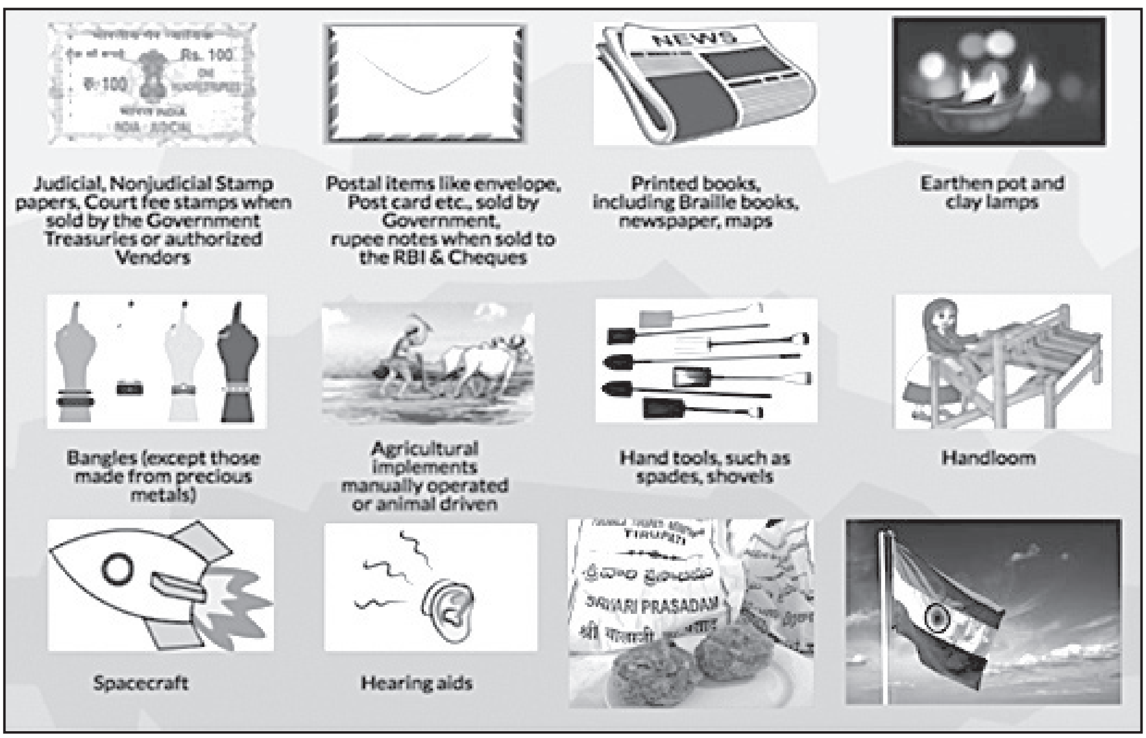

Judicial, Nonjudicial Stamp papers, Court fee stamps when sold by the Government Treasuries or authorized Vendors
Postal items like envelope, Post card etc., sold by Government, rupee notes when sold to the RBI & Cheques
Printed books, including Braille books, newspaper, maps
Earthen pot and clay lamps
Bangles (except those made from precious metals)
Agricultural implements manually operated or animal driven
Hand tools, such as spades, shovels
Handloom
Spacecraft
Hearing aids

Illustration 57

Mr. Raman (register person under GST) being a dealer furnished the following business transactions took place during the October 2022. Find the GST liability.

(a) Sale of plastic bangles for ₹20,000.

(b) Supply of mobile phones for₹3,20,120

(c) Sale of printed books and newspapers for ₹1,25,500

(d) Sale of Dates for ₹13,500

(e) Sale of Salt for ₹9,180

(f) Sale of Organic manure worth ₹2,00,000

(g) Sale of Chemical Fertilizers ₹5,75,000 (out of which 30% subsidy received from Government of India).

Note: Taxable supply attracts GST @5% (CGST 2.5% and SGST 2.5%).

Solution:

Statement showing tax liability of Mr. Raman

Sl. No.	Particulars	Taxability	CGST 2.5%	SGST 2.5%
(a)	Plastic bangles	Exempted	Nil	Nil
(b)	Mobile phone	3,20,120	8,003	8,003
(c)	Books	Exempted	Nil	Nil
(d)	Dates	Exempted	Nil	Nil
(e)	Salt	Exempted	Nil	Nil
(f)	Organic manure	Exempted	Nil	Nil
(g)	Che. Fertilizers @70%	4,02,500	10,063	10,063
	Total		**18,066**	**18,066**

The following services are exempted from GST:

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
1	Services by an entity registered under section 12AAor 12AB (inserted w.e.f. 1-10-2021) of the Income-tax Act, 1961 by way of charitable activities.
2	Services by way of transfer of a going concern, as a whole or an independent part thereof.
3	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or (a Governmental authority or Govt. Entity – Omitted w.e.f. 1-1-2022 vide Notification No. 16/2021 CT (R) dated 18.11.2021) by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	"Government Entity" means an authority or a board or any other body including a society, trust, corporation,— i. set up by an Act of Parliament or State Legislature; or ii. established by any Government, with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority".
3A	w.e.f. 25.1.2018, Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or (a Governmental authority or a Government Entity – Omitted w.e.f. 1-1-2022 vide Notification No. 16/2021 CT (R) dated 18.11.2021) by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution
4	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.
5	Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution. Notification No. 32/2017-Central Tax (Rate), dated 13.10.2017, this notification extends the exemption from GST to Central Government, State Government, Union territory, local authority along with Governmental Authority. **"Governmental Authority"** means an authority or a board or any other body,— i. set up by an Act of Parliament or a State Legislature; or ii. established by any Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a Municipality under **article 243W** of the Constitution or to a Panchayat under **article 243G** of the Constitution [Notification No. 32/2017-CT (R), dated 13.10.2017].
6	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.
7	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of upto ₹20 lakh (₹10 lakh in case of a special category state) in the preceding financial year. Explanation: For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to— (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	agency services provided to a person other than the Central Government, State Government, Union territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers; and (b) services by way of renting of immovable property. **w.e.f. 1-10-2019:** Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to "such amount in the preceding financial year as makes it eligible for exemption from registration under the (12 of 2017)" is exempt. Earlier the turnover was specified as "twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year" which has now been rationalised.
8	Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority: Provided that nothing contained in this entry shall apply to services— (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) of transport of goods or passengers
9	Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹5,000: Provided that nothing contained in this entry shall apply to— (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers: Provided further that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹5,000 in a financial year.
9A	**Entry No. 9A:** **Notification No. 21/2017-Central Tax (Rate), dated 22nd Aug 2017:** Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India have been exempted from GST. Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 World Cup 2017.";

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
9AA	**w.e.f. 1-10-2019:** Services provided by and to Federation International de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the event under FIFA U-17 Women's World Cup 2020 to be hosted in India is exempted from GST. **W.e.f. 1-10-2021 the words "hosted in India", the words "whenever rescheduled" shall be inserted.** Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 World Cup 2020.
9AB	**w.e.f. 1-10-2021:** Services provided by and to AsianFootball Confederation (AFC) and its subsidiaries directly or indirectly related to any of the events under AFC Women's Asia Cup 2022 to be hosted in India exempt from GST. Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under AFC Women's Asia Cup 2022." Notification No. 07/2021- Central Tax (Rate) dt **30th September 2021**.
9B	**Entry No. 9B** **Notification No. 30/2017-CT(R), dated 29.9.2017:** Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) have been exempted from GST.
9C	Supply of service by a **Government Entity** to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants [vide Notification No. 33/2017-Central Tax (Rate) Dt 13.10.2017].
9D	**w.e.f. 27th July, 2018:** Services by an old age homes run by Central Government, State Government or entity under section 12AA **or 12AB (inserted w.e.f. 1-10-2021)** of the Income Tax Act, 1961, to residents for consideration upto ₹25,000 per month per member is exempted from GST [vide Notification No. 14/2018-Central Tax (Rate)]
10	Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.
10A	**w.e.f. 27th July, 2018:** Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use exempt from GST [vide Notification No. 14/2018-Central Tax (rate)].
11	Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a **single residential unit** otherwise than as a part of a residential complex.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
11A	Service provided by Fair Price Shops to Central Government by way of sale of wheat, rice and coarse grains under Public Distribution System (PDS) against consideration in the form of commission or margin. **Notification No. 21/2017-Central Tax (Rate), dated 22nd Aug., 2017.** **w.e.f. 15th November 2017:** "Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin" is exempt from GST [vide Notification No. 47/2017-Central Tax (Rate)]
11B	Service provided by Fair Price Shops to State Governments or Union territories by way of sale of kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against consideration in the form of commission or margin. **Notification No. 21/2017-Central Tax (Rate), dated 22nd Aug., 2017.** **W.e.f. 15th November, 2017 Entry No. 11B omitted.**
12	Services by way of renting of residential dwelling for use as residence.
13	Services by a person by way of— (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA **or 12AB (inserted w.e.f. 1-10-2021)** of the Income-tax Act, 1961 or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act: Provided that nothing contained in entry (b) of this exemption shall apply to,— (i) renting of rooms where charges are ₹ 1,000 or more per day; (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹ 10,000 or more per day; (iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.
14	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below ₹ 1,000 per day or equivalent. **w.e.f. 1-10-2019 clarification given by Govt. of India:** Amendment has been brought under S. No. 14 of Services exemption notification to clarify that services by way of residential or lodging purposes, having value of supply of a unit of accommodation **below or upto one thousand rupees** per day is exempt.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
15	Transport of passengers, with or without accompanied belongings, by— (a) air, embarking from or terminating in an airport located in the state of— i. Arunachal Pradesh, ii. Assam, iii. Manipur, iv. Meghalaya, v. Mizoram, vi. Nagaland, vii. Sikkim, or viii. Tripura or ix. at Bagdogra located in West Bengal; (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than airconditioned stage carriage. w.e.f. 1-1-2022, Notificatin No, 16/2021 CT (R) dated 18.11.2021, "Provided that nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017)." It means, w.e.f. 1-1-2022, the exemption on services of transport of passengers, with or without accompanied belongings, a. by non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire, or b. stage carriage other than air conditioned stage carriage; shall not be available if such services are supplied through an electronic commerce operator, and are notified under sub-section (5) of section 9 of the CGST Act, 2017.
16	Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a regional connectivity scheme airport, against consideration in the form of viability gap funding: Provided that nothing contained in this entry shall apply on or after the expiry of a period of one year from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation. **w.e.f. 25-1-2018**, Viability Gap Funding (VGF) for a period of 3 years from the date of commencement of RCS airport from the present period of 1 year.
17	Service of transportation of passengers, with or without accompanied belongings, by— (a) railways in a class other than—

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	(i) first class; or (ii) an air-conditioned coach; (b) metro, monorail or tramway; (c) inland waterways; (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (e) metered cabs or auto rickshaws (including e-rickshaws). w.e.f. 1-1-2022, Notificatin No, 16/2021 CT (R) dated 18.11.2021, "Provided that nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017)." It means, w.e.f 1-1-2022, The exemption on service of transportation of passengers, with or without accompanied belongings, by metered cabs or auto-rickshaws (including e-rickshaws) shall not be available if such services are supplied through an electronic commerce operator, and are notified under sub-section (5) of section 9 of the CGST Act, 2017.
18	Services by way of transportation of goods- (a) by road except the services of— (i) a goods transportation agency; (ii) a courier agency; (b) by inland waterways.
19	Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India
19A	w.e.f. 25.1.2018, Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India. This exemption granted **upto September 2022**.
19B	w.e.f. 25.1.2018, Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India. This exemption granted **upto September 2022**.
19C	Satellite services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited is exempted from GST (vide Notification No. 5/2020CT (Rate), dated 16-10-2020).
20	Services by way of transportation by rail or a vessel from one place in India to another of the following goods— (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (b) defense or military equipment's; (c) newspaper or magazines registered with the Registrar of Newspapers; (d) railway equipment's or materials;

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	(e) agricultural produce; (f) milk, salt and food grain including flours, pulses and rice; and (g) organic manure.
21	Services provided by a goods transport agency, by way of transport in a goods carriage of— (a) agricultural produce; (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹1,500; (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹750; (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (h) defense or military equipment's.
21A	"Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the specified recipients" also exempt from GST [vide Notification No. 33/2017-Central Tax (Rate), dated 13.10.2017].
21B	**Notification No. 28/2018-CT(R), dated 31st December, 2018:** Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to,— (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services.
22	Services by way of giving on hire:— (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers; or (b) to a goods transport agency, a means of transportation of goods. **w.e.f. 25.1.2018,** (c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	Entry 22 (aa): w.e.f 1-10-2019: Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers;
23	Service by way of access to a road or a bridge on payment of toll charges. Entry 23A: Service by way of access to a road or a bridge on payment of annuity is also exempt from GST (Notification No. 32/2017-Central Tax (Rate), dated 13.10.2107)
24	Services by way of loading, unloading, packing, storage or warehousing of rice.
24A	**w.e.f. 27th July 2018:** Service by way of Services by way of warehousing of minor forest produce exempt from GST [Notification No. 14/2018-Central Tax (Rate)].
24B	**w.e.f. 1-10-2019:** **services provided by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres, jute etc. indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea exempted from GST.**
25	Transmission or distribution of electricity by an electricity transmission or distribution utility.
26	Services by the Reserve Bank of India.
27	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers.
27A	**Notification No. 28/2018-CT (R), dated 31st Dec, 2018:** Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
28	Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).
29	Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
29A	w.e.f. 25.1.2018, Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government retrospectively w.e.f. 1st July 2017.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
29B	**w.e.f. 1-10-2019:** **Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force exempted from GST.**
30	Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948 (34 of 1948).
31	Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 (19 of 1952).
31A	**w.e.f. 27th July 2018:** Services by Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 [Notification No. 14/2018-Central Tax (Rate)]
31B	**w.e.f. 27th July 2018:** Services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee. [Notification No. 14/2018-Central Tax (Rate)].
32	Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999).
33	Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
34	Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service. Explanation.—For the purposes of this entry, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.
34A	**w.e.f. 27th July 2018:** Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the financial institutions. [Notification No. 14/2018-Central Tax (Rate)].
35	Services of general insurance business provided under following schemes— (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals;

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	(d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha BimaYojna; (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999). **w.e.f. 1-10-2019:** exemption notification has been amended to exempt services of general insurance business provided under "Bangla Shasya Bima" scheme.
36	Services of life insurance business provided under following schemes— (a) Janashree Bima Yojana; (b) Aam Aadmi Bima Yojana; (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of two lakhs rupees (w.e.f. 25.1.2018). Prior to 25.1.2018 it was fifty thousand rupees; (d) Varishtha Pension BimaYojana; (e) Pradhan Mantri Jeevan JyotiBimaYojana; (f) Pradhan Mantri Jan DhanYogana; (g) Pradhan Mantri Vaya Vandan Yojana
36A	**w.e.f. 25.1.2018** Services by way of reinsurance of the insurance schemes specified in serial number 35 or 36. It is expected that the premium amount charged from the Government/insured in respect of future insurance services is reduced.
37	Services by way of collection of contribution under the Atal Pension Yojana.
38	Services by way of collection of contribution under any pension scheme of the State Governments.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
39	Services by the following persons in respective capacities— (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch; (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or (c) business facilitator or a business correspondent to an insurance company in a rural area.
39A	w.e.f. 25.1.2018, Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR). **Explanation:** For the purposes of this entry, the intermediary of financial services in IFSC is a person,— (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.
40	Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory. Services of Re-insurance of the insurance schemes provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory (i.e. insurance scheme exempted under Entry 40) **[vide Notification No. 14/2018-Central Tax (Rate) dated 27th July 2018].**
41	One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units. **w.e.f. 20th September, 2018:** “Explanation.—For the purpose of this exemption, the Central Government, State Government or Union territory shall have 50 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.” [Notification No. 23/2018-Central Tax (Rate)]. **W.e.f. 1-10-2019:** Explanation.—For the purpose of this exemption, the Central Government, State Government or Union territory shall have 20 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.”

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area: Provided also that the State Government concerned shall monitor and enforce the above condition, as per the order issued by the State Government in this regard: Provided further that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of integrated tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty: Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the integrated tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.
41A	Service by way of transfer of development rights or Floor Space Index on or after **1st April**, 2019 for construction of residential apartments. Exemption is available only when promoter or builder paying tax under construction supply of service.
41B	Upfront amount payable in respect of service by way of granting of long-term lease of 30 years, or more, on or after **01.04.2019**, for construction of residential apartments. Exemption is available only when promoter or builder paying tax under construction supply of service.
42	Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be
43	**Omitted w.e.f. 1-10-2021 (vide Notification No. 7/2021 CT dated 30-9-2021)**, Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.
44	Services provided by an incubatee upto a total turnover of ₹50 lakh in a financial year subject to the following conditions, namely:— (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and (b) a period of three years has not elapsed from the date of entering into an agreement as an incubatee.
45	Services provided by— (a) an arbitral tribunal to— i. any person other than a business entity; or ii. a business entity with an aggregate turnover upto ₹20 lakh (₹10 lakh in the case of special category states) in the preceding financial year;

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	iii. w.e.f. 25.1.2018, the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity; (b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to— i. an advocate or partnership firm of advocates providing legal services; ii. any person other than a business entity; or iii. a business entity with an aggregate turnover upto ₹20 lakh (₹10 lakh in the case of special category states) in the preceding financial year; iv. w.e.f. 25.1.2018, the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity; (c) a senior advocate by way of legal services to— i. any person other than a business entity; or ii. a business entity with an aggregate turnover upto ₹20 lakh (₹10 lakh in the case of special category states) in the preceding financial year or iii. w.e.f. 25.1.2018, the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity. **w.e.f. 1-10-2019:** **aggregate turnover of up to** "such amount in the preceding financial year as makes it eligible for exemption from registration under the **Central Goods and Services Tax Act, 2017** (12 of 2017)" **is exempt.** Earlier the turnover was specified as "twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year" which has now been rationalised.
46	Services by a veterinary clinic in relation to health care of animals or birds.
47	Services provided by the Central Government, State Government, Union territory or local authority by way of— (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force
47A	**w.e.f. 27th July 2018:** Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators. [Notification No. 14/2018-Central Tax (Rate)].
48	Taxable services, provided or to be provided, by a Technology Business Incubator or a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or bioincubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
49	Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India.
50	Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
51	Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.
52	Services by an organiser to any person in respect of a business exhibition held outside India
53	Services by way of sponsorship of sporting events organised— (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country; (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat; (c) by the Central Civil Services Cultural and Sports Board; (d) as part of national games, by the Indian Olympic Association; or (e) under the Panchayat Yuva Kreeda Aur Khel Abhiyaan Scheme.
53A	**w.e.f. 25.1.2018**, Services by way of fumigation in a warehouse of agricultural produce.
54	Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of— (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; (b) supply of farm labour; (c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; (e) loading, unloading, packing, storage or warehousing of agricultural produce; (f) agricultural extension services; (g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce. (h) w.e.f. 25.1.2018, Services by way of fumigation in a warehouse of agricultural produce.
55	Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
55A	**w.e.f. 27th July 2018:** Services by way of artificial insemination of livestock (other than horses) [Notification No. 14/2018-Central Tax (Rate)].
56	Services by way of slaughtering of animals
57	Services by way of pre-conditioning, precooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.
58	Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.
59	Services by a foreign diplomatic mission located in India
60	Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, the Government of India, under bilateral arrangement. w.e.f. 25.1.2018, the words "the Ministry of External Affairs," shall be omitted;
61	Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.
61A	**Services by way of granting National Permit to a goods carriage to operate through-out India / continuous States (new exemption inserted w.e.f. 1-10-2021 vide Notification No. 7/2021 CT dated 30-9-2021)**
62	Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.
63	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products
64	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April 2016: Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in instalments, for assignment of right to use such natural resource.
65	Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.
65A	w.e.f. 25.01.2018 Services by way of providing information under the Right to Information Act, 2005 – EXEMPT

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
65B	**w.e.f. 27th July 2018:** Services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders. **Explanation:** "mining lease holder" means a person who has been granted mining lease, quarry lease or license or other mineral concession under the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the rules made thereunder or the rules made by a State Government under sub-section (1) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957. Provided that at the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of goods and services tax deposited by mining lease holders on royalty is more than the goods and services tax exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and where such amount of goods and services tax paid by mining lease holders is less than the amount of goods and services tax exempted, the exemption shall be restricted to such amount as is equal to the amount of goods and services tax paid by the mining lease holders and the ERCC shall pay the difference between goods and services tax exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and goods and services tax paid by the mining lease holders on royalty."; **[Notification No. 14/2018-Central Tax (Rate), dated 26th July 2018]**
66	Services provided— (a) by an educational institution to its students, faculty and staff; (aa) w.e.f. 25.1.2018, by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;" (b) to an educational institution, by way of,— i. transportation of students, faculty and staff; ii. catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; iii. security or cleaning or housekeeping services performed in such educational institution; iv. services relating to admission to, or conduct of examination by, such institution; upto higher secondary: w.e.f. 25.1.2018, the words "upto higher secondary" shall be omitted; as a result, services relating to admission to, or conduct of examination provided to all educational institutions, as defined in the notification is exempt from GST. v. "w.e.f. 25.1.2018, supply of online educational journals or periodicals:"; w.e.f. 25.1.2018, Provided that nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education upto higher secondary school or equivalent. w.e.f. 25.1.2018, "Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,— (i) pre-school education and education upto higher secondary school or equivalent; or

<table>
<tr><th>Sl. No.</th><th colspan="3">Exempted services
Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)</th></tr>
<tr><td></td><td colspan="3">(ii) education as a part of an approved vocational education course.”;
It means, to exempt subscription of online educational journals/periodicals by educational institutions who provide degree recognized by any law from GST.
“educational institution” means an institution providing services by way of,—
(a) pre-school education and education upto higher secondary school or equivalent;
(b) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
(c) education as a part of an approved vocational education course;</td></tr>
<tr><td rowspan="6">67</td><td colspan="3">Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme:—
(a) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management;
(b) fellow programme in Management;
(c) five year integrated programme in Management.</td></tr>
<tr><td colspan="3">Entry No. 67 Omitted w.e.f. 1-1-2019 (vide CBIC Circular No. 82/01/2019-GST, dated 1-1-2019):</td></tr>
<tr><th>Period</th><th>Exemption</th><th>Remarks</th></tr>
<tr><td>1-7-2017 to 30-1-2018</td><td>IIM’s exempted from Entry No. 67 of Notification No. 12/2017 C.T.</td><td>IIMs were not covered by the definition of educational institutions as given in notification No. 12/2017 Central Tax (Rate), dated 28.06.2017. Thus, they were not entitled to exemption under Sl. No. 66 of the said notification.</td></tr>
<tr><td colspan="3">It is further, clarified that with effect from 31st January 2018, all IIMs have become eligible for exemption benefit under Sl. No. 66 of notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017. As such, specific exemption granted to IIMs vide Sl. No. 67 has become redundant. The same has been deleted vide notification No. 28/2018- Central Tax (Rate) dated, 31st December 2018 w.e.f. 1st January 2019.</td></tr>
<tr><td>31-1-2018 to 31-12-2018</td><td>Two exemptions, i.e. under Sl. No. 66 and under Sl. No. 67 of notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 are available to the IIMs.</td><td>As per Hon’ble Supreme Court of India, if there are two or more exemption notifications available to an assessee, the assessee can claim the one that is more beneficial to him.</td></tr>
</table>

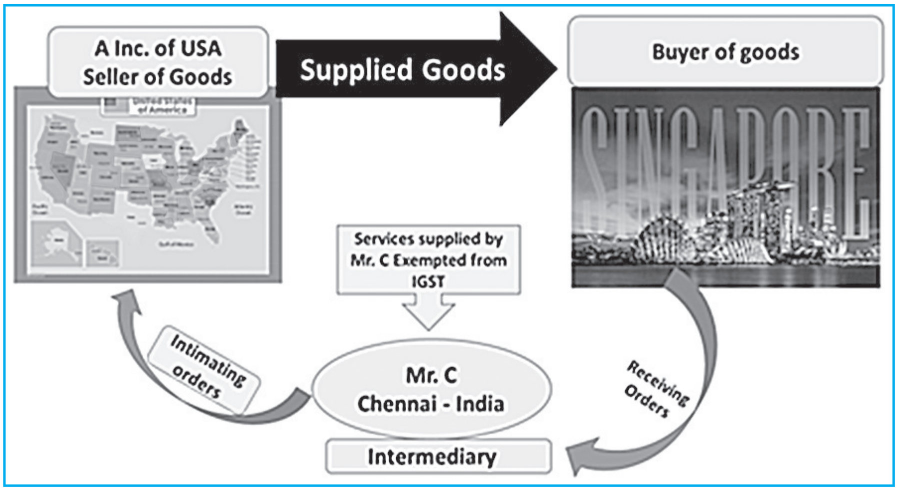
Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	Important Note: Indian Institutes of Managements also provide various short duration/ short term programs for which they award participation certificate to the executives/ professionals as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of Indian Institutes of Management. Services provided by IIMs as an educational institution to such participants is not exempt from GST.
68	Services provided to a recognised sports body by—(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body; (b) another recognised sports body.
69	Any services provided by,— (a) the National Skill Development Corporation set up by the Government of India; (b) a Sector Skill Council approved by the National Skill Development Corporation; (c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation; (d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council, in relation to— i. the National Skill Development Programme implemented by the National Skill Development Corporation; or ii. a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or iii. any other Scheme implemented by the National Skill Development Corporation.
70	Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.
71	Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.
72	Services provided to the Central Government, State Government, Union territory administration under any training programme for which **75% or more of the (inserted w.e.f. 1-10-2021)** total expenditure is borne by the Central Government, State Government, Union territory administration.
73	Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.
74	Services by way of— (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
74A	Notification No. 28/2018-CT (R), dated 31st December 2018: Services provided by rehabilitation professionals recognized under the Rehabilitation Council of India Act, 1992 (34 of 1992) by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA or **12AB (inserted w.e.f. 1-10-2021)** of the Income tax Act, 1961 (43 of 1961).
75	Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.
76	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets
77	Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution— (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or (c) w.e.f. 25.1.2018, upto an amount of ₹7,500 per month per member (prior to 25.1.2018 it was ₹5,000 per month per member) for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.
77A	**w.e.f. 27th July 2018:** Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,— (i) activities relating to the welfare of industrial or agricultural labour or farmers; or (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of one thousand rupees (₹1000/-) per member per year. **(Notification No. 14/2018-Central Tax (Rate) dated 26th July 2018)**
78	Services by an artist by way of a performance in folk or classical art forms of— (a) music, or (b) dance, or (c) theatre, if the consideration charged for such performance is not more than ₹1,50,000: Provided that the exemption shall not apply to service provided by such artist as a brand ambassador.
79	Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
79A	w.e.f. 15-11-2017, Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act 1958 (24 of 1958) or any of the State Acts, for the time being in force is exempt from GST. **[Notification No.47/2017-Central Tax (Rate), dated 14th November 2017]**
80	Services by way of training or coaching in recreational activities relating to— (a) arts or culture, or (b) sports by charitable entities registered under section **12AA or 12AB (inserted w.e.f. 1-10-2021)** of the Income-tax Act
81	Services by way of right to admission to— (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; (c) recognised sporting event, (d) w.e.f. 25.1.2018, planetarium, where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than ₹500 per person." prior to 25.1.2018, where the consideration for admission is not more than ₹250 per person as referred to in (a), (b) and (c) above.
82	Entry 82: Services by way of right to admission to the events organised under FIFA U-17 World Cup 2017 have been exempted from CGST **[Notification No. 25/2017 CT (R), dated 21.09.2017].**
82A	**w.e.f. 1-10-2019** services by way right to admission to the events organised under FIFA U-17 Women's World Cup 2020 exempted from GST.
82B	**w.e.f. 1-10-2021** Services by way of right to admission to the events organised under AFC Women's Asia Cup 2022 exempted from GST.

List of services exempt from IGST

Apart from above, list of services exempts from IGST by Notification No. 9/2017-Integrated Tax (Rate), dated 28th June, 2017 also include following three services.	
83	Services received from a provider of service located in a non-taxable territory by— (a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;

	(b) an entity registered under section 12AA or **12AB (inserted w.e.f. 1-10-2021)** of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or (c) a person located in a non-taxable territory: Provided that the exemption shall not apply to— (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or (ii) services by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India received by persons specified in the entry. it means Item No. (i) and (ii) are taxable.
84	Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves.
85	Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.
86	w.e.f. 1-10-2019, Notification No. 20/2019- (IT Rate) dated September 30, 2019: so as to exempt "Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory". 

Exempted services under GST

1. **SERVICES BY AN ENTITY REGISTERED UNDER SECTION 12AA or 12AB (inserted w.e.f. 1-10-2021) OF THE INCOME TAX ACT, 1961**

Following are the specified charitable activities:—

"Charitable activities" as defined in clause (r) of para 2 of the definitions in the Notification No. 12/2017- Central Tax (Rate), dated 28-06-2017 means activities relating to—

(r) "Charitable activities" means activities relating to—

(i) public health by way of—

(a) care or counselling of

(i) terminally ill persons or persons with severe physical or mental disability,

(ii) persons afflicted with HIV or AIDS, or

(iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(b) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion or spirituality or Yoga (w.e.f. 21-10-2015);

(iii) advancement of educational programmes or skill development relating to,—

(a) abandoned, orphaned or homeless children;

(b) physically or mentally abused and traumatized persons;

(c) prisoners; or

(d) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;

Services received from a provider of service located in a non-taxable territory by—

(c) an entity registered under section 12AA or **12AB (inserted w.e.f. 1-10-2021)** of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities;

Exempted from GST.

As per CBIC Circular No. 66/40/2018-GST, dated 26th September, 2018:

GST on Residential programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts:

"The services provided by entity registered under Section 12AA or **12AB (inserted w.e.f. 1-10-2021)** of the Income Tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt. Fee or consideration charged in any other form from the participants for participating in a religious, Yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt. Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.

However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable".

Illustration 58

Services of a NGO registered under section 12AA or **12AB (inserted w.e.f. 1-10-2021)** of the Income Tax Act, 1961 working for the rehabilitation of disabled. The aggregate value of taxable supply is ₹20 Lakh. Find the taxability for the given service?

Solution:

As per entry 74A of NT No. 12/2017-C.T.

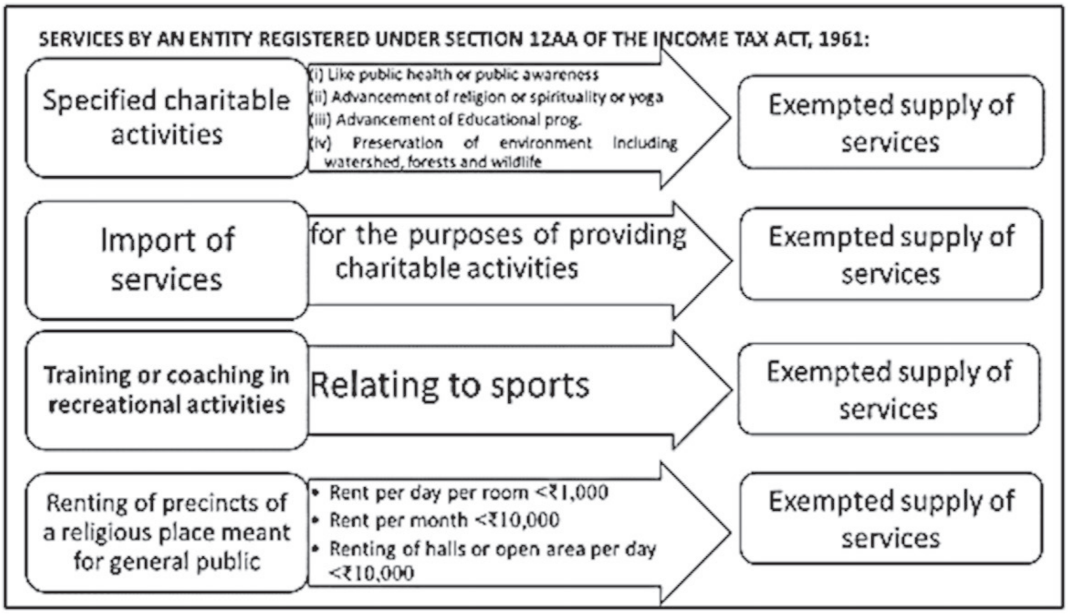
Notification No. 28/2018-CT(R), dated 31st December 2018:

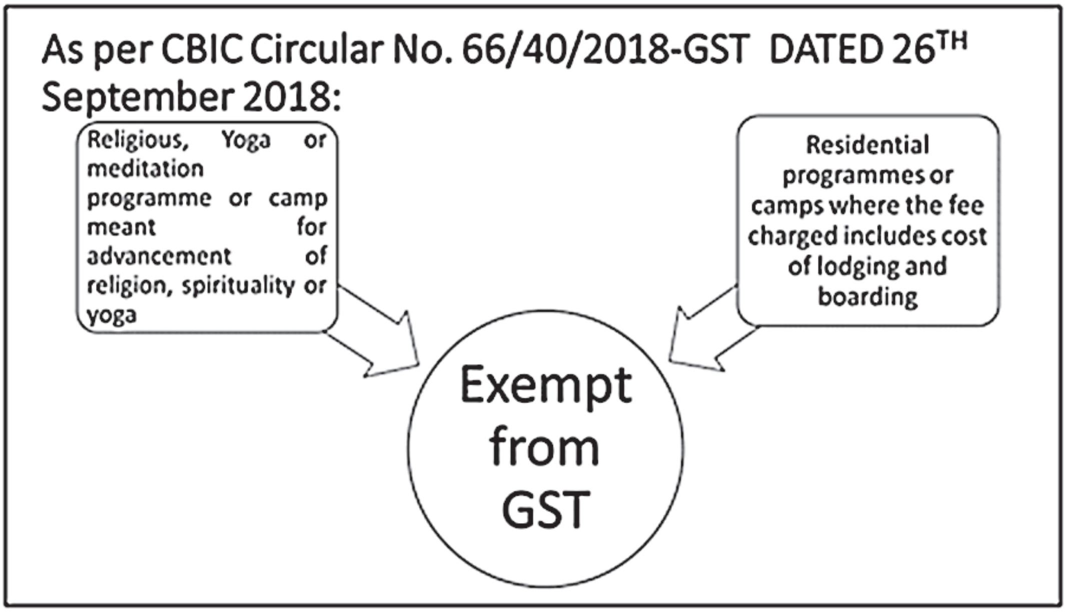
Services provided by rehabilitation professionals recognized under the Rehabilitation Council of India Act, 1992 (34 of 1992) by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State

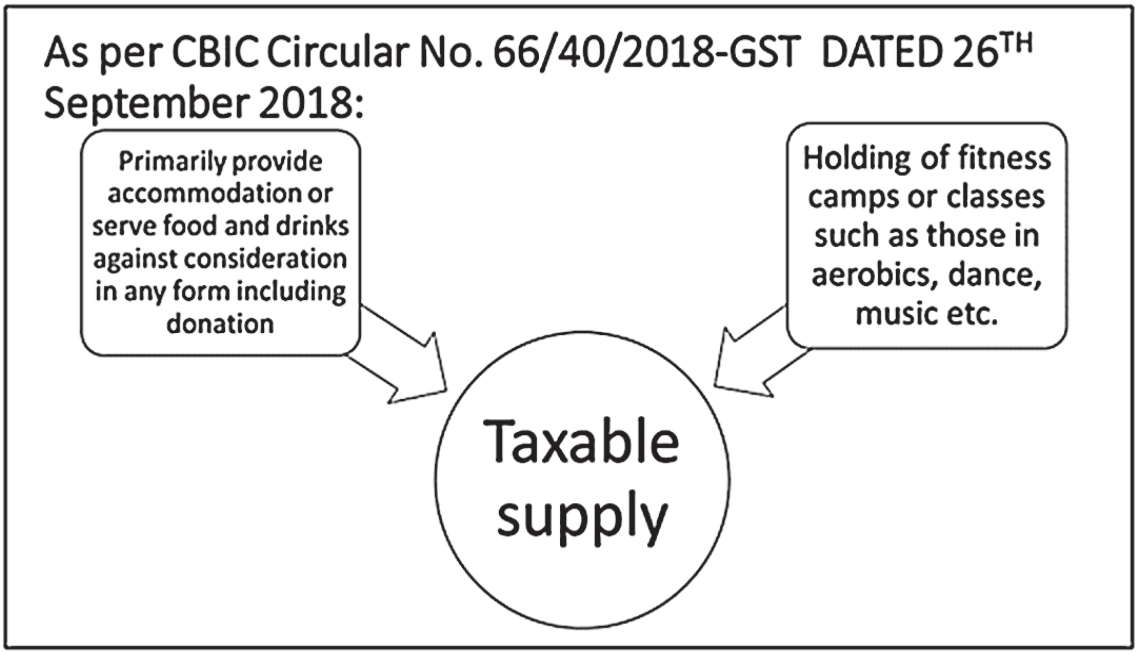
Government or Union territory or an entity registered under section 12AA or **12AB (inserted w.e.f. 1-10-2021)** of the Income tax Act, 1961 (43 of 1961) is exempt from GST.

Therefore, NGO is not liable to pay GST.

Simplified Approach:







2. SERVICES BY WAY OF TRANSFER OF A GOING CONCERN

Services by way of transfer of a going concern, as a whole or an independent part thereof, are exempt from Goods and Services Tax. Therefore, no GST on such sale of business. Sale of business as going concern to another not a supply as per schedule II of the CGST Act, 2017.

Illustration 59

M/s X & Co., is a partnership firm registered under GST Law. The partners decided to convert the partnership into a limited liability partnership (LLP). The LLP takes over M/s X & Co., assets and liabilities and continues to operate the same business. Is it taxable supply?

Solution:

It is not taxable supply. Since, transfer of business as a going concern to another person, then it will not be supply (as per schedule II of CGST Act, 2017).

Note: If taxable person de-registered, he will be liable to pay GST.

3. Services provided in relation to function entrusted to Panchayat under section 243G or in relation to any function entrusted to a Municipality under article 243W of the Constitution

Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or (a Governmental authority or a Government Entity – Omitted w.e.f. 1-1-2022 vide Notification No. 16/2021 CT (R) dated 18.11.2021) by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Illustration 60

A contract awarded by Bombay Municipal Corporation (BMC) for repair of a particular road to M/s B Ltd. of

Mumbai with a total consideration of ₹12 lakhs with terms and conditions as stated that:

(a) It is pure service (excluding works contract service or other composite supplies involving supply of any goods) and

(b) the entire work should be completed within 30 days.

The said work has been completed as per terms and conditions. Applicable rate of GST 18%

Find the following:

(a) Is it taxable supply?

(b) Rework if the contract is in the nature of works contract where material is involved (i.e. 40% of the Composite supply) in the value of contract. Is it taxable supply? If so who is liable to pay GST.

Note: previous turnover of M/s B Ltd. was ₹22 crores

Solution:

(a) Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the local authority exempt from GST.

Therefore, in the given case M/s B Ltd. supplied exempted service.

(b) M/s B Ltd. supplied works contract service which includes material and hence it is taxable supply.

M/s B Ltd is liable to pay GST.

CGST 9%= ₹1,08,000

SGST 9%= ₹1,08,000

Note: It is assumed that material value exceeds 25% of the total contract value.

Otherwise, it exempted from GST under entry No. 3A.

3A. w.e.f. 25.1.2018, Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or (a Governmental authority or a Government Entity – omitted w.e.f. 1-1-2022) by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Illustration 61

A contract awarded by Chennai Corporation for repair of a particular road to M/s B Ltd. with a total consideration of ₹12 lakhs (pure service).

Applicable rate of GST 18%

Find the following:

(a) Is it taxable supply?

(b) Rework if the contract is in the nature of works contract where material of ₹4 lakhs is involved in the value of contract. Is its taxable supply? If so, who is liable to pay GST.

Solution:

(a) Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the local authority exempt from GST. Therefore, in the given case M/s B Ltd. supplied exempted service.

(b) M/s B Ltd. supplied works contract service which includes material and hence it is taxable supply.

M/s B Ltd is liable to pay GST.

CGST 9% = ₹ 1,08,000

SGST 9% = ₹ 1,08,000

Note:

(i) w.e.f. 25.1.2018, Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply is exempt from GST under entry no. 3A of the NT No. 12/2017 as amended from time to time.

(ii) In the given case value of material @33% as a result does not qualify for exemption.

w.e.f. 1-1-2022, the term Governmental authority or a Government Entity – Omitted from entry no. 3 and 3A, vide Notification No. 16/2021 CT (R) dated 18.11.2021)

4. Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

Illustration 62

Validate the following statement:

Charges recovered by the Government for regulation of land use like conversion of agriculture to non-agriculture will be exempt from payment of GST.

Solution: The given statement is valid:

Covered under entry 4 of exemption Notification No. 12/2017, dated 28.06.2017-Central Tax (Rate).

Illustration 63

Validate the following statement:

Charges recovered by the Government of India from local authority for construction of building like granting approval of the plant is exempt from GST?

Solution: The given statement is valid:

Covered under entry 4 of exemption Notification No. 12/2017, dated 28.06.2017-Central Tax (Rate).

Illustration 64

Validate the following statement:

Grant received by the State Government from Central Government for implementing National Bio-gas and Manure management Programme operating under Ministry of New and Renewable Energy is taxable supply of service?

Solution: The given statement is invalid:

State Government is bound to implement the centrally sponsored scheme on receipt of grant. Consequently, State Governments are implementing agency and not service provider.

Therefore, there is no supply.

GST does not arise in the given case.

5. **Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.**

   Notification No. 32/2017-Central Tax (Rate), dated 13.10.2017, this notification extends the exemption from GST to Central Government, State Government, Union territory, local authority along with Governmental Authority.

6. **Services by the Central Government, State Government, Union territory or local authority excluding the following services—**

   (a) services by the Department of Posts by way of—

   (i) speed post,

   (ii) express parcel post,

   (iii) life insurance, and

   (iv) agency services provided

   to a person other than the Central Government, State Government, Union territory;

   (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

   (c) transport of goods or passengers; or

   (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.

are exempted from GST.

It means, all types of supply of services are taxable unless specifically exempted from GST.

CBIC clarification:

Services provided by State Government by way of general insurance (managed by government) to employees of the State government/ Police personnel, employees of Electricity Department or students are exempt vide entry 6 of notification No. 12/2017-CT(R) which exempts Services by Central Government, State Government, Union territory or local authority to individuals.

Illustration 65

Examine whether GST is payable in the following case:—

Speed post services by Department of Post to Union Territory of Lakshadweep.

Solution:

GST is not payable in case of speed post services by Department of Post to Union territory of Lakshadweep. The said service wholly from GST (Entry No. 8).

Exemption Notification inter alia provides exemption to services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to the Central Government, State Government, Union territory. Therefore, GST is payable, if such service is provided to a person other than Central Government/ State Government/Union Territory.

List of services are specifically exempted:

1. **Entry No. 4:** Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.

2. **Entry No. 5:** Services by Central Government, State Government, Union territory, local authority or

governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

3. **Entry No. 7:** Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of upto ₹20 lakh (₹10 lakh in case of a special category state) in the preceding financial year.

   Explanation: For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to—

   (a) services,—

   (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;

   (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

   (iii) of transport of goods or passengers; and

   (b) services by way of renting of immovable property.

4. **Entry No. 8:** Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority;

   Provided that nothing contained in this entry shall apply to services—

   (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;

   (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

   (iii) of transport of goods or passengers;

5. **Entry No. 9:** Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹5,000:

   Provided that nothing contained in this entry shall apply to services—

   (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;

   (ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

   (iii) of transport of goods or passengers;

   Provided further that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹5,000 in a financial year.

6. **Entry No. 42:** Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April 2016, on payment of licence fee or spectrum user charges, as the case may be.

7. **Entry No. 47:** Services provided by the Central Government, State Government, Union territory or local authority by way of—

   (a) registration required under any law for the time being in force;

   (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force

8. **Entry No. 61:** Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.

9. **Entry No. 62:** Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating **non-performance** of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.

10. **Entry No. 61A: Services by way of granting National Permit to a goods carriage to operate throughout India / continuous States (new exemption inserted w.e.f. 1-10-2021)**

11. **Entry No. 63:** Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.

12. **Entry No. 64:** Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April, 2016:

    Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in instalments, for assignment of right to use such natural resource.

13. **Entry No. 65:** Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of **Merchant Overtime charges**.

Reverse Charge Mechanism (RCM) applicable:

S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding: — a. Renting of immovable property to a registered person, w.e.f 25.1.2018 covered under RCM. However, **Renting of immovable property by government or local authority to un-registered person shall continue under forward charge.** and b. Services specified below: — (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) Transport of goods or passengers.	Central Government, State Government, Union territory, or local authority	Any business entity located in the taxable territory.	Recipient

Definitions:

(1) "**business entity**" means any person carrying out business;

Example 71

w.e.f. 1st July 2017, GST will be applicable on following services provided by Government or Local Authority:

S. No.	Nature of service	Taxability	Who is liable to pay	Remarks
(i)	Speed Post Service provided by Department of Post to Government	Exempted supply	NA	Coved under entry no. 8 of exemption list.
(ii)	Express Parcel Post Services by department of Post provided to a business entity	Taxable supply	Dept. of Post	Not covered under RCM (not specially exempted)
(iii)	Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport.	Taxable supply	Supplier of service	Not covered under RCM (also not exempted)
(iv)	Transport of goods or passengers	Taxable supply	Supplier of service	-do-
(v)	Renting of immovable property for commercial nature to Business Entity whose turnover in the P.Y.is ₹18 lakh.	Taxable supply	**Renting of immovable property by government or local authority to un-registered person shall continue under forward charge.**	Not covered under RCM and also not covered under any exemption.
(vi)	Other services provided to business entity whose P.Y. turnover is ₹8 lakh.	Exempted supply	NA	Covered under entry no. 7 and hence exempted from GST.
(vii)	Other services provided to business entity whose P.Y. turnover is ₹22 lakh.	Taxable supply	Business entity being recipient is liable to pay GST	Covered under RCM. It is not covered under any exemptions.

Illustration 66

M/s X Academy Pvt. Ltd. provided following services in the previous year:

1. Manpower supply services to Higher Secondary School for ₹12,00,000.
2. Housekeeping services to Kidzee (i.e. Pre-school education) for ₹9,00,000.

In the current year M/s X Academy Pvt. Ltd. received advertisement services for ₹ 75,000 from Indian Railways. Find the following:

(a) Who is liable to pay GST?

(b) Total tax liability if any?

(c) Rework, if the previous total turnover ₹11,10,000 then find the GST liability in the C.Y.?

Note:

(i) Applicable rate of GST 18%.

(ii) M/s X Academy is located in Chennai

Solution:

P.Y. turnover (₹12 lakh + ₹9 lakh)	=	₹	21,00,000

(a) Since, aggregate turnover of the previous year exceeds ₹20 lakh, in the current year recipient of service is liable to pay GST under RCM.

(b) GST 18% on ₹75,000	=	₹	13,500

Re-work

(c) GST liability is nil, since P.Y. turnover does not exceed ₹20 lakhs (vide Entry No. 7 Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017).

Illustration 67

State Police provided protection services to the Judges of High Court in the month of July 2017. The police protection is provided on payment of ₹2,00,000. GST is payable?

Solution: It is exempted service. Since, covered under entry no. 8 (vide Notification No. 12/2017, dated 28.6.2017-Central Tax (Rate), it is exempted from GST.

Illustration 68

The Chief Secretary to Finance Minister travelled from Delhi to Chennai by rail in an air conditioned coach on official trip. Cost of ticket is ₹1,200. Is it exempt from GST? Applicable rate of GST 5%.

Solution: It is taxable supply of service. It is covered under entry 6(c) of Notification No. 12/2017, date 28.06.2017-Central Tax (Rate), GST will be levied under forward charge.

Illustration 69

Passport is issued by the office of the External Affairs Ministry under Passport Act, 1967 to individual. The fee of ₹6,500 paid by business entity in which such individual person is working. This activity will attract GST.

Solution: The exemption from payment of GST would be available both cases, where fee is paid by individual or by the business entity. The said activity is exempted from GST under entry no. 61 of the Notification No.12/2017, date 28.06.2017 Central Tax (Rate).

Illustration 70

X Pvt. Ltd., received the following services from the Government of India during the taxable period:

1. Application fee paid towards processing of application for issuance of advance authorization ₹12,000.
2. Security services provided by Government security agency for a period of four months for a total consideration of ₹6,000:

(a) Jan 2023 – Part payment	₹	500
(b) Feb 2023 – Part payment	₹	2,000
(c) Mar 2023 – Part payment	₹	2,000
(d) April 2023 – Final payment	₹	1,500.

3. Customs authorities have charged Merchant Over Time (MOT) fee for ₹1,000 at the time of special warehousing of goods.

Find the total GST payable by X Pvt. Ltd. if any?

Note: Previous Turnover of X Pvt. Ltd. ₹41 lakhs.

Note: Applicable rate of GST 18%

Solution: Statement showing GST liability of X Pvt. Ltd.

Sl. No.	Particulars	Value in (₹)	Remarks
1	Application fee paid towards processing of application for issuance of advance authorization	12,000	Taxable supply of service. Since, amount exceeds ₹5,000.
2	Security services provided by Government security agency. F.Y. 2022-23 ₹4,500 F.Y. 2023-24 ₹1,500 the exemption shall apply only where the consideration charged for such service does not exceed ₹5,000 in a financial year.	Nil	Exempted supply of service under entry no. 9.
3	Merchant Overtime charges	Nil	Exempted supply of service under Entry No. 65.
	Total subject to tax under reverse charge	12,000	
	Total GST liability	2,160	12,000 × 18%

Illustration 71

M/s X Ltd. paid penalty under section 49 of the CGST Act, 2017 ₹20,00,000 to the Government Department in the month of Oct 2022. Is it taxable supply under the GST law?

Solution: It is not a supply of service. The fine or penalty chargeable by Government or local authority imposed for violation of statute, byelaws, rules or regulations are not leviable to GST. Such fines or penalty are not recovered for tolerating non-performance of a contract.

Illustration 72

A contract awarded by Bombay Municipal Corporation (BMC) for repair of a particular road to M/s B Ltd of Mumbai with terms and conditions that the entire work should be completed within 30 days. However, there is a delay of 10 days to complete the work. BMC charged liquidated damages of ₹1,20,000 and the same recovered from M/s B Ltd.

Applicable rate of GST 18%

Find the following:

(a) who is liable to pay GST on what amount?

(b) Total GST liability if any?

Note: Previous year turnover of M/s B Ltd. was ₹88 lakh.

Solution:

(a) It is supply of service.

M/s B Ltd. being recipient of service is liable to pay GST on ₹1,20,000 (i.e. Reverse Charge applicable). Since, the contractor has performed the contract, but there is a delay of 10 days.

(b) GST liability = ₹21,600

Note:

(i) It appears the liquidated damages recovered by local authority for delay in performance in contract will not be covered under exemption list of GST. The contract has been performed in such cases, GST will be payable on the same.

(ii) Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; is exempted from GST.

Illustration 73

For registration of a company whose nominal share capital does not exceeds ₹1,00,000, paid registration fee of ₹5,000.

Whether your answer is different if registration fee ₹6,000.

Is it taxable supply? Attract GST?

Solution: Exempted from GST vide Entry No. 47, Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017.

Our answer is not differing even if the registration fee is ₹6,000 under the entry no. 47.

Illustration 74

Domicile Certificate for certifying the number of years during which the person has stayed in State, has been obtained from District Collector's Office, by paying fee of ₹5,500. It is taxable supply?

Solution: This activity is falls under entry no. 47 Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017.

Therefore, the given activity is exempted from GST.

Illustration 75

X Ltd. covered under the Factories Act, 1948. Inspector of Factories certified the factory is safe for the workers to carry their work and charged Government fee of ₹10,000.

X Ltd. owned one more factory at another place, which is not covered under Factories Act, 1948. However, X Ltd. obtained safety certificate for the factory from the Inspector of Factories by paying ₹15,000 voluntarily.

Is it taxable supply? Attract GST? If so who is liable to pay GST.

Applicable rate of GST 18%.

Solution: X Ltd. being recipient of service from the Inspector of Factories is not liable to pay GST. Since, certification relating safety of workers **required** under the Factories Act, 1948 covered under entry 47.

Another factory which is not covered under Factories Act, 1948 for which fee paid by X Ltd. voluntarily is liable to pay GST under reverse charge mechanism.

CGST 9% on ₹15,000 = ₹1,350

SGST 9% on ₹15,000 = ₹1,350

Illustration 76

The Inspector of the Metrology department verified the calibration of weighing scale as well as the weight and collected charges of ₹7,500 from the shop owner under the The Legal Metrology Act, 2009. Is it taxable supply?

Solution: This activity is exempt from GST under Entry No. 47 Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017.

Illustration 77

The Department of Agriculture, Co-operation and Farmers Welfare, provided Soil Conservation Service, Animal Husbandry, Dairying and Fisheries to a farmer by charging fee of ₹20,000 in relation to assignment of natural resources. It is taxable supply?

Solution: This activity is specifically exempted from GST under Entry No. 63 Notification No. 12/2017- Central Tax (Rate), dated 28-06-2017.

Illustration 78

A Ltd., becomes the successful bidder. The spectrum is assigned to A Ltd., for a total consideration of ₹1000 crores in the month of June 2015.

Government permitted to pay as one time charge payable, in full upfront or in instalments as the case may be.

A Ltd. chooses to make in instalments over a period of 5 years. Instalment due fallen on or after 1st July 2017 is leviable to GST?

Whether your answer is different if periodic payment required to be made by the assignee.

Solution: The exemption under entry 42 Notification No. 12/2017-Central Tax (Rate),dated 28-06-2017shall apply only to one time charge, payable in full upfront or in instalments, for assignment of right to use any natural resource or spectrum assigned. Hence, A Ltd. is not liable to pay GST.

The exemption shall not applicable to any periodic payment required to be made by the assignee.

GST is payable on periodic payments due after 1.7.2017 in respect of spectrum assigned before 1.4.2016. GST is liable to pay by A Ltd. (RCM applicable).

Changes w.r.t. 1.7.2017 services provided by Government or Local Authority:

Services provided by Government / Local Authority	YES	To business entity whose turnover in preceding year exceeds ₹ 20 lakhs	YES	Gross amount charged exceeds ₹ 5,000	YES	Other than specified services [i.e., other than entry 6(a), (b) & (c) exemption Notification]	YES	Not covered under other Exemption Notification	YES	Taxable under Reverse Charge

If answer for any one of these is 'NO', then the same would not be liable to GST under reverse charge mechanism.

Entry No. 9A: FIFA U-17

Notification No. 21/2017-Central Tax (Rate), dated 22nd Aug 2017:

Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India have been exempted from GST.

Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 World Cup 2017.";

Entry 9AA: w.e.f 1-10-2019 services provided by and to Federation International de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the event under FIFA U-17 Women's World Cup 2020 to be hosted in India is exempted from GST. **W.e.f. 1-10-2021 the words "hosted in India", the words "whenever rescheduled" shall be inserted**.

w.e.f. 1-10-2021:

Entry No. 9AB: Services provided by and to Asian Football Confederation (AFC) and its subsidiaries directly or indirectly related to any of the events under AFC Women's Asia Cup 2022 to be hosted in India exempt from GST.

Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under AFC Women's Asia Cup 2022."

Notification No. 07/2021- Central Tax (Rate) dt 30th September 2021.

Entry No. 9B: Transit cargo to Nepal and Bhutan

Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) have been exempted from GST [vide Notification No. 30/2017-CT(R), dated 29.09.2017].

The government of India has removed the goods and services tax on services provided by Indian service providers for transit cargo such as—

- transportation,
- insurance,
- shipment,
- container freight station and
- cargo handling charges, among others

considering these services provided by the Indian service providers as 'service export'.

Entry No. 9C: Supply of service by a Government Entity to Govt.

Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants [vide Notification No. 33/2017-Central Tax (Rate), dated 13.10.2017].

"**Government Entity**" means an authority or a board or any other body including a society, trust, corporation,—

(i) set up by an Act of Parliament or State Legislature; or

(ii) established by any Government,

with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority".

Entry No. 9D: Services by an Old Age Homes:

Entry No. 9D:

w.e.f. 27th July, 2018:

Services by an old age homes run by Central Government, State Government or entity under section 12AA or **12AB (inserted w.e.f. 1-10-2021)** of the Income Tax Act, 1961, to residents for consideration upto ₹25,000 per month per member is exempted from GST [vide Notification No. 14/2018-Central Tax (Rate)].

Entry No. 10: Pure labour services for Housing Scheme

Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.

Entry No. 10. Pure labour services for Housing Scheme Services provided by way of pure labour contracts of—

- construction,
- erection
- commissioning,
- installation
- completion
- finishing
- repair,
- maintenance,
- renovation, or
- alteration of a civil structure or
- any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.

"original works" means all new constructions;

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

Pure labour contract means supplier of service should not utilize any material in supplying the service. It should be a labour contract only.

The Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana scheme where in Housing for all mission will be implemented through four verticals which are as follows:

1. 'In-situ' Slum Redevelopment
2. Affordable Housing through credit linked subsidy
3. Affordable Housing in Partnership
4. Subsidy for beneficiary-led individual house construction.

Entry No. 10A: Services by Electricity Distribution Utilities:

Entry No. 10A:

w.e.f. 27th July 2018

Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use exempt from GST [vide Notification No. 14/2018-Central Tax (Rate)].

Entry No. 11: Construction, erection and related services pertaining to single residential unit:

Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a **single residential** unit otherwise than as a part of a residential complex is exempted from GST.

Illustration 79

Raj Builders is constructing a two-floor residential house. Is it taxable supply?

Solution: Yes, the given activity is a taxable supply and GST will be levied.

Illustration 80

Rana Contractors has undertaken pure labour contracts to repair a single residential house owned by Mr. Rafi. Is it taxable supply?

Solution: Yes, the given activity is a taxable supply and GST will be levied.

Illustration 81

Ram Contractors has undertaken to construct new single shop for M/s X & Co. Is it taxable supply?

Solution: Yes, the given activity is a taxable supply and GST will be levied.

Entry No. 11A: w.e.f. 15.11.2017

"Service provided by Fair Price Shops to Central Government, State Government or Union Territory by way of sale of Food grains, Kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin" is exempt from GST [vide Noyification No.47/2017- Central Tax (Rate)].

Entry No. 12: Services by way of renting of residential dwelling for use as residence is also

The following are taxable supplies:

- Residential house taken on rent for commercial purposes
- House is given on rent and the same is used as a hotel or a lodge
- Rooms in a hotel or a lodge are let out where tariff per day per room ₹1000 or more.

Illustration 82

Mr. A owns a residential building in a prime commercial locality. Basement of the building is leased to Mr. B, a wholesaler. One-fourth of the basement is used by Mr. B as his office and remaining portion is used as a godown for storing his merchandise.

Ground floor of the building is given on rent to Mr. C who uses the same as a guest house for his business contacts. First floor of the building is occupied by Mr. A. and his family. Second floor is given on rent to Mr. D who uses the same as his residence.

There is a large vacant land in the backyard of the building which is also given on rent to a parking contractor, Mr. E who has set up a parking facility on the said land.

Separate rent/lease deeds have been executed in respect of each floor of the building and vacant land given on rent/lease.

Examine the GST liability of Mr. A with respect to the residential building owned by him.

Solution:

Renting of immovable property (whether residential or commercial) is supply of service as per Serial No. 5(a) of Schedule II. However, services by way of renting of residential dwelling for use as residence are covered under exempted supply of services and are thus not liable to GST.

Since, Mr. A has let out different floors of his residential building to different tenants and separate rent/lease deeds have been executed in respect of each floor of such building and vacant land given on rent/lease, principle of composite or mixed supply will not apply. In this backdrop, the taxability of each of the floor of the building and vacant land owned by Mr. A is discussed as under:

(i) Basement: Leasing out of the basement of the building to Mr. B would not be covered under exemption list of services as Mr. B uses the basement for commercial purpose. Thus, it would be liable to GST as supply of service.

(ii) Ground floor: Renting of ground floor of the building to Mr. C for being used as a guest house will not be covered under exemption list of services since Mr. C uses it for commercial purpose. Thus, it would be liable to GST as supply of service.

(iii) First floor: Since Mr. A uses the first floor of the building himself, it would not be a supply and thus, would not be liable to tax.

(iv) Second floor: Renting of second floor of the building to Mr. D for being used as a residence would not be chargeable to GST as it is covered in exemption list of supply of services.

(v) Vacant land: Though vacant land is also an immovable property, renting thereof to Mr. E, a parking contractor, will not be covered under exemption list of services since Mr. E uses it for commercial purpose. Thus, it would be liable to GST.

Entry No. 13: Charitable/religious activities

Services by a person by way of—

(a) conduct of any religious ceremony;

(b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section12AA or 12AB (inserted w.e.f. 1-10-2021) of the Income-tax Act, 1961

or

a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act

or

a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:

Provided that nothing contained in entry (b) of this exemption shall apply to,—

(i) renting of rooms where charges are ₹1,000 or more per day;

(ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹10,000 or more per day;

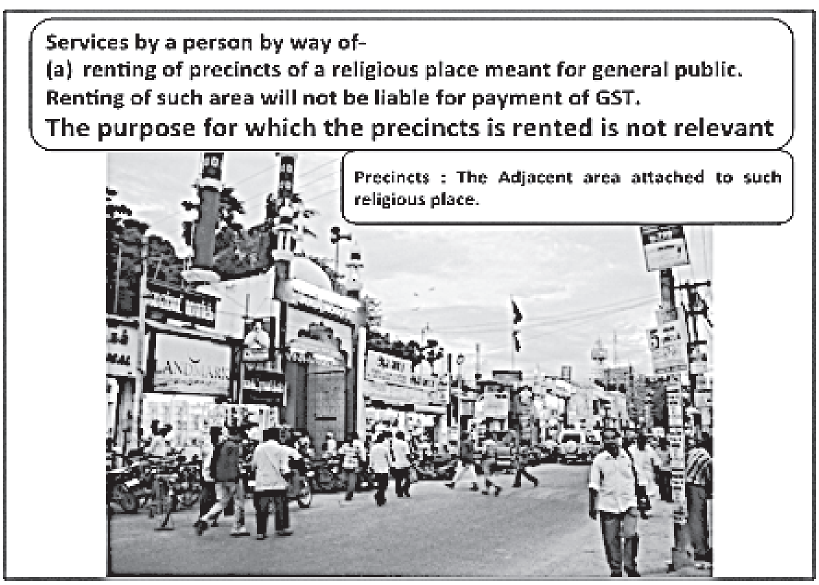
(iii) renting of shops or other spaces for business or commerce where charges are ₹10,000 or more per month.

The term "religious place" as per the clause (zy) of the said notification means "a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality".

As per clause (zc) of the said notification, the term "general public" means "the body of people at large sufficiently defined by some common quality of public or impersonal nature".

Dictionary meaning of "precincts" is an area within the walls or perceived boundaries of a particular building or place, an enclosed or clearly defined area of ground around a cathedral, church, temple, college, etc.

Precincts means:



Religious Ceremonies: Occasions like birth, marriage, and death involve elaborate religious ceremonies are exempted from service tax.

Services by the priest of temple shall also be exempted.

Few examples for religious ceremony:

(i) Goat Sacrifice by a Muslim to exhibit his religious belief on a Bakrid Day;

(ii) Performance of "Shradha" and offering of "Pinda" to ancestors;

(iii) Carrying "Trishul" by a few in procession to be taken out by a particular community.

Illustration 83

Examine whether GST is payable in the following case:-

Ananda Deepam Chartitable trust, registered under Section 10(23C)(v) of the Income Tax Act, 1961 manages a temple in Mylapore, Chennai. It has given on rent a community hall, located within temple premises, to public for celebration of new year evening. Rent charged is ₹9,499/-.

Solution: A trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act, 1961, renting of its premises, community halls, kalyanmandapam or open area, and the like where charges are ₹10,000 or more per day; is taxable supply.

In the given case Ananda Deepam Chartitable trust, registered under Section 10(23C)(v) of the Income Tax Act, 1961 and given on rent for ₹9,499/- per day. Hence, it is exempted from GST.

Entry No. 80: Services by way of training or coaching in recreational activities relating to-

(a) arts or culture, or

(b) sports by charitable entities registered under section 12AA or 12AB (inserted w.e.f. 1-10-2021) of the Income-tax Act

are exempt from GST.

Entry No. 80 Exemption for Recreational Activities

There is exemption fromGST to training or coaching in recreational activities relating to arts, culture or sports. The benefit is available to coaching or training relating to all forms of dance, music, painting, sculpturemaking, theatre and sports etc.

Illustration 84

Validate the following statement.

Activities in sculpture making is exempt from GST.

Solution: the given statement is invalid.

Exemption is granted only for training or coaching of sculpture but not activities of sculpture making.

Illustration 85

Mr. Rohith Sharma is undertaken training in cricket to improve his skill in various areas like bowling, batting, fielding etc. to enable him to participate in various levels of tournament. Sachin Trust registered under Sec.12AB of the Income Tax Act, 1961 has provided such training by charging ₹10 lakhs. Is taxable supply of service?

Solution: Yes, it is a taxable service.

Because training in such case is not for recreation.

Illustration 86

Kapleswara Charitable Trust registered under Section 12AB of the Income Tax Act, 1961. Supplied the following services during the taxable period. Find the taxable supply or exempted supply from the following:

(a) Income from Navratri functions, other religious functions, and religious poojas conducted for ₹2,12,345/-

(b) During Ganeshutsav or other religious functions, charitable trusts rent out their space to agencies for advertisement hoardings, income from such advertisement ₹4,98,765/-

(c) Donation for religious ceremony is received with specific instructions to advertise the name of a donor for ₹1,00,001/-.

Solution:

Particulars	Nature of supplies	Remarks
(a) Income from Navratri functions etc.	Exempted supply	Meant of religious ceremony
(b) Income for renting out space	Taxable supply	Advertisement services
(c) Donation received with reciprocity	Taxable supply	Donation is compensating against consideration

Illustration 87

Marry Charitable Trust registered under section 12AB of the income tax and also registered person under GST Law.

Provided the following services in the month of October.

(1) Services by way of training or coaching in recreational activities relating to sports for ₹4,00,000/-.

(2) Fee from organizing yoga camps or other fitness camps for ₹5,00,500/-

(3) Organizes fitness camps in reiki, aerobics, etc., and receive donation from participants ₹2,25,000/-.

(4) Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material for ₹20,000

Assume applicable rate of GST for taxable supplies @18%.

Solution:

Particulars	Value in (₹)	Remarks
training or coaching in recreational activities relating to sports	Nil	Exempted supply.
Fee from organizing yoga camps or other fitness camps	5,00,500	Since, not covered under advancement of religion, spirituality or yoga, it is taxable supply.
Donation for Organizes fitness camps in reiki, aerobics	2,25,000	Covered under health and fitness services, which is not exempted.
Public libraries	Nil	Exempted supply.
Total	7,25,500	
GST 18%	1,30,590	(7,25,500 x 18%)

Illustration 88

Chari Charitable Trust registered under section 10(23BBA) of the income tax and also registered person under GST Law.

Provided the following services in the month of October.

(1) Services by way of accommodation (i.e. Rest house) for ₹1,000 per day for 12 days. This property located within the precincts of the trust.

(2) Fee from convention hall for ₹8,000 per day for 4 days. However, this hall located outside the premises of the Trust.

(3) shops situated within the premises of a religious place are rented out for ₹8,000 per month.

Find the taxable supply and exempted supply of services.

Assume applicable rate of GST for taxable supplies @18%.

Solution:

Particulars	Value in (₹)	Remarks
Services by way of Rest house	12,000	Taxable supply.
Fee from convention hall	32,000	Taxable supply.
Rent from shops situated within the premises of a religious place	Nil	Exempted supply ₹8,000/- under Entry No. 13 Exempted supply.
Total	44,000	
GST 18%	7,920	(44,000 x 18%)

Renting of rooms where charges are ₹1000 or more per day;

Illustration 89

DEPARTMENT CLAIM: Tirumal Tirupati Devasthanams, Tirupati registered under section 12AA of the Income Tax Act, 1961 was running guest houses for pilgrims. Renting of precincts of a religious place meant for general public, by charging more than ₹1,000 per day. Therefore, the assessee was liable to pay GST.

ASSESSEE CONTENTION: Since, they were running guest houses without any profit motive hence they were not liable to pay GST.

Decide the case whether assessee contention is right or Department claim is justifiable?

Solution:

Renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 is exempt from GST.

However, w.e.f. 1-7-2017, this exemption shall not be applicable to—

1. Renting of rooms where charges are ₹1,000/- or more per day,
2. Renting of premises, community halls, kalyanmandapam or open area, etc. where charges are ₹10,000/- or more per day, and
3. Renting of shops or other spaces for business or commerce where charges are ₹10,000/-or more per month.

Thus, the law gives a limited exemption to renting of only religious precincts or a religious place meant for general public by the entity registered under Section 12AA of the Income Tax Act or section 10(23C)(v) or section 10(23BBA) of the Income Tax Act, 1961.

In the given case is not exempt from GST. Therefore, department claim is justifiable.

Entry No. 14: Renting of Hotel, Inn, Guesthouse, Club or Camp site, etc.

Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below ₹1,000 per day or equivalent is an exempted supply under GST.

w.e.f. 1-10-2019 clarification given by Govt. of India:

Amendment has been brought under S. No. 14 of Services exemption notification to clarify that services by way of residential or lodging purposes, having value of supply of a unit of accommodation below or upto one thousand rupees per day is exempt.

w.e.f. 27-7-2018 "Declared Tariff" has been repealed by "Value of Supply"

W.e.f. 27th July 2018, vide notification No. 13/2018-CT (Rate), the concept of "Declared Tariff" has been repealed and the term is replaced by "Value of Supply". Therefore, the tax rate will be determined in accordance with the "Value of Supply" instead of "Declared Tariff".

Illustration 90

Is hostel accommodation provided by Trusts to students covered within the definition of Charitable Activities and thus, exempt under Sl. No. 1 of notification No. 12/2017-CT (Rate)?

Solution: As per CBIC Circular No. 32/06/2018-GST, dated 12th February 2018, Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of Notification No. 12/2017-CT(Rate).

However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared value of supply of a unit of accommodation below one thousand rupees per day or equivalent are exempt.

Thus, accommodation service in hostels including by Trusts having value of supply less than or equal to one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-CT(Rate) refers].

Entry No. 15: Transportation of passengers by any mode of conveyance

Transport of passengers, with or without accompanied belongings, by—

(a) air, embarking from or terminating in an airport located in the state of

1. Arunachal Pradesh,
2. Assam,
3. Manipur,
4. Meghalaya,
5. Mizoram,
6. Nagaland,
7. Sikkim, or
8. Tripura or
9. at Bagdogra located in West Bengal;

(b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c) stage carriage other than airconditioned stage carriage.

are exempted from GST.

w.e.f. 1-1-2022, the exemption on services of transport of passengers, with or without accompanied belongings,

(i) by non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire, or

(ii) stage carriage other than air conditioned stage carriage;

shall not be available if such services are supplied through an electronic commerce operator, and are notified under sub-section (5) of section 9 of the CGST Act, 2017.

Entry No. 15(a) Transportation of passengers by air

Passengers embarking from or terminating in an airport located in the state of

- Arunachal Pradesh
- Assam
- Manipur
- Meghalaya
- Mizoram
- Nagaland
- Sikkim
- Tripura

$\Big\}$ North-Eastern States

In round trip tickets involving multiple journeys that involves embarkation or disembarkation at North-Eastern States / Bagdogra alone will be covered under exemption

or at Bagdogra located in West Bengal are exempted from GST

Place of Supply – Transportation of passengers:

The Place of Supply of Services where location of supplier and recipient is in India, section 12 of the IGST Act, 2017:

S. No.	Nature of service	Place of supply of service Sec. 12(9) of the IGST Act 2017.
1	Passenger transportation service. Including: Rail, Mono Rail, Metro Rail, Road, Air, Vessel, boat, Cycle rickshaw, Bullock cart, Camel etc.	Provided to a registered person: • Location of recipient of Service. Provided to an un-registered person: • Place where the passenger embarks on the continuous journey.

Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Sec. 13 of IGST]

S. No.	Nature of service	Place of supply of service Sec. 13(10) of the IGST Act 2017.
1	Passenger transportation service. Including: Rail, Mono Rail, Metro Rail, Road, Air, Vessel, boat, Cycle rickshaw, Bullock cart, Camel etc.	where the passenger embarks on the conveyance for a continuous journey.

Assume recipient of Service un-registered person.

Embarking	Disembarking	Service	Remarks
Assam	Delhi	Exempted supply Of service	Since, embarking from assam
Chennai	Manipur	Exempted supply Of service	Since disembarking In manipur
Mumbai-Sikkim	Sikkim-Mumbai	Exempted supply Of service	Since, disembarking in Sikkim & Embarking from Sikkim (Signle ticket)
Chennai	London	Taxable supply Of service	Since, place of provision is chennai
J & K	Hyderabad	Taxable supply Of service	Since, place of provision is J&K.
Cochin	J & K	Taxable supply Of service	Since, place of provision is cochin

The GST rate applicable for transport of passengers by air in economy class is 5%with input tax credit allowed on input services.

The GST rate for transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport is also fixed at 5%with input tax credit allowed on input services.

The GST rate for transport of passengers by air in other than economy class is 12% with full input tax credit.

Summary:

Transportation of Passengers by Air	GST Rate	Input Tax Credit		
		Inputs	Capital goods	Input service
Economic class	5%	Not allowed	Not allowed	allowed
Business class	12%	allowed	allowed	allowed
Embarking from or terminating in a regional connectivity Scheme Airport	5%	Not allowed	Not allowed	allowed

Illustration 91

Air Bus Ltd furnishes you the following information for computation of its GST liability for the month of Oct 2022.

(a) Passenger travelling from Mizoram to Chennai – 2000 passengers, Gross Value per ticket ₹2,500.

(b) Passenger travelling from Chennai-USA 500 passengers, USA-CHENNAI – 200 passengers, Gross Value per ticket ₹45,000.

(c) Passengers travelling from Mumbai – Tripura -Mumbai with single ticket – 1000 passengers. Gross value per ticket ₹5,000

Air Bus Ltd. charging 40% passenger tax which is not included in the gross value per ticket.

Find the GST liability?

All passengers are travelled in economic class except point (b).

Solution:

ST. SHOWING S.T LIABILITY OF AIR BUS LTD. FOR Oct 2022.

(a) From Mizoram to Chennai	=	exempted supply
(b) Passenger travelling from Chennai-USA		
(500 passengers × 45,000)	=	₹ 2,25,00,000
Passenger tax40%	=	₹ 90,00,000
(c) From Mumbai – Tripura -Mumbai	=	exempted supply
VALUE OF TAXABLE SUPPLY OF SERVICES	=	₹ 3,15,00,000
CGST 6%	=	₹ 18,90,000
SGST 6%	=	₹ 18,90,000
TOTAL TAX	=	₹ 37.80,000

Note: Compulsory Inclusions: Any taxes, fees, charges levied under any law other than GST law, are required to be added to the price (if not already added) to arrive at the taxable value.

Entry No. 16 Regional connectivity scheme – exempted from GST

Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a regional connectivity scheme airport, against consideration in the form of viability gap funding: Provided that nothing contained in this entry shall apply on or after the expiry of a period of one year from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.

w.e.f. 25-1-2018, Viability Gap Funding (VGF) for a period of 3 years from the date of commencement of RCS airport from the present period of 1 year.

Entry No. 17: Service of transportation of passengers with or without accompanied belongings

- Inland waterways (i.e. National waterways)
- Public transport, other than predominantly for tourism purpose, in a vessel between places located in India (by coastal waterways);

are exempted from GST.

Illustration 92

Compute value of taxable supply of services of Air Speed Air lines located in Chennai for transportation of passengers by air from the following data relating to sums received exclusive of GST –

(1) Passengers embarking at Arunachal Pradesh: ₹5 lakhs;

(2) Passengers where journey terminated at Assam: ₹4 lakhs;

(3) Amount charged from passenger for flights starting from USA to Chennai: ₹250 lakhs;

(4) Amount charged from passengers flying from Chennai to Sydney (Business class): ₹540 lakhs (including passenger taxes levied by government and shown separately on ticket: ₹100 lakhs). All passengers booked ticket from Delhi Office of Air Speed Air lines.

(5) Passengers embarking from Chennai to Coimbatore (Economic class): ₹4 lakhs. Passengers booked tickets from Chennai office of Air Speed Air lines.

Applicable rate of GST 5% and 12%. Find the IGST, CGST & SGST if any.

Solution:

ST. SHOWING GST LIABILITY OF AIR Speed Airlines:

(a) embarking at Arunachal Pradesh	=	exempted supply
(b) where journey terminated at Assam	=	exempted supply
(c) from USA to Chennai	=	exempted supply
(d) from Chennai to Sydney (Business class)	=	₹ 4,40,00,000
Passenger tax	=	₹ 1,00,00,000
(e) from Chennai to Coimbatore	=	₹ 4,00,000(Economic class)
VALUE OF TAXABLE SUPPLY OF SERVICES	=	₹ 5,44,00,000
IGST 12% on ₹5,40,00,000	=	₹ 64,80,000
CGST 2.5% on ₹4,00,000	=	₹ 10,000
SGST 2.5% on ₹4,00,000	=	₹ 10,000
TOTAL TAX	=	₹ 65,00,000

Note:

Compulsory Inclusions: Any taxes, fees, charges levied under any law other than GST law, are required to be added to the price (if not already added) to arrive at the taxable value.

Air Travel Agents – GST

Air Travel agents are the mediator between the ultimate customer and the airlines e.g. Makemytrip.com, PayTM are all examples of Air travel agents because they act as a mediator between the customer and the airline companies like Air India, Spice Jet, etc.

Exemption: Air Travel Agents are not entitled for any exemption.

Payment of tax at the option of the Air Travel Agent:

(A) air travel agents are required to pay 18% GST on commission earned from airlines and also service charges, handling charges etc. (by whatever name called) collected from the customers/passengers.

There is no bar on air travel agents in availing ITC on input services to support the output services of travel agents.

OR

(B) As per rule 32(3) of the CGST Rules, 2017 permits an air travel agent to discharge GST at fixed percentage of basic fare on which commission is normally paid by the airlines to the agent. In such a case, the effective value and the effective rate of GST is tabulated below:—

Air travel Agent	Domestic booking	International booking
Value of taxable supplies	5% on Basic Fare	10% on Basic Fare

Air Travel Agent has to pay GST 18% on the above value of taxable supplies.

An air travel agent can pay tax under any of the 2 options on transaction to transaction basis. The rules do not bind the travel agent to opt for any of the options uniformly throughout the given financial year.

Input Tax Credit: Full ITC is available to the air travel agents.

Summary:

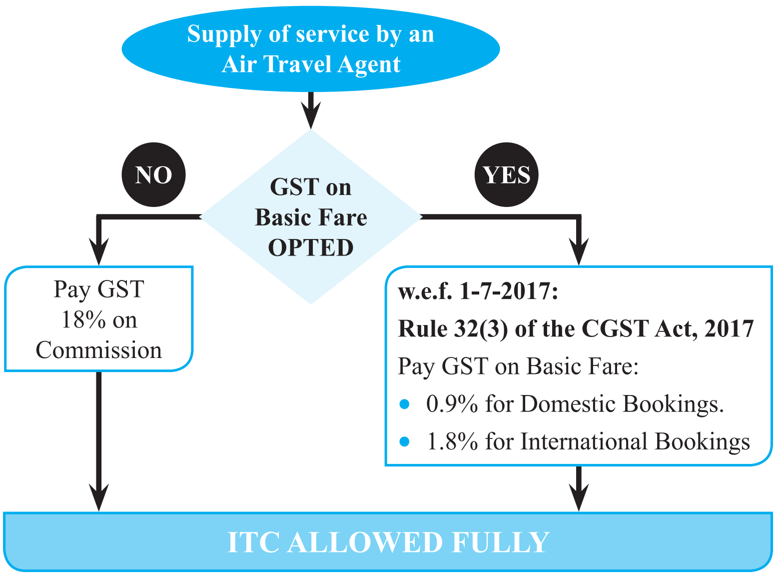


Illustration 93

Compute the GST liability of Mr. A, an air travel agent, for the quarter ended December 31, 2022 using the following details:—

Particulars	Amount (₹)
Basic air fare collected for domestic booking of tickets	50,00,000
Basic air fare collected for international booking of tickets	80,00,000
Commission received from the airlines on the sale of domestic and international tickets	4,50,000
Year ending bonus received from airlines	50,000

In the above case, would the GST liability of Mr. A be reduced if he opts for the special provision for payment of GST as per Rule 32(3) of the CGST Rules, 2017. The applicable rate of GST 18%.

Solution: ST. showing GST liability of Mr. A for the quarter ending 31st Dec 2022:

		(₹)
Commission received from the airlines on the sale of domestic and international tickets	=	4,50,000
Year ending bonus or incentive	=	50,000
Taxable supply of services	=	5,00,000
GST @18% on ₹5 lakh	=	90,000

ST. showing GST liability of Mr. A for the quarter ending 31st Dec., 2022

		(₹)
Basic air fare (domestic booking) [50,00,000 × 5%]	=	2,50,000
Basic air fare (international booking) [80,00,000 × 10%]	=	8,00,000
Total taxable supply of service	=	10,50,000
GST 18% on ₹10,50,000	=	1,89,000

Note: The GST liability of Mr. A would not be reduced in the aforesaid option.

Therefore, special provision under Rule 32(3) of CGST Rules, 2017 is not economical.

(b) non airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

A contract carriage (other than radio taxi) for the transportation of passengers (non-AC) (excluding tourism) are exempted from GST.

"contract carriage" has the same meaning as assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient ITC fully allowed, if GST paid @12%. Otherwise pay GST @5% without ITC, except the input tax credit of input service in the same line of business.

Transport of passengers by motor cab/renting of motor cab (vide Notification No. 31/2017-Central Tax (Rate), dated 13th October 2017):—

(i) GST of 5% without ITC and 12% with full ITC available to transport of passengers by motor cab/ renting of motor cab shall be extended to any motor vehicle (i.e. it includes contract carriage or stage carriage);

(ii) ITC of input services shall be allowed in the same line of business at GST rate of 5%.

Tour and Travel services:

"Tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sight-seeing or other similar services) by any mode of transport and includes any person engaged in the business of operating tours".

GST @ 5% has been applied on services of tour operator without benefit of Input Tax Credit (ITC) on goods and services. 5% GST will be payable on the gross amount charged by the tour operator from the customer. This GST is uniform for all services – package tours, hotel accommodation only etc.

The concessional GST rate of 5% is subject to meeting the following conditions: —

(i) Input Tax Credit on goods and services used in supplying output services of tour operator has not been taken.

w.e.f. 25.1. 2018, ITC of input services in the same line of business at the GST rate of 5% in case of tour operator service is allowed.

(ii) The invoice/bill issued for supply of output service indicates that it is inclusive of charges of accommodation and transportation required for such a tour. This narration can be given by way of footnote in the invoice.

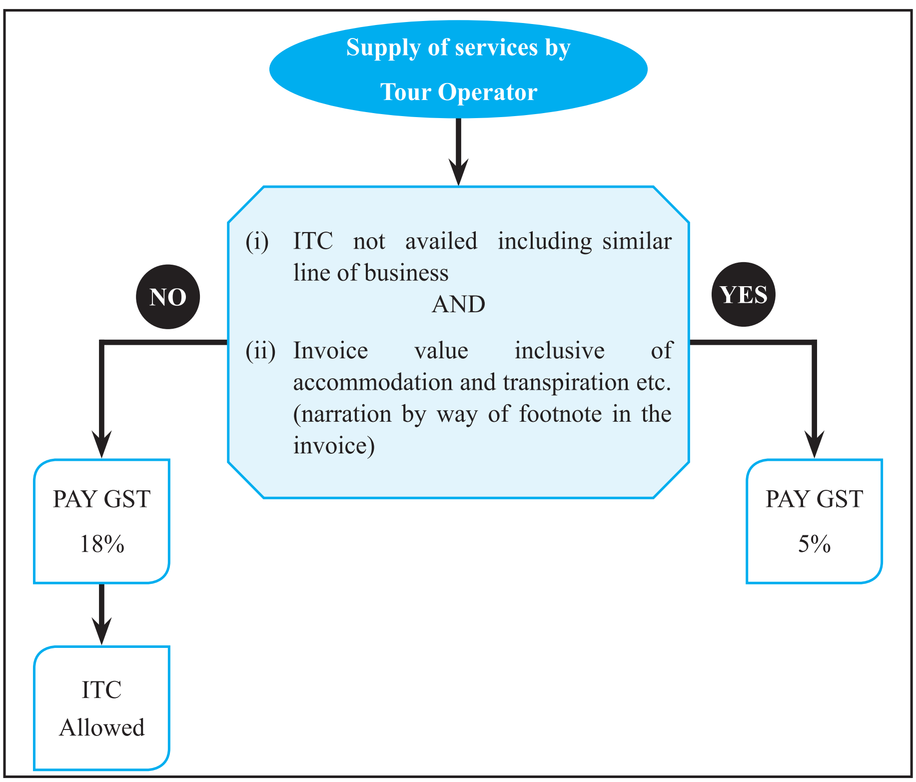
In case any of the above conditions are not met, the benefit of concessional rate of 5% would not apply and in that event the Department may demand full 18% GST from the tour operator.

Services provided by tour and travel agent (i.e. SPECIFIED SERVICES) Section 13(8) of the IGST Act, 2017

Place of Supply of Services	Location of the Supplier of Services

However, services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India exempted from GST (Notification No. 9/2017 Integrated Tax (Rate) dated 28thJune 2017).

Rate of GST and ITC:



Important Note:

(1) House Boats (moving): Services provided by house boats (moving) in Kerala and cruise ships, are also covered as Tour Operators Services. In both these cases, accommodation, food, transportation, sightseeing and other value added services are provided as combo package.

(2) Tours conducted through luxury trains like Maharaja Express, Deccan Odyssey, Heritage of India etc. are also covered as Tour Operators Services.

(3) The services provided by static house boats (in Kashmir) by way of providing accommodation and food to the tourists are not covered within the ambit of tour operators as such. These services are akin to services of hotels, inns, guest houses, campsites and other commercial places for residential or lodging purposes. The rate of GST in these cases will be linked with the declared tariff per day.

Illustration 94

RTS Tours Co. has arranged four package tours during October 2022. The particulars of the services and charges are as under:

(1) **Tour 1:** Charges received ₹35 lakhs. The package includes transportation, accommodation, food, and tourist guide, entry fees for monuments.

(2) **Tour 2:** Charges received ₹65 lakhs. The package includes transportation and accommodation for stay.

(3) **Tour 3:** Charges received ₹40 lakhs. The charges are solely for arranging accommodation for stay. However, the bills issued to the clients do not mention it clearly that the charges are solely for arranging the accommodation for stay.

(4) **Tour 4:** Charges received ₹50 lakhs (inclusive of charges of stay). The bill issued to the client's mentions it clearly that the charges are solely for arranging the accommodation for stay.

Compute the value of taxable supply of services and GST.

Note: Applicable rates of GST 5% and 18%. All transactions taken place at inter State level.

Solution:

STATEMENT SHOWING GST OF RTS TOURS Co. for October 2022

Particulars	Value (₹) in lakhs	Value (₹) in lakhs
Tour 1: Packaged Tour	35	
Tour 2: Transportation and Accommodation	65	
Tour 3: Accommodation for stay		40
Tour 4: Accommodation for stay	50	
Taxable supply of services	150	40
GSR Rate	5%	18%
IGST	7.50	7.20
Less: ITC	Not allowed	Allowed
Net GST liability	7.50	7.20

(c) Stage carriage other than airconditioned stage carriage.

"stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient ITC fully allowed, if GST paid @12%. Otherwise pay GST @5% without ITC, except the input tax credit of input service in the same line of business.

Transport of passengers by motor cab/renting of motor cab (vide Notification No. 31/2017-Central Tax (Rate), dated 13th October 2017):—

(i) GST of 5% without ITC and 12% with full ITC available to transport of passengers by motor cab/ renting of motor cab shall be extended to any motor vehicle (i.e. it includes contract carriage or stage carriage);

(ii) ITC of input services shall be allowed in the same line of business at GST rate of 5%.

w.e.f. 1-1-2022, the exemption on services of transport of passengers, with or without accompanied belongings,

a. by non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire, or

b. stage carriage other than air conditioned stage carriage;

shall not be available if such services are supplied through an electronic commerce operator, and are notified under sub-section (5) of section 9 of the CGST Act, 2017.

Illustration 95

XY Travels Pvt. Ltd., located in New Delhi, is engaged in providing services of transportation of passenger and discharges its GST liability by availing 5% tax rate. Value of services rendered by the company during the month of October 2022 is ₹5,50,000.

The company has sub-contracted part of its services to YZ Cabs Pvt. Ltd., which is also engaged in transportation of passenger. Total value of such sub-contracted services is ₹1,00,000 and GST charged @12%.

Determine the net GST liability of XY Travels Pvt. Ltd. (to be paid in cash) for the month of October, 2022.

Solution:

Statement showing Net GST liability of XY Travels Pvt. Ltd., for the month of October 2022:

Particulars	Value in (₹)	Working note
Output tax	27,500	5,50,000 × 5% = ₹27,500
Less: ITC on input service from similar line of business	(5,000)	1,00,000 × 12% = 12,000 12,000 × 5/12 = ₹5,000
Net output tax	22,500	

Illustration 96

M/s. R Ltd. is engaged in providing service of transportation of passengers, furnished the following information in the month of October 2022. Find the GST liability.

(1) Service of transportation of passengers by National Waterways: ₹50 lakhs;

(2) Service of transportation of passengers by Stage carriage (non-A/c): ₹5 lakhs;

(3) Service of transportation of passengers by contract carriage for tourism: ₹120 lakhs (bills inclusive of accommodation and transportation etc. indicated as narration at the bottom of invoice);

(4) Transportation of passenger from Mumbai to Chennai port in a vessel and such service is not for tourism purpose: ₹12 lakhs;

Note: R Ltd. is willing to avail exemption benefits if any. Taxable supplies of Mr. R in the previous year were ₹22 lakh.

Solution: Statement showing service tax liability M/s. R Ltd.

Nature of service Transport of passengers	(₹) in lakhs
By National Waterways	Exempted supply
By Stage carriage [non-A/c.]	Exempted supply
By contract carriage for tourism (bills inclusive of accommodation and transportation etc. indicated as narration at the bottom of invoice)	120
In a vessel from Mumbai to Chennai and such service is not for tourism	Exempted supply
Taxable supply of services	120
GST liability @5% on 120 lakhs (Note: input tax credit not allowed)	6

Entry No. 17: Service of transportation of passengers with or without accompanied belongings

(a) railways in a class other than—

(i) first class; or

(ii) an air-conditioned coach;

(b) metro, monorail or tramway;

(c) inland waterways;

(d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(e) metered cabs or auto rickshaws (including e-rickshaws).

w.e.f 1-1-2022, The exemption on service of transportation of passengers, with or without accompanied belongings, by metered cabs or auto-rickshaws (including e-rickshaws) shall not be available if such services are supplied through an electronic commerce operator, and are notified under sub-section (5) of section 9 of the CGST Act, 2017.

Note:

(1) The rate of GST on Transport of passengers by rail (other than sleeper class fixed by GST council at the introduction of GST in July 2017 is 5% with ITC of input services.

(2) E-rickshaws exempt from GST

Illustration 97

Indian railways has provided following services—

(1) Transport of passengers by general class : ₹15,00,000;

(2) Transport of passengers by sleeper class : ₹10,00,000;

(3) Transport of passengers by 1st Class air conditioned coach: ₹5,00,00,000;

(4) Transport of passengers by 2 tier air conditioned coach: ₹20,00,00,000;

(5) Transport of passengers by 3-tier air conditioned coach: ₹30,00,00,000;

Compute value of taxable supplies and GST liability. Applicable GST rate is 5%.

Solution: Statement showing service tax liability

Nature of service Transport of passengers	Value in (₹)
General class	Exempted supply
Sleeper class	Exempted supply
1st Class air conditioned coach	5,00,00,000
2 tier air conditioned coach	20,00,00,000
3-tier air conditioned coach	30,00,00,000
Taxable supply of service	55,00,00,000
GST @5% on ₹55 crore	2,75,00,000

Entry No. 18: Services by way of transportation of goods

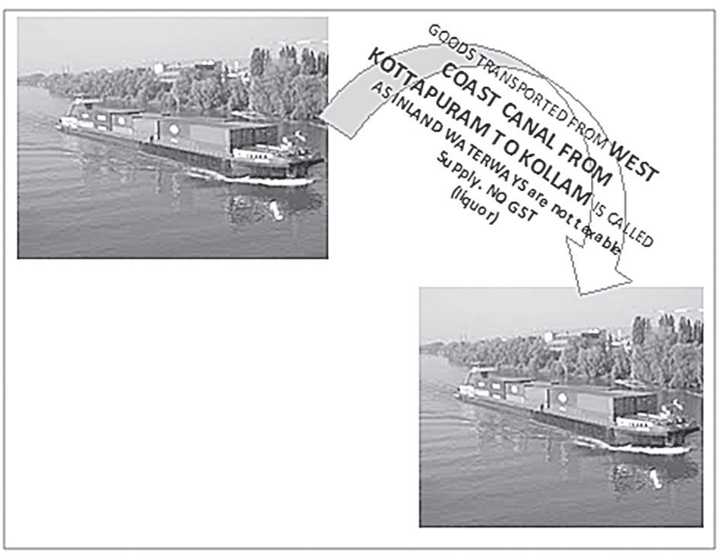
(a) by road except the services of—

  (i) a goods transportation agency;

  (ii) a courier agency;

(b) by inland waterways,

are exempted from GST.

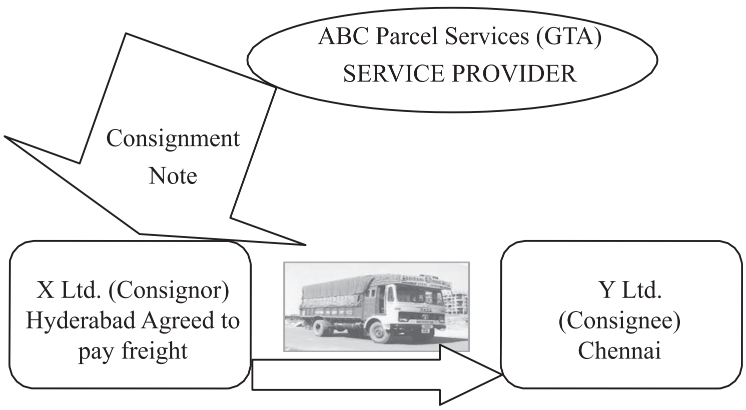


Goods Transport Agency – GST will be levied:

Under GST laws, the definition of Goods Transport Agency is provided in clause (ze) of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017. (ze) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

Example 173

ABC Parcel Services is a goods transport agency issued consignment note to X Ltd. for transporting of goods from Hyderabad to Y Ltd of Chennai. Hence, ABC Parcel Services is a provider of GTA service.



Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. As a result, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at S. No. 18 of notification No. 12/2017-Central Tax (Rate), which is exempt from GST.

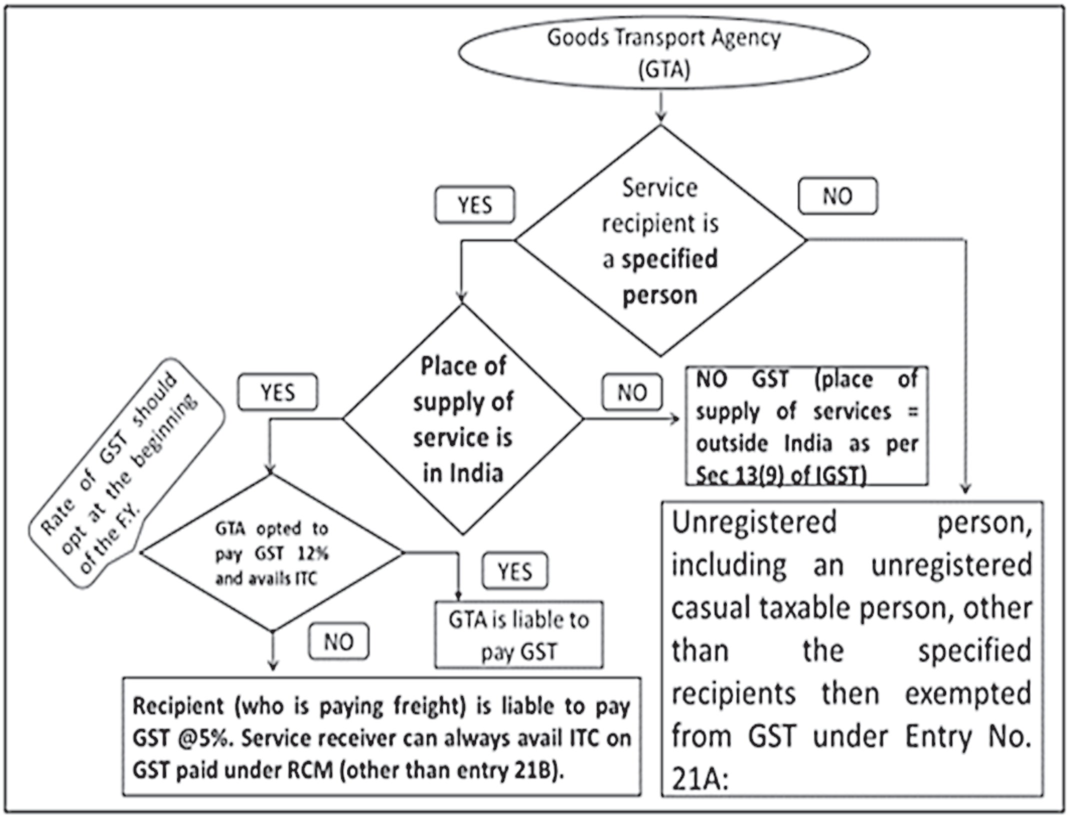
Thus, it is to be seen that mere transportation of goods by road, unless it is a service rendered by a goods transportation agency, is exempt from GST.

GTA - Reverse charge:

S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	GTA Services	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory.	Recipient

Thus, it is to be seen that mere transportation of goods by road, unless it is a service rendered by a goods transportation agency, is exempt from GST.

Person liable to pay GST:



However, the GTA has to opt 12% at the beginning of the financial year.

Registration under GST for GTA:

As per Notification No. 5/2017-Central Tax, dated 19/06/2017, a person who is engaged in making only supplies of taxable goods/services on which reverse charge applies is exempted from obtaining registration under GST.

Thus, a GTA does not have to register under GST if he is exclusively transporting goods where the total tax is required to be paid by the recipient under reverse charge basis (even if the turnover exceeds ₹20 lakhs).

Entry No. 21: GTA services specifically exempt:

In terms of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 (Sr. No. 21), the following services provided by a GTA (Heading 9965 or 9967) is exempt from payment of tax:

Services provided by a goods transport agency, by way of transport in a goods carriage of:

(i) agricultural produce;

(ii) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹ 1,500;

(iii) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750;

(iv) milk, salt and food grain including flour, pulses and rice;

(v) organic manure;

(vi) newspaper or magazines registered with the Registrar of Newspapers;

(vii) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or

(viii) defence or military equipments.

Entry No. 21A: "Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the specified recipients" also exempt from GST [vide Notification No. 33/2017-Central Tax (Rate), dated 13.10.2017].

Similarly, the following services received by the GTA (Heading 9966 or 9973) is also exempt in terms of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 (Sr. No.22)

Entry No. 21B: Notification No. 28/2018- CT (R), dated 31st Dec, 2018:

Services provided by a goods transport agency, by way of transport of goods in a goods carriage, to, -

(a) a Department or Establishment of the Central Government or State Government or Union territory; or

(b) local authority; or

(c) Governmental agencies,

which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services is exempted from GST.

Entry No. 22: Services by way of giving on hire:

(b) to a goods transport agency, a means of transportation of goods.

Thus, if the GTA hires a means of transportation of goods, no GST is payable on such transactions.

In case of GTA provided services to SPECIFIED PERSONS:

The following businesses (recipient of services) is required to pay GST under reverse charge provided GTA opted to pay GST @5% at the beginning of the year: —

1. Factory registered under the Factories Act,1948;
2. A society registered under the Societies Registration Act, 1860 or under any other law;
3. A co-operative society established under any law;
4. A GST registered person;
5. A body corporate established by or under any law; or
6. A partnership firm whether registered or not (including AOP);
7. Casual taxable person.

The liability to pay GST devolves on the recipients for supply of services by a goods transport agency (GTA) who has not paid central tax at the rate of 6%, Thus in cases where services of GTA are availed by the above categories of persons in the taxable territory the GTA supplier has the option to pay tax (and avail ITC) @12% (6% CGST + 6% SGST); and if the GTA does not avail this option, the liability to pay GST will fall on the recipients.

In all other cases where the recipients do not fall in the categories mentioned above, the liability will be on the supplier of GTA services.

Important note:

(1) It has been clarified that ancillary services such as loading/unloading, packing/unpacking, transhipment, temporary storage etc., would form part of the goods transport agency's (GTA) service if such services are provided by a GTA in the course of transportation of goods and the charges for such services are included in the invoice issued by the GTA, and not by any other person.

Illustration 98

A GTA engaged in transport of goods by road. As per the general business practices, GTA also provided intermediary and anciliary services like loading/unloading, packing, transhipment and temporary warehousing, in relation to transportation of goods by road.

With reference to the provisions of GST law, analyse whether such services are to be treated as part of the GTA service, being a composition supply, or as separate supplies.

Solution: CBIC has been clarified that ancillary services such as loading/unloading, packing/ unpacking, transhipment, temporary storage etc., would form part of the goods transport agency's (GTA) service if such services are provided by a GTA in the course of transportation of goods and the charges for such services are included in the invoice issued by the GTA, and not by any other person. Therefore, it is treated as composite supply and principal supply is GTA supply.

Place of supply of services in case of transportation of goods:

Place of supply of services by way of Transportation of goods including by mail or courier [Sec. 12(8) of IGST Act, 2017]:

S. No.	Nature of service	Place of supply of service
1	Services by way of Transportation of goods including by mail or courier	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Location at which such goods are handed over for their transportation.

Place of provision of a service of transportation of goods, other than by way of mail or courier section 13(9) of IGST

Place of supply of Service = Destination of such Goods

Illustration 99

Discuss whether GST is leviable in respect of transportation services provided by Raja Ram Goods Transport Agency in each of the following independent cases:

Customer	Nature of service provided	Amount charged (₹)
A	Transportation of milk	22,00,000

Customer	Nature of service provided	Amount charged (₹)
B	Transportation of books on a consignment transported in a single goods carriage	1,30,000
C	Transportation of chairs for a single consignee in the goods carriage	600

Note: Raja Ram Goods Transport Agency registered person under GST Law. Opted to pay CGST 6% and SGST @ 6%.

Solution: Statement showing service tax liability of Raja Ram Goods Transport Agency:

Customer	Nature of Service	Taxable supply (₹)	Remarks
A	Transportation of milk	Nil	Exempted supply.
B	Transportation of books on a consignment transported in a single goods carriage.	1,30,000	Taxable supply
C	Transportation of chairs for a single consignee in the goods carriage.	Nil	Freight ₹600 is exempted from GST
	Total taxable supply	1,30,000	
	CGST 6% on₹1,30,000	7,800	
	SGST 6% on ₹1,30,000	7,800	

Illustration 100

ABC & Co., a goods transportation agency located in Delhi, transports a consignment of new colour TVs from the factory of XYZ Ltd. in Cochin, to the premises of a dealer in Jammu (taxable territory). As per mutually agreed terms between ABC & Co., and XYZ Ltd., the dealer in Jammu is the person liable to pay freight. The amount of freight exclusive of taxes is ₹4,50,000. State the person liable to pay GST and amount of tax payable. ABC & Co. not availing input tax credit. Applicable tax rates for GTA are 5% and 12%.

Note: Consignment note issued by ABC & Co. for transporting goods.

Solution: Person liable to pay GST is dealer in Jammu (i.e. taxable territory).

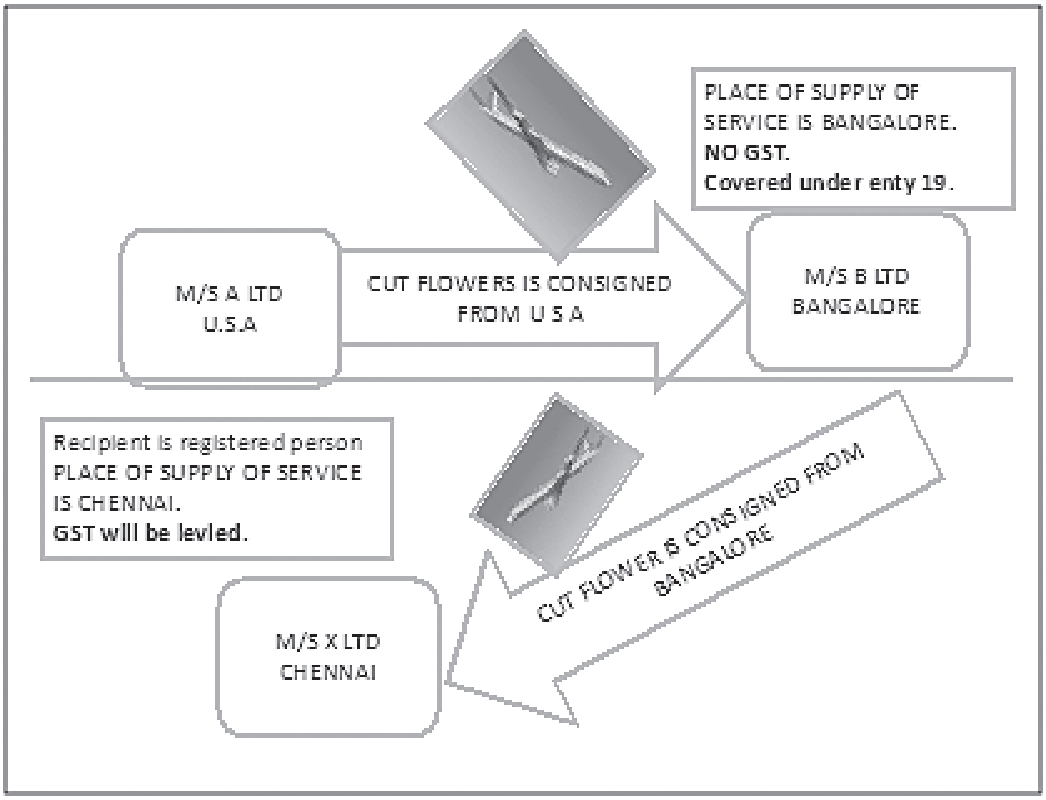
GST liability is as follows:

Total freight	=	₹ 4,50,000
IGST 5% on ₹4,50,000	=	₹ 22,500

Entry No. 19: Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India

S.No.	Transpiration of goods by Air	Taxable supply	GST Rate	Remarks
1	Within India	Yes	18%	Exemption not granted

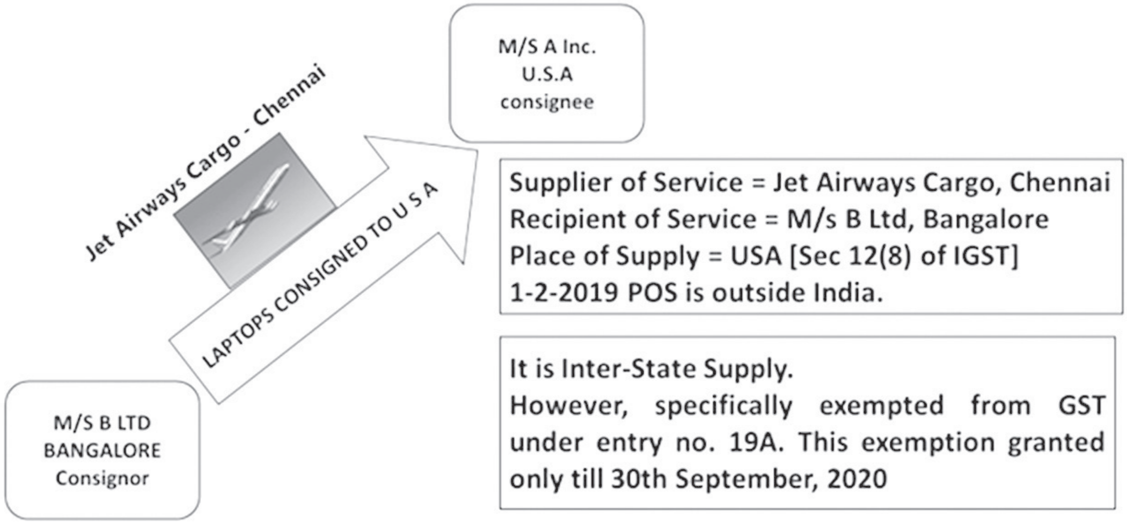
S.No.	Transpiration of goods by Air	Taxable supply	GST Rate	Remarks
2	From India to outside India	No	Nil	Destination of goods outside India
3	From outside India into India	No	Nil	Covered under Entry No. 19 of exemption list



19A. Transportation of goods by an aircraft from customs station of clearance in India to a place outside India:

w.e.f. 25.1.2018, Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.

this exemption extended upto 30th September 2022



19B. Transportation of goods by a vessel from customs station of clearance in India to a place outside India:

w.e.f. 25.1.2018, Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.

This exemption extended upto 30th September 2022

Supplier of Service	= Win Logistics Pvt. Ltd – Chennai
Recipient of Service	= M/s C Ltd, Chennai
Place of Supply	= USA [Sec 12(8) of IGST]

It is Inter State Supply. However, specifically exempted from GST under entry no. 19B.

Entry No. 19C: Satellite services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited is exempted from GST (vide Notification No. 5/2020CT (Rate), dated 16-10-2020):

Entry No. 20: Transport of goods by rail and vessel

Services by way of transportation by rail or a vessel from one place in India to another of the following –

(a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(b) defence or military equipments;

(c) newspaper or magazines registered with the Registrar of Newspapers;

(d) railway equipments or materials;

(e) agricultural produce;

(f) milk, salt and food grain including flours, pulses and rice; and

(g) organic manure.

are exempted from GST

GST Rate and ITC for transportation of Goods by Rail or Vessel:

- The rate is 5% (CGST 2.5% + SGST 2.5%) or IGST @ 5%.
- ITC of Input services available, but not for input Goods.

Illustration 101

Compute taxable value for transport of goods by rail within India (all sums exclusive of all taxes)—

(1) Transport of postal mails and postal bags : ₹55 lakhs;

(2) Transportation of household effects: ₹50 lakhs

(3) Transport of petroleum products: ₹25 lakhs;

(4) Transport of relief materials to flood affected areas: ₹25 lakhs;

(5) Transport of newspapers and magazines registered with registrar of newspapers: ₹15 lakhs

(6) Transport of milk: ₹15 lakhs;

(7) Transport of alcoholic beverages: ₹7 lakhs:

(8) Transport of defence and military equipments: ₹40 lakhs;

(9) Transport of chemical fertilizers: ₹90 lakhs;

(10)Transport of other taxable goods: ₹200 lakh (including ₹20 lakhs demurrages).

Answer: Statement showing GST liability:

Nature of service	(₹) in lakhs
Transport of postal mails and postal bags	55
Transportation of household effects	50
Transport of petroleum products	25
Transport of relief materials to flood affected areas	Exempted supply
Transport of newspapers and magazines registered with registrar of newspapers	Exempted supply
Transport of milk	Exempted supply
Transport of alcoholic beverages	7
Transport of defence and military equipments	Exempted supply
Transport of chemical fertilizers:	90
Transport of other taxable goods (including demurrages of ₹20 lakhs)	200
Taxable value of supply	427

Illustration 102

Validate the following:

Air Speed Airlines transported Fruits (i.e. agricultural produce) from Chennai airport to Meghalaya. It is exempted supply of service under GST.

Solution: The given statement is invalid.

Transportation of goods within India by Air, exemption not granted. Hence, GST will be levied.

Entry No. 22: Services by way of giving on hire:

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

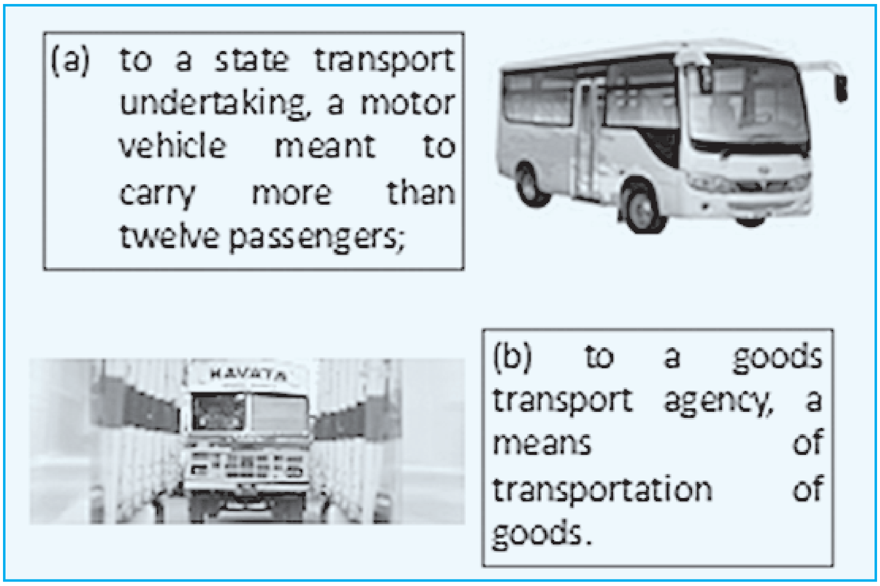
(b) to a goods transport agency, a means of transportation of goods.

w.e.f. 25.1.2018,

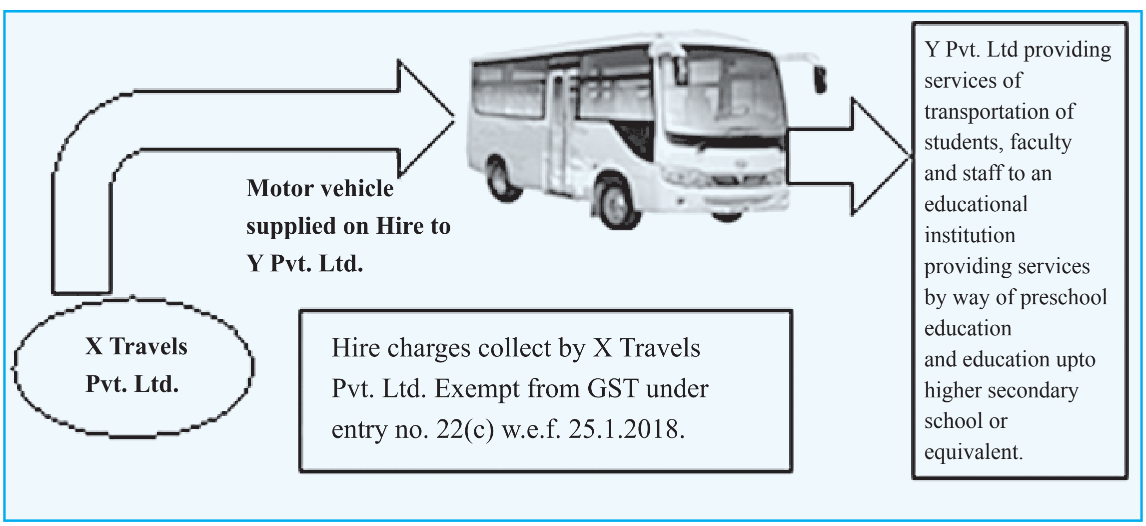
(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

(d) Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers.

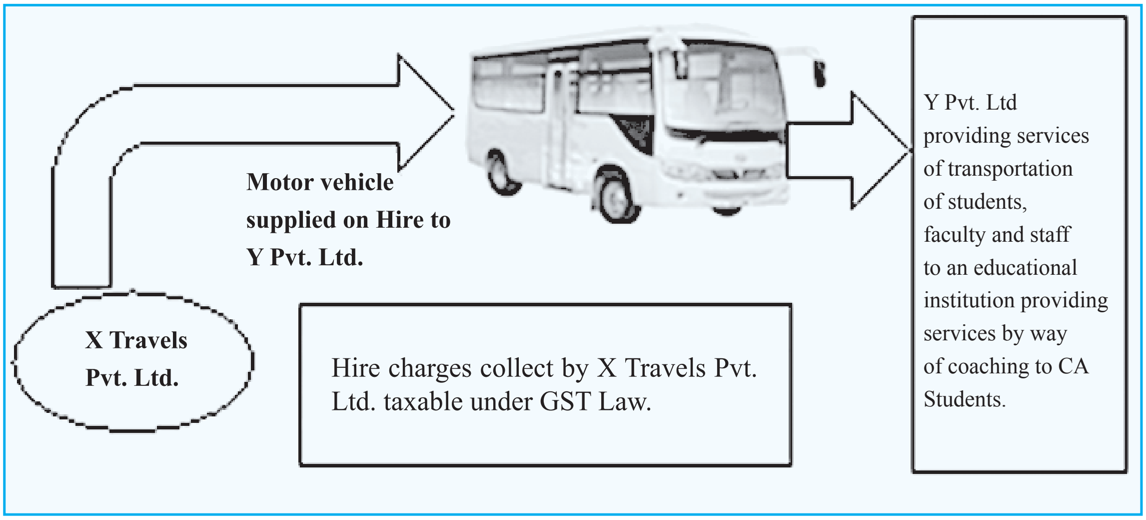
Example 179



Example 180



Example 181



Entry 22(aa): w.e.f 1-10-2019:

Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers exempted supply of service;

Note: EOV means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle.

Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers.

EOV means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle.

Entry No. 54: Agriculture

(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; specially exempted.

Illustration 102

Examine whether GST is payable in the following case:—

X Ltd., has given on hire 7 trucks to ABC transporters of Delhi (a goods transport agency) for transporting goods in Central Chennai. The hiring charges for the trucks are ₹6,200 per truck per day.

Answer: GST is not payable in case of hiring of trucks to ABC Transporters. The Exemption Notification No. 12/2017-CT(R), dated 28.06.2017/Notification No. 9/2017-IT(R), dated 28.06.2017 provides exemption to services by way of giving on hire inter alia to a goods transport agency, a means of transportation of goods.

Illustration 103

From the following information compute the value of taxable supply and GST payable thereon if all charges are exclusive of GST.

(1) Hiring of bus (capacity to carry 12) to APSRTC (a state transport undertaking): ₹22 lakhs

(2) Hiring of goods vehicle to a goods transport agency: ₹12 lakhs

(3) Hiring of cars designed to carry passengers to a goods transport agency: ₹22 lakh

(4) Renting of dumpers: ₹15 lakhs

(5) Hiring of audio visual equipment's for an event: ₹15 lakhs

(6) Hiring of pandal or shamiana for organizing functions/events: ₹30 lakhs

(7) Hiring of agro machinery for use in agriculture: ₹11 lakh

Assessee willing to avail the exemption benefits if any. Assume applicable rate of GST is 5%. Location of supplier and place of supply in the same State.

Solution: Statement showing GST liability:

Nature of service	Value (₹)in lakhs
Hiring of bus to APSRTC	22
Hiring of goods vehicle to a goods transport agency	Exempted
Hiring of cars designed to carry passengers to a goods transport agency	22
Renting of dumpers	15
Hiring of audio visual equipment's for an event	15
Hiring of pandal or shamiana for organising functions	30
Hiring of agro machinery for use in agriculture	Exempted
Taxable value of supply	104
CGST 2.5%	2.60
SGST 2.5%	2.60

Entry No. 23: Service by way of access to a road or a bridge on payment of toll charges exempted from GST.

The activity of toll collection outsourced to any third party agency who undertakes the work for consideration, is not exempted from payment of GST.

Entry 23A: Service by way of access to a road or a bridge on payment of annuity is also exempt from GST (Notification No. 32/2017-Central Tax (Rate), dated 13.10.2017)

Illustration 104

Intertoll India Consultants was under taken a contract to collect toll on commission basis from Noida Toll Bridge Company (i.e. agency authorised to levy toll). Noida Toll Bridge Company collection in the month of Oct 2017 ₹2 crore. Commission paid to Intertoll India Consultants @5% on the gross receipts.

Find the exempted value of supply and taxable supply.

Solution: Exempted value of supply = ₹2 crore

Taxable value of supply = ₹10 lakh

(₹2 crore × 5%)

Note: The activity of toll collection outsourced to any third party agency who undertakes the work for consideration is a taxable supply and GST will be levied.

Entry No. 24: Services by way of loading, unloading, packing, storage or warehousing of rice exempted from GST.

Illustration 105

Find the taxability for the following independent cases.

(a) Packing of pulses in retail packs for ₹42,000.

(b) Packing of tomato ketchup for ₹54,000

(c) Commission on sale of rice for ₹10,125.

(d) Storage of rice flour in the warehouse for ₹12,000.

Solution:

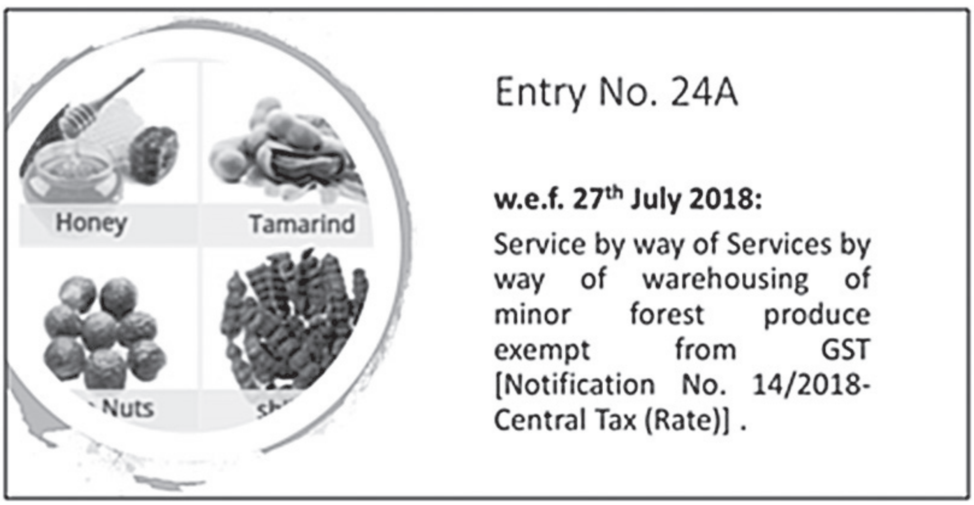
(a) taxable supply of services

(b) taxable supply of services

(c) taxable supply of services

(d) taxable supply of services

Entry No. 24A: Warehousing of minor forest produce:



Entry 24B: Exempted Services: services provided by way of storage or warehousing of

Cereals & Pulses	Fruits	Nuts	Vegetables
Spices	Copra	Sugarcane	Jaggery
Raw Vegetable Fibres	Indigo	Unmanufactured Tobacco	Betel Leaves
Tea	Coffe	Tendu Leaves	

Entry No. 25: Transmission or distribution of electricity by an electricity transmission or distribution utility exempt from GST

Services provided by—

- The Central Electricity Authority
- A State Electricity Board
- A State Transmission Utility
- A Transmission licensee or distribution licensee under the Electricity Act,

are exempted from GST.

Note: Charges collected by a developer or a housing society for distribution of electricity within a residential complex Installation of gensets attract the GST.

Illustration 106

The Resident Welfare Association (RWA) of Blue Heaven Building Housing Society in Delhi provides the following information pertaining to amounts received by it in the month of Oct, 2022.

Particular	(₹)
Electricity charges levied by State Electricity Board on the members of RWA (The same was collected from members and remitted to the Board on behalf of members).	3,50,000
Electricity charges levied by State Electricity Board on the RWA in respect of electricity consumed for common use of lifts and lights in common area. (Bill was raised in the name of RWA. RWA collected the said charges by apportioning them equally among 100 families and then, remitted the same to the Board.)	4,00,000

Find the GST liability if any. The applicable rate of GST 18%.

Note:

(i) the Gross receipts of RWA was ₹24,50,000 and

(ii) Electricity charges are charged separately, not forming part of monthly maintenance.

Solution: Statement showing GST liability for the month of Oct 2022

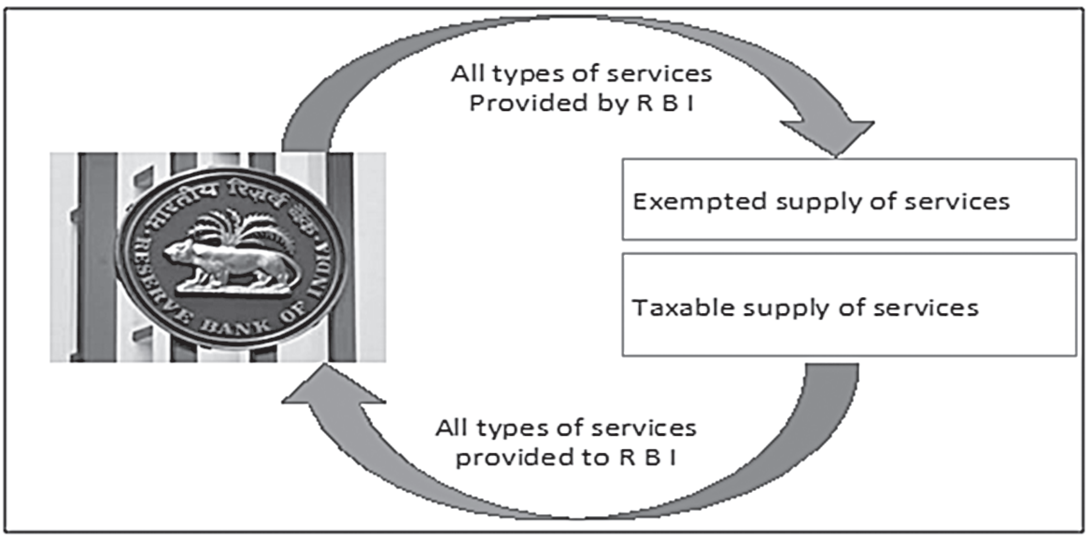
Particular	(₹)
Electricity charges levied by State Electricity Board on the members of RWA (i.e. Pure agent reimbursement expenses). RWA collected Electricity charges by apportioning them equally among 100 families and then, remitted the same to the Board.)	Nil 4,00,000
Value of taxable supply of service	4,00,000
CGST 9%	36,000
SGST 9%	36,000

Entry No. 26: Services by the Reserve Bank of India exempt from GST.

As per IGST Act, 2017: Services received by the Reserve Bank of India from outside India in relation to management of foreign exchange reserves also exempt from GST:

Example 72

- External asset management,
- custodial services,
- securities lending services etc.



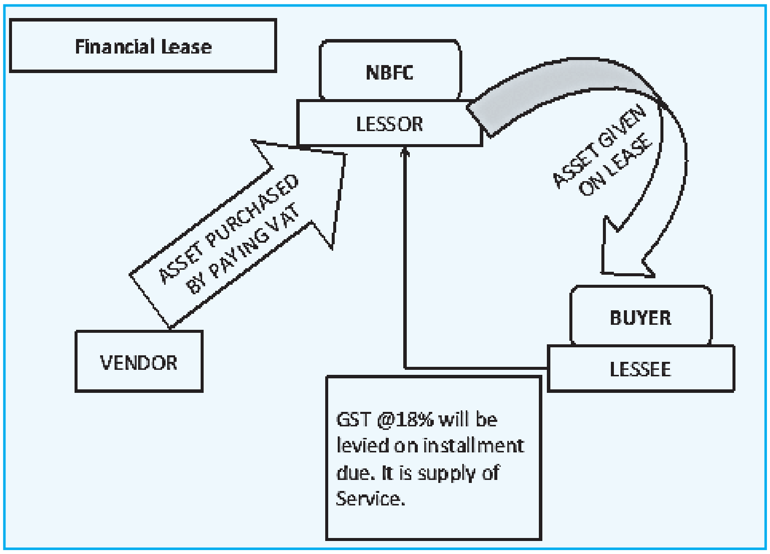
Entry No. 27: Banking and NBFC's Services are exempted from GST:

Services by way of—

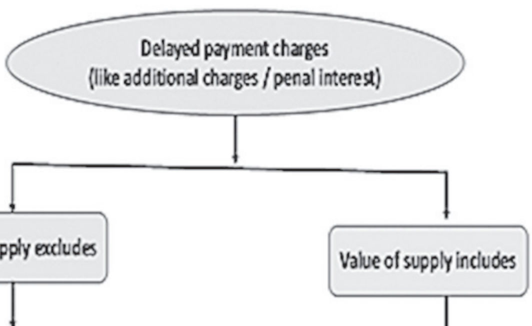
(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);

(b) sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers.

Lease — Applicability of GST:



Note: As per CBIC Circular No. 102/21/2019-GST, dated 28-6-2019, Penal interest against loan repayment is also treated as interest and covered under entry no. 27 of the Notification No. 12/2017-C.T. Therefore, exempted from GST.



Nature of supply	Value in ₹	Taxability
Loan given by Bank	Xxxx	Not taxable
Interest on loan	Xxx	Exempted supply
Penal interest on delay in repayment of loan	Xxx	Exempted supply

Nature of supply	Value in ₹	Taxability
Goods sold or supplied services on credit basis	Xxxx	Taxable supply
Interest charged by supplier of goods or services on periodic payment	Xxx	Taxable supply
Penal interest on delay in repayment of value of goods or services	Xxx	Taxable supply

[*Circular No. 102/21/2019-GST, dated 28-6-2019*]

Place of supply of service for Banking NBFC and Stockbroker

Place of Supply of banking and NBFC service including Stock broking services [Section 12(12) of IGST]:

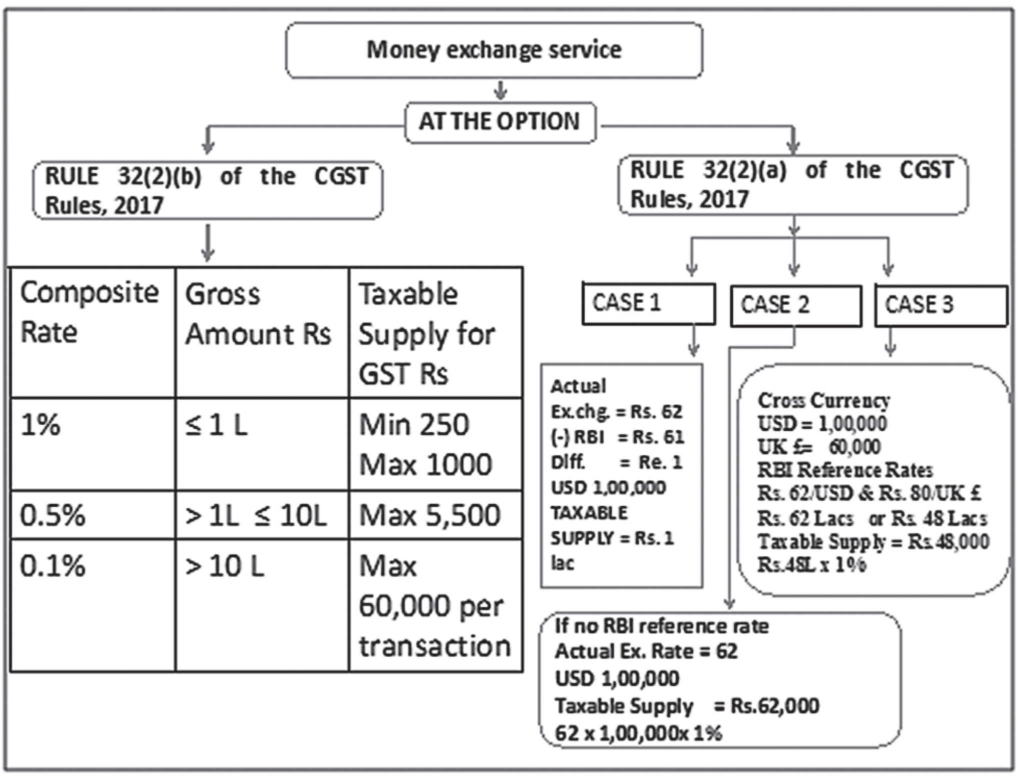
S. No.	Nature of service	Place of supply of service
1	Banking and NBFC service including Stock broking services	• Location of recipient of Service on the records of the supplier of service. Otherwise: • Location of supplier of service.

Services provided by a banking company, or financial company, or a NBFC to account holders SPECIFIED SERVICES Section 13(8) of the IGST Act, 2017

Place of Supply of Services	location of the Supplier of Services

ITC: Banking Company or NBFC [Section 17(4) of the CGST Act, 2017] A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to 50% of the eligible input tax credit on **inputs, capital goods and input services** in that month and the rest shall lapse.

Money exchange services – GST will be levied in case of supply of services to public at large.



Provided, also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) of Rule 32(2) of the CGST Rules, 2017 for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

Illustration 107

On 25th July 2022, Mr. X located in Chennai converted USD 100 into INR, actual exchange rate INR 62 per USD through Akbar Travel a money exchanger. RBI's reference rate for buying and selling was ₹61/61.5 respectively on such date. Akbar Travel registered under GST and located at Chennai.

(a) Find the Value of supply as per Rule 32(2)(a) of the CGST Rules, 2017 and GST where address of the recipient is available with Supplier?

(b) How much GST is liable to pay, in case where the RBI reference rate for a currency is not available.

Note: Applicable rate of GST 18%.

Solution:

(a) The value of supply = (62-61) × 100 = INR 100

Thus, the value of taxable supply of Akbar Travel will be INR 100 and GST will be levied on this amount.

GST = ₹18/-

9% CGST = ₹9

9% SGST = ₹9

(b) The value of supply = ₹62 (i.e. 1% of INR 6,200)

GST = ₹11.16

9% CGST = ₹5.58

9% SGST = ₹5.58

Illustration 108

Royal Financial Corporation located in Mumbai being a money exchanger provided the following service in the month of July 2022 to M/s Infosys Bengaluru.

(a) US$ 1,000 is changed into UK £ 571.4286 (i.e. 1 UK POUND = US$ 1.75).

(b) RBI reference rate for that currency at that time for 1US$ is ₹61 and for 1UK POUND = ₹85

Find the GST liability as per Rule 32(2)(a) of the CGST Rules, 2017.

Applicable rate of GST 18%.

Solution:

Taxable supply	= ₹486/- (₹48,571 × 1%)
IGST	= ₹87.43 (i.e. @18% on ₹486)
USD 1000 × ₹61	= ₹61,000
UKP 571.4286 × ₹85	= ₹48,571
whichever is less is ₹48,571	

Illustration 109

Srinidhi Ltd. exported some goods to LG Inc. of USA. It received US $ 9,000 as consideration for the same and sold the foreign currency @ ₹61 per US dollar. Compute the value of supply of money changing service under GST law and rules made thereunder in the following cases:—

(a) RBI reference rate for US dollar at. That time is ₹62 per US dollar

(b) RBI reference rate for US dollars is not available.

What would be the value of supply if US $9,000 are converted into UK £ 4,500. RBI reference rate at that time for US $ is ₹63 per US dollar and for UK £ is ₹101 per UK Pound.

Solution:

(a) In the given case, value of taxable service would be as follows:—

= ₹(62-61) × 9,000 USD = ₹9,000

(b) In the given case, value of taxable service would be as follows:—

1% of ₹(61 × 9,000 USD) = ₹5,490

In case neither of the currencies exchanged is Indian Rupee:

In the given case, value of taxable service would be 1% of the lower of the following:—

(a) US dollar converted into Indian rupees (or)

(b) UK pound converted into Indian rupees Value of taxable service

= $ 9,000 × ₹63 = ₹5,67,000 (or)

= £ 4,500× ₹101 = ₹4,54,500

= 1% of ₹4,54,500 = ₹4,545/-

Exit load – GST:

Exit load in the form of a fee (whether or not as a fixed percentage of the investment) is liable to GST.

Illustration 110

Whether GST will be levied on the exit-load on mutual funds?

Solution: Exit load in the form of a fee (whether or not as a fixed percentage of the investment) is liable to GST. Even if the exit load is in the form of units in the fund, it may be concluded that the consideration received in money was later converted to NAV units.

Interest rate swaps and foreign exchange swaps – GST:

Transactions in instruments like interest rate swaps, and foreign exchange swaps would be excluded from the definition of 'supply' since such instruments are derivatives, being securities, based on contracts of difference.

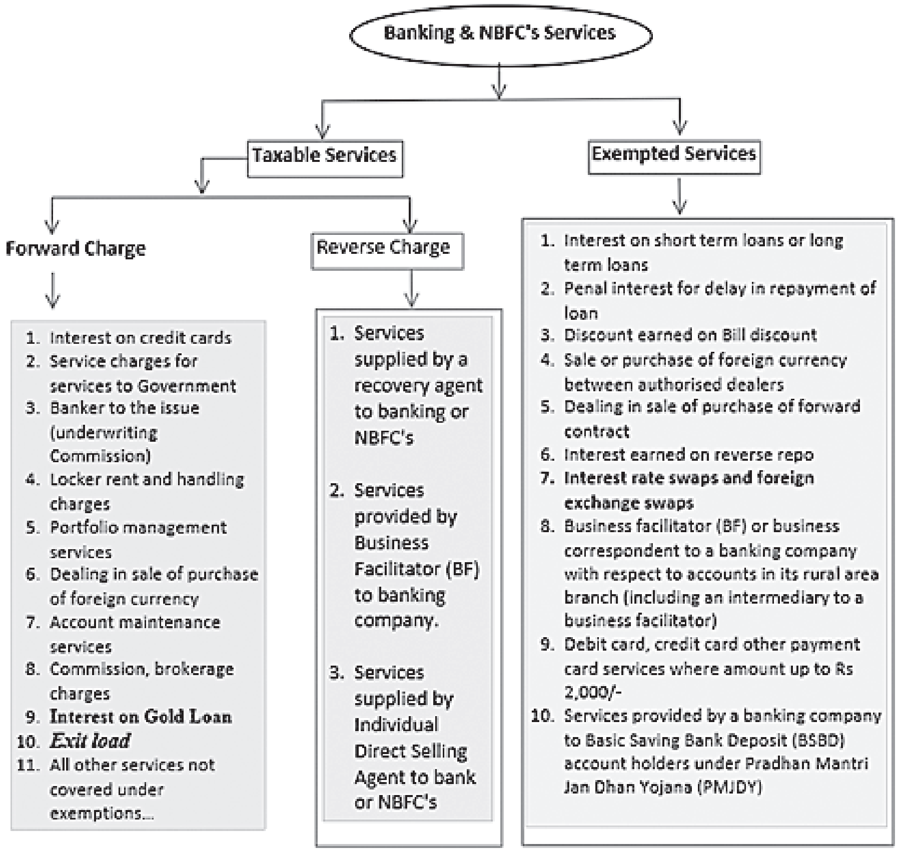
Interest on Gold Loan – GST:

The Gold (Metal) Loan Scheme is a means of financing. The jewellers can purchase gold (metal) from the Banks on outright basis on payment of the price. The gold (metal) loan only provides an option to the jeweller to avail a loan and pay for gold (metal) at a future date. For this facility, the jeweller pays interest to the Bank. The grant of loan and levy of interest is dependent on the purchase of gold, and therefore, part of the same transaction or facility; therefore, the interest, which is the consideration, will not be exempt as per provisions of section 15(2)(d) of the CGST Act, 2017.

Entry No. 27A
Notification No. 28/2018-CT(R), dated 31st December, 2018:

Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan

Mantri Jan Dhan Yojana (PMJDY) is exempted from GST.



Entry No. 28: Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).

Illustration 111

Kotak Mahindra Pension Fund provided the following services in a financial:

(a) Annual Premium of ₹6,000 collected from each individual in relation to National Pension Scheme. No. of subscribers 200.

(b) Monthly premium collected ₹8,750 towards general insurance to cover risk. No. of subscribers 500.

Applicable rate of GST 18%.

Find the GST liability.

Solution:

(a) Annual premium of ₹6,000 collected in relation to National Pension Scheme is exempted from GST.

(b) Monthly premium of ₹8,750 for 500 subscribers will attract GST @18%. Therefore, GST liability is ₹7,87,500 per month.

Entry No. 29: Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government exempt from GST.

Group Insurance means it covers a defined group of people, for example members of a professional association, or a society or employees of an organization. Group Insurance may offer life cover, health cover, and/or other types of personal insurance.

Group insurance has several advantages chief among which is a life cover made available to members irrespective of age, gender, socio economic background or profession, so long as they belong to the group that is applying for insurance.

Premium for these types of insurance is exempt from GST.

Entry No. 29A:

w.e.f. 25.1.2018,

Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government retrospectively w.e.f. 1st July 2017.

Entry 29B: w.e.f. 1-10-2019: Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force exempted from GST.

Entry No. 30: Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948 (34 of 1948) exempt from GST.

Entry No. 31: Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 (19 of 1952) exempt from GST.

Entry No. 31A: Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948:

w.e.f. 27th July 2018:

Services by Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948

[Notification No. 14/2018-Central Tax (Rate)]

Entry No. 31B: National Pension System (NPS) Trust:

w.e.f. 27th July 2018:

Services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee.

[Notification No. 14/2018-Central Tax (Rate)].

Entry No. 32: Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999) are exempted from GST.

Entry No. 33: Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market are exempted from GST.

Entry No.34: Debit card, credit card of the payment card services where amount upto ₹2,000 exempted from GST:

Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation– For the purposes of this entry, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

S. No.	Mode of payment	Transaction Amount in (₹)	Service Charges	GST 18%	Remarks
1	Debit card	1,000	5	Exempted	As per Entry No. 34 of NT No. 12/2017, dated 28.06.2017 Central Tax (Rate)
2	Credit card	2,000	20	Exempted	-do-

S. No.	Mode of payment	Transaction Amount in (₹)	Service Charges	GST 18%	Remarks
3	Debit card/ Credit card	2,124	21.24	3.82	Value of goods ₹1,800 plus GST ₹324 together exceeds ₹2,000, hence GST will be levied.
4	Internet Banking	1,000	5	0.90	Service charges attract GST. Since, payment mode of payment other than card.
5	Bank charges		200	36	**Fixed monthly/quarterly charges fully taxable.**

Entry No. 34A: Guaranteeing the loans:

w.e.f. 27th July 2018:

Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the financial institutions.

[Notification No. 14/2018-Central Tax (Rate)].

Entry No. 35: Services of general insurance business are exempted from GST

Services of general insurance business provided under following schemes –

(a) Hut Insurance Scheme;

(b) Cattle Insurance under Swarna Jayanti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);

(c) Scheme for Insurance of Tribals;

(d) Janata Personal Accident Policy and Gramin Accident Policy;

(e) Group Personal Accident Policy for Self-Employed Women;

(f) Agricultural Pump set and Failed Well Insurance;

(g) premia collected on export credit insurance;

(h) **"Restructured Weather Based Crop Insurance Scheme (RWCIS)"** (Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture);

(i) Jan Arogya Bima Policy;

(j) **"Pradhan Mantri Fasal Bima Yojana (PMFBY)"** [National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana)];

(k) Pilot Scheme on Seed Crop Insurance;

(l) Central Sector Scheme on Cattle Insurance;

(m) Universal Health Insurance Scheme;

(n) Rashtriya Swasthya Bima Yojana;

(o) Coconut Palm Insurance Scheme;

(p) Pradhan Mantri Suraksha BimaYojna;

(q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).

w.e.f 1-10-2019: exemption notification has been amended to exempt services of general insurance business provided under "Bangla Shasya Bima" scheme.

Entry No. 36: Services of life insurance business provided under following schemes are exempted from GST:

(a) Janashree Bima Yojana

(b) Aam Aadmi Bima Yojana;

(c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees (w.e.f. 25.1.2018 two lakhs rupees);

(d) Varishtha Pension Bima Yojana;

(e) Pradhan Mantri Jeevan Jyoti Bima Yojana;

(f) Pradhan Mantri Jan Dhan Yojana;

(g) Pradhan Mantri Vaya Vandan Yojana

Entry No. 37: Services by way of collection of contribution under the Atal Pension Yojana is also exempt from GST

Entry No. 38: Services by way of collection of contribution under any pension scheme of the State Governments.

Entry No. 39: Services by the following persons in respective capacities are exempted from GST –

(a) Business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;

(b) Any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or

(c) Business facilitator or a business correspondent to an insurance company in a rural area.

Business facilitators or correspondent services are as follows:

(a) Enrolment of customers, including collection of biometric and other details, provide card (ID Card, Debit Card, Credit Card), PIN.

(b) Provide transaction facility.

  (i) Deposit of money in an account with any bank

  (ii) Withdrawal of money from an account with any bank

  (iii) Remittances from an account with a bank to an account with the same or any other bank.

  (iv) Balance Enquiry and issue Receipts/ Statement of Accounts.

(c) Disbursal of credit facilities to borrowers involving small amounts strictly as per the instructions of the Bank.

(d) Other activities:

(i) Identification of borrowers and classification of activities as per their requirements.

(ii) Collection and prima facie scrutiny of loan applications including verification of primary data.

(iii) Creating awareness about savings and other products offered by the Bank and education and advice on managing money & debt counselling.

(iv) Preliminary scrutiny of data and submission of applications to the Bank for its review.

(v) Promotion, nurturing, monitoring and handholding of Self Help Groups and/or Joint Liability Groups and/or Credit Groups and others.

(vi) Facilitating the repayment of dues owed to the bank by its customers.

(vii) Marketing of third party financial products.

Recovery Agent Services to banking or NFBCs GST will be levied under RCM:

S. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
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	Recipient

Illustration 112

Mr. X being a registered person under GST Law provided the following services in the month of Oct 2017:

(a) Services provided to Gramina Bank located in rural area in the nature of Enrolment of customers and charge ₹20,000.

(b) Disbursal of credit facilities to borrowers involving small amounts strictly as per the instructions of the Bank locate in a village and collected ₹12,250.

(c) Facilitating the repayment of dues owed to the HDFC bank (Mylapore Branch, Chennai) by its customers and collected fee ₹55,000 from the bank.

(d) Recovery agent services to the State Bank of India, Mount Road Branch, Chennai, for ₹2,20,500.

Find the GST liable to pay by Mr. X. applicable rate of GST @18%.

Solution:

Particulars	Value in ₹
Enrolment of customers in rural area bank	Exempted supply
Disbursal of credit facilities as per bank located in rural area	Exempted supply
Facilitating the repayment of loan to bank in urban area	55,000
Recovery agent services to the SBI	Reverse applicable
Total taxable supply	55,000
CGST 9%	4,950
SGST 9%	4,950

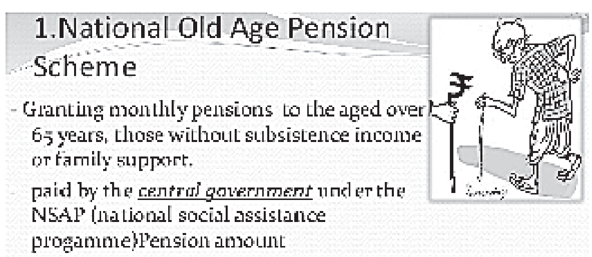
Entry No. 39A: w.e.f. 25.1.2018, Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

IFSC Meaning: An IFSC (International Financial Service Centre) caters to customers outside the jurisdiction of the domestic economy. IFSCs are set up in special economic zones as a unit of SEZ or as a special economic zone after approval from central government, and deal with flows of finance, financial products and services across borders.

Services offered by IFSC(s):

1. Fundraising services for individuals, corporations and governments
2. Asset management and global portfolio diversification undertaken by pension funds, insurance companies and mutual funds
3. Wealth management
4. Global tax management and cross-border tax liability optimisation, which provides a business opportunity for financial intermediaries, accountants and law firms.
5. Global and regional corporate treasury management operations that involve fundraising, liquidity investment and management and asset liability matching
6. Risk management operations such as insurance and reinsurance
7. Merger and acquisition activities among transnational corporations are exempted from GST.

Entry No. 40: Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory is exempted from GST.



For example: granting monthly pensions to the aged over 65 years, those without subsistence income or family support, paid by the Central Governmet of India under the National Social Assistance Programme (NSAP) Pension amount to the Insurance companies exempt from GST.

All other insurance premiums collected by insurance companies are taxable supplies and GST will be levied.

w.e.f. 1-7-2017, SERVICES OF LIFE INSURANCE COMPANY Rule 32(4) of the CGST Rule, 2017 - taxable value of supply:

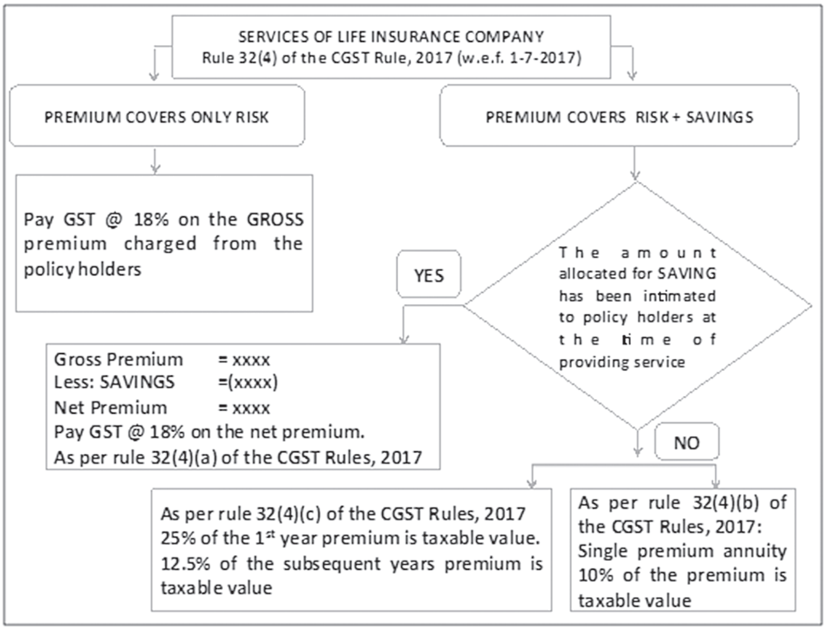


Illustration 113

Arihant Life Insurance Company Ltd. (ALICL) has started its operations in the year 2022-23 (w.e.f. 1-7-2022). During the year 2022-23, Arihant Life Insurance Company Ltd. (ALICL) has charged gross premium of ₹180 lakh from policy holders with respect to life insurance policies; out of which ₹100 lakh have been allocated for investment on behalf of the policy holders.

Compute the GST liability of ALICL for the year 2017-18 under rule 32(4) of the CGST Rules, 2017

(i) if the amount allocated for investment has been intimated by ALICL to policy holders at the time of providing service.

(ii) if the amount allocated for investment has not been intimated by ALICL to policy holders at the time of providing of service.

(iii) if the gross premium charged by ALICL from policy holders is only towards risk cover.

Applicable rate of GST 18%.

Solution:

(i) GST liability of ALICL for the year 2022-23 will be computed as under:

= ₹14.40lakhs (₹(180-100) lakh × 18%)

(ii) 25% of the 1st year premium is value of taxable supply. Thus, GST liability of ALICL for the year 2022-23, being first year of its operations, will be computed as under:

value of taxable supply = ₹180 lakh × 25% = ₹45 lakh

GST liability = ₹8.10 lakh (i.e. ₹45 lakh × 18%)

(iii) GST liability of ALICL for the year 2022-23 will be computed as under:

= ₹32.40 lakh (₹180 lakh × 18%)

Illustration 114

LIC of India provides you the following information for the month of Oct 2022. You are required to compute GST payable by the company if the company has opted to pay GST as per Rule 32(4) of CGST Rules, 2017:

(1) General policies: Total premiums collected ₹12,000 lakhs (Out of which 1st year premium is ₹5,000 lakhs)

(2) Only Risk Cover Policies: Premiums collected ₹500 lakhs.

(3) Variable Insurance Policies: Premiums collected ₹8,000 lakhs. (80% of the amount is allocated for investments on behalf of policy holder for which policy holder is given separate break up in premium receipts).

Note: Applicable rate of GST 18%. For all transaction's location of supplier and place of supply is within the same State.

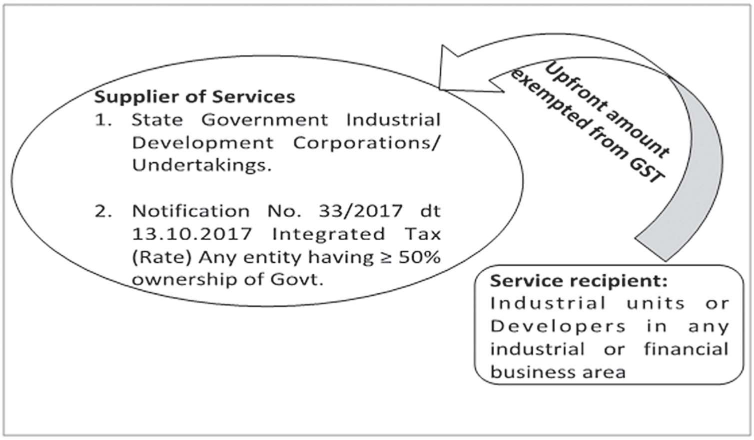
Solution:

Statement showing GST liability of LIC of India for the month of OCT 2022 under Rule 32(4) of the CGST Rules, 2017:

Particulars	Value ₹ in lakhs	Working note
General policies 1st Year premium	1,250	5,000 × 25%
2nd Year Premium	875	7,000 × 12.5%
Only Risk cover policies	500	
Variable insurance policies premium	1,600	(8,000 – 6,400)
Total taxable supply of service	4,225	
CGST 9%	380.25	(4,225 × 9%)
SGST 9%	380.25	(4,225 × 9%)

Entry No. 41: Upfront Fee in Long Term Lease exempted from GST:

One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units



w.e.f. 20th September 2018:

"Explanation—For the purpose of this exemption, the Central Government, State Government or Union territory shall have 50 per cent. or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory." [Notification No. 23/2018-Central Tax (Rate)].

W.E.F 1-10-2019:

Explanation.—For the purpose of this exemption, the Central Government, State Government or Union territory shall have **20 per cent** or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory."

Provided that the leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area:

Provided also that the State Government concerned shall monitor and enforce the above condition, as per the order issued by the State Government in this regard:

Provided further that in case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay such amount of integrated tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty:

Provided also that the lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease or sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the integrated tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.

Entry 41A exempting Transfer of TDR:

Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate or after its first occupation whichever is earlier.

Entry No. 42 already covered.

Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of licence fee or spectrum user charges, as the case may be.

Entry No. 43: (Omitted w.e.f. 1-10-2021)
Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways exempted from GST.

Entry No. 44: Services provided by an incubate

Services provided by an incubatee upto a total turnover of ₹50 lakh in a financial year subject to the following conditions, namely:—

(a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and

(b) a period of three years has not elapsed from the date of entering into an agreement as an incubatee.

are exempted from GST.

"INCUBATEE" means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products.

Illustration 115

Cloud M Power Technologies Pvt. Ltd., is a business incubatee provided following taxable services in the financial year 2022-23 (after July 2022):

Cloud computing services	=	₹25,00,000
Mobile application services	=	₹20,00,000
Social networking and location aware applications	=	₹10,00,000

Note:

(i) Previous year taxable services is ₹22,00,000.

(ii) Service provider enters into an agreement with STEP in the year 2021-22.

Find GST liability of Cloud M Power Technologies Pvt. Ltd. for the financial year 2022-23. Assume applicable rate of GST 18%.

Solution:

Statement showing service tax liability of Cloud M Power Technologies Pvt. Ltd for the year 2022-23:

Particulars	Taxable Services in (₹)	Remarks
Cloud computing services	Nil	Exempted from service tax upto ₹50 lakh
Mobile application services	Nil	-do-
Social networking and location aware applications	5,00,000	Over and above ₹50 Lakh is taxable in the financial year 2022-23
Taxable services	5,00,000	
CGST 9%	45,000	(5,00,000 × 9%)
SGST 9%	45,000	(5,00,000 × 9%)

Entry No. 45: Arbitral tribunal, Advocate or Senior Advocate services

Service Provider	Service Receiver	Taxable	Comments
ARBITRAL TRIBUNAL	Any person Or Business entity with a turnover upto ₹40 lakh or ₹20 lakh or ₹10 lakh as the case may be in the P.Y.	NO	All types of legal services are exempted

Service Provider	Service Receiver	Taxable	Comments
ARBITRAL TRIBUNAL	Business entity with a turnover > ₹40 lakh or ₹20 lakh or ₹10 lakh as the case may be in the P.Y.	YES. Business entity is liable to pay GST under reverse charge	All types of legal services like Advisory, consultancy, representational services before any court, tribunal or authority are taxable

Service Provider	Service Receiver	Taxable	Comments
Individual Advocate Or Firm of Advocates (Other than a senior advocate), by way of legal services	An advocate or firm of advocates Or Other than a business entity Or Business entity with a turnover upto ₹40 lakh or ₹20 lakh or ₹10 lakh as the case may be in the P.Y.	NO	All types of legal services like Advisory, consultancy, representational services BEFORE ANY COURT, TRIBUNAL OR AUTHORITY are exempted
Individual ADVOCATE Or Firm ADVOCATES	Business entity with a turnover > ₹40 lakh or ₹20 lakh or ₹10 lakh as the case may be in the P.Y.	YES. Business entity is liable to pay GST under Reverse Charge	All types of legal services like Advisory, consultancy, representational services BEFORE ANY COURT, TRIBUNAL OR AUTHORITY are TAXABLE

Service Provider	Service Receiver	Taxable	Comments
Senior advocate by way of legal services	Other than a business entity Or Business entity with a turnover upto ₹40 lakh or ₹20 lakh or ₹10 lakh as the case may be in the P.Y.	NO	All types of legal services like Advisory, consultancy, representational services BEFORE ANY COURT, TRIBUNAL OR AUTHORITY are exempted
Senior advocate by way of legal services	Business entity with a turnover > ₹40 lakh or ₹20 lakh or ₹10 lakh as the case may be in the P.Y.	YES. Business entity is liable to pay GST under Reverse Charge	All types of legal services like Advisory, consultancy, representational services BEFORE ANY COURT, TRIBUNAL OR AUTHORITY are TAXABLE

Summary:

Service provider	Recipient of service	Taxability	Who Is liable to pay GST
Arbitral Tribunal Advocates Senior Advocates	Business entity P.Y. Turnover > ₹40 lakh or ₹20 lakhs or ₹10 lakhs as the case may be)	Taxable supply	Recipient is liable to pay GST.

Notification 2/2018-Central Tax (Rate), dated 25.1.2018 issued.

w.e.f. 25.1.2018, Legal services provided to Government, Local Authority, Governmental Authority and Government Entity exempted.

- Services provided by a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity, EXEMPT;
- Services provided by a senior advocate, by way of legal services to the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity, EXEMPT;

Entry No. 46: Services by a veterinary clinic in relation to health care of animals or birds exempted from GST

Illustration 113

Clean and Green Pvt. Ltd. provided the bio-medical waste treatment facility to a veterinary clinic is a taxable supply of service, if so, GST will be levied?

Solution:

It is taxable supply of service.

Scope of the exemption under entry 75 is restricted to services provided by operators of the common **Bio-medical Waste Treatment Facility** to a clinical establishment and not to veterinary clinic.

Entry No. 47 already covered.

Services provided by the Central Government, State Government, Union territory or local authority by way of—

(a) registration required under any law for the time being in force;

(b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.

Entry No. 47A: Supply of FSSAI

w.e.f. 27th July 2018:

Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators. [Notification No. 14/2018-Central Tax (Rate)].

Entry No. 48: Supply of services by a Technology Business Incubator exempted from GST

A **"business incubator"** is a company that helps new and startup companies to develop by providing services such as management training or office space or equipment's or some time monitory assistance and capital.

Taxable services, provided or to be provided, by—

- a Technology Business Incubator or
- a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India

Or

- bioincubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.

are exempted from GST.

Illustration 114

Technopark Technology Business Incubator (T-TBI), provided the following taxable services in the financial year 2022-23 (on or after 1-7-2022):

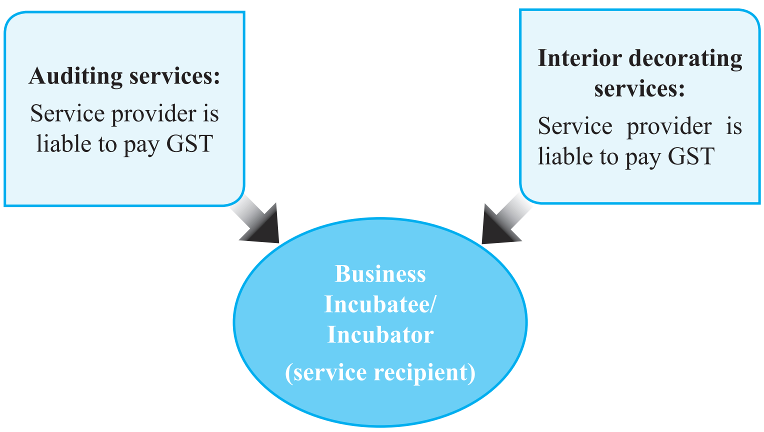
1. Entrepreneurship Awareness Camps to a Business incubatee for ₹20 lakh.
2. Commercial space provided to Infosys Ltd. a non-incubatee for ₹2 lakh.

Find GST liability of Technopark Technology Business Incubator?

Solution:

Statement showing service tax liability of Technopark Technology Business Incubator

Particulars	Taxable services in (₹)	Remarks
Entrepreneurship Awareness Camps to a Business incubatee.	Nil	Exempted service.
Commercial space provided to Infosys Ltd. a non-incubatee	Nil	Exempted service
Taxable supply of services	Nil	
Services provided to Business incubatee/Incubator presently not exempted from GST:		



Entry No. 49: Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India exempted from GST:

Entry No. 50: Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material exempted from GST.

Entry No. 51: Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax exempted from GST.

Entry No. 52: Services by an organiser to any person in respect of a business exhibition held outside India exempted from GST

Place of supply of service:

Place of supply of services provided by way of organization of a [Sec. 12(7) of IGST Act, 2017]:

<table>
<tr><th>S. No.</th><th colspan="2">Nature of service Section 12(7) of IGST Act, 2017</th><th>Place of supply of service</th></tr>
<tr><td>1</td><td>Cultural</td><td rowspan="6">Services ancillary thereto or assigning of sponsorship to such events.</td><td rowspan="6">Provided to a registered person:
• Location of recipient of Service
Provided to an un-registered person:
• Location where the event is actually held and
• if the event is held outside India, the place of supply shall be the location of the recipient.</td></tr>
<tr><td>2</td><td>Artistic</td></tr>
<tr><td>3</td><td>Sporting</td></tr>
<tr><td>4</td><td>Scientific</td></tr>
<tr><td>5</td><td>Educational</td></tr>
<tr><td>6</td><td>Entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events</td></tr>
</table>

Place of supply of services supplied by way of admission to, or organization of Section 13(5) of IGST

Nature of service Section 13(5) of IGST	Place of supply of service
• Cultural • Artistic • Sporting • Scientific • Educational • Entertainment event • Celebration • Conference • Fair • Exhibition • Similar events and • Services ancillary to such admission or organisation	Where event is actually held.

Illustration 115

Mr. X an event organiser, located in Chennai received an order from M/s Taxman publications, Mumbai to conduct a book fair at Chennai. Find the Place of supply of service and GST in the following two cases:

Case 1: Taxman publications is a registered person.

Case 2: Taxman publications is an un-registered person.

Solution:

Case 1: Mumbai (i.e. location of recipient of service)

Mr. X of Chennai is liable to pay IGST.

Case 2: Chennai (i.e. location where the event is actually held)

Mr. X of Chennai is liable to pay CGST & SGST.

Illustration 116

Mr. Kapil Sharma, a Jalandhar based comedian, hosted a comedy show at Singapore on birthday occasion of Mumbai based actor Mr. Shah Rukh Khan's son Abram.

Solution:

POS = Mumbai (i.e. location of service recipient).

GST = IGST is liable to pay by Mr. Kapil Sharma

Illustration 117

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor namely, Chennai Silks, Chennai, a registered person.

Solution:

POS = Chennai (i.e. location of service recipient).

IGST is liable to pay by Mr. D of Delhi

Illustration 118

Mr. C of Chennai being an event organizer hosted an exhibition at Dhaka to exhibit the products of exhibitor (namely Chennai Silks) located Chennai.

Solution:

POS = Chennai (i.e. location of service recipient)

GST is not liable to pay by Mr. C.

Note: Services by an organiser to any person in respect of a business exhibition held outside India is exempted from GST (vide Entry No. 52).

Illustration 119

Mr. Kapil Sharma a Jalandhar based comedian hosted a comedy show at Singapore with help of event organizer located in Dubai.

Solution:

POS = Singapore.

GST will not be levied.

Illustration 120

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor (namely M/s S Silks Ltd. of Singapore).

Solution:

PPS = Mumbai

IGST is liable to pay by Mr. D of Delhi

Entry No. 53: Services by way of sponsorship of sporting events organised –

(a) by a national sports federation,

(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;

(c) by Central Civil Services Cultural and Sports Board;

(d) as part of national games, by Indian Olympic Association; or

(e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme;

are exempted from GST.

Sponsorship services to conduct IPL matches are fully taxable under GST.

Entry No. 81	Services by way of right to admission to- (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; (c) recognised sporting event, where the consideration for admission is not more than ₹250 per person as referred to in (a), (b) and (c) above. (d) **w.e.f. 25.1.2018, planetarium,** **w.e.f. 25.1.2018** where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than ₹500 per person."

Illustration 121

M/s DLF Ltd., sponsored ₹20 lakhs in respect of a Tournament organized by Board of Council for Cricket in India (BCCI).

(a) Is it taxable supply of service?

(b) If so who is liable to pay GST?

Solution:

(a) Yes, the given service is taxable supply of service.

(b) M/s DLF Ltd., is liable to pay GST under reverse charge being a recipient of such sponsorship services from BCCI.

Note: BCCI is not a National Sports Federation.

Illustration 122

BCCI conducted a tournament in the month of October 20XX, in India (i.e. India vs. Australia) by selling tickets in the following denominations:

(a) 1,00,000 tickets @ 295 per ticket

(b) 10,000 tickets @ 550 per ticket.

Find the GST if any?

Solution:

(a) Where the consideration for admission is not more than ₹500 per person is exempted from GST.

(b) GST liability is as follows:

₹550 × 10,000 tickets	= ₹	55,00,000
CGST @14%	= ₹	7,70,000
SGST @14%	= ₹	7,70,000

Note:

(1) Entry fee per person per ticket exceeding ₹250 fully taxable. w.e.f. 25.1.2018, this limit is increased to ₹500.

(2) Admission to all sports events organized by recognized sports federations were to attract 28% GST

Entry No. 53A: w.e.f. 25-1-2018 Services by way of fumigation in a warehouse of agricultural produce is exempt fromGST.

Entry No. 54: Agriculture activities exempted from GST

The following are exempted:

- Cultivation, harvesting,
- Comm. on sale of Agricultural Produce
- All types of testing activities which are directly related to production of any agricultural produce
- Supply of farm labour
- Trimming, sorting etc., thereby marketable in the primary market
- Renting of agro machinery
- Loading, unloading, packing, storage and warehousing of agricultural produce
- Agricultural extension services
- Services by any agricultural produce marketing committee

Important Note: Exemption not available on Loading, Packing, Warehousing of Processed Agricultural Products like Tea, Coffee Beans, Pulses etc.

As per CBIC Circular, processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits & cashew nuts etc. fall outside the definition of agricultural produce given in Notification No. 11/2017-CT(R) and 12/2017-CT(R) and therefore the exemption from GST is not available to their loading, packing, warehousing etc.

Entry No. 55: Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce also exempt from GST

Agriculture or agricultural produce includes the following exempt from GST		
Breeding of fish	Rearing of silk worms	Cultivation of ornamental flowers
Horticulture	Forestry	Poultry farm

Plantation crops like rubber, tea or coffee also covered under agricultural produce exempt from GST		
Plantation of Rubber	Tea Plantation	Plantation of Coffee

Cleaning of wheat carried out outside the farm covered under EXEMPTION. Covered under entry no. 54. Hence, no GST

Shelling of paddy carried out outside the farm not covered under entry no. 54 and 55.

Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce. Therefore not eligible for exemption under S. No 55 of Notification 12/2017 - Central Tax (Rate) dated 28th June 2017 **(vide CBEC circular Circular No. 19/19/2017-GST dated 20th November 2017)**

Illustration 123

Mark Agro Products Ltd, furnishes the following details of various services provided by it in the month of August 2022:

S. No.	Particulars	Amount (₹)
1	Rearing of Silkworm and horticulture	2,50,000
2	Plantation of tea and coffee	2,00,000
3	Renting of vacant land for performing marriage ceremony	4,50,000
4	Sale of wheat on commission basis	50,000
5	Sale of rice on commission basis	2,00,000

Compute the value of taxable supply of services and the GST liability of Mark Agro Products Ltd. for the month of August 2022. Assume rate of GST 18%.

Solution:

S. No.	Particulars	Amount(₹)
1	Rearing of Silkworm and horticulture	Exempted supply
2	Plantation of tea and coffee	Exempted supply
3	Renting of vacant land for performing marriage ceremony	4,50,000
4	Sale of wheat on commission basis	Exempted supply
5	Sale of rice on commission basis	2,00,000
	Taxable supply	6,50,000
	GST 18% on ₹6,50,000	1,17,000

Illustration 124

From the following information find GST liability of M/s A Ltd for the month of October 2022:

Particulars	₹ in lakh
(i) Renting of Agro-machinery	5.0
(ii) Cultivation of Ornamental flowers	2.5
(iii) Processing of Tomato ketchup under the brand name of Y Ltd.	3.0
(iv) Plantation of Rubber	3.5
(v) Processing of Potato chips on jobwork basis	1.5

Assume applicable CGST 2.5% & SGST 2.5%.

Solution: Statement showing GST liability of M/s A Ltd for the month of October 2022:

Particulars	₹ in lakh
(i) Renting of Agro-machinery	Exempted supply of service
(ii) Cultivation of Ornamental flowers	-do-
(iii) Processing of Tomato ketchup under the brand name of Y Ltd.	3.00
(iv) Plantation of Rubber	Exempted supply of service
(v) Processing of Potato chips on jobwork basis	1.50
Taxable supply of service	4.50
CGST 2.5%	0.11250
SGST 2.5%	0.11250

Entry No. 55A: Artificial Insemination of livestock:

w.e.f. 27th July 2018:

Services by way of artificial insemination of livestock (other than horses) [Notification No. 14/2018- Central Tax (Rate)].

Exempted from GST.

Entry No. 56: Services by way of slaughtering of animals are exempt from GST

Services by way slaughtering services exempted from GST
Services by way of slaughtering of all animals are exempted from GST

Illustration 125

Validate the following:

(1) State Government grant fresh license to slaughterhouses by charging fee of ₹12,000. It is taxable supply of service and GST will be levied.

(2) Meat shops selling meat is taxable supply of goods and GST will be levied.

Solution:

(a) The given statement is invalid:

It is exempted supply of service under entry no. 4 12/2017-Central Tax (Rate), dated 28-06-2017 and hence, GST will not be levied.

(b) The given statement is invalid:

It is exempted supply of goods under Notification No. 2/2017-Central Tax (Rate), dated 28-06-2017 and hence, GST will not be levied.

Entry No. 57: Services by way of pre-conditioning, precooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

Services by way of Pre-conditioning, pre-colling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables are exempted from GST

Entry No. 58: Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination exempted from GST

Entry No. 59: Services by a foreign diplomatic mission located in India are exempt from GST

Entry No. 60: Services by a specified organisation in respect of a religious pilgrimage facilitated by the Government of India, under bilateral arrangement are exempted from GST

To claim exemption from GST the following conditions should be satisfied:

1. Services shall be provided by specified organisations.
   (a) Committee or Sate Committee as defined in Section 2 of the Haj Committee Act, 2002 (OR)
   (b) Kumaon Mandal Vikas Nigam Limited a Government of Uttarakhand Undertaking; or
2. The service shall be in respect of a religious pilgrimage.
3. Religious pilgrimage shall be facilitated by the Government of India, under bilateral arrangement.

Entry No. 61 Already covered

Entry No. 62 Already covered

Entry No. 63 Already covered

Entry No. 64 Already covered

Entry No. 65 Already covered

Entry No. 65A: w.e.f. 25.01.2018: Services by way of providing information under the Right to Information Act, 2015 – Exempt from GST.

Entry No. 66: Amended w.e.f. 25.1.2018: Services provided by Educational institution or to Educational institution

Services provided by Educational institution or to Educational institution

(a) Service provided by an educational institution to its students, faculty and staff;

“(aa) w.e.f. 25.1.2018, by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;”

are exempted from GST.

“educational institution” means an institution providing services by way of:

(i) pre-school education and education upto higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;

(iii) education as a part of an approved vocational education course.

(b) Services provided to an educational institution, by way of,-

(i) Transportation of students, faculty and staff

(ii) Catering, including any mid-day meals scheme sponsored by the Government.

(iii) Security or cleaning or house-keeping services performed in such educational institution.

(iv) Services relating to admission to, or conduct of examination by, such institution, upto higher secondary;

w.e.f. 25.1.2018, the words “upto higher secondary” shall be omitted; as a result, services relating to admission to, or conduct of examination provided to all educational institutions, as defined in the notification is exempt from GST.

(v) “w.e.f. 25.1.2018, supply of online educational journals or periodicals”;

w.e.f. 25.1.2018, Provided that nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

w.e.f. 25.1.2018, "Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-

(1) pre-school education and education upto higher secondary school or equivalent; or

(2) education as a part of an approved vocational education course.";

It means, to exempt subscription of online educational journals/periodicals by educational institutions who provide degree recognized by any law from GST.

Mess or canteen services:

CBIC Circular No. 28/2/2018-GST, dated 8-1-2018 read with File No. 354/03/2018, dated 18-1-2018:

If the catering services, i.e. supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution, then it is a supply of service to the concerned educational institution and attracts GST of 5% provided that credit of input tax charged on goods and services used in supplying the service has not been taken, w.e.f. 15-11-2017.

If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered under entry no. 66(a) of notification No. 12/2017-Central Tax (Rate).

The Ministry also noted that if schools upto higher secondary level supply food directly to students, the same would be exempt from the GST.

Illustration 126

Transport facility provided by a school to its students through a fleet of buses and cabs owned by the School.

Solution:

Exempted supply of service. GST will not be levied.

Illustration 127

Transport facility provided by a school to its students through a private Bus/Cabs Operator.

Solution:

Exempted supply of service. GST will not be levied.

Illustration 128

Service provided by a private transport operator to a school in relation to transportation of students to and from a school.

Solution:

Exempted supply of service. GST will not be levied.

Illustration 129

Service provided by a School in relation to a tour to its students and staff.

Solution:

Exempted supply of service. GST will not be levied.

Illustration 130

Service provided by a private transport operator to a school in relation to a tour and travel services of students and staff.

Solution:

Taxable Supply. GST will be levied

Illustration 131

Mr. C a practicing CMA provided services to CMA Institute by way of teaching to Students.

Solution:

Taxable supply.

Illustration 132

Restaurant services provided to the students of CMA institute, which is accessible by the others also. Is it taxable service?

Solution:

Taxable supply.

Illustration 133

Security services provided by a Safety and Security Bureau in Chennai. Supplied security services to the ICAI New Delhi for four months. Monthly charges ₹1,200. Is it taxable supply of service? Applicable GST 18%. Find the GST liability.

Solution:

This given activity is a taxable supply of service. Security Bureau is liable to pay GST.

IGST liability = 864

(₹1,200 pm × 4months) × 18%

Illustration 134

Campus Interviews conducted by CMA Institute, by collecting entry fee from the corporate houses. Is it taxable supply of service under GST?

Solution:

Yes. It is taxable supply of service

Illustration 135

Hr. Sec. School provided auditorium hall on rent to M/s X Academy in Chennai. Monthly charges ₹1,21,200 throughout the year (w.e.f. 1-7-2017). Is it taxable supply of service? Applicable GST 18%. Find the GST liability.

Solution:

This given activity is a taxable supply of service. Hr. Sec. School is liable to pay GST.

GST liability = 1,96,344

(₹1,21,200 pm × 9months) × 18%.

Note: Recognised Degree providing institutions including IIM's.

CBIC Circular No. 55/29/2018, dated 10th August, 2018:
Taxability of services provided by Industrial Training Institutes (ITI):

Illustration 136

Whether GST is payable on vocational training provided by private ITI's in designated trades and in other than designated trades?

Solution:

Private ITIs is qualified as an educational institution as defined under para 2(y) of Notification No. 12/2017-CT(Rate) if the education provided by these ITI's is approved by NCVT or SCVT or Modular Employable Skill course, approved by NCVT, run by a person registered with DG Training in Ministry of Skill Development.

Therefore, services provided by a private ITI's in respect of desingnated trades are exempt from GST under Entry No. 66 of NT 12/2017-CT(Rate).

However, services provided by a private ITI in respect of other than designated trades would be liable to pay GST and are not exempt.

Illustration 137

Whether GST is payable on the service, provided by a private Industrial Training Institute for conduct of examination against consideration in the form of entrance fee and also on the services relating to admission to or conduct of examination?

Solution:

In case of designated trades, services provided by a private ITI by way of conduct of entrance examination against consideration in the form of entrance fee will also be exempt from GST.

Further, in respect of such designated trades, services provided to an educational institution, by way of, services relating to admission to or conduct of examination by a private ITI will so be exempt.

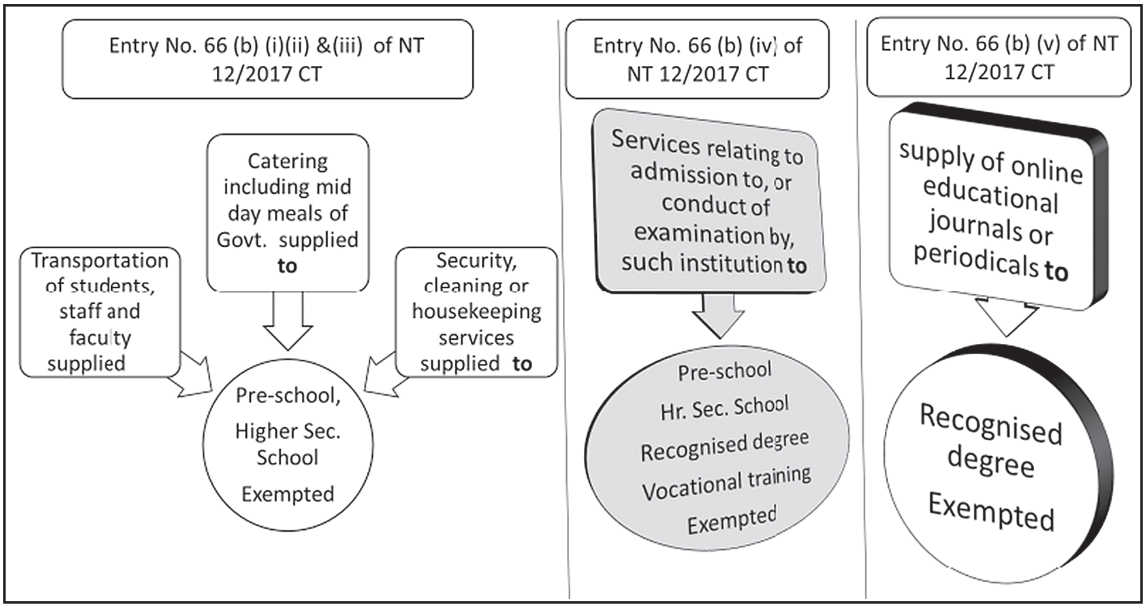
It is further clarified that in case of other than designated trades in private ITI's GST shall be payable on the service of conduct of examination against consideration by such institutions.

As far as Government ITI's are concerned, services provided by a Government ITI to individual trainees/ students, is exempt under entry No. 6 of NT 12/2017-CT (Rate).

Designated Trade means any trade or occupation or any subject field in engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of the Apprenticeship Act, 1961.

Summary:

Entry No. 66(a) & (aa) of NT 12/2017 CT		
Supplied by Pre-school Hr. Sec. School Recognised degree Vocational trianing →	To Students →	Any Service is exempted
→	To Staff →	Any Service is exempted
→	To Faculty →	Any Service is exempted
→	To Others →	Examination entrance fee is exempted



Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India. (CBIC Circular No. 117/36/2019-GST, dated 11th October, 2019)

Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014.

Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/ 2017-Central Tax (Rate), dated 28.06.2017.

Entry No. 68: Recognised sport body exempted from GST

Services provided to a recognised sports body by—

(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognised sports body;

(b) Another recognised sports body;

Recognised sports body means, —

(i) The Indian Olympic Association

(ii) Sports Authority of India.

(iii) A national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliated federations.

(iv) National sports promotion organizations recognised by the Ministry of Sports and Youth Affairs of the Central Government.

(v) The International Olympic Association or a federation recognised by the International Olympic Association

(vi) A federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.

Sports players participated in IPL tournament or acting as brand ambasssador, or appear in T.V. Commercial advertisements are fully taxable under GST.

Illustration 138

Mr. M.S. Dhoni provided services to Chennai Super Kings (a franchisee) in a premier league. Is it taxable service?

Solution:

Yes, it is taxable in the hands of Mr. M.S. Dhoni.

Since, the service of a player to a franchisee which is not a recognized sports body.

Illustration 139

Mr. Krishnamachari Srinivasan provided services as umpire in a premier league (IPL). Is this service taxable?

Solution:

No, the given service is exempt from GST.

Since, services of an individual as umpire, provided directly to a recognized sport body (BCCI), shall be exempt.

Entry No. 69: NSDC exempted from GST

Any sevices provided by NSDC:

Any services provided by		
(i) The National Skill Development Corporation set up by the Government of India; (ii) A Sector Skill Council approved by the National Skill Development Corporation; (iii) An assessment agency approved by the Sector Skill Council or the National Skill Development Corporation; (iv) A training partner approved by the National Skill Development Corporation or the Sector Skill Council	**in relation to**	(a) The National Skill Development Programme implemented by the National Skill Development Corporation; or (b) A vocational skill development course under the national Skill Certification and Monetary Reward Scheme; or (c) Any other Scheme implemented by the National Skill Development Corporation. **are exempted from GST**

Entry No. 70: Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.

This exemption has been provided to assessing bodies who are empanelled by Directorate General of Training and the entrepreneurship by way of assessments under Skill Development Scheme.

Illustration 140

Industrial and Technical Consultancy Organisation of Tamil Nadu Limited (ITCOT) is accredited for conducting assessment for Modular Employable Skills (MES) courses under SDI scheme.

Following services provided in the month of October, 2022:

1. Skill development services for ₹20 lakhs;
2. Skill Assessment examination and certification under SDI for ₹25 lakhs;
3. Feasibility reports to various industries for₹60 lakhs.

Find the GST liability?

Note:

(i) ITCOT is a registered person under GST Law.

(ii) Assume GST applicable 18%

Solution:

Statement showing GST liability

Particulars	Value ₹ (lakhs)	Remarks
Skill development services	20	Taxable supply of service
Skill Assessment examination and certification	Nil	Exempted supply of service
Feasibility reports to various industries	60	Taxable supply of services
Total taxable services	80	
GST 18%	14.40	

Entry No. 71: Deen Dayal Upadhyaya Grameen Kaushalya Yojana exempted from GST

Exemption to certain training providers

Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by National Council for Vocational Training.

The exemption is provided subject to the following conditions:

(a) Project implementing agency under Deen Dayal Upadhyaya Grameen Kaushalya Yojana under Ministry of Rural Development

(b) The services shall be in the nature of skill or vocational training courses certified by National Council for Vocational Training

The service provider may be Government Agency or any private agency, but he should provide the services as mentioned above.

Entry No. 72: Services provided to the Central Government, State Government, Union territory administration under any training programme for which 75% or more of the (inserted w.e.f. 1-10-2021) total expenditure is borne by the Central Government, State Government, Union territory administration.

Validate the following Statement:

The Government of Tamil Nadu granted the aid of ₹16 lakh to Nicolas Educational and Research Institute for providing training in Automotive Service Technician (two and three wheelers) for the year 2022-23 under the Pradhan Mantri Kaushal Vikas Yojana is taxable supply of service under GST. Total expenditure for providing training is ₹20 lakh

Solution: The given statement is invalid. It is exempted supply of service, since 75% or more of the total expenditure is borne by the Central Government. Thereby, covered under Entry No. 72, NT 12/2017-Central Tax (Rate) with nil rate of tax.

Entry No. 73: Cord Blood Bank exempted from GST

Specified services provided by Cord Blood Bank have been exempted from levy.

"Services provided by cord blood banks by way of preservation of stemp cells or any other service in relation to such preservation"

Entry No. 74: Health care services exempted from GST

Health Care Services

Exempted supply of services	Taxable supply of services
Supply of services in recognized systems of medicines in India are exempt. nursing staff, physiotherapists, technicians, lab assistants, 108 services etc. Ambulance services provided by an entity which is not a clinical establishment or an authorised medical practitioner or paramedics would also be exempt from GST.	Supply of services in relation to hair transplant or cosmetic or plastic surgery, except when undertaken due to congenital defects, developmental abnormalities, injury..

As per Section 2(h) of the Clinical Establishments Act, 2010 the following systems of medicine are recognized systems of medicines:

1. Allopathy
2. Yoga
3. Naturopathy
4. Ayurveda
5. Homoeopathy
6. Siddha
7. Unani
8. Any other system of medicine that may be recognized by the Central Government.

Diagnosis, treatment or care provided in these systems of medicines in India are excluded from the purview of taxability.

Pranic healing treatment: taxable supply of services

Acupressure treatment: taxable supply of services

Acupuncture treatment: taxable supply of services

Reiki treatment: taxable supply of services

Reiki is an ancient Eastern healing method that uses energy to balance the mindbody and spirit. Reiki is one of the oldest healing systems in use today.

Colour therapy: taxable supply of services

Ambulance services provided by Private Service provider to the Government exempted from GST:

Vide Circular No. 51/25/2018-GST, dated 31st July, 2018, the CBIC has clarified that the services provided by the Private Service Providers (PSPs) to the State Governments by way of transportation of patients in an ambulance on behalf of the State Governments against consideration, would be exempt from payment of GST (covering by Serial No. 3 and 3A of Notification No. 12/2017- Central Tax (Rate), date 28.06.2017).

Under GST, the functions of 'Health and sanitation' is entrusted to Panchayats under Article 243 G of Constitution and functions of 'Public health' is entrusted to Municipalities under Article 243W of the Constitution, thus, the ambulance services are an activity in relation to the functions entrusted to Panchayats and Municipalities under Article 243G and 243W of the Constitution. Therefore, the same would be covered by Serial No. 3 and 3A of Notification No. 12/2017-Central Tax (Rate), date 28.06.2017, i.e. GST would be exempted where pure services has been provided to Central Government, State Government, Union Territory Government, local authority and governmental authority by way of an activity in relation to the function entrusted to Panchayats under Article 243G or Municipalities under Article 243W of the Constitution.

Illustration 141

Well-Being Nursing Home has received the following amounts in the month of Jan 20XX in lieu of various services rendered by it in the same month. You are required to determine its GST liability from the details furnished below:

Sl. No.	Particulars	(₹ in lakh)
(i)	Palliative care for terminally ill patients at patient's home (Palliative care is given to improve the quality of life of patients who have a serious or life-threatening disease but the goal of such care is not to cure the disease)	30
(ii)	Services provided by cord blood bank unit of the nursing home by way of preservation of stem cells	24
(iii)	Hair transplant services	100
(iv)	Ambulance services to transport critically ill patients from various locations to nursing home	12
(v)	Transportation of patients in an ambulance on behalf of the State Governments against consideration	10
(vi)	Naturopathy treatments. Such treatment is a recognized system of medicine in terms of section 2(h) of the Clinical Establishments Act, 2010	80
(vii)	Plastic surgery to restore anatomy of a child affected due to an accident.	30
(viii)	Pranic healing treatments. Such treatment is not a recognized system of medicine in terms of section 2(h) of the Clinical Establishments Act, 2010	120
(ix)	Mortuary services	10

Note: All the amounts given above are exclusive of GST. Further, Well-Being Nursing Home is registered person under GST. Applicable rate of GST 18%. All transactions are at intra-State level.

Solution:

Sl. No.	Particulars	₹ in lakh
(i)	Palliative care for terminally ill patients	Exempted supply
(ii)	cord blood bank services	Exempted supply
(iii)	Hair transplant services	100
(iv)	Ambulance services	Exempted supply
(v)	Transportation of patients in an ambulance on behalf of the State Governments	Exempted supply under entry 3 of NT 12/2017 CT.
(vi)	Naturopathy treatments	Exempted supply
(vii)	Plastic surgery (warranted)	Exempted supply
(viii)	Pranic healing services	120
(ix)	Mortuary services	Excluded from the scope of supply (i.e. covered under Schedule III of CGST Act, 2017)
(x)	Taxable supply	220
(xi)	CGST 9%	19.80
(xii)	SGST 9%	19.80

Entry No. 74A (w.e.f. 1-1-2019)
Notification No. 28/2018- CT (R), dated 31st December 2018:

Services provided by rehabilitation professionals recognized under the Rehabilitation Council of India Act, 1992 (34 of 1992) by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA or 12AB (inserted w.e.f. 1-10-2021) of the Income tax Act, 1961 (43 of 1961) is exempted from GST.

Entry No. 75 : Bio-medical wastage treatment facility exempted from GST

Services provided by operators of the common **Bio-medical Waste Treatment Facility** to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto exempt from GST.

Illustration 142

Synergy Waste Management (P) Ltd. provided following services to Apollo Hospitals Chennai during the month of October 2022:

(i) Collection, transportation, Treatment & Disposal of Bio-Medical Waste for ₹5,25,000.

(ii) Training on Segregation of Bio-Medical Waste to Hospital Staff to further increase efficiency of Bio-Medical Waste Management Services for ₹1,25,000.

(iii) Laundry services for ₹50,000.

(iv) Common Bio-medical Waste Treatment Facility services provided toArvind Pharma Company during Oct 2022 for ₹2,00,000.

Find the GST liability for the month of OCT 2022?

Solution:

Statement showing Service Tax liability of Synergy Waste Management (P) Ltd.

Particulars	Value in (₹)	Remarks
Collection, transportation, Treatment & Disposal of Bio-Medical Waste	Nil	Exempted supply of service
Training on Segregation of Bio-Medical Waste	Nil	Exempted supply of service
Laundry services	50,000	Taxable service
Common Bio-medical Waste Treatment Facility services provided to Arvind Pharma Company.	2,00,000	Taxable service. Since, exemption is given to a clinical establishment by way of treatment or disposal of bio-medical waste
Total taxable supply of service	2,50,000	
GST 18%	45,000	

Illustration 143

Validate the following statement:

Hospital charging room rent per day per room is ₹1,200 on rooms provided to in-patients. It is exempted supply of service.

Solution:

The given statement is valid. It is treated as health care service and hence "room rent in hospitals is exempt".

Illustration 144

Kamakshi charitable trusts running a hospital by hiring visiting doctors/specialists.

Medical services to patients at a concessional rate charged by hospital for ₹2,25,500 from patients and paid to visiting doctors/specialists ₹2,00,000.

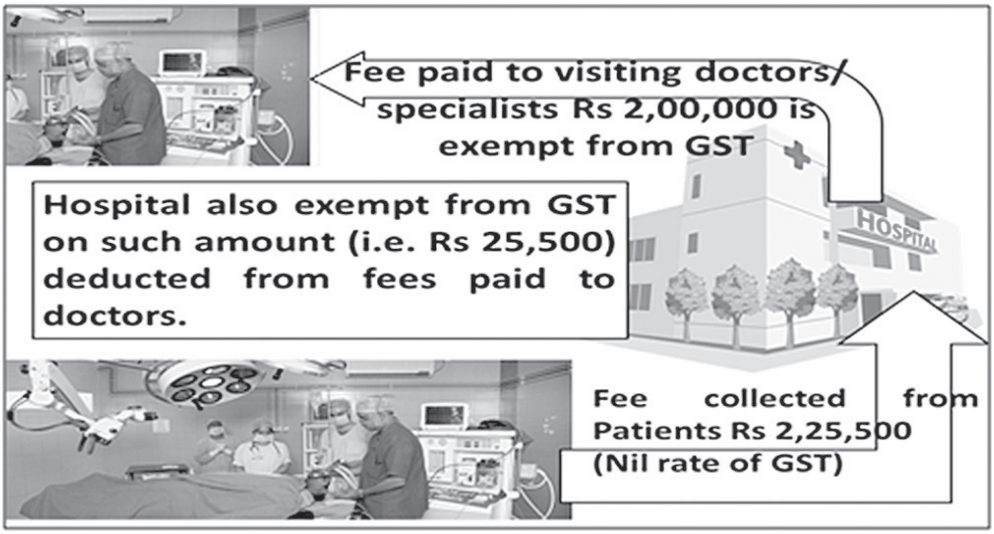
Find the following:

(a) Exempted supply if any.

(b) GST liability if any.

Applicable rate of GST 18%.

Solution:



Circular No. 32/06/2018-GST, dated 12th February 2018:

(1) Services provided by senior doctors/consultants/technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.

(2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India [para 2(zg) of notification No. 12/2017-CT(Rate)].

(3) Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.

(4) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients not admitted) or their attendants or visitors are taxable.

Authorised Medical Practioners (i.e. Doctors) are liable to pay GST?

In general Doctors are exempted from GST. However, they are liable to pay GST in the following cases:

(a) Supplied services in case of care but not cure (like hair transplant or cosmetic or plastic surgery and so on).

(b) In case of RCM (where recipient is liable to pay GST).

(c) Supplied exempted as well as taxable supply of goods or services or both aggregate value exceeds ₹20 lakhs (in case of special category States ₹10 lakhs). Hence, Doctors are liable to pay GST on taxable supply.

Entry No. 76: Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets; are exempted from GST

Entry No. 77: Service by an unincorporated body or a non-profit entity

Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

(a) as a trade union;

(b) for the provision of carrying out any activity which is exempt from the levy of GST; or

(c) upto an amount of ₹7,500/- per month per member (per flat) for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

are exempted from GST.

Illustration 145

Green Tree society is a registered tax payer under GST, provided following services in the month of Oct 20XX:

(i) Banquet hall provided to a Member of the society on hire for the purpose of celebrating his son birthday party for ₹25,000.

(ii) Payment of electricity bill issued by third person, in the name of its members; collected ₹1,10,000 from its members and paid to electricity department ₹1,00,000.

(iii) contribution per month per member is ₹8,500 for 20 members and ₹2,500 for 30 members has been received in the Oct 20XX.

Find the tax liability of the Green Tree Society for the month of Oct 20XX.

Applicable rate of GST is 18%.

Solution:

Statement showing GST liability of Green Tree Societyfor the month of Oct 20XX:

Particulars	Amount (₹)	Remarks
Banquet hall rent	25,000	Taxable service
Service charges	10,000	Taxable service is ₹10,000. Balance ₹1,00,000 is a pure agent nature not taxable.
Maintenance charges	1,70,000	8,500 × 20
Total taxable value of supply of services	2,05,000	
GST @18%	36,900	

w.e.f. 27th July 2018: Entry No. 77A:

Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,—

(i) activities relating to the welfare of industrial or agricultural labour or farmers; or

(ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment,

to its own members against consideration in the form of membership fee upto an amount of one thousand rupees (₹1000/-) per member per year is exempted from GST.

(Notification No. 14/2018-Central Tax (Rate), dated 26th July, 2018)

Entry No. 78: Artist exempted from GST

Services by an artist by way of a performance in folk or classical art forms of—

(a) music, or

(b) dance, or

(c) theatre,

if the consideration charged for such performance is not more than ₹ 1,50,000:

Provided that the exemption shall not apply to service provided by such artist as a brand ambassador.

The following artists are exempted from GST if consideration does not exceed ₹ 1,50,000 for such performance:

Services by a performing artist in western music or dance, actors in films or t.v. serials including artists in still art forms are liable to pay GST			
Western Music	Western Dance	Acting in Films	Painting (i.e. still art forms)

Illustration 146

Mr. Navab, being a registered tax payer and also a performing artist, provides the following information relating to August, 20XX.

Receipts from:	(₹)
Performing classical dance	98,000
Performing in television serial	2,80,000
Services as brand ambassador	12,00,000
Coaching in recreational activities relating to arts	2,10,000
Activities in sculpture making	3,10,000
Performing western dance	90,000

Determine the value of taxable supply of services and GST payable by Mr. Navab for August 20XX. GST @ 18%.

Solution:

Receipts from	Value in (₹)	Remarks
Classical dance	Nil	Exempt as receipt is less than or equal to ₹ 1,50,000
Performing in television serial	2,80,000	
Brand ambassador	12,00,000	
Coaching in recreational activities in relation to arts	Nil	
sculpture making	3,10,000	
Western dance	90,000	
Value of taxable supply of service	18,80,000	
GST 18%	3,38,400	

Entry No. 79: Admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo

Entry No. 79A: w.e.f. 15-11-2017:

Services by way of admission to a **protected monument** so declared under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any of the State Acts, for the time being in force is exempt from GST [Notification No. 47/2017-Central Tax (Rate), dated 14th November 2017].

Illustration 147

Validate the following statement

The Dolma Lakhang Gompha in Himachal Pradesh, is unprotected heritage centre. The Archaeological Survey of India (ASI) has provided funds for maintenance of such heritage centre. Admission to such heritage centre is exempt from GST.

Solution:

The given statement is invalid.

Admission to protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any of the State Acts alone exempt from GST.

However, exemption not granted to unprotected heritage centres.

Entry No. 80 already covered

Entry No. 81: Admission to entertainment exempted from GST

Services by way of right to admission to—

(a) circus, dance, or theatrical performance including drama or ballet;

(b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;

(c) recognised sporting event,

(d) **w.e.f. 25.1.2018, planetarium,**

w.e.f. 25.1.2018 where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than ₹500 per person."

Prior to 25.1.2018 where the consideration for admission is not more than ₹250 per person as referred to in (a), (b) and (c) above.

Admission fee for circus, dance or theatrical performance in cluding drama and ballet are exempted from GST where admission fee ≤ ₹250 (w.e.f. 25.1.2018 admission fee ≤ ₹500).

Admission to award function, concert, pageant, mucial performance or any sporting event other than a recognised sporting event, where the consideration for admission exempt from GST where admission fee ≤ ₹250 (w.e.f. 25.1.2018 admission fee ≤ ₹500).

Admission to recognized sporting events exempt from GST where admission fee ≤ ₹250 (w.e.f. 25.1.2018 admission fee ≤ ₹500):

Recognized sporting event means:

(i) Organized by a recognized sports body where the participating team or individual represent any district, state, zone or country;

(ii) Recognized sport body means refer entry No. 68

w.e.f. 25.01.2018

Admission to planetarium is exempted from GST provided admission fee is ≤ ₹500 per person.

Admission to any sporting event other than a recognised sporting event, where the consideration for admission is exceeds ₹250 per person (w.e.f. 25.1.2018 admission fee exceeds ₹500), GST will be levied.

Illustration 148

Admission to IPL is ₹485 and entertainment tax ₹25. Whether this is activity exempt from GST?

Solution:

Taxable supply of service. Since, transaction value exceeds ₹500 (i.e. ₹485 plus ₹25).

Admission to fashion show: Attract GST Since, this activity is specifically not exempted from any exemption Notification.

Entry No. 82: Services by way of right to admission to the events organised under FIFA U-17:

Entry 82: Services by way of right to admission to the events organised under FIFA U-17 World Cup 2017 have been exempted from CGST [Notification No. 25/2017 CT (R) dated 21.09.2017].

82A	**w.e.f. 1-10-2019,** services by way right to admission to the events organised under FIFA U-17 Women's World Cup 2020 exempted from GST.
82B	**w.e.f. 1-10-2021,** Services by way of right to admission to the events organised under AFC Women's Asia Cup 2022 exempted from GST (Notification No. 7/2021 CT Dated 30-9-2021).

Apart from above, list of services exempts from IGST by Notification No. 9/2017-Integrated Tax (Rate), dated 28th June 2017 also include following three services.

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

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; an entity registered under section 12AA or 12AB (inserted w.e.f. 1-10-2021) of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

a person located in a non-taxable territory:

Provided that the exemption shall not apply to—

(i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or

(ii) services by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India received by persons specified in the entry.

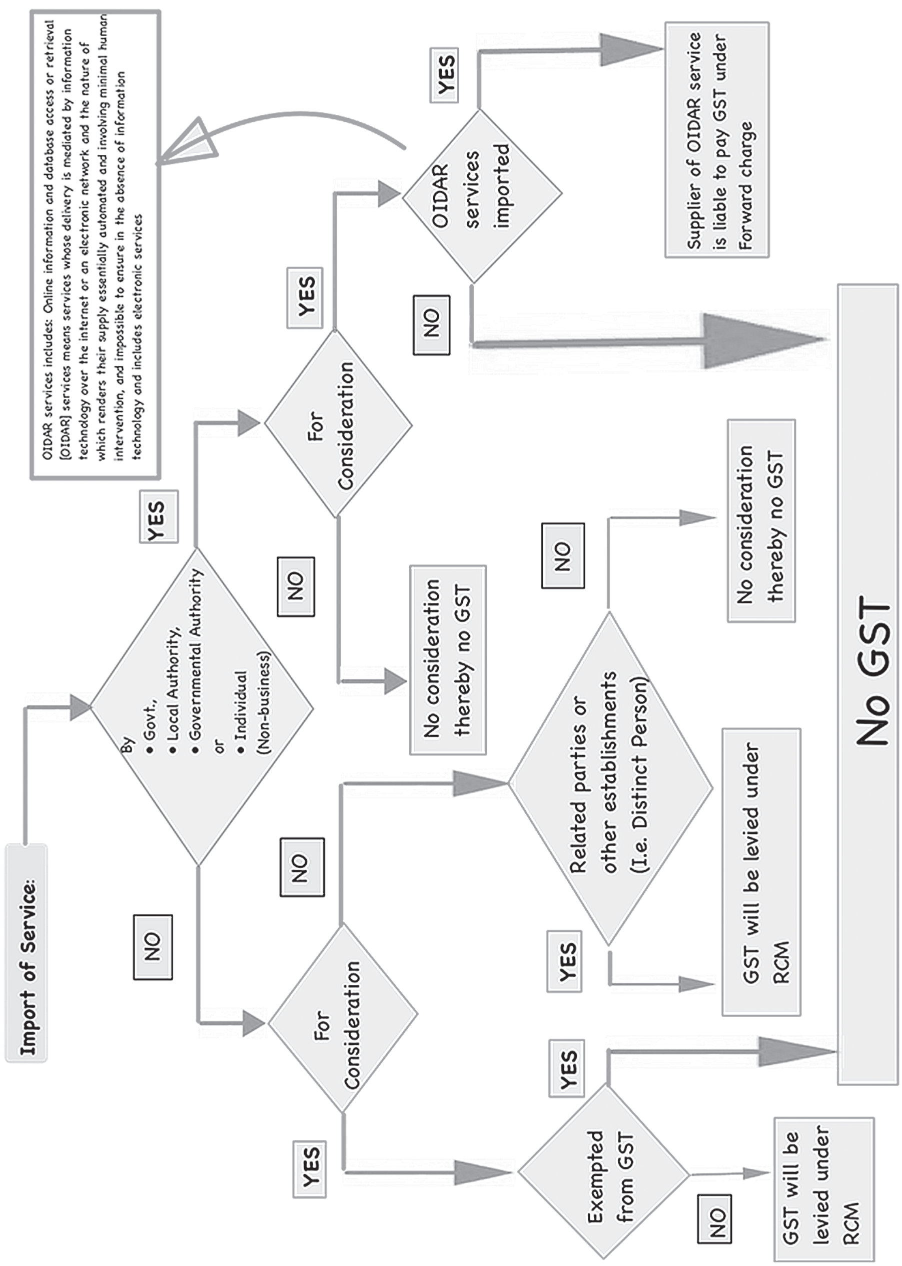
it means item no. (i) and (ii) are taxable.

Summary:

Provided that the exemption shall not apply to—

(i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b);

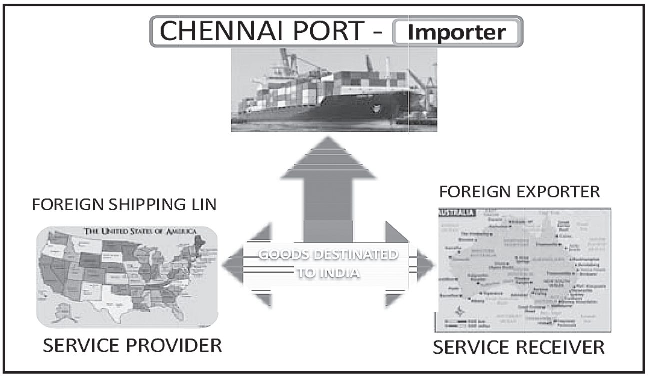
Simplified Approach:



Or

Provided that the exemption shall not apply to—

(ii) services by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India received by persons specified in the entry.



However, if the following goods are imported into India by vessel are falling are exempted from payment of IGST: —

(a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(b) defence or military equipments;

(c) newspaper or magazines registered with the Registrar of Newspapers;

(d) railway equipments or materials;

(e) agricultural produce;

(f) milk, salt and food grain including flours, pulses and rice; and

(g) organic manure.

Person liable to pay GST has been prescribed in relation to service of transportation of goods by a vessel – IMPORTER:

The person liable for paying GST in relation to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India is the **importer (as defined u/s 2(26) of the Customs Act, 1962).**

Thus, the importer will be liable to pay tax (under Reverse Charge), and accordingly now, he can take ITC on the basis of challan against payment of GST.

Where the value of taxable service provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India is not available with the person liable for paying integrated tax, the same shall be deemed to be **10 % of the CIF** value (sum of cost, insurance and freight) of imported goods.” [Vide IGST Tax (Rate) Notification No. 8/2017, dated 28-Jun-2017 read with Corrigendum dated 30-Jun-2017].

Accordingly, tax liability **under GST Regime w.e.f. 01 Jul 2017:**

- GST on Ocean Freight is @ 5%under Reverse Charge Mechanism (RCM).
- If freight is not known, then GST would be 5%on 10% of CIF value of goods. Hence tax applicability would be 0.5% on CIF value of goods.
- GST on Air Freight is @ 0%
- GST on all Destination Charges (i.e. Domestics Transportation till Consignee/Buyer's place) in India is @18%.

Place of supply of goods in case of cross border transactions:

Place of provision of a service of transportation of goods, other than by way of mail or courier section 13(9) of IGST:

Place of supply of Service = Destination of such Goods

Illustration 149

M/s Ram Ltd. of Chennai being importer furnished the following information:

(i) CIF price of imported goods from Indonesia: USD 1,00,000.

(ii) Submitted the Bill of entry on 15.07.20XX.

(iii) Rate of exchange is ₹65 per USD.

Note: The exact amount of freight paid by the foreign exporter to the foreign shipping line is not known. Your are required to answer:

(a) Value of taxable supply

(b) Who is liable to pay GST

(c) Total tax liability

Solution:

Particulars	Value in (₹)	Remarks
CIF value of import	65,00,000	(1,00,000 USD × ₹65)
(a) Value of taxable supply of service (i.e. ocean freight)	6,50,000	₹65,00,000 × 10%
(b) Importer (Ram Ltd.) is liable to pay GST @5% on the taxable value of supply of service		
(c) GST liability = ₹32,500 (₹6,50,000 × 5%)		

2. Services received by the Reserve Bank of India from outside India in relation to management of foreign exchange reserves exempted from GST:

Specialized financial services received by RBI from outside India, in the course of management of foreign exchange reserves are exempted from S.T.

Example 73

- External asset management,
- Custodial services,
- Securities lending services etc.

Illustration 150

Validate the following statement:

Indian Bank, Mound Road Branch in Chennai imported external asset management services is exempt from GST.

Solution:

The given statement is invalid. It is taxable supply of service and hence IGST will be levied.

3. **Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India exempted from GST**

   (Notification No. 9/2017-Integrated Tax (Rate),dated 28th June 2017):

Illustration 151

Service provided by Indian tour operator to a Sri Lankan for a tour conducted in Bhutan. Is it taxable supply?

Solution:

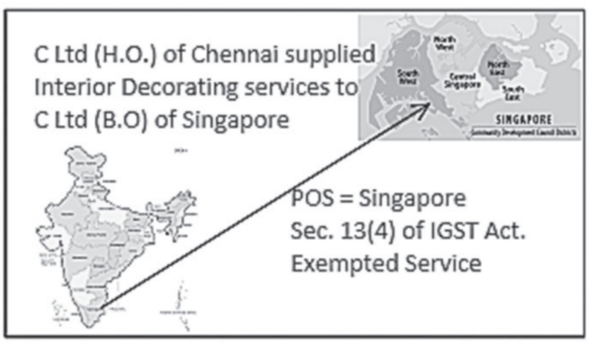
It is exempted supply of service and hence GST will not be levied.

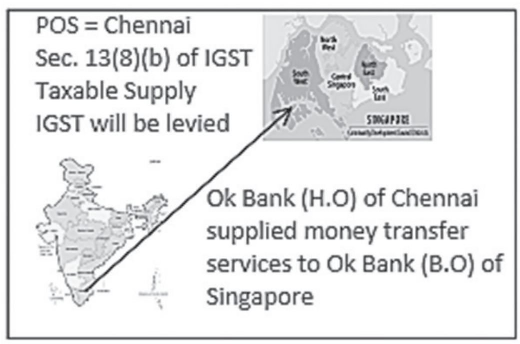
Place of supply = location of supplier of service (Sec. 13(8) of the IGST).

However, specifically exempted from GST.

w.e.f. 27th July, 2018, Service supplied by establishment of person in India to own establishment out of India exempt:

Service supplied by establishment of person in India to own establishment out of India is exempt, if place of supply is out of India (Sr. No. 10E of Notification No. 9/2017-IT (Rate), dated 28th June, 2017.





Inter State supply of services- Nepal and Bhutan exempt:

Further, Notification No. 9/2017-IT(R), dated 28.06.2017 has also been amended vide Notification No. 42/2017-IT(R), dated 27.10.2017 to exempt inter-State supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.

This exemption has been withdrawn from Integrated Tax for supply of services having place of supply in Nepal and Bhutan, against payment in Indian Rupees. vide Notification No. 2/2019-IT, dated 4-2-2019.

Online educational journals or periodicals to an educational institution:

Services received from a provider of service located in a non- taxable territory by 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 upto higher secondary school or equivalent; or

(ii) education as a part of an approved vocational education course;

have been exempted vide Notification No. 2/2018 IT dated 25.01.2018.

Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation.

Exempted from IGST.

Explanation.—For the purposes of this entry, unless the context otherwise requires, "specified international organisation" means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply.

Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers (including members of his or her family) posted therein also be exempted from IGST.

(A) Royalty and license fee exempt from IGST:

w.e.f. 25.1.2018, To exempt IGST payable under section 5 of the IGST Act, 2017 on supply of services covered by item 5(c) of Schedule II of the CGST Act, 2017 (i.e. intellectual property right) to the extent of aggregate of the duties and taxes leviable under section 3(7) of the Customs Tariff Act, 1975 read with sections 5 & 7 of IGST Act, 2017 on part of consideration declared under section 14(1) of the Customs Act, 1962 towards royalty and license fee includible in transaction value as specified under Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Illustration 152

Compute the duty payable under the Customs Act, 1962 for an imported equipment based on the following information:

(i) Transaction value of the imported equipment US $10,100 (royalty and license fee included in transaction value US $ 100).

(ii) Date of Bill of Entry 25.4.20XX basic customs duty on this date 12% and exchange rate notified by the Central Board of Indirect Taxes and Customs Us $ 1 = ₹65.

(iii) IGST u/s 3(7) of the Customs Tariff Act, 1975: 12%.

Social Welfare Surcharge @10% is applicable. Ignore Agriculture Infrastructure and Development Cess.

Importer is liable to pay IGST on import of royalty and license fee?

Applicable rate of IGST on import of services namely royalty and license fee @18%.

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest Rupee.

Solution:

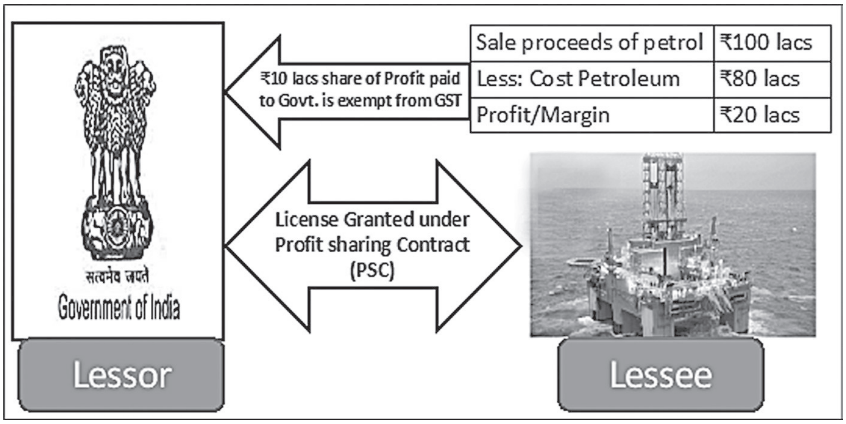
Particulars	Value in (₹)	Working Note
Assessable value	6,56,500	(10,100 USD × ₹65)
Add: Basic Customs Duty	78,780	₹6,56,500 × 12%
Add: 10% Social Welfare Surcharge	7,878	78,780 × 10%
Transaction value for IGST	7,43,158	
Add: IGST u/s 3(7) of Cus. Tariff	89,179	7,43,158 × 12%
Value of imports	8,32,337	
Total customs duty payable	1,75,837	

IGST payable on import of service	=	₹1,170
(i.e. USD100 × ₹65 × 18%)		
Less: Exempted		
[(i.e. 100 USD × ₹65) × 113.20%] × 12%	=	₹ (883)
Net IGST payable	=	₹ 287

Note: Transaction value of royalty and license fee included in the value of imported goods is ₹6,500 (i.e. 100 USD × ₹65)

(B) Exemption from CGST to Government's share of Profit from grant of licence/lease to explore or mine petroleum crude or natural gas (vide Notification No. 5/2018-C.T. (Rate), Dated 25.1.2018):

As per sec. 11(1) of the CGST Act, 2017 exempt the intra state supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, from so much of the central tax as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf.



In this regard CEBC issued Circular No. 32/06/2018-GST, dated 12th February 2018:

As per the Production Sharing Contract (PSC) between the Government and the oil exploration & production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum".

The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee in terms of the Petroleum and Natural Gas Rules, 1959. Having acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government. Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the Contractor shall have exclusive right to carry out Petroleum Operations to recover costs and expenses as provided in this Contract.

The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable per se.

However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture.

CBIC Circular No. 48/22/2018-GST, dated 14-6-2018:

1. Services of short-term accommodation, conferencing, banqueting, etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.
2. If event management services, hotel, accommodation services, consumables, etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of ZERO-RATED supply shall be available in such cases to the supplier.
3. The fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act, 2017 even if the goods (fabrics) supplied to them are covered under Notification No. 5/2017-CT, dated 28-6-2017 [i.e. in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies)].

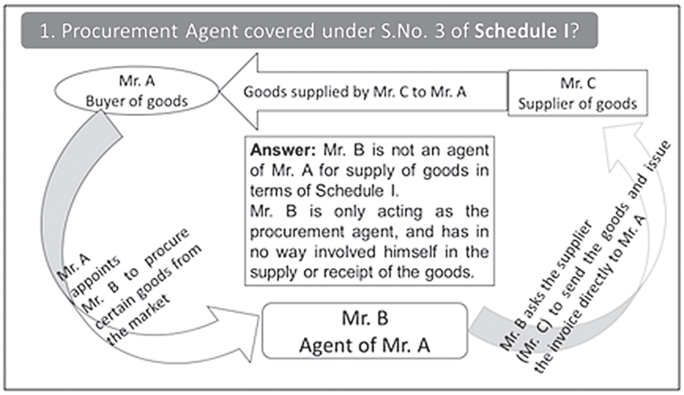
Important Circulars Covering Clarifcations on Supply

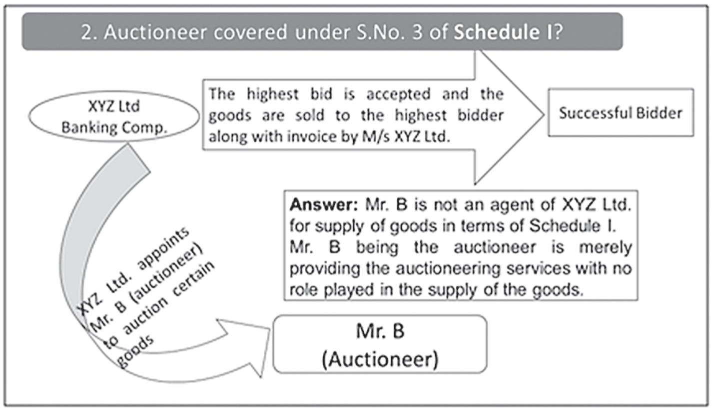
1.4

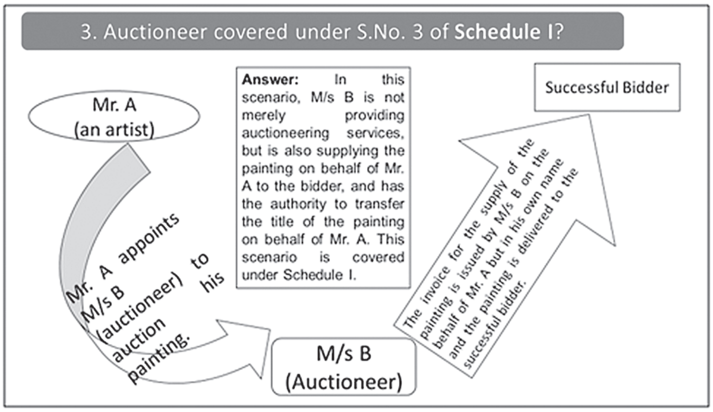
Circular No. 57/31/2018-GST, dated 4th September, 2018:

Scope of Principal-agent relationship in the context of Schedule I of the CGST Act, 2017

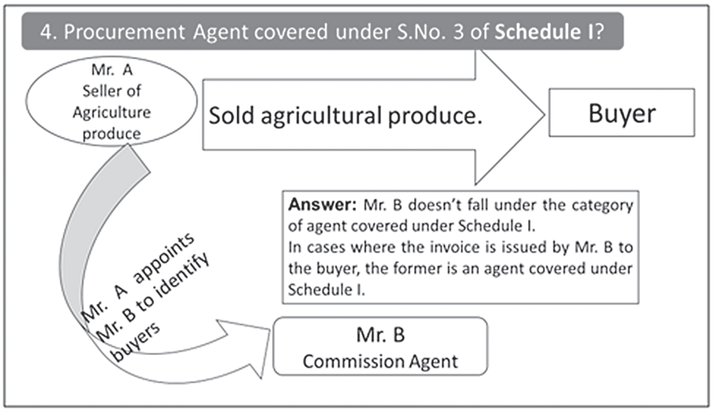
Simplified approach:





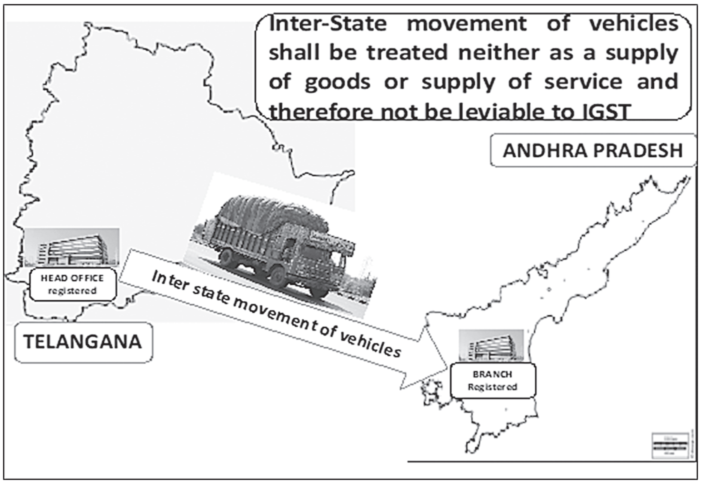


Note: A similar situation can exist in case of supply of goods as well where the C&F agent.



Inter-State movement of Vehicles:

Clarification on Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance (vide Circular No. 1/1/2017 IGST, dated 07/072017):

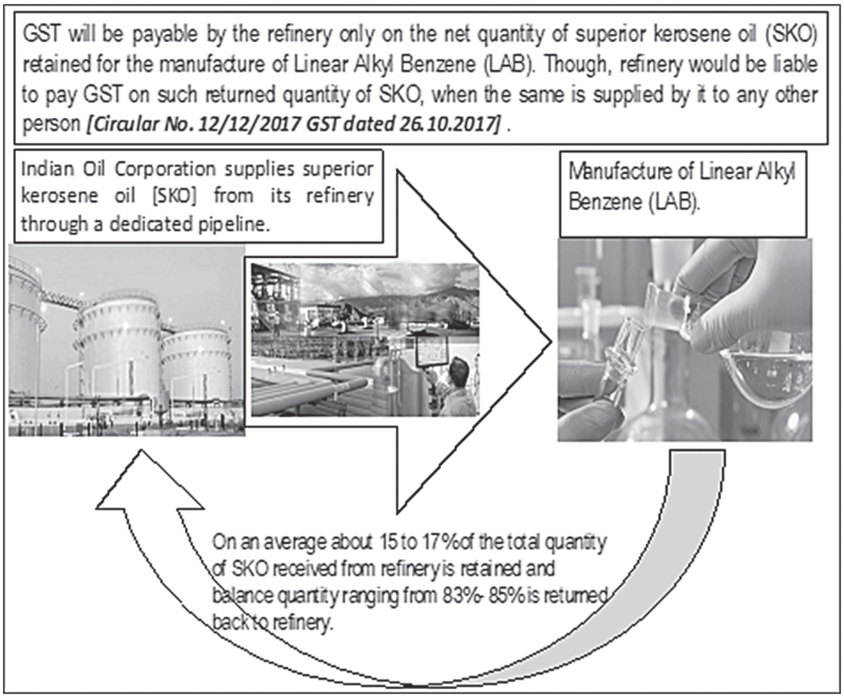


Note:

(i) Inter-State movement of vehicles are treated as supply if it is meant for further supply.

(ii) However, applicable CGST/SGST/IGST, as the case, may be shall be leviable on repairs and maintenance done for such conveyance.

Whether GST is applicable on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB]?

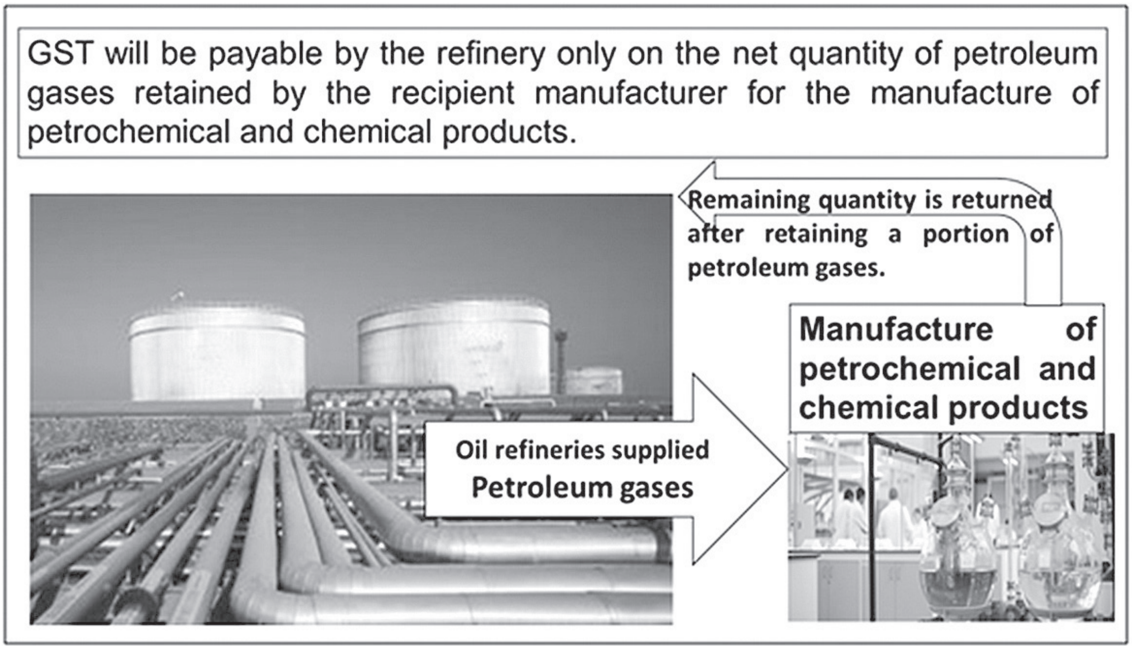


CBIC Circular No. 53/27/2018-GST, dated 9th August 2018.

Clarification regarding applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products:

Applicability of GST on petroleum gases, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines, while a portion of the raw material is retained by these manufacturers (recipient of supply), and the remaining quantity is returned to the oil refineries. In this regard, an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of petrochemical and chemical products.

It is hereby clarified that, in the aforesaid cases, GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. Though, the refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person. It is reiterated that this clarification would be applicable mutatis mutandis on other cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned back to the supplier. The net billing is done on the amount retained by the recipient.



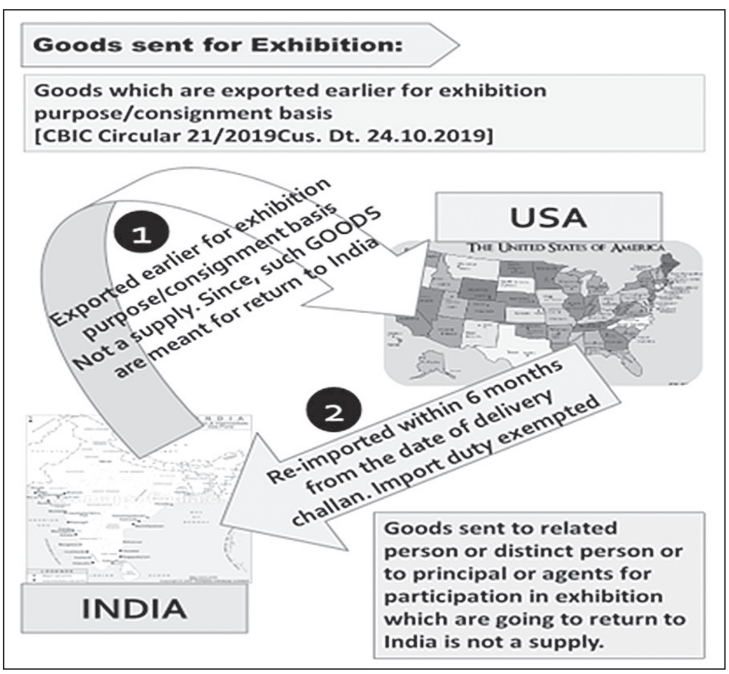
Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries

[Circular No. 22/22/2017-GST, dated 21-12-2017]

The art work for supply on approval basis an be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of actual supply of art work.

In case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are send to the gallery for exhibition and therefore, the same is not a supply. It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

Goods sent on Sale or Approval Basis:



LEVY OF GST ON Extra Neutral Alcohol (ENA):

GST will be levied on extra-neutral alcohol (ENA), which is used for manufacturing alcoholic liquor for human consumption, ENA a is derivative of sugarcane molasses (95% high-purity ethyl alcohol) and is not an alcoholic liquor for human consumption but can be used as raw material or input, after processing and substantial dilution, in the production of whisky, gin, country liquor etc.

w.e.f. 1-10-2019: Alcoholic liquor licence – Grant thereof not to treated as supply of goods/services:

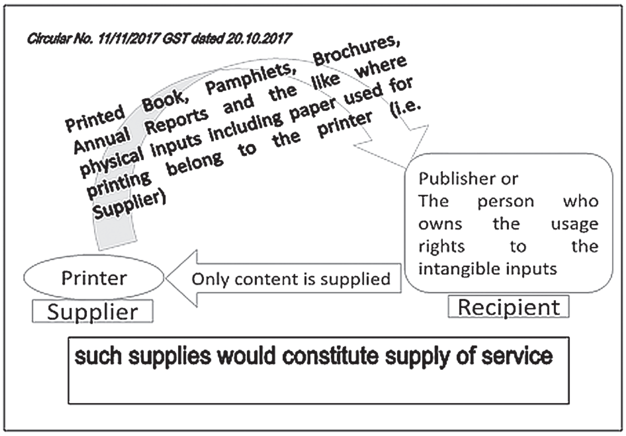
As per section 7(2) of CGST Act, 2017 Central Government of India on the recommendation of the GST Council notifies that the following activities or transaction under taken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service namely:—

"services by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called"

CBIC Circular No. 121/40/2019-GST, dated 11.10.2019 has clarified that the above special dispensation applies only to supply of service by way of grant of liquor licenses by the State Government as an agreement between the Central and States.

CBIC Clarifications on Composite and Mixed Supply:

1. Clarification on taxability of printing contracts:



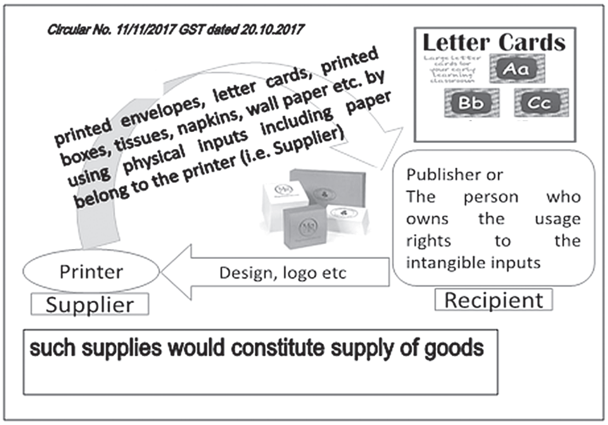


Illustration 153

"Perfect Force" a professional training institute gets its training material of "Aptitute Questions" printed from "Devi Printing House" a printing press. The content of the material is provided by the Perfect Force who owns the usage rights of the same while the physical inputs including paper used for printing belong to the Devi Printing House.

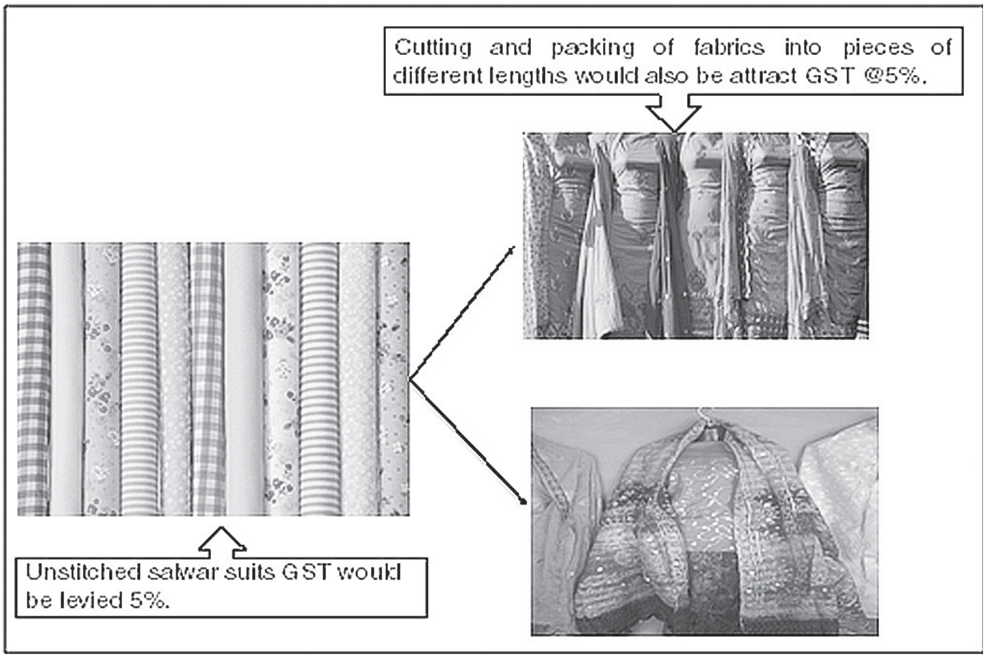
Ascertain whether supply of training material by the Devi Printing House constitutes supply of goods or supply of services.

Solution:

Devi Printing House made supply of service.

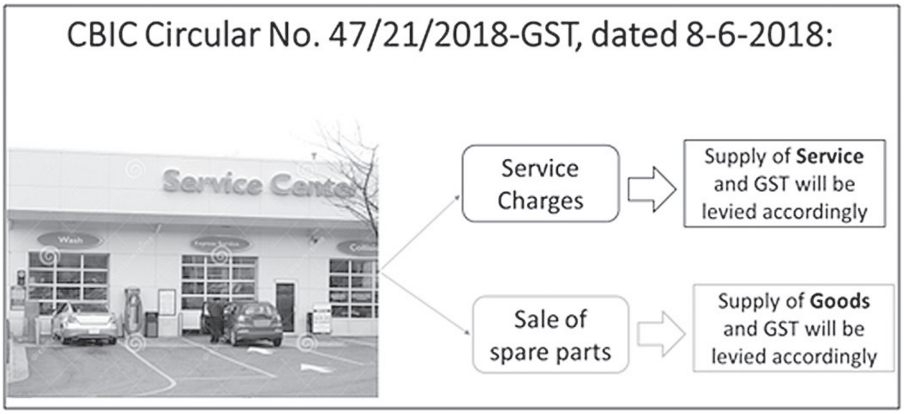
2. Clarification on Unstitched Salwar Suits:

The following GST Circular No. 13/13/2017-GST was issued on 27/10/2017 to clarify the GST rate on unstitched Salwar Suits. Through this GST Circular the GST Department has clarified that the GST rate for unstitched salwar suits would be 5%. Also, cutting and packing of fabrics into pieces of different lengths will not change the nature of goods and the fabric would continue to attract 5% GST rate.

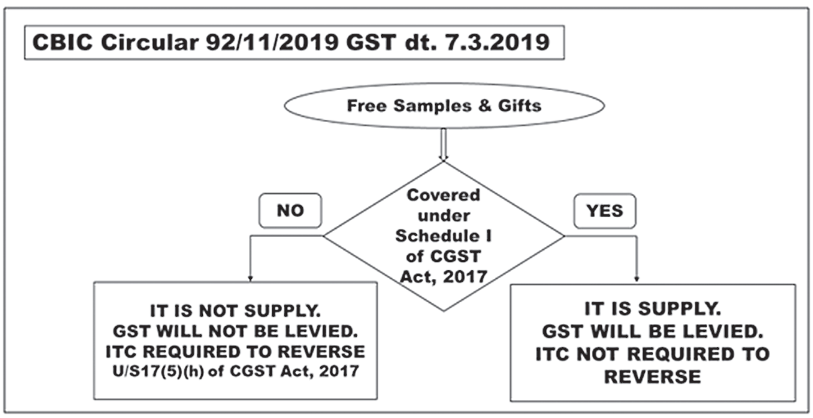


CBIC Circular No. 47/21/2018-GST, dated 8-6-2018:

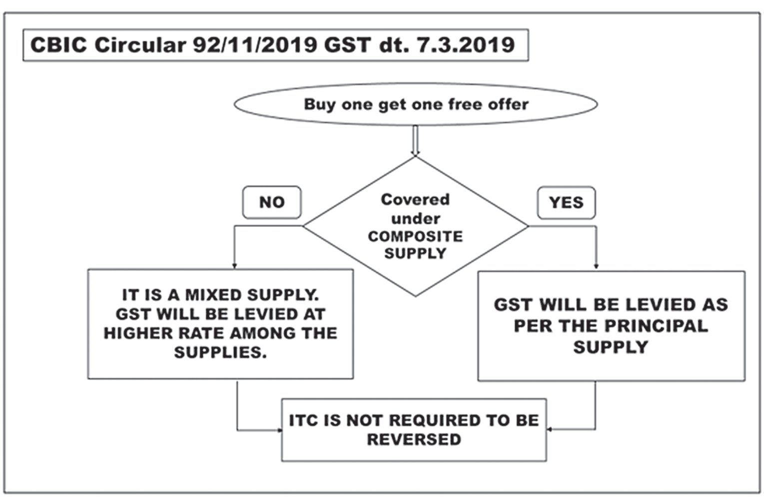
In case of servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.



Free Samples & Gifts:



Buy one get one free offer



Bus body building activity is a supply of goods or services? As per CBIC Circular No. 52/26/2018-GST, dated 09.08.2018,

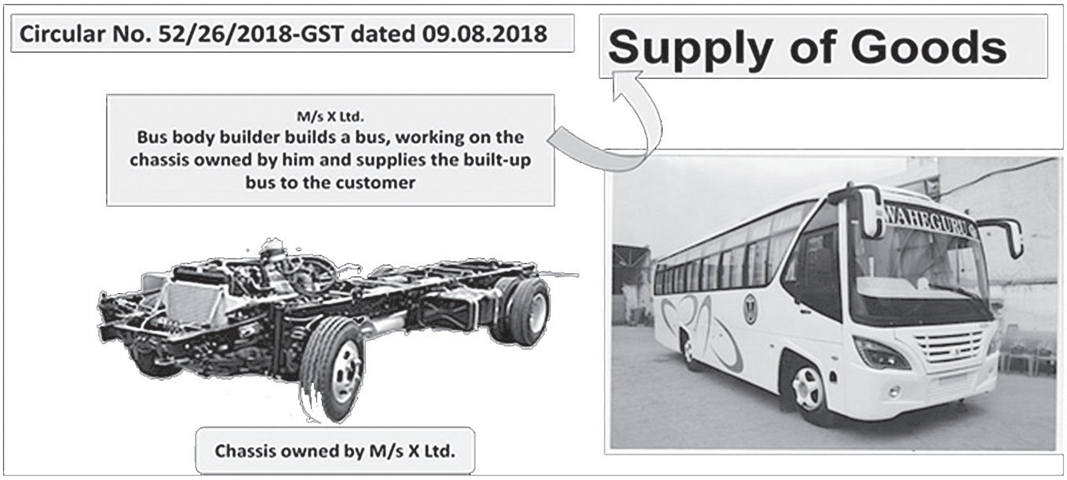
Thus, fabrication of buses may involve the following two situations:

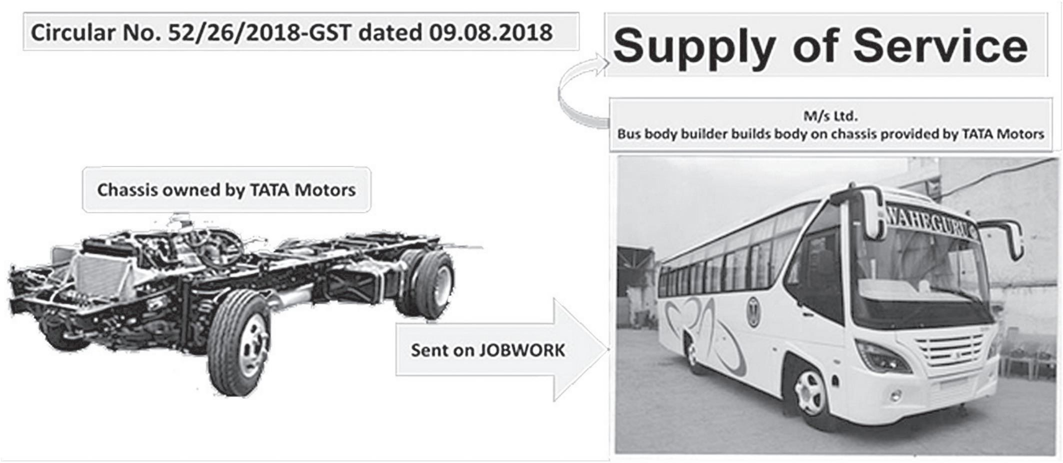
(a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

(b) Bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).

In the above context, it is hereby clarified that in case as mentioned (a) above, the supply made is that of bus, and accordingly supply would attract GST @28%.

In the case as mentioned at (b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly.





Levy and Collection

CGST Act, 2017	IGST Act, 2017
Section 9(1): CGST will be levied and collected on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption.	Section 5(1): IGST will be levied and collected on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. IGST also be levied on import of goods.
Section 9(2): CGST yet to be levied on • Petroleum crude, • High speed diesel, • Motor spirit (commonly known as petrol), • Natural gas and • Aviation turbine fuel	Section 5(2): IGST yet to be levied on • Petroleum crude, • High speed diesel, • Motor spirit (commonly known as petrol), • Natural gas and • Aviation turbine fuel.
Section 9(3): Govt. will decide who is liable to pay GST under Reverse Charge.	Section 5(3): Govt. will decide who is liable to pay GST under Reverse Charge.

Section 9(4): **Notified services taken from unregistered person liable to tax on reverse charge basis w.e.f 1st April, 2019 (i.e. section 9(4) of the CGST Act, 2017 or section 5(4) of IGST Act, 2017)**

The Central Government vide Notification No. 07/2019-Central Tax (R), dated 29th March 2019 has notified that the registered person specified below shall in respect of supply of specified goods or services or both received from an unregistered supplier shall pay tax on reverse charge basis as recipient of such goods or services.

Sl. No.	Category of supply of goods and services	Recipient of goods and services
1.	Supply of such goods and services or both other than services by way of grant of development rights, long term lease of land or 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.	Promoter
2.	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) 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)	Promoter
3.	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project	Promoter

CGST Act, 2017	IGST Act, 2017
Section 9(5): Electronic Commerce Operator (ECO) is liable to pay tax. Or Any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax provided ECO not located in taxable territory. Or Where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.	Section 5(5): Electronic Commerce Operator (ECO) is liable to pay tax. Or Any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax provided ECO not located in taxable territory. Or Where an ECO does not have a representative in the taxable territory, such ECO shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Reverse Charge Mechanism (RCM)

Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.

Section 9(3) of CGST/Section 5(3) of IGST: Govt. will decide who is liable to pay GST under Reverse Charge.

1. The following goods on which GST shall be levied under Reverse Charge have been notified (vide Notification No. 04/2017, dated 28th July 2017):

Sl. No.	Description of supply of goods	Supplier of goods	Recipient of Goods
1	Cashew nuts not shelled or peeled.	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
2	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
3	Tobacco leaves	Agriculturist	Any registered person. Recipient of goods is liable to pay GST.
4	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Distributor or selling agent is liable to pay GST.

Sl. No.	Description of supply of goods	Supplier of goods	Recipient of Goods
5	Silk yarn	Any person who manufactures silk yarn from raw silk or silkworm cocoons for supply of silk yarn.	Any registered person. Recipient of goods is liable to pay GST.
6	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap. Notification No. 36/2017-Central Tax (Rate),dated 13.10.2017 Notification No. 37/2017-Integrated Tax (Rate), dated 13.10.2017	Central Government, State Government, Union territory or a local authority.	Any registered person. Recipient of goods is liable to pay GST.
7	Raw Cotton Notification No. 43/2017-Central Tax (Rate) dated 14th November 2017. Notification No. 45/2017-Integrated Tax (Rate) dated 14th November 2017.	Agriculturist	Any registered person
8.	**w.e.f. 25th May 2018:** Priority Sector Lending Certificate vide Notification No. 11/2018-Central Tax (Rate) dated 28th May 2018.	Any registered person	Any registered person

Section 9(3) of CGST/Section 5(3) of IGST: Government will decide who is liable to pay GST under Reverse Charge.

w.e.f. 1st July 2017: As per Notification No. 13/2017-Central Tax (Rate), dated 28th June, 2017 and Notification No. 10/2017-Integrated Tax (Rate), dated 28th June, 2017 the following 9 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified.

Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	GTA Services **w.e.f. 1st January 2019,** Services provided by GTA to Government departments/local authorities exempted which have taken registration only for the purpose of deducting tax under Section 51 not liable under RCM (N. No. 29/2018-CT(R), dated 31st December 2018).	Goods Transport Agency (GTA)	Any factory, society, co-operative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory.	Recipient

Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
2	Legal Services by advocate	An individual advocate, including a senior advocate or a firm of advocates	Any business entity located in the taxable territory	Recipient
3	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity located in the taxable territory	Recipient
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.	Recipient
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding: — (1) Renting of immovable property (w.e.f. 25.1.2018 RCM apply), and (2) Services specified below: — (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.	Recipient
5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017.”;	Recipient.

Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
5B	w.e.f. 1-4-2019, Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter.	Promoter
5C	w.e.f. 1-4-2019, 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.	Promoter.
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	Recipient
7	Services supplied by an insurance agent to any person carrying on insurance business. w.e.f 25.1.2018, To define insurance agent in the reverse charge notification to have the same meaning as assigned to it in clause (10) of section 2 of the Insurance Act, 1938, so that corporate agents get excluded from reverse charge.	An insurance agent	Any person carrying on insurance business, located in the taxable territory	Recipient
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	Recipient
9	**w.e.f.1-10-2019:** Supply of services by music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957	music composer, photographer, artist, or the like	music company, producer or the like, located in the taxable territory	Recipient

Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
	relating to musical or artistic works to a publisher, music company, producer or the like			
9A	**w.e.f.1-10-2019:** Supplier of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a)of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher	Author	Publisher located in the taxable territory: Provided that nothing contained in this entry shall apply where,- (i) the author has taken registration under the CGST and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdic-tional CGST or SGST commis-sioner, as the case may be, that he exercises the option to pay central tax on the services specified (i.e. copyright by author) under forward charge in accor-dance with Sec 9(1) of CGST Act, 2017 and to comply with all the provisions of 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 ONE year from the date of exercising such option; (ii) the author makes a declaration, as prescribed in Annexure	Recipient

<table>
<tr><th>Sl. No.</th><th>Description of supply of service</th><th>Supplier of service</th><th>Recipient of service</th><th>Person liable to pay GST</th></tr>
<tr><td></td><td></td><td></td><td>II on the invoice issued by him in the Form GST Inv-I to the publisher.</td><td></td></tr>
<tr><td colspan="5">Notification No. 10/2017-Integrated Tax (Rate), dated 28th June, 2017, the following 2 services under IGST on which GST shall be levied under Reverse Charge have been notified:</td></tr>
<tr><td>10</td><td>Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.
Non-taxable online recipient means:
As per Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017,—
• any Government,
• local authority,
• governmental authority,
• an individual or
• any other person not registered
and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.</td><td>Any person located in a non-taxable territory</td><td>Any person located in the taxable territory other than non-taxable online recipient.</td><td>Recipient</td></tr>
<tr><td>11</td><td>Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India</td><td>A person located in non-taxable territory</td><td>Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.</td><td>Importer</td></tr>
<tr><td colspan="5">w.e.f. 1st January 2019, Insertion of new services to RCM u/s 9(3) of CGST Act [Notification No. 29/2018-CT (R), dated 31st December, 2018]:</td></tr>
</table>

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service	Comment
(1)	(2)	(3)	(4)	(5)
12	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory	
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.	
14	Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to,—(i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act.	Any person other than a body corporate	A registered person, located in the taxable territory.”;	Therefore, when Security services are provided to registered persons only then no need to take registration as per Section 23 of CGST Act, 2017. However, when supplier of security services provides services to registered as well as unregistered person then such supplier is required to take registration for supply to unregistered recipient and those under composition.
15	w.e.f. 1-10-2019: services provide by way of renting of a motor vehicle provided to a body corporate where cost of fuel is included in the consideration.	Any person other than a body corporate, and does not issue an invoice charging CGST @6% and SGST @6%.	Any body corporate located in the taxable territory.	Recipient

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service	Comment
(1)	(2)	(3)	(4)	(5)
16	w.e.f. 1-10-2019: services of lending of securities under Securities Lending Scheme 1997 of Securities and Exchange Board of India (SEBI), as amended	Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme of SEBI.	Borrower i.e. a person who borrows the securities under the scheme through an approved intermediary of SEBI.	Recipient
17	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.	Recipient
18	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.	Recipient

Notified services taken from unregistered person liable to tax on reverse charge basis w.e.f 1st April, 2019 (i.e. section 9(4) of the CGST Act, 2017 or section 5(4) of IGST Act, 2017)

The Central Government vide Notification No. 07/2019-Central Tax (R), dated 29th March 2019 has notified that the registered person specified below shall in respect of supply of specified goods or services or both received from an unregistered supplier shall pay tax on reverse charge basis as recipient of such goods or services

Sl. No.	Category of supply of goods and services	Recipient of goods and services
1.	Supply of such goods and services or both other than services by way of grant of development rights, long term lease of land or 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.	Promoter
2.	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) 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)	Promoter
3.	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project	Promoter

w.e.f. 1-10-2019: The CBIC vide **Notification No. 23/2019-(CT Rate), dated September 30, 2019** has put a retrospective sunset clause on applicability of **Notification No. 04/2018-(CT Rate) dated January 25, 2018** w.r.t. development rights supplied on or after April 01, 2019. The later Notification provided special procedure to be followed while determining time of supply in case of construction services against transfer of development rights.

The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate or first occupation of the project, whichever is earlier.

The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion or first occupation of the project, whichever is earlier.

CBIC Instruction No. 3/2/2020- GST dated 24-6-2020:

One of the conditions prescribed vide said notification is that atleast eighty per cent. of value of input and input services, [other than services by way of grant of development rights, long term lease of land or FSI, electricity, high speed diesel, motor spirit, natural gas], used in supplying the construction service, shall be received by the promoter/developer from registered supplier only. In case of shortfall from the said threshold of 80 per cent., the promoter/developer shall pay the tax on the value of input and input services comprising such shortfall in the manner as has been prescribed vide said notification. This tax shall be paid through a prescribed form electronically on the common portal by end of the quarter following the financial year. Accordingly for FY 2019-20, tax on such shortfall is to be paid by the 30th June, 2020.

In the above context, requests have been received seeking details of prescribed form on which the said tax amount has to be reported. 4. The issue referred by the trade has been examined. It has been decided that FORM GST DRC-03, as already prescribed, shall be used for making the payment of such tax by promoter/ developer. Accordingly, person required to pay tax in accordance with the said notification on the shortfall from threshold requirement of procuring input and input services (below 80%) from registered person shall use the form **DRC-03** to pay the tax electronically on the common portal within the prescribed period.

Section 9(5) deals with taxability of supply of services:

Output tax of which shall be paid by e-commerce operator even though e-commerce operator is not the actual supplier. E-commerce liable to comply with GST provisions as if he is supplier of services and liable to pay tax. In case services are notified u/s 9(5), actual supplier of services need not required to get registration even if turnover exceeds threshold limit unless stated other wise.

List of services notified under section 9(5):

1. **Passenger Transport Service:** Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motorcycle; with effect from 1st January 2022, the scope of Passenger Transport Service expanded to include service provided through Omnibus and any other motor vehicle. (Notification No. 17/2021 dated 18.11.2021).

   Explanations: -

   (a) "radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);

   (b) "maxicab", "motorcab", motorcycle, motor vehicle and omnibus shall have the same meanings as assigned to them respectively in clauses (22), (25), (27), (28) and (29) of section 2 of the Motor Vehicle Act, 1988 (59 of 1988).

2. **Accommodation Services:** Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said CGST Act.

3. **Housekeeping Services:** 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 sub-section (1) of section 22 of the said CGST Act.

4. **w.e.f 1-1-2022 Restaurant Services (i.e. Cloud Kitchen):** Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

   "Specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent (i.e. ≥ ₹7500/- per unit)" vide Notification No. 17/2021 dated 18.11.2021.

Note: Restaurant is supplying services through E-COM only, he is not required to get registered under GST. In case, he is already registered, he may continue with such registration or get them de-registered under GST.

GST on service supplied by restaurants through e-commerce operators (CBIC Cicular No. 167/23/2021-GST Dated 17th December 2021):

Sl. No.	Issue	Clarification
1	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1 st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collectTCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present

Sl. No.	Issue	Clarification
2	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
3	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
5	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECOs avail input tax credit (ITC). The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)
7	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.

Sl. No.	Issue	Clarification
8	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continuesfor ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.
9	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
11	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.	A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant servicesthroughECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

Important points:

(A) Registration: A person who is required to pay tax under reverse charge has to compulsorily register under GST and the threshold limit for registration is not applicable to him.

(B) ITC: A supplier cannot take ITC of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax.

Practical theory:

Department contention:

Assessee being an importer of goods from Indonesia is liable to pay GST on Ocean Freight. Since, place of supply of service is destination of goods as per section 13(9) of IGSTAct, 2017.

Assessee's view:

Since, goods imported into India, paid customs duty on such ocean freight which is inclusive of Cost, Insurance and Freight (CIF value). Therefore, question of levying of GST would not arise at all.

Decide the case with the help of decided case, if any.

Solution:

Facts of the Case: Import of goods into India completed when goods are landed on land mass of India (as per the Garden Silk Mills Ltd. of the Hon'ble Supreme Court of India). Ocean freight on import of goods into India is subject to customs duty. As per the Department contention Ocean Freight is subject to GST again.

Grounds on Appeal:

In the case of United Shippers Ltd. 2015 (37) STR 1043 (Tri-Mumbai) has held that when the value of transportation charges has been added in CIF value on which customs duty is paid. Service Tax again cannot be recovered on the same value.

The department's appeal against the order of Tribunal to the Hon'ble Supreme Court of India has been dismissed as reported in 2015(39) STR J369 (SC). It means the judgment of Hon'ble Tribunal-Mumbai has been confirmed as whole good.

The ratio of this judgment is equally applicable to Goods and Services Tax Law also.

Therefore, payment of GST on Ocean Freight does not arise.

Illustration 154

Energy Pvt. Ltd., a registered supplier, is engaged in providing expert maintenance and repair services for large power plants that are in the nature of immovable property, situated all over India. The company has its Head Office at Bangalore, Karnataka and branch offices in other States. The work is done in the following manner.

- The company has self-contained mobile workshops, which are container trucks fitted out for carrying out the repairs. The trucks are equipped with items like repair equipment's, consumables, tools, parts etc. to handle a wide variety of repair work.
- The truck is sent to the client location for carrying out the repair work. Depending upon the repairs to be done, the equipment, consumables, tools, parts etc. are used from the stock of such items carried in the truck.
- In some cases, a stand-alone machine is also sent to the client's premises in such truck for carrying out the repair work.
- The customer is billed after the completion of the repair work depending upon the nature of the work and the actual quantity of consumables, parts etc. used in the repair work.
- Sometimes the truck is sent to the company's own location in other State(s) from where it is further sent to client locations for repairs.

Work out the GST liability [CGST & SGST or IGST, as the case may be] of Energy Pvt. Ltd., Bangalore on the basis of the facts as described, read with the following data for the month of November 20XX.

Sl. No.	Particulars	(₹)
A	Truck sent to own location in Tamil Nadu (i) Value of items contained in the truck - ₹3,00,000 (ii) Value of truck - ₹25,00,000	
B	Truck sent to a client location in Tamil Nadu for carrying out repairs. Stand- alone machine is also sent in the truck to client location for repairs (i) Value of items contained in the truck – ₹2,85,000 (ii) Value of stand-alone machine - ₹4,00,000 (iii) Value of truck - ₹20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
C	Truck sent to a client location in Karnataka for carrying out repairs (i) Value of items contained in the truck - ₹1,06,000 (ii) Value of truck - ₹20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
D	Invoices raised for repair work carried out in Tamil Nadu [including the invoice for repair work done in 'B'] -	70,00,000
E	Invoices raised for repair work carried out in Karnataka [including the invoice for repair work done in 'C']	12,00,000

Also, specify the document(s), if any, which need to be issued by Energy Pvt. Ltd., Bangalore for the above transactions.

All the given amounts are exclusive of GST, wherever applicable. Assume the rates of taxes to be as under:

Items used for repairs		
CGST – 6%	SGST – 6%	IGST – 12%
Container truck, Stand-alone machines		
CGST – 2.5%	SGST – 2.5%	IGST – 5%
Works contract for repairs and maintenance of immovable property		
CGST – 9%	SGST – 9%	IGST – 18%

You are required to make suitable assumptions, wherever necessary.

Solution:

Sl. No.	Particulars	(₹)
A.	Items sent in container truck to own location in Tamil Nadu - IGST @ 12% x ₹3,00,000 =	36,000
	Container truck sent to own location in Tamil Nadu Since the activity is not a supply, tax invoice is not required to be issued by Energy Pvt. Ltd. However, a delivery challan is to be issued by the company in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the truck to its own location in Tamil Nadu.	-
B.	Stand-alone machine sent in container truck to client location in Tamil Nadu, for carrying out repairs a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location.	-
	Container truck sent to client location in Tamil Nadu a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location.	-
	Items sent in container truck to client location in Tamil Nadu, for carrying out repairs It is form part of works contract service and taxable only when supply of service takes place.	-
C.	Container truck sent to client location in Karnataka	-
	Items sent in container truck to client location in Karnataka, for carrying out repairs	-
D.	Invoices raised for repair work carried out in Tamil Nadu: IGST @ 18% on ₹70,00,000	12,60,000
E.	Invoices raised for repair work carried out in Karnataka: CGST 9% + SGST 9% on ₹12,00,000	2,16,000
	Total GST liability	**15,12,000**

Illustration 155

Sushma Industries Ltd., registered in the State of Tamil Nadu, manufactures plastic pipes for other suppliers on job-work basis.

On 10.01.20XX, Plasto Manufacturers (registered in the State of Himachal Pradesh) sent plastic worth ₹4 lakh and moulds worth ₹ 50,000, free of cost, to Sushma Industries Ltd. to make plastic pipes. Sushma Industries Ltd. also used its own material - a special type of lamination material for coating the pipes - worth ₹1 lakh in the manufacture of pipes. It raised an invoice of ₹2 lakh as job charges for making pipes and returned the manufactured pipes through challan to Plasto Manufacturers on 20.10.20XX.

The same quality and quantity of plastic pipes, as was made for Plasto Manufacturers, were made by Sushma Industries Ltd. from its own raw material and sold to Solid Pipes (registered in Jammu and Kashmir) for ₹7.5 lakh on 20.10.20XX.

Examine the scenario and offer your views on the following issues with reference to the provisions relating to job work under the GST laws:

1. Is there any difference between the manufacture of plastic pipes by Sushma Industries Ltd. for Plasto Manufacturers and for Solid Pipes?

2. Whether Sushma Industries Ltd. can use its own material even when it is manufacturing the plastic pipes on job-work basis?
3. Whether sending the plastic and moulds to Sushma Industries Ltd. by Plasto Manufacturers is a supply and a taxable invoice needs to be issued for the same?
4. Whether Sushma Industries Ltd. should include the value of free of cost plastic supplied by Plasto Manufacturers in its job charges?

Solution:

1. Supplied to Plasto Manufactures - Supply of service.

   Supplied to Solid Pipes - Supply of goods

2. Yes. Sushma Industries Ltd. can use its own material even though it is manufacturing the plastic pipes on job-work basis.
3. It is not a supply. No Tax Invoice is required to issue by Plasto Manufacturers.
4. Value of material supplied by Plasto Manufacturers under job work not included in the job work charges of Sushma Industries Ltd.

Illustration 156

Mr. Rajeev of New Delhi made a request for a Motor cab to "Fast Ride" for travelling from New Delhi to Gurgaon (Haryana). After Mr. Rajeev pays the cab charges using his debit card, he gets details of the driver Mr. Jorawar Singh and the cab's registration number.

"Fast Ride" is a mobile application owned and managed by D.T. Ltd. located in India. The application "Fast Ride" facilitates a potential customer to connect with the persons providing cab service under the brand name of "Fast Ride".

D.T. Ltd. claims that cab service is provided by Mr. Jorawar Singh and hence, he is liable to pay GST. With reference to the provisions of IGST Act, 2017, determine who is liable to pay GST in this case?

Would your answer be different, if D.T. Ltd. is located in New York (USA)? Also briefly state the statutory provisions involved.

Solution:

DT Ltd. owns and manages a mobile application to facilitate supply of passenger transportation services in a motor cabs over a digital network (i.e. Radio Taxi services), it is an ECO. Thus, DT Ltd., an ECO located in India is liable to pay GST in the given case.

D.T. Ltd., is located in New York:

In such case person representing ECO is liable to pay tax. Further, where ECO has neither the physical presence nor any representative in the taxable territory, person appointed by the ECO for the purpose of paying the tax is liable to pay tax.

Accordingly, D.T. Ltd. shall appoint a person in India for the purpose of paying tax and such person shall be liable to pay tax.

Illustration 157

Determine taxable value of supply under GST law with respect to each of the following independent services provided by the registered persons:

Particulars	Gross amount charged (₹)
Fees charged for yoga camp conducted by a charitable trust registered under section 12AB of the Income-tax Act, 1961	80,000
Amount charged by business correspondent from banking company for the services provided to the rural branch of a bank with respect to Savings Bank Accounts	2,00,000
Amount charged by cord blood bank for preservation of stem cells	8,00,000
Amount charged for service provided by commentator to a recognized sports body	5,20,000

Solution:

Taxable supply = Amount charged for service provided by commentator to a recognized sports body ₹5,20,000. All other services are exempted.

Illustration 158

Mrs. Kala, a registered supplier of Jaipur (Rajasthan), has made the following supplies in the month of January, 20XX:

i. Supply of a laptop bag along with the laptop to a customer of Mumbai for ₹ 55,000 (exclusive of GST).

ii. Supply of 10,000 kits (at ₹ 50 each) amounting to ₹ 5,00,000 (exclusive of GST) to Ram Fancy Store in Kota (Rajasthan). Each kit consists of 1 hair oil, 1 beauty soap and 1 hair comb.

iii. 100 kits are given as free gift to Jaipur customers on the occasion of Mrs. Kala's birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit is ₹ 35, but the open market value of such kit of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the goods contained in the kit.

iv. Event management services provided free of cost to her brother for his son's marriage function in Indore (Madhya Pradesh). Cost of providing said services is ₹ 80,000, but the open market value of such services and of services of like kind and quality is not available.

v. 1,400 chairs and 100 coolers hired out to Function Garden, Ajmer (Rajasthan) for ₹3,30,000 (exclusive of GST) including cost of transporting the chairs and coolers from Mrs. Kala's godown at Jaipur to the Function Garden, Ajmer. Mrs. Kala has paid the cost of transportation of chairs and coolers to an unregistered Goods Transport Agency (GTA) [located in the State of Rajasthan] @ ₹20 (exclusive of GST) for each chair and each cooler and in turn, has charged ₹20 only for each chair and each cooler from Function Garden for transportation of the same.

vi. Interest of ₹ 6,400 (inclusive of GST) was collected by Mrs. Kala in January from Ram Fancy Store, Kota for the payment received with a delay of 30 days

Assume rates of GST to be as under: Laptop 18%, Laptop bag 28%, Hair oil 18%, Beauty soap 28%, Hair comb 12%, Event Management service 5%, Service of renting of chairs and coolers 12% and Transportation services 5%. From the above information, compute the GST liability (CGST and SGST and/ or IGST, as the case may be) of Mrs. Kala for the month of January, 20XX.

Solution:

Particulars	Value (₹)	CGST (₹)	SGST (₹)	IGST (₹)	Working note
Laptop with bag	55,000	Nil	Nil	9,900	It is composite supply. Principal supply is laptop. Hence, GST applicable for Laptop is also applicable to bag. 55,000 × 18%
Kits	5,00,000	70,000	70,000	Nil	It is mixed supply. Higher rate is applicable.
Chairs and coolers on hire basis	3,30,000	19,800	19,800	Nil	Hiring of chairs and coolers along with transportation is composite supply. Hence, entire supply will attract @12% GST.
Interest collected from Ram Fancy stores for delay in payment	5,000	700	700	Nil	6,400 × 100/128 = 5,000. 5,000 × 14% = 700
GTA services availed from unregistered person (RCM apply)	30,000	750	750	Nil	(1400 + 100) × ₹20 × 2.5% = 750
Total GST		**91,250**	**91,250**	**9,900**	

Illustration 159

Mr. A, a taxable service provider, provided taxable supply of services to Mr. B. The contract of service entered into between them stipulated that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations. While the service was being provided, an amendment in the law shifted the liability to pay GST in case of such taxable supply of services from service provider to service receiver retrospectively, i.e. reverse charge provisions were made applicable.

You are required to answer the following questions with the help of the decided case law(s), if any:

(i) Can Mr. B, who is the person liable to pay GST under reverse charge, shift the burden of such GST on Mr. A by deducting the same from the payment made against the bills raised by Mr. A?

(ii) Can Mr. B ask the Revenue to recover GST from Mr. A since the contract of service stipulates that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations?

Solution:

(i) Yes. As per the **Rashtriya Ispat Nigam Ltd. v Dewan Chand Ram Saran 2012 (260) STR 289 (SC)**, Mr. B can shift the burden of GST on Mr. A by deducting the same from the payment made against the bills raised by Mr. A.

(ii) No. As per the **Delhi Transport Corporation v Commissioner Service Tax 2015 (038) STR 673 (Del)**, Mr. B cannot ask the Revenue to recover GST from Mr. A since the contract of service stipulates that Mr. A will bear all the taxes, duties and other liabilities in connection with discharge of his obligations.

Analysis of Key Advance Rulings

1.5

Solved Case 1:

M/s Columbia Asia Hospitals Pvt. Ltd. (AAR No.-KAR ADRG 15/2018) filed an application to sought an answer to the question whether the services provided by the employee of corporate office to the other units of the company is taxable plus charging consideration against allocation of common expenditure of units would tantamount to levy GST or not. The Karnataka AAR held the ruling in favour of revenue, briefing the findings in relation with the Entry 2 of Schedule I of CGST Act, 2017.

In the instance case, the applicant is a private limited company engaged in providing health care services categorizing them as In-patient (IP) and Out-patient (OP) services. The applicant is also engaged in supply of medicines (pharmacy) to in-patients and out-patients. The relevant facts on the basis of which ruling have been sought after are:—

As clarified by the applicants through the facts that the person delivering the service are employed by the corporate office & not by the other units of the applicant. Hence there is an employer-employee relationship with corporate office only and no relationship exists with the employees of the corporate office & other units of the applicant. Therefore, the entry no. 1 of schedule III of CGST Act, 2017 would not be applicable.

The services provided by such employees to the other units would be treated as the transaction between the corporate office & its units located in other states. Though the corporate office & its units are the distinct person u/s 25 of CGST Act, 2017, the transaction would be covered under the Entry no. 2 of Schedule I of CGST Act, 2017 i.e. "Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business" & therefore becomes taxable. The valuation of the transaction includes all cost incurred by the corporate office after considering employee cost in the form of salary, incentive & perquisites.

Additionally, corporate office raises an invoice for the allocation of the expenses such as rent, travel expense, consultancy, etc. incurred on behalf of other units. Such reimbursement from the other units would be covered under the term 'TRANSFER' u/s 7(1)(a) of CGST Act, 2017. Furthermore, the transaction between the distinct person without consideration is covered under the definition of the SUPPLY under Entry No. 2 of Schedule I of CSGT Act, 2017. Hence the reimbursement of the expenditure would be attracting the tax liability.

Solved Case 2: Bai Mumbai Trust v Suchitra (Bombay High Court)

Whether GST is applicableonservices or assistance rendered by the Court receiver appointed by the Court?

Decision:

Court observed that schedule III provides that services provided by any court or tribunal established under any law isneither a supply of goods nor supply of services.

Court Receiver should implement orders of the court and functions under the supervision and direction of the Court. Hence, office of the Court Receiver is an establishment of the High Court through which the orders issued by the Court are given effect to.

Therefore, the services of the Court Receiverare to be considered as services provided by any Court. Accordingly, the fees or charges paid to the Court Receiverare not liable to GST.

The Honorable High Court held that GST cannot be levied or recovered on services provided by the Court Receiver.

Solved Case 3:

Supply of external storage battery with UPS, constitutes as 'Mixed Supply'

In the case of **Switching Avo Electro Power Ltd.** (2018) 96 taxmann.com 106 (AAAR-West Bengal), the Appellant Authority for Advance Ruling upheld the ruling of Authority for Advance Ruling that when the storage battery or electric accumulator is supplied separately with the static converter (UPS), it would be considered as a mixed supply or not naturally bundled supply.

Here the appellant contended that the UPS cannot function without battery as the same is an integral part of UPS and it is naturally bundled and supplied in conjunction with each other, therefore the supply of static converter along with the external battery should be considered as a composite supply and not mixed supply.

However, the AAAR opined that the when a UPS is supplied with built-in batteries in a manner that the supply of the battery is inseparable from the supply of the UPS, and the two items are 'naturally bundled' then it should be treated as a composite supply under Section 2(30) of the CGST Act, but when the storage batteries having multiple uses is supplied with the static converter i.e. UPS, it cannot be said that they are naturally bundled even if the same is supplied under a single contract at a combined single price. **Therefore, the supply of external storage battery supplied with UPS would be considered as a 'mixed supply'.**

Switching Avo Electro Power Ltd. (2018) 96 taxmann.com 106 (AAAR-West Bengal)

Solved Case 4:

Association of Leasing & Financial Service Companies v Union of India 2010 (20) STR 417 (SC):

Hon'ble Apex court had held that Lessor collecting principal as well as interest from Lessee and accounting the interest part as income by following Accounting Standard 19 and hence interest part is considered as consideration. Therefore, Lessor is liable to pay service tax on the interest part. **Now under GST Law the entire instalments (Principal + Interest) will attract GST.**

Solved Case 5:

Rashtriya Ispat Nigam Ltd. v Dewan Chand Ram Saran 2012 (260) STR 289 (SC):

Point of dispute: Whether the service tax liability created under law can be shifted by a clause entered in the contract?

DECISION: YES. ASSESSEE CAN CONTRACT TO SHIFT THEIR LIABILITY.

Regarding transferring of service tax liability by way of contract was correct. It means service provider will bear all the taxes, and service receiver can shift the burden of service tax payable by him to service provider by deducting the same from the bills raised by service provider.

Solved Case 6:

Delhi Transport Corporation v Commissioner Service Tax 2015 (038) STR 673 (Del)

Facts of the Case: The appellants entered into contracts with seven various agencies for display of advertisements; inter alia, on bus-queue shelters and time-keeping booths. The terms of the contract clearly stated that it would be the responsibility of the contractors/advertisers to pay directly to the concerned authority the tax/levy imposed by such authority in addition to the license fee.

Department issued show cause notice asking the appellant (service provider) to pay service tax along with interest and penalties on the service of display of advertisements rendered by them.

Appellant's Contentions: The appellant argued that they were under a bona fide belief that the liability to remit service tax stood transferred to the recipient as per the agreements; this caused the failure to file returns and remit service tax. They relied upon Rashtriya Ispat Nigam Limited v Dewan Chand Ram Saran 2012 (26) STR 289 (SC) to urge that having entered into the contracts in the nature mentioned above, it was a legitimate expectation that the service tax liability would be borne by the contractors/advertisers and, thus, there was no justification for the appellant being held in default or burdened with penalties.

Decision: The High Court held that undoubtedly, the service tax burden could be transferred by contractual arrangement to the other party. However, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party (the other party) or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors (the other party).

Therefore, the appellant was an assessee, and statutorily bound to not only get itself registered but also submit the requisite returns as per the prescription of law and rules framed thereunder.

Solved Case 7:

Tata Consultancy Services v State of AP 2004 (178) ELT 22 (SC):

If software is designed/developed, put in a media and sold, it could still be treated as sale of goods by applying the Supreme Court decision in **Tata Consultancy Services v State of AP 2004 (178) ELT 22 (SC)**.

In the said case, it was held that goods may be tangible property or an intangible one. It would become goods provided that attributes thereof having regard to

(a) utility

(b) capable of being bought and sold,

(c) capable of being transmitted,

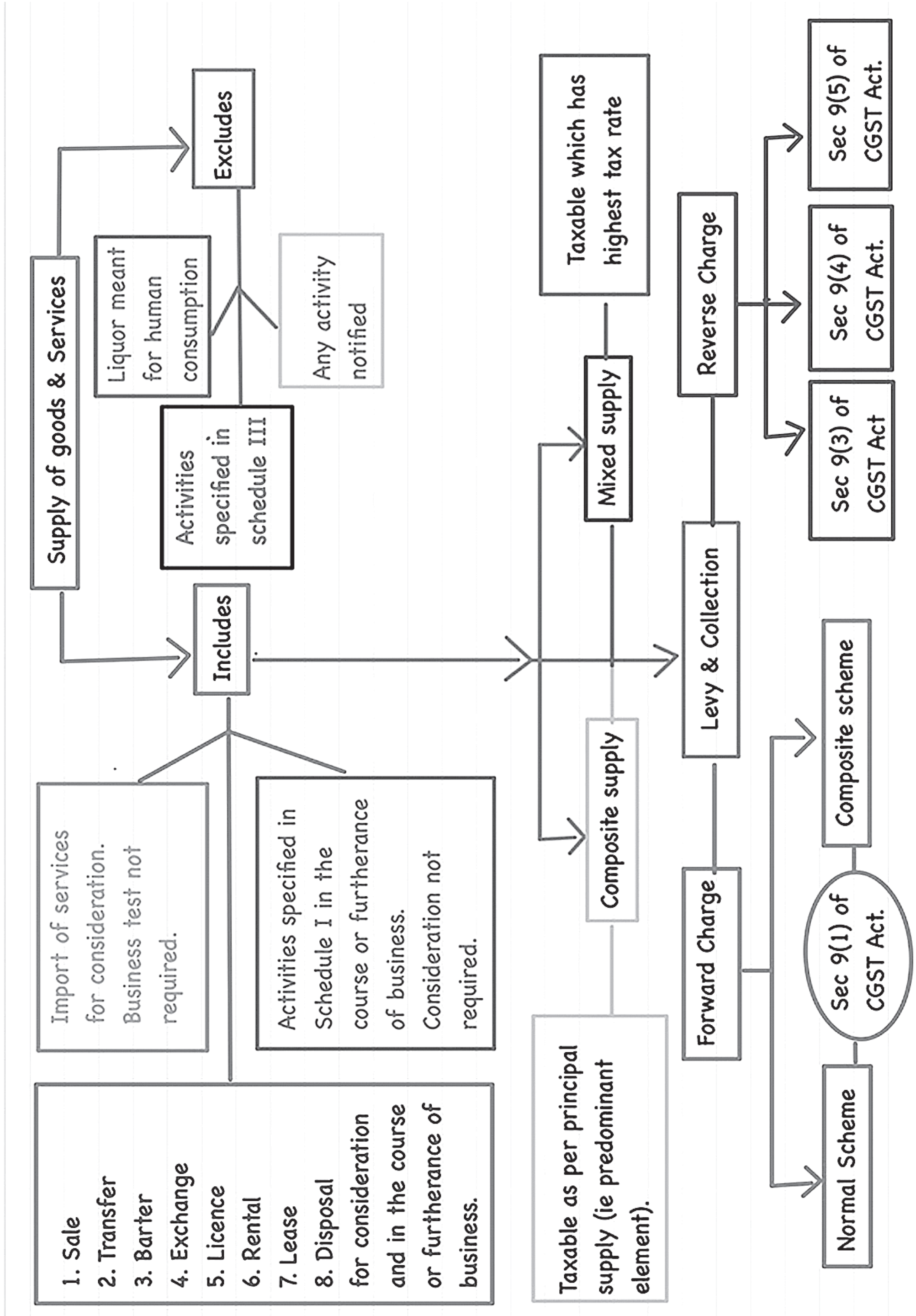
(d) transferred,

(e) delivered

(f) stored and

(g) possed.

If a software, whether customised or non-customised, satisfies these attributes, the same would be goods.


Supply of goods & Services
Includes
Excludes
1. Sale
2. Transfer
3. Barter
4. Exchange
5. Licence
6. Rental
7. Lease
8. Disposal
for consideration and in the course or furtherance of business.
Import of services for consideration. Business test not required.
Activities specified in Schedule I in the course or furtherance of business. Consideration not required.
Activities specified in schedule III
Liquor meant for human consumption
Any activity notified
Composite supply
Mixed supply
Taxable as per principal supply (ie predominant element).
Taxable which has highest tax rate
Levy & Collection
Forward Charge
Reverse Charge
Normal Scheme
Sec 9(1) of CGST Act.
Composite scheme
Sec 9(3) of CGST Act
Sec 9(4) of CGST Act.
Sec 9(5) of CGST Act.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. As per the CGST Act, 2017, the term “works contract” includes:
   (a) Construction, fabrication, completion, erection, installation, etc. of movable property
   (b) Construction, fabrication, completion, erection, installation, etc. of immovable property
   (c) Both (a) and (b)
   (d) None of the above

2. While repairing the factory shed, few goods were also supplied along with the labour service. Whether it is a:
   (a) Composite Supply
   (b) Mixed Supply
   (c) Works Contract Service
   (d) None of the above

3. What is the taxable event under GST?
   (a) Manufacturing of goods
   (b) Sale of goods
   (c) Provision of service
   (d) supply

4. Taxability of supply with its meaning stands for:
   (a) Manufacture and sale of goods
   (b) Provision of services
   (c) Both (a) and (b)
   (d) None of the above

5. Goods within the meaning of supply does not includes
   (a) Movable property
   (b) Money and securities
   (c) Actionable claim
   (d) All of the above

6. What are different types of supplies covered under the scope of supply?
   (a) Supplies made with consideration
   (b) Supplies made without consideration

(c) Both of the above

(d) None of the above

7. Items out of the purview of supply are provided in

(a) Schedule I

(b) Schedule II

(c) Schedule III

(d) None of the above

8. Flow of consideration is not a mandatory field under supply, in case of:

(a) imports

(b) Activities specified under Schedule I of the CGST Act, 2017

(c) Both

(d) None of the above

9. Can an activity be considered supply even when not made in the course or furtherance of business with reference to Section 7(1)(b) of the CGST Act, 2017?

(a) Yes

(b) No

(c) May be

(d) May not be

10. M/s X Academy made certain gifts to its employees, as—

(i) Mr. B ₹50,000

(ii) Mr. N ₹47,000

(iii) Mr. Y ₹57,000

Which of these gifts shall be liable to GST?

(a) (i), (ii) & (iii)

(b) (i) & (iii)

(c) Only (iii)

(d) None of the above

11. M/s R Associates of Chennai received certain consultancy services from A Inc. of USA. Both are not related person. The services received is without any consideration. Does the same classify as supply?

(a) Yes. Being import of services in the course of business

(b) No. Since, party to the contract are not related

(c) On the prior approval of the Government

(d) None of the above

12. Mr. Dhoni a registered person from Mumbai, received certain architectural services from one its associates from UAE for his personal purpose. The same was worth $5,000. Does the import of service qualify as supply?
    (a) Yes. Being made from related party
    (b) No. since, not made in course or furtherance of business
    (c) Yes, but only on prior approval of Government
    (d) None of the above

13. Transfer of rights in goods has been considered as supply under Schedule II. What type of supply is it?
    (a) Supply of goods
    (b) Supply of service
    (c) Either of two at the option of authority
    (d) Non-taxable supply

14. X Ltd. Transferred certain assets forming part of business assets. The same was transferred free of cost without any consideration as a part of corporate social responsibility (CSR). What shall be the classification of such supply? X Ltd. Not availed Input Tax Credit on such assets.
    (a) Supply of goods
    (b) Supply of services
    (c) Does not qualify as supply
    (d) Supply of goods and services or both

15. M/s Vijaya & Co. a registered person initiates action of winding up his business due to any non-compliance clause under legal verdict of court. As a result of such incidence he shall cease to be registered person under GST. All the stocks standing as on date of winding up of business shall hence be classified as:
    (a) Supply of goods
    (b) Supply of services
    (c) Does not qualify as supply
    (d) None of the above

16. Which among the following is included in Schedule II
    (a) Transfer of title in goods
    (b) Renting of immovable property
    (c) Temporary transfer or permitting use of intellectual property rights
    (d) All the above

17. Actionable claim form part of definition of goods. Since, the goods are considered under supply, actionable claim hence falls under the concept of supply provided if it is lottery, betting & gambling.
    (a) Yes

(b) No

(c) May or may not be

(d) None of the above

18. Schedule III of the CGST Act, 2017 does not include

(a) Funeral, Burial or Crematorium

(b) Functions performed by MP's, MLA's

(c) Services by any court or tribunal

(d) Services by Government of India by transportation of passengers

19. The Government of Sikkim took initiative to develop Khadi, Village and Rural Industries in various Panchayats and municipalities as public authorities. The same provision is covered under:

(a) Supply of goods

(b) Supply of services

(c) Neither of the two

(d) At the option of Appropriate Authority

20. Transactions falling outside the ambit of supply are provided in:

(a) Schedule I

(b) Schedule II

(c) Schedule III

(d) None of the above

21. While repairing the factory shed, few goods were also supplied along with the labour service. Whether it is a:

(a) Composite Supply

(b) Mixed Supply

(c) Works Contract Service

(d) None of the above

22. What are the factors differentiating composite supply & mixed supply?

(a) Nature of bundling i.e. artificial or natural

(b) Existence of principal supply

(c) Both (a) & (b)

(d) None of the above

23. What would be the tax rate applicable in case of composite supply?

(a) Tax rate as applicable on principal supply

(b) Tax rate as applicable on ancillary supply

(c) Tax rate as applicable on respective supply

(d) None of the above

24. What would be the tax rate applicable in case of mixed supply?

(a) Tax rate as applicable on supply attracting the lowest rate of tax

(b) Tax rate as applicable on supply attracting the highest rate of tax

(c) Tax @ 28%

(d) None of the above

25. X Ltd. Manufactures the jeans on order of ABC Pvt. Ltd. After manufacturing, the same delivered to ABC Pvt. Ltd. By incurring transport charges and insurance during transit. What kind of supply is this?

(a) Mixed supply

(b) Composite supply

(c) Supply

(d) None of the above

26. Which of the following is not a composite supply?

(a) Goods are packed and transported with insurance

(b) Supplier of machinery providing erection and commissioning services

(c) Goods transport agency arranging for loading and unloading facility

(d) None of the above

27. Mr. R received a gift from a student on the occasion of passing CMA Final exams with highest marks in Indirect Taxes. The packed box contains canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juice all together. What type of supply shall it constitutes?

(a) Composite supply

(b) Mixed supply

(c) Non-taxable supply

(d) Not a supply under GST

28. A person purchases a bundle of toothpaste along with Tooth brush. Toothpaste under this case is liable to GST @12% and tooth brush for instance is liable to GST @18% and is sold as a single unit for a single price. What shall be the tax rate applicable in case of such supply?

(a) 18%

(b) 12%

(c) 15%

(d) Nil

29. Mr. Raja purchased a packet of snacks constituting sweets, chocolates, dry fruits and aerated drinks. However, at the time of payment, the invoice specifies all the items separately and tax is charged accordingly from him. What types of supply shall it be considered?
    (a) Composite supply
    (b) Mixed supply
    (c) Normal supply
    (d) Does not qualify as supply

30. Which of the following are naturally bundled?
    (a) Hotel provides short-term accommodation and restaurant services
    (b) Hotel provides short-term accommodation and coaching or teaching Indirect Taxes
    (c) Hotel provides short-term accommodation and repairing services of customer watches
    (d) Hotel provides short-term accommodation

Composition Scheme:

31. Which of the following persons can opt for composition scheme?
    (a) Person making any supply of goods which are not leviable to tax under this Act;
    (b) Person making any inter-State outward supplies of goods and services (except restaurant services);
    (c) Person effecting supply of goods through an e-commerce operator liable to collect tax at source
    (d) Person providing restaurant services

32. What is the threshold limit of turnover in the preceding financial year for opting to pay tax under composition scheme for States other than special category States?
    (a) ₹20 lacs
    (b) ₹10 lacs
    (c) ₹50 lacs
    (d) ₹1.5 crore

33. What is the threshold limit of turnover in the preceding financial year for opting to pay tax under composition scheme for special category states?
    (a) ₹25 lacs
    (b) ₹50 lacs
    (c) ₹75 lacs
    (d) ₹1.5 crore

34. What is the rate applicable under CGST to a registered person being a manufacturer opting to pay taxes under composition scheme?
    (a) 2.5%
    (b) 1%
    (c) 0.5%
    (d) No composition for manufacturer
35. What is the rate applicable under CGST to a registered person being a hotelier opting to pay taxes under composition scheme?
    (a) 1%
    (b) 0.5%
    (c) 2.5%
    (d) Not eligible for composition scheme thus liable to pay normal tax
36. Mr. Ram, a trader in Delhi has opted for composition scheme of taxation under GST. Determine the rate of total GST payable by him under composition scheme:
    (a) 0.5% CGST & 0.5% SGST
    (b) 2.5% CGST & 2.5% UTGST
    (c) 5% IGST
    (d) 5% of UTGST
37. Can composition scheme be availed if the registered person effects inter-State supplies?
    (a) Yes
    (b) No
    (c) Yes, subject to prior approval of the Central Government
    (d) Yes, with prior approval of the Union Finance Minister
38. Can a registered person opting for compo-sition scheme collect tax on his outward supplies?
    (a) Yes
    (b) No
    (c) Yes, only on such goods as may be notified by the Central Government
    (d) Yes, if the buyer is the registered person who opted to pay tax under normal scheme.
39. Can a registered person opt for composition scheme only for one out of his 3 business verticals having same Permanent Account Number?
    (a) Yes
    (b) No

(c) Yes, subject to prior approval of the Central Government

(d) No provision in the GST Law.

40. Can a registered person under composition scheme claim input tax credit?

(a) Yes

(b) No

(c) Input tax credit on inward supply of goods only can be claimed

(d) Input tax credit on inward supply of services only can be claimed

41. What will happen if the turnover of a registered person opting to pay taxes under composition scheme during the year 2022-23 crosses threshold limit?

(a) He can continue under composition scheme till the end of the financial year

(b) He will be liable to pay tax at normal rates of GST on the entire turnover for the financial year 2022-23

(c) He will cease to remain under the composition scheme with immediate effect

(d) He will cease to remain under the composition scheme from the quarter following the quarter in which the aggregate turnover exceeds threshold limit

42. Aggregate turnover does not include—

(a) Inward supplies on which tax is payable on reverse charge basis

(b) Exempt supplies

(c) Export of goods or services or both

(d) Inter-State supplies of persons having the same PAN number

43. X Ltd. has provided following information for the month of Jan 2019:

(i) Intra-State outward supply ₹8,00,000/-

(ii) Inter-State exempt outward supply ₹5,00,000/-

(iii) Turnover of exported goods ₹10,00,000/-

(iv) Payment made to GTA ₹80,000/- (ITC not availed by GTA)

Calculate the aggregate turnover of X Ltd.

(a) ₹8,00,000/-

(b) ₹23,80,000/-

(c) ₹23,00,000/-

(d) ₹18,00,000/-

44. The person was operating in regular scheme. Now in financial year 2022-23, he wants to opt for the composition scheme. Which form he must file to provide details of the input tax credit in respect of the stock of goods held with him on the day preceding the date of opting in composition scheme.

    (a) Form GST ITC-01

    (b) Form GST ITC-02

    (c) Form GST ITC-03

    (d) Form GST ITC-04

45. The person was operating under normal scheme, but now he wants to convert in composition scheme/ which form he must file?

    (a) Form GST CMP-01

    (b) Form GST CMP-02

    (c) Form GST CMP-03

    (d) Form GST CMP-04

46. In which form can the person file for withdrawal of composition scheme?

    (a) Form GST CMP-01

    (b) Form GST CMP-02

    (c) Form GST CMP-03

    (d) Form GST CMP-04

47. What document shall a person under composition scheme issue to its customer?

    (a) Bill of supply

    (b) Tax invoice

    (c) Invoice

    (d) Debit note

48. Which return must be filed by the composition dealer?

    (a) GSTR-4

    (b) GSTR-5

    (c) GSTR-3B

    (d) GSTR-6

49. Can a person paying tax under composition scheme make supplies of goods to SEZ located in same State?

    (a) Yes

    (b) No

(c) Sometimes allowed

(d) Yes, subject to prior approval of the concerned State Government

50. Calculate the tax to be paid by Mr. C, a composition dealer who supplied laptops being a trader from the following data:

    (i) Cost of purchases ₹3,00,000 plus GST 12%.

    (ii) Profit Margin 40% on cost of purchases.

    (a) 4,704

    (b) 7,404

    (c) 4,074

    (d) None of the above

51. If the show cause notice in Form GST CMP-05 has been issued on 15th March 2019, then by when can the taxpayer (composition dealer) submit his reply?

    (a) Within 90 days

    (b) Within 180 days

    (c) Within 15 days

    (d) Within 60 days

52. Service provider other than section 10 of CGST Act, 2017 can opt to pay GST under composition scheme only when

    (a) whose aggregate turnover in the preceding financial year was ₹50 lakh or below

    (b) whose aggregate turnover in the preceding financial year was ₹150 lakh or below

    (c) whose aggregate turnover in the preceding financial year was ₹75 lakh or below

    (d) whose aggregate turnover in the preceding financial year was below ₹50 lakh

Exempted Supply

53. Which one of the following is correct?

    (a) Entire income of any trust is exempted from GST

    (b) Entire income of a registered trust is exempted from GST

    (c) Incomes from specified/defined charitable activities of a trust are exempted from GST

    (d) Incomes from specified/defined charitable activities of a registered trust (u/s 12AA of Income Tax Act) are exempted from GST

54. Under _____ section of CGST Act and _____ section of IGST Act, Government can issue a general exemption notification

    (a) Section 11(1) of the CGST Act & Section 6(1) of the IGST Act

(b) Section 6(1) of the IGST Act & Section 11(1) of the CGST Act

(c) Section 11(2) of the CGST Act & Section 6(2) of the IGST Act

(d) Section 11(3) of the CGST Act & Section 6(3) of the IGST Act

55. Select the correct statement?

(a) Transfer of a going concern wholly is not exempt from GST

(b) Transfer of a going concern is partly exempt from GST

(c) Transfer partly as going concern is exempted from GST

(d) Transfer of a going concern is exempt from GST

56. Under_____ section of CGST Act and _____ section of IGST Act, Government exemption by way of special order

(a) Section 11(2) of the CGST Act & Section 6(2) of the IGST Act

(b) Section 6(2) of the IGST Act & Section 11(2) of the CGST Act

(c) Section 11(1) of the CGST Act & Section 6(2) of the IGST Act

(d) Section 11(3) of the CGST Act & Section 6(3) of the IGST Act

57. Services to a single residential unit is, exempted if:

(a) It is pure labour service only

(b) It is works contract only

(c) It is a part of residential complex only

(d) It is on ground floor without further super structure

58. Services by a hotel, inn, guest house, club or campsite are exempted for residential/lodging purposes—

(a) If the actual tariff for a unit of accommodation is below ₹10,000

(b) If the actual tariff for a unit of accommodation is below ₹1,000

(c) If the actual tariff for a unit of accommodation is exactly ₹1,000

(d) If the actual tariff for a unit of accommodation is above ₹1,000

59. Transportation of passengers is exempted –

(a) In an air-conditioned railway coach

(b) In a vessel for public tourism purpose between places in India

(c) In a metered cab/auto rickshaw/e rickshaw

(d) In all the above mentioned

60. One of the following is exempted from GST—

(a) Any business exhibition

(b) A business exhibition in India

(c) A business exhibition outside India

(d) None of the above

61. Which of the following is not exempted -?

(a) Health care service to human beings by authorized medical practitioners/para medics

(b) Health care services to Animals/Birds

(c) Slaughtering of animals

(d) Rearing horses

62. Services by a Residential Welfare Asso-ciation (Registered or Unregistered) are exempted—

(a) provided the contribution received is upto ₹7500 per month from a member

(b) provided the contribution received is upto ₹7500 per month from a member towards sourcing goods/ services from any third person for common use of members

(c) provided the contribution is less than ₹7500 per month from a member towards sourcing goods/ services from any third person for common use of members

(d) provided the contribution is upto ₹7500 per month per member for common use specified members

63. The exemption notification must be issued in public interest. Public interest means….

(a) General happiness of the mass

(b) General happiness of a section of society

(c) General happiness of a community

(d) Both (a) & (c)

64. Where there an ambiguity in application of exemption notification, the same should be settled in favour of

(a) Revenue

(b) Assessess

(c) Revenue and Assessee equally

(d) None of the above

65. Exemption can be claimed at ______ stage even if not claimed at______ stage.

(a) Adjudication, Investigation

(b) Investigation, Adjudication

(c) None of the above

(d) Any, prior

66. Transportation of passengers is exempted—
    (a) In an air-conditioned railway coach
    (b) In a vessel for public tourism purpose between places in India
    (c) In a metered cab/auto rickshaw/e-rickshaw
    (d) In all the above mentioned

67. Which of the following is exempted?
    (a) All kinds of long term (30 or more years) leases of industrial plots
    (b) Long term (30 or more years) leases of industrial plots or plots for development of infrastructure for financial business by State Government Industrial Development Corporations or Undertakings to industrial units
    (c) Short term (upto 30 years) leases of industrial plots by State Government Industrial Development Corporations or Undertakings to industrial units
    (d) All kinds of short term (upto 30 years) lease of industrial plots

68. Which of the following are exempted services?
    (a) Services by an artist by way of a performance in folk or classical art forms of music/dance/ theatre with consideration therefor not exceeding ₹ 1 lakh
    (b) Services by an artist by way of a performance in folk or classical art forms of music/dance with consideration therefor not exceeding ₹ 1.5 lakh
    (c) Services by an artist by way of a performance in folk or classical art forms of music/dance/ theatre with consideration therefor not exceeding ₹ 1.5 lakh
    (d) Services by an artist as a brand ambassador by way of a performance in folk or classical art forms of music/dance/theatre with consideration therefor not exceeding ₹ 1.5 lakh

69. Service supplied by establishment of person in India to own establishment out of India is exempt,
    (a) if place of supply is out of India
    (b) if place of supply is in India
    (c) if place of supply is in Domestic Tariff Area
    (d) if place of supply is in Special Economic Zone (SEZ)

70. Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers (including members of his or her family) posted therein also be
    (a) Taxable services
    (b) Non-taxable services
    (c) Exempted supply by special order
    (d) exempted from IGST

71. Levy of GST on Priority Sector Lending Certificate (PSLC) under
    (a) Exempted supply of goods
    (b) Reverse Charge Mechanism (RCM)
    (c) Forward Charge
    (d) Partial Reverse Charge Mechanism

Answer

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
b	c	d	c	b	c	c	b	a	c	b	b	b	c	a
16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
d	a	d	c	c	c	c	a	b	b	d	d	a	c	a
31	32	33	34	35	36	37	38	39	40	41	42	43	44	45
d	d	c	c	d	a	b	b	b	b	c	a	c	c	d
46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
d	a	a	b	a	c	a	d	a	d	a	a	b	c	c
61	62	63	64	65	66	67	68	69	70	71				
a	b	a	a	a	c	b	c	a	d	b				

Solved Cases

1. Mr Tata is a registered supplier in Kolkata. He entered into following transactions during the financial year 2022-23 :

a.	Funeral service	₹ 90000
b.	Service provided to recognized sports body as Selector of National Team	₹ 14000
c.	Received commission from Life Insurance Corporation of India as an agent	₹ 13000

You are required to calculate the Gross Value of taxable supply on which GST is to be paid by Mr Tata.

Solution:

a.	Funeral service	As per Section 7(2), Funeral Services are exempt from GST, Thus it is not taken as taxable supply on which GST is to be paid	-

b.	Service provided to recognized sports body as Selector of National Team	Services provided by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recogised sports body shall be exempt from GST. However, in this case, Mr Tata is a selector and does not cover under the exemption list, the amount received shall be liable to GST	₹ 14,000
c.	Received commission from Life Insurance Corporation of India as an agent	Services supplied by an Insurance Agent to any person carrying on the insurance business are taxable on reverse charge basis on the receipient. Thus, in the given case, Mr Tata shall not be liable to pay GST on the amount received as commission from LIC as an agent.	-
	Taxable Value of Supply		₹ 14,000

2. Mr Das, age 72 years, is a resident of Kolkata. On the occasion of his daughter's marriage, which is a destination wedding at Goa, he avails a service of an Event Management company named M/s Memorable Wedding Events Company which shall take care of all the proceedings and tasks to deliver a successful event, such that Mr Das can focus on the day and his guests. He also has provided Mr Das two plans – Plan A and Plan B for any kind of contingencies and assured that in case plan A doesn't work then it shall go with Plan B.

   a. Determine the place of supply of services provided by Memorable Wedding Events Company.

   b. What is the wedding takes place at Dubai instead of Goa ?

   c. Whether the answer to above will change, if Mr Das is a registered person under the GST law?

Solution:

As per Section 12(2), it is a general rule that supply of services shall be where the performance of service has taken place

a. In the given case, Mr Das is unregistered person who has availed services provided to him by Memorable Wedding Events Company at Goa. Thus, place of supply shall be place of event where service is provided to the receipient. In this case, place of supply shall be Goa

b. Similarly, when services are availed in Dubai i.e. where the recipient is an unregistered person and location is outside India, place of supply shall be Location of recipient. In this case, it shall be Kolkata

c. However, the answer in this case, shall not change, when the recipient of service is a registered person under the GST law. Place of supply shall be location of recipient irrespective of the wedding being taken place in India or outside India. Thus, the place of supply shall be Kolkata.

Time of Supply (Advanced) 2

This Module Includes

Time of Supply (Advanced)

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Identify the point in time when the liability to pay GST arises on supply of goods or services under forward charge
- Identify the point in time when the liability to pay GST arises on supply of goods or services under reverse charge including international transactions.
- Explain time of supply for continuous supply, vouchers exchangeable for goods and services
- Understand when the liability to pay GST arises on supply of goods and services in residual cases
- Identify time of supply in case of interest, late fee/penalty paid for delay in payment of consideration
- Understand the applicable rate of GST in case there is change in rate of GST in respect of supply of goods or services
- Understand practical issues relating to time of supply of goods and service.

Introduction

2.1

It means the date on which the charging event has occurred. As a result, the rate of CGST/SGST or IGST or UTGST will be decided in accordance with the time of supply. Based on time of supply we will also determine the due date of payment of GST. In terms of section 39 of the CGST Act, 2017 every registered person who is required to furnish a return shall pay tax to the Government the tax due as per return not later than the last date on which he is required to furnish such return.

Section 12 and 13 of CGST Act, 2017

Time of Supply of Goods		Time of Supply of Services	
Section 12(1)	The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.	**Section 13(1):**	The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.
Section 12(2)	Time of Supply of Goods under Forward Charge.	**Section 13(2)**	Time of Supply of Services under Forward Charge.
Section 12(3)	Time of Supply of Goods under Reverse Charge.	**Section 13(3)**	Time of Supply of Services under Reverse Charge.
Section 12(4)	Time of Supply in case of Supply of Vouchers.	**Section 13(4)**	Time of Supply in case of Supply of Vouchers.
Section 12(5)	Residuary Clause. [where the time of supply cannot be determined under sub-section (2) to sub-section (4) of Section 12]	**Section 13(5)**	Residuary Clause. [where the time of supply cannot be determined under sub-section (2) to sub-section (4) of section 13]
Section 12(6)	The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.	**Section 13(6)**	The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Domestic Transactions Including Reverse Charge

2.2

Time of Supply of Goods [Section 12(2) of CGST Act, 2017]:

The CBIC vide Notification No. 66/2017-Central Tax dated 15th November, 2017 notified that the registered person who did not opt for the composition levy under section 10 of the CGST Act as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.

No GST on advance received against supply of GOODs for ALL ASSESSEES

(w.e.f. 15th November 2017):

Vide Notification No. 66/2017-Central Tax, dated 15 November 2017, this relaxation has been extended to all persons, except persons opting to pay GST under composition scheme. It should be noted that this relaxation is applicable only on the advances received post 15 November 2017 for supply of goods. Post this notification, the time of supply for goods would be the date of issue of invoice by the supplier (or the due date, by when the invoice needs to be issued). This would apply even in case of a change in rate of tax (i.e. section 14 of the CGST Act, 2017).

However, the **supplier of services** are required to pay GST at the time of receipt of advances.

Summary:

Period	Supplier of goods Turnover	Time of supply
w.e.f. 1st July 2017 to 12th October 2017	Irrespective of the turnover	Date of Invoice or Date of payment whichever is earlier.
From 13th October 2017 to 14th November 2017	≤ ₹ 1.50 crore	Date of invoice
From 15th November till the date	Irrespective of the turnover	*Date of invoice
***Invoice should have been issued as per Section 31(1)(a) or (b) of the CGST Act, 2017.**		

In case of supplies in respect of which tax is paid or liable to be paid on Reverse Charge Mechanism, the time of supply shall be the earliest of the following dates :

a. date of receipt of goods - in case of supply of goods or

b. 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. 30 days from the date of issue of invoice – in case of supply of goods

d. 60 days from the date of issue of invoice – in case of supply of services

Note:

When it is not possible to determine the time of supply as per above, the date of entry in the books of account of the recipient of supply to be taken as time of supply.

Example 1

C of Chennai registered person under GST supplies goods to B of Bengaluru. C has to send the goods for delivery from Chennai to Bengaluru. C sends the goods to B on 30th October 20XX. Find the time of supply in the following different scenarios:

Removal of Goods	Date of Issue of Invoice	Last Date for Issue of Tax Invoice	Date on which payment is entered in the books of account	Date on which payment is credited in the Bank Account	Time of Supply	Criteria for determining Time of Supply
30th Oct	30th Oct	30th Oct	31st Oct	1st Nov	30th Oct	Date of issue of Invoice
30th Oct	2nd Nov	30th Oct	31st Oct	1st Nov	30th Oct	Last Date for issue of Invoice
30th Oct	28th Oct	30th Oct	27th Oct	26th Oct	28th Oct	Date of issue of Invoice

Illustration 1

Mr. Ram registered person under GST sold goods to Mr. Ravi worth ₹ 5,00,000. The invoice was issued on 15th November. The payment was received on 1st October. The goods were supplied on 20th November.

Find the time of supply of goods?

Solution:

Particulars	Whichever is earlier
Dt of issue of invoice	15th November
Last dt. on which invoice should have been issued	20th November
Dt. of receipt of payment (i.e. Advance)	1st October
Therefore, time of supply of goods = 15th November.	

Time of supply for Composition Levy (Section 10 of the CGST Act, 2017):

A composition dealer will not have to pay any tax on advances received, if such advances pertain to his outward supplies. The advances received and goods returned do not form part of taxable supplies and do not form part of the turnover in a State at the end of the quarter (i.e. tax period) for the purpose of computing turnover (Section 2(112) of the CGST Act, 2017).

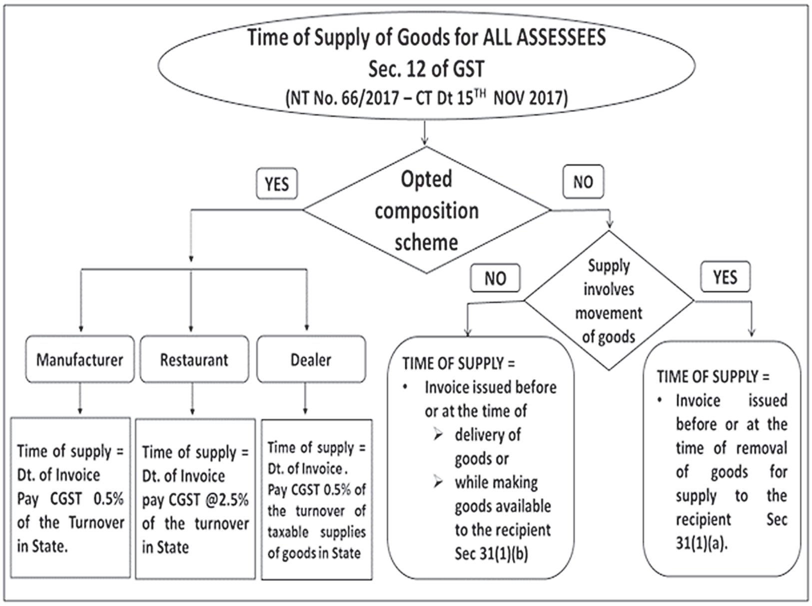
(a) Manufacturer is liable to pay CGST 0.5% of the Turnover in State or

(b) Supplier supplies restaurant services has to pay CGST @2.5% of the turnover in State or

(c) Dealer is liable to pay CGST 0.5% of the turnover of taxable supplies of goods in State or

In the above three cases Advance payment for outward supplies not taken into account.

Time of Supply of GOODS [Applicable to all subsections of Section 12 of CGST Act, 2017]



Example 2

C of Chennai supplies goods to M of Madurai. C has to send the goods for delivery from Chennai to Madurai. C sends the goods to M on 30th May 2022. Turnover of C in the P.Y. was ₹2.50 crore. Find the time of supply in the following different scenarios:

Removal of Goods	Date of Issue of Invoice	Last Date for Issue of Tax Invoice	Date on which payment is entered in the books of account	Date on which payment is credited in the Bank Account	Time of Supply	Criteria for determining Time of Supply
30th May	30th May	30th May	31st March	1st April	30th May	Date of Issue of Invoice
30th May	2nd June	30th May	31st May	1st April	30th May	Last Date for Issue of Tax Invoice
30th May	28th May	30th May	27th April	26thMarch	28th May	Date of Issue of Invoice

Illustration 2

X & Co., being a trader receives an advance of ₹2,500/- on 29.11.2022 for goods worth ₹10,000/- to be supplied in the month of January 2023.

Find the following:

(a) Time of supply

(b) Due date of tax liability.

(c) CGST and SGST liability.

Note: P.Y. turnover ₹ 0.80 crore. X & Co., opted to pay GST under Composition scheme.

Solution:

(a) Time of supply the date of invoice (i.e. Turnover basis) = January 2023

(b) Due date of tax liability 18th April 2023 (i.e. quarterly)

(c) CGST = ₹ 50/- (i.e. ₹ 10,000 × 0.5%) and SGST = ₹ 50/- (i.e. ₹ 10,000 × 0.5%)

The phrase "the date on which supplier receives the payment" or "the date of receipt of payment" means:

- the date on which payment is entered in his books of accounts

Or

- the date on which the payment is credited to his bank account,

whichever is earlier.

The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment:

Illustration 3

X & Co., receives an advance of ₹ 2,500/- on 29.07.2022 for goods worth ₹ 10,000/- to be supplied in the month of September 2022.

Find the following:

(a) Value of supply of goods in the month of July 2022

(b) Due date of tax liability for the month of July 2022.

Note: P.Y. turnover ₹ 1.80 crore.

Solution:

(a) Advance payment against supply of goods is treated as not a supply and hence no time of supply for ₹ 2,500/- in the month of July 2022.

(b) No due date for the month of July 2022 in the given case.

An amount upto ₹ 1000/- in excess of the amount indicated on the tax invoice.

Time of supply =

- The date of issue of invoice.

Or

Date of receipt of payment.

- At the option of the supplier.

Illustration 4

If a supplier of goods has received an amount of ₹ 1500/- against an invoice of ₹ 1100/- on 25.7.2022 and the date of invoice of next supply to the said recipient is 14.8.2022.

Find the following in respect of excess amount over and above invoice value:

(a) Time of Supply of goods

(b) Due date of payment of tax.

Solution:

(a) Since, excess amount received over and above invoice value does not exceed ₹ 1,000, supplier has an option to treat the time of supply w.r.t. ₹ 400/- either as 25.07.22 or 14.8.2022.

(b) Due date of payment of tax

- If Time of Supply = 25.7.2022, then due date is 20.8.2022
- If Time of Supply = 14.8.2022, then due date is 20.9.2022

Illustration 5

M/s X Ltd., being a manufacturer, sold goods to M/s Y Ltd., wholesaler, and issued invoice for the sale on 01-08-20XX.

Find the time of supply of goods in each of the following independent cases:

(i) M/s X Ltd., removes the goods for delivery to M/s Y Ltd., on 16th August 20XX.

(ii) M/s. Y Ltd., collects the goods from premises of M/s X Ltd., on 10th August 20XX.

(iii) M/s Y Ltd., made full payment on 26th July 20XX.

(iv) M/s Y Ltd., credited the payment in bank account of M/s X Ltd., on 28th July 20XX for 3/4th of goods, M/s X Ltd., recorded the same as receipts in his books on 3rd August 20XX. The goods were dispatched on 5th August 20XX from the warehouse.

Solution:

(i) 1st August 20XX is the time of supply of goods.

i.e. Earlier of the following:

- Date of Invoice - 1st August 20XX

  or

- Date on which invoice is required to be issued - 16th August 20XX.

(ii) 1st August 20XX is the time of supply of goods.

i.e. Earlier of the following:

- Date of Invoice - 1st August 20XX

  or

- Date on which goods is delivered - 10th August 20XX.

(iii) 1st Aug 20XX is the time of supply of goods

i.e. date of invoice:-

- Date of Invoice - 1st August 20XX

(iv) Time of supply is 1st August 20XX.

Illustration 6

Part Advance payment is made or invoice issued is for part payment, whether the time of supply will cover the full supply?

Solution:

The supply of services shall be deemed to have been made to the extent it is covered by the invoice or the part payment. It means part advance payment is the time of supply.

However, for goods payment of tax will need to be made upon date of issue of invoice, irrespective of the fact whether or not advance or part payment is received.

Illustration 7

M/s X Ltd, being a manufacturer, sold goods to M/s Y Ltd., wholesaler, and issued invoice for the sale on 01-08-20XX.

Find the time of supply of goods in each of the following independent cases:

(i) M/s X Ltd., removes the goods for delivery to M/s Y Ltd., on 16th August 20XX.

(ii) M/s. Y Ltd., collects the goods from premises of M/s X Ltd., on 10th August 20XX.

(iii) M/s Y Ltd. made full payment on 26th July 20XX.

(iv) M/s Y Ltd., credited the payment in bank account of M/s X Ltd., on 28th July 20XX for 3/4th of goods, M/s X Ltd., recorded the same as receipts in his books on 3rd August 20XX. The goods were dispatched on 31st July 20XX from the warehouse.

Solution:

Time of supply on or after 15th November 20XX is as follows:

(i) Time of supply = Date of Invoice - 1st August 20XX.

(ii) Time of supply = Date of Invoice - 1st August 20XX.

(iii) Time of supply = Date of Invoice - 1st August 20XX.

(iv) Time of supply = Date of dispatch of goods (i.e. last date on which invoice might have been issued)–31st July 20XX.

Note: For goods payment of tax will need to be made upon date of issue of invoice, irrespective of the fact whether or not advance or part payment is received.

Continuous supply of goods

Time of Supply =
- Time when each statement is issued.

OR

- Time when each payment is received.

Whichever is earlier

Note: Section 31(4) of GST Act, 2017, the Invoice shall be issued before or at the time of such statement is issued or, as the case may be each such payment is received.

In case of continuous supply of services: -

the time of supply shall be –

(i) **Where the due date of payment is ascertainable from the contract:**

The date on which the payment is liable to be made by the service receiver, whether or not any invoice has been issued or any payment has been received by the supplier of service;

(ii) Where the due date of payment is not ascertainable from the contract:

When the supplier of service receives the payment, or issues an invoice, whichever is earlier;

(iii) Where the payment is linked to the completion of an event:

The time of completion of that event;

Illustration 8

M/s Indian Oil Corporation entered into a contract with Mr. B to supply of oil throughout the year. M/s Indian Oil Corporation issues monthly statement for the oil supplied to Mr. B.

Determine the time of supply of goods in following independent cases:

(i) Mr. B made payment for the month of July on 31st July, 20XX and M/s Indian Oil Corporation issued statement for the month of July on 8th August, 20XX.

(ii) M/s Indian Oil Corporation issued statement for the month of August on 5th September, 20XX, the payment of which not received till 30th September, 20XX.

Solution:

(i) 31st July 20XX will be the time of supply.

Earliest of the following:

- Date of Invoice: 8th August 20XX
- Last date on which invoice has to be issued:

Date of payment (31.07.20XX) **or** statement (08.08.20XX), whichever is earlier i.e. 31st July, 20XX.

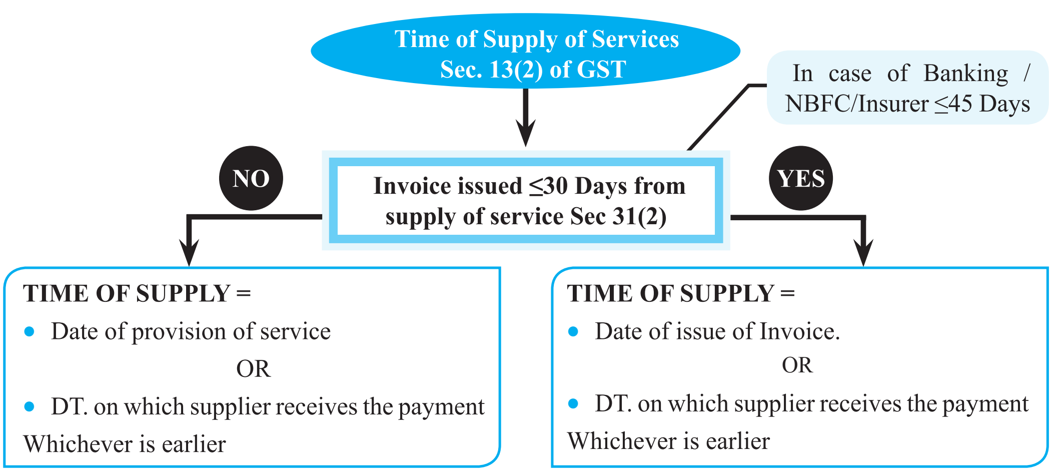
(ii) 5th September 20XX will be the time of supply.

Earliest of the following:

- Date of Invoice: 5th September 20XX.
- Last date on which invoice has to be issued:

Date of payment (not known) **or** statement (05.09.20XX), whichever is earlier i.e. 5th September, 20XX.

Time of Supply of Services [Section 13(2) of GST]



Excess payment upto ₹1000: Option of taking invoice date as time of supply:

In terms of the proviso to sub-section (2) of section 13, if payment received is upto ₹1,000 in excess of the invoice value, the supplier can choose to take the related invoice date as the time of supply in relation to this excess value.

Example 3

A telephone company receives ₹5000 against an invoice of ₹4800. The excess amount of ₹200 can be adjusted against the next invoice. The company has the option to take the date of the next invoice as the time of supply of service in relation to the amount of ₹200 received in excess against the earlier invoice.

Illustration 9

BSNL regularly issues invoices to the customers on 10th of the following month from the end of relevant month. A invoice has been issued for ₹1,00,000 (exclusive of GST) on 10th October 20XX for the taxable services provided to a customer from 1st September 20XX to 30th September 20XX. However, payment received from the same customer for ₹1,00,950 on 31ST Oct 20XX.

Find the time of supply and due date of payment of GST only for the excess payment which is received over and above invoice value.

Any invoice is required to issue for excess payment of ₹950 by BSNL?

Solution:

Time of supply for ₹950 = 10th November 20XX.

Due Date of payment is 20th December 20XX

Note: No need to issue any separate invoice in respect of such excess payment. Since, it is adjusted against next invoice.

Illustration 10

On the basis of following information, determine the 'Time of supply' from the following: -

(1)	Commencement of providing of service on	05-06-20XX
(2)	Completion of service on	10-10-20XX
(3)	Invoice issued on	20-10-20XX
(4)	Payment received by cheque and entered in the books on	15-10-20XX
(5)	Amount credited in Bank A/c on	25-10-20XX
(6)	Service became taxable for the first time on	01-07-20XX

Solution:

Time of supply = 15-10-20XX

Date of payment = book entry or bank entry whichever is earlier (i.e. 15-10-20XX)

Date of invoice = 20-10-20XX (i.e. invoice issued within 30 days from the date of completion of service)

Hence, date payment or date of invoice whichever is earlier is the time of supply.

Illustration 11

ABC & Co., a Chartered Accountants firm issued invoice for services rendered to Mr. Ram on 5th August 2022. Determine the time of supply in following independent cases:

(i) The provisions of services were completed on 1st July 2022.

(ii) The provisions of services were completed on 15th July 2022.

(iii) Mr. Ram made the payment on 3rd July 2022, where provisions of services were remaining to be completed.

(iv) Mr. Ram made the payment on 15th August 2022, where provisions of services were remaining to be completed.

Solution:

(i) 1st July 2022 will be the time of supply of services as invoice is not issued within the time frame of 30 days.

(ii) 5th August 2022 will be the time of supply of services as invoice is issued within the time frame.

(iii) 3rd July 2022 will be the time of supply of services as payment received before invoice date.

(iv) 5th August 2022 will be the time of supply of services as invoice is issued before the completion of provisions of services.

The following treatment shall apply to TDR/FSI and Long-term lease for projects commencing after 1-4-2019:

The supply of TDR, FSI, long term lease (premium) of land by a land owner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from landowner to builder under the Reverse Charge Mechanism (RCM).

The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate or first occupation of the project, whichever is earlier.

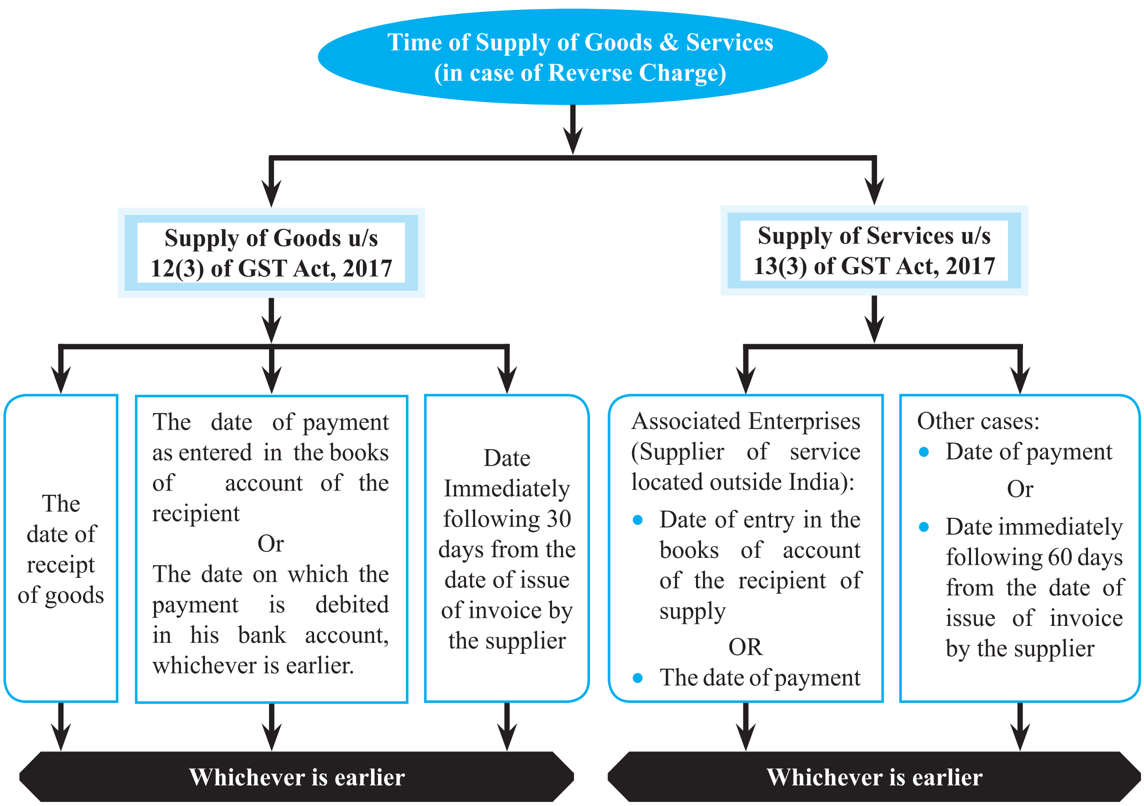
The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion or first occupation of the project, whichever is earlier.

w.e.f. 1-10-2019: The CBIC **vide Notification No. 23/2019-(CT Rate), dated September 30, 2019** has put a retrospective sunset clause on applicability of **Notification No. 04/2018- (CT Rate), dated January 25, 2018** w.r.t. development rights supplied on or after April 01, 2019. The later Notification provided special procedure to be followed while determining time of supply in case of construction services against transfer of development rights.

International Transactions including Reverse Charge

2.3

Time of Supply of Goods & Services (i.e. Reverse Charge):



If time of supply cannot be determined with the help of above provisions, then the time of supply shall be the date on which entry in the books of the recipient of goods & services is made.

Illustration 12

Mr. A, a registered person received goods (i.e. Bidi leaves) from Mr. B, an unregistered dealer. Mr. B issues invoice on 1st July 2022.

Find the time of supply of goods in following independent cases:

(i) Mr. A received goods on 15th July 2022, payment of which is not made yet.

(ii) Mr. A received goods on 3rd August 2017 & made payment for the same on 4th August 2022.

(iii) Mr. A made payment on 8th July and received goods on the same date.

(iv) Mr. A received goods on 10th July 2022 & made payment for the same on 9th July 2022.

Solution:

(i) Time of supply of goods = 15-07-2022

Earliest of the following:

Receipt of Goods	= 15-07-2022
Date of Payment	= not paid
Dt. immediately following 30 days from the date of invoice	= 01-08-2022

(ii) Time of supply of goods = 01-08-2022

Earliest of the following:

Receipt of Goods	= 03-08-2022
Date of Payment	= 04-08-2022
Dt. immediately following 30 days from the date of invoice	= 01-08-2022

(iii) Time of supply of goods = 08-07-2022

Earliest of the following:

Receipt of Goods	= 08-07-2022
Date of Payment	= 08-07-2022
Dt. immediately following 30 days from the date of invoice	= 01-08-2022

(iv) Time of supply of goods = 09-07-2022

Earliest of the following:

Receipt of Goods	= 10-07-2022
Date of Payment	= 09-07-2022
Dt. immediately following 30 days from the date of invoice	= 01-08-2022

Illustration 13

C Ltd., a registered firm received services from a Raman & Co., an Advocate firm, an unregistered person. The firm issued invoice to C Ltd. on 1st July 2022. Determine the time of supply of services in the following independent cases:

(i) C Ltd. made the payments to the firm on 15th August 2022.

(ii) C Ltd. made the payments to the firm on 11th September 2022.

Note: C Ltd turnover in the preceding financial year was ₹ 2 crore

Solution:

(i) Time of supply of service = 15-08-2022

Note: as payment made earlier than the date immediately following 60 days from date of issue of invoice.

(ii) Time of supply of service = 31-08-2022

Note: as payment made after the date immediately following 60 days from date of issue of invoice.

Illustration 14

X Ltd. (India) & Y Ltd. (London) is associated enterprises. X Ltd., a registered firm received the services of Y Ltd., an unregistered firm. Determine the time of supply in following cases:

(i) X Ltd. recorded the liability in the books on 15th July 2022 and payment will be made in the next month.

(ii) X Ltd. made advance payment to Y Ltd. on 10th July and recorded liability in the books on 15th Aug 2022.

Solution:

(i) Time of supply =15-07-2022

Note: as the date of entry in the books is prior to the date of payment.

(ii) Time of supply = 10-07-2022

Note: as the payment is made earlier to the date of entry in the books.

Goods sent for approval:

TIME OF SUPPLY=

- Time when it becomes known that supply is taken place.

OR

- Six months from the date of removal.

Whichever is earlier

Illustration 15

Mr. A (registered person under GST) sends goods to Mr. B (registered person under GST) on approval basis on 20th January 2023.

Find the time of supply in the following independent cases:

(a) If Mr. B. accept the goods on 10th February 2023.

(b) If Mr. B accepts the goods on 1st September 2023.

(c) If Mr. B returns the goods on 10th February 2023.

(d) If Mr. B return the goods on 1st September 2023.

Solution:

Sl. No.	Particulars	Time of supply	Remarks
(a)	Mr. B. accept the goods on 10th February 2023.	10th February 2023	Time when it becomes known that supply is taken place (i.e. 10th Feb 2023) OR Six months from the date of removal (i.e. 20th July 2023) Whichever is earlier
(b)	Mr. B accepts the goods on 1st September 2023.	21st July 2023	1st day after expiry of 6 months from the date of removal.

<table>
<tr><th>Sl. No.</th><th>Particulars</th><th colspan="2">Time of supply</th><th>Remarks</th></tr>
<tr><td>(c)</td><td>Mr. B returns the goods on 10th February 2023.</td><td colspan="2">Not applicable</td><td>No tax will be payable. Since, goods returned within six months from the date of dispatch.</td></tr>
<tr><td rowspan="2">(d)</td><td rowspan="2">Mr. B return the goods on 1st September 2023.</td><td>Mr. A</td><td>Mr. B</td><td rowspan="2">GST will be payable as the return is after 6 months from date of dispatch. Both Mr.A and Mr. B are liable to pay GST.</td></tr>
<tr><td>21st July 2023</td><td>1st September 2023</td></tr>
</table>

Time of Supply of Vouchers for Goods & Services [Section 12(4) & 13(4) of CGST Act, 2017]

If the supplies is identifiable at that point:

- Time of supply = Date of issue of voucher.

If the supplies is not identifiable at that point:

- Time of supply = The date of redemption of voucher.

Illustration 16

Reliable Industries a readymade garment manufacturer issued the voucher on 10-07-2022 to their prospective customer for enabling them to buy readymade garments manufactured by them from their shop. Customer purchased readymade garments on 20th Aug 2022.

Find the time of supply of goods?

Solution:

Time of supply of goods = 10-07-2022

Note: time of supply will be the issuance of the voucher. Since, the voucher is identifiable with the goods.

Illustration 17

Shopper's Stop store a large retailer who sells various types of products like readymade garment, jewellery, cosmetics, fabrics, shoes etc., issued the voucher on 10-07-2022 to their prospective customer for enabling them to buy any product from their shop. Customer purchased readymade garments on 20th August, 2022.

Find the time of supply of goods?

Solution:

Time of supply of goods = 20-08-2022

Note: time of supply will be the date of encashment of voucher (i.e. Redemption of voucher). Since, the voucher is not identifiable with any specific product.

Time of supply of goods or services (Residual provisions) [Section 12(5) and Section 13(5) of the CGST Act, 2017]:

In case it is not possible to determine the time of supply under aforesaid provisions, the time of supply is:

- Due date of filing of return, in case where periodical return has to be filed.
- Date of payment of tax in all other cases

Time of supply of goods or services related to an addition in the value of supply by way of interest, late fees or penalty [Section 12(6) and Section 13(6) of the CGST Act, 2017]:

Illustration 18

Mr. X being a supplier receives consideration in the month of September 2022, instead of due date of July 2022, and for such delay he is eligible to receive an interest amount of ₹ 1,000/- and the said amount is received on 15.12.2022.

Find the time of supply for the interest portion and due date of payment.

Solution:

The time of supply = 15.12.2022

i.e. the date on which it is received by the supplier and

Due date of tax liability = 20.01.2023

Change in Rate of Tax in respect of supply of goods or services [Section 14 of the CGST Act, 2017] (upto 14.11.2017): in case of supply of goods P.Y. turnover > ₹ 150 lakhs.

Sl. No.	Supply is completed before the change in rate of tax	Invoice issued before the date of change in tax	Payment received before the date of change in tax rate	Time of supply	Applicable rate of tax
1.	Yes	No	No	Earliest of the date of invoice or payment	New Rate of Tax
2.	Yes	Yes	No	Date of issue of invoice	Old Rate of tax
3.	Yes	No	Yes	Date of receipt of payment	Old Rate of tax
4.	No	Yes	Yes	Earliest of the date of invoice or payment	Old Rate of Tax
5.	No	Yes	No	Date of receipt of payment	New Rate of tax
6.	No	No	Yes	Date of issue of Invoice	New Rate of tax

No GST on advance received against supply of GOODs for ALL ASSESSES (w.e.f. 15th November 2017):

The CBIC vide Notification No. 66/2017-Central Tax, dated 15th November 2017, pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act.

Change in Rate of Tax in respect of supply of goods Sec. 14 of the CGST Act, 2017, w.e.f. 15.11.2017: Notwithstanding anything contained in section 12, the time of supply, where there is a change in the rate of tax in respect of goods, shall be determined in the following manner, namely:—

Sl. No.	Supply is completed before the change in rate of tax	Invoice issued before the date of change in tax	Payment received before the date of change in tax rate	Time of supply NT 66/2017-CT, dated 15.11.2017)	Applicable rate of tax
1.	Yes	No	No	Date of issue of Invoice	New Rate of Tax
2.	Yes	Yes	No	Date of issue of invoice	Old Rate of tax
3.	Yes	No	Yes	Date of issue of Invoice	Old Rate of tax
4.	No	Yes	Yes	Date of issue of Invoice	Old Rate of Tax
5.	No	Yes	No	Date of issue of Invoice	New Rate of tax
6.	No	No	Yes	Date of issue of Invoice	New Rate of tax

Example 4

Rate of GST reduced from 28% to 18% w.e.f. 15th November 2022.

Before – Event occurred before November 15, 2022

After – Event occurred on or after November 15, 2022

Find the rate of tax to be applied on the following supplies?

Supply Provided	Invoice issued	Payment received	Answer: GST Rate
Before	After	After	18%
Before	Before	After	28%
Before	After	Before	28%
After	Before	After	18%
After	Before	Before	28%
After	After	Before	18%

Change in Rate of Tax in respect of supply of services Sec. 14 of the CGST Act, 2017 w.e.f. 15.11.2017:

Notwithstanding anything contained in section 13, the time of supply, where there is a change in the rate of tax in respect of services, shall be determined in the following manner, namely:—

Sl. No.	Supply is completed before the change in rate of tax	Invoice issued before the date of change in tax	Payment received before the date of change in tax rate	Time of supply	Applicable rate of tax
1.	Yes	No	No	Earliest of the date of invoice or payment	New Rate of Tax
2.	Yes	Yes	No	Date of issue of invoice	Old Rate of tax
3.	Yes	No	Yes	Date of receipt of payment	Old Rate of tax
4.	No	Yes	Yes	Earliest of the date of invoice or payment	Old Rate of Tax
5.	No	Yes	No	Date of receipt of payment	New Rate of tax
6.	No	No	Yes	Date of issue of Invoice	New Rate of tax

Date of receipt of payment in case of change in rate of tax

Normally the date of receipt of payment is the date of credit in the bank account of the recipient of payment or the date on which the payment is entered into his books of account, whichever is earlier.

However, in cases of change in rate of tax, the date of receipt of payment is the date of credit in the bank account if such credit is after four working days from the date of change in rate of tax.

Date of receipt of payment in case of change in rate of tax:

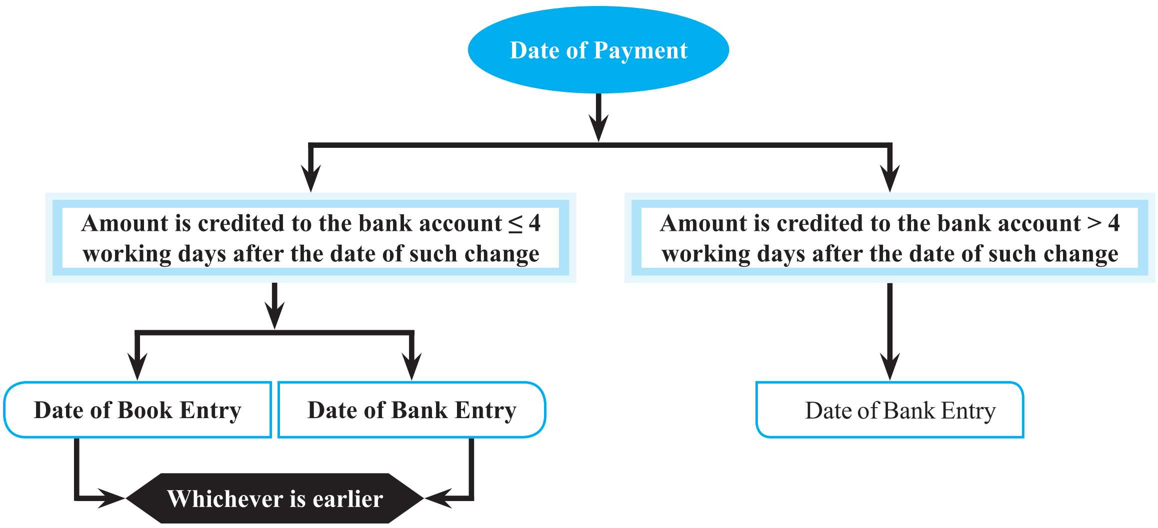


Illustration 19

X Pvt. Ltd. engaged in providing taxable services by way of training and coaching activities in relation of information Accounting and Auditing since, 1st July 2017 has the following details in respect of that activity for the month of September, 2022:

Date of issuance invoice	Date on which payment received	Amount in (₹)
16.09.2022	03.10.2022	2,50,000
20.10.2022	06.10.2022	25,000
02.10.2022	30.09.2022	1,25,000

The date of change in effective rate of tax in this case is 01-10-2022 from 12% to 18%. These services are rendered in August 2022. Find the Time of Supply of service, effective rate of tax and due date of payment of tax.

Solution:

Services rendered	Date of issuance invoice	Date on which payment received	Amount in (₹)	Time of supply of service	Effective Rate of tax	Due date of payment
Aug 2022	16.09.2022	03.10.2022	2,50,000	16.09.2022	12%	20.10.2017
Aug 2022	20.10.2022	06.10.2022	25,000	06.10.2022	18%	20.11.2017
Aug 2022	02.10.2022	30.09.2022	1,25,000	30.09.2022	12%	20.10.2017

Illustration 20

A machine has to be supplied at site. It is done by sourcing various components from vendors and assembling the machine at site. The details of the various events are:

17th September	Purchase order with advance of ₹ 50,000 is received for goods worth ₹ 12 lakh and entry duly made in the seller's books of account.
20th October	The machine is assembled, tested at site, and accepted by the buyer
23rd October	Invoice raised
4th November	Balance payment of ₹ 11,50,000 received

Determine the time of supply(ies) in the above scenario.

Note: Turnover for the year 2022-23 as per records of supplier is ₹ 218 lakhs.

Solution:

For Advance payment: No Time of supply

For entire amount of ₹ 12 lakh:

Time of supply = 20th October

Working note:

(i) sale taken place on 20th October

(ii) Invoice is issued on 23rdOctober (however, last date to issue invoice is 20th October)

Whichever is earlier.

Illustration 21

A machine has to be supplied at site. It is done by sourcing various components from vendors and assembling the machine at site. The details of the various events are:

17th September	Purchase order with advance of ₹25,000 is received for goods worth ₹10 lakh and entry duly made in the seller's books of account.
20th October	The machine is assembled, tested at site, and accepted by the buyer
23rd October	Invoice raised
4th November	Balance payment of ₹9,75,000 received

Determine the time of supply(ies) in the above scenario.

Note: Turnover for the year 2022-23 as per records of supplier is ₹41 lakhs and not opted composition scheme.

Solution:

Time of supply for the entire value of ₹10 lakh = 20th October

Note: As per Section 31(1)(b) of the CGST Act, 2017 last date to issue invoice is 20th October.

Illustration 22

Gas is supplied by a pipeline. Monthly payments are made by the recipient as per contract. Every quarter, invoice is issued by the supplier supported by a statement of the goods dispatched and payments made, and the recipient has to pay the differential amount, if any. The details of the various events are:

August 5, September 5, October 6	Payments of ₹2 lakh made in each month
October 3	Statement of accounts issued by supplier, with invoice for the quarter July - September
October 17	Differential payment of ₹56,000 received by supplier for the quarter July – September as per statement of accounts

Determine the time of supply.

P.Y. turnover (2022-23) of the supplier is ₹200 lakh.

Solution:

Time of supply for payments of ₹2 lakh made in each month

- August 5,
- September 5,
- October 6

Time of supply for differential payment of ₹56,000:

- October 3

Note:

(i) Date of invoice for the quarter July to Sep = 3 October

(ii) Payment received in October 6, is belongs to Oct – Dec quarter, for which invoice is yet to issue.

(iii) Continuous supply of goods

TIME OF SUPPLY=
• Time when each statement is issued.
OR
• Time when each payment is received.
Whichever is earlier

Section 31(4) of GST Act, 2017, the Invoice shall be issued before or at the time of such statement is issued or, as the case may be each such payment is received.

Illustration 23

Determine the time of supply from the given information:

May 4	Supplier invoices goods taxable on reverse charge basis to Bridge & Co.
May 12	Bridge & Co. receives the goods
May 30	Bridge & Co. makes the payment

Solution:

Time of supply = May 12

Working note:

(i) Date of payment = May 30

(ii) 1st Day that occur after expiry of 30 days from date of invoice = June 4

(iii) Date of receipt of goods = May 12

whichever is earlier.

Illustration 24

Determine the time of supply from the given information:

May 4	Supplier invoices goods taxable on reverse charge basis to Pillar & Co.
June 12	Pillar & Co. receives the goods, which were held up in transit
July 3	Pillar & Co. makes the payment

Solution:

Time of supply = June 4

Working note:

(i) Date of payment = July 3

(ii) 1st Day that occur after expiry of 30 days from date of invoice = June 4

(iii) Date of receipt of goods = June 12

whichever is earlier.

Illustration 25

Determine the time of supply from the following particulars:

6th May	Booking of convention hall, sum agreed ₹ 15,000, advance of ₹ 3,000 received
15th September	Function held in convention hall
27th October	Invoice issued for ₹ 15,000, indicating balance of ₹ 12,000 payable
3rd November	Balance payment of ₹ 12,000 received

Solution:

Time of Supply for ₹ 3,000 = 6th May

Time of Supply for the balance ₹ 12,000

= 15thSeptember

Note: As per section 31 read with rule 47 of CGST Rules, the tax invoice is to be issued within 30 days of supply of service. In the given case, the invoice is not issued within the prescribed time limit. As per section 13(2)(b), in a case where the invoice is not issued within the prescribed time, the time of supply of service is the date of provision of service or receipt of payment, whichever is earlier.

Illustration 26

Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

Sl. No.	Date of receipt of goods	Date of payment by recipient of goods	Date of issue of invoice by supplier of goods	Time of supply
(i)	July 1	August 10	June 29	July 1
(ii)	July 1	June 25	June 29	June 25
(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29	June 30 for part payment made and July 1 for balance amount
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1	June 28 (i.e., when payment is entered in the books of account of the recipient)

Sl. No.	Date of receipt of goods	Date of payment by recipient of goods	Date of issue of invoice by supplier of goods	Time of supply
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	June 26 (i.e., when payment is debited in the recipient's bank account)
(vi)	August 1	August 10	June 29	July 30 (i.e., 31st day from issuance of invoice)

Illustration 27

Determine the time of supply from the given information. (Assuming that service being supplied is taxable under reverse charge)

May 4	The supplier of service issues invoice for service provided. There is dispute about amount payable, and payment is delayed.
August 21	Payment made to the supplier of service

Solution:

Here, July 4 will be the time of supply, being the earliest of the two stipulated dates namely, date of payment and date immediately following 60 days since issue of invoice.

Illustration 28

An income tax and money laundering case against Mr. X, working in a company, reveals a large volume of undisclosed assets, which he claims as service income. On this basis, the GST authorities investigate the GST liability. Dates of provision of service, whether in the first half or the second half of the financial year being scrutinized by income-tax authorities, are not known. Mr. X voluntarily pays GST during the investigation.

What is the time of supply of the services?

Solution:

Where it is not possible to determine the time of supply in terms of date of invoice or date of provision of service or date of receipt of payment or date of receipt of services in the books of account of the recipient, and where periodical return is not to be filed (Mr. X, being an employee in a company, is not a registered person), the date of payment of tax is taken as the time of supply [Section 13(5)(b)].

Therefore, the date when Mr. X pays the GST will be the time of supply.

Illustration 29

Royal Sweet Co., Delhi, a registered supplier, has furnished the details of the following few transactions which took place in November, 2022:

Assume the rates of taxes to be as under:—

Sl. No.	Date of payment	Particulars	Date of invoice	Amount (₹)
(i)	11.11.2022	Payment made to an advocate in Delhi	07.07.2022	1,25,000

Sl. No.	Date of payment	Particulars	Date of invoice	Amount (₹)
(ii)	20.11.2022	Paid sitting fee to Director from Haryana for meeting held in Delhi on 15.10.2022 [Inter-State supply]	15.10.2022	75,000

Particulars	Rate
CGST	9%
SGST	9%
IGST	18%

You are required to compute GST [CGST & SGST/IGST, as the case may be] along with time of supply of the aforementioned activities.

Note: GST paid to the Govt. Department on 20th December 20XX for the above (i) and (ii) above.

Solution:

Computation of GST payable for the month of November, 20XX

Sl. No.	Particulars	Time of supply of services	CGST (₹)	SGST (₹)	IGST (₹)	Interest (₹)
(i)	Services from an advocate in Delhi	6th Sep 2022	11,250	11.250	Nil	677
(ii)	Director's Sitting fee	20th Nov 2022	Nil	Nil	13,500	nil

Interest = 22,500 × 18% 21× 61/365 = ₹677/-

Due date of payment tax is 20th Oct 20XX.

No. of days delay

Oct 2022	11 Days
Nov 2022	30 Days
Dec 2022	20 Days
Total No. of days delay	61 Days

Illustration 30

Somnath Industries Ltd. (SIL) is an Indian Company. It has received taxable services from a UK based company-George Ltd. on 1-1-2023. George Ltd. raised on SIL an invoice of £45,000 on 27-1-2023. SIL debited its books of accounts on 7-2-2023 and made the payment on 25-3-2023.

George Ltd. and SIL are associated enterprises.

Find the time of supply in the following independent cases:

(a) George Ltd. and SIL are associated enterprises.

(b) George Ltd. and SIL are non-associated enterprises.

(c) George Ltd. and SIL are associated enterprises but both of them located in taxable territory

Solution:

(a) Time of supply = 07-02-2023

(b) Time of supply = 25-03-2023

(c) Time of supply = 27-01-2023

Illustration 31

Mr. M a registered person, provides the following information in respect of his regular customer, Mr. S.

Date	Particulars	Amount (₹)
01.10.2022	Supply of goods	35,700
01.10.2022	Date of invoice	35,700
18.10.2022	Receipt of payment	36,000

Find the time of supply for excess payment over and above invoice value.

Solution:

The time of supply in respect of the excess payment of ₹ 300 shall be at the option of Mr. M is as follows:

Option 1: Time of supply = 01.11.2022 (i.e. Date of next invoice)

Option 2: Time of supply = 18.10.2022 (i.e. Date of receipt of excess payment)

Illustration 32

Cell Two Ltd., a registered person, provides the following information in respect of its regular customer, Mr. Piyush:

Date	Particulars	Amount (₹)
01.10.2022	Supply of service for the month of September 2018	845
01.10.2022	Date of invoice	845
18.10.2022	Receipt of payment	1,000

Find the time of supply for excess payment over and above invoice value.

Solution:

Time of supply at the option of the supplier:

Option 1: The time of supply in respect of the excess payment of ₹ 155 at the option of Cell Two Ltd., shall be 01.11.2022 (i.e. the date of the next monthly invoice) or

Option 2: Time of supply = 18.10.2022 (i.e. the date of receipt of payment).

Illustration 33

Determine the time of supply from the following particulars:

8th September	Community hall booked for a marriage, Sum agreed ₹ 11,20,000, Advance ₹ 1,20,000 recorded in the books of account.
10th September	Advance amount credit in bank account
2nd November	Marriage held in Community Hall
18th December	Invoice issued for ₹ 11,20,000 indicating the balance of ₹ 10,00,000 payable
22nd December	Balance ₹ 10,00,000 recorded in the books of account.
24th December	Payment ₹ 10,00,000 credit to the bank account

Solution:

Date of payment for advance = Bank entry or Book entry, whichever is earlier

Therefore, date of payment (for advance) in the given case = 8th September

Date of completion of service = 2nd November

(Invoice date not relevant. Since, it is issued after 30 days from the date of completion of service).

Date of payment for balance amount = Bank entry or Book entry, whichever is earlier

Therefore, date of payment (for balance) in the given case = 22nd December

Whichever is earlier.

Time of supply for Advance of ₹ 1,20,000 is 8th September

Time of supply for balance of ₹ 10,00,000 is 2nd November

Case Studies / Analysis of Advance Ruling

2.4

Solved Case 1

CMA & Associates provided Cost Audit Servies to its client named M/s Wealth & Co. The supply was completed on 15th May. As the pandemic situation had arisen all over the state, the partner of the Firm, Mr X requested the Director of the Company, Mr Pritam to make the payment of the professional service rendered and informed that invoice shall be issued when the condition stabilises. On getting request from the Partner, the payment for the Audit Services availed was released on 25th May. The GST rate applicable till 30th May was 18%

Due to adverse conditions and engagement in other audit services by the Firm, the invoice was raised after one month i.e. 15th June. However, at the GST council meeting the rate of GST got increased by 2% i.e. 20%. Determine the Time of Supply and the rate applicable.

Solution:

In the given case, CMA & Associates had provided the audit services on 15th May which is before the change n rate of GST on 1st June. Thus, the Time of Supply shall be the earlier of Date of Invoice or Date of Payment as under

Case	Answer
Payment received on	25th May
Invoice raised on	15th June
Time of Supply – payment received date or invoice raised date whichever is earlier	25th May
Tax Rate	18%

Solved Case 2

Determine the Time of Supply from the following particulars

08th September	Mr. X booked a room in J W Marriott for 01 night at room rent of ₹ 120000 per night. An advance of ₹ 20000 was paid in advance and this amount was recorded in books of account
10th September	Mr X got a confirmation message from the Bank that the amount of ₹20000 being paid to J W Marriott has been debited from the balance amount
02nd November	Mr. X stays in the room for 01 night and gives instruction to issue the invoice for the balance amount at the time of checkout from the Hotel. As the server of the Hotel got jammed, the Manager gave assurance that when the same will be set, the invoice shall be raised and the payment can be done on that date

18th December	It was fortunate that Manager was able to raise an invoice on this day. An invoice was raised for ₹ 120000 for one night on Mr X. The invoice also stated that about the advance of ₹ 20000 and balance being shown as outstanding of ₹100000 which was payable by Mr X to the Hotel
22nd December	Mr X on receipt of the invoice issued a cheque of ₹ 100000 in the name of Hotel
24th December	The amount of ₹ 100000 was debited from the balance amount of Mr X from the Bank

Solution:

In the given case, there are two parts.

Firstly there in advance payment of ₹ 20000 to the Hotel – J W Marriott by Mr X.

Secondly, there is a balance payment of ₹ 100000.

Thus, for determining the time of supply, we also need to understand and clarify the concepts in two aspects

a. For Advance - Time of Supply shall be Date of Payment or Date of Invoice whichever is earlier. Therfore, in this case, advance was given on 08th September which is the date of payment or 18th December which is the date of invoice, whichever is earlier. Therfore, here the Time of Supply will be 8th September

b. For Balance Amount - Time of Supply shall be Date of Payment or Date of provision of supply, if invoice is not raised within 30 days.

Here, the Invoice was raised after 30 days i.e. 18th December which is more than 30 days from the date of utilisation of service which is 02nd November.

Therfore, in this case, Time of Supply will be 02nd November

Solved Case 1

SP Singla Constructions Pvt. Ltd. (GST AAR Gujarat - 2022):

Question on which Advance Ruling sought: SP Singla Constructions Pvt. Ltd. desires to obtain Advance Ruling on the question as to what is the time of supply for the purpose of discharge of GST under the CGST Act, 2017 in respect of Mobilization Advance (hereinafter referred to as 'said advance') received by it for construction services provided by it? SP Singla Constructions Pvt. Ltd. received advance from its recipient of service for procurement of goods.

Advance Ruling: SP Singla Constructions Pvt. Ltd. does not contest the taxability on said Advance, but is before us for its deferment from date of its receipt to date of issue of invoice. We pass the Ruling based on Section 13(2) CGST Act read with its explanation (i). Time of Supply, on said Advances received by SPSC for Supply of its Service, is the date of receipt of said advance.

Advance is for procurement of Goods. SP Singla Constructions is Service provider, supplying Works Contract Service. We refer to Schedule II (6)(a) CGST Act, wherein works contract shall be treated as supply of service. The Contract submitted before us is also for the same. The Payment terms and conditions are part and parcel of the contract. We find it neither tenable to colour a Service Contract as Goods supply contract nor rational to misrepresent a Service contract as Goods supply contract to hoodwink Section 13(2) CGST Act and defer payment of Tax.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Find the time of supply from the following where date of supply of service is 7th September 20XX
   (a) Date of invoice 30th Oct 20XX
   (b) Date of payment received by way of cheque and the entry for receipt of payment is recorded in books of accounts 10th Oct 20XX
   (c) Amount credited to bank account of supplier 12th Oct 20XX
   (d) 7th September 20XX

2. What is time of supply of service with respect to receipt of amount in excess of the invoice amount.
   (a) Date of issue of invoice by the supplier, if the invoice is issued within the period prescribed u/s 31 or the date of receipt of payment, whichever is earlier; or
   (b) Date of provision of service, if the invoice is not issued within the period prescribed u/s 31 or the date of receipt of payment, whichever is earlier; or
   (c) Date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:
   (d) All (a), (b) & (c)

3. What is time of supply of goods, in case of forward charge?
   (a) Date of issue of invoice
   (b) Due date of issue of invoice
   (c) Date of receipt of consideration by the supplier
   (d) Earlier of (a) & (b)

4. Mr. A, who has opted for composition levy, supplies goods worth ₹ 24,300 to Mr. B and issues an invoice dated 25.09.2022 for ₹ 24,300. and Mr. B pays ₹ 25,000 on 1.10.2022 against such supply of goods. The excess ₹ 700 (being less than ₹ 1,000) is adjusted in the next invoice for supply of goods issued on 5.01.2022. Identify the time of supply and value of supply:
   (a) For ₹25,000 – 1.10.2022
   (b) For ₹ 24,300 – 25.09.2022 and for ₹ 700 – 1.10.2022
   (c) For ₹ 24,300 – 25.09.2022 and for ₹ 700 – 5.10.2022.
   (d) (b) or (c) at the option of supplier, who has opted for composition levy

5. Value of services rendered is ₹ 1,00,000/. Date of issue of invoice is 5th October 2022. Advance Received is ₹ 25,000/- on 20th September 2022. Balance amount received on 7th October 2022. What is the time of supply for ₹ 1,00,000/-
   (a) 5th October 2022 for ₹ 1,00,000/-

(b) 20th September 2022 for ₹ 1,00,000/-

(c) 20th September 2022- ₹ 25,000/- and 5th October 2022 for ₹ 75,000/-

(d) 20th September 2022- ₹ 25,000/- and 7th October 2022 for ₹ 75,000/-

6. There was increase in tax rate from 12% to 18% w.e.f.1.09.2022. Which of the following rate is applicable when services are provided after change in rate of tax in September 2022, but invoice issued and payment received, both in August 2022:

   (a) 12% as it is lower of the two

   (b) 18% as it is higher of the two

   (c) 12% as invoice and payment were received prior to rate change

   (d) 18% as the supply was completed after rate change

7. ABC Ltd has purchased for its customer 50 vouchers date 20th Aug 20XX worth ₹ 500 each from Ram Pvt. Ltd. a footwear manufacturing company. The vouchers were issued by Ram Pvt. Ltd on 20th Sep 20XX. The vouchers can be encashed at retail outlets of Ram Pvt. Ltd. The employees of ABC Ltd. enchased the same on 1st Oct 20XX. Determine the time of supply of vouchers.

   (a) 20th Aug 20XX

   (b) 20th Sep 20XX

   (c) 1st Oct 20XX

   (d) None of the above

8. What is the maximum time limit for issue of tax invoice in case of insurance service providers and banks?

   (a) 30 days

   (b) 45 days

   (c) At the time when supply ceases

   (d) At the time when supply started

9. Determine the amount of GST in case of supply of service of ₹ 10,00,000 on 4th Sep 20XX and invoice has also been issued on the same date. The date of payment is 30th Aug 20XX. The CGST rate has been increased from 5% to 12% w.e.f. 1st Sep 20XX.

   (a) ₹50,000

   (b) ₹1,00,000

   (c) ₹70,000

   (d) ₹1,20,000

10. Which notification removed the requirement of payment of tax on advance receipt in case of supply of goods?

    (a) Notification No. 10/2017 Central Tax, dated 15th November 2017

(b) Notification No. 66/2017 Central Tax Dated 15th November 2017

(c) Notification No. 77/2017 Central Tax Dated 15th November 2017

(d) Notification No. 66/2017 Central Tax Dated 15th November 2018

11. Mr. A entered into a contract with Mr. B & agreed to make the payment by 30th Sep 20XX. If the payment is not made in time, then he shall pay late fees @₹200 per day. No payment of late fees has been made so far. What shall be the time of supply in respect of the late fees due on Mr. A.

    (a) September 2022

    (b) October 2022

    (c) Time of supply has not arisen

    (d) None of the above

12. There was decrease in tax rate from 28% to 18% w.e.f. 1.09.2022. Which of the following rate is applicable if the supplier has not opted for composition levy and supplies goods to Customer? Further, Goods were removed from its factory on 31.08.2022; delivered at buyer place on 2.02.2022; invoice is issued on 31.08.2022 and payment is received on 4.09.2022.

    (a) 18% as it is lower of the two

    (b) 28% as date of invoice and dispatch of goods from factory, has happened before change of rate

    (c) 18% as both, payment and completion of supply, has happened after change of rate

    (d) none of the above

13. M/s Wanderlust Travels (P) Ltd. purchased a bus chassis from M/s Krishi Motots Ltd. for a consideration of ₹ 90.00 lakh on 1st Jan 2022. M/s Wanderlust Travels (P) Ltd. sent the bus chassis for body building to M/s Bhagwant Fabricators and paid in advance the total consideration of ₹ 25.00 lakh on 15th Oct 2022. M/s Bhagwant Fabricators, after completing the bus body, informed M/s Wanderlust Travels (P) Ltd for carrying out the inspection of the work done on 5th Nov 2022. M/s Wanderlust Travels (P) Ltd. visited the work shop of M/s Bhagwant Fabtricators on 8th Nov 2022 and confirmed that the bus body was in accordance with the terms of the contract.

    The last date for issuing the invoice by M/s Bhagwant Fabricators is

    (a) 15th Oct 2022

    (b) 8th Nov 2022

    (c) 8th Dec 2022

    (d) 5th Dec 2022

Answers:

1.	**2.**	**3.**	**4.**	**5.**	**6.**	**7.**	**8.**	**9.**	**10.**	**11.**	**12.**	**13.**
d	**d**	**d**	**d**	**c**	**c**	**b**	**b**	**d**	**b**	**c**	**b**	**c***

Note: Treated as supply of goods

Place of Supply 3

This Module Includes

Place of Supply

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand place of supply importance and its applicability in case of supply of goods or services or both in case of domestic as well as cross border transactions.
- Explain the provisions relating to determination of place of supply of goods and services
- Apply practically how to apportion consolidated values between States and UT's using IGST Rules, 2017.

Introduction 3

Place of Supply under GST – Important Definitions:

Section	Term	Provision
Sec. 2(4) of IGST	Customs frontiers of India means	the limits of a customs area as defined in section 2 of the Customs Act, 1962
Sec. 2(5) of IGST	Export of goods means	taking goods out of India to a place outside India
Sec. 2(6) of IGST	Export of services means	the supply of any service when,— (i) the supplier of service is located in India; (ii) the recipient of service is located outside India; (iii) the place of supply of service is outside India; (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by Reserve Bank of India (w.e.f. 1-2-2019); and (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;
Sec. 2(10) of IGST	Import of goods means	bringing goods into India from a place outside India
Sec. 2(11) of IGST	Import of services means	the supply of any service, where— (i) the supplier of service is located outside India; (ii) the recipient of service is located in India; and (iii) the place of supply of service is in India;
Sec. 2(16) of IGST	Non-taxable online recipient means	any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval (OIDAR) services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Section 7 of IGST Act, 2107: Inter-State Supply:

Supply of goods	Supply of service
Section 7(1): Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in— (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of goods in the course of inter-State trade or commerce.	**Section 7(3):** Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in— (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.
Section 7(2): Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.	**Section 7(4):** Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.
Section 7(5): Supply of goods or services or both,— (a) when the supplier is located in India and the place of supply is outside India; (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.	

Section 8 of IGST Act, 2017: Intra-State Supply:

Supply of goods	Supply of services
Section 8(1): Subject to the provisions of **section 10**, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply: Provided that the following supply of goods shall not be treated as intra-State supply, namely:— (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit; (ii) goods imported into the territory of India till they cross the customs frontiers of India; or (iii) supplies made to a tourist referred to in section 15.	**Section 8(2):** Subject to the provisions of **section 12**, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply: Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Supply of goods	Supply of services

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

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

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

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

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

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

Supplies in Territorial Waters 3.1

Supplies in territorial waters (Section 9 of the IGST Act, 2017): -

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

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

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

Example 1

Repair services are provided by M/s X Ltd., in Delhi on ship moved off the coast (i.e. an area of land that is next to the sea of Cochin for a shipping company from U.K., the place of supply of the repairs services will not be the waters but Cochin itself.

Example 2

Oil and Natural Gas Company has on offshore (seaward) on the field off coast (seaboard) of Mumbai. Supplies from such oil field would be deemed to be supplies from the State of Maharashtra.

Illustration 1

Sonu Traders, registered person in Maharashtra. In the month of September, it supplied taxable goods worth ₹50 lakh to Rose Oil Corporation Ltd. in the territorial waters. The said territorial waters are located at a distance of 8 nautical miles from the baseline of the State of Maharashtra and 9 nautical miles from the base line of the state of Gujarat. You are required to determine the amount of net CGST and SGST and / or IGST payable in the month of September. Applicable rate of CGST 9% and SGST 9% or IGST 18%.

Solution:

Place of Supply = Maharashtra (inter-State Supply).

CGST @9% is ₹4,50,000; and SGST @9% is ₹4,50,000.

Detailed Discussion on Place of Supply Provisions

3.2

While determining the levy of taxes based on Place of Supply, two things are considered namely:

1. **Location of Supplier:** It is the registered place of business of the supplier.
2. **Place of Supply:** It is the registered place of business of the recipient

Example 3

X Ltd. is a supplier of craft products, having the registered office in Chennai, Tamil Nadu. It supplies goods to schools in Madurai, Tamil Nadu. Since, the location of supplier as well as the place of supply is in the same State i.e. Tamil Nadu, it will be counted as 'Intra-State Supply of Goods' and hence SGST & CGST will be levied.

Illustration 2

X Ltd., located in Mumbai, Maharashtra receives order from M/s Y Ltd. located in Ahmadabad, Gujarat for supply of one machine.

Find the place of supply and applicable GST?

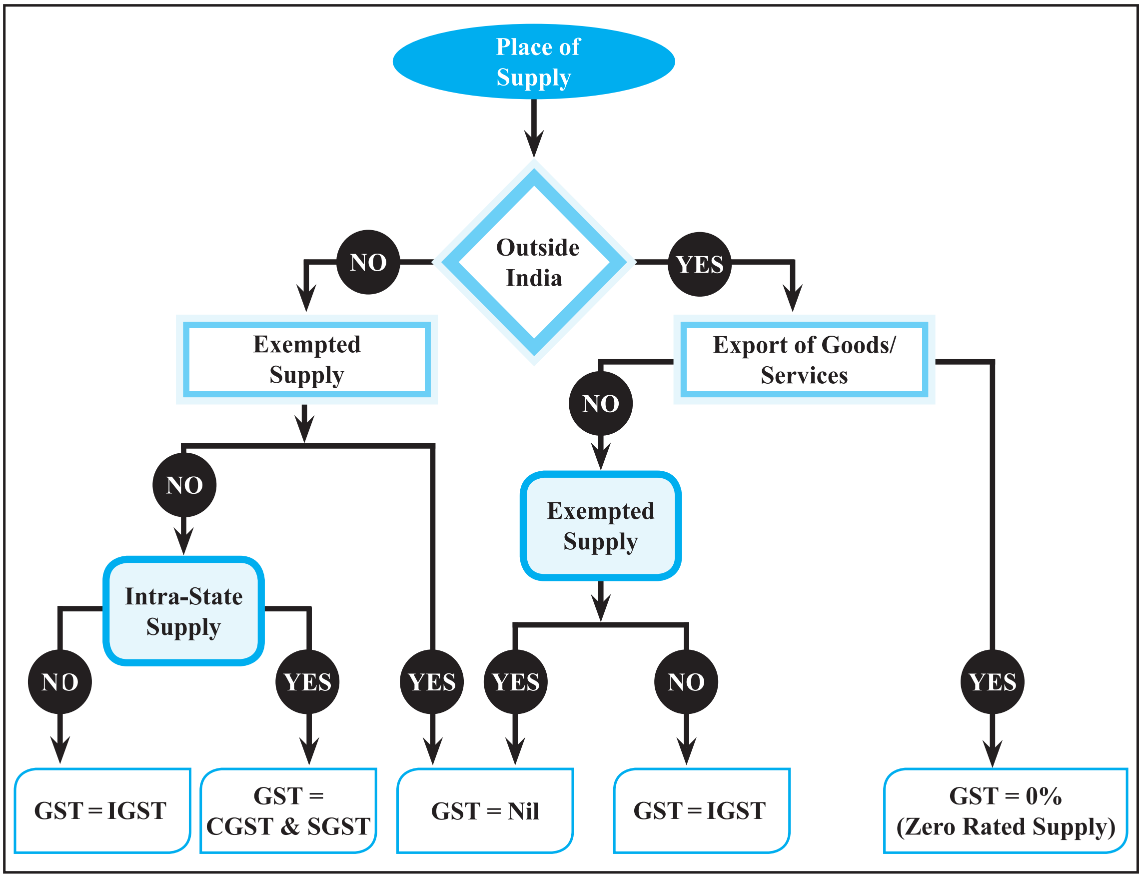
Solution:

1. **Location of Supplier:** Mumbai (Maharashtra).
2. **Place of Supply:** Ahmedabad (Gujarat)

Since the movement of goods terminate at Ahmedabad.

Applicable GST = IGST

Simplified approach:



Place of supply of Goods

As per section 10 of the IGST Act, 2017 Place of Supply of goods other than supply of goods imported into, or exported from India, shall be as follows:

Place of Supply of Goods (Other than Import or Export)

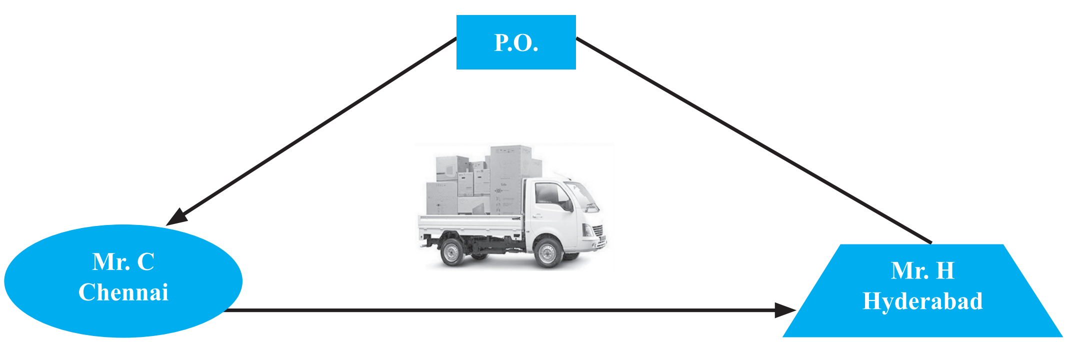
Supply involves movement of goods (whether by supplier or recipient or by any other person) [Sec 10(1)(a) of IGST Act]	Goods delivered on the direction of third person [Sec 10(1)(b) of IGST Act]	Supply does not involves movement of goods [Sec 10(1)(c) of IGST Act]	Goods assembled or installed at site [Sec 10(1)(d) of IGST Act]	Goods supplied on board a conveyance [Sec 10(1)(e) of IGST Act]	In any other case [Sec. 10(2) of IGST Act]
Place where movement terminates for delivery to the recipient	Principal place of business of the third person.	Location of goods at the time of delivery to the recipient	Place of installation or assembly	Location where goods are taken board	Place of supply shall be determined in such manner as may be prescribed

Supply involves movement of goods [Section 10(1)(a) of the IGST Act, 2017]

Nature of supply	Place of supply of goods
Supply involves movement of goods whether by supplier or recipient or by any other person:	Location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Example 4

Mr. C of Chennai received purchase order from Mr. H of Hyderabad for want of commercial goods. Now supply involves movement of goods by supplier from Chennai to Hyderabad in a truck by road.



Place of supply of goods = Hyderabad.

IGST will be levied.

Declare outward supply of goods in **Table 5 of GSTR-1**, supplier should indicate place of suppluy where location of supplier and recipent are different.

Illustration 3

R Limited of Rajasthan sells 100 cell phones to Shah Traders in Tamil Nadu. R Limited delivers the product to Shah Traders in its warehouse in Chennai.

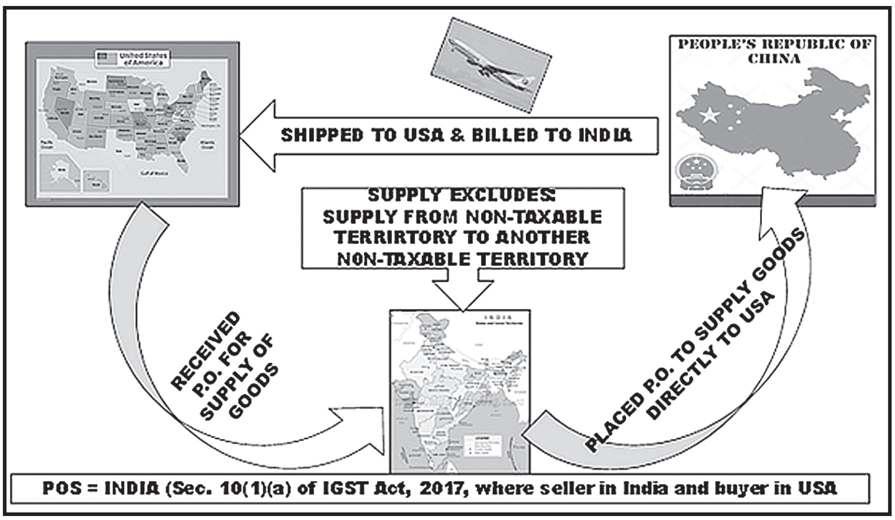
Find the place of supply and levy of GST?

Solution:

Place of supply = Chennai (i.e. Tamil Nadu)

IGST will be levied.

Supply of goods from non-taxable territory to another place in the non-taxable territory without such goods entering into India:



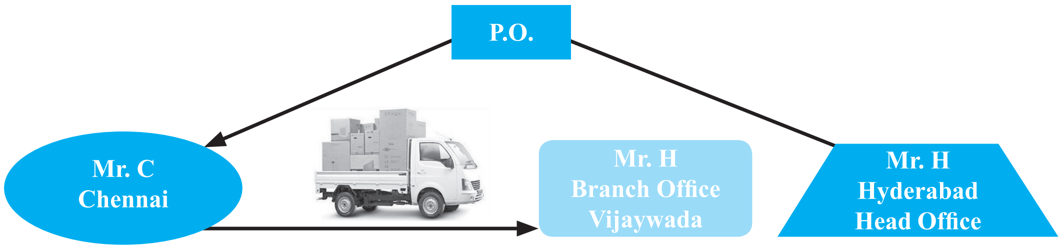
The supplier delivers goods to a recipient or any other person on the direction of a third person by way of transfer of documents of title to the goods or otherwise Section 10(1)(b) of the IGST Act, 2017:

Nature of supply	Place of supply of goods
Goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods by way of transfer of documents of title to the goods or otherwise.	It shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the principal place of business of such person.

Example 5

Mr. C of Chennai received purchase order from Mr. H of Hyderabad for want of commercial goods. Now supply involves movement of goods by supplier from Chennai to Hyderabad by road in a truck.

Upon the direction of Mr. H of Hyderabad these goods are redirect to Branch office of Mr. H located in Vijayawada by way of transfer of documents of title to the goods (i.e. Lorry Receipt or LR copy).

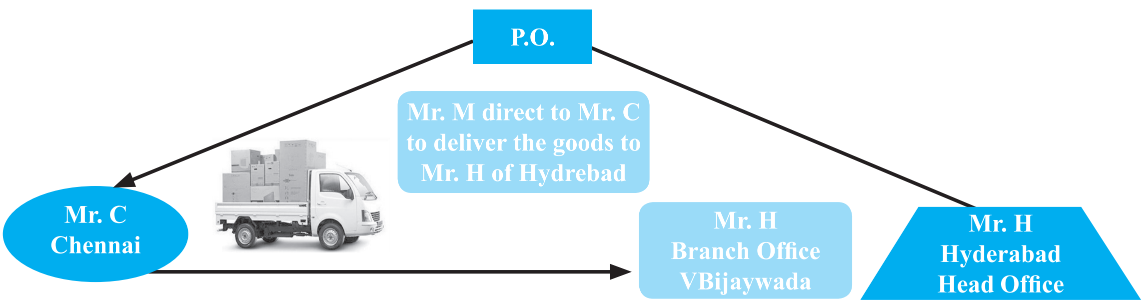


Place of supply of goods = Hyderabad. IGST will be levied

It shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the principal place of business of such person.

Example 6

Supplier delivers goods to a Principal on the direction of an Agent.



Place of supply of goods = Hyderabad. IGST will be levied

It shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the principal place of business of such person as per Sec 10(1)(b) of IGST Act, 2017, even if Mr. M acts as agent of Mr. H (namely Principal).

Bill to Shipp to Model:

Example 7

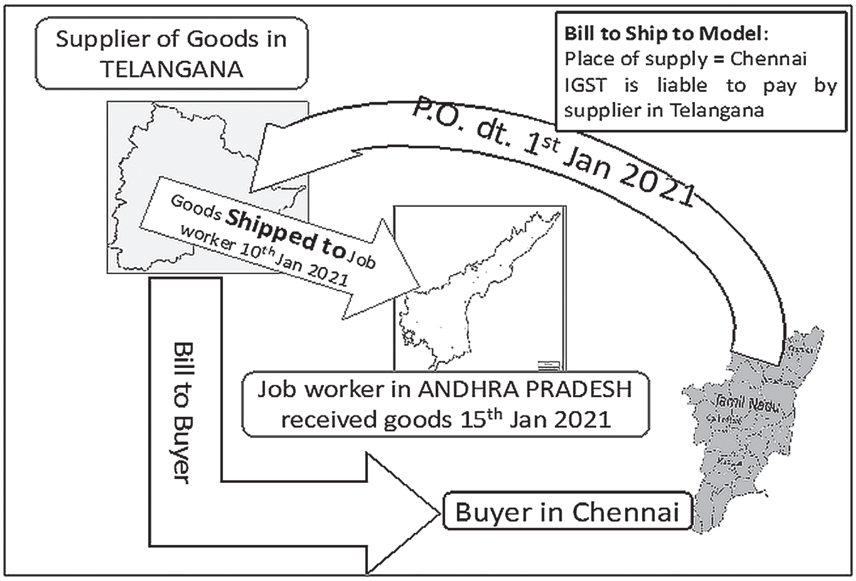


Illustration 4

Maruti Traders, a dealer in furniture, located in Maharashtra, receives an order from Bhagavan Traders, also located in Maharashtra. The order is for the supply of 250 Tables, with an instruction to ship the Tables to Bhakta Hardware's, located in Tamil Nadu. Bhakta Hardware's is a customer of Bhagavan Traders.

Find the place of supply and levy of GST in the hands of Maruti Traders as well as Bhagavan Traders?

Solution:

There are two parts to this transaction:

- **First part of the transaction** – between Maruti Traders (Maharashtra) and Bhagavan Traders (Maharashtra):

  Maruti Traders is the supplier of Tables, and Bhagavan Traders is the buyer. Accordingly, Maruti Traders bills the transaction to Bhagavan Traders, and as per the instruction, ships the goods to Bhakta Hardware's in Tamil Nadu.

- **The second part of the transaction** – between Bhagavan Traders and Bhakta Hardware's; Bhagavan Traders is the supplier, and Bhakta Hardware's is the buyer. Bhagavan Traders bills the transaction to Bhakta Hardware's and endorses the lorry receipt (goods shipped in a lorry by Maruti Traders) in favour of Bhakta Hardware's. This lorry receipt (LR) will enable Bhakta Hardware's to take the delivery of the goods.

  Over here, on the instruction from Bhagavan Traders, Maruti Traders ships the tables to Bhakta Hardware's located in Tamil Nadu.

  Here, Bhagavan Traders is deemed as the third person. Therefore, the place of supply will be the principal place of business of the third person, i.e., Maharashtra. Accordingly, Maruti Traders charges CGST and SGST on billing to Bhagavan Traders. The second part of the transaction between Bhagavan Traders and Bhakta Hardware's will be interstate, and IGST will be charged.

Illustration 5

Whether E-commerce operator (ECO) like **FILPKART, AMAZON, SNAPDEAL** is to be considered as agent of the manufacture/trader & provisions of section 10(1)(b) of IGST Act, 2017 as applicable to Bill to – Ship to transactions shall apply?

Solution:

Sec. 2(45) of CGST Act, defines the term "electronic commerce operator" as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

Sec. 2(44) of CGST Act, defines the term "Electronic commerce" as means the supply of goods or services or both, including digital products over digital or electronic network.

The ECO cannot be considered to acting as agent or otherwise as required by section 10(1)(b) of IGST Act, 2017.

ECO is an independent service provider and earning commission for the services rendered by it and its primary responsibility is collect TCS @ 1% under section 52(1) of CGST Act, 2017, on 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.

From the above it is evident that the ECO is not working in the capacity of agent or otherwise. It is only providing the online marketplace services and earning subscription fees or commission on the sale value from the listed sellers.

So the provisions of section 10(1)(b) of IGST Act, i.e. bill to – ship to provisions are not applicable to ECO.

Illustration 6

Mr. Rafi of Chennai, Tamil Nadu orders a headphone from Amazon to be delivered to his father in Kanigiri (AP) as a gift. M/s C India Pvt. Ltd., (online seller registered in Hyderabad) processes the order and sends the headphone accordingly and Mr. R is billed by Amazon.

Find the place of supply and levy of GST. Who is liable to pay GST?

Solution:

Place of supply = Chennai (i.e. location of buyer) as per Section 10(1)(b) of the IGST Act, 2017.

IGST is liable to pay by M/s C India Pvt. Ltd. (Hyderabad).

Illustration 7

M/s H Ltd., holding company incorporated in Hyderabad, Telangana for facilitating the sale of finished product of another Company M/s S Ltd. subsidiary of H Ltd. M/s S Ltd incorporated in Chennai.

Sale Agreement provides that H Ltd. will be responsible for evacuation of 100% products and by-products of S Ltd., for a marketing commission @5% on net sales value. S Ltd., will pack the material in standard bags as per the industry norms and will also get the bags printed as "Marketed by H Ltd." along with H Ltd logo & with other printing such as "Manufactured by S Ltd." along with S Ltd., logo.

M/s S Ltd is directly supplying the goods to the ultimate customers who are located in the State of Tamil Nadu on behalf of M/s H Ltd.

Whether the aforesaid agreement will attract taxability & modality of invoicing will attract the scope of section 10(1)(b) of IGST Act, 2017 (i.e. bill to and ship model as goods are moving to customer as per directions for H Ltd.)?

Solution:

The provision under section 10(1)(b) of the IGST Act, 2017 has been made to avoid two times movement of goods, first from S Ltd., to H Ltd., and then second time from H Ltd., to the ultimate customer.

The given scenario is covered under bill to ship model.

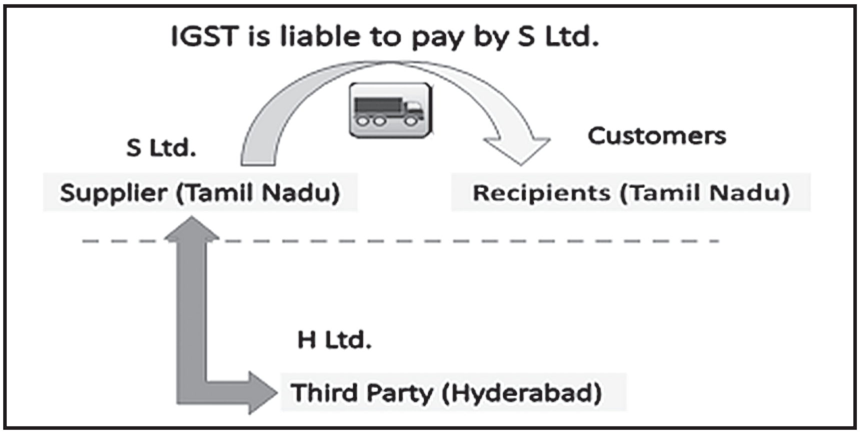
M/s S Ltd., and M/s H Ltd., are registered in different States, then IGST will be payable by M/s S Ltd., while directly supplying the goods to ultimate customer who may be located within the same State as that of M/s S Ltd.

M/s S Ltd. will issue bill in the name of M/s H Ltd., and goods ship to customers.

M/s H Ltd., will issue bill in the name of individual customers, then IGST will be payable by M/s H Ltd.

Summary:

Place of Supply of 'Goods' for S Ltd. Sec. 10(1)(b) = Hyderabad



Place of Supply of 'Goods' for H Ltd. Sec. 10(1)(a) = Tamil Nadu

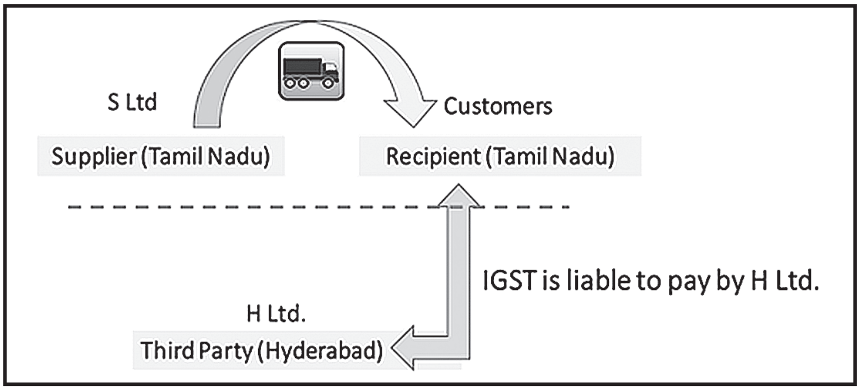


Illustration 8

Chandana Traders in Karnataka receives an order from M/s A Inc. in USA to deliver 100 cell phones at Odiar

Dealers in Karnataka. On application of section 10(1)(b) place of supply will be USA. The question arises will this transaction be taxed even if the place of supply is USA?

Solution:

There will be two parts to this transaction as well:

(a) Between Chandana Traders of Karnataka and M/s A Inc. of USA.

(b) Between M/s A Inc. of USA and Odiar Dealers in Karnataka.

(a) Between Chandana Traders of Karnataka and M/s A Inc. of USA:

Transaction between Chandana Traders of Karnataka and M/s A Inc. of USA will be considered as Export? As per section 16 of the IGST Act, 2017, export of goods is a "Zero Rated Supply" and tax need not be levied on the same.

As per section 2(5) of the IGST Act, 2017, "export of goods" means taking goods out of India to a place outside India. In our case, as goods are not moving out of India hence it cannot be termed as exports.

Section 7(5)(a) of the IGST Act, 2017 states that supply of goods or services or both when the supplier is located in India and the place of supply is outside India shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

Above section applies to the present case, supplier (Chandana Traders) is located in India and place of supply (USA) is outside India as per Sec. 10(1)(b) of the IGST Act, 2017. Hence, the transaction between Chandana Traders of Karnataka and M/s A Inc. of USA will be considered as an inter-state supply, and IGST shall be levied on it.

(b) Between M/s A Inc. of USA and Odiar Dealers in Karnataka:

According to Section 2(10) of the IGST Act, 2017 "import of goods" means bringing goods into India from a place outside India. The transaction between M/s A Inc. of USA and Odiar Dealers in Karnataka cannot be considered as the import of goods.

This transaction will be covered under section 7(5)(c) which states that supply of goods or services or both in the taxable territory, not being an intra-state supply and not covered elsewhere in section 7 shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

In the present case, the supply of goods is in the taxable territory (Karnataka), it is not an intra-state supply as a supplier (M/s A Inc. of USA) is located outside the taxable territory and such a situation is not covered elsewhere in section 7. Hence, transaction between M/s A Inc. of USA and Odiar Dealers in Karnataka is also an Inter-state transaction and IGST will have to be paid by Odiar Dealers under reverse charge mechanism (Section 5(4) of the IGST Act, 2017). However, section 5(4) of IGST is not applicable except in case of construction service.

Supply does not involve movement of goods [Section 10(1)(c) of the IGST Act, 2017]

Nature of supply	Place of supply of goods
Where the supply does not involve movement of goods, whether by the supplier or the recipient.	Location of such goods at the time of the delivery to the recipient (This place of supply is irrespective of the location of the buyer and seller)

Illustration 9

A and B both located in Kerala. B comes to shop of A. A delivered goods to B. What is the place of supply of goods. Which levy will attract?

Solution:

Place of supply goods = Kerala.

CGST& SGST will be levied

Location of such goods at the time of the delivery to the recipient.

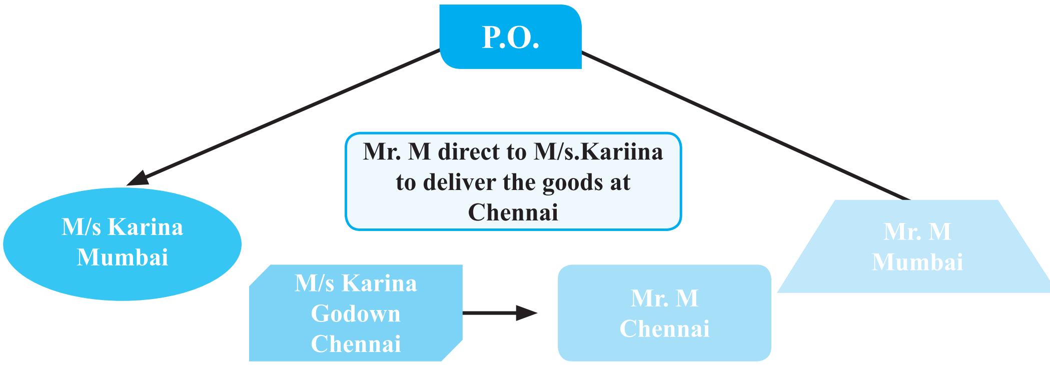
This is irrespective of the location of the buyer and seller.

Illustration 10

M/s Karina Ltd. incorporated in Mumbai and own a godown in Chennai. Mr. M of Mumbai approached M/s Karina Ltd. of Mumbai for purchase of goods lying in godown at Chennai. Mr M further informs that he does not want delivery of goods in Mumbai. M/s Karina Ltd. issues invoice for sale of goods in Mumbai.

Find the place of supply of goods and levy of tax?

Solution:



Place of supply goods = Chennai

IGST will be levied

Location of such goods at the time of the delivery to the recipient where **Supply does not involve movement of goods**.

This place of supply is irrespective of the location of the buyer and seller.

Illustration 11

M/s X Ltd has place of business in Chennai, being an NBFC given an asset under financial lease to M/s ABC Ltd. of Chennai. The said asset so far used by M/s ABC Ltd in their factory located at Hyderabad. At the end of lease period the said asset acquired by M/s ABC Ltd. at a nominal amount. Find the place of supply of goods and levy of GST.

Solution:

Place of supply of goods = Hyderabad.

IGST will be levied.

Since, there is no movement of goods from one place to another, provisions of section 10(1)(c) of IGST applicable.

Example 8

Supply from the supplier of goods (Rani) to the person to whom the goods are delivered (Raja) on the instruction of a third person (Ram). In the given case there are two supplies:

1. Rani supplied goods to Raja on the instruction of Ram (Sec. 10(1)(b).
2. Ram supplied goods to Raja without movement of goods (Sec. 10(1)(a).

Step 1: Place of supply shall be the principal place of business of the person on whose instruction goods are delivered to the receiver of goods Sec. 10(1)(b):

Case	Location of Supplier – Rani	Place of delivery of goods – Office of Raja	Principal place of Ram who instructed delivery to Raja	Place of supply for Rani	Type of tax payable by Rani
1	Chennai	Chennai	Vijayawada	Vijayawada	IGST
2	Chennai	Hyderabad	Delhi	Delhi	IGST
3	Chennai	Cochin	Kashmir	Kashmir	IGST
4	Chennai	Cochin	Chennai	Chennai	CGST & SGST

Step 2: Deemed supply of goods by the person on whose instruction (Ram) the goods were delivered by the original supplier (Rani) to the receiver of goods (Raja) – Place of supply shall be the location of the goods at the time of delivery to the recipient Sec. 10(1)(a):

Case	Location of Supplier – Rani	Place of delivery of goods – Office of Raja	Principal place of Ram who instructed delivery to Raja	Place of supply for Ram	Type of tax payable by Ram
1	Chennai	Chennai	Vijayawada	Chennai	IGST
2	Chennai	Hyderabad	Delhi	Hyderabad	IGST
3	Chennai	Cochin	Kashmir	Cochin	IGST
4	Chennai	Cochin	Chennai	Cochin	IGST

Goods are assembled or installed at Site [Section 10(1)(d) of IGST, 2017]

Nature of supply	Place of supply of goods
Where the goods are assembled or installed at site.	Place of such installation or assembly

Illustration 12

M/s Feather Light Furnitures Pvt. Ltd. being a manufacturer in Mumbai send its personnel to Kolkata for setting up a new office for a client whose registered office is in Delhi. The furniture is brought in dismantled form (i.e. Fully knocked down condition) to the office at Kolkata and assembled at the client's place. Here, the place of supply will be Kolkata as it is the place of assembly/ installation.

Solution:

Place of supply of goods = Kolkata

M/s Feather Light Furnitures Pvt. Ltd. is liable to pay IGST.

Illustration 13

M/s X Ltd. Tirupathi, Andhra Pradesh agrees to supply machinery to Y Ltd. of Mumbai, which would be installed at site in Mumbai. Find the place of supply and GST liability?

Solution:

Place of supply of goods = Mumbai

M/s X Ltd. is liable to pay IGST.

Example 22

Location of te supplier	Location of the recipient	Place of assembly or installation at site	Place of supply	GST liability
Delhi	Haryana	Punjab	Punjab	IGST
Andhra Pradesh	Telangana	Andhra Pradesh	Andrha Pradesh	CGST & SGST
Cochin	Cochin	Bengaluru	Bengaluru	IGST

Goods are supplied on board a conveyance [Section 10(1)(e) of IGST Act, 2017]:

Nature of supply	Place of supply of goods
Where the goods are supplied on board a conveyance including a vessel, an aircraft, a train or a motor vehicle.	Location at which such goods are taken on board.

Illustration 14

Chennai express train going form Chennai to Cochin, M/s X Ltd. located in Cochin has supplied the food which are given to passengers during night time. The food packets are loaded at Chennai Central Station, Chennai.

Find the place of supply of goods and levy of GST?

Solution:

Place of supply of goods = Chennai

M/s X Ltd. is liable to pay IGST.

Illustration 15

Mr. C of Chennai supplied goods to M/s Spice Jet Airlines of Chennai flying between Delhi-Mumbai. The goods are loaded in the aircraft in Delhi. Find the place of supply of goods and levy of tax?

Solution:

Place of supply of goods = Delhi

Mr. C of Chennai is liable to pay IGST.

Place of Supply of goods cannot be determined [Section 10(2) of the IGST Act, 2017]

Nature of supply	Place of supply of goods
Any thing not covered under sub-section (a) to (e) of Section 10(1) of the IGST Act, 2017	Determined in such manner as may be prescribed (i.e. as recommended by GST Council)

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

Nature of supply	Place of supply of goods
Import into India	Location of the importer
Export from India	Location outside India

Illustration 16

Mr. M of Mumbai imports goods from Mr. G of Germany.

Find the place of supply and levy of GST?

Solution:

Place of supply = Mumbai (i.e. location of importer)

Illustration 17

Mr. C of Chennai exports goods to Mr. A Inc. of USA.

Solution:

Place of supply = USA

Intra-State supply of Goods [Section 8 of the IGST Act, 2017]:

Section 8(1) of the IGST Act, 2017 reads as follows: Subject to the provisions of section 10 of the IGST Act, 2017, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:—

(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;

(ii) goods imported into the territory of India till they cross the customs frontiers of India; or

(iii) supplies made to a tourist referred to in section 15.

As per explanation to section 15 of the IGST Act, 2017 Tourist means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

Section 8(2) of the IGST Act, 2017 reads as follows: Subject to the provisions of section 12 of IGST Act, 2017, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

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

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

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

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

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

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

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

Illustration 18

M/s Rajini & Sons is registered in the State of Kerala and is a supplier of repair and maintenance services of generator. The foregoing firm has supplied repair and maintenance services to M/s Sha Ltd., which is a SEZ unit in Kerala. The aforesaid supply shall be an inter-State supply and shall be subject to IGST even though both the units are located in the State of Kerala.

Solution:

Supply of services by a SEZ unit to the recipient of service shall be treated to be a supply of service in the course of inter-State trade or commerce even if both are located in the same State.

It is important to note Section 16 of the IGST Act, supplies to SEZ unit is treated as zero rated supply.

Conclusion: IGST – Levy

IGST – Levy on supply of good:

Supply of goods in the course of inter-State trade or commerce means any supply where:

- the location of the supplier

  and

- the place of supply is in different States

Deemed Inter State Supply:

- A supply of goods and/or services in the course of import
- An export of goods and/or services

The Place of Supply of Services where location of supplier and recipient is in India [Section 12 of IGST Act, 2017]

To know the Place of Supply for Services the following two concepts are very important (Section 12(1) of the IGST Act, 2017):

1. Location of the recipient of services.
2. Location of the supplier of services

Location of the recipient of services:

Section 2(14) of IGST Act, the definition of location of recipient of service divided into 4 sub clauses:

Recipient of service		Location of the recipient of service
(a)	Services received at place of business where registration is obtained.	Location of such place of business
(b)	Services received at fixed establishment	Location of such fixed establishment
(c)	Services received at more than one establishment	The location of establishment most directly concerned with the receipt of the supply
(d)	Services received at other than above.	The location of the usual place of residence of the recipient.

Location of the Supplier of service

Section 2(15) of IGST Act, the definition of location of supplier of service divided into 4 sub clauses:

Supplier of service	Location of the supplier of service
(a) Supply is made from a place of business where registration is obtained.	Location of such place of business
(b) Supply is made from a fixed establishment	Location of such fixed establishment
(c) Supply is made from more than one establishment	The location of establishment most directly concerned with the provision of the supply
(d) Services supplied at other than above.	The location of the usual place of residence of the supplier.

Illustration 19

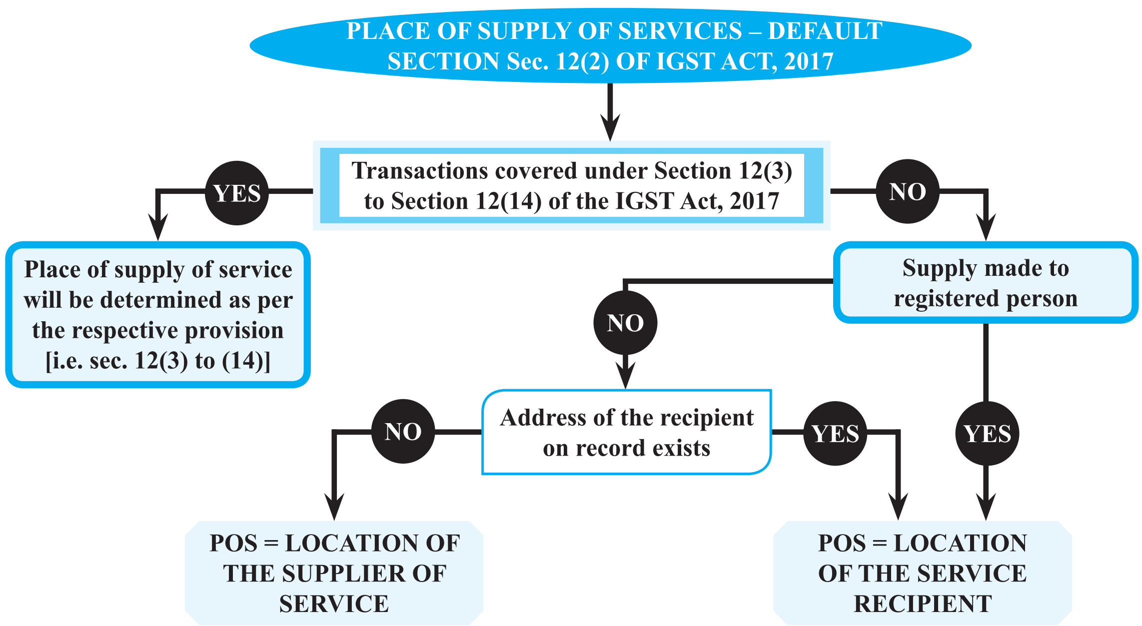
M/s X Ltd. has entered into agreement with M/s Y Ltd to maintain air conditioners. M/s. X Ltd has air conditioners located in Telangana, Andhra Pradesh and Tamil Nadu. M/s Y Ltd. has appointed sub-contractors for the purpose of providing the services of maintenance of air conditioners installed in Telangana, Andhra Pradesh and Tamil Nadu. The maintenance and repair work undertaken by the sub-contractor. Who is a supplier of service in the given case.

Solution:

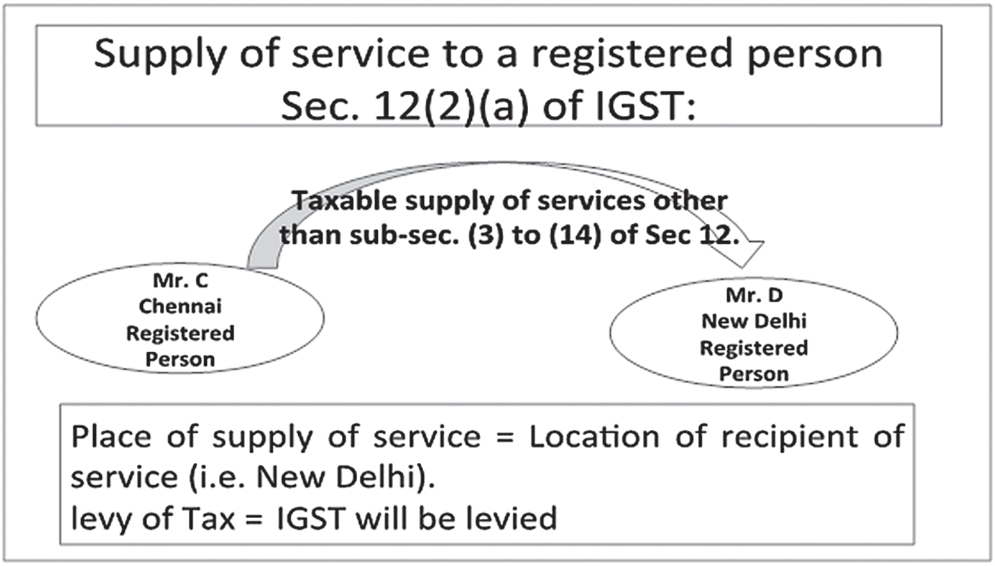
Supplier of service is M/s Y Ltd., even though the services are actually provided by the sub-contractors on behalf of M/s Y Ltd.

Place of supply of services — Default Section

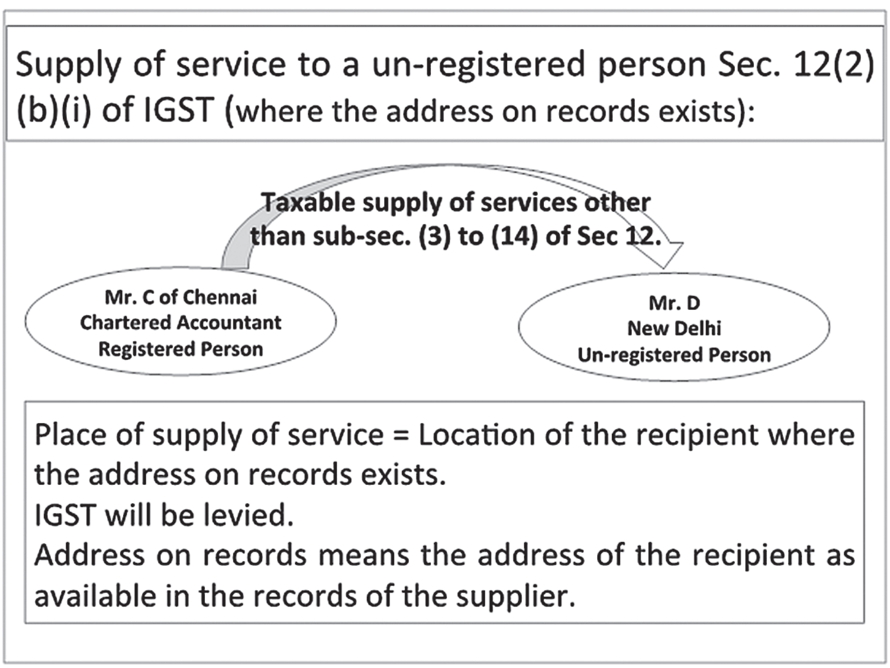
It means, Section 12(2) is applicable only when Section 12(3) to Section 12(14) is not applicable.



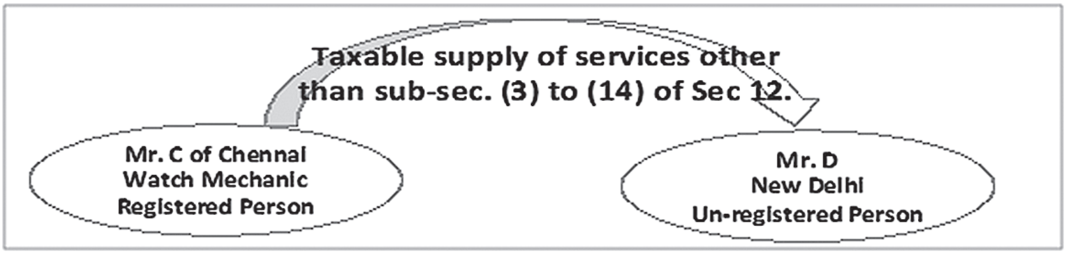
Supply of service to a registered person [Section 12(2)(a) of IGST]



Supply of service to an unregistered person [Section 12(2)(b)(i) of IGST (where the address on records exists)]



Supply of service to an unregistered person [Section 12(2)(b)(ii) of IGST (where the address on records NOT exists)]



Place of supply of service = Chennai

CGST & SGST will be levied.

Illustration 20

Lucky Singh, a resident of Noida, U.P., went to Himachal Pradesh for a family vacation via Delhi-Chandigarh-Himachal Pradesh in his own car. After entering Chandigarh, his car broke down due to some technical issue. He called 'ONROARDS' - an emergency roadside car assistance company (registered under GST in Delhi) to repair the car. The car was repaired by the staff of 'ONROARDS'. The value of supply amounted to ₹80,000 (being labour charges ₹50,000 and spares ₹30,000). The bill was supposed to be generated online though the server, but due to some technical issue, it was not so generated.

Determine the place of supply in the given case.

Solution:

Place of supply = Delhi

Place of supply of services directly in relation to an immovable property [Section 12(3)(a) of IGST Act, 2017]

Sl. No.	Nature of service		Place of supply of service
1	Architects	Any services ancillary to these services Section 12(3)(d)	Immovable property located or intended to be located India: • Location of Immovable property Outside India: • Location of the recipient.
2	Interior decorator		
3	Surveyors		
4	Engineers and other related exports or estate agents		
5	Any service provided by way of grant of rights to use immovable property		
6	for carrying out or co-ordination of construction work		

Illustration 21

Mr. X located in Chennai engaged the services of Mr. Y an Architect in Chennai. Mr. X requests him to make design of residential complex to be constructed in Cochin, Kerala. Mr. Y provided drawing and design services in relation to immovable property located at Cochin.

Find the place of supply of service and levy of tax?

Solution:

Place of supply of service = location or intended to be locate the property (i.e. Cochin)

IGST is liable to pay by Mr. Y

Place of supply of services by way of lodging accommodation by a [Section 12(3)(b) of IGST Act, 2017]

Sl. No.	Nature of service		Place of supply of service
1	Hotel	any services ancillary to these services Section 12(3)(d)	Property located or intended to be located in India: • Location of Immovable property or boat or vessel. Outside India: • Location of the recipient.
2	Inn		
3	Guest house		
4	Home stay		
5	Club or campsite by whatever name called and including a houseboat or any other vessel		

Illustration 22

Mr. Rohit registered person in Jaipur. He went to Kolkata and stays in a Taj hotel at Kolkata. He also availed Beauty treatment services at hotel.

Find the place of supply of service and tax liability in the hands of Taj hotel.

Solution:

Place of supply of service = Kolkata place of supply of service is same for accommodation service by hotel as well as Beauty treatment as it is an ancillary service to the accommodation.

CGST & SGST will be levied.

Place of supply of services by way of accommodation in any immovable property for organizing [Section 12(3)(c) of IGST Act, 2017]:

Sl. No.	Nature of service		Place of supply of service
1	Any marriage or reception or matters related thereto,	any services ancillary to these services Section 12(3)(d)	Property located or intended to be located in India: • Location of Immovable property. Outside India: • Location of the recipient.
2	Official, social, cultural, religious or business function including services provided in relation to such function at such property		

Explanation to Section 12(3)(a) to (d) of IGST:

If the immovable property or boat or vessel is located in more than one State or Union Territory, the supply of service shall be treated as made in each of the respective States or Union Territories in proportion to value of services separately collected or determined in terms of the contract or agreement.

If there is no such contract or agreement, the value of service between two States or Union Territories shall be determined on reasonable basis as may be provided.

Place of supply of services in relation to [Section 12(4) of IGST Act, 2017]:

Sl. No.	Nature of service	Place of supply of service
1	Restaurant	Location where the services are actually performed.
2	Catering services	
3	Personal grooming	
4	Fitness services	
5	Beauty treatment services	
6	Health services including cosmetic and plastic surgery	

Illustration 23

Mr. Navab a person staying at Dubai, trained for the purpose of grooming of horse in Chennai. Find the place of supply of service?

Solution:

Place of supply of service = Chennai

As the horses are groomed in Chennai.

Illustration 24

M/s Cut Ltd., provider of hair cutting saloon services, located in Mumbai. Mr. M.S. Dhoni came from Jharkhand to Mumbai after appointment for haircut. The services are provided in Mumbai. Find the place of supply of service and tax liability in the hands of M/s Cut Ltd.

Solution:

Place of supply of service = Mumbai

M/s Cut Ltd is liable to pay CGST and SGST.

Place of supply of services in relation to training and performance appraisal [Section 12(5) of IGST Act, 2017]:

Sl. No.	Nature of service	Place of supply of service
1	Services in relation to training and performance appraisal.	Provided to a registered person: • Location of recipient of Service Provided to a un-registered person: • Location where the services are actually performed.

Illustration 25

Mr. A located at Kolkata provides training at Kolkata to employees of M/s Infosys Ltd, which is registered at Mumbai.

Find the place of supply of service and GST liability in the following two cases?

Case 1: Infosys is registered person under GST

Case 2: Infosys is not registered person under GST

Solution:

Case 1: If Infosys Ltd is a registered person

POS will be Mumbai.

Mr. A. is liable to pay IGST.

Case 2: If Infosys Ltd is not a registered than POS will be Kolkata.

Mr. A. liable to pay CGST and SGST.

Illustration 26

R Academy registered person provides commercial training and coaching services to budding CMA's at Chennai. Many students (who are unregistered persons) from Telangana, Andhra Pradesh, Tamil Nadu, Karnataka and Kerala came and stay in Chennai for the purpose of undergoing training in the R Academy. Find the Place of supply of service.

Solution:

Place of supply of service = Chennai

As the training is performed in Chennai.

R Academy is liable to pay CGST and SGST.

Illustration 27

X Ltd. being a registered person located in Hyderabad hires Mr. Y who is located in Chennai for appraisal performance of senior employees of their company. Mr. Y visits Hyderabad to evaluate the performance of the senior employees.

(a) Find the Place of supply of service?

(b) What would be the place of supply of service if some of the selected employees and relevant papers are sent to Chennai for evaluation where X Ltd. is un-registered person.

Solution:

(a) POS = Hyderabad (i.e. Location of recipient of Service, since, provided to a registered person)

Mr. Y is liable to pay IGST.

(b) POS = Chennai (i.e. Location where the services are actually performed, since, provided to un-registered person)

Mr. Y is liable to pay CGST and SGST.

Illustration 28

Mr. Remo (located in Mumbai) a Choreographer, being a judge appraises the performance of the participants in Dance + auditions. He went to Bengaluru to appraise the performance of dance show competition of various participants.

Find the place of supply of service.

Solution:

POS = Bengaluru

(i.e. where the appraisal of performance has been made, since, recipients are un-registered persons)

Place of supply of services provided by way of admission to a [Section 12(6) of IGST Act, 2017]

<table>
<tr><th>Sl. No.</th><th colspan="2">Nature of service</th><th>Place of supply of service</th></tr>
<tr><td>1</td><td>Cultural</td><td rowspan="6">Services ancillary thereto</td><td rowspan="6">Where the event is actually held or
where the park or such other place is located.</td></tr>
<tr><td>2</td><td>Artistic</td></tr>
<tr><td>3</td><td>Sporting</td></tr>
<tr><td>4</td><td>Scientific</td></tr>
<tr><td>5</td><td>Educational</td></tr>
<tr><td>6</td><td>Entertainment event or Amusement park or any other place.</td></tr>
</table>

Illustration 29

Board of Control for Cricket in India located at Mumbai, sold tickets on-line for IPL match, is going to conduct at Chepauk Stadium, Chennai. However, finally match conduct at Mumbai. Find the place of supply of service of admission to sporting event?

Solution:

POS = Mumbai

BCCI is liable to pay CGST and SGST.

Place of supply of services provided by way of organization of a [Section 12(7) of IGST Act, 2017]

<table>
<tr><th>Sl. No.</th><th colspan="2">Nature of service</th><th>Place of supply of service</th></tr>
<tr><td>1</td><td>Cultural</td><td rowspan="6">Services ancillary thereto or assigning of sponsorship to such events.</td><td rowspan="6">Provided to a registered person:
• Location of recipient of Service
Provided to an un-registered person:
• Location where the event is actually held and
• if the event is held outside India, the place of supply shall be the location of the recipient.</td></tr>
<tr><td>2</td><td>Artistic</td></tr>
<tr><td>3</td><td>Sporting</td></tr>
<tr><td>4</td><td>Scientific</td></tr>
<tr><td>5</td><td>Educational</td></tr>
<tr><td>6</td><td>Entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events</td></tr>
</table>

Explanation to Section 12(7)(a) & (b) of IGST:

Where the event is held in more than one State or Union Territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of services shall be taken as being in each of the respective States or Union Territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Illustration 30

Mr. X an event organiser, located in Chennai received an order from M/s Taxman publications, Mumbai to conduct a book fair at Chennai. Find the Place of supply of service and GST in the following two cases:

Case 1: Taxman publications is a registered person.

Case 2: Taxman publications is a un-registered person.

Solution:

Case 1: Mumbai (i.e. location of recipient of service)

Mr. X of Chennai is liable to pay IGST.

Case 2: Chennai (i.e. location where the event is actually held)

Mr. X of Chennai is liable to pay CGST & SGST.

Illustration 31

Mr. Kapil Sharma, a Jalandhar based comedian, hosted a comedy show at Singapore on birthday occasion of Mumbai based actor Mr. Shah Rukh Khan's son Abram.

Solution:

POS = Mumbai (i.e. location of service recipient).

GST = IGST is liable to pay by Mr. Kapil Sharma

Illustration 32

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor namely, Chennai Silks, Chennai, is a registered person.

Solution:

POS = Chennai (i.e. location of service recipient)

IGST is liable to pay by Mr. D of Delhi

Illustration 33

Mr. C of Chennai being an event organizer hosted an exhibition at Dhaka to exhibit the products of exhibitor (namely Chennai Silks) located Chennai.

Solution:

POS = Chennai (i.e. location of service recipient)

GST = CGST and SGST is not liable to pay by Mr. C

Note: Services by an organiser to any person in respect of a business exhibition held outside India is exempted from GST (Entry No. 52).

Illustration 34

M/s Kalyan Pvt. Ltd. is an event management company is located in Chennai. Mr. Raj located in Jaipur hires the services of M/s Kalyan Pvt. Ltd., for organizing marriage function of his son in Taj Coromandel, Chennai. Mr. Raj is not a registered person. Find the place of supply of service and GST liability?

Solution:

POS = Chennai

(i.e. where the event is actually held).

M/s Kalyan Pvt. Ltd. of Chennai is liable to pay CSGT & SGST.

Illustration 35

The Times Group being an event organizer located at New Delhi organized Miss India 2017 beauty pageant in India in the following Cities for M/s Femina Miss India a registered person located in Mumbai:

City	No. of Days	Fee in ₹
New Delhi	12	12 crores
Chennai	18	18 crores
Mumbai	20	20 crores
Total	50	50 crores

Find the place of supply of service if contract specifies clear details.

Find the place of supply of service if contract specifies lump sum amount of ₹48 crores.

Solution:

The place of supply of service if contract specifies clear details:

City	No. of Days	₹in crore	Location of supplier of service	Place of supply of service = where the respective event is held	GST
New Delhi	12	12	New Delhi	New Delhi	CGST & SGST
Chennai	18	18	New Delhi	Chennai	IGST
Mumbai	20	20	New Delhi	Mumbai	IGST
Total	50	50			

The place of supply of service if contract specifies lump sum amount:

City	No. of Days	₹in crore	Location of supplier of service	Place of supply of service = where the respective event is held.	GST
New Delhi	12	11.52	New Delhi	New Delhi	CGST & SGST
Chennai	18	17.28	New Delhi	Chennai	IGST

City	No. of Days	₹in crore	Location of supplier of service	Place of supply of service = where the respective event is held.	GST
Mumbai	20	19.20	New Delhi	Mumbai	IGST
Total	50	48.00			

Place of supply of services by way of Transportation of goods including by mail or courier [Section 12(8) of IGST Act, 2017]

Sl. No.	Nature of service	Place of supply of service
1	Services by way of Transportation of goods including by mail or courier	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Location at which such goods are handed over for their transportation. **w.e.f. 1-2-2019:** Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.

Section 2(52) of CGST, Goods means:

Every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply or under a contract of supply.

Illustration 36

M/s Navatha a transporter registered under GST, located in Vijayawada. M/s C Ltd. of Chennai registered under GST, received services from M/s Navatha for transport of goods from its warehouse in Vijayawada to Guntur. M/s Navatha delivered goods at Guntur.

Find the place of supply of service and GST?

Whether your answer is different, if M/s C Ltd. of Chennai is not a registered person under GST?

Note: ITC availed by M/s Navatha.

Solution:

If the recipient is registered person:

POS = Chennai (i.e. location of recipient).

M/s Navatha of Vijayawada is liable to pay IGST.

If the recipient is not a registered person:

POS = Vijayawada (i.e. Location at which such goods are handed over for their transportation).

M/s Navatha of Vijayawada is liable to pay CGST & SGST.

Illustration 37

M/s DHL courier registered under GST and located in Mumbai, provided transportation of documents like Cheques, promissory notes, pay orders (which cannot be considered as goods) belonging to Mr. C of Chennai, from Mumbai to Chennai.

Find the place of supply of services in the following independent cases:

(a) Mr. C of Chennai is a registered person under GST.

(b) Mr. C of Chennai is an un-registered person under GST, however his address is available in the books of M/s DHL.

(c) Mr. C of Chennai is an un-registered person under GST, however his address is not available in the books of M/s DHL.

Solution:

Place of supply of services is as per section 12(2) but not under section 12(8) of IGST.

(a) POS = Chennai (i.e. location of recipient of service)

(b) POS = Chennai (i.e. location of recipient of service)

(c) POS = Mumbai (i.e. location of supplier of service)

Note: Cheques, promissory notes, pay orders cannot be considered as goods.

Place of Supply of passenger transportation service to [Section 12(9) of IGST]

Sl. No.	Nature of service	Place of supply of service
1	Passenger transportation service. Including: Rail, Mono Rail, Metro Rail, Road, Air, Vessel, boat, Cycle rickshaw, Bullock cart, Camel etc.	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Place where the passenger embarks on the continuous journey.
Sl. No.	**Nature of service**	**Place of supply of service [refer to Section 12(2) of IGST]**
2	Right to passage is given for future use and point of embarkation is not known at the time of issue of such right	Provided to a registered person: • Location of recipient of Service. Provided to a un-registered person: • Location of recipient when address on record is available. • Location of supplier in other cases

Section 2(3) of IGST Act, 2017 defines Continuous journey:

Means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves **no stopover** between any of the legs of the journey for which one or more separate tickets or invoices are issued.

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

Illustration 38

Mr. Ram working in Infosys Company having office in Bengaluru is registered under GST. Mr. Ram purchased the ticket from Hyderabad for transportation passenger by Air from Hyderabad to Chennai. Mr. Ram discloses the name of the organization and its registration number and the place where the organization is registered. Supplier of service is located at Hyderabad.

Find the following

(a) Place of supply of service and GST liability?

(b) Whether your answer is different if Mr. Ram is not disclosed the name of the organization and its registration number?

Solution:

(a) POS = Bengaluru (i.e. location of recipient of service)

GST = IGST is liable to pay by Air Travel Operator

(b) POS = Hyderabad (i.e. Place where the passenger embarks on the continuous journey)

GST = CGST & SGST is liable to pay by Air Travel Operator

Illustration 39

Jet Air registered under GST and located in Mumbai operates flight from Delhi-Dubai-London-Dubai-Delhi. Mr. Rafi who is unregistered person, purchase air ticket for Delhi-London. Two tickets are issued to him showing Delhi-Dubai with a halt at Dubai for 5 hours and Dubai-London.

Find the Place of supply of service and GST liability?

Solution:

POS = Delhi (i.e. place of embark)

GST = Jet Air is liable to pay IGST for the entire value of air fare.

Note: since, it is continuous journey, place of embarking of passenger who is unregistered person is relevant.

Illustration 40

Jet Airways registered under GST and located in Mumbai operates flight from Mumbai-Delhi-Mumbai. Mr. Rafi who is unregistered person, purchase air ticket for Mumbai-Delhi-Mumbai. Only one ticket is issued to him showing both the route.

Find the Place of supply of service and GST liability?

Solution:

POS = Mumbai (i.e. Mumbai-Delhi, place of embark is relevant)

GST = Jet Airways is liable to pay CGST & SGST.

POS = Delhi (i.e. Delhi-Mumbai, place of embark is relevant)

GST = Jet Airways is liable to pay IGST.

Note:

(i) As per explanation, Mumbai-Delhi and Delhi-Mumbai journey will be considered two separate journeys.

(ii) If there is stopover during the journey, the journey will not be considered as continuous journey.

Place of Supply of service on board a conveyance [Section 12(10) of IGST]:

Sl. No.	Nature of service	Place of supply of service
1	Vessel	Location of the first scheduled point of departure of that conveyance for the journey.
2	Air craft	
3	Train	
4	Motor vehicle.	

Illustration 41

A movie on demand is provided as on board entertainment during the Delhi-Chennai leg of a Dubai-Delhi-Chennai flight.

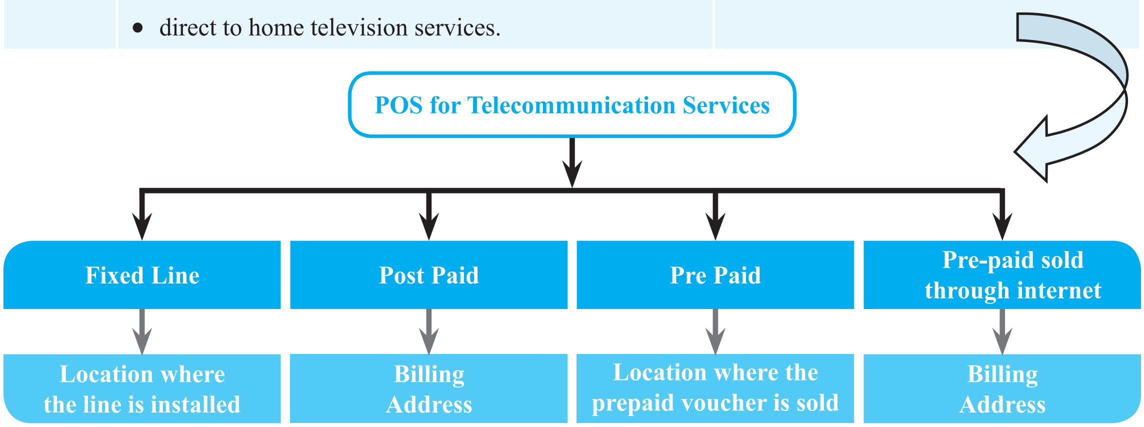
Find the place of supply of service?

Solution:

POS = Dubai (outside the taxable territory, hence not liable to GST).

Place of supply of telecommunication services [Section 12(11) of IGST]

Sl. No.	Nature of service	Place of supply of service
1	including • data transfer, broadcasting, • cable and • direct to home television services.	



Where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of service.

Illustration 42

M/s Air Call registered under GST and located in Chennai. M/s Air Call has appointed Mr. C as a selling agent for supplying pre-payment voucher to the subscriber. Find the Place of supply of service and GST liability?

Solution:

POS = Chennai (i.e. Address of the selling agent on the record of M/s Air Call).

GST = CGST & SGST is liable to pay by M/s Air Call.

Place of Supply of banking and NBFC service including Stock broking services [Section 12(12) of IGST]

Sl. No.	Nature of service	Place of supply of service
1	Banking and NBFC service including Stock broking services	• Location of recipient of Service on the records of the supplier of service. **Otherwise:** • Location of supplier of service.

Illustration 43

Mr. Harsha being a registered stock broker at BSE, located in Mumbai. He has clients in Chennai, Kolkata, Bengaluru. He purchases and sells shares of clients located in Chennai, Kolkata, Bengaluru. Find the place of supply of service and GST liability?

Solution:

POS = Chennai, Kolkata & Bengaluru.

GST = IGST is liable to pay by Mr. Harsha.

Place of supply of insurance services [Section 12(13) of IGST]

Sl. No.	Nature of service	Place of supply of service
1	Insurance services	To a registered person • Location of recipient of Service. To a person other than registered person • Location of the recipient of services on the records of the supplier of service.

Illustration 44

M/s X Ltd. has factory in Cochin, Chennai, Vijayawada and Hyderabad and office in Bengaluru. M/s X Ltd obtains insurance for the assets located in Cochin, Chennai, Vijayawada, Hyderabad and Bengaluru from insurance company located at Delhi. Premium receipt issued by the insurance company to the Bengaluru office.

Find the place of supply of service and GST liability?

Solution:

POS = Bengaluru

GST = IGST is liable to pay by the insurance company.

Place of supply of advertisement services to specified persons [Section 12(14) of IGST Act, 2017]

Sl. No.	Nature of service	Place of supply of service
1	Advertisement services to • Central Government • State Government • Statutory Body • Local Authority	Located in each of such states and the value of such supplies specific to each state shall be in proportion to amount attributable to service provided by way of dissemination in the respective states.

Illustration 45

The Government has hired 200 hoardings in Lakshadweep and 175 hoardings in Chennai for providing advertisement of Gas subsidy and contract contains the consideration for these hoardings separately. Hoarding services supplied by M/s X Ltd. located in Hyderabad.

Find the place of supply of service and GST

Solution:

POS = Lakshadweep & Chennai

GST = IGST is liable to pay by M/s X Ltd.

w.e.f. 1st January 2019, Integrated Goods and Services Tax (Amendment) Rules, 2018

Central Government vide N. No. **04/2018-Integrated Tax, dated 31st December, 2018** notified the following rules as Integrated Goods and Services Tax (Amendment) Rules, 2018:—

IGST Rules, 2017:

A new **rule 3** has been inserted in IGST Rules to provide a mechanism to compute the proportionate value of advertisement services attributable to different States or Union territories **in the absence of any contract** between the supplier of service and recipient of services.

Sl. No.	Advertisement services	Basis of apportion
1	Newspapers and publications	No. of editions in each State/UT
2	Pamphlets, leaflets, diaries, calendars, T -shirts, etc.	No. of pamphlets or leaflets or diaries or calendars or T-Shirts distributed in each State/UT
3.	Hoardings other than those on trains.	No. of hoarding located in each State/UT
4.	Advertisements placed on trains	Length of the track in each State/UT where the train travelled.
5	Advertisements on the back of utility bills of oil and gas companies, etc.,	No. of consumers having billing addresses in such State/UT

Sl. No.	Advertisement services	Basis of apportion
6	Advertisements on railway tickets	Ratio of the number of Railway Stations in each State or Union territory
7.	Advertisements over radio stations	The release order issued by Govt. Agency will show the breakup of the amount which is to be paid to each of these radio stations.
8.	Advertisement on television channels	On the basis of the viewership of such channel in such State/UT shall be calculated in the following manner, namely:- (i) the channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council; (ii) the figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter; (iii) where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures; (iv) the ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory. **Example 12:** Govt. Agency issues a release order with QR channel for telecasting an advertisement relating to the 'Pradhan Mantri Kaushal Vikas Yojana' in the month of November 2017. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. Let us assume it is 1,00,000 for Delhi and 2,00,000 for the region comprising of Uttar Pradesh and Uttarakhand and 1,00,000 for the region comprising of Bihar and Jharkhand. QR will ascertain the viewership figures for their channel in the last week of September 2017 from the Broadcast Audience Research Council. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9:1. When this ratio is applied to the viewership figures of 2,00,000 for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to 1,80,000 and 20,000 respectively. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of 1,00,000 for this region, the viewership figure for Bihar and Jharkhand works out to 80,000 and 20,000 respectively. Thus, if the total amount payable to QR by Govt. Agency is ₹20,00,000, the State-wise breakup is ₹5,00,000 (Delhi), ₹9,00,000 (Uttar Pradesh)

Sl. No.	Advertisement services	Basis of apportion
		₹1,00,000 (Uttarakhand), ₹4,00,000 (Bihar) and ₹1,00,000 (Jharkhand). Separate invoices will have to be issued State-wise and Union territory-wise by QR to Govt. Agency indicating the value pertaining to that State or Union territory.
9.	Advertisements at cinema halls	No. of cinema halls or no. of screens in a multiplex. **Example 56:** Govt. Agency commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the states of Tamil Nadu and Telangana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State-wise and Union territory-wise by ST to Govt. Agency indicating the value pertaining to that State.
10.	Advertisements over internet,	On the basis of the internet subscribers in such State or Union territory
11.	Advertisements through short messaging service (SMS)	On the basis of the telecommunication (hereinafter referred to as telecom) subscribers in such State or Union territory

Illustration 46

Govt. Agency issues a release order with QR channel (located in Delhi) for telecasting an advertisement relating to the 'Pradhan Mantri Kaushal Vikas Yojana' in the month of November 2017. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand.

Viewership figures for their channel in the last week of September 2017 from the Broadcast Audience Research Council is as follows:

Number of viewers 1,00,000 for Delhi and 2,00,000 for the region comprising of Uttar Pradesh and Uttarakhand and 1,00,000 for the region comprising of Bihar and Jharkhand.

The ratio of the populations of Uttar Pradesh and Uttarakhand is 9:1 & for Bihar and Jharkhand is 4:1.

Total amount payable to QR by Govt. Agency is ₹20,00,000.

Applicable rate of GST 18%

Find the value of supply and place of supply for each State along with CGST & SGST or IGST payable by QR for the month of November 2017.

Solution: **(value in ₹)**

State/UT	Value of supply	Place of supply	CGST & SGST	IGST
Delhi	5,00,000	Delhi	90,000	NIL
Uttar Pradesh	9,00,000	Uttar Pradesh	NIL	1,62,000

State/UT	Value of supply	Place of supply	CGST & SGST	IGST
Uttarakhand	1,00,000	Uttarakhand	NIL	18,000
Bihar	4,00,000	Bihar	NIL	72,000
Jharkhand	1,00,000	Jharkhand	NIL	18,000

1. **Rule 3 in clause (h):**

   The words "**the service shall be deemed to have been provided all over India and**" inserted after the words "in the case of advertisements over internet" to clarify that the services provided over internet is not specific to 1 or more State or Union territory and shall be deemed to be provided all over India.

2. **Insertion of Rule 4:**

   The place of supply in case of the supply of services attributable to different States or Union territories, under sub section (3) of section 12 of the IGST Act, 2017 shall be:—

   1. Where such immovable property or boat or vessel is located in more than one State or Union territory- each of the respective States or Union territories and
   2. In the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory to be determined in the following manner namely:-

      (i) Services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called and services ancillary to such services:

      1. Where such property is a single property located in two or more contiguous States or Union territories or both: the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.

      Example 13

      There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

      2. Cases except where such property is a single property located in two or more contiguous States or Union territories or both: the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property.

      Example 14

      A hotel chain X charges a consolidt. sum of ₹30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as ₹20,000/- in the Union territory of Delhi and ₹10,000/- in the State of Uttar Pradesh.

      (ii) All other services in relation to immovable property including services by way of accommodation

in any immovable property for organising any marriage or reception etc.: the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory

(iii) **services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services:** the supply shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, determined on the basis of a declaration made to the effect by the service provider.

Example 15

A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka inasmuch as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.

3. Insertion of Rule 5:

The place of supply in case of supply of services attributable to different States or Union territories, under subsection (7) of section 12 of the said Act, in the case of—

1. services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, including supply of services in relation to a conference, fair exhibition, celebration or similar events; or
2. services ancillary to the organisation of any such events or assigning of sponsorship to such events,

where the services are supplied to a person other than a registered person, the event is held in India in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by application of the generally accepted accounting principles.

Example 16

An event management company E has to organise some promotional events in States S1 and S2 for a recipient R. 3 events are to be organised in S1 and 2 in S2. They charge a consolidt. amount of ₹10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as ₹6,00,000/- in S1 and ₹4,00,000/- in S2.

4. Insertion of Rule 6: Supply under section 12(11) of the IGST Act

In the case of supply of services relating to a leased circuit, where the leased circuit is installed in more than one State or Union territory and a consolidated. amount is charged for supply of such services, shall be taken as being in **each of the respective States or Union territories**, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely:—

1. The number of points in a circuit shall be determined in the following manner:

(i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;

(ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;

2. the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory.

Example 17

A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.

Example 18

A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

Example 19

A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

5. Insertion of Rule 7

In the case of services supplied in respect of goods which are required to be made physically available by the recipient to the supplier, or to a person acting on behalf of the supplier, or in the case of services supplied to an individual, represented either as the recipient or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, shall be taken as being in each of the respective States or Union territories, and the proportion of value attributable to each such State and Union territory in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case may be, shall be determined in the following manner, namely:-

1. in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed;
2. in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;
3. in the case of services supplied to individuals, by applying the generally accepted accounting principles.

Example 20

A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.

Example 21

A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union Territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

Example 22

A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

6. Insertion of Rule 8

In case of supply of services directly in relation to an immovable property, including services supplied by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 4, mutatis mutandis.

7. Insertion of Rule 9

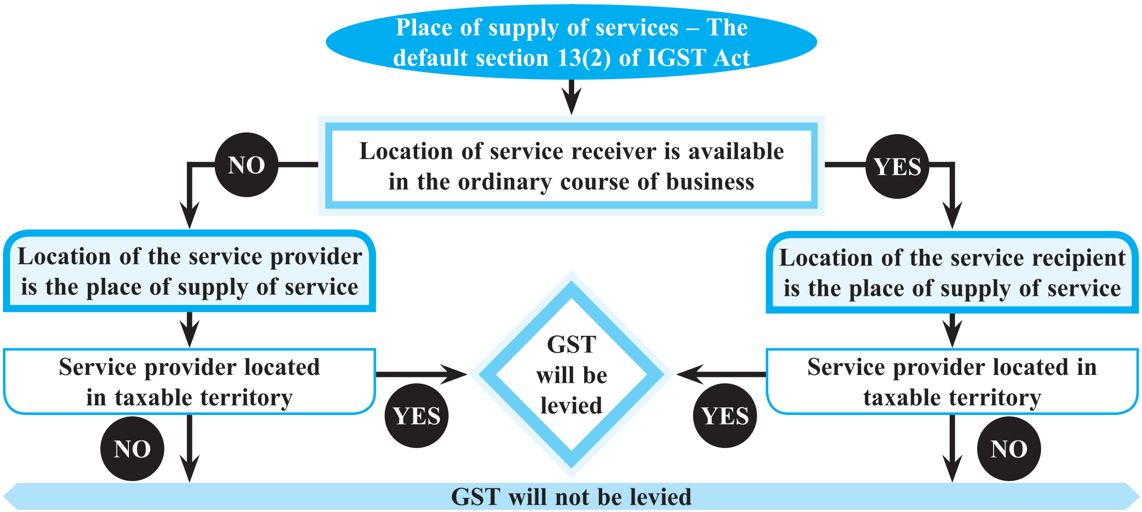
In case of supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, where the location of the supplier or the location of the recipient is outside India, and where such services are provided in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 5, mutatis mutandis".

Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Section 13(1) of the IGST Act, 2017]

Services are grouped into—

- Default Section 13(2): It is applicable only when sub-section (3) to (13) of section 13 are not applicable.
- Specific Section 13(3) to 13(13)

Default [Section 13(2)]

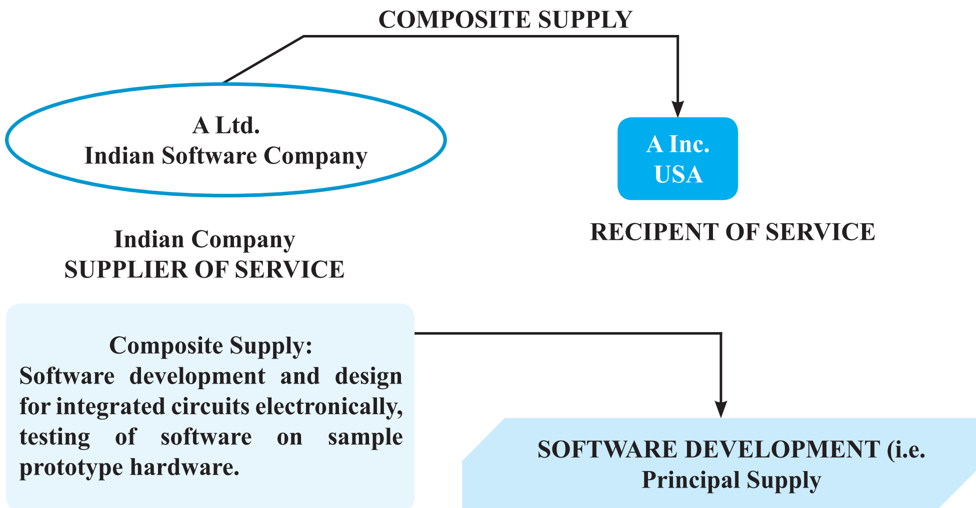


Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry (CBIC Circular No. 118/37/2019-GST, dated 11th October, 2019.)

In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.

Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware/test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

Software/Design services related to Electronics Semi-conductor and Design manufacturing (ESDM) industry:



POS = LOCATION OF RECIPIEN OF SERVICE [Sec. 12(2)] of the IGST Act, 2017

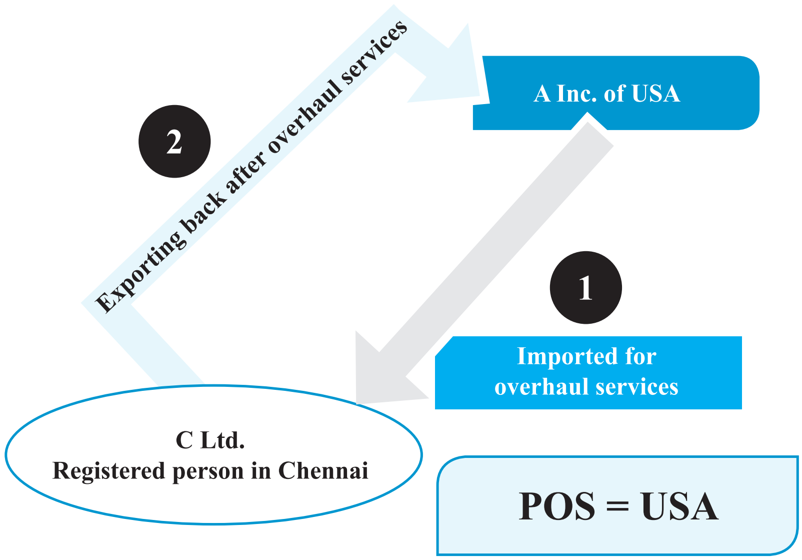
Clarification in respect of determination of place of supply in following cases: -
Vide CBIC Circular No. 103/22/2019 GST dated 28.06.2019

Various services are being provided by the port authorities to its clients in relation to cargo handling:

Place of supply: As per Section 12(2) or Section 13(2) of IGST Act, 2017.
Notification No. 2/2020 IT dated 26.03.2020

W.E.F 01.04.2020, B2B maintenance, repair and overhaul services have been notified as the services for which the place of supply shall be the place of effective use and enjoyment of a service as given under:

Description of services or circumstances	Place of supply
Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business	The place of supply of services shall be the location of the recipient of service



Notification No. 3/2021 IT dt. 02.06.2021:

The place of supply in respect of B2B supply of maintenance, repair or overhaul service (hereinafter referred to as MRO service) in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business shall be the location of the recipient of service.

Example 23

ZEENA and Co., being an Idian shipping company has received MRO service in respect of a ship/vessel from a foreign supplier namely M/s M Inc. of Mexico. Place of supply of such service is in India (i.e., location of recipient being in India) and said service would qualify as an 'import of service'. Thereby, GST is payable under Reverse Charge on these services.

Place of supply services on Goods [Section 13(3)(a) of IGST]

S. No.	Nature of service	Place of supply of service
1	"in respect of goods that are made physically available, by the receiver to the service provider in order to provide the service"	location where the services are actually performed.
2	services provided by way of electronic means in relation to tangible goods,	the actual location of goods.

TAXABLE TERRITORY	NON-TAXABLE TERRITORY	TAXABLE TERRITORY w.e.f 8-7-2017
POS = CHENNAI	POS = J&K	

LOCATED AT CHENNAI

LOCATED AT J&K

SONY MUSIC COMPANY (LONDON), UNDERTAKING A TOUR IN TWO INDIAN CITIES (NAMELY MUMBAI & CHENNAI), OBTAINS THE SERVICES OF AN INDIAN CARGO HANDLING FIRM TO MOVE ITS SOUND AND MUSICAL EQUIPMENTS BETWEEN THE TWO CITIES.

Place of supply of service shall be the location where the services are actually performed. THIS SERVICE IS IN THE TAXABLE TERRITORY (i.e. Chennai) not withstanding the location of the service receiver.

MUSICAL INSTRUMENTS TRANSPORTED FROM MUMBAI TO CHENNAI by Air

Spice jet company in India gets its aircraft repaired at Chennai Airport, by enginers deputed by Airbus, France an overseas firm who travel from France to Chennai for the purpose.

- The place of supply of this service is in the taxable territory (i.e. Chennai).
- This service is taxable in the hands of Airbus, France (i.e. non-resident taxable person)

Section 13(3)(a) of IGST Act, 2017 is not applicable:

If the following two conditions are satisfied then section 13(2) of IGST Act, 2017 is applicable:

(i) If goods are to be temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process

(ii) without being put to any other use in India, than that which is required for such repairs or treatment or process.

Illustration 48

ABC Fabricators has its factory located in Gujarat. It has temporarily imported certain goods from its customer located in China and re-exported them to China after carrying out the necessary repairs without putting them to any use in Gujarat.

Examine what would be the place of provision of service in the given case with reference to the Place of Supply of Services.

Will your answer be different if the repaired goods are re-exported after being put to use in Gujarat for some time?

Solution:

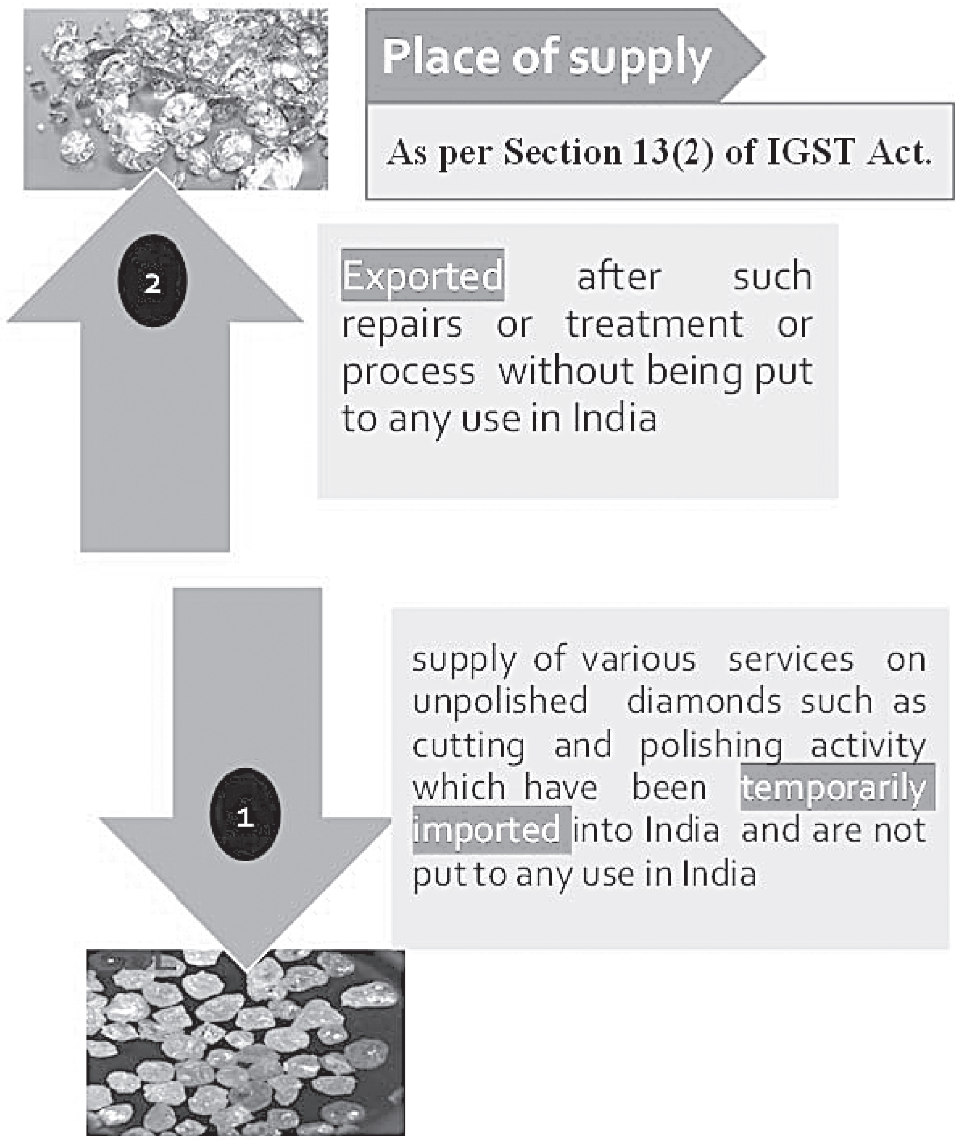
In the given case, since goods have been temporarily imported by ABC Fabricators and have been re-exported after the repairs without being put to any use in Gujarat (taxable territory), place of provision of repair services carried out by ABC Fabricators will be determined by section 13(2) of IGST Act, 2017. Consequently, the place of supply of service will be the location of service receiver, viz. China (non-taxable territory).

However, if repaired goods are re-exported after being put to use, the place of provision of service will be determined according to section 13(3)(a) of IGST Act, 2017, if the use to which such goods are put to is not required for such repair.

Therefore, in such a case, the place of supply of service will be the location where the service is actually performed, which in the given case is Gujarat.

However, if the use is of such nature, which is necessary for carrying out the repairs, the place of supply of service will again be determined as per section 13(2) of IGST Act, 2017.

Clarification in respect of determination of place of supply in following cases: -
Vide CBIC Circular No. 103/22/2019 GST dated 28.06.2019



Place of supply services on Individual [Section 13(3)(b) of IGST]

S. No.	Nature of service	Place of supply of service
1	Services supplied to an Individual, represented either as the service receiver or a person acting on behalf of the receiver, which require physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.	location where the services are actually performed.

Illustration 49

Famous actress Aish went to London and avail cosmetic or plastic surgery services for her nose. Find the place of supply of service. GST is liable to pay?

Solution:

Place of supply = London. GST is not liable to pay.

Place of supply of services supplied directly in relation to an IMMOVABLE PROPERTY [Section 13(4) of IGST]

Nature of Service	Place of Supply of Service
• Lease or a right to use, occupation enjoyment or provision of hotel accommodation by a hotel, guest house, club • Construction service • Architects • Interior decorators • Renting of immovable property • Real estate agents • Auctineers, engineers and similar experts or professional people, relating to land, buildings or civil engineering works etc.,	**WHERE IMMOVABLE PROPERTY IS LOCATED OR INTENDED TO BE LOCATED**

Illustration 50

Mrs. Neelam Goel, an Interior Designer based in Delhi provides her service to an Indian Hotel Chain (which has business establishment in Mumbai) for its newly acquired property in London. Find the place of supply of service and the person liable to pay GST if any?

Solution:

As per section 12(3)(a) of IGST Act, 2017, Location of service recipient is the place of supply of service.

PoS = Mumbai. Taxable territory. Hence, attract IGST in the hands of Mrs. Neelam Goel.

Place of supply of services supplied by way of admission to or organization of Section 13(5) of IGST

Place of supply of services supplied by way of admission to, or organization of section 13(5) of IGST

Nature of Service	Place of Supply of Service
• Cultural • Artistic • Sporting • Scientific • Educational • Entertainment event • Celebration • Conference • Fair • Exhibition • Similar events and • Services ancillary to such admission or organisation	**Where event is actually held.**

Illustration 51

Mr. Sharma a Jalandhar based comedian hosted a comedy show at Singapore with help of event organizer located in Dubai.

POS: Singapore

Illustration 52

Mr. Kapil a Jalandhar based comedian hosted a comedy show at Singapore on birth day occasion of Mumbai based actor Mr. Khan's son Mr. Abu an un-registered person. Find the GST liability if any?

POS = Mumbai (i.e. location of the recipient Sec. 12(7) of IGST Act, 2017)

GST = IGST is liable to pay by Mr. Kapil.

Illustration 53

Mr. D of Delhi being an event organizer hosted an exhibition at Mumbai to exhibit the products of exhibitor (namely M/s S Silks Ltd. of Singapore).

PPS = Mumbai

GST = IGST is liable to pay by Mr. D of Delhi.

Illustration 54

Mr. D of Dhaka being an event organizer hosted an exhibition in Mumbai to exhibit the products of exhibitor (namely M/s S Silks Ltd. of Shimla).

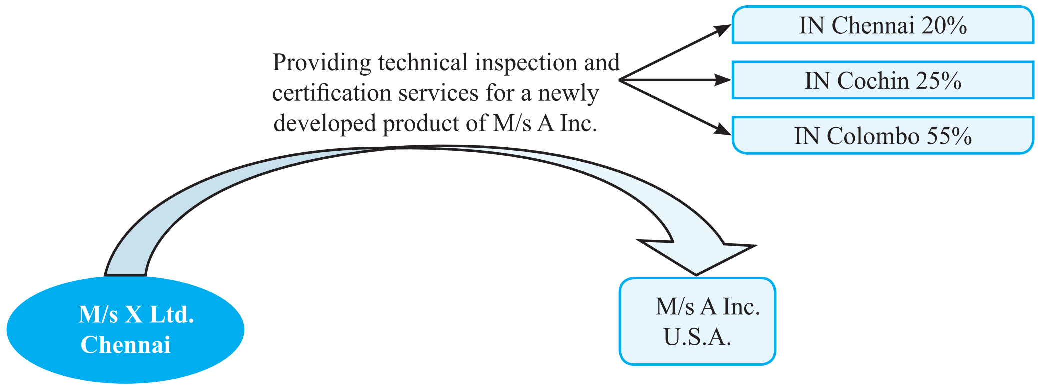
Solution:

PPS = Mumbai

GST = CGST & SGST is liable to pay by Mr. D of Dhaka (non-resident taxable person).

Services referred u/s 13(3) or (4) or (5) is supplied at more than one location [Section 13(6) of IGST]

Where any service stated in sub-section 3, 4, or 5 of section 13 is provided at more than one location, including a location of taxable territory, its place of supply shall be the location in the taxable territory.



Place of supply of service will be the place in the taxable territory (i.e. Chennai and Cochin).

X Ltd is liable to pay IGST for the part of Chennai

X Ltd is liable to pay IGST for the part of Cochin.

X Ltd is also liable to pay IGST for the services rendered in Colombo.

It means tax will be payable on the entire value.

Section 13(3) or (4) or (5) Services performed in more than one State [Section 13(7) of IGST]

Section 13(3) or (4) or (5) Services performed in more than one State or Union Territory, the Place of supply of such services shall be taken as deemed in each of the State or Union Territories in proportion to the value of services so provided.

The value of services is required to be determined in terms of the agreement or any reasonable means.

Illustration 55

Mr. Harsha, an event organiser located in Malaysia, undertakes to organize comedy shows of Mr. Bhrami of Hyderabad and Mr. Vadivelu of Chennai in India. The comedy shows are hosted in Telangana, Andhra Pradesh, Tamil Nadu and Pondicherry.

Gross value of contract is ₹ 60 crores.

State		**No. of Days**	**Recipient of Service**
Telangana	=	20	Mr. Bhrami
Andhra Pradesh	=	15	Mr. Bhrami
Tamil Nadu	=	14	Mr. Vadivelu
Pondicherry	=	01	Mr. Vadivelu
Total	=	50	

Find the place of supply of services, value of service and person liable to pay tax.

Solution:

Place of Supply of service	Value ₹ in crores	Who is liable to pay GST	GST
Telangana	24	Mr. Harsha being a non-resident taxable person.	IGST
Andhra Pradesh	18	Mr. Harsha being a non-resident taxable person.	IGST
Tamil Nadu	16.80	Mr. Harsha being a non-resident taxable person.	IGST
Pondicherry	1.20	Mr. Harsha being a non-resident taxable person.	IGST
Total	60		

Specified Services [Section 13(8)]

PLACE OF SUPPLY OF SERVICES = LOCATION OF THE SERVICE PROVIDER

SPECIFIED SERVICES INCLUDES:

(a) Services provided by a banking company, or financial company, or a NBFC to account holders

(b) Intermediary services

(c) Services consisting of hiring of means of transport, other than —

(i) aircrafts, and

(ii) vessels except yachts

upto a period of one month

Services provided by a banking company or financial company or a NBFC to account holders:

Illustration 56

Mr. S has a permanent residence at Chennai. He has a savings bank account with Chennai Mound Road Branch of State Bank of India. On Aug 1, 2015, Mr. S opened a safe deposit locker with the Chennai Mound Road Branch of State Bank of India. Mr. S went to Singapore for official work in Sep, 2015 and has been residing there since then. Mr. S contends that since he is a non-resident during the year 2017-18 in terms of the Income-tax Act, GST cannot be levied on the locker fee charged by State Bank of India for the year 2017-18.

Examine the correctness of the contention of Mr. S.

Solution:

POS = Chennai

GST = CGST and SGST is liable to pay by State Bank of India Chennai Mount Road Branch.

14.3.6b Intermediary services

Includes the following:

- Travel agent (any mode of travel)
- Tour operator
- Commission agent for a service (including an agent for buying or selling of goods)
- Recovery agent etc.,

Remittances from abroad, GST will be levied.

Intermediary:

As per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both securities on his own account.

Illustration 57

Freight Forward Services:

S. No.	Service provider	Nature of Service	Place of supply of service	Remarks
1.	Freight forwarder acts as an agent of airline/carrier/ ocean liner	Transportation of goods outside India	Intermediary service. Section 13(8)(b) of the IGST Act, 2017.	Location of Service provider is the Place of supply of Service.
2.	Freight forwarders act as a principal. The invoice is raised by the freight forwarder on the exporter. He is bearing all the risks and liability for transportation.	Transportation of goods outside India	Transportation of goods Section 13(9) of the IGST Act, 2017.	Destination of the goods is the place of supply of service.

Illustration 58

Write a brief note on the applicability of GST in the following cases.

(i) Whether the representation service provided by State Bank of India Chennai to a foreign MTSO (Money Transfer Service Operator) in relation to money transfer to a beneficiary in India falls in the category of intermediary service.

(ii) Whether GST is leviable on the services provided as mentioned in (i) above by an intermediary/agent located in India (in taxable territory) to MTSO's located outside in India.

Solution:

(i) Yes, the given service falls under intermediary service under section 13(8)(b) of the IGST Act, 2017.

(ii) Place of supply of service is location of the supplier of service (i.e. taxable territory namely Chennai) and hence, GST is liable to pay by intermediary/agent.

Illustration 58(a)

MSTO (namely City Bank USA) provided services to account holder:

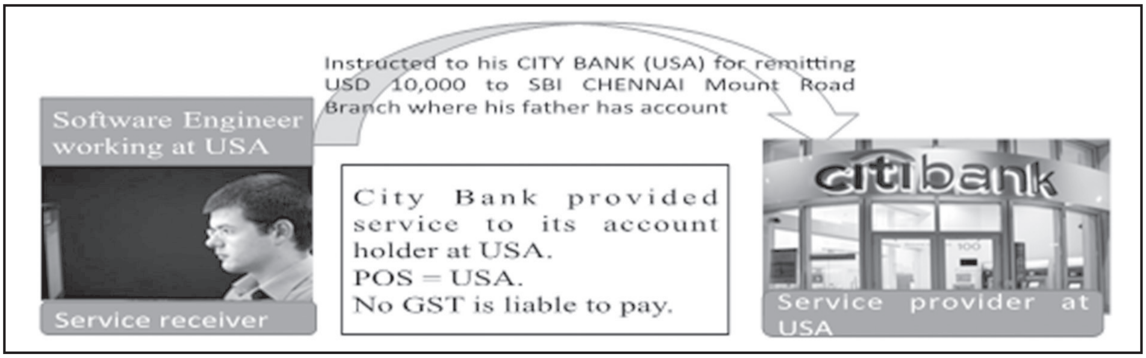


Illustration 58(b)

State Bank India Mount Road Branch Chennai provided services to MSTO (namely City Bank USA) by crediting beneficiary account in India by acting as intermediary:

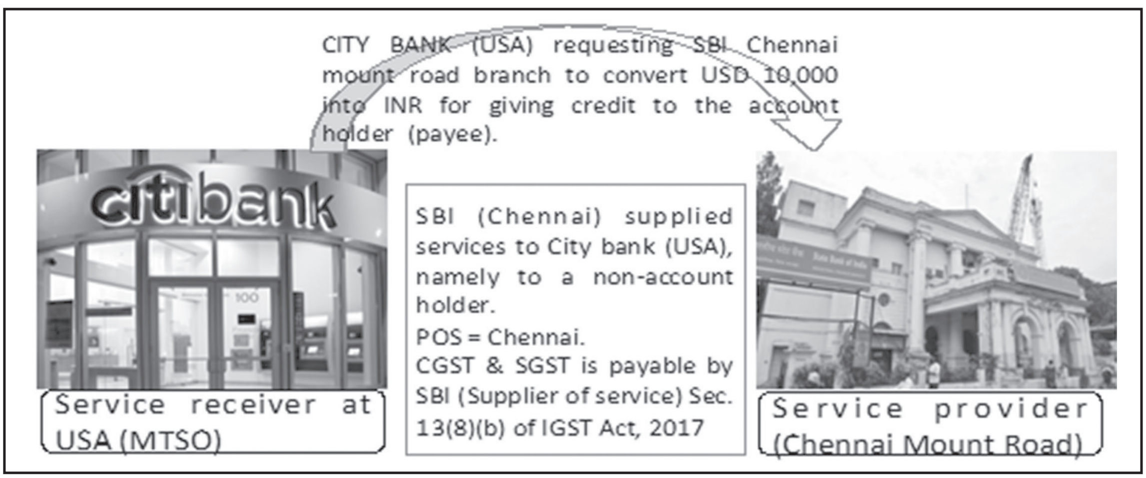


Illustration 59

M/s Bharath International of Imphal, Manipur is an Indenting Agent. M/s MRS Inc. of Singapore, supply yarns as per the instruction of M/s Bharath International, an Indenting Agent, to the buyers located in India and Bangladesh also. M/s MRS Inc. of Singapore give commission to M/s Bharath International of Imphal at pre-decided rate in percentage of sales value. M/s MRS Inc. of Singapore is foreign resident, and not having any permanent establishment of business in India. M/s Bharath International of Imphal receive the commission from M/s MRS Inc. of Singapore in Foreign Currency. This receipt of commission in the hands of M/s Bharath International is not liable to any other tax.

Answer the following:

(1) Whether M/s Bharath International of Imphal is liable to pay IGST on the amount of commission?

(2) If yes, then how the amount of IGST will be calculated say USD 1,00,000 received in the month of April 2018? Exchange rate as per generally accepted accounting principles is ₹68.25. RBI exchange rate is ₹68. Applicable rate of IGST @18%.

(3) Whether IGST paid on the Commission amount is eligible for the credit as RCM?

Solution:

Place of supply = Location of Supplier i.e. Imphal, Manipur (i.e. Taxable Territory) as per Section 13(8)(b) of the IGST Act, 2017.

Location of supplier = M/s Bharath International of Imphal, Manipur

It is not export of service. Since, section 2(6) of the IGST Act, 2017 one of the conditions (i.e. Place of supply should be outside India) is not satisfied.

In view of the above provisions answers to specific queries are provided as follows:

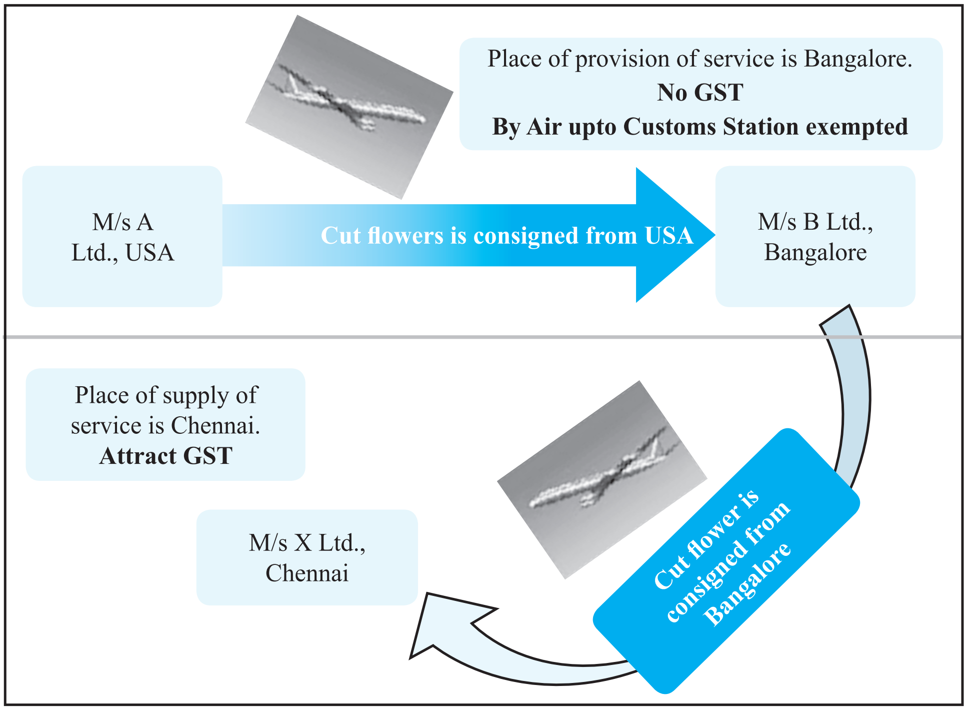
(a) M/s Bharath International of Imphal, Manipur is liable to pay IGST on the commission amount received by it. [Sec 7(5)(c) of the IGST Act, 2017]

(b) IGST is ₹12,28,500 [i.e. (₹68.25 x USD 1,00,000) x 18%].

(c) Since, M/s Bharath International, Imphal is liable to pay IGST on the commission amount received from M/s MRS Inc. of Singapore, and M/s Bharath International, Imphal it is not paying GST on reverse charge, it is not eligible to take credit of GST paid by it.

Place of provision of a service of transportation of goods other than by way of mail or courier [Section 13(9) of IGST]

Place of supply of Service = Destination of such Goods



In case of transhipment of goods:

Illustration 60

A vessel Bhishma, sailing from U.S.A to Australia via India carries various types of capital goods namely ‘A, B, C & D’. ‘A & B’ are destined to Mumbai Port. On account of submission of bill of transhipment product ‘A’ transhipped to Chennai port as ultimate destination in India and product ‘B’ transhipped to Srilanka.

Find the place of supply of service and person liable to pay GST.

Solution:

Place of supply of services is destination of goods and person liable to pay GST is the importer.

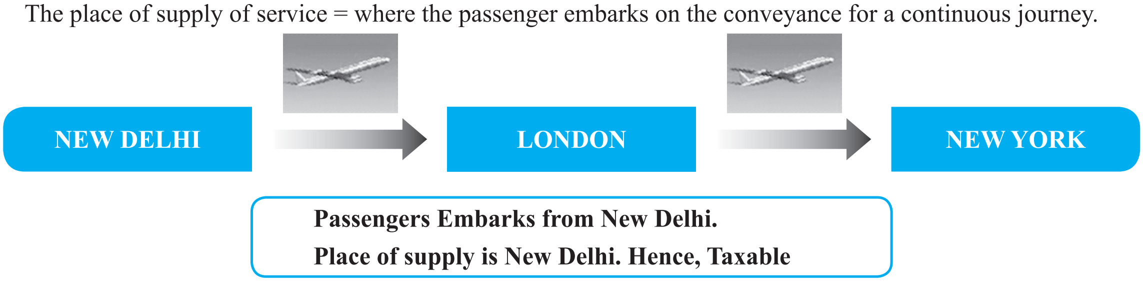
In the given case

Place of supply = Chennai (i.e. product ‘A’ ultimate destination in India)

Person liable to pay GST is importer on the ocean freight.

Passenger Transportation Services [Section 13(10) of IGST]

The place of supply of service = where the passenger embarks on the conveyance for a continuous journey.



Services Provided on Board Conveyances [Section 13(11) of IGST]

Any service provided on board a conveyance (aircraft, vessel, rail, or roadways bus) will be covered here.

POS = The first scheduled point of departure of that conveyance for the journey.

Online information and database access or retrieval services [Section 13(12) of IGST]

POS = Location of the recipient of service

Recipient of service deemed to be located in the taxable territory, if any two of the following conditions are satisfied:

(a) the location of address presented by the recipient of services through internet is in the taxable territory;

(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;

(c) the billing address of the recipient of services is in the taxable territory;

(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;

(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;

(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;

(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

Place of Supply - OIDAR services

3.3

Online information and database access or retrieval [OIDAR] services means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services:

OIDAR Services includes	OIDAR Services excludes
(i) advertising on the internet;	(i) Supplies of goods, where the order and processing is done electronically
(ii) providing cloud services;	(ii) Supplies of physical books, newsletters, newspapers or journals
(iii) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;	(iii) Services of lawyers and financial consultants who advise clients through email
(iv) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;	(iv) Booking services or tickets to entertainment events, hotel accommodation or car hire
(v) online supplies of digital content (movies, television shows, music, etc.);	(v) Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (in other words, using a remote link)
(vi) digital data storage; and	(vi) Offline physical repair services of computer equipment
(vii) online gaming.	(vii) Advertising services in newspapers, on posters and on television

Examples of services whether or not OIDAR services:

Nature of service	Whether Provision of service mediated by information technology over the internet or an electronic network	Whether it is Automated and impossible to ensure in absence information technology	OIDAR service
Pdf document manually emailed by provider. **Example 72** R Academy sent soft copy of work book solutions.	**Yes**	**No**	**No**
Pdf document automatically emailed by provider's system **Example 73** Airtel receipt for post paid connections, acknowledgments for submission of documents through MCA website and so on.	**Yes**	**Yes**	**Yes**
Pdf document automatically downloaded from site **Example 74** downloading software like anti-virus software, software to block banner adverts showing and so on.	**Yes**	**Yes**	**Yes**
Stock photographs available for automatic download **Example 75** Desktop themes, screen savers	**Yes**	**Yes**	**Yes**
Online course consisting of pre-recorded videos and downloadable pdfs. **Example 76** On account of pressing buy button pre-recorded video classes automatically available on screen.	**Yes**	**Yes**	**Yes**
Online course consisting of pre-recorded videos and downloadable pdfs plus support from a live tutor. **Example 77** Recorded classes are available for those students who miss live classes.	**Yes**	**No**	**No**

Nature of service	Whether Provision of service mediated by information technology over the internet or an electronic network	Whether it is Automated and impossible to ensure in absence information technology	OIDAR service
Individually commissioned content sent in digital form **Example 24** **P**hotographs, reports, medical results.	**Yes**	**No**	**No**

Summary:

Type of service	Nature of service (Cross-border)	Taxable/Exempted	Liable to pay tax
B2C	OIDAR service	Taxable	Forward charge
B2C	Other than OIDAR service	Exempt	Exempted supply
B2B	OIDAR service	Taxable	Reverse charge
B2B	Other than OIDAR service	Taxable	Reverse charge

Power to notify supply of a services or circumstances [Section 13(13)]

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

w.e.f. 1-10-2019:

The CBIC vide Notification No. 04/2019-(IT), dated September 30, 2019 has notified the place of supply of R&D services related to pharmaceutical sector provided by Indian pharma companies to foreign service recipients, as the place of effective use and enjoyment of a service i.e. location of the service recipient subject to fulfilment of the following conditions:

(i) Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory.

(ii) Such supply of services fulfils all other conditions in the definition of export of services, except sub-clause

(iii) Provided at clause (6) of section 2 of Integrated Goods and Services Tax, Act, 2017.

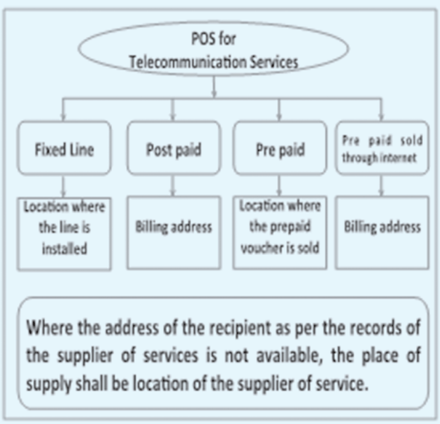
Section 12 and 13 of IGST Act, 2017 summary:

Sl. No.	The Place of Supply of Services where location of supplier and recipient is in India [Section 12 of IGST Act, 2017]		Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Section 13(1) of the IGST Act, 2017]	
	Nature of supply	Place of supply	Nature of supply	Place of supply
1	In relation to immovable property, short term accommodation, organising event in any immovable property	Location of property. If it is outside India, then	On tangible goods Or On Individuals	location where the services are actually performed. Services provided by way of electronic means in

Sl. No.	The Place of Supply of Services where location of supplier and recipient is in India [Section 12 of IGST Act, 2017]		Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Section 13(1) of the IGST Act, 2017]	
	Nature of supply	Place of supply	Nature of supply	Place of supply
	(Section 12(3) of IGST Act, 2017)	location of recipient.	(Section 13(3) of IGST Act, 2017)	relation to tangible goods, then place of supply is the actual location of goods.
2	Restaurant Catering services Personal grooming Fitness services Beauty treatment services Health services including cosmetic and plastic surgery (Section 12(4) of IGST Act, 2017)	Location where the services are actually performed.	In relation to immovable property (Section 13(4) of IGST Act, 2017)	Location of property
3	Services in relation to training and performance appraisal. (Section 12(5) of IGST Act, 2017)	Provided to a registered person: Location of recipient of Service Provided to an un-registered person: Location where the services are actually performed.	**Admission to or organization:** Cultural Artistic Sporting Scientific Educational Entertainment event or Amusement park or any other place. (Section 13(5) of IGST Act, 2017)	Where the event is actually held
4	**Admission to a** Cultural Artistic Sporting Scientific Educational Entertainment event or Amusement park or any other place. (Section 12(6) of IGST Act, 2017)	Where the event is actually held or where the park or such other place is located.	Services in relation to • Performance on goods or individuals. • Immovable property • Admission or organisation of events provided at more than one location, including a location of taxable territory. (Section 13(6) of IGST Act, 2017)	location in the taxable territory

Sl. No.	The Place of Supply of Services where location of supplier and recipient is in India [Section 12 of IGST Act, 2017]		Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Section 13(1) of the IGST Act, 2017]	
	Nature of supply	Place of supply	Nature of supply	Place of supply
5	**Organization of a** Cultural Artistic Sporting Scientific Educational Entertainment event (Section 12(7) of IGST Act, 2017)	Provided to a registered person: • Location of recipient of Service Provided to an un-registered person: • Location where the event is actually held and • if the event is held outside India, the place of supply shall be the location of the recipient.	Services in relation to • Performance on goods or individuals • Immovable property • Admission or organisation of events performed in more than one State or Union Territory. (Section 13(7) of IGST Act, 2017)	In each of the State or Union Territories
6	Services by way of Transportation of goods including by mail or courier (Section 12(8) of IGST Act, 2017)	Provided to a registered person: • Location of recipient of Service. Provided to an un-registered person: • Location at which such goods are handed over for their transportation. **w.e.f. 1-2-2019:** Provided that	SPECIFIED SERVICES INCLUDES: a. Services provided by a banking company, or financial company, or a NBFC to account holders b. Intermediary services c. Services consisting of hiring of means of transport, other than,— (i) aircrafts, and (ii) vessels except yachts upto a period of one month	Location of the Service Provider

Sl. No.	The Place of Supply of Services where location of supplier and recipient is in India [Section 12 of IGST Act, 2017]		Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Section 13(1) of the IGST Act, 2017]	
	Nature of supply	**Place of supply**	**Nature of supply**	**Place of supply**
		where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.	(Section 13(8) of IGST Act, 2017)	
7	Passenger transportation service. Including: Rail, Mono Rail, Metro Rail, Road, Air, Vessel, boat, Cycle rickshaw, Bullock cart, Camel etc. (Section 12(9) of IGST Act, 2017)	Provided to a registered person: • Location of recipient of Service. Provided to an un-registered person: • Place where the passenger embarks on the continuous journey.	**transportation of goods other than by way of mail or courier** (Section 13(9) of IGST Act, 2017)	**Destination of such Goods**
7a	Right to passage is given for future use and point of embarkation is not known at the time of issue of such right (Section 12(9) of IGST Act, 2017)	Provided to a registered person: • Location of recipient of Service. Provided to an un-registered person: • Location of recipient when address on record is available.	**Passenger Transportation Services** (Section 13(10) of IGST Act, 2017)	where the passenger embarks on the conveyance for a continuous journey.

Sl. No.	The Place of Supply of Services where location of supplier and recipient is in India [Section 12 of IGST Act, 2017]		Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Section 13(1) of the IGST Act, 2017]	
	Nature of supply	**Place of supply**	**Nature of supply**	**Place of supply**
		• Location of supplier in other cases		
8	**On board conveyance:** Vessel Air craft Train Motor vehicle. (Section 12(10) of IGST Act, 2017)	Location of the first scheduled point of departure of that conveyance for the journey.	**Services Provided on Board Conveyances** (Section 13(11) of IGST Act, 2017)	The first scheduled point of departure of that conveyance for the journey.
9	**telecommunication services** (Section 12(11) of IGST Act, 2017) 		**Online information and database access or retrieval services** (Section 13(12) of IGST Act, 2017)	Location of the recipient of service
10	Banking and NBFC service including Stock broking services (Section 12(12) of IGST Act, 2017)	Location of recipient of Service on the records of the supplier of service. Otherwise: Location of supplier of service.	In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Govt. of India shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective	**w.e.f. 1-10-2019:** The CBIC vide Notification No. 04/2019- (IT), dated September 30, 2019 has notified the place of supply of R&D services related to pharmaceutical sector provided by Indian pharma companies to foreign service recipients, as the place of effective use and

Sl. No.	The Place of Supply of Services where location of supplier and recipient is in India [Section 12 of IGST Act, 2017]		Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Section 13(1) of the IGST Act, 2017]	
	Nature of supply	Place of supply	Nature of supply	Place of supply
			use and enjoyment of a service. Section 13(13) of IGST Act, 2017	enjoyment of a service i.e. location of the service recipient.
11	Insurance services (Section 12(13) of IGST Act, 2017)	To a registered person • Location of recipient of Service. To a person other than registered person • Location of		
		the recipient of services on the records of the supplier of service.		
12	Advertisement services to • Central Government • State Government • Statutory Body • Local Authority (Section 12(14) of IGST Act, 2017)	Located in each of such states and the value of such supplies specific to each state shall be in proportion to amount attributable to service provided by way of dissemination in the respective states.		

<table>
<tr><th rowspan="2">Sl. No.</th><th colspan="2">The Place of Supply of Services where location of supplier and recipient is in India [Section 12 of IGST Act, 2017]</th><th colspan="2">Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Section 13(1) of the IGST Act, 2017]</th></tr>
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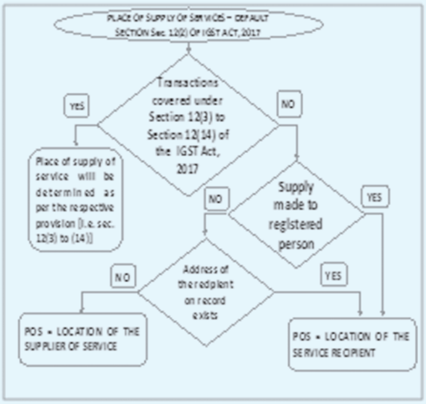
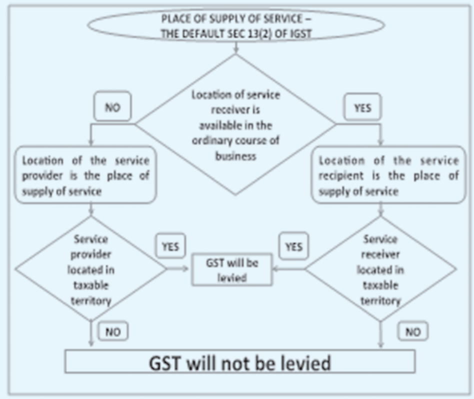
<tr><td>13</td><td colspan="2">
</td><td colspan="2">
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Case Studies and Illustrations on Place of Supply

3.4

Case law: Universal Services India (P) Ltd., In re 2016 (42) STR 585 (AAR)

Facts of the case:

WWD – a US based Company is engaged in the business of providing name registration, web hosting, designing and other services to customers across the world.

WWD will provide said services to Indian customers

The customers can either directly pay to WWD in US Dollars using an international credit card or in Indian rupees using their Indian credit cards.

Principal to Principal

Collections would be remitted without any markup to WWD

Payment collected from customers

In order to enable customers to pay for the services, using Indian credit card in Indian rupees, WWD intends to enter into an agreement with the applicant – an **Indian company**.
The applicant submitted that the payment processing service would be the main service of the applicant where it provides this service on its own account.

Point of dispute for which Advance Ruling is sought:

(i) Whether the place of provision of payment processing service proposed to be provided by the applicant, is outside India in terms of Section 13(2) of the IGST Act, 2017?

(ii) Whether services proposed to be provided by applicant would qualify as 'export of service'?

Ruling of Authority for Advance Ruling:

The definition of "intermediary" as envisaged under rule 2(f) of PoPS (now as per Section 2(13) of the IGST Act, 2017) does not include a person who provides the main service on his own account. In the present case, applicant provides main service, i.e., "business support services" to WWD on his own account. Therefore, applicant is not an "intermediary" and thus, the service provided by it is not intermediary service.

Thus, AAR ruled that the place of provision of payment processing service to be provided by the applicant, is outside India in terms of Section 13(2) of the IGST Act, 2017.

Further, while deciding the questions as to whether services provided by applicant qualify as export of service, AAR observed that all conditions mentioned under Rule 6A of STR, 1994 (now as per Section 2(6) of the IGST Act, 2017) are satisfied, and hence the said service will qualify as export of taxable service.

Maharashtra Authority for Advance Ruling in case of M/s Amogh Ramesh Bhatawadekar (2020):

The applicant, Amogh Bhatavdekar, located in Thane is a proprietor supplying digital goods, in the subject case 'online gaming' and has not obtained GSTIN because he is of the opinion that the services rendered by him is export of e-goods (Digital Goods).

Applicant has stated that;

(a) Digital goods/e-goods are not necessarily goods as commonly understood & as defined in the GST Acts but they can at best be called as "services".

(b) They are supply of services done through internet or mails. There is no delivery of e-goods as such.

(c) The said e-goods, are stored on CLOUD which are located outside India, & are purchased from vendors outside India who send it to the CLOUD as identified by the buyer / vendor / the applicant.

(d) The e-goods are not received by the seller in India but are stored on CLOUD hence it cannot be said to be imports in India, hence out of purview of reverse charge mechanism under the IGST Act.

(e) The buyers are usually from abroad, who pay in dollars directly through PAYPAL, therefore it is supply outside India taking it outside purview of IGST levy. It is export of services i.e. it is out and out services not liable to either IGST or CGST & SGST. It is covered by the Circular NO. 78/52/2018 GST New Delhi dated 31/12/2018.

Observation and Order of AAR:

A perusal of the submissions made by the applicant reveals that Digital Goods are purchased by applicant from the suppliers based abroad. Such digital goods, in this case online gaming, are then sent to the applicant by Email or Instant message service. Thus we find that there is a supply of OIDAR services to the applicant from suppliers based abroad. The nature of OIDAR services are such that it can be provided online from a remote location outside the taxable territory. A similar service provided by an Indian Service Provider, from within the taxable territory, to recipients in India would be taxable. In case where the supplier of such service is located outside India and the recipient is a business entity (registered person) located in India, the reverse charge mechanism would get triggered and the recipient in India who is a registered entity under GST will be liable to pay GST under reverse charge and undertake necessary compliances. If the supplier is located outside India and the recipient in India is an individual consumer not registered under GST Laws, in such cases also the place of supply would be India and the transaction is amenable to levy of GST. In such case the individual should obtain registration and pay GST under reverse charge.

For reasons as discussed in the body of the order, the questions are answered thus:-

Q1. Whether "e-goods" as commercially known in the market are "goods" as defined in the GST Acts or are they services as per GST Act?

Ans: E-goods, in this case – 'Online Gaming' will be covered under services under the GST Act.

Q2. If they are goods what is the its HSN classification and or if services what is SAC classification & rate of GST on its sale / supply within State?

Ans: In view of observations made above the SAC will be 998439

Q3. Whether they are exempted from GST?

Ans: Answered in the negative

Q4. If not exempted what is the rate of GST on supply?

Ans: GST rate will be 18%

Q5. In what circumstances IGST under reverse charge will be applicable or whether it is applicable in the situation of procurement from foreign supplier & supply from out of India as discussed above?

Ans: In the situation of procurement from foreign supplier & supply from out of India the applicant has to discharge IGST liability under reverse charge mechanism.

Q6. If the customer is from India and paying the consideration in dollar, whether it will be allowed as exports or if not allowed as exports, then whether GST is leviable? What is rate of SGST & CGST or IGST? Under which HSN Code or SAC?

Ans: Since, both, the customer and the applicant are in India, GST would be liable @18% under SAC 998439.

Q7. In case buyer is from India the goods/services are stored in CLOUD which are the servers outside India therefore even though payment is received in rupees, it is again export of services being services are received from distantly installed servers. Hence, No CGST and SGST is leviable?

Ans: Said services are not export of services and hence GST must be discharged by the applicant.

Q8. Whether IGST is applicable under Section 5(3) & 5(4) of the IGST Act, according to us it is not imported into India and the services are stored on CLOUD and therefore, it cannot be said to be imports and thus not liable for RCM?

Ans: IGST is applicable under Section 5(3) & 5(4) of the IGST Act.

Clarification on supply of satellite launch services by ANTRIX Corporation Ltd:

How is the taxability of satellite launch services provided to both international and domestic customers by ANTRIX Corporation Limited, which is a wholly owned Government of India Company under the administrative control of Department of Space (DOS), determined?

In view of the above, place of supply of satellite launch services supplied by ANTRIX Corporation Limited to international customers would be outside India in terms of section 13(9) of IGST Act, 2017 and such supply which meets the requirements of section 2(6) of IGST Act, thus constitutes export of service and shall be zero rated in accordance with section 16 of the IGST Act. Where satellite launch service is provided by ANTRIX Corporation Limited to a person located in India, the place of supply of satellite launch service would be governed by section 12(8) of the IGST Act and would be taxable under CGST Act, UTGST Act or IGST Act, as the case may be.

ANTRIX Corporation Limited to international customers:

Place of supply u/s 13(9) = outside India

Note: Export of service and hence, no GST.

ANTRIX Corporation Limited to a person located in India:

Place of supply u/s 12(8) = India

w.e.f. 1-2-2019 Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.

ANTRIX Corporation Limited to a person located in India:

Place of supply u/s 12(8) = Outside India

Antrix Corporation Limited is not liable to pay IGST.

Note: Satellite services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited is exempted from GST (vide Notification No. 6/2020-IT, dated 15-10-2020).

Illustrations 61

(i) Mr. Z, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US. With reference to the provisions of GST law, examine whether the supply of goods by Mr. Z to customer in US is an inter-State supply?

(ii) RST Inc., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, RST Inc. has approached ABC Consultants, Mumbai, (Maharashtra) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.

The survey is to be solely based on the oral replies of the surveyees; they will not be provided any sample by RST Inc. to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment.

With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service?

Solution:

(i) The transaction undertaken by Mr. Z is neither import nor export of goods in terms of Customs Act, 1962. However, it is an inter-State supply in terms of provisions of section 7(5)(a) of the IGST Act, 2017 which provides that when the supplier is located in India and the place of supply is outside India, supply of goods or services or both in the course of inter-State trade or commerce.

    However, w.e.f. 1-2-2019 it is treated as supply exclude "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".

(ii) As per Section 13(2) of the IGST Act, 2017 place of supply = USA.

    Since, all conditions specified under section 2(6) of the IGST Act, 2017 are fulfilled in the given case, the same will be considered as an 'export of service'.

Illustration 62

ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer. The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it. For the month of December, 20XX, the company has charged US $ 1,00,000 (exclusive of GST) to its foreign customer. With reference to the provisions of GST law, examine whether the company is liable to pay IGST or CGST and SGST.

Note: GST @ 18% is applicable on supply of the support services provided by ABC Pvt. Ltd. Rate of exchange is ₹65 per US $.

Solution:

As per Section 13(8)(b) of the IGST Act, 2017 the place of supply in case of intermediary services is the location of the supplier (i.e. ABC Pvt, Ltd, New Delhi).

As per section 8(2) of the IGST Act, 2017 Subject to the provisions of section 12 supply of services where the location of the supplier and the place of supply of services are in the same State is treated as intra-State supply. In the given case it is not so.

Therefore, ABC Pvt. Ltd. New Delhi is liable to pay IGST (As per Sec. 7(5)(c) of IGST Act, 2017).

IGST 18% = ₹11,70,000 (i.e. ₹65 × 1,00,000 × 18%)

Illustration 63

M/s Jiju Ltd. an Indian Company, is a subsidiary of M/s Didi Ltd. of UK. The aforesaid holding company M/s Didi Ltd. places an order for supply of certain goods on M/s Jiju Ltd. M/s Jiju Ltd. in turn, places an order on a company located in China. M/s Jiju Ltd specifically asks the Chinese Company to supply the specified goods directly to M/s Didi Ltd. on its behalf. M/s Jiju Ltd. shall receive the agreed price from M/s Didi Ltd. in convertible foreign exchange.

In the light of above information whether supply of goods by M/s Jiju Ltd. to M/s Didi Ltd. shall qualify as 'Export of Goods'?

Solution:

As per section 2(5) of the IGST Act, 2017, "export of goods" means taking goods out of India to a place outside India. In our case, as goods are not moving out of India hence it cannot be termed as exports.

Place of supply of goods = U.K.

Location of supplier = India

However, M/s Jiju Ltd. is liable to pay IGST.

Note: Supply of goods from China to UK (i.e. from non-taxable territory to non-taxable territory.

As per the Finance Act, 2018 to be notified:

Schedule III Point No. 7, supply excludes: 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.

Illustration 64

Mr. M, an unregistered person and a resident of Pune, hires the services of M/s S Ltd. an event management company registered in Delhi, for organizing of the new product launch in Bengaluru.

(i) Determine the place of supply of services provided by M/s S Ltd.

(ii) What would your answer be in case the product launch takes place in Bangkok?

(iii) What would your answer be in case Mr. M is a registered person and product launches takes place in Bengaluru and Bangkok?

Solution:

(i) Place of supply = Bengaluru (i.e. location where the event is actually held, where recipient is unregistered person).

(ii) Place of supply = Pune (i.e. if the event is held outside India, the place of supply shall be the location of the recipient).

(iii) Place of supply = Pune (i.e. As per Sec. 12(7) of IGST location of Recipient is the place of supply since, recipient is registered person).

Illustration 65

Determine the Place of supply for the following independent cases under the IGST Act, 2017:

(i) GGE, an event management company at Kolkata, organizes two award functions for Kalyan Jewellers of Chennai (Registered in Chennai) at New Delhi and Singapore.

(ii) Perfect Planners (Bengaluru) is hired by Dr. K (unregistered person based in Kochi) to plan and organize his son's wedding at Mumbai.

Will your answer be different if the wedding is to take place at Malaysia?

Solution:

(i) Place of supply = Chennai

When service by way of orgnisation of an event is provided to a registered person, place of supply is the location of recipient as per section 12(7)(a)(i) of IGST Act, 2017, even though the award functions at New Delhi and Singapore are organized for Kalyan Jewellers (Registered person in Chennai), place of supply in both the cases is location of Kalyan Jewellers i.e. Chennai.

(ii) Place of supply = Mumbai (Refer Section 12(7) of IGST)

Place of supply = Kochi (Refer Section 12(7) of IGST)

Illustration 66

RR, a registered supplier under GST in Mumbai, is directed by M/s N Enterprises, Kolkata to deliver goods valued at ₹12,00,000 to Fabricana of Aurangabad in Maharashtra. RR makes out an invoice at 9% tax rate under CGST and SGST respectively (scheduled rate) and delivers it locally in Maharashtra.

Discuss and comment on the above levy of tax and determine the tax liability of goods in the above circumstances.

Solution:

Place of supply = Kolkata (Sec. 10(1)(b) of IGST Act, 2017)

Location of supplier of goods = Mumbai

RR is liable to pay IGST.

IGST = ₹2,16,000 (i.e. ₹12,00,000 × 18%)

Illustration 67

Mr. MG, an interior decorator provides professional services to Mr. HJ in relation to two of his immovable properties.

Determine the place of supply in the transactions below as per provisions of GST law in the following independent situations:

Case	Location of Mr. MG	Location of Mr. HJ	Properties situated at
I	Delhi	Mumbai	New York (USA)
II	Delhi	New York	Paris (France)

Explain the relevant provisions of law to support your conclusions.

Solution:

Case	Location of Mr. Mahendra Goyal	Location of Mr. Harish Jain	Properties situated at	Place of Supply
I	Delhi	Mumbai	New York (USA)	Mumbai (As per section 12(3)(a) of IGST Act, 2017.
II	Delhi	New York	Paris (France)	Paris (France). As per Section 13(4) of IGST Act, 2017.

Illustration 68

Determine the place of supply of service as well as their taxability in each of the following cases with brief reasons:

(a) XY Ltd. of Delhi, agrees to provide 'technical inspection and certification service' in respect of a newly developed product of an overseas firm (for a newly launched motorbike which has to meet emission standards in different states or countries). The overseas firm has provided its newly developed product to XY Ltd. for the purpose of testing. The testing is carried out in Delhi (15%), Assam (35%) and Sweden (50%).

(b) A movie on demand is provided as on board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi Flight.

Solution:

(a) As per Section 13(6) of IGST Act, 2017, Place of supply of service will be the place in the taxable territory (i.e. Delhi and Assam).

X Ltd is liable to pay IGST for the part of Delhi

X Ltd is liable to pay IGST for the part of Assam.

X Ltd is also liable to pay IGST for the services rendered in Sweden.

It means tax will be payable on the entire value.

(b) As per section 13(11) of the IGST Act, 2017, PoS is Bangkok which is non taxable territory, not subject to GST.

Illustration 69

Swamy Ltd. of Chennai acquires the business of SA Ltd. at Johannesburg, South Africa. Swamy Ltd. entered into a contract with M/s Krish & Krish Architects, Chennai to do the interiors of the building of new business at South Africa. The Central Tax department issued a notice demanding GST based on the Place of supply of service provisions. Discuss briefly the applicability of the Place of supply of service to M/s Krish & Krish as the work to be done is outside the taxable territory.

Solution:

Place of supply of services supplied directly in relation to an IMMOVABLE PROPERTY as per Section 13(4) of IGST is where immovable property is located or intended to be located.

However, location of supplier and location of recipient is in India we should refer section 12(3)(a) of IGST Act, 2017, accordingly place of supply of service is where immovable property located or intended to be located in India. If location of Immovable property is outside India, then place of supply is location of the recipient.

In the given case location of supplier and location of recipient is in India and hence, place of supply of service is Chennai section 12(3)(a) of IGST. Location of supplier of service is in Chennai. CGST and SGST will be levied (sec. 8(2) of IGST subject to sec. 12).

From the above it is evident that the claim of the Central Tax Department is correct.

Illustration 70

With reference to the GST provisions briefly explain:

(i) time of supply under reverse charge with respect to payment date.

(ii) Place of supply of service of hiring of all means of transport (except vessel and air craft) upto a period of one month, where location of supplier or location of recipient is from outside India.

Solution:

(i) The phrase “the date on which payment received by the Supplier” or “the date of payment” means—

- the date on which payment is entered in his books of accounts

  or

- the date on which the payment is debited to his bank account,

whichever is earlier.

(ii) SPECIFIED SERVICES [Section 13(8)(c) of the IGST Act, 2017]

PLACE OF SUPPLY OF SERVICES = LOCATION OF THE SERVICE PROVIDER

Illustration 71

With reference to the position of Goods and Service Tax law as applicable on or after 01.07.2017, what would be the place of supply of service in the following independent cases?

(i) MN Trade Links of New Delhi are appointed as commission agent by a foreign company for sale of its goods to Indian customers. In lieu of their services, MN Trade Links receive a fixed percentage of commission from the concerned foreign company.

(ii) OP Fabricators of Mumbai has temporarily imported certain goods from its customer located in Hongkong for repairs. The said goods have been re-exported to Hongkong after carrying out the necessary repairs without being put to any use in Mumbai.

(iii) UV Airlines, an airline located in New Delhi, has hired aircrafts from a foreign Airlines for a period of 15 days.

Solution:

(i) Place of supply of service = New Delhi (i.e. location of supplier of service section 13(8)(b) of the IGST Act, 2017). IGST will be levied.

(ii) Place of supply of service = Hongkong (i.e. location of recipient of service as per Section 13(2) of the IGST Act, 2017). No GST will be levied.

(iii) Place of supply of service = New Delhi (i.e. location of recipient of service as per Section 13(2) of the IGST Act, 2017). IGST will be levied.

Illustration 72

Determine the place of supply of service in each of the following independent cases and state whether GST is payable in each of these cases:

(a) Mr. A travelled on a Bagdogra-Dibrugarh-Singapore-Dibrugarh-Bagdogra flight where a single ticket with no stopover has been issued by Parkinson Airlines located in Dubai.

(b) Mr. B, a well-known comedian from Delhi, organises a stage-show in Japan. For organising the stage-show, he takes the services from a Mumbai based event organiser.

Solution:

(a) Place of supply of services = Bagdogra of West Bengal (As per Section 13(10) of the IGST). However, it is specifically exempted from GST.

(b) Place of supply of service = Delhi (i.e. location of recipient of service). IGST is payable by supplier of service (Section 12(7) of the IGST).

Illustration 73

M/s. X Ltd. of Chennai, engaged in various businesses has provided the following services, whose values are listed below. Compute its GST liability:

(1) Service of interior decoration in respect of immovable property located in Jammu: ₹5 lakh;

(2) Service of renting of commercial buildings in Delhi: ₹15 lakh;

(3) Architectural services to an Indian Hotel Chain which has business establishment in Mumbai for its newly acquired property in Sydney: ₹25 lakhs;

(4) Services provided as an Indian agent undertaking marketing in India of goods of a foreign seller: ₹51 lakhs;

(5) Services provided as travel agent undertaking marketing in India of services of a foreign seller: ₹1 lakh.

Applicable rate of GST 18%.

Solution:

Particulars	Value ₹ (in lakhs)	Working note
Interior decoration services	5	PoS = J & K (Section 12(3)(a) of IGST) taxable territory. IGST will be levied

Particulars	Value ₹ (in lakhs)	Working note
Renting of commercial buildings	15	PoS = Delhi (Section 12(3)(a) of IGST) Taxable territory IGST will be levied
Architectural services	25	PoS = Mumbai (Section 12(3)(a) of IGST). Taxable territory IGST will be levied
Marketing of Goods	51	PoS = Chennai (Section 13(8)(b) of IGST) Taxable territory, IGST will be levied.
Travel agent	1	PoS = Chennai (Section 13(8)(b) of IGST) Taxable territory IGST will be levied.
Taxable supply of services	97	
IGST liability	17.46	

Pos = Place of Supply

Illustration 74

Samy Pvt. Ltd., owned by Rang Tarang- a famous classical singer - wishes to organise a 'Rang Tarang Music Concert' in Gurugram (Haryana). Samy Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Pooja (P) Ltd. (registered in Delhi) for organising the said music concert at an agreed consideration of ₹ 10,00,000. Pooja (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered in Haryana) for holding the music concert, for a lump sum consideration of ₹ 4,00,000. Samy Pvt. Ltd. fixes the entry fee to the music concert at ₹ 5,000. 400 tickets for 'Rang Tarang Music Concert' are sold.

You are required to determine the CGST and SGST or IGST liability, as the case may be, in respect of the supplie(s) involved in the given scenario.

Will your answer be different if the price per ticket is fixed at ₹ 450?

Note: Rate of CGST and SGST is 9% each and IGST is 18%. All the amounts given above are exclusive of taxes, wherever applicable.

Solution:

In the given situation, three supplies are involved:

(i) Services provided by Samy Pvt. Ltd. to audiences by way of admission to music concert.

(ii) Services provided by Pooja (P) Ltd. to Samy Pvt. Ltd. by way of organising the music concert.

(iii) Services provided by Hotel Dumdum to Pooja (P) Ltd. by way of accommodation in the Hotel lawns for organising the music concert.

(i) Section 12(6) of IGST: Place of supply = where event is held (i.e. Gurugram, Haryana)

Location of supplier = Ludhiana, Punjab

IGST = (400 tickets × ₹5,000 per ticket) × 18% = ₹3,60,000

(ii) Section 12(7) of IGST: Place of supply = location of recipient who is a registered person (i.e. Ludhiana, Punjab)

Location of supplier = Delhi

IGST = ₹10,00,000 × 18% = ₹1,80,000

(iii) Section 12(3)(c) : Place of supply = Location of immovable property (i.e. Gurugram, Haryana)

Location of supplier = Gurugram, Haryana.

CGST = ₹4,00,000 × 9% = ₹36,000

SGST = ₹4,00,000 × 9% = ₹36,000

If the price for the entry ticket is fixed at ₹ 450:

Admission to music concert is exempted supply under GST.

However, there will be no change in the answer in respect of supplies mentioned in point (ii) and (iii) above.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Which of the following is an inter-State supply?
   (a) Supplier of goods located in Chennai and place of supply of goods is to an SEZ located in Chennai
   (b) Supplier of goods located in Chennai and place of supply of goods in Jaipur
   (c) Supplier of goods located in Chennai and place of supply of goods is to an SEZ located in Chandigarh
   (d) All the above

2. Which of the following is an intra-state supply?
   (a) Supplier of goods located in Chennai and place of supply of goods SEZ located in Chennai
   (b) Supplier of goods located in Chennai and place of supply of goods in Jaipur
   (c) Supplier of goods located in Chennai and place of supply of goods in Chennai
   (d) All the above

3. Which of the following transaction is inter-state supply of goods involving movement of goods?
   (a) Location of supplier is in Hyderabad and location of recipient is in Mumbai and goods are shipped to Kolkata
   (b) Location of supplier is in Hyderabad and place of supply is Mumbai
   (c) Location of supplier and place of supply is Hyderabad
   (d) None of the above

4. Money transferred service provided to foreign entity by Indian supplier of service is intermediary service and subject to
   (a) CGST & SGST
   (b) CGST & UTGST
   (c) IGST
   (d) UTGST

5. A. No GST shall be payable on transhipment of goods at customs station in India for further transportation out of India.
   B. In case of import of goods by vessel from out of India to first customs port in India, the importer in India is liable to pay GST under reverse charge.

   Comment on the above statements
   (a) A – Correct. B – Incorrect
   (b) A – Incorrect, B – Correct
   (c) Both A & B – Correct
   (d) Both A & B- Incorrect

6. What is the Place of Supply in case the supply is made in territorial waters?
   (a) Location in territorial waters

(b) Coastal State or Union territory where the nearest point of the appropriate baseline is located
(c) Either (a) or (b)
(d) None of the above

7. Supply of goods in the course of import into the territory of India is
   (a) Intrastate supply
   (b) Inter-State supply
   (c) Export
   (d) Neither Export nor Import

8. If RR shipping Co. located in Chennai charges ocean freight charges for transport of goods to USA for a customer located in Hyderabad, the place of supply of service will be
   (a) Chennai
   (b) USA
   (c) Hyderabad
   (d) None of the above

9. M/s XYZ is having two SEZ in State of Maharashtra. One of these SEZ sends goods to another SEZ on 1st April 20XX. What shall be chargeable on such supply?
   (a) IGST
   (b) CGST + SGST
   (c) Self-supply and hence, no GST
   (d) None of the above

10. Person supplying goods or services or both from the territorial waters should register in—
   (a) Coastal State or Union Territory
   (b) State of their residence
   (c) Only in Delhi
   (d) State of their place of business

11. Maintenance & repair service provided within territorial waters to marine vessel owned by foreign company is
   (a) Not export of service even if payment is received in forex
   (b) Not export of service if payment is received in Indian Rupees
   (c) Export of service if payment is received in forex
   (d) Export of service even if payment is received in Indian Rupees

12. Stylish a modelling agency, registered in Mumbai having 10 models entered into a contact for beauty treatment of their models with Fair & Lovely in Delhi but the beauty treatment was done before a fashion show in the city of Hyderabad. What is the place of supply?
   (a) Mumbai
   (b) Delhi

(c) Chennai

(d) Hyderabad

13. Agency fees paid to foreign banks for arranging finance is—

(a) Export of service

(b) Import of service

(c) Tax free service

(d) None of the above

14. Mr. B director of M/s Ram Ltd. registered in Chennai went for 2 days official seminar in Delhi. He booked a hotel in Delhi & provided the company's GSTIN.

What is the place of supply?

(a) Delhi

(b) Chennai

(c) Either (a) or (b)

(d) None of the above

15. What tax shall be levied on this supply?

(a) Delhi GST + CGST

(b) Chennai GST + CGST

(c) IGST

(d) CGST + UTGST

16. Will Ram Ltd. get the credit of the taxes paid to the hotel?

(a) Yes

(b) No

(c) Maybe

(d) Yes, with prior permission of Jurisdictional Commissioner

17. Mr. OBAMA of USA came to Chennai for personal visit and booked a room in Taj Hotel of Chennai. What GST is liable to pay by Taj Hotel of Chennai where payment received in US Dollars?

(a) CGST + SGST

(b) IGST

(c) Zero rate of GST

(d) None of the above

Answer:

1.	**2.**	**3.**	**4.**	**5.**	**6.**	**7.**	**8.**	**9.**	**10.**
d	**c**	**a**	**c**	**c**	**b**	**b**	**c**	**a**	**a**
11.	**12.**	**13.**	**14.**	**15.**	**16.**	**17.**			
a	**d**	**b**	**a**	**a**	**b**	**b**			

Valuation (Advanced) 4

This Module Includes

Valuation (Advanced)

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand related party and distinct person transactions
- Explain value of supply with valuation rules
- Apply practically how to arrive correct valuation as per the provisions of GST Law.

Introduction

4.1

Value of Supply in common terms is nothing but the amount paid by the recipient of supply to the supplier as consideration for supply (also known as transaction value). It means Value of supply is the figure upon which tax is levied and collected.

It is important to know to ascertain correct value of supply for correct levy of GST.

Valuation rules determine value of goods or services or both on which tax under GST has to be charged. Valuation rules have been prescribed under CGST Rules, 2017 for the purpose of determination of fair market value of goods or services or both supplied by the registered person. It means valuation rules are helpful to determine the value of supply where value not determined under section 15(1) as mentioned under section 15(4) of CGST Act, 2017.

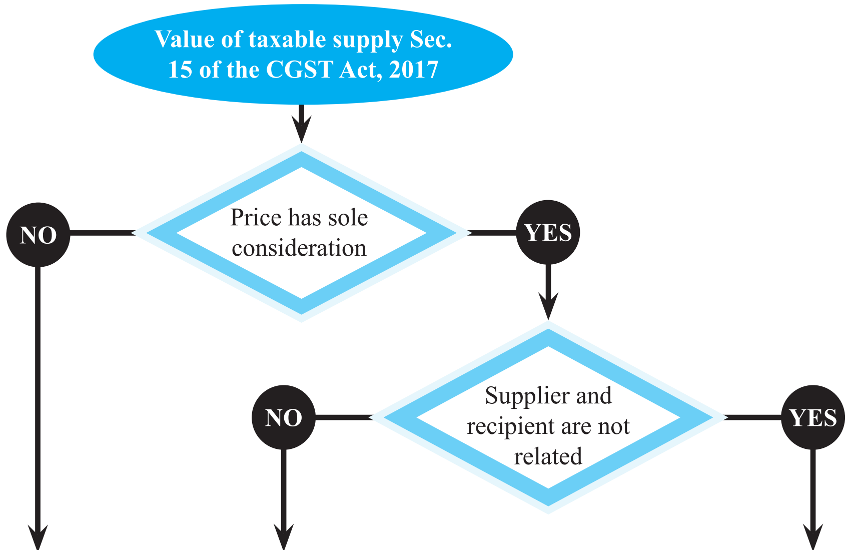
Example 1

Mr A goes to shop of Mr. B and purchases television. He pays amount of ₹50,000 as consideration for 52 inches LED TV Purchased plus GST. MRP of the product ₹65,000. Discount offered to all buyers ₹15,000. As per section 15(1) of the CGST Act, 2017 the valuation will be as per transaction value basis. Assume applicable rate of CGST 14% and SGST 14%. Invoice will be prepared as follows:

Invoice	
Particulars	**Value in ₹**
Transaction value	50,000
Add: CGST 14%	7,000
Add: SGST 14%	7,000
Invoice price	64,000
Note: Invoice price should not increase the Maximum Retail Price (MRP)	

If Mr. A not maintained sole consideration for such sale or they are related persons then valuation will based on determination of value of supply rules (i.e. CGST Rules, 2017).

The same concept explained in the following diagram:



Value of supply as per Sec. 15(4) read with CGST Rules, 2017 (i.e., Determination of Value of supply)
Rule 27: Value of supply of goods or services where the consideration is not wholly in money
(a) Open market value of such supply (b) Sum total of consideration equal to money, if such amount is known at the time of supply provided (a) not applicable. (c) The value of supply of like kind and quality if (a) and (b) not applicable. (d) Based on cost as per rule 30 or based on residual method as per rule 31 in that order, provided (a) to (c) not applicable.
Rule 28: Value of supply of goods or services or both between distinct or related persons, other than through an agent
Rule 29: Value of supply of goods made or received through an agent
Rule 30: Value of supply of goods or services or both based on Cost.
Rule 31: Residual method for determination of value of supply of goods or services or both

Value of Supply Sec. 15(1)	xxx
Add: If not included in the above	
Sec. 15(2)(a):	
• Any taxes (other than GST),	xx
• Duties,	xx
• Cesses,	xx
• Fees and charges	xx
Sec. 15(2)(b): Supplies made by the recipient on behalf of supplier	xx
Sec. 15(2)(c): Commission and packing or incidental expenses	xx
Sec. 15(2)(d): Interest or late fee or penalty for delayed payment	xx
Sec. 15(2)(e): Subsidy directly linked to the price (other than Govt. subsidy)	xx
Less: If included in the above	
Sec. 15(3): Discount	xx
Transaction Value	xx

Related Party Transactions 4.2

Explanation to Section 15 of CGST Act, 2017:

(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 recognized 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;

(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.

Related persons concept has been explained elaborately with sample of illustrations in Chapter 1.

Distinct Person Transactions 4.3

Distinct persons specified under section 25 of CGST Act, 2017:

Every place of business of a person where separate registration is obtained for output supply will be considered as distinct person.

Section 25(4), A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

Section 25(5), Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

Distinct persons concept has been explained elaborately with sample of illustrations in Chapter 1.

Specific Valuation Rules

4.4

Section 15(1): the price is sole consideration for sale

Under GST, the valuation is done based on the transaction value only if price is a sole consideration where supplier and the recipient are not related.

Sole consideration means by paying GST on such consideration there is no revenue loss to the department.

Value of a supply of goods and/or services shall be:

"Transaction Value (TV), that is the price actually paid or payable for the said supply of goods and/or services"

Where:

- The supplier and the recipient of the supply are not-related and
- The price is the sole-consideration for the supply.

Payment of taxes, duties, cesses, fees and charges [Section 15(2)(a) of CGST Act, 2017]

Any taxes, duties cesses, fees and charges levied under any law for the time being in force other than CGST/SGST/UTGST/IGST/Compensation Cess shall be added to the value of supply.

Illustration 1

Admission to True Theatre is ₹90 per ticket for a Tamil Movie as well as for a Hindi Movie plus entertainment tax 10% on Tamil Movie and 20% on other languages. In the month of November, True Theatre sold 2000 tickets of Tamil Movie and 1500 tickets of Hindi Movie. Find the value of taxable supply of service. Applicable rate of GST 18% & 28%. Find the GST liability if any?

Solution:

Statement showing value of taxable supply of service and GST liability:

Value of taxable services:		
Tamil Movie	₹1,98,000	(₹99 × 2000 tickets)
Hindi Movie	₹1,62,000	(₹108 × 1500 tickets)

Particulars	9% CGST	9% SGST	14% CGST	14% SGST
GST liability (₹)	17,820	17,820	22,680	22,680

Working note:

Particulars	Tamil Movie (₹)	Hindi Movie (₹)
Rate per ticket	90	90

Particulars	Tamil Movie (₹)	Hindi Movie (₹)
Add: Entertainment tax	9	18
Value of taxable supply	99	108
Applicable GST rate	18%	28%

Supplies made by recipient on behalf of supplier [Section 15(2)(b) of CGST Act, 2017]

The transaction value will include the amount which the supplier is so liable to pay but it has been paid by the recipient of supply.

Illustration 2

Mr. Ram sold goods to Mr. Lakshman for ₹2,50,000. As per the contract of sale, Mr. Ram is required to deliver the goods in the premises of Mr. Lakshman. Mr. Ram hires transporter for transportation for delivery of goods. However, the freight paid by Mr. Lakshman to transporter. Freight paid ₹2,500.

Find the transaction value of supply of goods.

Solution:

Particulars	Value in ₹
Value of supply of goods	2,50,000
Add: Freight paid by recipient of supply (which the supplier is so liable to pay)	2,500
Taxable value of supply of goods	2,52,500

TCS would not be includible in the value of supply under GST:

The Central Government vide Corrigendum to Circular No. 76/50/2018-GST, dated 31st December, 2018 has clarified that Tax collection at source (TCS) is not a tax on goods but an interim levy on the possible "income" arising from the sale of goods by the buyer and to be adjusted against the final income- tax liability of the buyer. Accordingly, for the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

1. What is the correct valuation methodology for ascertainment of GST on Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961?

Answer:

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

b. For the purpose of determination of value of supply under GST, Tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

2. Motor vehicle worth ₹20 lakh is sold by M/s Sundar Pvt. Ltd. to a customer in retail market and for which ₹ 5 lakh has been paid in cash and balance amount by way of cheque.

   Find the following:

   (a) TCS under section 206C of the Income Tax Act, 1961 is applicable in the given case?

   (b) who is required to collect TCS?

(c) value TCS if any?

(d) value of taxable supply under section 15 of CGST Act, 2017?

(e) Invoice Price of M/s Sunder Pvt. Ltd.?

Note: Assume applicable TCS is @1% and GST 28%.

Answer:

(a) Yes, TCS is applicable in the given case.

(b) Under section 206C the seller has to collect Tax at Source (TCS) at the rate of 1% from purchaser while selling the specified items or services beyond specified limits. In the given case M/s Sundar Pvt. Ltd. must collect the TCS.

(c) TCS = ₹20,000 (i.e. @1% on ₹20 lakh)

(d) Value of taxable supply under Section 15 of CGST Act, 2017 is ₹20 lakh only.

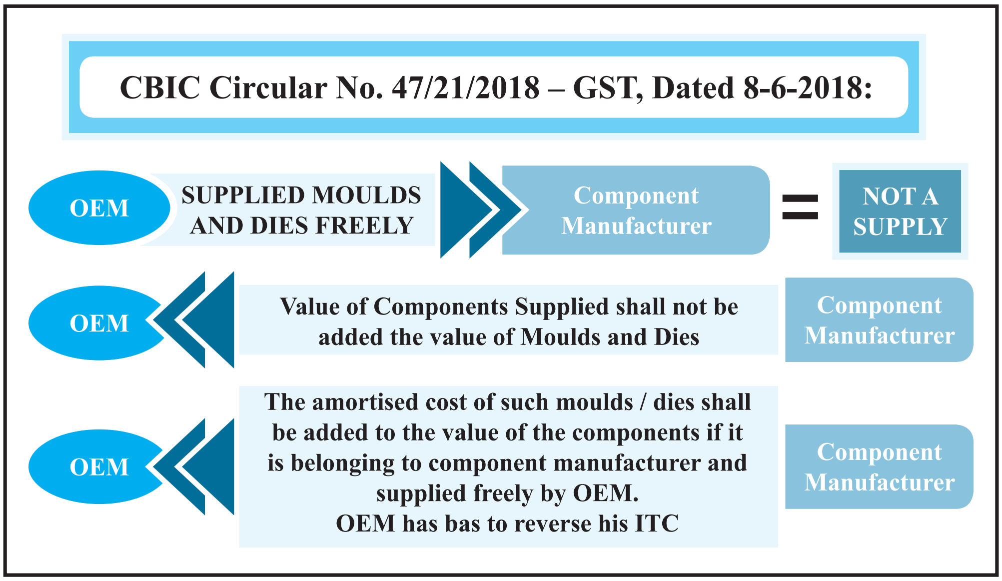
(e) Invoice price

Particulars	Value in ₹
Cost of Motor Vehicle	20,00,000
Add: TCS under Sec 206C of IT Act, 1961	20,000
Sub-total	20,20,000
Add: GST 28% on ₹20 lakh	5,60,000
Invoice price	25,80,000

CBIC Circular No. 47/21/2018-GST, dated 8-6-2018:

Issue	Clarification
Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?	1.1 Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM. 1.2 It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act for short). 1.3 However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components. In such cases, the OEM will be required to reverse the credit availed on such moulds/ dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.

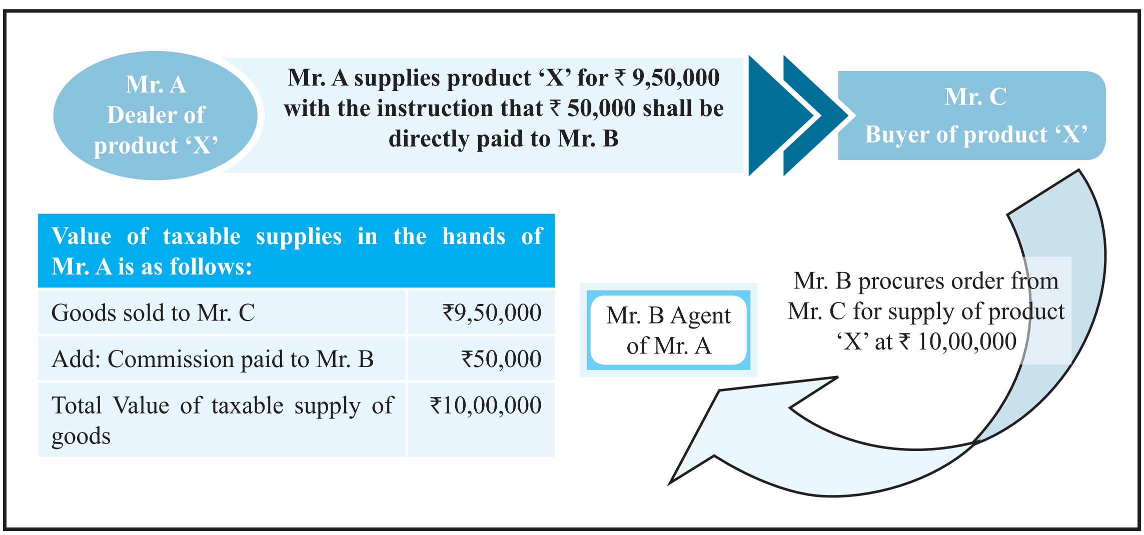
SUMMARY:



Commission and packing charges [Section 15(2)(c)]

The transaction value will include commission and packing charges charged by the supplier to the recipient of supply and transaction value to include any amount charged by the supplier for anything done in respect of supply either at the time or before delivery of goods or services.

Example 2



Value of taxable supplies in the hands of Mr. A is as follows:	
Goods sold to Mr. C	₹9,50,000
Add: Commission paid to Mr. B	₹50,000
Total Value of taxable supply of goods	₹10,00,000

Illustration 3

Mr. A is a seller of furniture. He supplied the furniture for ₹5,75,000 to Mr. B with the condition that to remove old furniture from the premises of Mr. B by charging ₹5,000. Find the value of taxable supply of goods in the hands of Mr. A.

Solution:

The value of taxable supply of goods is ₹5,80,000.

Interest or late fee or penalty for delayed payment [Section 15(2)(d) of the CGST Act, 2017]

It is specifically provided that interest or late fee or penalty for delay in payment of any consideration for supply will form part of the value of supply.

Example 3

Penal interest charged by the supplier of goods for delay in payment of dues is subject to GST.

Example 4

As per CBIC Circular No. 102/21/2019-GST, dated 28-6-2019, Penal interest against loan repayment is also treated as interest and covered under entry no. 27 of the Notification No. 12/2017 C.T. Therefore, exempted from GST.

Subsidy directly linked to the price (other than Govt. Subsidies) [Section 15(2)(e) of CGST Act, 2017]

Subsidy provided in any form or manner **linked to the supply** will also be included in the transaction value.

Illustration 4

Bharat Gas sells cooking gas cylinders. Subsidy directly transferred to the account of the customer. Selling price per cylinder is ₹800. Customer received subsidy ₹200 directly from Government to his bank account. Net outflow of the buyer is ₹600. Find the value of supply of goods (per cylinder) in the hands of Bharat Gas.

Solution:

Since, the amount of subsidy is directly credited to the account holder and not received by the Bharat Gas making the supply. Therefore, such subsidy will not be considered as part of transaction value as it is not received by the Bharat Gas making the supply.

Hence, transaction value is ₹800 per cylinder.

Illustration 5

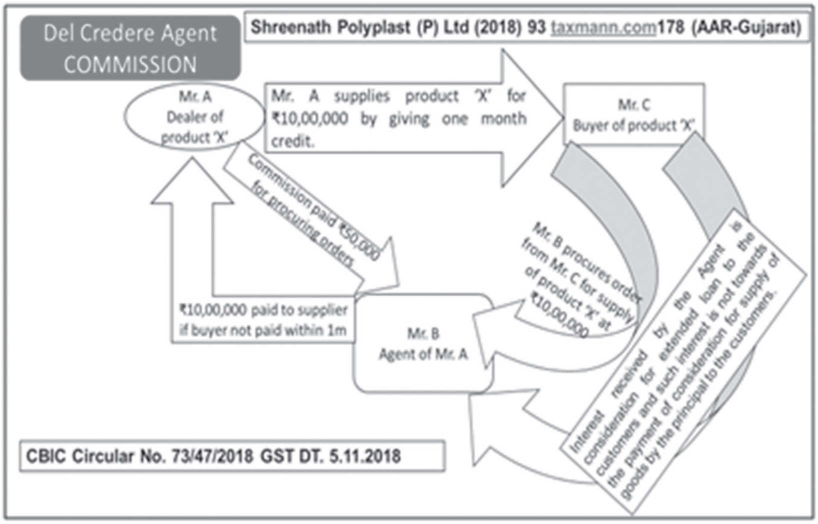
The Government provides subsidy, for the benefit of farmers but it is given to the manufacturer of fertilizers. Such subsidy will form part of value of supply.

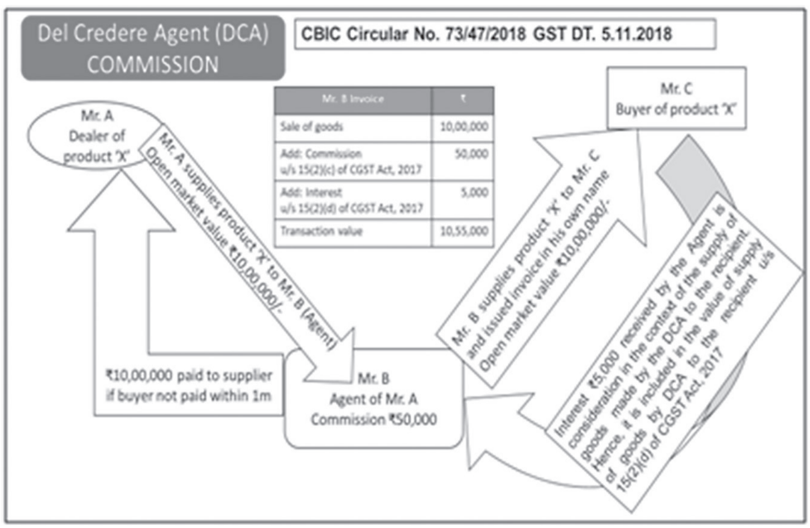
Solution:

The buyer of goods does not provide subsidy, but the Government as per the scheme provides it.

Therefore, this will not form part of value of supply as it is specifically specified that such subsidy provided by the Government will not form part of the value of supply.

Del Credere Agent Commission - GST





Mr. B Invoice	₹
Sale of goods	10,00,000
Add: Commission u/s 15(2)(c) of CGST Act, 2017	50,000
Add: Interest u/s 15(2)(d) of CGST Act, 2017	5,000
Transaction value	10,55,000

Donation or gifts from individual donors – Levy of GST on service display of name plates or donor in premises of charitable organisation (CBIC Circular No. 116/35/2019 GST, dated 11-10-2019):

Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable institutions, schools, hospitals, orphanages, old age homes etc. the recipient institutions place a name plate or similar such acknowledgement in their premises to express gratitude.

When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no **GST liability** on such consideration.

Example 5

"Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Rajesh to a charitable Yoga institution.

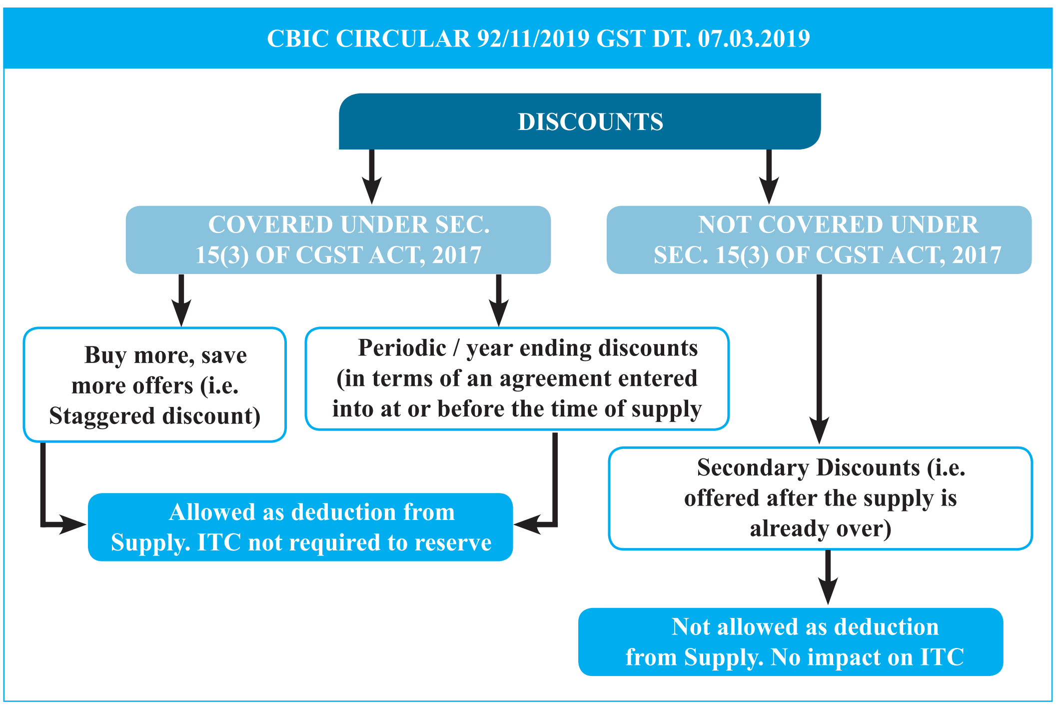
Example 6

"Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

Discount under GST [Section 15(3) of the CGST Act, 2017]

S. No.	Nature of Discount	Treatment in GST	
1	If the discount is given before or at the time of supply and is recorded in the invoice.	Value of goods Less: Discount Transaction value	Xxxx (xx) xxx
2	If the discount is given after supply but agreed upon before or at the time of supply, and can be specifically linked to relevant invoices.	Can be claimed as deduction from transaction value	
3	If the discount is given after supply, and not known at the time of supply	Cannot be claimed as deduction from transaction value	

Discounts:



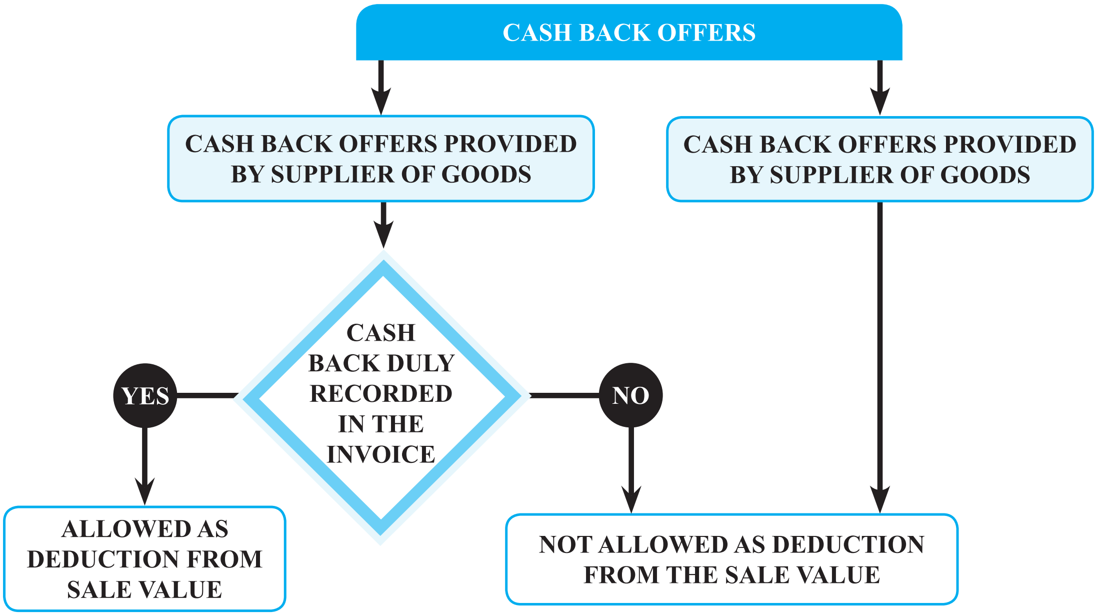


Illustration 6

M/s Ashok Enterprise sells mineral water bottles, with MRP ₹20 per bottle. However, customers availing discount of ₹4 per bottle. In the month of Oct 2022, M/s Ashok Enterprise sold 2,000 bottles. Applicable rate of GST 18%. Find the tax liability.

Solution:		**(₹)**
Transaction value	=	32,000
Add: CGST 9% on ₹32,000	=	2,880
Add: SGST 9% on ₹32,000	=	2,880
Invoice price	=	37,760

Working note:		(₹)
MRP value (₹20 × 2000 pcs)	=	40,000
Less: Discount (₹4 × 2000 pcs)	=	(8,000)
Transaction value	=	32,000

Illustration 7

Best Cars Ltd sells a car worth ₹5,00,000 to Sundar Automobiles. Best Cars Ltd. incurred packing charges of ₹6,000 on the car. Best Cars Ltd provided a discount of 1% on the car price, as part of Diwali scheme.

Best Cars Ltd agreed to provide a further discount of 0.5% if Sundar Automobiles makes payment by 31st of the month via net banking. Sundar Automobiles makes the payment by 31st of the month using net banking. Find the Net GST liability in the hands of Best Cars Ltd. Applicable rate of GST 18%.

Solution:

Particulars	Value in ₹
Value of the product	5,00,000
Add: packing charges	6,000
Sub-total	5,06,000
Less: Discount 1% on ₹5 lakh	(5,000)
Transaction value	5,01,000
Add: CGST 9%	45,090
Add: SGST 9%	45,090
Invoice price	5,91,180

Note: Since, the discount was known at the time of supply, and can be linked to this specific invoice, the discount amount can be reduced from the transaction value.

For this, Best Cars Ltd will issue a credit note to Sundar Automobiles for ₹2,500 (0.5% of ₹5,00,000 = ₹2,500+ GST@ 18% on ₹2,500 = ₹450), and the same must be linked to the relevant tax invoice.

Discount given after supply but agreed upon before or at the time of supply and can be specifically linked to relevant invoices, can be deducted from the transaction value.

Illustration 8

However, due to a severe cash crunch, Best Cars Ltd requests Sundar Automobiles to make the payment within 2 days, promising a discount of 2% on doing so. Sundar Automobiles makes the payment within 2 days.

Solution:

Since, the discount was not known at the time of supply, it couldn't be claimed as a deduction from the transaction value for GST calculation.

Illustration 9

M/s Nambiar & Co., an Audit firm based in Cochin undertake an audit assignment of his client based in Chennai. The Contract mentioned about the audit fees of ₹5,00,000 and arrangement of taxi by the Clint which may be worth ₹15,000.

Find the transaction value on which M/s Nambiar and Co., is liable to pay GST.

Solution:

Transaction value in the hands of M/s Nambiar & Co., is ₹5,15,000.

Note: Not only audit fees but also the expenditure incurred in connection with the taxi ₹15,000 constitutes the sole consideration.

Illustration 10

M/s X Ltd is engaged in doing job work for M/s Y Ltd. M/s Y Ltd supplies raw material for ₹2,00,000 and packing material for ₹22,500 to M/s X Ltd. for completion of job work. M/s X Ltd has agreed to supply job-work services for the purpose of performing the activities as specified by M/s Y Ltd. Job worker labour charges ₹1,00,000, profit of ₹70,000 and material consumed for ₹3,500. Find transaction value (i.e. sole consideration) to levy GST in the hands of M/s X Ltd.

Solution:

Particulars	Value in ₹
Service charges	1,00,000
Add: Material consumed	3,500
Add: Jobworker profit	70,000
Transaction value (i.e. taxable value of supply of service in the hands of M/s X Ltd.)	1,73,500
Note: "Although, it includes materials worth ₹3,500, still the entire supply including value of material would be treated as services.	

Illustration 11

Asha Ltd. supplies raw material to a job worker Kareena Ltd. After completing the job-work, the finished product of 5,000 packets are returned to Asha Ltd. putting the retail sale price as ₹20 on each packet. The product in the packet is covered under MRP provisions. Determine the transaction value in the hands of Kareena Ltd. under GST law from the following details:

Particulars	Value in ₹
Cost of raw material supplied	30,000
Job worker's charges including profit	10,000
Transportation charges for sending the raw material to the job worker	3,000
Transportation charges for returning the finished packets to Asha Ltd.	4,500
Asha Ltd. paid certain technology transfer fees to 'Reena Ltd', so that 'Kareena Ltd' can use the said technology in the given job-work operation. This technology owned by Asha Ltd. for subsequent use as well.	22,500

Note: Kareena Ltd offered discount ₹2,000, provided full payment is made at the time of raising invoice and the same is mentioned in the invoice. Asha Ltd. made full payment at the time of issue of invoice.

Solution:

Statement showing transaction value of Kareena Ltd.

Particulars	Value in ₹
Cost of raw material supplied	Exempted supply

Particulars	Value in ₹
Job worker's charges including profit	10,000
Transportation charges for sending the raw material to the job worker	Exempted supply
Transportation charges for returning the finished packets to Asha Ltd. [Section 15(2)(b) of the CGST Act, 2017]	4,500
Technology fee	not addable
Sub-total	14,500
Less: Discount [Section 15(3) of CGST Act, 2017]	(2,000)
Transaction value (i.e. sole consideration)	12,500

Note:

(1) It is very clear that principal to jobworker and jobworker to principal cannot be treated as supply as per section 143 of the CGST Act, 2017.

(2) CBIC Circular No. 47/21/2018-GST, dated 8-6-2018:

Technology owned by the recipient which are provided to a job worker (the two not being related persons or distinct persons) on FOC basis does not constitute a supply. It is further clarified that while calculating the value of the supply made by the job worker, the value of technology provided by the recipient to the job worker on FOC basis shall not be added to the value of such supply because the cost of technology was not to be incurred by the job worker and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act for short).

(3) Therefore, if 'Asha Ltd.' paid certain technology transfer fees to 'Reena Ltd', so that 'Kareena Ltd' can use the said technology in the job-work operation that is performing for 'Asha Ltd', the value of such technology transfer fee may also be included in transaction value of job-work services.

Illustration 12

Mr. Bhanu makes supply of ₹2,00,000 to Mr. Renu. The contract provides that Mr. Renu will pay ₹50,000 to Mr. Bhanu and ₹1,50,000 to Mr. Venu to settle the debt of Mr. Bhanu. Find the transaction value and GST liability in the hands of Mr. Bhanu. Applicable rate of CGST and SGST 9% each.

Solution:

Answer: Statement showing transaction value and GST liability:	
Particulars	**Value in ₹**
Payment from Renu to Bhanu	50,000
Payment from Renu to Venue for settling the debt of Bhanu	1,50,000
Transaction value (i.e. Sole consideration)	2,00,000
CGST 9%	18,000
SGST 9%	18,000

Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members. (CBIC Circular No. 109/28/2019-GST, dated 22nd July, 2019)

<table>
<tr><th>Sl. No.</th><th>Issue</th><th>Clarification</th></tr>
<tr><td>1</td><td>Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?</td><td>Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of ₹ 7500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST. Prior to 25th January 2018, the exemption was available if the charges or share of contribution did not exceed ₹ 5000 per month per member. The limit was increased to ₹ 7500 per month per member with effect from 25th January 2018. [Refer clause (c) of Sl. No. 77 to the Notification No. 12/2018- Central Tax (Rate), dated 28.06.2019]</td></tr>
<tr><td>2</td><td>A RWA has aggregate turnover of ₹20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than Rs. 7500 per month per member?</td><td>No. If aggregate turnover of an RWA does not exceed ₹20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds ₹ 7500 per month per member. RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than ₹ 7500 per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also ₹ 20 lakhs or more.
<table>
<tr><th>Annual turnover of RWA</th><th>Monthly maintenance charge</th><th>Whether exempt?</th></tr>
<tr><td rowspan="2">More than ₹ 20 lakhs</td><td>More than ₹ 7500</td><td>No</td></tr>
<tr><td>₹ 7500 or less</td><td>Yes</td></tr>
<tr><td rowspan="2">₹ 20 lakhs or less</td><td>More than ₹ 7500</td><td>Yes</td></tr>
<tr><td>₹ 7500 or less</td><td>Yes</td></tr>
</table></td></tr>
<tr><td>3</td><td>Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than ₹ 7,500 per month per member?</td><td>RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.</td></tr>
</table>

Sl. No.	Issue	Clarification
4	Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of ₹ 7500 per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?	As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of ₹ 7500 per month per member shall be applied separately for each residential apartment owned by him. For example, if a person owns two residential apartments in a residential complex and pays ₹ 15000 per month as maintenance charges towards maintenance of each apartment to the RWA (₹ 7500 per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.
5	How should the RWA calculate GST payable where the maintenance charges exceed ₹ 7500 per month per member? Is the GST payable only on the amount exceeding ₹ 7500 or on the entire amount of maintenance charges?	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed ₹ 7500 per month per member. In case the charges exceed ₹ 7500 per month per member, the entire amount is taxable. For example, if the maintenance charges are ₹ 9000 per month per member, GST @18% shall be payable on the entire amount of ₹ 9000 and not on [₹ 9000 - ₹ 7500] = ₹ 1500 .

Transaction value not available [Section 15(4) read with CGST Rules, 2017 (i.e. Determination of value of supply)]

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

(a) Open market value of such supply

(b) Sum total of consideration equal to money, if such amount is known at the time of supply provided (a) not applicable.

(c) The value of supply of like kind and quality if (a) and (b) not applicable.

(d) Based on cost as per rule 30, if not as per residual method rule 31in that order, provided (a) to (c) not applicable.

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

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

Rule 30: Value of supply of goods or services or both based on Cost.

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

15.4.1 Rule 27: value of supply of goods or services where the consideration is not wholly in money:

Valuation based on based on open market value of such supply.

(a) **“Open market value”** of 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 price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

Example 10

Where a new phone is supplied for ₹20,000 along with the exchange of an old phone and if the price of the new phone without exchange is ₹24,000, the open market value of the new phone is ₹24000.

Illustration 13

Mr. A being a registered person sells TVs to all customers at ₹45,000. He supplied new TV for ₹42,000along with the exchange of an old TV. Find the open market value of TV.

Solution:

Open market value is ₹45,000.

Illustration 14

M/s X Ltd is a manufacturer of car and sells the car in the open market at a price of ₹11,00,000. M/s X Ltd provided the car to his company auditor is only for ₹9,00,000. In return auditor provided auditing services to M/s X Ltd and charged ₹5,000 with the condition that company will be provided the car at the price of ₹9,00,000. Find the value as per Rule 27(a), Determination of value of supply.

Solution:

Open market value of the car is ₹11,00,000.

Therefore, M/s X Ltd transaction value should be ₹11,00,000 on which GST will be levied.

(b) Sum total of consideration equal to money, if such amount is known at the time of supply provided open market value is not available.

The value of consideration which is non-monetary terms shall be determined in monetary terms. The said value shall be added to the value in monetary terms in determination of value of supply.

Illustration 15

M/s X Ltd. is supplier of security services provided such services to M/s Y Ltd. As per the contract M/s Y Ltd is to pay monthly ₹1,00,000. In the month of November M/s Y Ltd. supplied uniforms to all employees of M/s X Ltd. by spending ₹20,000. As a result M/s X Ltd. raised the bill for ₹80,000 in the month of November. In the given case M/s X Ltd. received consideration for security service is partially in terms of money ₹80,000 and partially in kind (i.e. uniforms). Find the taxable value of service on which GST will be levied.

Solution:

GST will be levied on the value of ₹1,00,000 (₹80,000 + uniforms equal to monetary value of ₹20,000) in the hands of M/s X Ltd.

Illustration 16

R Academy normally charge ₹10,000 for teaching the commerce students. A merit student approaches the management of R Academy and narrates his financial position. R Academy management considering his financial position agrees to charge only ₹5,000 from such student. Find the value of taxable supply of service.

Solution:

Since, R Academy has not received any consideration from the student in any other form, ₹5,000 itself is the sole consideration. GST will be levied on ₹5,000.

(c) The value of supply of like kind and quality if (a) and (b) not applicable:

If the value of supply is not determinable as per open market value and monetary value of non-monetary values, the values of supply shall be of like kind and quality.

Factors facilitating to determine value of supply:

- Goods or services of same kind and quality
- Identical or Similar nature
- Similar circumstances
- Comparison of various factors and so on…

Example 11

R Academy teaching or coaching budding CMA's Tuition fee of R Academy can be compared with another academy of same kind and nature. It means we should not compare with home tuition of a faculty to 4th Standard students.

Example 12

Feather light chairs price compare with **identical or similar nature** product. It means feather light product compare with Godrej chair products.

Example 13

Value of product in Chennai will be on higher than the product in Sikkim or Assam. Therefore, the rule provides that the supply of goods or services shall be in **similar circumstances**. It means that if the supply of goods or services which value is required to be determined has been made in Chennai, supply of goods or services which is considered as base shall be made in Chennai.

Example 14

Canon heavy duty machines cannot be **compared** with ordinary laser Jet printer. Likewise, interior decorator completed interior decoration of a residential house measuring 1000 sq. ft. cannot be considered as similar service for doing interior decoration of 1000 sq. ft. of office area.

(d) Based on cost as per rule 30 or based on residual method as per rule 31 in that order, provided (a) to (c) not applicable.

As per rule 30 of the CGST Rules, 2017 value of supply of goods or services or both on cost. The value shall be 110% of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Illustration 17

Raj & Co. furnishes the following expenditure incurred by them to find the transaction value for the purpose of paying GST.

(i)	Direct material cost per unit inclusive of IGST at 18%	₹944
(ii)	Direct wages	₹250
(iii)	Other direct expenses	₹100
(iv)	Indirect materials	₹75
(v)	Factory overheads	₹200

(vi) Administrative overhead (25% relating to production capacity) ₹100

(vii) Selling and distribution expense ₹150

(viii) Quality control ₹25

(ix) Sale of scrap realised ₹20

(x) Actual profit margin 15%

Find the value for the purpose of payment of GST as per Rule 30 of the CGST Rules, 2017.

Solution:

Statement showing value of supply of goods as per Rule 30 of the CGST Rules, 2017:

Particulars	Value in ₹
Direct material cost (944 × 100/118)	800
Direct wages	250
Other direct expenses	100
Indirect materials	75
Factory overheads	200
Administrative overhead (25% of ₹100)	25
Quality control	25
Sub-total	1475
Less: Sale of scrap	(20)
Cost of production	1,455
Add: 10% profit margin as per Rule 30 of the CGST Rules, 2017	145.50
Value of taxable supply of goods	1,600.50

Cost Accounting Standard (CAS)-4 issued by the Institute of Cost Accountants of India enumerates various costs to be included in determining the cost of production of goods. CAS-4 principles are also applicable for determining the cost of supply of service.

Thus, cost of acquisition will include cost of transportation, any local taxes, insurance, other expenditure like commission, fee and so on paid on procurement of goods.

However, GST element will not be considered for the purpose of determining the cost of acquisition.

Illustration 18

Determine the cost of production of the under mentioned product for the purpose of valuation in terms of Rule 30 of the Central Goods and Services Tax Rules, 2017. Direct Material ₹11,800, Direct wages and Salaries ₹8,400, Works overheads ₹6,200, Quality control costs ₹3,500, Research and Development Costs ₹2,400, Administration Overheads ₹4,100, Selling and Distribution Costs ₹1,600, Realisable value of scrap ₹1,200. Administrative overheads are in relation to production activities. Material cost includes IGST₹1,800.

Solution:

Calculation of Cost of Production and value:

Direct Material Cost	₹11,800
Less: IGST	₹ (1,800)
	₹10,000
Direct Wages	₹ 8,400
Works overheads	₹ 6,200
Quality control costs	₹ 3,500
Research and Development cost	₹ 2,400
Administrative O.H. relating to production	₹ 4,100
Less: Realisable value of scrap	₹(1,200)
Cost of Production	₹33,400
Add: 10% profit margin	₹ 3,340
Transaction Value (i.e. Assessable Value)	₹36,740

Illustration 19

Compute the cost of production and valuation for the under mentioned product as per Rule 30 of the CGST Rules, 2017:

		(₹)
1.	Cost of material (Inclusive of CGST & SGST at 12%)	1,12,000
2.	Direct wages	47,000
3.	Other direct materials	13,500
4.	Computer use for office purpose	41,000
5.	Quality control test incurred for production process	17,000
6.	Engineer charges paid for installation of machinery	12,750
7.	Other factory overhead	27,000
8.	Salary of staff appointed for office duty	84,000
9.	Sale of scrap realized	1,800
10.	Actual profit margin	15%
11.	Administrative overhead (100% related to administrative Works)	1,00,000
12.	Selling and distribution overhead	30,000

Solution:

Statement showing Transaction Value as per Rule 30 of the CGST Rules, 2017:

Transaction cost	Assessable value ₹	Remarks
Cost of material	1,00,000	1,12,000 × 100/112

Transaction cost	Assessable value ₹	Remarks
Direct wages	47,000	
Other direct material	13,500	
Computer office	Nil	Not addable
Quality control test	17,000	
Engineering charges for installation of machinery	Nil	Not addable
Other factory overheads	27,000	
Salary	Nil	Not addable
Sale of scrap	-1,800	
Cost of production	2,02,700	
Add: 10% profit margin	20,270	2,02,700 × 10%
Assessable value	2,22,970	

Illustration 21

From the following particulars, compute the transaction value as per Rule 30 of the CGST Rules, 2017 for GST purpose. Out of 1,000 units manufactured, 800 units have been cleared to a sister unit for further production of taxable goods on assessee's behalf, the balance 200 units are lying in the stock:

Particulars	(₹)
Direct material consumed (inclusive of IGST @ 18%)	2,36,000
Direct labour and direct expenses	1,60,000
Works overheads	40,000
Research and development costs	25,000
Administration overheads (75% related to production)	80,000
Input received free of cost from sister units	35,000
Abnormal losses (not included above)	24,000
Advertisement and selling costs	36,000
VRS compensation to employee (not included above)	1,20,000
Realisable value of scrap/wastage	20,000

Solution:

Statement showing Assessable Value for 800 units:

Transaction cost	Assessable value ₹	Remarks
Material cost	2,00,000	2,36,000 × 100/118
Labour cost	1,60,000	

Transaction cost	Assessable value ₹	Remarks
Overheads	40,000	
Research and Development	25,000	
Administrative overheads	60,000	80,000 × 75%
Input received from sister unit	35,000	
Abnormal loss	Nil	Not considered
VRS compensation	Nil	Not considered
Resale value of scrap	-20,000	
Cost of production for 1000 u	5,00,000	
Transaction value of 800 units	4,40,000	(5,00,000 × 800u/1000u) × 110%

Illustration 21

Alpha Ltd., a manufacturer of taxable goods. Assuming that there is no opening and closing inventory, compute its value as per Rule 30 of the CGST Rules, 2017 for the purpose of GST from the following information provided by Alpha Ltd:

Particulars	(₹)
Cost of direct materials (inclusive of IGST 28%)*	25,600
Cost of direct salaries (includes house rent allowance of ₹12,000)	30,000
Consumable stores and repairs	8,400
Depreciation of machinery	500
Quality control cost	4,300
Research & development cost	2,700
Administrative cost:	
Production related	2,000
Project management related	1,800
Interest and financial charges	2,400
Cost incurred due to break down of machinery	1,300
Amortised cost of moulds and tools received free of cost from the recipient of goods	600
Selling and distribution cost	4,600
Scrap value realized	1,500

***Note:** ITC of the IGST so paid is available.

Solution:

Statement showing assessable value for M/s Alpha Ltd.

Particulars	Value ₹	Working note
Cost of direct materials	20,000	25,600 × 100/128
Cost of direct salary	30,000	
Consumables	8,400	
Depreciation of Machine	500	
Quality control cost	4,300	
Research and development	2,700	
Administrative cost Production	2,000	
Add: amortisation cost	600	
Less: sale of scrap	-1,500	
Cost of production	67,000	
Add: profit	6,700	67,000 × 10%
Transaction value	73,700	

As per Rule 31 of the CGST Rules, 2017 Residual method for determination of value of supply of goods or services or both

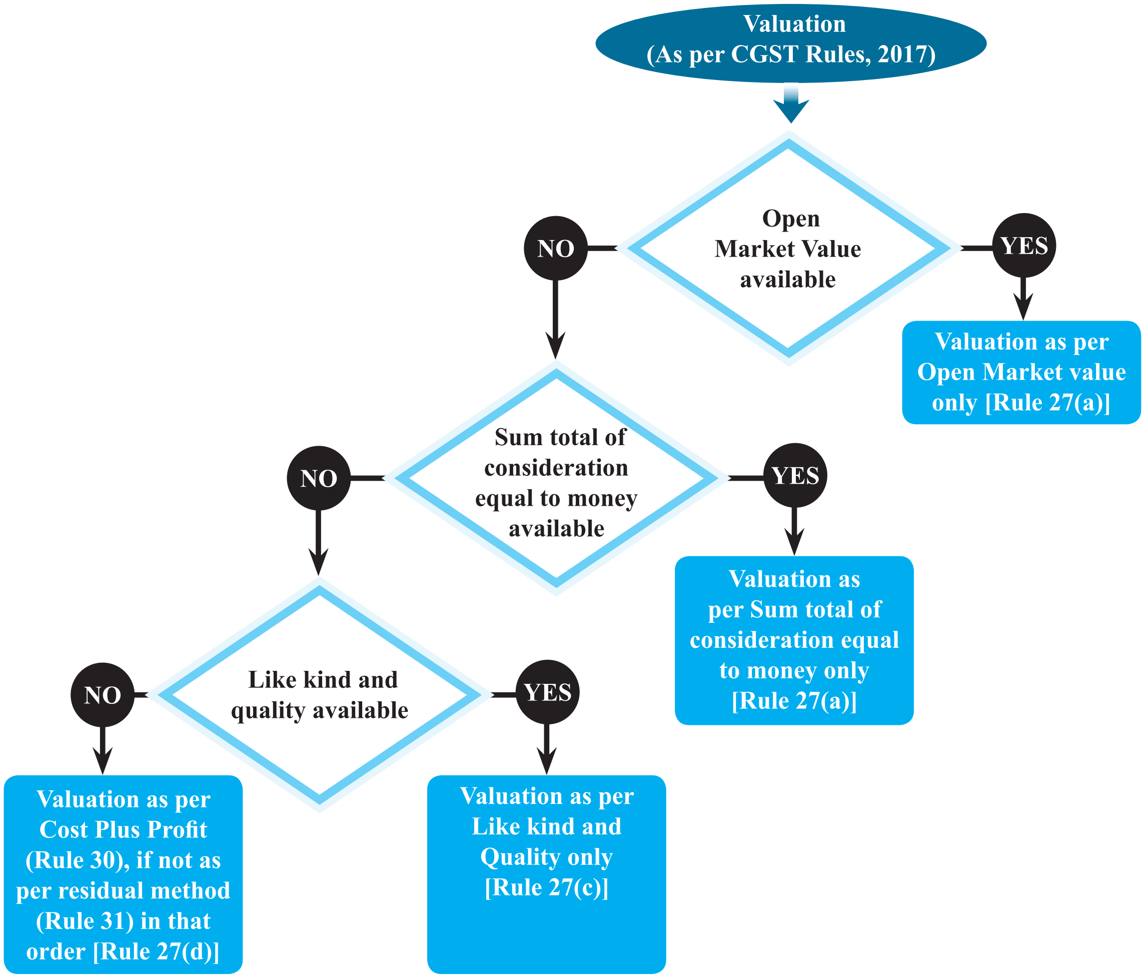
It is provided that where the value of supply of goods or services or both cannot be determined under rule 27 to rule 30 of the CGST Rules, 2017, value shall be determined by using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter IV of the CGST Rules, 2017.

Value of service can be on basis of rule 31 instead of on cost plus 10% basis: -

In case of supply of services, the supplier may opt for rule 31 ignoring rule 30 (as per proviso to Rule 31 of CGST and SGST Rules, 2017).

It means to say that efforts should be made by proper officer to determine the by using his best judgment assessment.

Simplified Approach: Rule 27 of the CGST Rules, 2017:



Rule 28 of the CGST Rules 2017 value of supply or goods or services or both between distinct or related persons other than through an agent

The value of the supply of goods or services or both between distinct persons as specified in section 25(4) and section 25(5) of the CGST Act, 2017 or where the supplier and recipient are related, other than where the supply is made through an agent, shall—

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

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged of the supply of goods of like kind and quality by the recipient to his customer not being a related person:

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

Illustration 22

M/s X Ltd owned factory in Chennai (Tamil Nadu) and one depot in Cochin (Kerala). Depot in Cochin is required to obtain separate registration as they are considered as distinct person under Section 25(4) of the CGST Act, 2017. The goods manufactured in Chennai factory will be transferred to Cochin Depot where it will be sold as it is.

Particulars	No. of units	Price at Factory Per unit	Price at Depot Per unit	Rate of IGST Advalorem
(i) Goods transferred from factory to depot on 8th February	1,000	₹200	₹220	18%
(ii) Goods actually sold at depot on 18th February	750	₹220	₹250	12%

Find the value of taxable supply of goods and IGST liability in the hands of M/s X Ltd. of Chennai.

Note: Depot in Cochin is not availing input tax credit.

Solution:

Value of taxable supply of goods = ₹1,98,000

(₹220 × 1,000 units) × 90%

IGST = ₹35,640 (i.e. ₹1,98,000 × 18/100)

Note: It means at the time of transfer of goods from Chennai Factory to Cochin Depot, M/s X Ltd. will have to determine the price at which depot will sell the goods to his customers.

As per 1st proviso to Rule 28 of Chapter IV of the CGST Rules, 2017 provides that such price should be the price for sale of goods to unrelated person.

M/s X Ltd. has option to pay GST on 90% of such value (i.e. 90% of the price at which the goods are being sold from Cochin Depot).

Illustration 23

M/s Y Ltd owned factory in Hyderabad (Telangana) and one depot in Vijayawada (Andhra Pradesh). Depot in Vijayawada is required to obtain separate registration as they are considered as distinct person under Section 25(4) of the CGST Act, 2017. The goods manufactured in Hyderabad factory will be transferred to Vijayawada Depot where it will be sold as it is. Depot in Vijayawada is availing Input Tax Credit.

Particulars	No. of units	Price at Factory Per unit	Price at Depot Per unit	Rate of IGST Advalorem
(i) Goods transferred from factory to depot on 8th February	1,000	₹200	₹220	18%
(ii) Goods actually sold at depot on 18th February	750	₹220	₹250	12%

Find the value of taxable supply of goods and IGST liability in the hands of M/s Y Ltd. of Hyderabad.

Solution:

Value of taxable supply of goods = ₹2,00,000 (i.e. Deemed to be open market value)

(1000 units × ₹200)

IGST = ₹36,000 (₹2,00,000 × 18/100)

Note:

(i) As per 2nd proviso to Rule 28 of Chapter IV of the CGST Rules, 2017 provides that where the recipient is eligible for input tax credit, value declared in the invoice shall be deemed to be open market value of goods or services.

(ii) Integrated Tax Department has right to reject the valuation if the value is not full fill the open market value. It should meet the requirement of sole consideration.

Illustration 24

Kamal & Co. manufactures customized products at its unit situated in Rajasthan. Cost of production for Kamal & Co for 1000 products is ₹20,00,000. These products require further processing before sale, and for this purpose products are transferred from its Rajasthan unit to its another unit in Punjab. The Punjab unit, apart from processing its own products, engages in processing of similar products of other persons who supply the products of the same kind and quality and thereafter sells these processed products to wholesalers. There are no other factories in the neighboring area which are engaged in the same business as that of its Punjab unit. Products of the same kind and quality are supplied in lots of 1000 each time by another manufacturer located in Punjab. The price of such goods is ₹19,00,000. Determine the value of 1000 products supplied by Kamal & Co. to its Punjab unit as per the provisions of CGST Act, 2017.

Solution:

Value of supply for Kamal & Co., Rajasthan: The value of the supply of goods or services or both between distinct persons as specified in section 25(4) and section 25(5) of the CGST Act, 2017 or where the supplier and recipient are related, other than where the supply is made through an agent, shall—

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

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged of the supply of goods of like kind and quality by the recipient to his customer not being a related person:

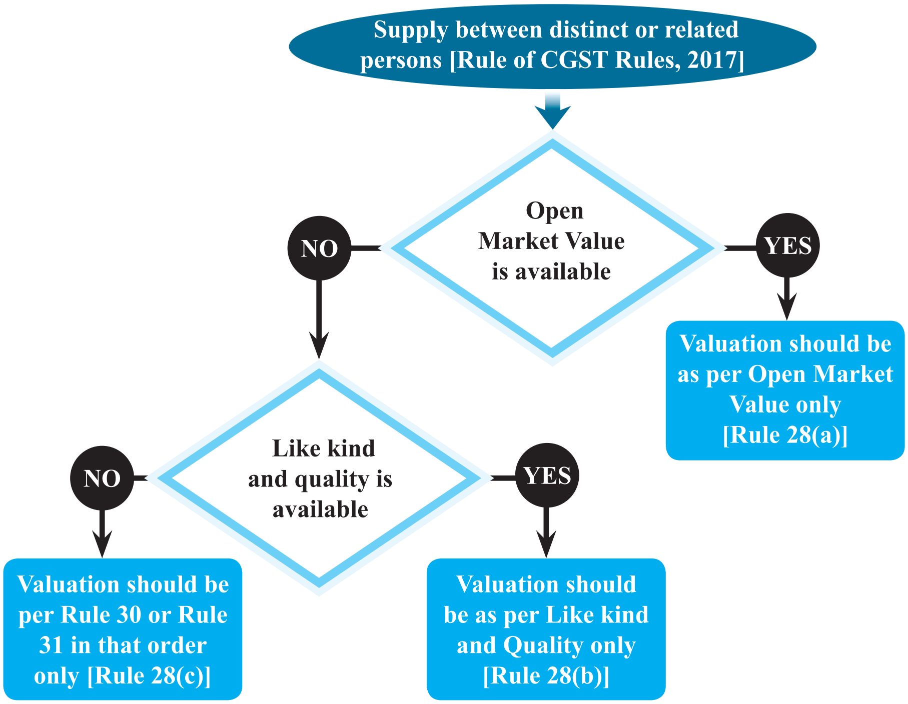
Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services.

In the given case, open market value of the 1000 products being supplied to Punjab unit is not available since the supplier manufactures customised products. Therefore, value of 1000 products supplied by Rajasthan unit of Kamal & Co. to Punjab unit will be the value of the goods of like kind and quality supplied to Punjab unit by other customers which is ₹19,00,000.

Since goods are not supplied as such by the Punjab unit, goods cannot be valued @ 90% of the price charged for the supply of like goods by the Punjab unit to its unrelated customers in terms of first proviso to rule 28 of CGST Rules, 2017.

Further, if Punjab unit is entitled for full ITC, the value declared in the invoice of Rajsthan unit will be deemed to be the open market value of the goods vide second proviso to rule 28 of CGST Rules, 2017.

Simplified Approach: Rule 28 of the CGST Rules, 2017:



1st Proviso to Rule 28: Where the goods supplied as such, at the option of the supplier value shall be 90% of the price charged by recipient.
2nd Proviso to Rule 28: Where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the open market value of goods or service

Rule 29 of the CGST Rules 2017 value of supply of goods made or received from an agent:

As we are aware of that as per clause 3 of **Schedule I** of the CGST Act 2017:

SCHEDULE I ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION
3. Supply of goods— (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

As per Rule 29 of the CGST Rules, 2017 provides the manner in which value shall be determined in such cases.

(a) be the **open market value** of the goods being supplied, or at the option of the supplier, be **90% of the price charged for the supply of goods** of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient;

(b) where the value of a supply is not determinable under clause (a), the same shall be determined by application of Rule 30 or Rule 31 of Chapter IV of the CGST Rules 2017 in that order.

Illustration 25

A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of ₹5,000 per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of ₹4,550 per quintal.

Find the value of taxable supply in the hands of principal as per Rule 29(a) of the CGST Rules, 2017.

Solution:

The value of taxable supply made by the principal shall be ₹4,550 or where he exercises the option, the value shall be ₹4,500 (i.e. 90% of ₹5,000) per quintal.

Illustration 26

M/s P Ltd being a principal supplies laptop to his agent and the agent is supplying laptops of like kind and quality in subsequent supplies. M/s P Ltd incorporated in Chennai (Tamil Nadu). Agent is located in Nagercoil (Tamil Nadu). Goods supplied on 15th November by the Principal to his Agent.

	Particulars	No. of units	Price at which principal supplies to agent	Price at which agent supplies to his customer not being a related person	Rate of GST Advalorem
(i)	Selling price on 15th November	1,000	₹Nil	₹22,000	18%
(ii)	Goods procured by agent from other independent supplier supplying laptops of like kind and quality at ₹20,000 per unit on 15th November.				

Find the value of taxable supply of goods and GST liability in the hands of M/s P Ltd. of Chennai.

Solution:

Value of taxable supply made by principal shall be ₹20,000 per laptop or where the principal exercise the option the value shall be ₹19,800 per laptop (i.e. 90% of the ₹22,000).

It is economical to opt the 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being related person on the day of supply.

Total taxable value of supply = ₹198,00,000

(i.e. 19,800 × 1000 units).

GST liability in the hands of M/s P Ltd. of Chennai:

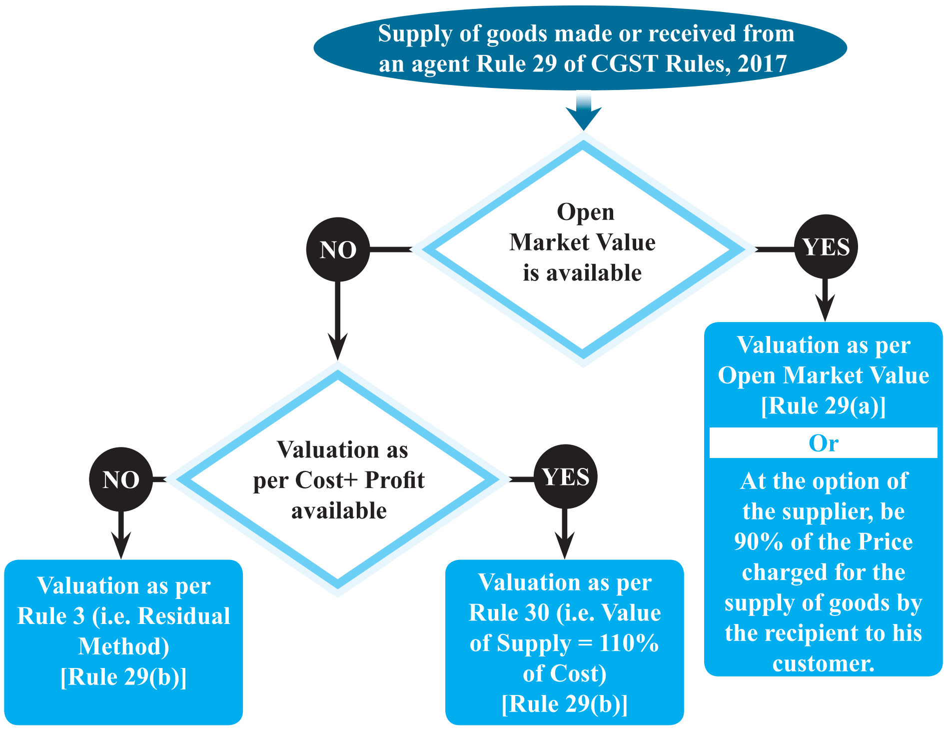
CGST 9% on ₹198 lakh = ₹17,82,000

SGST 9% on ₹198 lakh = ₹17,82,000

Rule 30: Value of supply of goods or services or both based on Cost already covered.

Rule 31: Residual method for determination of value of supply of goods or services or both already covered.

Simplified Approach: Rule 29 of the CGST Rules, 2017:



Value of supply in case of lottery, betting, gambling and horse racing

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.

Explanation— For the purposes of this sub-rule, the expressions—

(a) "lottery run by State Governments" means a lottery not allowed to be sold in any State other than the organizing State;

(b) "lottery authorised by State Governments" means a lottery which is authorised to be sold in State(s) other than the organising State also; and

(c) "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.

(2) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.";

Rule 31A. Value of supply in case of lottery, betting, gambling, and horse racing

Supply	Value
W.E.F. 1.3.2020 **Supply of lottery run by State Govt. (OR)** **Supply of lottery authorised by State Govt.**	Higher of the two amounts to be deemed as value: 100/128 of the face value of ticket **OR** 100/128 of the price as notified in the official Gazette by the organising State.
Supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club	100% of the face value of the bet or the amount paid into totalisator

(100/128) × Face Value of lottery ticket **OR** **(100/128) × Price notified in the official Gazette by the organising State** — **Whichever is Higher**

Determination of value in respect of certain supplies (Rule 32 of Chapter IV of the CGST Rules, 2017):

Rule 32(1): Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the OPTION of the supplier, be determined in the manner provided hereinafter.

Rule 32(2): Money changing services	**Already covered**
Rule 32(3): Air travel agent of passenger transport	
Rule 32(4): Life insurance business	

Rule 32(5): Buying and Selling of second hand goods:

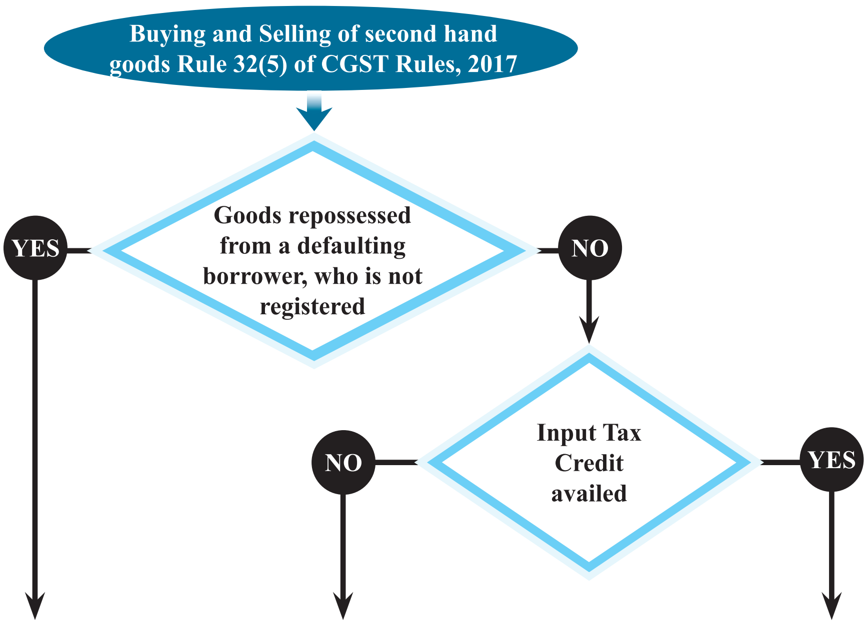
Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e. used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored (i.e. goods are sold at loss then tax will not be payable).

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.

When a registered second-hand goods dealer supplies second-hand goods, the dealer is liable to charge GST on the second-hand goods. For this, 2 options have been given to the dealers:

Charge GST on the full transaction value. Here, the dealer is eligible to claim input tax credit of the tax paid on purchase of the used goods.

Simplified approach:



Purchase Value	XX
Less: 5% per quarter from the date of purchase to date of disposal	(XX)
Purchase price of the borrower	XX
GST will be levied on the margin (i.e., sale value - purchase value). If it is negative then GST is Nil	

Sale Value	XXX
Less: Purchase Value	(XX)
Margin	XXX
GST will be levied on the margin. If it is negative then GST is Nil	

Sale Value (i.e., Transaction value)
GST will be levied on the Transaction value of second hand goods

As per Section 2(92) of the CGST Act, 2017 "quarter" shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;

Illustration 27

Ram & Co., being a car dealer dealing in second hand cars. Ram & Co., purchases used car from Mr. Raja and sell the very same car to Miss. Rani after water wash and painting. The purchase price is ₹2,00,000 whereas the sale price is ₹2,50,000. Find the GST liability as per rule 32(5) of the CGST Rules, 2017 by following margin scheme in the hands of Ram & Co. Assume applicable rate of GST 28%.

Ram & Co., is not availing input tax credit on purchase of second hand cars.

Whether your answer is different if the sale of second hand car for ₹1,80,000.

Note: Ram & Co., and Miss. Rani are located within the State of Tamil Nadu.

Solution:

GST net liability is as follows:

Particulars	Value ₹	14% CGST ₹	14% SGST ₹	Remarks
Output supply	2,50,000			
Less: purchase price	2,00,000			
Difference known as margin	50,000	7,000	7,000	Charge GST on the margin or profit earned on the goods (₹50,000 × 28%)

Yes. Our answer different in case of sale price is ₹1,80,000:

Sale price	=	₹1,80,000
Less: purchase price	=	₹(2,00,000)
Margin	=	₹(20,000)
GST liability	=	₹Nil

Note: For a dealer who has opted for the margin scheme, there can be a scenario where the second-hand goods are sold at zero margins or for a lesser price than the purchase price. In this case, no GST will be applicable on the supply.

Illustration 28

Mr. D being a dealer in goods sells new brand cars at ₹11,00,000. He advertises that customers can sell their old car if they buy new car from him. One customer exchanged his old car for ₹2,00,000. Mr. D sold new car to that customer for ₹9,00,000. The Central Tax Department demanded to pay GST on ₹11,00,000 whereas Mr. D argues that he is eligible to pay GST on the difference namely margin of ₹9,00,000 as per Rule 32(5) of the CGST Rules, 2017. Discuss and decide the correct approach.

Solution:

Rule 32(5) of the CGST Rules, 2017 is applicable only when person is dealing in buying and selling of secondhand goods.

In the given case Mr. D is not eligible for margin scheme as referred in rule 32(5). Since, dealer sold new car and therefore, provisions of rule 32(5) will not apply.

Therefore, from the above it is evident that the Central Tax Department view is correct.

Illustration 29

M/s X Ltd, a registered person under GST, being a dealer dealing with second-hand goods. M/s X Ltd. supplies a used camera to a consumer in Chennai for selling price of ₹15,000. The used camera (i.e. second hand) was purchased for ₹10,000 from a registered dealer in Mumbai, on which CGST + SGST of ₹1,400 each was charged (i.e. GST rate applicable to cameras is 28%).

M/s X Ltd. charged IGST 28% on inter State supply.

Find the net GST liability in the following independent cases:

(a) if input tax credit availed.

(b) if input tax credit not availed.

Solution:

(i) Net GST liability in case of input tax credit availed:		
Particulars	**Value ₹**	**28% IGST ₹**
Output supply	15,000	4,200
Less: ITC CGST 14% SGST 14%	10,000	 (1,400) (1,400)
Net GST liability		1,400

(ii) Net GST liability in case of input tax credit not availed:			
Particulars	**Value₹**	**28% IGST ₹**	**Remarks**
Output supply	15,000		
Less: purchase price	12,800		GST will form part of cost.
Difference known as margin	2,200	616	Charge GST on the margin or profit earned on the goods (₹2,200 × 28%)

Repossession of goods in case of default by the unregistered borrower:

Illustration 30

Mr. C has taken a loan from the bank on 15th July 2017 worth ₹2 crore and purchased a machine. Subsequently Mr. C defaulted in paying the loan amount along with interest. Subsequently bank repossessed the machine from Mr. C on 1st Jan 2018. The banker sells the said goods on 26th April 2018.

Find the value of taxable supply of goods in the hands of banker in the following two independent cases:

Case 1: machine sold for ₹1,90,00,000.

Case 2: machine sold for ₹1,70,00,000.

Note: Applicable rate of IGST 18%.

Solution:

Determination of purchase value:

Particulars	Value in ₹	Working note
Purchase value of the banker	2,00,00,000	Purchase value for the lending company will be the purchase price of the defaulter.
Less: 5% per quarter for 2 quarters	(20,00,000)	From 1st Jan 2018 to 26th April 2018 = 2 quarters
Purchase value at the time of disposal by the bank	1,80,00,000	

Value of taxable supply in the hands of banking company:			
Particulars	**Case 1**	**Case 2**	**Remarks**
Sale price	1,90,00,000	1,70,00,000	
Less: purchase price	(1,80,00,000)	(1,80,00,000)	In case the sale price is below ₹1,80,00,000, banker will not be liable to pay GST as value is nil.
Taxable value or Margin	10,00,000	Nil	
IGST 18%	1,80,000	Nil	₹10 lacs x 18%

Redeemable voucher/coupons/stamp (other than postage stamp) Rule 32(6) of the CGST Rules, 2017

There are many companies who issue vouchers, coupons, stamp and so on and on the basis of which goods or services can be procured by the holder of such vouchers/coupons/stamps etc.

Valuation:

The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

Time of Supply of Vouchers for Goods & Services (Section 12(4) & 13(4) of CGST Act, 2017

If the supplies is identifiable at that point:

- Time of supply = Date of issue of voucher.

If the supplies is not identifiable at that point:

- Time of supply = The date of redemption of voucher.

Example 15

A voucher has face value of ₹5,000. The holder of voucher can purchase goods or services of equivalent value of ₹5,000. When the holder of voucher receives the goods or services against the voucher it is termed as redemption of voucher.

Illustration 31

X Ltd. being a cloth merchant sold gift voucher to customer for ₹2,000 on 10th November to purchase specific cloth from its showroom. Goods actually purchased by customer on 15th November for ₹2,400. Find the time of supply and value of supply with regard to gift voucher in the hands of X Ltd.

Solution:

Time of supply is at the time issue of voucher i.e. 10th November.

Value of supply = ₹2,000 for gift voucher.

Illustration 32

Ram & Co., being dealer in electronics and electrical items, issued gift voucher to its customer for ₹2,000 on 15th November. Customer can use gift voucher to purchase anything which is available. Customer purchased goods worth ₹1,400 on 20th Nov. 2017. Applicable CGST and SGST 9% each.

Find the following

(a) time of supply

(b) value of supply

(c) GST liability in the hands of Ram & Co.

Solution:

(a) Time of supply is 20th November 2017.

(b) Value of supply is ₹1,400.

(c) GST liability:

- CGST is ₹126
- SGST is ₹126

Working Note: ₹1,400 x 9% = ₹126m

Illustration 33

Mr. & Ms. Kapoor purchase 10 gift vouchers for ₹500 each from Crossword, and 5 vouchers from a reputed Spa costing ₹1,000 each. The vouchers from a reputed Spa had a special offer for couples, where in services for both persons at the price chargeable to one. Find the value of supply in the hands of Crossword and reputed Spa.

Solution:

Statement showing value of taxable supply:

Particulars	Crossword Value in ₹	Reputed Spa value in ₹	Remarks
Value of taxable supply	5,000	10,000	10 gits × 500 = ₹5,000. (5 vouchers × ₹1,000) × 2 = ₹10,000

Value of service provided by one distinct person to another distinct person Rule 32(7) of the CGST Rules, 2017:

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 CGST Act, 2017 between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

SCHEDULE I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

   Provided that gifts not exceeding ₹50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

Value of supply of services in case of pure agent Rule 33 of the CGST Rules, 2017

Pure Agent means a person who:

(a) enters into a contractual agreement with the recipient of supply to act on their behalf and 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) procured on behalf of or provided to the recipient of supply;

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

(d) receives only the actual amount incurred to procure such goods or services.

The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied namely: —

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

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

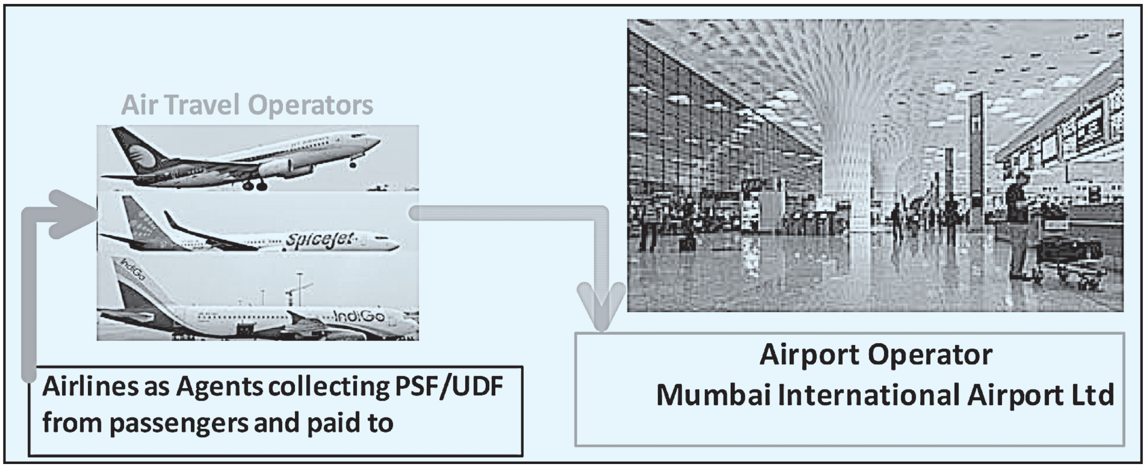
(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Airport levies under GST (CBIC Circular No. 115/34/2019-GST, dated 11-10-2019):

Passenger Service Fee (PSF) or User Development Fee (UDF) levied by airport operator for services provided to passengers, are collected by the air lines as an agent and is not a consideration for any service provided by the airlines. Airlines may act as a pure agent for the supply of airport services in accordance with rule 33 of the CGST Rules, 2017.

The airport operators (like Mumbai International Airport Ltd., or Airport Authority of India or Delhi International Airport Ltd. etc) shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. Since, the airport operators are collecting PSF and UDF inclusive of GST, there is no question of their not paying GST collected by them to the Government.

Collection charges paid by the airport operator to airlines are a consideration for the services provided by the airlines to the airport operator and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.



Example 16

Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies (ROC). The fees charged by the Registrar of Companies for the registration and approvals of the name are compulsorily levied on B. A is merely acting as 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.

Example 17

Mr. Ram is a registered dealer under GST Law. He sold furniture to a customer for ₹51,000 with free delivery. In such case Mr. Ram availing the service of the transporter for his own interest and therefore, transport charges is included in selling price of ₹51,000 and he would be not considered as pure agent in this case.

Illustration 34

Mr. X is a Customs Broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. The amounts charged by the Customs Broker are as below:

Sl. No.	Component charges in invoice	Amount in ₹
1	Agency income	10,000
2	Travelling expenses	5,500

Sl. No.	Component charges in invoice	Amount in ₹
3	Hotel expenses	9,500
4	Customs duty	55,000
5	Dock dues	2,500

Find the value of taxable supply of service in the hands of Customs Broker.

Solution:

Statement showing taxable value of supply of service:

Sl. No.	Particulars	Amount in ₹	Remarks
1	Agency income	10,000	Addable into the value
2	Travelling expenses	5,500	-do-
3	Hotel expenses	9,500	-do-
4	Customs duty	Not addable	Pure agent reimbursement
5	Dock dues	Not addable	Pure agent reimbursement
	Total	25,000	

Illustration 35

Determine the value of supply and the GST liability, to be collected and paid by the owner, with the following particulars:

	(₹)
Rent on the commercial building	18,00,000
Maintenance charges collected by local society from the owner and reimbursed by the tenant	2,50,000
Owner intends to charge GST on refundable advance, as GST is applicable on advance	6,00,000
Municipal taxes paid by the owner	3,00,000

GST rates applicable on renting of business premises is as follows:

CGST 9% and SGST 9%

Provide suitable explanations where required.

Solution:

Statement showing taxable supply and GST liability:

	(₹)
Rent on the commercial building	18,00,000
Maintenance charges collected by local society from the owner and reimbursed by the tenant	2,50,000

Owner intends to charge GST on refundable advance, as GST is applicable on advance (GST not applicable on refundable advance)	Nil
Municipal taxes paid by the owner (assumed the same recovered from the tenant)	3,00,000
Taxable supply	23,50,000
GST liability CGST 9% on ₹23,50,000 SGST 9% on ₹23,50,000	 2,11,500 2,11,500

Illustration 36

Puplly Manufacturers Ltd., registered in Mumbai (Maharashtra), is a manufacturer of footwear. It imports a footwear making machine from USA. Puplly Manufacturers Ltd. avails the services of Dada Logistics, a licensed customs broker with its office at Ahmedabad (Gujarat), in meeting all the legal formalities for getting the said machine cleared from the customs station.

Puplly Manufacturers Ltd. also authorises Dada Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine from the customs station and bringing the same to its warehouse at Mumbai. These expenses would be reimbursed by Puplly Manufacturers Ltd. to Dada Logistics on actual basis. In addition, Puplly Manufacturers Ltd. will also pay the agency charges to Dada Logistics for the services rendered by it.

Dada Logistics raised an invoice in July, 20XX as follows:

Sl. No.	Particulars	Amount* (₹)
(i)	Agency charges	5,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	50,000
(iii)	Charges for transport of machine from Kandla port, Gujarat to Dada Logistics' godown in Ahmedabad, Gujarat	25,000
(iv)	Charges for transport of machine from Dada Logistics' Ahmedabad godown to the warehouse of Puplly Export Import House in Mumbai, Maharashtra	28,000
(v)	Customs duty on machine	5,00,000
(vi)	Dock dues	50,000
(vii)	Port charges	50,000
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000

*exclusive of GST wherever applicable

Compute the value of supply made by Dada Logistics with the help of given information. Would your answer be different if Dada Logistics charges ₹ 13,00,000 as a lump sum consideration for clearing the imported machine from the customs station and bringing the same to the warehouse of Puplly Manufacturers Ltd.?

Solution:

Statement showing taxable supply of Dada Logistics for the month of July 20XX:

Sl. No.	Particulars	Amount* (₹)
(i)	Agency charges	5,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	Pure agent exepnditure
(iii)	Charges for transport of machine from Kandla port, Gujarat to Dada Logistics' godown in Ahmedabad, Gujarat	Pure agent exepnditure
(iv)	Charges for transport of machine from Dada Logistics' Ahmedabad godown to the warehouse of Puplly Export Import House in Mumbai, Maharashtra	Pure agent exepnditure
(v)	Customs duty on machine	Pure agent exepnditure
(vi)	Dock dues	Pure agent exepnditure
(vii)	Port charges	Pure agent exepnditure
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000
	Total taxable supply	5,97,000

However, if Dada Logistics charges ₹13,00,000 as a lumsum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Puplly Manufacturers Ltd., Dada Logsitics would incur expenses (ii) to (vii) for its own interest (as the agreement requires it to get the imported machine cleared from the customs station and bring the same to the Puplly Manufactures Ltd.'s warehouse). Thus, Dada Logistic would not be considered as a pure agent of Puplly Manufacturers Ltd. for said services. Consequently, in that case, value of supply will be ₹13,00,000.

Rate of exchange of currency for determination of value Rule 34 of the CGST Rules, 2017

The rate of exchange for the determination of the value of taxable goods or services or both shall be the applicable reference rate for that currency as determined by the Reserve Bank of India (RBI) on the date of time of supply in respect of such supply in terms of section 12 or as the case may be, section 13 of the Act.

Notification No. 17/2017-CT, New Delhi, the 27th July 2017

for rule 34, the following shall be substituted, namely:

"34. Rate of exchange of currency, other than Indian rupees, for determination of value.—

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

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

Illustration 37

Compute the duty payable under the Customs Act, 1962 for imported equipment based on the following information:

(i) Assessable value of the imported equipment US $10,100.

(ii) Date of Bill of Entry 25.10.2017 exchange rate notified by the Central Board of Excise and Customs US $ 1 = ₹65.

(iii) Date of Entry inwards 01.11.2017 exchange rate notified by the Central Board of Excise and Customs US $ 1 = ₹60.

Find the taxable value of imported goods.

Solution:

Statement showing taxable value of imported goods:

Particulars	Value in ₹	Remarks
Assessable value of imported goods	6,56,500	10,100 USD × ₹65 Exchange rate as on the date of submission of bill of entry is relevant as per section 14 of the Customs Act, 1961.

Value of supply inclusive of integrated tax, State tax, Union territory tax Rule 35 of the CGST Rules, 2017

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely: —

$$\textbf{Tax Amount} = \frac{\textbf{Value Inclusive of Tax}}{\textbf{100 + GST}} \times \textbf{Rate of GST}$$

This formula is very useful in case where supplier may treat the particular supply as exempted from GST and therefore will not indicate the tax amount separately in the bill of supply prepared by him. In fact it is taxable supply with GST. In such case transaction value will be determined with help of rule 35.

Illustration 38

An assessee was under impression that his product is exempt from GST and hence sold the goods @₹100 per piece without charging GST. Later, it was found that actually, the product was chargeable with IGST 18%. Department claimed that since goods were removed without GST, transaction value should be ₹100 and GST is payable accordingly. Assessee contended that price of ₹100 should be taken as inclusive of GST and actual GST payable should be calculated by back calculations. Determine the correct GST payable per piece.

(ICWAI Final Dec. 2003 model)

Solution:

As per rule 35 of the CGST Rules, 2017 transaction value and GST liability is as follows:

The Transaction value should be taken, as cum-tax-price and tax payable should be calculated by making back calculations. Hence, the transaction value is as follows:

The transaction value	= ₹100 × 100/118	= ₹84.75
IGST	= ₹100 x 18/118	= ₹15.25
Total invoice price		= ₹100.00

[CCE v Maruti Udyog Ltd. (2002) 141 ELT 3 (SC)]

Construction service vs works contract service – valuation

w.e.f. 25.1.2018: Construction service or works contract service:

<table>
<tr><th>Sl. No.</th><th>Description of Services</th><th>GST Rate</th></tr>
<tr><td>1.</td><td>Construction of a complex, building, civil structure or a part thereof, intended for sale to a buyer, wholly or partly. The value of landis included in the amount charged from the service recipient.</td><td>12% with full ITC but no refund of overflow of ITC.</td></tr>
<tr><td>2</td><td>Composite supply of works contract as defined under section 2(119) of CGST Act, 2017 read with clause 5(b) of Schedule II</td><td>18% with full ITC</td></tr>
<tr><td>3</td><td>w.e.f. 25.1.2018, Houses constructed under three components of the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban) –
(i) In-situ redevelopment of existing slums using land as a resource component;
(ii) Affordable housing in partnership and
(iii) Beneficiary-led individual house construction/ enhancement.
The Council extended this tax benefit to CLSS, for Economically Weaker Sections (EWS)/Lower Income Group (LIG)/Middle Income Group-1/Middle Income Group-2 (MIG-2) under the PMAY (Urban) programme.
Further the GST Council extend the concessional rate of 12% (i.e. effective rate 8%) to services by way of construction of low cost houses upto a carpet area of 60sqm in a housing project which has been given infrastructure status.
In addition to the above, GST Council decided to give exemption to leasing of land by Government to Governmental Authority or Government entity.</td><td>8% (i.e. after deducting 1/3 of the amount charged for house, flat etc., towards the cost of land or undivided share of land, as the case may be).
Summary:<table><tr><td>Normal rate of GST</td><td>12%</td></tr><tr><td>Less: 1/3rd of 12%</td><td>- 4%</td></tr><tr><td>Effective rate of GST</td><td>8%</td></tr></table></td></tr>
</table>

Illustration 39

Mr. A agrees to undertake a works contract for M/s B Ltd. for maintenance and repair or reconstruction of machine for ₹50,00,000. The breakup of the gross value charged by Mr. A to B Ltd., is as under:

(a) Value of material ₹30,00,000

(b) Labour charges ₹15,00,000

(c) Cost of consumables ₹2,00,000

(d) Profit margin on labour and service ₹3,00,000

Find the value of supply and GST liability?

Solution:

Particulars	Value in ₹
Value of material	30,00,000
Labour	15,00,000
Cost of consumables	2,00,000
Profit margin	3,00,000
Composite supply of works contract	50,00,000
GST @18% on ₹50,00,000	9,00,000

Illustration 40

ME Ltd. has entered into a contract for construction of a building with SC Ltd. As per the agreement, the amount payable (excluding all taxes and land value) by ME to SCL is ₹100,00,000 inclusive of the steel and cement to be supplied by ME for which it charged ₹5,00,000 from SCL. Fair market value of the steel and cement (excluding taxes) is ₹10,00,000. Compute the 'total amount charged' pertaining to the said works contract for execution of 'original works'. Also find the GST liability.

Solution:

Particulars	Value in ₹
Composite supply of works contract	1,00,00,000
Add: Fair market value of material supplier by recipient of supply	10,00,000
Less: value of steel and cement charged by supplier at nominal value	5,00,000
Value of taxable supply of service	1,05,00,000
GST 18%	18,90,000

Illustration 41

M/s. Beta Construction Co. Ltd. expects a gross turnover of ₹2,500 crores during the coming year 2018-19 from various commercial/industrial constructions (inclusive of land value ₹1000 crores). It furnishes following additional information –

The company is in a dilemma whether to opt for works contract supply or construction supply. Advise.

Solution:

Particulars	Works contract service (land value excluded)	Construction contract service (land value included)
GST Rate	18%	12%
Value of supply	₹1,500 crores	₹2,500 crores
GST liability	₹270 crores	₹300 crores
Advice: works contract service is economical.		

Illustration 42

JE Engineers, a partnership firm, registered under GST for supplying Works Contract services. JE Engineers agreed to supply works contract services. Accordingly, company quoted an amount of ₹100 lakhs for a construction work. It is agreed that if B Ltd. supplied the steel and cement, the contract amount will be reduced on the agreed basis. B Ltd. supplied steel and cement of ₹10 lakh for use in the construction activities as a result the contract amount reduced to ₹90 lakhs. Further JE Engineers had billed and supplied goods to B Ltd. worth ₹2 lakhs under a separate agreement which was also used while providing above works contract service.

B Ltd. provided canteen facilities, electricity and water to JE Engineers free, without charge while providing the works contract service. Cost of such services was ₹1,50,000.

Find out the taxable supply and GST liability?

Note: contract value excludes land value.

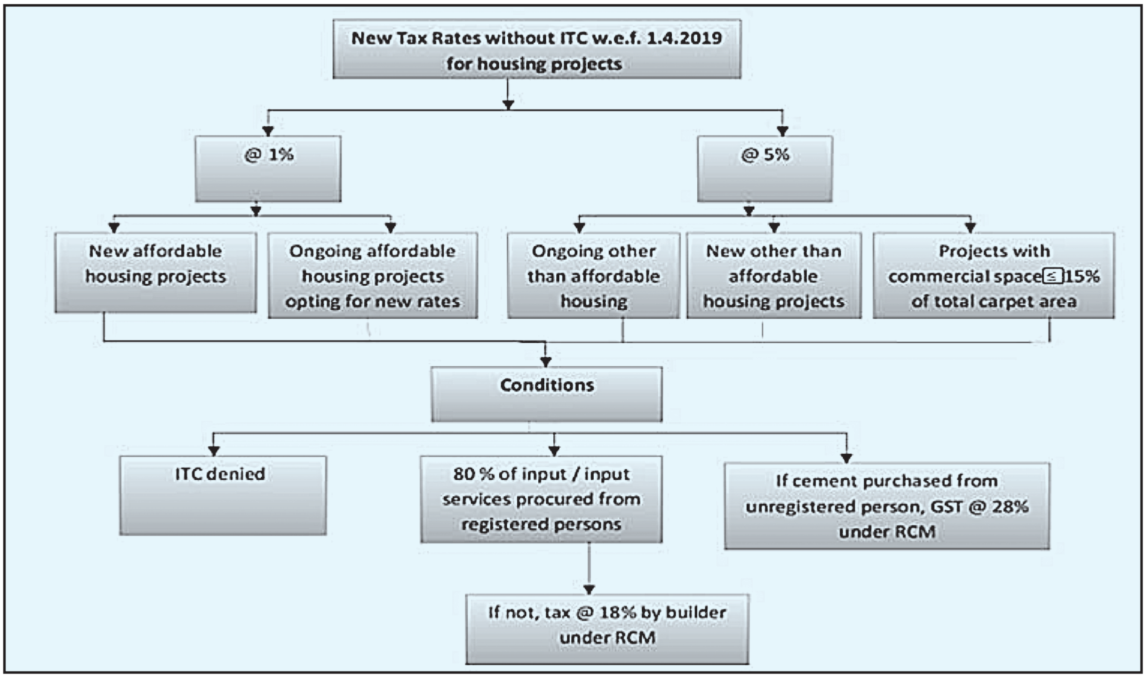
Solution:

Particulars	Value in ₹ in lakhs	Remarks
Works contract supply	90.00	
Add: Material supplied free of cost by recipient of service	10.00	As per Sec. 15(2)(b) of the CGST Act, 2017.
Add: consumables	2.00	Composite works contract service includes cost of consumables
Add: Electricity and water	1.50	Monitory values of non-monitory value should be included as per Rule 27(b) of the CGST Rules, 2017.
Value of supply	103.50	
GST 18%	18.63	

W.e.f. 1-4-2019 REAL ESTATE SECTORS are summarized as under:

Conditions for the new tax rates:

- At least 80% of the material to be procured from registered dealers. Further, on shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis.
- However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.
- Input tax credit shall not be available.



Applicability of new tax rates:

The new tax rates which shall be applicable as follows:

1% without input tax credit (ITC) on construction of affordable houses shall be available for:

- Houses having area of 60 sqm in metros/90 sqm in non-metros and value upto ₹45 lakhs
- Under construction affordable houses presently eligible for concessional rate of 8% GST (after 1/3rd land abatement)

5% without input tax credit shall be applicable on construction of:

- Under construction houses other than affordable houses presently booked prior to or after 01.04.2019. For houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019.
- Commercial apartments having carpet area of not more than 15% of total carpet area of all apartments.

The following treatment shall apply to TDR/FSI and Long term lease for projects commencing after 1-4-2019:

The supply of TDR, FSI, long term lease (premium) of land by a land owner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from landowner to builder under the Reverse Charge Mechanism (RCM).

The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.

The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion.

Simplified Approach:

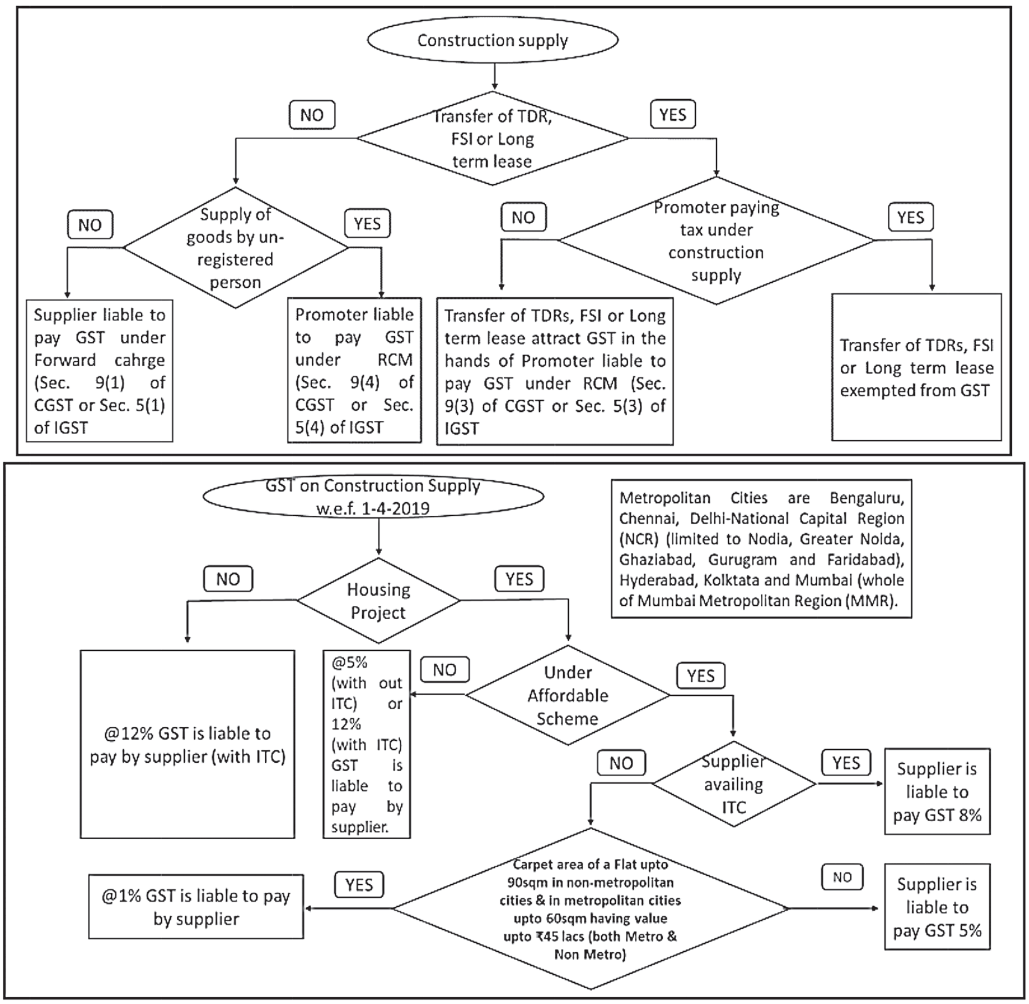


Illustration 43

Does a promoter or a builder has option to pay tax at old rates of 8% & 12% with ITC?

Solution:

Yes, but such an option is available in the case of an ongoing project. In case of such a project, the promoter or builder has option to pay GST at old effective rate of 8% and 12% with ITC.

To continue with the old rates, the promoter/builder has to exercise one time option in the prescribed form and submit the same manually to the jurisdictional Commissioner by the 10th of May, 2019.

However, in case where a promoter or builder does not exercise option in the prescribed form, it shall be deemed that he has opted for new rates in respect of ongoing projects and accordingly new rate of GST i.e. 5%/1% shall be applicable and all the provisions of new scheme including transitional provisions shall be applied.

There is no such option available in case of projects which commence on or after 01.04.2019. Construction of residential apartments in projects commencing on or after 01.04.2019 shall **compulsorily attract new rate of GST @ 1% or 5% without ITC**.

Illustration 44

What is the rate of GST applicable on construction of commercial apartments [shops, godowns, offices etc.] in a real estate project?

Solution:

With effect from 01-04-2019, effective rate of GST, after deduction of value of land or undivided share of land, on construction of commercial apartments [shops, godowns, offices etc.] by promoter in real estate project are as under:

Description	Effective rate of GST
Construction of commercial apartments in a Residential Real Estate Project (RREP), which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rates effective from 01-04-2019	5% without ITC on total consideration.
Construction of commercial apartments in a Real Estate Project (REP) other than Residential Real Estate Project (RREP) or in an ongoing project in respect of which the promoter has opted for old rates	12% with ITC on total consideration.

Illustration 45

What is a Residential Real Estate Project?

Solution:

A "Residential Real Estate Project" means a "Real Estate Project" in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the project.

Illustration 46

GK Developers Limited (i.e. Developer) enters into an agreement with land owner Mr. Nagarajan where Transfer Development Rights (TDRs) of the land transferred but ownership in land continues with the landowner (i.e. license to occupy land) on 31st May, 20XX. After entering to TDRs/Joint Development Agreements, the flats meant for landowner and builder are identified and a Supplementary Agreement (i.e. conveyance deed) is entered into for this purpose on 15th June, 20XX. In pursuit of this agreement a total of 10 residential units will be constructed by GK Developers Limited on the land provided by Mr. Nagarajan, whereas 40% of the units shall be given to Mr. Nagarajan.

Answer the following:

(a) Transfer of TDRs is taxable supply? If so, who is liable to pay GST? Find the Time of supply for transfer of TDRs?

(b) Whether GST is payable on the owner's share of the flats/houses/portion of the building constructed by the builder or developer given to the landowner as per development agreement? If so, find the Time of Supply?

(c) Find the time of supply for the consideration received by the builder from other buyers?

(d) Re-work, where TDRs of the land transferred permanently and irrevocably transferred by the landowner to the developer (i.e. sale/transfer of land). If so, transfer of TDRs is taxable supply in the hands of landowner?

Note: All 10 residential units constructed under the category of other than affordable housing project and sold only after obtaining completion certificate.

Solution:

(a) TDRs transferred by land owner is taxable supply in the hands of promoter under RCM (Section 9(3) of CGST Act, 2017).

Time of supply = Date of completion certificate

(b) Flats allotted under JDA is before optaining completion certificate and hence, it is taxable supply.

Time of supply = Date of completion certificate.

(c) Allotment of Flats after completion certificate is not supply of goods or services. Hence, GST does not arise.

(d) Since, ownership on land is transferred, which is not a supply of goods nor supply of service. Therefore, GST is not applicable.

Illustration 47

ABC Constructions Ltd. has provided the following details with respect to individual residential units constructed by it at various cities as part of residential apartments:

Flat type	Capet area (sq.ft.)	Amount charged (₹)	
A	1980	1,10,00,000	Part of consideration received before issuance of completion certificate by the competent authority. Commercial apartments having carpet area of not more than 15% of total carpet area of all apartments.
B	2000	1,00,00,000	-do-
C	2500	1,05,00,000	-do-
D	2400	99,50,000	Entire consideration received before issuance of completion certificate by the competent authority. Commercial apartments having carpet area of more than 15% of total carpet area of all apartments
E	2100	1,00,00,000	-do-
F	1600	80,00,000	-do-
G	1940	90,00,000	Entire consideration received after issuance of completion certificate by the competent authority
LIG	60 sq. Mtrs.	45,00,000	Under affordable houses 34 Flats constructed and ITC not availed. Project commenced from 1st April 2019 under Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (Urban). Construction value includes land value.

Flat type	Capet area (sq.ft.)	Amount charged (₹)	
EWS	400 sqfts	1,25,00,000	Pure labour service contracts of construction to the beneficiary-led individual house construction under Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban).

Following details are also available:

Type of building	Amount charged (₹)	
Multi-level parking for local authority	3,10,00,000	Part of consideration received before issuance of completion certificate by the competent authority
Office Complex	12,20,00,000	Entire consideration received before issuance of completion certificate by the competent authority
Shopping Mall	30,00,00,000	Entire consideration received after issuance of completion certificate by the competent authority

Find the GST liability if any?

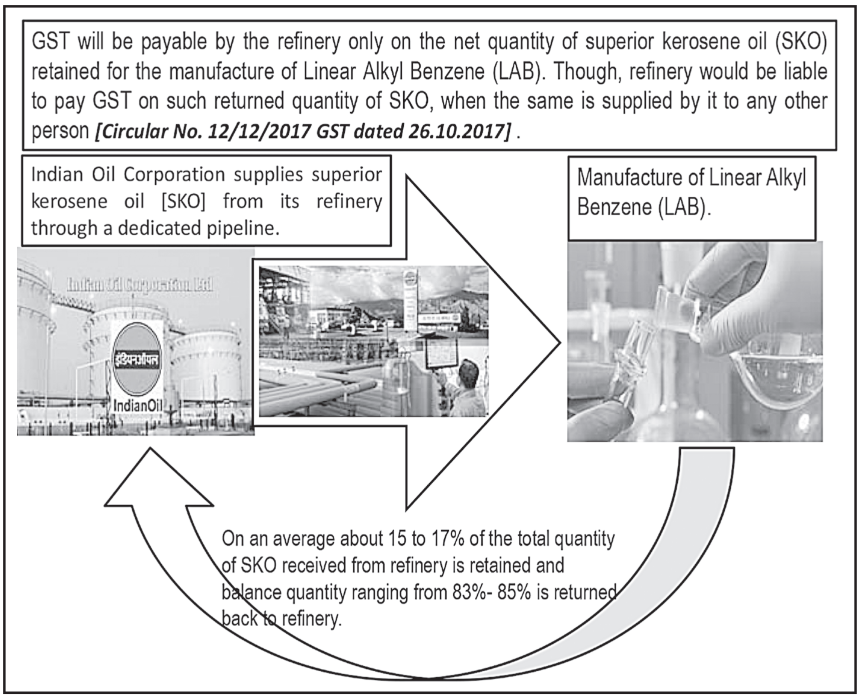
Solution:

Flat type	Amount charged (₹)	Taxability	GST Rate	GST in ₹
A	1,10,00,000	Taxable supply	5% Assumed that ITC not availed	5,50,000
B	1,00,00,000	-do-	-do-	5,00,000
C	1,05,00,000	-do-	-do-	5,25,000
D	99,50,000	Taxable supply	12% ITC allowed	11,94,000
E	1,00,00,000	-do-	-do-	12,00,000
F	80,00,000	-do-	-do-	9,60,000
G	90,00,000	Not a supply	-NA-	Nil
LIG	45,00,000	Taxable supply	1%	45,000
EWS	1,25,00,000	Exempted supply	Nil	Nil
Multi-level parking for local authority	3,10,00,000	Taxable supply	12%	37,20,000
Office Complex	12,20,00,000	Taxable supply	12%	1,46,40,000
Shopping Mall	30,00,00,000	Not a supply	-NA-	Nil

Important points:

1. **Whether GST is applicable on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB]?**

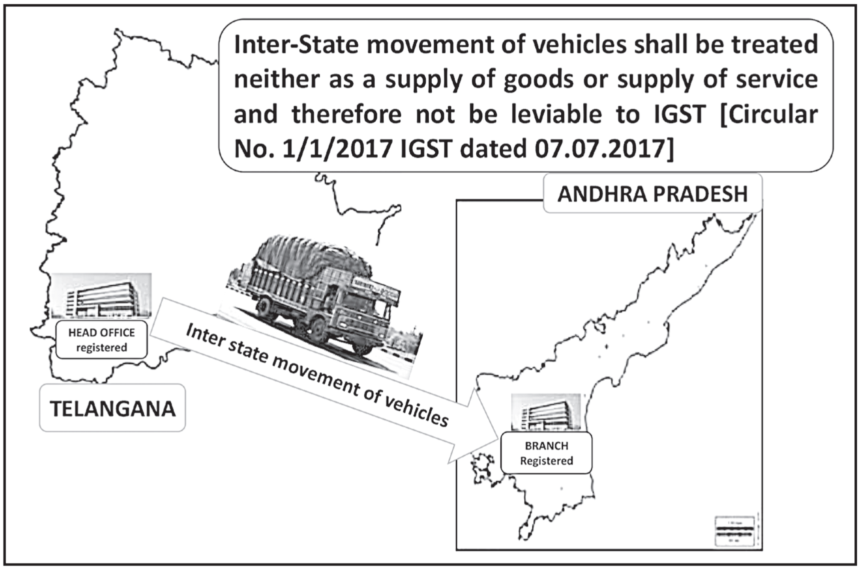
   Facts of the case: Linear Alkyl Benzene (LAB) manufacturers have stated that they receive superior Kerosene oil (SKO) from, a refinery, say, Indian Oil Corporation (IOC). They extract n- Paraffin from SKO and return back the remaining of SKO to the refinery. In this context, the issue has arisen as to whether in this transaction GST would be levied on SKO sent by IOC for extracting n-paraffin or only on the n-paraffin quantity extracted by the LAB manufactures. Further, doubt have also been raised as to whether the return of remaining Kerosene by LAB manufactures would separately attract GST in such transaction.



2. **Clarification on Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance:**

   It is hereby clarified that the inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the CGST Act, may not be treated as supply and consequently IGST will not be payable on such supply.

   However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.



1. **Inter-State Movement of Goods do not constitute Supply:**

   To clarify that inter-state movement of goods like rigs, tools, spares and goods on wheel like cranes, not being in the course of furtherance of supply of such goods, does not constitute a supply. This clarification gives major compliance relief to industry as there are frequent inter-state movement of such kind during providing services to customers or for the purposes of getting such goods repaired or refurbished or for any self-use. Service provided using such goods would in any case attract applicable tax. However, E-way Bill is mandatory provided the value of goods exceeds ₹50,000 (i.e. for reasons other than supply).

2. **ITC Available on Inter-state supply of Aircraft engines, Parts & Accessories:**

   It is being clarified that credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter-state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons as specified in section 25 of the CGST Act.

Clarification on certain issues related to GST

The Central Government vide Circular No. 76/50/2018-GST, dated 31st December, 2018 clarified certain issues under the GST Law as under:—

Sl. No.	Issue	Clarification
	Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?	1. Intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST. 2. Notification No. 36/2017-CT(R) and Notification No. 37/2017-IGST(R) notified that such **supply to any registered person would be subject to GST on reverse charge basis**.

Sl. No.	Issue	Clarification
		3. Such supply to **an unregistered person is also a taxable supply under GST** but is not covered under Notification No. 36/2017-CT (R) and Notification No. 37/2017-Integrated Tax (Rate). 4. It is clarified that the respective Government departments shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of sections 22 and 24 of the CGST Act.

Clarification related to treatment of sales promotion scheme under GST

The Central Government vide Circular No. 92/11/2019-GST, dated 07th March, 2019clarified the following issues raised with respect to tax treatment of sales promotion schemes under GST:-

1. **Free samples and gifts**

   Since the consideration is an important element of the definition supply, therefore the samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the said Act.

   Further, clause (h) of sub-section (5) of section 17 of the said Act clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" as per Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

2. **Buy one get one free offer**

   It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply.

   Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per section 8 of the said Act. And, ITC shall be available to the supplier in relation to such supply.

3. **Discounts including 'Buy more, save more' offers**

   Discounts offered by the suppliers to customers including staggered discount under "Buy more, save more" scheme and post supply/volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount. Further, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply.

4. **Secondary Discounts**

   Value of supply shall not include any discount by way of issuance of credit note(s), except in cases where the provisions contained in clause (b) of sub-section (3) of section 15 of the said Act are satisfied. There is no impact on availability or otherwise of ITC in the hands of supplier.

Case Studies and Illustrations on Valuation

4.5

Solved Case 1

Mahendra & Mahendra Ltd. is a registered supplier of bulk drugs in Delhi. It manufactures bulk drugs and supplies the same in the domestic and overseas market. The bulk drugs are supplied within Delhi and in the overseas market directly from the company's warehouse located in South Delhi. For supplies in other States of India, the company has appointed consignment agents in each such State. However, supplies in Gurgaon (Haryana) and Noida (U.P.) are effected directly from South Delhi warehouse. The drugs are supplied to the consignment agents from the South Delhi warehouse.

Mahendra & Mahendra Ltd. also provides drug development services to drug manufacturers located in India, including testing of their new drugs in its laboratory located in Delhi.

The company has furnished the following information for the month of January, 2022:

Particulars	(₹)
Advance received towards drug development services to be provided to Hyder Ltd., a drug manufacturer, located in Delhi [Drug development services have been provided in February, 2022 and invoice is issued on 28.02.2022]	5,00,000
Advance received for bulk drugs to be supplied to Pratap Medicals, a wholesale dealer of drugs in Gurgaon, Haryana [Invoice for the goods is issued at the time of delivery of the drugs in March, 2022]	6,00,000
Supply of bulk drugs to wholesale dealers of drugs in Delhi	60,00,000
Bulk drugs supplied to Wood Medicals Inc., USA under bond [Consideration received in convertible foreign exchange]	90,00,000
Drug development services provided to Gopal Ltd., a drug manufacturer, located in Delhi	6,00,000

Consignments of bulk drugs were sent to Kanna Dava Pvt. Ltd. and Bharath Medicals – agents of Mahendra & Mahendra Ltd. in Punjab and Haryana respectively. Kanna Dava Pvt. Ltd. and Bharath Medicals supplied these drugs to the Medical Stores located in their respective States for ₹60,00,000 and ₹50,00,000 respectively.

Bulk drugs have been supplied to Rajandra Medicals Pvt. Ltd. - a wholesale dealer of bulk drugs in Gurgaon, Haryana for consideration of ₹15,00,000. Mahendra & Mahendra Ltd. owns 60% shares of Rajandra Medicals Pvt. Ltd. Open market value of the bulk drugs supplied to Rajandra Medicals Pvt. Ltd. is ₹30,00,000. Further, Rajandra Medicals Pvt. Ltd. is not eligible for full input tax credit.

Note:

(i) All the given amounts are exclusive of GST, wherever applicable.

(ii) Assume the rates of GST to be as under:

Goods/services supplied	CGST	SGST	IGST
Bulk drugs	2.5%	2.5%	5%
Drug development services	9%	9%	18%

You are required to make suitable assumptions, wherever necessary.

Find GST liability of Mahendra & Mahendra Ltd for the month of Jan 2022.

Solution:

Statement showing GST liability of Mahendra & Mahendra Ltd for the month of Jan 2022

Particulars	CGST ₹	SGST ₹	IGST ₹
Advance received for drug development services supplied to Hyder Ltd., a drug manufacturer, located in Delhi	45,000 (₹5,00,000 × 9%)	45,000 (₹5,00,000 × 9%)	Nil
Advance received for bulk drugs to be supplied to Pratap Medicals, a wholesale dealer of drugs in Gurgaon, Haryana			Advance is not time of supply in case of supply of goods.
Supply of bulk drugs to wholesale dealers of drugs in Delhi	1,50,000 (₹60,00,000 × 2.5%)	1,50,000 (₹60,00,000 × 2.5%)	
Bulk drugs supplied to Wood Medicals Inc., USA			Export of goods
Supply of drug development services to Gopal Ltd., a drug manufacturer, located in Delhi	54,000 (₹6,00,000 × 9%)	54,000 (₹6,00,000 × 9%)	
Supply of bulk drugs to consignment agents - Kanna Dava Pvt. Ltd. and Bharath Medicals of Punjab and Haryana			4,95,000 (60,00,000 + 50,00,000) *90% *5%
Supply of bulk drugs to Rajandra Medicals Pvt. Ltd of Gurgaon, Haryana			1,50,000 (₹30,00,000 × 5%)
GST liability	2,49,000	2,49,000	6,45,000

Solved Case 2

Smt. A. Vijaya v Commissioner of Central Excise, Salem (2016) 64 taxmann.com 77 (Chennai-CESTAT)

Facts of the case:

Multi-Level Marketing (MLM) is a marketing strategy in which the distributor is compensated for the sales of the other salespeople that they recruit. This recruited sales force is referred to as the participant's "downline", and can provide multiple levels of compensation. In this model, distributors sell products directly to consumers by means of relationship referrals or by encouraging others to join the company as a distributor. In this model, usually three kinds of incentives/rewards are earned by the distributor-

- Profit margin earned on sale of goods purchased from the MLM company (hereafter referred to as "company");
- Incentive received for buying certain quantum of goods; and
- Consideration for identification of persons who can further be appointed as distributors.

Decision: Recently, honorable tribunal held that:

(a) **Profit margin:** Sale of goods by distributors to the seller is not in the nature of service but is in the nature of sale of goods, on which VAT is applicable because after sale, those products cease to belong to the company, but belong to the Distributor. Hence Tax is not applicable. However, after GST it is treated as supply of goods which will attract GST.

(b) **Buying Commission (i.e. Discount):** Incentive received for quantum of goods purchased by the distributor from the company is in the nature of voluble discount. Hence, outside the ambit of Tax.

(c) **Downline Marketing:** The activity of a Distributor of identifying distributors is considered as Business Auxiliary service on which tax will apply.

This case law is whole good under GST Law also.

Solved Case 3

CCEx. Mumbai v Fiat India Pvt. Ltd. 2012 (283) ELT 161 (SC):

Assessee Claim: Fiat UNO model cars for the past five years consistently selling at below manufacturing cost to non-relative buyers for meeting demand in the market. Therefore, such selling price (i.e. transaction value) itself has sole consideration for the purpose of GST.

Department Contention: The extra commercial consideration was involved in this case an additional consideration should be added to the price for the purpose of duty. Therefore, Best Judgment Assessment has been invoked.

Decision: Full commercial cost of manufacturing and selling was not reflected in the price as it was deliberately kept below the cost of production. Thus, price could not be considered as the sole consideration for sale. No prudent businessperson would continuously suffer huge loss only to penetrate market. Therefore, Best Judgment Assessment of the department was proper said by the Hon'ble Supreme Court of India in the case of **CCEx. Mumbai v Fiat India Pvt. Ltd. 2012 (283) ELT 161 (SC)**.

The spirit of the above case law is also applicable under GST Law.

Practical Illustrations:

1. ABC Consultancy, registered in Mumbai, supplies technical consultancy services to its clients. It has been providing technical services to XY Ltd., Mumbai since past two years. Consideration is settled by XY Ltd. assignment wise. XY Ltd. paid ₹45 lakh to ABC Consultancy on 10th January, 20XX on ABC consultancy agreeing to not provide similar technical services to any other business entity in India or abroad for a period of 8 years. ABC Consultancy is of the view that ₹45 lakh is not chargeable to GST.

   You are required to examine whether the view taken by ABC Consultancy is valid in law. Calculate GST liability of ABC Consultancy, if any. The technical services provided by ABC consultancy is otherwise chargeable to GST at the rate of 18%. It may be noted that XY Ltd. is not ready to pay any further amount to ABC Consultancy in addition to the amount already agreed.

Solution:

As per paragraph 5(e) of Schedule II of the CGST Act, 2017 provides that agreeing to the obligation to refrain from an act or to tolerate an act or a situation or to do an act is treated as supply of service.

Since, GST is not separately collected, it will be assumed that it is included in ₹45 lakh. As per Rule 35 of the CGST Rules, 2017, where the value of supply is inclusive of GST, the tax amount is determined in the following manner.

Particulars	(₹)
Taxable value of supply ₹45 lakh × 100/118	38,13,560
Add: CGST @9% on 38,13,560	3,43,220
SGST @9% on 38,13,560	3,43,220
Total	**45,00,000**

2. Red and Blue Pvt. Ltd. has provided the following particulars relating to goods sold by it to Colourful Pvt. Ltd.

Particulars	Amount in ₹
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods	5,000
CGST and SGST chargeable on the goods	10,440
Packing charges (not included in price above)	1,000

Red and Blue Pvt. Ltd. received ₹2,000 as a subsidy from a NGO on sale of such goods. The price of ₹50,000 of the goods is after considering such subsidy. Red and Blue Pvt. Ltd. offers 2% discount on the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supply made by Red and Blue Pvt. Ltd.

Solution:

Statement showing value of taxable supply

Particulars	Amount in ₹
List of the goods (exclusive of taxes and discount)	50,000
Add: Tax levied by Municipal Authority on the sale of such goods	5,000
CGST and SGST chargeable on the goods	Not addable
Add: packing charge	1,000
Add: Subsidy from a NGO	2,000

Particulars	Amount in ₹
Less: Discount 2% on ₹50,000	(1,000)
Value of taxable supply	57,000

3. S Advertisers conceptualized and designed the advertising campaign for a new product launched by Moon Pvt. Ltd. for a consideration of ₹15,00,000. S Advertisers owed ₹1,20,000 to one of its vendors in relation to the advertising service provided by it to Moon Pvt. Ltd. Such liability of S Advertisers was discharged by Moon Pvt. Ltd. Moon Pvt. Ltd. delayed the payment of consideration on thus, paid ₹15,000 as interest. Assume the rate of GST to be 18%.

   Determine the value of taxable supply made by S Advertisers.

   Solution:

   Statement showing value of taxable supply

Particulars	Amount in ₹
Service charges	15,00,000
Add: payment made by Moon Pvt. Ltd to vendor of S Advertisers	1,20,000
Add: Interest (i.e. ₹15,000 × 100/ 118)	12,712
Value of taxable supply	16,32,712

   Note: The interest in delay in payment of consideration will be includible in the value of supply but the time of supply of such interest will be the date when such interest is received in terms of section 13(6) of the CGST Act, 2017. Such interest will be taken to be inclusive of GST and the value will be computed by making back calculations [Interest/100 + tax rate) × 100].

4. Hari Ltd., a registered supplier in Mumbai (Maharashtra), has supplied goods to Santhi Traders and Peace MotorsLtd. located in Ahmedabad (Gujarat) and Pune (Maharashtra) respectively. Hari Ltd. has furnished the following details for the current month:

Sl. No.	Particulars	Santhi Traders (₹)	Peace MotorsLtd. (₹)
(i)	Price of the goods (excluding GST)	20,000	15,000
(ii)	Packing charges	600	
(iii)	Commission	400	
(iv)	Weighment charges		1,000
(v)	Discount for prompt payment (recorded in the invoice)		500

   Items given in points (ii) to (v) have not been considered while arriving at price of the goods given in point (i) above.

   Compute the GST liability [CGST & SGST or IGST, as the case may be] of Hari Ltd. for the given month. Assume the rates of taxes to be as under:

Particulars	Rate of tax
Central tax (CGST)	9%
State Tax (SGST)	9%
Integrated tax (IGST)	18%

Make suitable assumptions, wherever necessary.

Note: The supply made to Santhi Traders is an inter-State supply.

Solution:

Statement showing taxable supply and GST liability:

Sl. No.	Particulars	Santhi Traders (₹)	Peace MotorsLtd. (₹)
(i)	Price of the goods (excluding GST)	20,000	15,000
(ii)	Add: Packing charges	600	
(iii)	Add: Commission	400	
(iv)	Add: Weighment charges		1,000
(v)	Less: Discount for prompt payment (recorded in the invoice)		(500)
	Value of Taxable supply	21,000	15,500
	CGST	Nil	1,395
	SGST	Nil	1,395
	IGST	3,780	Nil

5. Shakthi Engineering Pvt. Ltd., a registered supplier, is engaged in providing expert maintenance and repair services for large power plants that are in the nature of immovable property, situated all over India. The company has its Head Office at Bangalore, Karnataka and branch offices in other States. The work is done in the following manner.

- The company has self-contained mobile workshops, which are container trucks fitted out for carrying out the repairs. The trucks are equipped with items like repair equipment's, consumables, tools, parts etc. to handle a wide variety of repair work.
- The truck is sent to the client location for carrying out the repair work. Depending upon the repairs to be done, the equipment, consumables, tools, parts etc. are used from the stock of such items carried in the truck.
- In some cases, a stand-alone machine is also sent to the client's premises in such truck for carrying out the repair work.
- The customer is billed after the completion of the repair work depending upon the nature of the work and the actual quantity of consumables, parts etc. used in the repair work.
- Sometimes the truck is sent to the company's own location in other State(s) from where it is further sent to client locations for repairs.

Work out the GST liability [CGST & SGST or IGST, as the case may be] of Shakthi Engineering Pvt. Ltd., Bangalore on the basis of the facts as described, read with the following data for the month of November 20XX.

Sl. No.	Particulars	(₹)
A	Truck sent to own location in Tamil Nadu (i) Value of items contained in the truck - ₹3,00,000 (ii) Value of truck - ₹25,00,000	
B	Truck sent to a client location in Tamil Nadu for carrying out repairs. Stand- alone machine is also sent in the truck to client location for repairs (i) Value of items contained in the truck – ₹2,85,000 (ii) Value of stand-alone machine - ₹4,00,000 (iii) Value of truck - ₹20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
C	Truck sent to a client location in Karnataka for carrying out repairs (i) Value of items contained in the truck - ₹1,06,000 (ii) Value of truck - ₹20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
D	Invoices raised for repair work carried out in Tamil Nadu [including the invoice for repair work done in 'B'] -	70,00,000
E	Invoices raised for repair work carried out in Karnataka [including the invoice for repair work done in 'C']	12,00,000

Also, specify the document(s), if any, which need to be issued by Shakthi Engineering Pvt. Ltd., Bangalore for the above transactions.

All the given amounts are exclusive of GST, wherever applicable. Assume the rates of taxes to be as under:

Items used for repairs		
CGST – 6%	SGST – 6%	IGST – 12%
Container truck, Stand-alone machines		
CGST – 2.5%	SGST – 2.5%	IGST – 5%
Works contract for repairs and maintenance of immovable property		
CGST – 9%	SGST – 9%	IGST – 18%

You are required to make suitable assumptions, wherever necessary.

Solution:

Sl. No.	Particulars	(₹)
A.	Items sent in container truck to own location in Tamil Nadu - IGST @ 12% × ₹3,00,000 =	36,000
	Container truck sent to own location in Tamil Nadu Since the activity is not a supply, tax invoice is not required to be issued by Shakthi Engineering Pvt. Ltd. However, a delivery challan is to be issued by the company in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the truck to its own location in Tamil Nadu. Since, the value exceeded ₹50,000 E-way Bill is mandatory for the value of goods of ₹3,00,000.	-

Sl. No.	Particulars	(₹)
B.	Stand-alone machine sent in container truck to client location in Tamil Nadu, for carrying out repairs a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location. E-way Bill is also mandatory for stand alone machine.	-
	Container truck sent to client location in Tamil Nadu a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location.	-
	Items sent in container truck to client location in Tamil Nadu, for carrying out repairs It is form part of works contract service and taxable only when supply of service takes place.	-
C.	Container truck sent to client location in Karnataka	-
	Items sent in container truck to client location in Karnataka, for carrying out repairs	-
D.	Invoices raised for repair work carried out in Tamil Nadu: IGST @ 18% on ₹70,00,000	12,60,000
E.	Invoices raised for repair work carried out in Karnataka: CGST 9% + SGST 9% on ₹12,00,000	2,16,000
Total GST liability		**15,12,000**

6. XYZ Ltd., Noida (Uttar Pradesh) is a supplier of machinery used for making bottle caps. The supply of machinery is effected as under:

   - The wholesale price of the machinery (excluding all taxes and other expenses) at which it is supplied in the ordinary course of the business to various customers is ₹42,00,000. However, the actual price at which the machinery is supplied to an individual customer varies within a range of ± 10% depending upon the terms of contract of supply with the particular customer.

   Apart from the price of the machinery, XYZ Ltd. charges from the customer the following incidental expenses:

   - associated handling and loading charges of ₹10,000
   - installation and commissioning charges of ₹1,00,000

   The machinery can be dismantled and erected at another site, if required. The above charges are compulsorily levied in every case of supply of machinery.

   Transportation of machinery to the customer's premises is arranged by XYZ Ltd. through a third-party service provider [Goods Transport Agency (GTA)]. The customer enters into a separate service contract with the GTA and pays the freight directly to it.

   The company provides one-year free warranty for the machinery. However, the company also provides an extended two-year warranty on payment of additional charge of ₹3,00,000.

   A cash discount of 2% on the price of the machinery is offered at the time of supply, if the customer agrees to make the payment within 15 days of the receipt of the machinery at his premises. In the event of failure to make the payment within the stipulated time, the company-

   - recovers the discount given; and
   - charges interest @ 1% per month or part of the month on the total amount due from the customer

(towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is charged on the tax dues.

For every machinery supplied, XYZ Ltd. receives a grant of ₹2,00,000 from its holding company DEF Ltd.

XYZ Ltd. has supplied a machinery to D Pvt. Ltd. on August 1, 20XX at a price of ₹40,00,000 (excluding all taxes). D Pvt. Ltd has its corporate office in New Delhi. However, the machinery has been installed at its manufacturing unit located in Gurugram (Haryana). D Pvt. Ltd. has paid the freight directly to the GTA and opted for two year warranty. Discount @ 2% was given to D Pvt. Ltd. as it agreed to make the payment within 15 days. However, D Pvt. Ltd. paid the consideration on 31st October, 20XX.

Assume the rates of taxes to be as under:

Bottle cap making machine		
CGST – 6%	SGST – 6%	IGST – 12%
Service of transportation of goods		
CGST – 2.5%	SGST – 2.5%	IGST – 5%
Other services involved in the above supply		
CGST – 9%	SGST – 9%	IGST – 18%

Calculate the GST payable [CGST & SGST or IGST, as the case may be] on the machinery and support your conclusions with legal provisions in the form of explanatory notes.

Make suitable assumptions, wherever needed.

Solution:

Computation of GST liability of XYZ Ltd.

Particulars	(₹)
Price of machine	40,00,000
Handling and loading charges	10,000
Installation and commissioning charges	1,00,000
Transportation cost (not the responsibility of XYZ Ltd)	Nil
Additional warranty cost	3,00,000
Grant from DEF Ltd.	2,00,000
Total price of the machine	**46,10,000**
Less: 2% cash discount on price of machinery = ₹40,00,000 × 2%	80,000
Taxable value of supply	45,30,000
Tax liability for the month of August 20XX	
IGST @ 12% on ₹45,30,000	5,43,600
Tax liability for the month of October 20XX	
Interest collected @ 3% on ₹44,10,000	1,32,300

Particulars	(₹)
Cash discount recovered	80,000
Cum-tax value of interest and cash discount	2,12,300
IGST = (₹2,12,300/112) × 12%	22,746
Total IGST payable on the machinery (5,43,600 + 22,746)	5,66,346

Note: the cash discount recovered and interest have been considered as cum tax value on the logical assumption that tax component counld not be recovered from the client. Thus, tax payable thereon has to be computed by making back calculations in terms of rule 35 of CGST Rules, 2017.

7. Raja Bhai, registered in Uttrakhand has supplied 30 tons of a chemical @ ₹50,000 per ton (excluding taxes) to P of Uttrakhand on 8th September, 20XX. The invoice for the supply has also been issued on the same date. Further, following additional amounts were also charged from P:-

Particulars	(₹)
Freight	1,80,000
Packing charges	1,10,000
Weighing charges	20,000
Cost of instrument specially purchased by Singhals Brothers to manufacture the chemical	3,10,000

As per the terms of the contract of supply, Raja Bhai is required to get the chemical inspected by an independent testing agency before the delivery of the same to P. P has paid such inspection charges amounting to ₹12,000 directly to the testing agency. Raja Bhai has also received ₹50,00,000 as a subsidy from State Government for setting up chemical manufacturing plant in Uttrakhand.

P is required to make payment within 15 days of supply in terms of the contract. However, P delayed the payment of consideration and made payment in November, 20XX thus paid ₹15,000 as interest. You are required to calculate the GST liability in this case and due date of deposit. Assume the rate of GST to be 18%.

Note: Raja Bhai and P are not related and price is the sole consideration for the supply.

Solution:

Computation of GST liability of Raja Bhai

Particulars	(₹)
Price of chemicals (₹50,000 × 30 tons)	15,00,000
Freight	1,80,000
Packing charges	1,10,000
Weighing charges	20,000
Cost of special instrument	3,10,000
Inspection charges	12,000

Particulars	(₹)
Government subsidy	Nil
Value of taxable supply – September 20XX	**21,32,000**
Tax liability for the month of September 20XX	
CGST @ 9%	1,91,880
SGST @ 9%	1,91,880
Value of taxable supply (i.e. Interest for late payment) (₹15,000 × 100/118)	**12,712**
CGST payable @ 9%	1,144
SGST payable @ 9%	1,144

Due dates of payment of GST:

Particulars	Time of Supply	Due date of deposit
GST liability of ₹3,83,760 for the taxable supply made by Raja Bhai	September 8, 20XX	October 20, 20XX
Interest amounting to ₹2,288	November, 20XX	December 20, 20XX

8. A manufacturer of machinery supplied a special machine to LM Furnishers. Following details are provided in relation to amounts charged:

   Charges mentioned in (ii) to (v) are not included in (i) below. Other information furnished is—

   (a) Cash discount @ 2% on price of machinery has been allowed to the customer at the time of supply and also recorded in invoice.

   (b) GST rate – 18%.

   Calculate value of supply of the special machine.

Sl. No.	Particulars	Value in ₹
(i)	Price of machinery excluding taxes (before cash discount)	6,00,000
(ii)	Transit insurance	11,000
(iii)	Packing charges	9,000
(iv)	Extra charges for designing the machine	20,000
(v)	Freight	12,000

Solution:

Sl. No.	Particulars	Value in ₹
(i)	Price of machinery excluding taxes (before cash discount)	6,00,000
(ii)	Add: Transit insurance	11,000

Sl. No.	Particulars	Value in ₹
(iii)	Add: Packing charges	9,000
(iv)	Add: Extra charges for designing the machine	20,000
(v)	Add: Freight	12,000
	Sub-total	6,52,000
	Less: 2% cash discount on price of machinery (6,00,000 × 2%)	-12,000
	Value of taxable supply	6,40,000

9. Mr. Mahendran, a registered supplier of Chennai, has received the following amounts in respect of the activities undertaken by him during the month ended on 30th September 2022:

Sl. No.	Particulars	Amount (₹)
(i)	Amount charged for service provided to recognized sports body as selector of national team	50,000
(ii)	Commission received as an insurance agent from insurance company	65,000
(iii)	Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts	15,000
(iv)	Service to foreign diplomatic mission located in India	28,000
(v)	Funeral services	30,000

He received the services from unregistered goods transport agency for his business activities relating to serial numbers (i) to (iii) above and paid freight of ₹45,000 (his aggregate turnover of the previous year was ₹9,90,000).

Note: All the transactions stated above are intra state transactions and also are exclusive of GST.

You are required to calculate gross value of taxable supply on which GST is to be paid by Mr. Mahendran for the month of September 2022.

Working notes should form part of your answer.

Solution:

Statement showing gross value of taxable supply of Mr. Mahendran

Sl. No.	Particulars	Amount (₹)	Remarks
(i)	Amount charged for service provided to recognized sports body as selector of national team	50,000	Taxable
(ii)	Commission received as an insurance agent from insurance company	Nil	Taxable under RCM

Sl. No.	Particulars	Amount (₹)	Remarks
(iii)	Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts. Note: w.e.f 1-1-2019, business correspondent supply of services covered under RCM.	15,000	Taxable
(iv)	Service to foreign diplomatic mission located in India	28,000	Taxable
(v)	Funeral services	Nil	Excluded from the scope of supply
	Total taxable supply (forward charge)	93,000	
	Total taxable supply (RCM)	45,000	Freight paid to GTA

Key Advance Rulings 4.6

1. **Specsmakers Opticians Private Limited (GST AAAR Tamil Nadu - 2019):**

   Facts of the case:

   Applicant View: The two provisos under Rule 28 of the CGST Rules deal with specific situations. There is no requirement that the provisos should be applied sequentially.

   - The intention of the legislature was to only avoid blocking of funds by introducing second proviso; and
   - Reliance was placed on the decision of Appellate AAR in the case of GKB Lens Pvt. Ltd. (supra).
   - After considering the various provisions/rules of GST law, the Appellate AAR observed as under:
   - There is no specific regulation in CGST Rules, that the rules are to be applied seriatim;
   - The first proviso to Rule 28 does not mandate and it is at the option of the supplier, to take the value as 90% of the sale value of goods of like kind and quality;
   - The second proviso is an alternative, whereby the invoice value can be taken as Open Market Value;
   - The second proviso is not subordinate to the first proviso. It independently deals with a situation where the recipient is eligible for full ITC.

   Based on the above, when the supply is to the distinct person of the appellant and the recipient is eligible for full Input tax credit, the second proviso provides the value declared in the invoice to be the 'open market value' for such transaction. Also the second proviso does not restrict its application as in the first proviso, which is to be applied for cases of 'as such supply' only. Therefore, the appellants may adopt the value for supply to distinct person as provided under Proviso 2 to Rule 28 of the CGST/TNGST Rules 2017.

2. **Lakshmi Tulasi Quality Fuels – 2022 (62) GSTL 71 (App. A.A.R -GST – A.P.)**

   Facts of the case:

   Where residential building consists of several rooms are leased/rented out and lessee has not used it itself as residence but sub-leased for its commercial interest and business for accommodating students and working professionals in bulk numbers for a temporary period of stay.

   AAAR Held:

   The Appellate Authority for Advance Ruling observed that the benefit of exemption is available only where residential dwelling is used as residence. The lessee would be involved in business of sub-leasing of property and had no intention to use property as residence. Moreover, the intention of lessee to take property on lease for commercial and business purposes was evident from lease deed. As a result, lessor is not eligible to exemption and liable to 18% IGST said by AAAR.

   Therefore, leasing services involving own or leased non-residential property would be classifiable under SAC 997212 and taxable at 18%.

3. **Intas Pharmaceuticals Limited. (GST AAR Gujarat) - 2022 GSTL**

   Dishman Carbogen Amcis Ltd. (GST AAR Gujarat) – 2022 GSTL

   Facts of the case:

   Canteen charges – employee portion – Applicant providing canteen facility to tis employees at concessional amount – part charges borne by applicant and balance collected from its employees and paid to canteen service provider – no profit margin retained by applicant. Whether GST, at the hands of the applicant, is leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant from employees and paid to the Canteen Service Provider?

   Ruling:

   GST, at the hands of the Intas Pharmaceuticals Limited, is not leviable on the amount representing the employees portion of canteen charges, which is collected by Intas Pharmaceuticals Limited and paid to the Canteen service provider.

4. **Greenbrilliance Renewable Engergy LLP – 2022 (61) GSTL 114 (AAR – GST – Guj.)**

   Facts of the Case:

   The applicant was supplying photovoltaic panels and Solar EPC services and empanelled as channel partner to execute the solar rooftop system in Gujarat under the Surya Gujarat Yojna. As per the scheme, the beneficiaries have to pay channel partner amount after deducting subsidy portion from total system cost and after successful installation of solar system, channel partner has to apply to respective electricity distribution company (DISCOM) of region for subsidy and funds are released by respective DISCOM directly to channel partners. It filed an application for advance ruling to determine whether subsidy should be reduced for arriving at taxable value of solar system in order to collect GST on goods supplied to customer under rooftop solar project.

   Subsidy granted by Government does alter taxable nature of supplies to make supply partly exempted and partly taxable; thus section 17(2) of CGST Act, has any implication?

   AAR held:

   Subsidy provided Government on Solar Rooftop System is not includible in value of supply; however, since said subsidy received by applicant also included GST element, applicant would be liable for paying back to Government.

   Subsidy granted by Government does not alter taxable nature of supplies to make supply partly exempted and partly taxable; thus, entire supply being taxable, sub-section (2) of Section 17 of CGST Act, 2017 in respect of input tax credit has no implication.

5. **Fastrack Deal Comm Pvt. Ltd. – 2022 (61) GSTL 125 (AAR – GST – Guj.)**

   Facts of the case:

   When sale of land is not treated as supply as per Schedule III of GST Act, 2017, whether forfeiture of advance pertaining to sale of land will be treated as supply and accordingly attract GST?

   AAR Held:

   Forfeiture of advance amount in a land transaction by seller for breaching sale condition by buyer is taxable activity of ‘refraining or tolerating or doing an act’ and taxable accordingly in hand of person forfeiting such amount.

6. **Shanmuga Durai – 2022 (62) GSTL 210 (AAR – GST – T.N)**

   Facts of the case:

   Renting out property by partner free of rent to his partnership firm in which he and his wife are partners and he is managing partner holding 2/3rd shares amounts to supply?

   AAR Held:

   The AAR ruled that therefore the activity of renting immovable property owned by the Applicant to the partnership firm, in which he was a major shareholding partner, is a taxable supply under CGST Act.

   Valuation of renting of property free of rent by partner to his firm in which he and his wife partners and he is managing partner holding 2/3rd shares is to be determined by applying Rule 28 of CGST Rules, 2017.

7. **Antara Purukul Senior Living Ltd. – 2022 (61) GSTL 177 [AAR – GST – Uttarakhand (UK)]**

   The applicant has sought advance ruling from AAR Uttarakhand on the following questions:

   1. Whether the electricity charges paid to Uttarakhand Power Corporation Limited (UPCL) for the power consumed by residents in their residential apartments and recovered from them on actual cost basis liable to GST?
   2. Whether the electricity charges paid to UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis are liable to GST?
   3. Whether Asset Replacement Deposits collected from residents are liable to GST?

   AAR Held:

   1. The electricity charges paid to Uttarakhand Power Corporation Limited (UPCL) for the power consumed by residents in their residential apartments and recovered from them on actual cost basis is liable to GST.
   2. The electricity charges paid to UPCL (Electricity supply authority) for the power consumed towards common area and recovered from residents on actual cost basis is liable to GST.
   3. The amounts collected towards Asset Replacement Deposits, amounts to advancement for future supply of services to residents, are taxable, in terms of Section 13(2)(a) of the CGST Act, 2017.

      Electricity charges – Applicant, a residential community providing residential apartments, infrastructure etc. to senior citizens as lessor entering into "maintenance & facilities agreement" with the Lessee i.e. service receiver – owner/occupant resident of community – Owner/occupant resident of community cannot opt out of agreement to seek for direct supply of electricity/water by any other agency, without using infrastructure developed by applicant – applicant using "electricity" procured from electricity supply authority for furtherance of its interest inasmuch as all the infrastructure developed by it fully dependent on electricity (and water also) – Services of maintenance & facilities so offered to Community absolutely dependent on electricity – Applicant no "pure agent" – Electricity charges paid by community to Electricity supply authority for power consumed by residents in their residential apartments and recovered from them on actual cost basis liable to GST – Electricity charges paid to Electricity supply authority for the power consumed towards common area and recovered from residents on actual cost basis also liable to GST – Rule 33 of CGST Rules, 2017.

      Asset Replacement Deposit – Amount towards future supply of service – Charged by applicant, a community providing residential apartments, infrastructure etc. to senior citizen from residents/owners for undertaking/execution of any services in future (planned or unplanned) – Amount non-refundable in nature – Basis for calculating these amounts directly proportional to super area taken on lease, as per the lease deed executed between parties, indicative of fact that element of service inbuilt, although for a future date – Advance paid in lieu of a promise to seamlessly provide services in future – Coining and using any other term to camouflage such deposits, would not take away its basic characteristics of “consideration” – Time of supply to be date of receipt of amount towards Asset Replacement Deposits – Amount collected being advance for future supply of services to residents, taxable – sections 2(31) and 13(2)(a) of CGST Act, 2017.

Solved Case 1

Mahendra Co Ltd , Kolkata, a registered supplier, is manufacturing Paper products and Stationary items. It has its factory in Dankuni. During the financial year 2022-23, the following transactions were carried out by the company :

	Details	GST Paid (₹)
a	List price of goods supplied in Orissa and Jharkhand	620000
	The following adjustments were done in the price given above in (a)	
	Central Government Subsidy was received for supply of stationary items to Government School	60000
	Subsidy from Trade Association for supply of books	15000
	Tax Levied by Municipal Authority	12000
	Packing Charges	6000
	Late fee paid by the receipient of supply for delayed payment of Invoice	2500

Calculate the value of taxable supply.

Solution:

Details	(₹)	Reason
List Price of the goods	620000	List Price of Goods
Subsidy received from Central Government	-	Subsidy is received from a Government body
Subsidy received from a Trade Association	15000	Subsidy is received from a non-Goverments body
Tax levied by Municipal Authority	12000	Included as not GST
Packing Charges	6000	Included in value
Late Fee paid	2500	Amount paid as penalty or fine or late fee is part of value of supply
Value of Taxable Supply	655500	

Solved Case 2

Mr Harry is an agent of Mr. Potter who operates his business from Asansol, West Bengal. Nature of business being operated by Mr Harry is that of selling Printers. Mr Harry sells a jumbo printer Model No. Burj Khalifa to Mr Tom Cruise for ₹ 74000.

On sending the records to his Principal, he realises that there is an error in invoice raised while selling the jumbo printer to Mr Tom Cruise. By mistake, an amount of ₹ 45000 has been included in the invoice which belongs to the West Bengal State Electricity Department. Calculate the GST to be charged and examine the provisions of law for the given case. GST rate be 18%

Solution:

Firstly, any expenditure being incurred by a supplier, as a Pure Agent, does not form part of the taxable services.

Secondly, in the given scenario, it is understood that Mr Harry had done a mistake for which action has to be taken. Here Mr Harry acts as a Pure Agent of Mr Potter to his client Mr Tom Cruise. Thus, an amount of ₹ 45000 which related to West Bengal State Electricity Department should be removed from the invoice billed of ₹ 74000. Revised Invoice value should have been ₹ 74000 – ₹ 45000 = ₹ 29000

Lastly, the GST to be charged will be ₹ 29000 × 18% = ₹ 5220

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. The value of supply should include
   (a) Any non-GST taxes, duties, cesses, fees charged by supplier separately
   (b) Interest, late fee or penalty for delayed payment of any consideration for any supply of goods or services
   (c) Subsidies directly linked to the price except subsidies provided by the Central and State Government
   (d) All of the above

2. When can the transaction value be rejected for computation of value of supply?
   (a) When the buyer and seller are related and price is not the sole consideration
   (b) When the buyer and seller are related or price is not the sole consideration
   (c) It can never be rejected
   (d) When the goods are sold at very low margins

3. Rule 30 of the CGST Rules inter alia provides value of supply of goods or services or both based on cost shall be ……………% of cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services
   (a) 100
   (b) 10
   (c) 110
   (d) 120

4. In terms of Rule 32(7) of the CGST Rules, 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 CGST Act between distinct persons as referred to in section 25, where ITC is available, shall be deemed to be ………………..
   (a) ₹10,000
   (b) Arm's length price as required under the Income Tax law
   (c) NIL
   (d) As per the contract between the supplier and recipient

5. Mr. Ram a second-hand car dealer purchased a second hand car for ₹2,50,000. He sold he same car to Mr. Lakshman for ₹3,00,000. Determine value of supply?
   (a) ₹3,00,000
   (b) ₹2,50,000
   (c) ₹50,000
   (d) None of the above

6. Mr. Vijay purchased certain goods worth ₹17,000 from Big Bazaar. As a matter of security, Mr. Vijay made a request to the supplier to provide for an additional packaging on the given item for safe transportation

which cost around ₹1,500. The supplier charged value of the additional packaging separately after the supply was made. What is the final value of such supply made?

(a) ₹17,000

(b) ₹18.500

(c) ₹1,500

(d) None of the above

7. Thomas Cook Forex Pvt. Ltd. being a registered person under GST purchased 2000 USD from M/s R Academy at the rate of INR 30 per USD. Actual exchange rate at that time was ₹70 per Dollar. RBI reference rate not available. What shall be the value of such supply?

(a) ₹1300

(b) ₹1400

(c) ₹2000

(d) None of the above

8. CMA Bharath being a Practicing Cost Accountant provided certain professional services to his client. However, during such course of action, some out of pocket expenses were incurred, which Bharath claimed for reimbursement from his client. Does the same be included in the transaction value? _____

(a) Yes

(b) No

(c) May be

(d) Does not qualify as supply

9. Does the custom duty paid by Customs house agent forms part of transaction value for the purpose of calculation of IGST?

(a) Yes

(b) No

(c) As per the option of customs authority

(d) None of the above

10. What will be the value of supply if X & Co., supply Sony television set for ₹85000 along with the exchange of an old TV and if the price of the Sony television set without exchange is ₹1,00,000, the open market value of the Sony television set is:

(a) ₹85,000

(b) ₹1,00,000

(c) ₹15,000

(d) ₹1,15,000

11. Dumdum Engineering Private Limited (DEPL), Surat (Gujarat), a supplier of heavy machinery, supplied a machine to Gulati Manufacturers from its gowdown located in Mumbai, Maharashtra, on 1st January at a price of ₹ 64,00,000 (excluding all taxes). Gulati Manufacturers has its corporate office in New Delhi. However, the machinery was installed at its manufacturing unit located in Gurugram (Haryana) for which installation and commissioning charges of ₹ 4,80,000 and handling and loading charges of

₹ 1,60,000, were charged by DEPL. For every machinery supplied, DEPL receives a grant of ₹ 3,20,000 from its holding company Dharam Ltd.

Transportation of machinery to the customer's premises is arranged by DEPL through a third-party service provider [Goods Transport Agency (GTA)]. Gulati Manufacturers entered into a separate service contract with the GTA and paid the freight of ₹ 50,000 directly to it.

DEPL offered a cash discount of 2% on the price of the machinery at the time of s upply since Gulati Manufacturers agreed to make the payment within 15 days of the receipt of the machinery at its premises. However, it was agreed that in case Gulati Manufacturers failed to make the payment within the stipulated time, DEPL would-

- recover the discount given; and
- charge interest @ 1% per month or part of the month on the total amount due (including discount recovered) from Gulati Manufacturers (towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is to be charged on the tax dues.

Gulati Manufacturers paid the consideration for the machine on 31st March. Since the payment was made after the stipulated period of 15 days of the receipt of the machinery, discount given was recovered from it and interest was accordingly charged. However, Gulati Manufacturers refused to pay tax on interest and discount recovered.

Assume the rates of taxes to be as under:

Supply	CGST rate	SGST rate	IGST rate
Machinery supplied	6%	6%	12%
Service of transportation of goods	2.5%	2.5%	5%
Other services involved in the above supply	9%	9%	18%

In view of the above information, you are required to answer the following questions:

(i) The place of supply of the machinery supplied by DEPL is _______ and the nature of supply is _________.

(a) Gujarat, intra-State supply

(b) Haryana, inter-State supply

(c) New Delhi, inter-State supply

(d) Maharashtra, inter-State supply

(ii) The GST liability of DEPL for the month of January is (approx.).

(a) 9,46,660

(b) 8,67,840

(c) 9,06,153

(d) 8,29,440

(iii) The GST liability of DEPL for the month of March is………… (approx.).

(a) 36,343

(b) 36,504

(c) 35,314

(d) Nil

(iv) Supply of machinery and supply of installation and commissioning services is ……………. supply. Time of supply of interest received by DEPL and cash discount recovered on account of delayed payment of consideration is _.

(a) composite, 31st March

(b) composite, 1st January

(c) mixed, 1st January

(d) mixed, 31st March

(v) If the grant of ₹ 3,20,000 received by DEPL had been received from Central Government instead of its holding company Dharam Ltd., with other facts remaining the same, the GST liability of DEPL for the month of January would have been (approx.).

(a) 9,46,660

(b) 8,67,840

(c) 9,06,153

(d) 8,29,440

12. Shree Ram Seva Trust is a charitable institution registered under section 12AA of the Income-tax Act, 1961. It has organized a skill development programme relating to persons over the age of 65 years residing in a well-planned city, in the month of April. It has received following amounts under the programme:

Particulars	Amount (₹)
Subscription fees for the programme	50,000
Sponsorship fees	1,00,000
Consideration for supply of goods	3,00,000

Besides, the trust has received the donations of ₹2,00,000 in April. Hanuman, accountant of Shree Ram Seva Trust, is not able to determine the taxability of the above amounts received under GST law. He seeks your expertise in determining the same.

Determine the value of taxable supply of Shree Ram Seva Trust, for the month of April.

(a) Nil

(b) ₹6,50,000

(c) ₹6,00,000

(d) ₹4,50,000

13. Mr. Kala is a proprietor of M/s. Kala & Associates (registered under GST) which deals in sale/purchase of second hand cars. During the current financial year, he effected following intra-State transactions:

Particulars	Purchase Price	Sale Price
Car 1	₹5,00,000	₹7,50,000
Car 2	₹3,00,000	₹2,75,000
Car 3	₹6,00,000	₹6,50,000

Particulars	Purchase Price	Sale Price
Car 4	₹8,00,000	₹9,50,000

Mr. Kala purchased Car 4 from another registered person who charged GST of ₹1,30,000 and accordingly, Mr. Kala has availed the input credit of the same. Determine the GST liability of Mr. Kala assuming the applicable rate of tax as 18%.

(a) ₹95,000

(b) ₹1,08,000

(c) ₹1,30,500

(d) Exempt Supply, No GST

Answer:

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
d	b	c	c	c	b	b	a	a	b
11.(i)	11.(ii)	11.(iii)	11.(iv)	11.(v)	12.	13.			
b	b	a	a	d	d	a			

Input Tax Credit (Advanced) 5

This Module Includes

Input Tax Credit (Advanced)

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Explain the terms and conditions for availing ITC
- Understand how to apportion common ITC for exempted and taxable supplies
- Explain what blocked credit is
- Get clear picture on availment of ITC in certain Special Circumstances
- Apply how to utilise ITC

Introduction

5.1

The basic concept of INPUT TAX CREDIT (ITC) is to avoid the cascading effect of duty. Cascading effect of duty (i.e. duty on duty) happens where tax is levied at every stage of supply.

The following examples will help us understand this.

Example 1

If the duty is based on the manufacture of a product, the tax burden keeps increasing as raw material and final product passes from one stage to another.

Cascading effect

	(₹)	(₹)
Assessee	**A**	**B**
Purchases	100	224
Value added	100	76
Assessable Value	200	300
Add: Excise Duty @ 12%	24	36
Sale prices	224	336

200 × 12% = 24

24 × 12% = 2.88 ← **Duty paid on duty**

76 × 12% = 9.12

GST eliminates cascading effect of tax

	No Cascading effect		
Assessee	**A**	**B**	
	(₹)	(₹)	
Purchases	100	200.00	(₹ 224 – ₹ 24)
Value added	100	76.00	Output tax 33.12
Assessable Value	200	276.00	
Add: Excise Duty @ 12%	24	33.12	Input tax (24.0)
Sale prices	224	309.12	net payable 9.12

i.e. 76×12% = 9.12

Uninterrupted and seamless chain of input tax credit (hereinafter referred to as, "ITC") is one of the key features of Goods and Services Tax. As the tax charged by the Central or the State Governments would be part of the same tax regime, the credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage.

Specific Provisions on Input Tax Credit

5.2

Input (Section 2(59) of the CGST Act, 2017): means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.

Capital Goods (Section 2(19) of the CGST Act, 2017): means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

Input Service (Section 2(60) of the CGST Act, 2017): means any service used or intended to be used by a supplier in the course or furtherance of business.

Input Tax (Section 2(62) of the CGST Act, 2017): 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 Section 9(3) and Section 9(4) of the CGST Act, 2017;

(c) the tax payable under Section 5(3) and Section 5(4) of the IGST Act, 2017;

(d) the tax payable under SGST Act (i.e. person liable to pay GST under RCM);

(e) The tax payable under UTGST Act (i.e. person liable to pay GST under RCM),

But does not include the tax paid under the composition levy.

Input Tax Credit (Section 2(63) of the CGST Act, 2017): means the credit of input tax.

Electronic cash ledger (Section 2(43) of the CGST Act 2017): means the electronic cash ledger referred to in sub-section (1) of section 49.

Electronic credit ledger Section 2(46) of the CGST Act, 2017: means the electronic credit ledger referred to in sub-section (2) of section 49;

Exempted supply (Section 2(47) of the CGST Act, 2017): means supply of any goods or services or both which attracts—

- nil rate of tax, or
- which may be wholly exempt from tax under section 11, or
- under section 6 of the Integrated Goods and Services Tax Act, and
- includes non-taxable supply;

Invoice or tax invoice (Section 2(66) of the CGST Act, 2017): means the tax invoice referred to in section 31;

Inward supply (Section 2(67) of the CGST Act, 2017): "inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;

Job work (Section 2(68) of the CGST Act, 2017): means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;

Non-taxable supply (Section 2(78) of the CGST Act, 2017): means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

Output tax (Section 2(82) of the CGST Act, 2017): "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

Outward supply (Section 2(83) of the CGST Act, 2017): "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;

Quarter (Section 2(92) of the CGST Act, 2017): "quarter" shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;

Works contract (Section 2(119) of the CGST Act, 2017): 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;

Zero rated supply means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone (SEZ), developer of SEZ unit (As referred under Section 16(1) of the IGST Act, 2017.

Export of goods (Section 2(5) of the IGST Act, 2017): with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Export of service (Section 2(6) of the IGST Act, 2017): means the supply of any service when,—

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [w.e.f. 1-2-2019, or in Indian rupees wherever permitted by the Reserve Bank of India]; and

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

Over all view of Input Tax Credit under GST:

Input Tax Credit (ITC)

APPLICABLE GOODS & SERVICES
Section 16 of the CGST Act, 2017

- **INPUT** Section 2(59) of the CGST Act.
- **CAPITAL GOODS** Section 2(19) of the CGST Act.
- **INPUT SERVICES** Section 2(60) of the CGST Act.

Input goods, Capital goods & Input services are used in the course or furtherance of business.

NOT APPLICABLE GOODS & SERVICES
Section 17(5) of the CGST Act, 2017

(a) Motor vehicle (except few cases)

(b) Goods and/or services provided in relation to—

(i) Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, except under specified circumstances;

(ii) Membership of a club, health and fitness centre;

(iii) Rent-a-cab, life insurance, health insurance except where it is obligatory for an employer under any law;

(iv) Travel benefits extended to employees on vacation such as leave or home travel concession;

(c) Works contract services when supplied for construction of immovable property, other than plant & machinery, except where it is an input service for further supply of works contract;

(d) Goods or services received by a taxable person for construction of immovable property on his own account, other than plant & machinery, even when used in course or furtherance of business;

(e) Goods and/or services on which tax has been paid under composition scheme;

(f) Goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) Goods and/or services used for private or personal consumption, to the extent they are so consumed;

(h) Goods lost, stolen, destroyed, written off, gifted, or free samples;

(i) Any tax paid due to short payment on account of fraud, suppression, mis-declaration, seizure, and detention.

Eligibility to avail ITC

As per Section 16(1) of the CGST Act, 2017 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.

Example 2

Mr. K of Kolkata sold taxable goods to Mr. C of Chennai. Mr. B being a buyer of goods is eligible to claim the IGST as credit on purchases based on the tax invoice issued by Mr. K of Kolkata.

Step by step approach:

1. Mr K will upload the details of all tax invoices issued in GSTR-1.
2. The details with respect to sales to Mr C will auto populate/get reflected in GSTR 2A, the same data will be pulled when Mr C will file GSTR 2 (i.e. details of inward supply).
3. Mr C will then accept the details that the purchase has been made and reported by the seller correctly and subsequently the tax on purchases will be credited to 'Electronic Credit Ledger' of Mr C and he can adjust it against future output tax liability.

Utilization of ITC:

Inward supply	Outward supply			Remarks
	CGST	SGST	IGST	
ITC of CGST	Allowed	Not allowed	Allowed	1st CGST next IGST in that order
ITC of SGST	Not allowed	Allowed	Allowed	1st SGST next IGST in that order
ITC of IGST	Allowed	Allowed	Allowed	W.e.f. 1-4-2019 section 49A of CGST Act, 2017 read with Rule 88A of CGST Rules, 2017: IGST credit can be adjusted equally between CGST and SGST or any other proportion at the option of the assessee.

Amendments made by the IGST (Amendment) Act, 2018 – Effective from 01.02.2019

IGST not apportioned under sub-sections (1) and (2) of section 17 to be apportioned equally amongst Central Government and State Government/Union Territories on ad hoc basis [New sub-section (2A) inserted in section 17 of the IGST Act]

Section 17 of the IGST Act prescribes the provisions for such apportionment of IGST and settlement of funds between the Central Government and the State Governments.

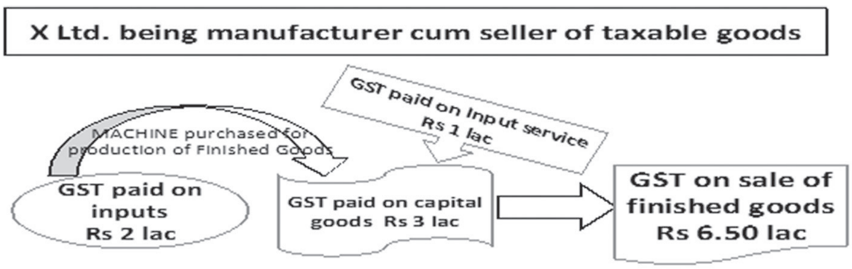
Sub-sections (1) and (2) of section 17 provides for apportionment of IGST between the Central Government and State Governments/Union Territories in respect of those supplies where the input tax credit cannot be availed and thus, the tax revenue finally accrues to the exchequer.

A new sub-section (2A) has been inserted in section 17 to provide that the amount of IGST not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of 50% to the Central Government and 50% to the State Governments or the Union territories, as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections. Thus, essentially, the new sub-section (2A) provides for apportionment of IGST in respect of B2B supplies wherein input tax credit has been taken by the recipients.

ITC is an integration of Goods and Services

Since GST is charged on both goods and services, input tax credit can be availed on both goods and services (except those which are on the exempted/negative list). Input tax credit is allowed on capital goods.

Example 3:



Particulars	GST Rs in lac
Output supply of goods	6.50
Less: ITC on Inward supply of goods	(2)
Less: ITC on Capital goods	(3)
Less: ITC on Input supply of services	(1)
Net GST liability	0.50

Note: Goods or services or both which are used or intended to be used in the course or furtherance of business and the said amount shall be credited to the electronic credit ledger of such person.

Conditions for taking ITC

Section 16(2) of the CGST Act, 2017: Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

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

w.e.f. 1-2-2019 Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

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

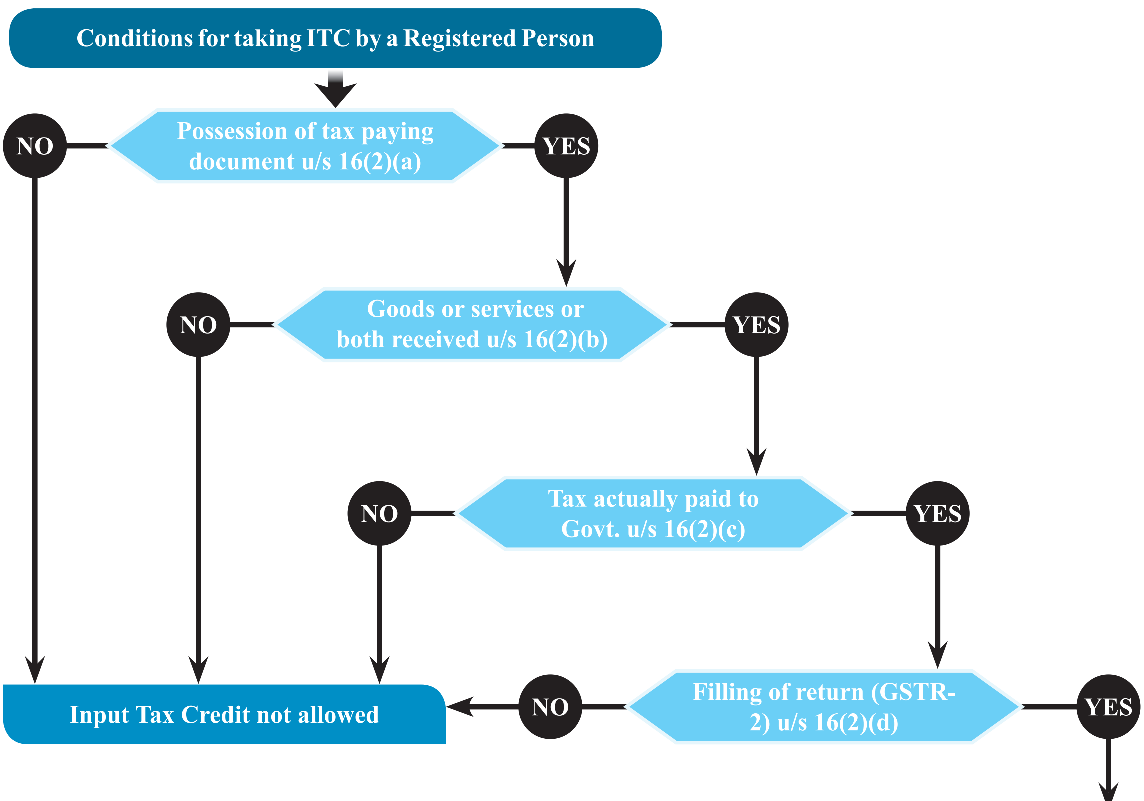
Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of **one hundred and eighty days** from the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

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

Section 16(3) of the CGST Act, 2017: Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

Section 16(4) of the CGST Act, 2017: A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Simplified Approach:



Input Tax Credit (ITC) allowed

- Goods received in lots ITC available only on receipt of last lot/installment [1st proviso to Sec 16(2)].
- Payment for the invoice to be made within 180 days from the date of issue of invoice by the supplier [2nd proviso to Sec 16(2)].

Amendment as per Finance Act, 2021 (w.e.f. 1-1-2022): In section 16 of the Central Goods and Services Tax Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:– (aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

It means ITC claims will be allowed only when the details of such invoice or debit note have been furnished by the supplier in his GSTR-1 and subsequently, it appears in GSTR-2A/2B. So, the taxpayers can no longer claim 5% provisional ITC under the CGST Rule 36(4) and ensure every ITC value claimed was reflected in GSTR-2A/2B

Quantum of credit [Section 16(1) of the CGST Act, 2017]

The entire credit on the input and capital goods allowed can be availed at the time of receipt of input and capital goods. Thus, to this extent there is no difference between input and capital goods under GST Law.

Tax Invoice or debit note [Section 16(2)(a) of the CGST Act, 2017]

The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents (Rule 36(1) of the CGST Rules, 2017), namely,—

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued under reverse charge;

(c) a debit note;

(d) a bill of entry

(e) an Input Service Distributor invoice or Input Service Distributor credit note.

All these documents are to be furnished at the time of filing form GSTR-2, in accordance with Rule 36(2) of the CGST Rules, 2017.

As per Rule 36(3) of the CGST Rules, 2017, No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.

Illustration 1

M/s. X Ltd. supplied taxable goods from the factory after manufacture in the month of October 2017 for sale to a distributor for ₹8,00,000. M/s X Ltd has suppressed this transaction. However, he deposited the GST @12% on these goods on 10-1-2018 against show cause notice issued under Section 74 (when there is fraud) of the CGST Act, 2017 by the Central Tax Officer and passed the order accordingly.

Whether distributor namely recipient of these goods is eligible to take input tax credit.

Solution:

As per rule 36(3) of the CGST Rules, 2017, No credit on payment of tax due to fraud, wilful-misstatement or suppression of fact etc. shall be allowed.

In the given case no input tax credit was available to registered person if the supplier has paid tax in pursuance of order where any demand has been confirmed on account of any fraud, wilful-misstatement or suppression of facts and so on under Section 74 of the CGST Act, 2017.

Hence, input tax credit is not allowed to recipient of these goods (i.e. distributor in the given case).

Notification No. 39/2018-CT, dated 4-9-2018:

Input tax credit may be availed based on following particulars:

(i) Amount of tax charged

(ii) Description of goods or services

(iii) Total value of supply of goods or services or both

(iv) GSTIN of the supplier and recipient and

(v) Place of supply in case of inter-State supply,

ITC on receipt of goods or services [Section 16(2)(b) of the CGST Act, 2017]:

(a) No credit when tax paid on advance receipt:

As we are aware of that time of supply of goods (Section 12 of the CGST Act, 2017) or time of supply of supply of service (Section 13 of the CGST Act, 2017) where time of supply is the date on which the supplier receives the payment if the payment is received prior to raising of invoice/supply of goods or services (except where supply of goods turnover does not exceed ₹150 lacs, in such case date of invoice namely supply of goods is the time of supply).

GST paid by supplier on advance is not auto populated to the account of receipt of goods or services. The recipient of goods or services is not entitled for credit of tax paid on advances by the supplier. Section 16(2)(b) provides that the receiver should have received the goods or services for availment of credit. When the payments are made on advance receipt of supplier, the recipient has not received the goods or services. Therefore, he is not entitled for credit on input tax paid.

(b) Receipt of goods and services:

Registered person shall receive the goods or services and used or intended to be used in the course or furtherance of business. In case of input or input services are not received, by the registered person, the question of its use in the course or furtherance of business does not arise and hence, ITC not allowed.

In case goods received in instalment:

Illustration 2

M/s C Ltd Chennai procured goods 10,000 Kgs @ ₹100 per Kg., from M/s D Ltd of Delhi. These goods came to M/s C Ltd of Chennai in the following manner:

Date of dispatch	No. Kgs dispatched	Date of receipt	Normal loss in transit kgs	Abnormal loss in transit Kgs	No. Kgs received
10th Oct	2,000	15th Nov	2	Nil	1,998
2nd Nov	5,000	20th Nov	5	Nil	4,995
3rd Dec	3,000	1st Jan	1	20	2,979

Invoice shows 10,000 Kgs. and GST @18%.

You are required to answer:

(a) M/s C Ltd can avail the proportionate credit on 15th Nov and 20th Nov.

(b) M/s C Ltd is eligible for input tax credit if so when.

(c) How much credit is allowed to M/s C Ltd.?

Solution:

(a) M/s C Ltd. cannot take proportionate credit on the quantity received on 15th Nov and 20th Nov.

(b) M/s C Ltd is eligible to avail the input tax credit on 1st Jan.

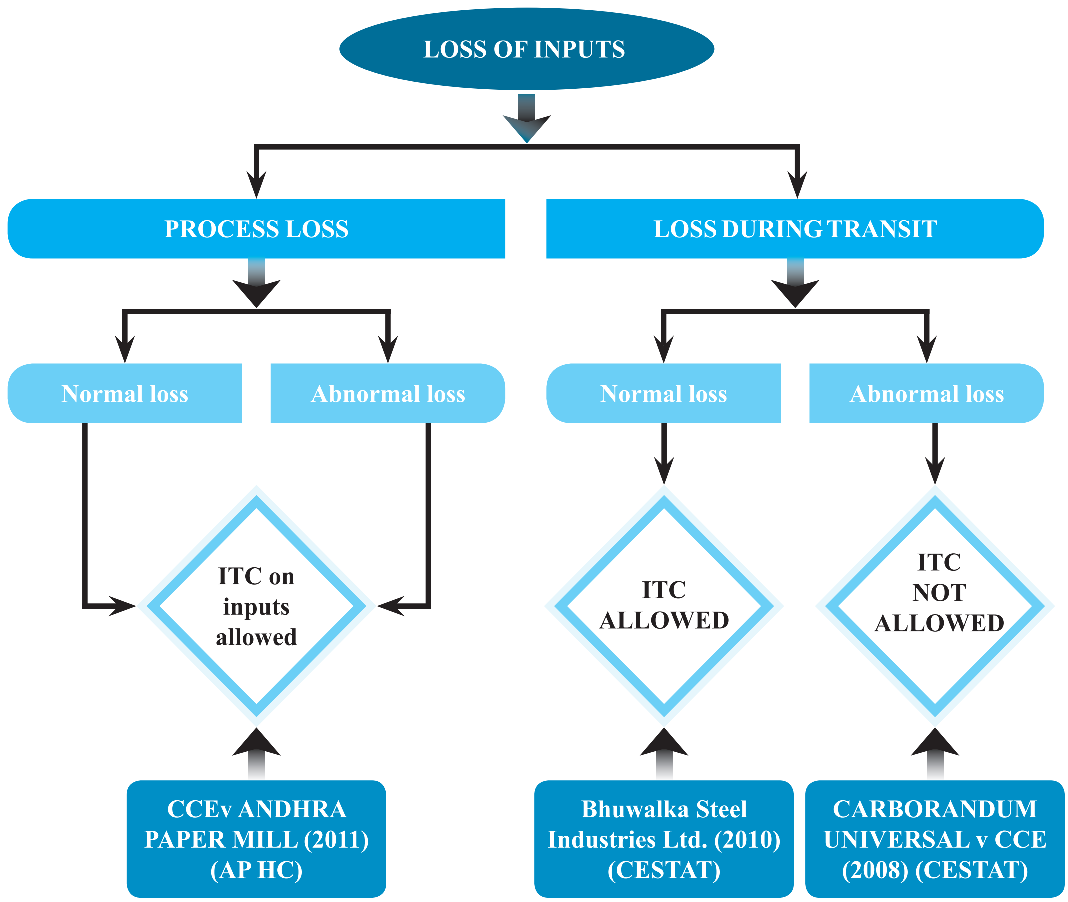
(c) Input tax credit allowed = ₹1,79,640/-
(10,000 Kgs × ₹100) × 18% × 9980 kgs/10,000 kgs.

Note:

(i) Goods received in lots ITC available only on receipt of last lot/instalment [1st proviso to Section 16(2)]

(ii) Entire input tax credit is allowed in case of transit loss (i.e. normal loss). Whereas input tax credit is not allowed to the extent of transit loss (i.e. abnormal loss).

Loss of Inputs

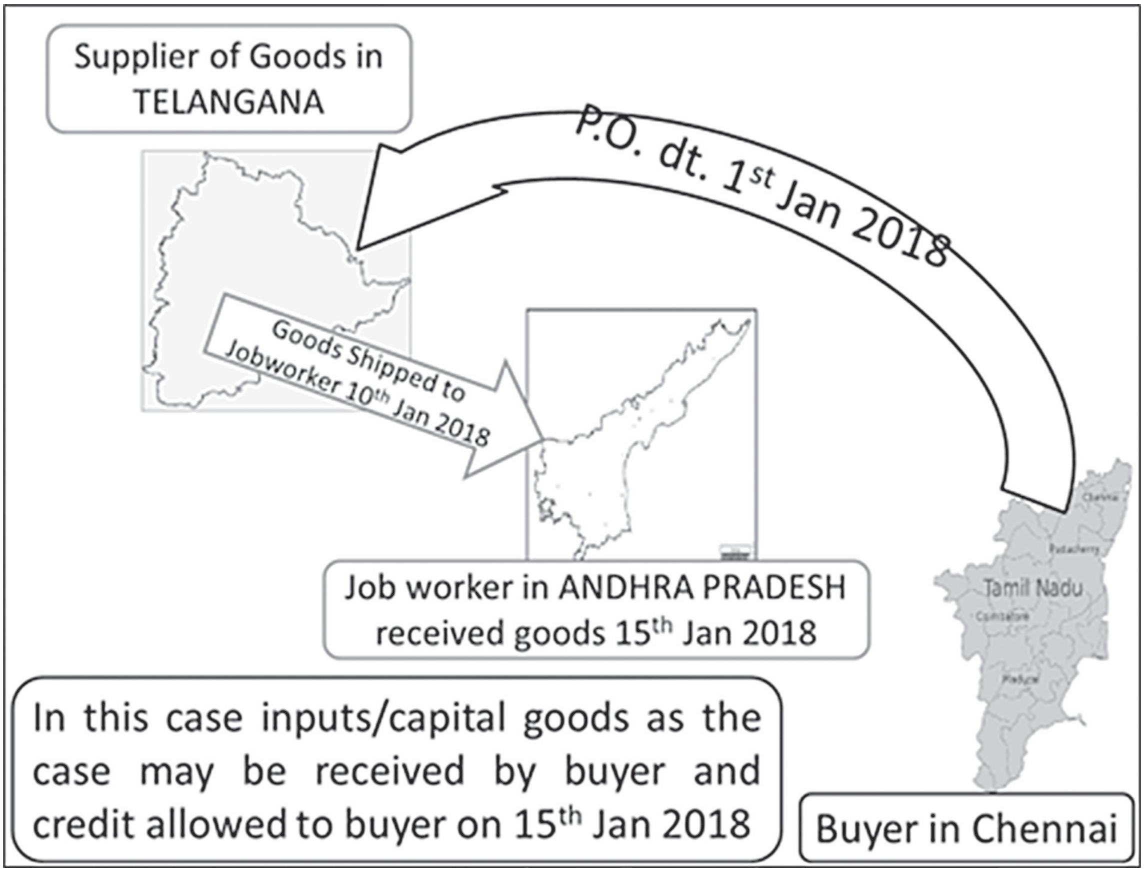


Deemed receipt of goods [Explanation to Section 16(2)(b) of the CGST Act, 2017]

The explanation expands the meaning of receipt of goods to provide that it is not necessary that the goods are physically received by the recipient. The recipient can issue directions to deliver the goods to third person.

Example 4

Goods sent to job worker from supplier on the directions of buyer (i.e. Bill To Ship).



Tax charged in respect of such supply has been actually paid to the Government [Section 16(2)(c) of the CGST Act, 2017 subject to the provisions of Section 41 of the CGST Act, 2017]

It is now specially provided that the supplier has actually paid to the credit of appropriate Govt. the tax amount on the supply made by him.

The liability of payment of tax will be computed by the common portal based on the information of outward supply declared by the supplier goods or services or by recipient himself. The liability so computed as per GSTR-3 will automatically reflected in common portal in tax liability register of taxpayer in Part 1 of the GST-PMT-1.

The taxpayer can make the payment of such liability either by using the balance available in the credit ledger or cash ledger. The payment is required to be made by 20th of following month.

It means supplier will give the credit to recipient only when tax paid to the Govt.

Illustration 3

M/s. X Ltd. supplied taxable goods from the factory after manufacture in the month of October 20XX for sale to a distributor for ₹8,00,000. However, he deposited the GST @12% on these goods on 10-1-20XX against show cause notice issued under Section 74 (when there is fraud) of the CGST Act, 2017 by the Central Tax Officer and passed the order accordingly.

During the month of December 20XX, M/s X Ltd received goods worth ₹5,00,000 by paying GST 12%.

(a) Find the Net GST deposited by M/s X Ltd. into the Government Account on 10th January 20XX.

(b) Your answer is different if M/s X Ltd. paid GST 12% against show cause notice issued under section 73 (when there is no fraud).

(c) Rework, M/s X Ltd. paid output tax by following self-assessment (i.e. when there is no show-cause notice issued)

Note: Ignore penalty and interest.

Solution:

(a) Statement showing Net GST deposited by M/s X Ltd. (where there is fraud Section 74 of the CGST Act):

Particulars	CGST 6%	SGST 6%	Remarks
Output tax	48,000	48,000	(₹8 lac × 6%)
Less: ITC (Since, it is paid against the order where there is fraud)	Not allowed	Not allowed	GST @12% paid on ₹5 lac is not allowed as ITC.
Net GST liability	48,000	48,000	

(b) Our answer remains same as stated in (a) above.

(c) Statement showing Net GST deposited by M/s X Ltd. (where there is no show cause notice issued):

Particulars	CGST 6%	SGST 6%	Remarks
Output tax	48,000	48,000	(₹8 lac × 6%)
Less: ITC	(30,000)	(30,000)	GST @12% paid on ₹5 lac is allowed as ITC.
Net GST deposited	18,000	18,000	

Return under Section 39 of the CGST Act, 2017 must submit to avail the credit Section 16(2)(d) of the CGST Act, 2017

For example, M/s X Ltd supplied goods in the month of December 2022; the entry for debit must be made by 20th January 2023. In the absence of making payment of tax, the return cannot be filed under section 39 of the CGST Act, 2017. In such case credit to the recipient of goods or services will be denied.

It means the credit will be denied even when the recipient has paid tax to the supplier and supplier has failed to pay the tax to the Government.

Payment to supplier of goods or services or both [2nd Proviso to Section 16(2) of the CGST Act, 2017]

The recipient shall pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the value along with the tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier.

It means recipient of goods/services should pay to the supplier (Including Taxes), within 180 days from the date of issue of invoice, else the Input Credit shall be reversed

Reversal of input tax credit in the case of non-payment of consideration [Rule 37(1A) of the CGST Rules, 2017]

A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16 (i.e. 180 days from the date of invoice), shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

It means, if 180 days expires on 15th December 2017, the details are required to be declared in GSTR-2 for the month of January 2018.

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

It means, where supply is made without consideration in respect of activities specified in Schedule I then in such case proviso to sub-rule (1) to Rule 37 makes the deeming fiction that value against such supplies has deemed to be paid within 180 days from the date of issue of invoice.

Notification No. 26/2018-CT, dated 13-6-2018:

Reversal of input tax credit in case of non-payment of consideration is not required (i.e. Deemed to have been paid): Notification No. 26/2018-CT, dated 13-6-2018:

Value of supplies on account of any amount added in accordance with the provisions of section 15(2)(b) of CGST Act, 2017 shall be deemed to have been paid for the purposes of the second proviso to section 16(2) of the CGST Act, 2017.

Illustration 4

M/s A Ltd of Aluva (Kerala) receives the input service from M/s B Ltd of Bengaluru who raises the invoice for supply of service on 17th December, 2021 and availed the credit on the same date.

Find the time limit within which M/s A Ltd is required to pay the bill amount inclusive of tax to supplier of service.

Also explain consequence if payment is not made within the stipulated time period as mentioned in 2nd proviso to section 16(2) of the CGST Act, 2017.

Re-credit is allowed if the payment is made to the supplier of service after expiry of time period as mentioned in 2nd proviso to section 16(2) of the CGST Act, 2017.

Solution:

In the given case M/s A Ltd must pay to M/s B Ltd the value of services and GST payable thereon by 15th June 2022.

Working note:

From	To	No. of days
18th Dec 2021	15th June 2022	180

In case M/s A Ltd does not pay by 15th June 2018, the credit availed by it will be added to his output liability. The amount will be added to their output tax liability with interest.

The 3rd proviso to Section 16(2) of the CGST Act, 2017, provides that the amount so reversed can be again taken as a credit when the payment for receipt goods or services has been made to the supplier of goods or services.

As per Rule 37(4) of the CGST Rules, 2017, the time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter that had been reversed earlier.

Illustration 5

M/s X Ltd. has establishment in Chennai, and establishment in Hyderabad. Supply of goods (open market value of ₹5,00,000) made by M/s X Ltd. Chennai to M/s X Ltd. Hyderabad. M/s X Ltd. Chennai paid IGST of ₹60,000. Accordingly, M/s X Ltd. Hyderabad availed the input tax credit of ₹60,000. 2nd Proviso to Section 16(2) of CGST Act, 2017 is applicable in the given case (i.e. to revere the credit where payment is not made within 180 days from the date of invoice). Advise.

Solution:

As per proviso to rule 37(1) of the CGST Rules, 2017, the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

In the given case M/s X Ltd. Hyderabad is not required to reverse the input tax credit. Since, as per Section 25(4) of the CGST Act, 2017 two establishments are considered as establishment of distinct person and accordingly, supply made by one establishment to another establishment will be covered under Schedule I without consideration.

Depreciation on GST component of the Capital Goods under Income Tax Act, 1961 under section 16(3) of the CGST Act, 2017:

Taxable person shall not claim depreciation on tax component of the cost of capital goods under the provisions of the Income Tax Act, 1961. If the depreciation under section 32 of the Income Tax Act, 1961 is claimed on the tax component by capitalizing with the cost of capital goods, input tax credit shall not be allowed.

Example 5

M/s Jay Ltd. being a manufacturer purchased machinery worth ₹10,00,000 on which GST ₹1,80,000 is paid. The manufacturer has following two options:

Option 1: claim depreciation on the entire value of machinery inclusive of GST (i.e. ₹11,80,000) by forgoing ITC on capital goods.

Option 2: claim depreciation on the cost of machine (i.e. ₹10,00,000) and avail the ITC of GST portion (i.e. 1,80,000).

Time limit to avail the input tax credit Section 16(4) of the CGST Act, 2017

Time limit for availment of credit by registered taxable person is prescribed in the following manner.

(a) Filing of return under section 39 for the month of September following end of financial year to which such invoice pertains

Or

(b) Filing of annual return

whichever is earlier.

ITC on invoices pertaining to a financial year or debit notes relating to invoices pertaining to a financial year can be availed any time till the due date of filing of the return for the month of September of the succeeding financial year or the date of filing of the relevant annual return, whichever is earlier.

Exception: the time limit under section 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

It is worthy to note that the return for the month of September is to be filed by 20th October and annual return of a financial year is to be filed by 31st December of the succeeding financial year.

As per Finance Act, 2020, the words were "invoice relating to such" has been omitted.

The effect of the amendment is that date of debit note, and date of underlying invoice have been delinked. Thus, debit note in respect of an invoice can be raised even after 30th September following end of financial year to which the invoice pertains.

It means the recipient can avail ITC of GST paid through debit note, even if the supply pertains to previous financial years.

Return for month of September

As per section 39 of the CGST Act, 2017, every registered taxable person is required to file return in the prescribed form by 20th of the following month. Thus, return for the month of September is required to file by 20th of October. The credit thereof shall be availed by 30th September and declare in return.

For example, financial year 2021-22, the registered taxable person files the return on 18th October 2022. It is provided that after filing of return, the input tax credit for the supply of goods or services pertaining to the period 2021-22 cannot be claimed by the registered taxable person.

Annual Return of the succeeding financial year

As per Section 44 of the CGST Act, 2017, every registered taxable person is required to file annual return by 31st December following end of financial year. Thus, for the financial year 2021-22, the annual return is required to be filed by 31st December 2022.

w.e.f. 1-8-2019:

"Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner."

As per Section 44 of the CGST Act, 2017, every registered taxable person is required to file annual return by 31st December following end of financial year. Thus, for the financial year 2022-23, the annual return is required to be filed by 31st December 2023.

Illustration 6:

M/s X Ltd. purchased input for ₹2,00,000 vide Tax Invoice No. 12, dated 1st December 2021. M/s X Ltd. has submitted annual return for the financial year 2021-22 on 15th September 2022 and return for September 2022 has been filed 19th Oct 2022. Find the time limit within which input tax credit can be availed on input by X Ltd.

M/s X Ltd. wants to take input tax credit on such input on 30th September, 2022, advise.

Solution:

Time limit to avail the credit is earlier of the following:

(a) 30th September 2022 (it means credit can be availed by 30th September 2022 and the same can be shown in GSTR-3B return to file on or before 20th October 2022).

Or

(b) 15th September 2022

Therefore, M/s X Ltd has to avail the input tax credit on or before 15th September, 2022.

Advise:

After 15th September 2022, the registered taxable person **cannot** take credit based on invoice pertaining to supply of goods or services for the period 1st April 2021 to 31 March, 2022. Hence, in the given case M/s X Ltd is NOT eligible to avail the input tax credit on 30th September 2022.

Illustration 7

M/s X Ltd. delivered a machine to M/s Y Ltd. in January 2022 under Invoice No. 180, dated 21st January ₹for ₹5,00,000 plus GST, and undertook trial runs and calibration of the same machine as per the requirements of M/s Y Ltd. The amount chargeable for the past delivery activities were covered in a debit note raised in May 2023 for ₹1,25,000 plus GST. M/s Y Ltd did not file its annual return till October 2023.

Find the time limit under section 16(4) of the CGST Act, 2017 within which input tax credit can be availed by M/s Y Ltd.

Solution:

Time limit to avail the ITC on machine (vide Invoice No. 180, dated 21.01.2022) is 30th September 2023.

Time limit to avail the ITC on debit note is also 30th September 2024.

Note: As per Finance Act, 2020, the words were "invoice relating to such" has been omitted.

The effect of the amendment is that date of debit note, and date of underlying invoice have been delinked. Thus, debit note in respect of an invoice can be raised even after 30th September following end of financial year to which the invoice pertains.

It means the recipient can avail ITC of GST paid through debit note, even if the supply pertains to previous financial years.

Common inputs and input services for taxable and exempted supplies [Section 17 of the CGST Act, 2017]

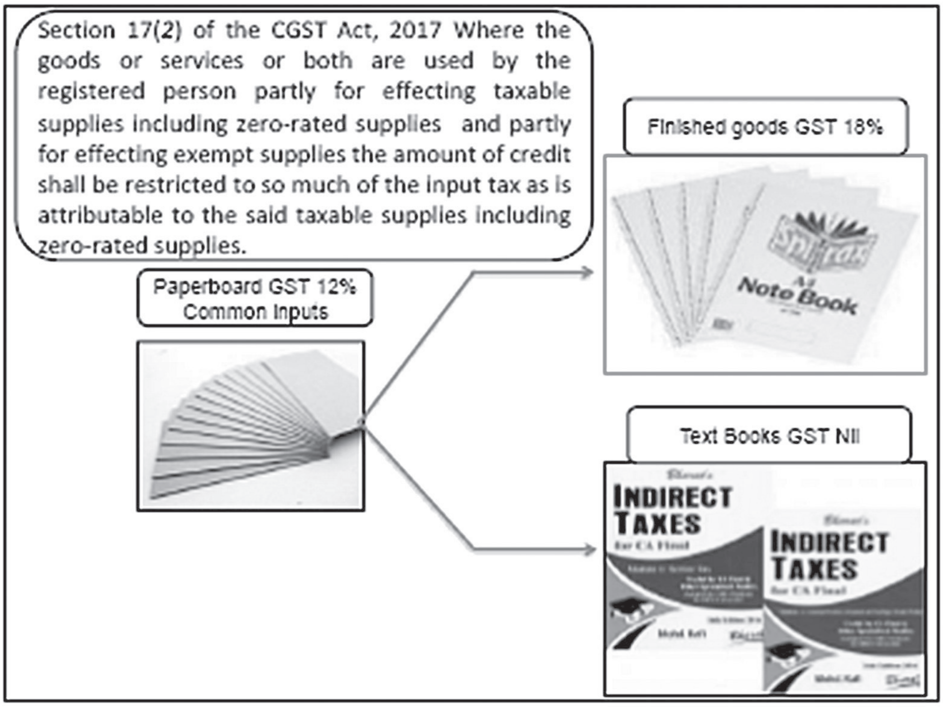
17.20.1 Section 17(1) of the CGST Act, 2017 where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

17.20.2 Section 17(2) of the CGST Act, 2017 where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

17.20.3 Section 17(3) of the CGST Act, 2017 the value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

w.e.f. 1-2-2019

Explanation: For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.



Manner of determination of input tax credit in respect of inputs or input services and reversal thereof [Rule 42(1) of the CGST Rules, 2017]

The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,—

Step 1: Calculate common input tax credit on inputs and input services which are used to supply taxable as well as exempted output supplies:

Particulars	Value in (₹)	CGST Rules, 2017
Total ITC on inputs and input services	Xxx	As per rule 42(1)(a)
Less: ITC on supplies exclusively used for the purpose other than business	(xx)	As per rule 42(1)(b)
Less: ITC on supplies exclusively used for providing exempted supplies	(xx)	As per rule 42(1)(c)
Less: ITC not available under section 17(5) of the CGST Act, 2017	(xx)	As per rule 42(1)(d)
Input tax credit which are used to supply taxable as well as exempted output supplies	Xxx	As per rule 42(1)(e)
Less: ITC on supplies used exclusively for taxable supply including Zero rated supply (i.e. ITC on normal supplies)	(xx)	As per rule 42(1)(f)
Common ITC, which are used to supply taxable as well as exempted output supplies (denoted as "C2")	Xx	As per rule 42(1)(h)

Note: As per Rule 42(1)(g) of the CGST Rules, 2017, information relating to Rule 42(1)(b), (c), (d) and (f) shall be determined and declared by the registered person at the invoice level in FORM GSTR-2;

Step 2: Amount of reversal of input tax credit attributable towards Exempt supplies rule 42(1)(i) of the CGST Rules, 2017 (denoted as "D1"):

$$= \frac{\text{Exempted supplies during the tax period ('E')}}{\text{Total turnover in the State of the registered person during the tax period ('F')}} \times \text{Common ITC, which are used to supply taxable as well as exempted, output supplies}$$

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation:

For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

Notification No. 55/2017-Central Tax, dated 15th November 2017, w.e.f. 15th November, 2017:

An explanation has been inserted after sub-rule (2) in rule 43 for the purposes of rule 42 and this rule that the aggregate value of exempt supplies shall exclude the value of supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.

Notification No. 3/2018-Central Tax, dated 23rd January 2018:

For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude:—

(a) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(b) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.";

Tax period

As per section 2(106) of the CGST Act, 2017 tax period means for the purpose for which return is required to be furnished. As per section 39 return is required to be furnished on monthly basis by the registered person except the person opting for composition scheme or persons eligible to file return quarterly (other than composition levy assessees) based on their aggregate turnover not exceeds ₹150 lacs.

This rule is not applicable to persons opting for composition scheme.

Computing proportionate amount attributable to use for non-business purposes (i.e. Personal purpose) [Rule 42(1)(j) of the CGST Act, 2017]

The amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2', and shall be equal to five per cent of C2; and

Common ITC, which are used to supply taxable as well as exempted output supplies (denoted as "C2")	Xx	As per rule 42(1)(h)

Thus, if input or input services have been used for the purpose of non-business, as per rule 42(1)(j) of the CGST Rules, 2017 credit of 5% of "C2" will be required to be reversed. It means the same should be deducting from input tax credit on input or input services exclusively used for taxable supply in the electronic credit ledger.

Quantum of eligible ITC [Rule 42(1)(k) of the CGST Act, 2017]

The remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C3', where,—

$$C3 = C2 – (D1+D2)$$

Eligible ITC to be separately computed for different taxes [Rule 42(1)(l) of the CGST Rules, 2017]

That "C3" shall be computed separately for CGST, SGST, UTGST and IGST.

Added to the output tax liability Rule 42(1)(m) of the CGST Rules, 2017:

Person shall compute D1 and D2 (i.e. ineligible credit in addition to ineligible credit at invoice level and add that amount to the output tax liability. This will be added on monthly basis and the registered person should pay the amount.

Adjustment at the year end [Rule 42(2) of the CGST Rules, 2017]

The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and—

(a) where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

w.e.f. 1-4-2020, For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods

w.e.f. 1st February 2019, The Central Government vide Notification No. 03/2019-CT, dated 29th January 2019 has amended CGST Rules, 2017 details of which are explained below:

	Revised	Comment
Insertion of Rule 41A [Transfer of credit on sale, merger, amalgamation, lease or transfer of a business]:	1. A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilized ITC lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within 30 days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically, Provided that the ITC shall be transferred to the newly registered entities in the ratio of the value of assets (value of the entire assets of the business whether or not input tax credit has been availed thereon.) held by them at the time of registration and upon such acceptance by newly registered person (transferee), the unutilized input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.	Please note that this rule is especially where separate registration is obtained under the amended section 25(2).

w.e.f. 1st February 2019, The Central Government vide Notification No. 03/2019-CT, dated 29th January, 2019 has amended CGST Rules, 2017 details of which are explained below:

	Revised	Comment
Insertion in Explanation to Rule 42 and Rule 43 [Manner of determination of input tax credit in respect of inputs or input services /capital goods and reversal thereof]	After the word and figures "entry 84", the word, figures and letter "and entry 92A" shall be inserted. Therefore for the purposes of Rule 42 & 43, the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92 A* of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule *Entry 92A levy taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.	

The Central Government vide Notification No. 16/2019-CT, dated 29th March 2019 has amended Central Goods and Services Tax Rules, 2017. Amendments made are explained below:

Rule	Revised Provision	Comment
Rule 41: (Transfer of credit on sale, merger, amalgamation, lease or transfer of a business)	**Insertion of Explanation: -** it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.	Comment: With the insertion of this explanation it is clarified that for the purpose of apportionment of ITC in case of demerger on the basis of ratio of assets of the new units as specified in the demerger scheme value of assets means value of all assets whether ITC claimed or not.
Insertion in Rule 42: (Manner of determination of input tax credit in respect of inputs or input services and reversal thereof)	**Insertion of Explanation in clause (f):** For the purpose of calculation of T4, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II (Construction of complex, building, civil structure or part thereof except where entire consideration received after issuance of completion certificate), value of T4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date. **Insertion in clause (g):** T1', 'T2', 'T3' and 'T4' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 **and at summary level in FORM GSTR-3B** **Insertion of proviso in clause (i):** Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:- E= aggregate carpet area of the apartments, construction of which is exempt plus but are identified to be sold after issue of completion certificate or first occupation, whichever is earlier F= aggregate carpet area of the apartments in the project. Further as per explanation, value of E shall also include aggregate carpet area of the apartments, which have not been booked.	Comment: In case of service of Construction of complex, building, civil structure or part thereof except where entire consideration received after issuance of completion certificate value of T4 shall be zero during the construction phase. Comment: Now, a taxpayer shall declare T1', 'T2', 'T3' and 'T4' at summary level in FORM GSTR-3B as well earlier this information was only required in GSTR- 2 at the invoice level. Comment: A proviso has been inserted to provide that in case of service of Construction of complex, building, civil structure or part thereof except where entire consideration received after issuance of completion certificate, value of 'E/F' for a tax period shall be calculated for **each project separately.**

Rule	Revised Provision	Comment
	Substitution in Sub Rule (1) clause (l): the amount 'C3', **'D1' and 'D2'** shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and **declared in FORM GSTR-3B or through FORM GST DRC-03**	**Comment:** This now gives teeth the instructions from CBIC to carry out reversals (for earlier years) through DRC03. It was seen that reversals for earlier year were made through GSTR 3B which resulted in double counting of reversal in subsequent financial year.
	Substitution Sub Rule (1) clause (m): the amount equal to aggregate of 'D1' and 'D2' shall be **reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03**	
	Substitution in sub rule (2): Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit 44 determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule	
	Substitution in sub rule (2) clause (a): where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be **reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03** 45 in the month not later than the month of September following the end of the financial year to which such credit relates……..	**Comment:** This is consequential effect that is required to accommodate previous rule changes.
	Insertion of Sub Rule (3): In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 In the manner prescribed in the said sub-rule.	**Comment:** Where transition adjustment has been made (into new rate-regime), the reversal effect needs to be treated without allowing these adjustments to unduly impact the reversal.

Rule	Revised Provision	Comment
Rule 43: Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.	**Insertion in sub rule 1 clause (a):** the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 and **FORM GSTR-3B** and shall not be credited to his electronic credit ledger. **Insertion in sub rule 1 clause (b):** he amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in FORM GSTR-2 **and FORM GSTR-3B** and shall be credited to the electronic credit ledger.	Comment: Earlier the ITC on capital goods used for non-business purpose and used for effecting exempt supplies was required to be indicated in GSTR 2 only. Now, it shall be indicated in GSTR 3B as well. Further, ITC in respect of capital goods used for effecting supplies other than exempted but including zero rated shall also be indicated in GSTR 3B now.
	Insertion of explanation in clause (b): For the purpose for calculating ITC on capital goods used for effecting supplies other that exempted, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.	Comment: This is welcome as difficulty in determining reversal during year of construction which would have impacted the correctness of reversal which could be favourable or unfavourable to RPs and subverts correct determination of reversal required.
	Insertion in clause (g): 'F' is the total turnover **in the State** of the registered person during the tax period:	Comment: Earlier the clause defining abbreviation "F" is modified in a way to provide that total turnover only within a state will be considered.
	Insertion of proviso in clause (g): Provided that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier. F= aggregate carpet area of the apartments in the project	Comment: A proviso has been inserted to provide that in case of service of Construction of complex, building, civil structure or part thereof except where entire consideration received after issuance of completion certificate, value of 'E/F' for a tax period shall be calculated for each project separately.

Rule	Revised Provision	Comment
	Insertion of clause (i): The amount Te shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR 3B	Comment: A new clause has been inserted to provide that calculation of the amount of common credit attributable towards exempted supplies shall be computed separately for each tax type.
	Substitution of sub rule 2: In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (Te final) shall be calculated finally for the entire period (from commencement to completion or occupation whichever earlier) as under: Te final= [(E1 + E2 + E3)/F] x Tc final, where value of Te final exceeds the aggregate of amounts of Te determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September and the said person shall be liable to pay interest on the said excess amount. Such excess amount shall be claimed as credit by the registered person in his return	Comment: This is welcome as it takes into consideration the timing-difference of projects executed over more than one financial year.

Illustration 8:

M/s. Vipin Ltd. purchased raw material 'A' 10,000 kg @ ₹80 per Kg. plus GST. The said raw material was used to manufacture product 'P'. The other information's are as under:

(i) Processing loss : 2% on inputs 'A'.

(ii) Transaction value of 'P' : ₹100 per kg.

(iii) Other material 'M' used in the manufacture of 'P' : ₹2 lac plus GST.

(iv) GST on capital goods imported during the period and used in the manufacture of 'P':

— Basic customs duty ₹20,000

— IGST under customs under section 3(7) of the Customs Tariff Act, 1975 ₹10,000;

(v) Rate of GST on 'A', 'M' and 'P': 12%.

M/s. Vipin Ltd. is not eligible for composition scheme under Section 10 of CGST Act, 2017

Compute: (i) Amount of input tax credit available and

(ii) Net GST payable by M/s. Vipin Ltd.

Solution:

(i) Statement showing eligible input tax credit of M/s Vipin

Particulars	Value in ₹	Working note
Raw material 'A'	96,000	(10,000 kg × ₹80) × 12%
Other material 'M'	24,000	2,00,000 × 12%
Capital goods (imported)	10,000	IGST allowed as ITC.
Total ITC	1,30,000	

(ii) Net GST liability of M/s Vipin

Input 'A' 10,000 kg → Out put 'P' 9,800 kg

	(₹)
GST payable on value of supply 'P' (9,800 kg ₹100) × 12%	= 1,17,600
Less: ITC allowed	= (1,30,000)
Excess ITC c/f	= (12,400)

Illustration 9

M/s X Ltd manufacturer of textile products. Company received order from Government to supply goods to defence (exempted supply). The turnover of the other taxable goods and exempted goods ₹4 crore and ₹1 crore respectively. Common inputs on which GST paid ₹20,000.

Calculate the eligible ITC on common inputs?

Solution:

Common inputs credit = ₹20,000

Total turnover = ₹5 crores

Credit attributable to exempted supplies = ₹4,000

(₹20,000 × ₹1 crore/ ₹5 crore)

Eligible ITC is ₹16,000 (i.e. 20,000 – 4,000)

Illustration 10

M/s Lips Ltd., manufactures four types of 'Nail Polishes', namely Sweety, Pretty, Beauty, Tweety.

The Company has taken input tax credit of ₹3,00,000 on the common inputs used in the manufacture of 'Nail Polishes'. Common inputs also used partly for non-business purposes. During the financial year the company manufactured 1000 litres of each type of 'Nail Polishes'. The Company was not in a position to maintain separate set of records with regards to inputs used for final products. GST payable on final goods @12%.

You are required to calculate the net GST payable by M/s Lips Ltd. for the year from the following data:

Product Name	Description	Sale price (Exclusive of GST)
Sweety	Sale to Domestic Tariff Area	₹30 per 20ml. bottle
Pretty	Sale to a Special Economic Zone (SEZ)	₹40 per 20ml. bottle
Beauty	Sale to A Ltd. of USA	₹50 per 20ml. bottle
Tweety	Sale to Defence Canteen(Exempted from GST)	₹60 per 20ml. bottle

Solution:

Statement showing GST on outward supplies:

Product Name	Description	Sale price (Exclusive of GST)	Transaction Value ₹	GST liable to pay ₹	Remarks
Sweety	Sale to Domestic Tariff Area	₹30 per 20ml. bottle	15,00,000	1,80,000	₹15,00,000 (1000 litres × 1000ml./ 20ml × ₹30) GST = ₹1,80,000 (₹15,00,000 × 12%)
Pretty	Sale to a unit of SEZ (treated as exports)	₹40 per 20ml. bottle	20,00,000	Zero rated supplies	₹20,00,000 (1000 litres × 1000ml./ 20ml × ₹40)
Beauty	Sale to A Ltd. of USA (export sales)	₹50 per 20ml. bottle	25,00,000	Zero rated supplies	₹25,00,000 (1000 litres × 1000ml./ 20ml × ₹50)
Tweety	Sale to Defence Canteen (Exempted from GST)	₹60 per 20ml. bottle	30,00,000	Exempted	₹30,00,000 (1000 litres × 1000ml/20ml × ₹60)
	Total		90,00,000	1,80,000	

As per Section 17(2) of the CGST Act, 2017 read with rule 42(1)(i) and rule 42(1)(j) of the CGST Rules, 2017 proportionate reversal of credit is as follows:

Particulars	ITC reversal ₹	Working note
Input tax credit proportionate reversal on common inputs [rule 42(1)(i)]	1,00,000	(₹30,00,000/₹90,00,000) × ₹3,00,000
Credit attributable to non-business purposes on common inputs [rule 42(1)(j)]	15,000	₹3,00,000 × 5%
Total	**1,15,000**	

Therefore, quantum of eligible ITC (Rule 42(1)(k) of the CGST Rules, 2017) ₹is ₹1,85,000/-

[₹3,00,000 – (1,00,000 + 15,000)]

Statement showing net GST liability or excess credit:

Therefore, the GST payable on taxable supply of goods	=	₹1,80,000
Add: ITC reversed (i.e. Output tax liability)	=	₹1,15,000
Total Tax liability	=	₹2,95,000
Less: ITC credit allowed	=	₹(3,00,000)
Excess ITC can be carried forward into next month	=	₹(5,000)

Illustration 11

Assume in above illustration, M/s Lips Ltd., utilized the credit ₹2,25,000. Excess credit paid on 15th April 20XX. Find the interest if any payable by M/s Lips Ltd.

Solution:

w.e.f. 1-4-2019, As per Rule 42(2) of the CGST Rules, 2017 where the aggregate of the amount calculated finally in respect of ineligible credit exceeds the aggregate of the amounts determined under rule 42(1)(i) and (j), such excess shall be reversed by the registered person in GSTR 3B or in the prescribed form in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of Section 50 for the period starting from the 1st day of April of the succeeding financial year till the date of payment.

Interest = ₹296/-

[(₹2,25,000 – 1,85,000) × 18% × 15/365]

Illustration 12

Y Ltd. manufactures taxable and exempted goods. Y Ltd. also simultaneously provides taxable as well as exempted output services. Raw material 10,000 units were purchased @ ₹100 per unit used commonly during the month of January 2018 to produce all final products. GST paid on inputs 12%. Input services commonly used for all goods and services in the month of January 2018. Total ITC on inputs and input services taken into books of account in the relevant tax period is ₹1,74,000.

Turnover for the month of January 2018 (excluding all taxes)

Particulars	Value of finished goods ₹
Taxable supply of goods	2,00,000
Exempted supply of goods (₹80 per unit)	1,00,000
Taxable supply of services	1,00,000
Exempted supply of services	50,000
Total	**4,50,000**

You are required to compute the amount of reversal of input tax credit as per rule 42(1)(i) of the CGST Rules, 2017 for the month of January 2018.

Note: Each unit of exempted final product needs 2 units of raw materials. Assumed that there is no process loss.

Solution:

Step 1: Calculate common input tax credit on inputs and input services which are used to supply taxable as well as exempted output supplies:

Particulars	Value in ₹	Working note
Total ITC on inputs and input services	1,74,000	rule 42(1)(a)
Less: ITC on supplies exclusively used for the purpose other than business	Nil	rule 42(1)(b)
Less: ITC on supplies exclusively used for providing exempted supplies	(30,000)	2,500u × ₹100 × 12%[rule 42(1)(c)]
Less: ITC not available under section 17(5) of the CGST Act, 2017	Nil	rule 42(1)(d)
Input tax credit which are used to supply taxable as well as exempted output supplies	1,44,000	rule 42(1)(e)
Less: ITC on supplies used exclusively for taxable supply including Zero rated supply (i.e. ITC on normal supplies)	(90,000)	(10,000u – 2,500u) × ₹100 × 12%. As per rule 42(1)(f)
Common ITC, which are used to supply taxable as well as exempted output supplies (denoted as "C2")	54,000	As per rule 42(1)(h)

Step 2: Amount of reversal of input tax credit attributable towards exempted supplies rule 42(1)(i) of the CGST Rules, 2017 is as follows:

(₹1,50,000/4,50,000) × ₹54,000 = ₹18,000/-

Working Note:

(i) Number of units of exempted final products 1,250 units (i.e. ₹1,00,000/ ₹80 per unit = 1,250 units)

(ii) Since, each unit of exempted final product needs 2 units of raw materials. Raw material used exclusively for exempted final product 2,500 units (i.e. 1,250 units x 2 units = 2,500 units).

Illustration 13

Ram & Co., being a registered person under GST supplied the following in the month of January 20XX:

Particulars	Value in ₹
Taxable supply of goods	20,00,000
Exempted supply of goods	5,00,000
Sale of land	12,50,000
Recovery Agent services supplied to OK Bank	2,50,000
Deposit on which interest received	2,00,000
Total	42,00,000

Common inputs for the relevant tax period is ₹2,00,000.

GST applicable rate on outward supply of goods @28%

Find the GST liability?

Solution:

Statement showing net GST liability:

		(₹)
Output tax	=	5,60,000
Add: ITC reversed	=	95,238
Out tax liability	=	6,55,238
Less: ITC	=	(2,00,000)
Net GST liability	=	4,55,238

Working note:

(1) Exempted supply:

	(₹)
Exempted supply of goods	5,00,000
Sale of land	12,50,000
Recovery Agent services supplied to OK Bank	2,50,000
TOTAL	20,00,000

(2) Net ITC allowed = ₹1,04,762 (₹2,00,000 - ₹95,238)

(3) GST liability on outwards supply

₹20,00,000 × 28% = ₹5,60,000

(4) ITC not allowed as per Rule 42(1)(i) of CGST Rules, 2017

2,00,000 × 20 L/42 L = ₹95,238/-

Sale of land and Recovery Agent to a banking company is treated as exempted supply as per Section 17(3) of the CGST Act, 2017

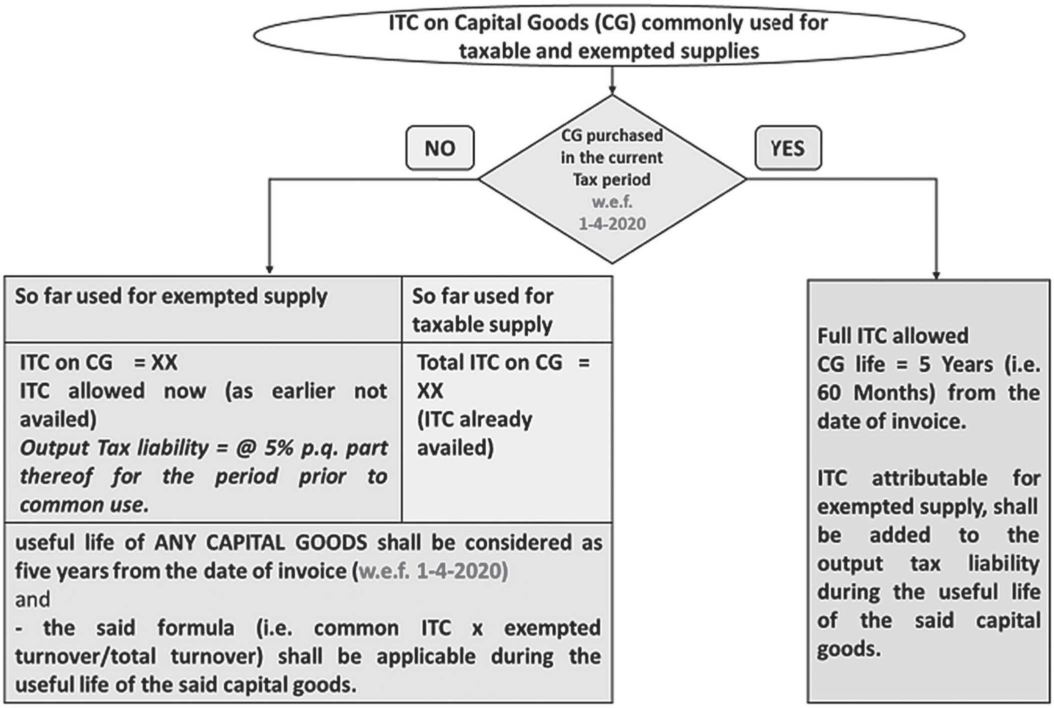
W.e.f. 25.1.2018, interest on deposits should not include in exempted supply. However, it is included in total turnover.

Rule 43 of the CGST Rules, 2017: Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases:

This provision elucidated in the following manner:

w.e.f 1-4-2020, For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years **from the date of invoice** and the said formula shall be applicable during the useful life of the said capital goods.

Amendment in rule 43 of the CGST Rules which prescribes the manner of determination of ITC in respect of capital goods and reversal thereof in certain cases w.e.f. 1-4-2020.



[Notification No. 16/2020-CT, dated 23.03.2020]

Illustration 14

Praja Industries is a manufacturing company registered under GST. It manufactures two taxable products 'X' and 'Y' and one exempt product 'Z'. The turnover of 'X', 'Y' and 'Z' in the month of April, 20XX was ₹2,00,000, ₹10,00,000 and ₹12,00,000. Praja Industries is in possession of certain machines and purchases more of them. Useful life of all the machines is considered as 5 years.

From the following particulars furnished by it, compute the amount to be credited to the electronic credit ledger of Praja Industries and amount of common credit attributable towards exempted supplies, if any, for the month of April, 20XX.

Particulars	GST paid (₹)
Machine 'A' purchased on 01.04.20XX for being exclusively used for non-business purposes	19,200
Machine 'B' purchased on 01.04.20XX for being exclusively used in manufacturing zero-rated supplies	38,400
Machine 'C' purchased on 01.04.20XX for being used in manufacturing all the three products – X, Y and Z	96,000

Particulars	GST paid (₹)
Machine 'D' purchased on April 1, 2 years before 01.04.20XX for being exclusively used in manufacturing product Z. From 01.04.20XX, such machine will also be used for manufacturing products X and Y.	1,92,000
Machine 'E' purchased on April 1, 3 years before 01.04.20XX for being exclusively used in manufacturing products X and Y. From 01.04.20XX, such machine will also be used for manufacturing product Z.	2,88,000

Solution:

Statement showing Common ITC on Capital Goods as on 1st April, 20XX

Particulars	Value in ₹	Working note
Capital goods C Used both for taxable and exempted supplies	96,000	As per rule 43(1)(c) of CGST Rules, 2017
Capital goods D (has been exclusively used for 2 years for exempted supplies). Now there is change in use, both for taxable and exempted supplies.	1,92,000	Proviso to rule 43(1)(c) of CGST Rules, 2017. ₹1,92,000 ITC allowed fully, provided, ₹77,800 is considered as output tax liability in April, 20XX. 1.92 L × 5% × 8 quarters = ₹76,800.
Capital goods E (has been exclusively used for 3 years for taxable supplies). Now there is change in use, both for taxable and exempt supplies.	2,88,000	Proviso to rule 43(1)(d) of CGST Rules, 2017. ITC already availed and hence, ITC in April 20XX is not allowed.
Common credit	5,76,000	
the amount of input tax credit attribu-table to a tax period on common capital goods during their useful life	9,600	As per Rule 43(1)(e) of the CGST Rules, 2017 calculated as: 5,76,000 ÷ 60 = ₹9,600
the amount of common credit attribu-table towards exempted supplies	4,800	As per Rule 43(1)(g) of the CGST Rules, 2017 calculated as: ₹9,600 × ₹12,00,000 / ₹24,00,000.

Statement showing Total ITC to the Electronic Credit Ledger for the month of April 20XX:

Particulars	Value in ₹
Capital goods B used exclusively for taxable supplies (i.e. Zero-rated supply)	38,400
Capital goods C Used both for taxable and exempted supplies	96,000
Capital goods D (has been exclusively used for 2 years for exempted supplies). Now there is change in use, both for taxable and exempted supplies.	1,92,000
Electronic Credit Ledger	3,26,400

w.e.f. 1-4-2020, For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

Banking Company or NBFC [Section 17(4) of the CGST Act, 2017]

A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to 50% of the eligible input tax credit on **inputs, capital goods and input services** in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

Illustration 15

X Bank of India has corporate office in Mumbai and branches in Chennai, Delhi and Kolkata. Mumbai office provided services to Chennai office accordingly IGST paid. Office of Chennai will avail the credit of IGST. Whether Chennai office is required to reverse such credit? Explain.

Solution:

As per Section 17(4) of the CGST Act, 2017 that reversal of 50% shall not be made for the credit availed by Chennai office on services provided by corporate office. Thus, no credit reversal shall be made for the credit availed on input services provided by one registered person to another registered person holding same PAN.

Illustration 16

OK Bank has availed credit of ₹25,00,000 lacs in the month of December 2017. Total credit, out of which ₹5,00,000 pertains to non-business purpose and ₹7,00,000 pertains to credit availed under 2nd proviso of section 17(4). Find the total input tax credit eligible to OK Bank.

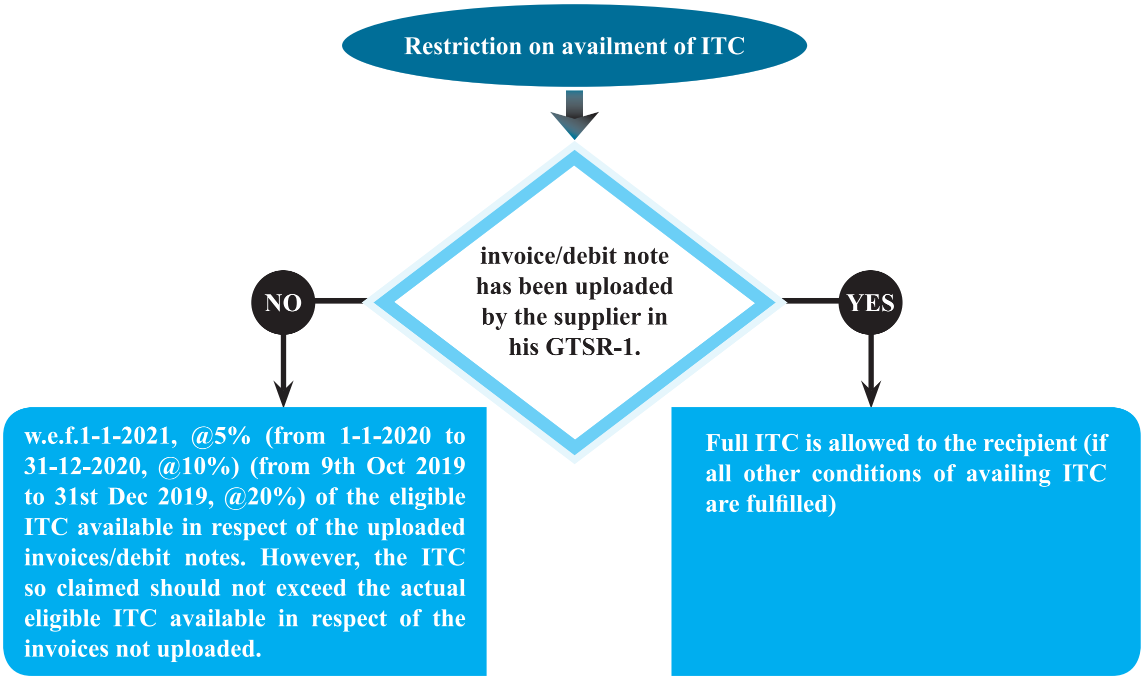
Note: OK Bank opted to avail ITC an amount equal to 50% of eligible credit.

Solution:

Statement showing eligible ITC to OK Bank for the month of December 2017:

Particulars	ITC Amount in ₹	Remarks
Input tax credit attributable to non-business purpose	Nil	ITC fully not allowed
ITC from its other establishment	7,00,000	ITC fully allowed.
Other ITC	6,50,000	(25,00,000 – 5,00,000 – 7,00,000) × 50%
Total ITC allowed in Form GSTR-2	13,50,000	

Restriction on availment of input tax credit (ITC) in respect of invoices/debit notes not uploaded by the suppliers in their GSTR-1s [New sub-rule (4) inserted in rule 36 of the CGST Rules] omitted w.e.f. 1-1-2022.



From 1st January 2022, ITC claims will be allowed only if it appears in GSTR-2B. So, the taxpayers can no longer claim 5% provisional ITC under the CGST Rule 36(4) and ensure every ITC value claimed was reflected in GSTR-2B.

Restrictions on utilisation of ITC [Rule 86A]

A new rule 86A has been inserted in the CGST Rules to empower the Commissioner/ an officer (not below the rank of an Assistant Commissioner) authorised by him, to impose restrictions on utilization of ITC available in the electronic credit ledger if he has reasons to believe that such ITC has been fraudulently availed or is ineligible.

The restrictions can be imposed in the following circumstances:

(i) ITC has been availed on the basis of tax invoices/valid documents -

- issued by a non-existent supplier or by a person not conducting any business from the registered place of business; or
- without receipt of goods or services or both; or
- the tax in relation to which has not been paid to the Government

(ii) Registered person availing ITC has been found non-existent or not to be conducting any business from the registered place of business; or

(iii) Registered person availing ITC is not in possession of tax invoice/valid document.

If the ITC is so availed, the restrictions can be imposed by not allowing such ITC to be used for discharging any liability under section 49 or not allowing refund of any unutilised amount of such ITC. Such restrictions can be imposed for a period up to 1 year from the date of imposing such restrictions. However, the Commissioner/officer authorised by him, can withdraw such restriction if he is satisfied that conditions for imposing the restrictions no longer exist.

[Notification No. 75/2019-CT, dated 26.12.2019]

Restriction on use of amount available in Electronic Credit Ledger **Rule 86B of the CGST Rules, 2017**:

w.e.f. 1-1-2021, New Rule 86B has been inserted which restricts the use of credit available in Electronic Credit Ledger. The said rule restricts the use of Input Tax Credit by more than 99% against output tax liability. This restriction is applicable for taxpayers whose taxable supply other than exempt supply and zero-rated supply exceeds ₹ 50 lakhs in a month.

Example 6

The total value of inter-State supply of Shiva & Sons for the month of March 2021 is of ₹100 lakh. Said supply is taxable @ 18% IGST. Thus, total output tax liability of Shiva & Sons is ₹18 lakh. Amount available in electronic credit ledger is ₹ 20 lakh (IGST).

In terms of restriction imposed by rule 86B, Shiva & Sons can discharge @ 99% of its output tax liability, i.e. ₹17,82,000 (99% of ₹18,00,000) from the amount available in electronic credit ledger. However, it has to mandatorily discharge the balance 1% of the output tax liability i.e. ₹ 18,000 (1% of ₹ 18,00,000) through electronic cash ledger only.

Further, the said rule is not applicable in the following cases:—

(a) The taxpayer (proprietor/Karta/managing director/partner/Whole Time Director/Members of the managing committee of Association/Board of Trustees) have paid income tax exceeding ₹1 lakh in each of the 2 preceding financial years or

(b) Where taxpayers have received a refund of unutilized input tax credit exceeding ₹1 lakh in the preceding financial year on account of exports or supplies to SEZ or

(c) Where taxpayers have received a refund of unutilized input tax credit exceeding ₹1 lakh in the preceding financial year on account of inverted duty structure or

(d) The taxpayer has discharged his liability towards output tax through the Electronic Cash Ledger for an amount which is more than 1% of the total output liability, applied cumulatively, up to the said month in the current financial year or

(e) The taxpayer is—

- Government Department
- Public Sector Undertaking
- Local authority
- Statutory body

The Commissioner or any officer authorized by him on this behalf may remove the said restriction after such verification and safeguards as he may deem fit (vide Notification No. 94/2020-CT., dated 22-12-2020).

Input Tax Credit (ITC) not applicable goods and services Section 17(5) of the CGS Act, 2017

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

ITC not allowed

Section 17(5) of the CGST Act, 2017

Capital Goods Section 2(19) of the CGST Act, 2017	Input Section 2(59) of the CGST Act, 2017	Input Service Section 2(60) of the CGST Act, 2017

w.e.f. 1-2-2019:

(a) motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making the following taxable supplies, namely:-

A. further supply of such vehicles; or

B. transportation of passengers; or

C. imparting training on driving such motor vehicles;

(aa) vessel and aircraft except when they are used-

(i) For making the following taxable supplies, namely: -

A. Further supply of such vessels or aircraft; or

B. Transportation of passengers or

C. Imparting training on navigating such vessel or

D. Imparting training on flying such aircraft

(ii) For transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance insofar as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or (aa);

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

(i) Where the motor vehicles, vessels or aircraft referred to in clause (a) or (aa) are used for the purposes specified therein;

(ii) Where received by a taxable person engaged-

(I) In the manufacture of such motor vehicles, vessels or aircraft; or

(II) In the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) w.e.f. 1-2-2019, the following supply of goods or services or both—

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

Provided that input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) travel benefits extended to employees on vacation such as leave or home travel concession;

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of Fraud, Detention, Seizure and confiscation of goods or conveyance.

Explanation: For the purposes of clauses (c) and (d) of Section 17(5) of the CGST Act, 2017, the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

Section 2(76) of the CGST Act, 2017 "motor vehicle" shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988;

Section 2(34) "**conveyance**" includes a vessel, an aircraft and a vehicle;

17.29.1 Section 17(5)(a)(ii) of the CGST Act, 2017 further provides that credit on any motor vehicle or other conveyance used for transportation of goods by the company himself or for making taxable supply will be available to avail credit on motor vehicles.

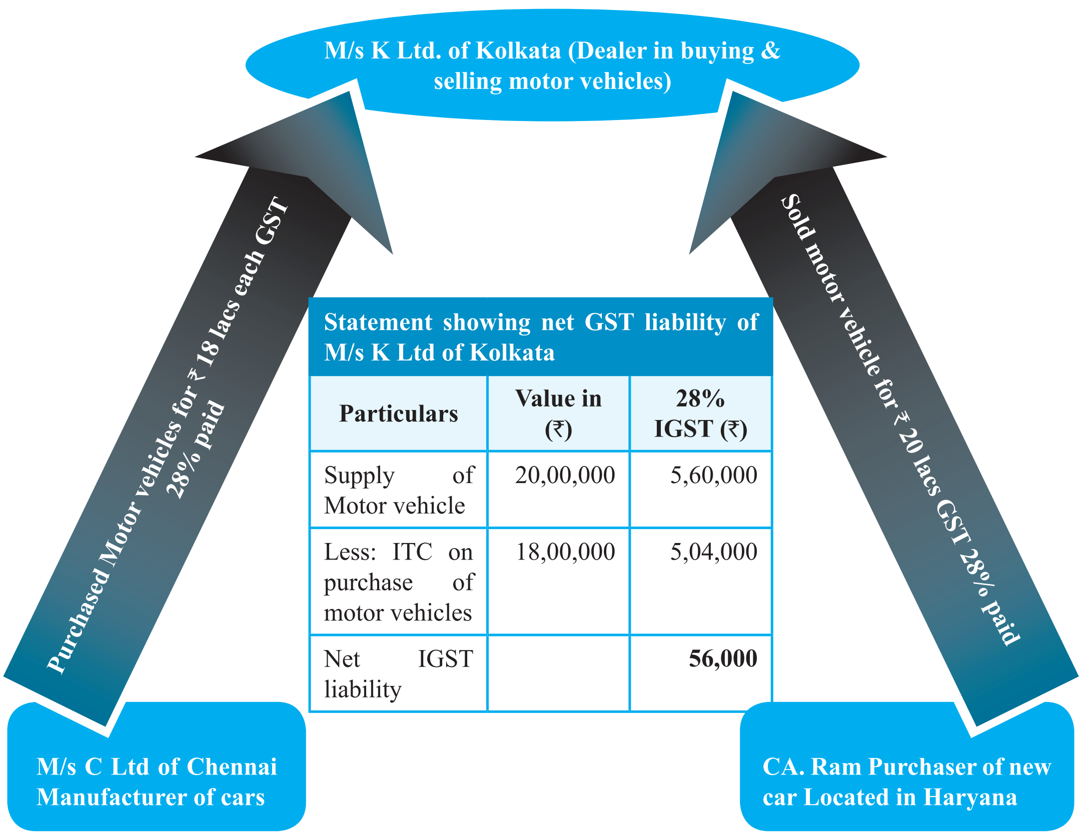
Section 17(5)(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

Section 17(5)(a) motor vehicles and other conveyances ITC Not allowed except when they are used—

(i) for making the following taxable supplies, namely:—

Motor vehicles or conveyances are used for further supply of such vehicles or conveyances:



Statement showing net GST liability of M/s K Ltd of Kolkata

Particulars	Value in (₹)	28% IGST (₹)
Supply of Motor vehicle	20,00,000	5,60,000
Less: ITC on purchase of motor vehicles	18,00,000	5,04,000
Net IGST liability		**56,000**

There are many taxable persons who are engaged in purchase and sale of used cars. These dealers purchase used cars from others by paying GST then the credit of GST paid will be available to such dealers (i.e. while selling they are liable to pay GST).

Illustration 17

M/s A Ltd. a registered person under GST law and purchased 10 cars for ₹45 lakh plus 28% GST. M/s A Ltd sold 8 cars for ₹55 Lakh plus 28% GST.

Find the GST liability in the following two independent cases:

(a) M/s A Ltd is a dealer of motor vehicles

(b) M/s A Ltd is not a dealer of motor vehicles

Solution:

Statement showing net GST liability of M/s A Ltd.

Particulars	M/s A Ltd. is a dealer in motor vehicles ₹ in lacs	M/s A Ltd. is not a dealer in motor vehicles ₹ in lacs	Remarks
GST on Supply of goods	15.40	15.40	₹55 lacs × 28%
Less: ITC	(12.60)	Not allowed	₹45 lacs × 28%
Net GST liability	2.80	15.40	

Section 17(5)(a)/(aa) motor vehicles and other conveyances ITC not allowed except when they are used—

(i) for making the following taxable supplies, namely:—

Motor vehicles or conveyances are used for transportation of passengers:

The person boarding in the motor vehicle for performing the journey can be considered as passenger under GST. As a result, transportation of passengers from one place to another in any motor vehicle can be considered as transportation of passenger.

Illustration 18

M/s Parveen Travels transporting passengers from Chennai-Mumbai-Chennai. For this purpose, M/s Parveen Travels purchased Volvo Bus (air-conditioned) for ₹55 lakhs plus GST 28%. M/s Parveen Travels is eligible for ITC on Volvo Bus in the following two cases:

1. M/s Parveen Travels paying GST 12% on supply of output supplies.
2. M/s Parveen Travels paying GST 5% on supply of output supplies.

Solution:

Case (1). Yes. M/s Parveen Travels is eligible to avail the ITC on purchase of Volvo Bus.

Case (2). No. M/s Parveen Travels is not eligible to avail the ITC on capital goods and input goods (except input services from similar line of business).

Note: AC contract/stage carriage other than motor cab GST @5% – with ITC of input services only from similar line of business (vide Notification No. 31/2017-Central Tax (Rate), dated 13th October 2017)

Illustration 19

M/s MR Ltd. manufacturer of motor vehicles. Company purchased a passenger vehicle for ₹20 lacs plus GST 28% for transportation of their employees from their residence to factory and from factory to their residence. M/s MR Ltd. is eligible to avail the credit on purchase motor vehicle?

Solution:

No. M/s MR Ltd. is not in the business of transporting passengers and hence credit on purchase of motor vehicle is not allowed.

Moreover, it is not used for taxable supply.

Note: If the taxable person transports its own employees free of cost it will not be covered by the aforesaid clause and hence, he will not be able to claim benefit of input tax credit in respect of the same.

Illustration 20

Sukhee Bhava Hospital is a clinical establishment purchased four ambulances for ₹32 lakhs plus GST 28%. Find the input tax credit available to Sukhee Bhava Hospital.

Solution:

Input tax credit = nil

Note: since, supply of services of Sukhee Bhava is exempted from GST under health care services.

Illustration 21

Ferrari Company for conducting Formulae One car races purchased 20 Racing Cars for ₹80 lakhs plus GST 28%. Ferrari company is eligible for availing ITC on purchase of Racing Cars.

Solution:

No. Ferrari Company can not avail the ITC on purchase of Racing Cars which are not treated as passenger vehicles.

Illustration 22

Mr. Ram a school van driver and also registered person under GST law. He purchased Omni vehicle for ₹8 lacs plus GST 28%. Mr. Ram is eligible for ITC on this vehicle. Explain.

Solution:

Since, Mr. Ram is a registered person supplying taxable services in the nature of transportation of passengers, he is eligible to avail the ITC on motor vehicle.

If Mr. Ram supplies services to school, he is not eligible for ITC. Since, his supplies exempted from GST.

Illustration 23

M/s Sharma Travels supplied rent-a-cab services to M/s Infosys Company for transporting their employees (i.e. pickup and drop). Accordingly, M/s Sharma Travels charging monthly rent of ₹22,500 per cab plus GST 12%. 10 Motor cabs purchased by M/s Sharma Travels for ₹85,000 each plus GST 28% and used for transporting company employees. Find the Net GST liability of M/s Sharma Travels for the financial year.

Solution:

Statement showing GST liability of M/s Sharma Travels for the Financial year:

Particulars	Value in (₹)	Remarks
Output supply: Rent-a-cab	3,24,000	22,500 × 12% × 12 months × 10Nos
Less: ITC on motor vehicle	2,38,000	Since, M/s sharma travel using motor cabs for further supply, ITC allowed. 85,000 × 10 Nos × 28%
Net GST liability	86,000	
Therefore, M/s Sharma Travels is liable to GST for the Financial year ₹86,000.		

Section 17(5)(a)/(aa) motor vehicles/vessels/aircrafts and other conveyances ITC not allowed except when they are used—

for making the following taxable supplies, namely:—

Motor vehicles/vessels/aircrafts are used for imparting training on driving, flying, navigating such vehicles/ aircrafts/vessels;

Illustration 24

M/s Maruti Driving School Pvt. Ltd. supplied taxable services in the month of October 2017 for ₹15 lacs (plus GST 18%) to provide training on driving. Company purchased two vehicles for this purpose namely passenger vehicle for ₹20 lacs plus GST 28% and goods vehicle for ₹33 lacs plus GST 28%. Find the net GST liability of M/s Maruti Driving School Pvt Ltd.

Solution:

GST on output supply	=	₹2,70,000
Less: ITC		
On passenger vehicle	=	₹- 5,60,000
On goods vehicle	=	₹- 9,24,000
Net Excess ITC c/f	=	₹ 12,14,000

Illustration 25

Course completion certificate/training offered M/s Sky Ltd. (Flying Training Institute) purchased aircraft for ₹22 crores plus GST 28%. Whether the flying institute is eligible for input tax credit on purchase of aircraft.

Solution:

Yes. M/s Sky Ltd. (Flying Training Institute) is eligible to avail ITC.

Navigating means transport to direct the way that a ship, aircraft, etc. will travel, or to find a direction across, along, or over an area of water or land, often by using a map.

(ii) Motor vehicles/vessels/aircrafts are used for transportation of goods:

(ii) for transportation of goods

Credit of GST paid on motor vehicle and other conveyance will be available when motor vehicle/vessels/ aircrafts are used for transportation of goods. The motor vehicle/vessels/ can be sued for

(a) making outward supply of transportation of goods;

(b) transporting own goods.

Note: If the vehicle is used for supplying own goods if those goods are taxable supplies the taxable person will be entitled to avail credit of such input tax paid on such vehicle.

Illustration 26

Mr. A buy a passenger car worth ₹3,00,000 with GST ₹80000. He deals in electronic goods and uses the car to travel to his showroom.

1. Mr. A is eligible for ITC?
2. Rework if Mr. A purchased goods transport vehicle for transport his own electronics.

Solution:

1. In this case, even if the car is used for his business, ITC ₹80,000 cannot be claimed.
2. Yes. ITC allowed.

Illustration 27

DHL courier purchased vehicles (i.e. two wheelers) for ₹20 lacs plus GST 28% for transport of goods.

Whether ITC allowed on two wheels?

Solution:

No. since, two wheelers cannot be registered as goods transport vehicles under Motor vehicles Act.

Section 17(5)(b) the following supply of goods or services or both — ITC not allowed:

Illustration 28

R Academy organizes parents meeting and provides meal during meeting to students and their parents. The supplier of food charged ₹72,500 plus GST 18%, under the category of outdoor catering. Explain R Academy being provider of taxable supply of services namely commercial training and coaching services is eligible to avail the credit of GST paid on outdoor catering service.

Solution:

GST paid on outdoor catering is not allowed as ITC even though such services are used for business purpose. Since, it is specifically mentioned under Section 17(5)(b)(i) of the CGST Act, 2017 where credit is not allowed.

Illustration 29

Annapoorna caterings supply outdoor catering services to its customers by sub-contracting the same. Sub-contractor supplied food items like ice creams, North Indian Meals, South Indian Meals and so on to Annapoorna caterings. Sub-contractor raised invoice on Annapoorna caterings for supply of outdoor catering services ₹2,00,000 plus GST 18%. Annapoorna caterings supplied outdoor catering to its customers for ₹2,10,000 plus GST 18%. Find the Net GST liability of Annapoorna caterings.

Solution:

Statement showing net GST liability of Annapoorna caterings:

Particulars	Value in ₹	Remarks
GST on outward supply	37,800	₹2,10,000 × 18%
Less: ITC from similar line of business	(36,000)	₹2,00,000 × 18%
Net GST liability	1,800	

Illustration 30

Sky Ltd is engaged in supply of transport of passengers by air services. The company avails outdoor catering services of M/s Anna Caterers in order to provide food and beverages to the passengers. M/s Anna Caterers raises an invoice on Sky Ltd charging GST.

Sky Ltd. wants to avail the ITC on outdoor catering services supplied by M/s Anna Caterers. Advise.

Solution:

ITC shall be available where an inward supply of goods or services or both of a particular category is used by a registered person as an element of a taxable composite or mixed supply.

Advise: In the given case, Sky Ltd will be entitled to avail the ITC of the GST paid to M/s Anna Caterers since outdoor catering services forms part of taxable composite supply of passengers by air services.

Membership charges: -

For example, if you have taken any subscription of the gym, or membership of any club for any sport or for anything else, the ITC credit shall not be allowed.

Rent a cab:

Illustration 31

Wipro Pro Ltd is a BPO which works on night shift basis. As per the Government Notification, it has to provide rent a cab facility to its employees who work on night shifts.

Whether, Wipro Pro is eligible to avail ITC on rent a cab service.

Solution:

Yes. Wipro pro Ltd can claim ITC on the GST paid on such rent-a-cab services.

Illustration 32

Hotel King Pvt Ltd. provider of short-term accommodation services and also provides picking up guest from airport. Accordingly, Hotel King Pvt Ltd availed rent-a-cab services from M/s X & Co.

Rent-a-cab services provided by M/s X & Co to Hotel King Pvt Ltd. during Nov 20XX for ₹2,00,000 plus GST 18%.

Hotel King Pvt Ltd. provided short-term accommodation services to its customers (i.e. guests) during Nov 2017 for ₹15,75,250 plus GST 18%.

Find the Net GST liability of Hotel King Pvt Ltd. during the month of November 20XX.

Solution:

Statement showing Net GST liability of Hotel King Pvt Ltd for the month of Nov 20XX

Particulars	Value in (₹)	Remarks
GST on outward supplies	2,83,545	15,75,250 × 18%
Less: ITC on rent-a-cab service	(36,000)	2,00,000 × 18%
Net GST liability	2,47,545	

Note: In the given case Hotel King Pvt Ltd. providing a composite supply of rent-a-cab and accommodation service. The principal supply of service is accommodation service. Hence, GST paid on rent-a-cab will be available as a credit to Hotel King Pvt Ltd.

Illustration 33

Infosys Ltd. being a registered person under GST Law paid insurance premium for its employees along with GST thereon. Infosys Ltd. can avail the ITC of GST paid on insurance premium?

Solution:

No. Infosys Ltd cannot avail the ITC benefit in the given case.

Illustration 34

M/s MRFL Ltd. being a manufacturer of taxable goods paid general insurance premium to cover loss of stock of finished goods. Company wants to avail the GST paid on such premium as input tax credit. Advise.

Solution:

GST paid on general insurance premium to cover loss of stock of finished goods is well allowed as input tax credit. Hence, M/s MRFL Ltd. is eligible to avail the tax paid on general insurance premium as ITC.

Illustration 35

X Ltd is provider of rent a cab services to Infosys company. Infosys company using cab services for following purposes.

Case 1: if Infosys uses cab services for transportation of their employees.

Case 2: if Infosys uses cab services for their prospective customers.

Case 3: if Infosys under an obligation of Law to provide such cab service to employees.

Find the applicability of input tax credit to Infosys Company?

Solution:

Case 1: ITC not allowed.

Case 2: ITC not allowed.

Case 3: ITC allowed.

Section 17(5)(b) the following supply of goods or services or both— ITC Not allowed:

(iii) travel benefits extended to employees on vacation such as leave or home travel concession;

ITC on tax paid on travel benefits extended to employees on vacation such as leave or home travel concession shall not be available.

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Section 17(5) of the CGST Act, 2017 ITC Not allowed:

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

Situations in which ITC can be availed on any tax paid on work contract services:

ITC for any tax paid on work contract services shall be available in the following cases:

(a) When supplied for construction of plant and machinery

(b) Where it is an input service for further supply of works contract service.

Works contract:

Under section 2(119) of CGST Act "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

The expression 'works contract' is limited to contracts to do with immoveable property, unlike the existing understanding of the phrase which also extends to moveable property. A contract will amount to a 'works contract' only where there is a transfer of property in goods, while such a transfer may result in goods or anything else (i.e., immoveable property).

Construction [applicable to clause (c) and (d)]:

The expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Plant and machinery:

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:

(a) land, building or any other civil structures

(b) telecommunication towers; and

(c) pipelines laid outside the factory premises.

Section 17(5) of the CGST Act, 2017 ITC Not allowed:

(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.

It is important to note: Distinction between Section 17(5)(c) and Section 17(5)(d) of the CGST Act, 2017:

Section 17(5)(c), deals with works contract services i.e. when such services are received under composite contracts and used for the purpose of construction of an immovable property (other than plant and machinery).

Section 17(5)(d), deals with situations when goods or services or both are received under different independent contracts i.e. supply of goods and supply of services under separate contracts for the construction of an immovable property (other than plant and machinery).

Input tax credit (ITC) shall not be available in respect of the following Section 17(5) of the CGST Act, 2017:

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is input service for further supply of works contract service;

Explanation: For the purpose of Chapter V (i.e. Input Tax Credit) and Chapter VI (i.e. Registration), 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 support but excludes—

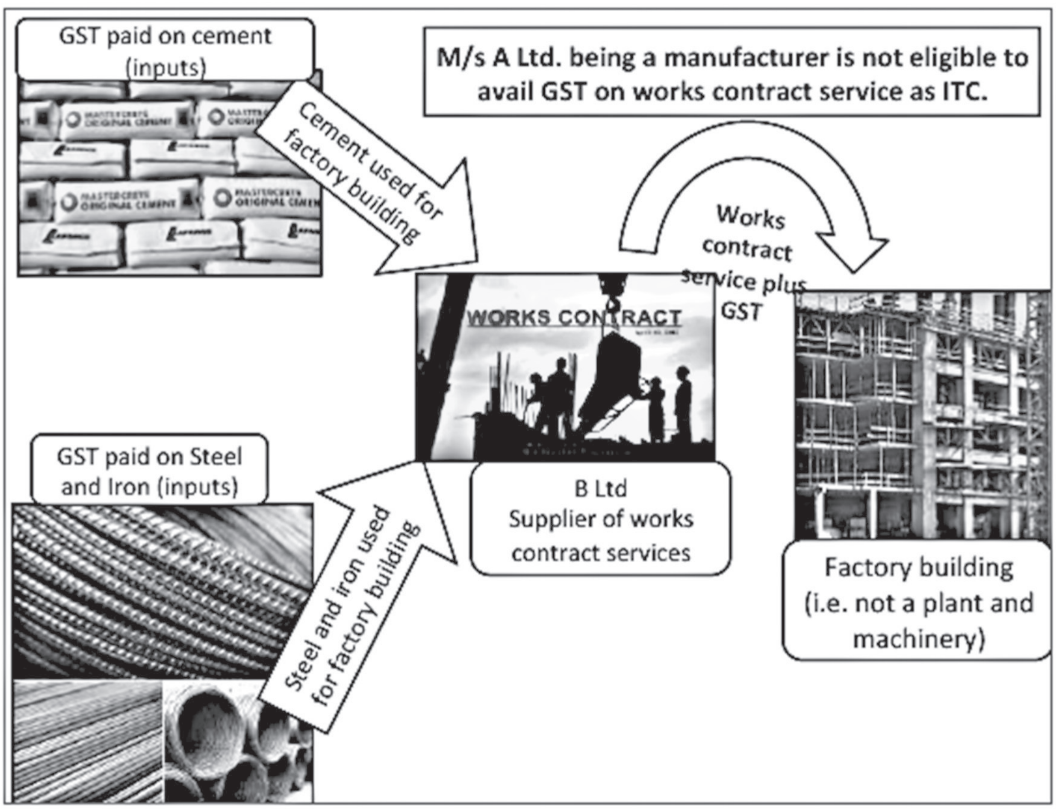
(a) land, building or any other civil structures;

(b) telecommunication towers; and

(c) pipelines laid outside the factory premises.

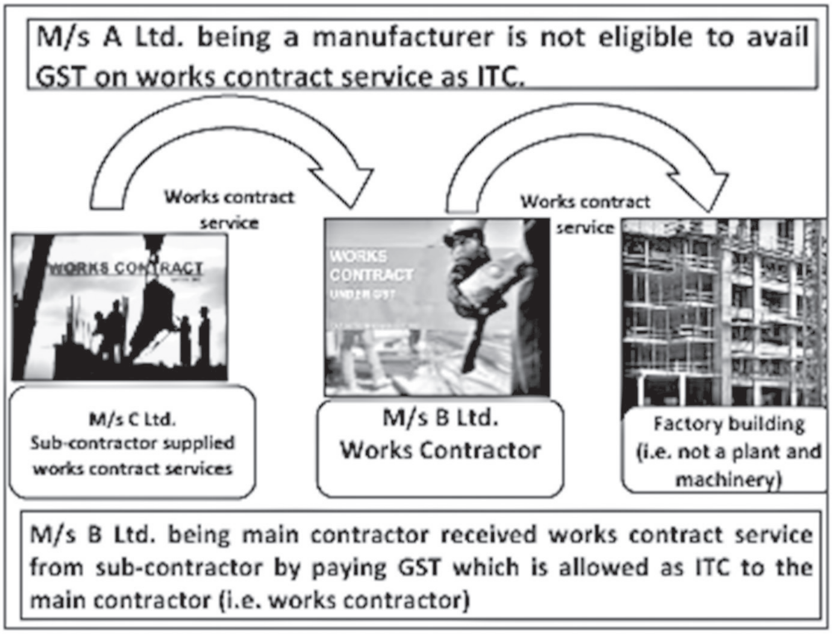
Example 7

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises.



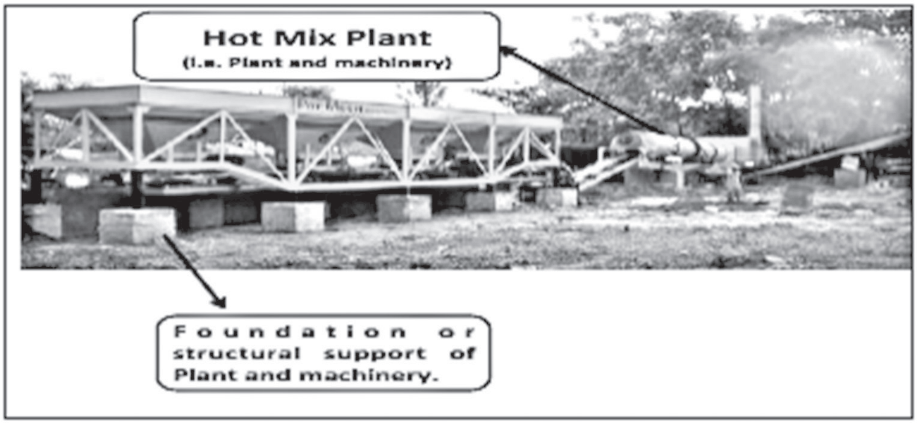
Example 8

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. Accordingly M/s B Ltd. sub-contacted works contract service to M/s C Ltd.



Example 9

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of foundation or structural support of Hot Mix Plant (i.e. plant and machinery) that are used for making outward supply of goods or services or both. Accordingly, M/s B Ltd used cement, steel, Iron, water, chemicals and labour to complete the job. GST paid on such works contract service is allowed as input tax credit to M/s A Ltd. GST paid on Hot Mix Plant (i.e. plant and machinery) is also allowed as input tax credit to M/s A Ltd.



Input tax credit (ITC) shall not be available in respect of the following Section 17(5) of the CGST Act, 2017:

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business;

Explanation: Construction [applicable to clause (c) and (d) of Section 17(5) of the CGST Act, 2017]:

The expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Explanation: For the purpose of Chapter V (i.e. Input Tax Credit) and Chapter VI (i.e. Registration), 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 support but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

Example 10

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. M/s B Ltd. agreed to undertake only labour contract plus GST. Material supplied by M/s C Ltd, plus GST.

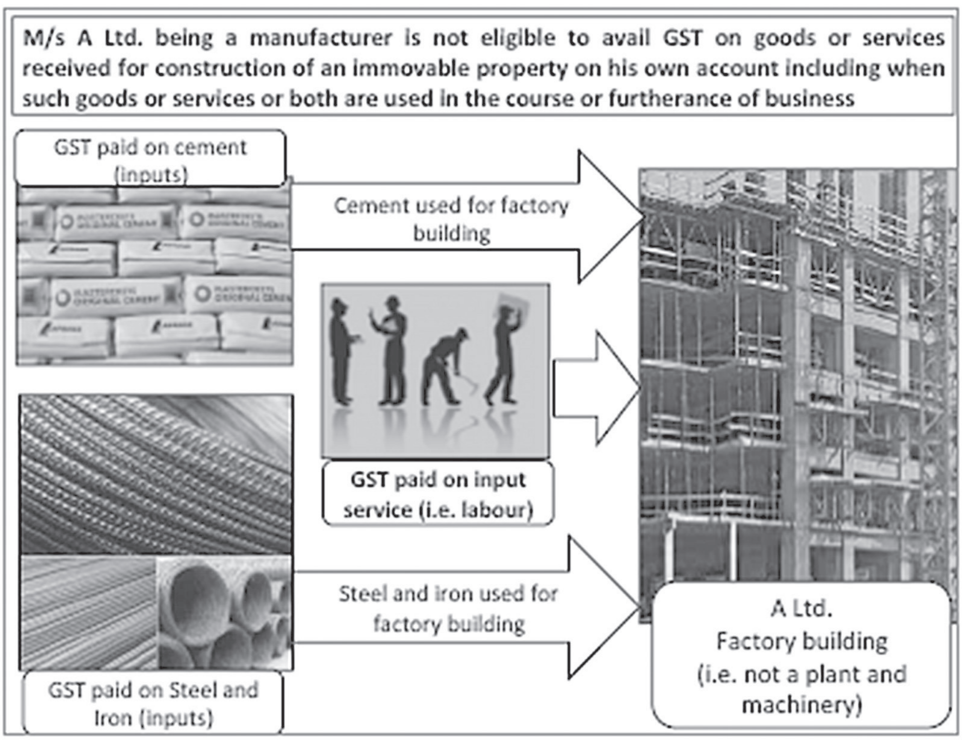
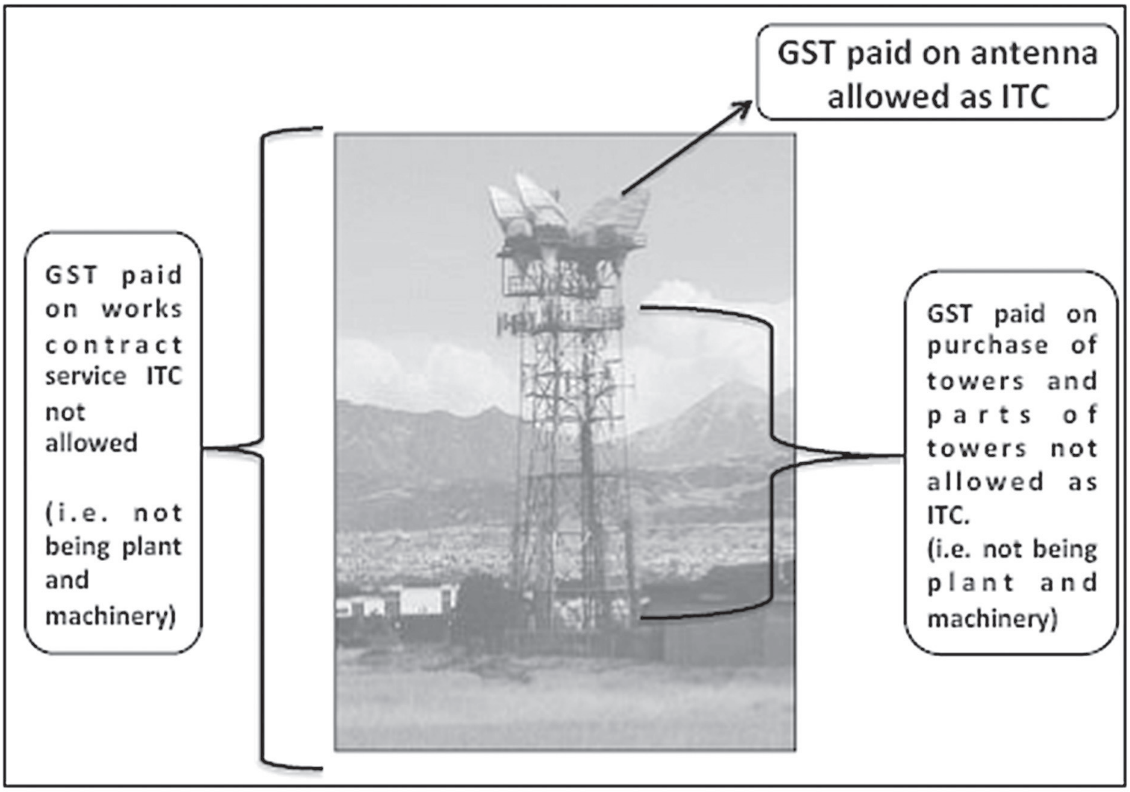


Illustration 36

M/s Bharti Airtel Limited purchased antennas, towers and parts thereof by paying GST. Company also received works contract service from M/s B Ltd. for its installation by paying GST thereon. Finally towers and parts thereof are fastened and are fixed to the earth and after their erection become Immovable. Find the eligibility of input tax credit to M/s Bharti Airtel Limited.

Solution:



Example 11:

M/s Indian Oil Corporation wants to lay down pipeline from Bhubaneswar to Chennai. Company awarded this contract to M/s B Ltd. for a consideration plus GST. Is it input service to M/s Indian Oil Corporation?

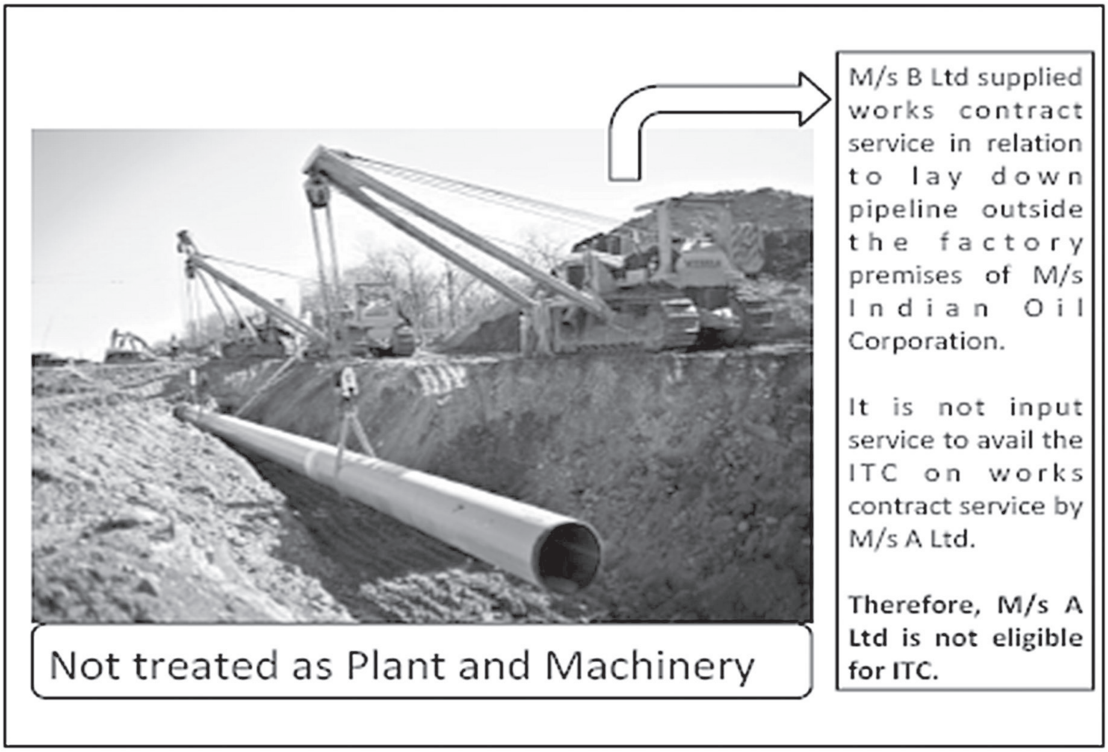


Illustration 37

M/s X Ltd manufacturer of taxable goods and registered under GST Law. M/s X Ltd assigned the contract in the month of January 2023, for ₹5,00,000 plus GST 18% to M/s Y Ltd. for constructing structural support of Hot Mix Plant, which is used for making taxable supply of goods.

Accordingly, M/s Y Ltd used cement, steel, Iron, water, chemicals and labour to complete the job. Entire work has been completed and payment also be received in the month of January 2018.

M/s X Ltd further provides the following information to find net GST liability of M/s X Ltd. for the month of January 2023:

Inward supply	Value in (₹)	GST Rate	Outward supply	Value in (₹)	GST Rate
Raw material (10 Kgs)	2,00,000	18%	Finished goods	15,00,000	28%
Hot Mix Plant	6,00,000	28%			
Works contract service	5,00,000	18%			

Note: there is process loss @1% while converting raw materials into finished goods.

Solution:

Statement showing net GST liability for the month of January 2023 of M/s X Ltd.

Particulars	GST (₹)	Remarks
Output tax	4,20,000	15,00,000 × 28%
Less: ITC on Input ITC on Capital goods ITC on Input service	(36,000) (1,68,000) (90,000)	2,00,000 × 18% 6,00,000 × 28% 5,00,000 × 18%
Net GST liability	1,26,000	

Note: Hot Mix Plant is capital goods, hence ITC allowed.

Inputs and input services used for constructing of building or any other civil structures ITC not allowed:

Illustration 38

M/s A Ltd. being a manufacturer of laptops registered under GST. Company appointed M/s B Ltd. for construction of factory building in the factory premises. Contract price is ₹120 lacs plus GST 18%. M/s B Ltd., supplied cement, steel and labour while executing the contract. Whether M/s A Ltd is eligible to avail the input tax credit on such works contract service.

Solution:

GST paid on works contract services which is used for land, building or any other civil structures specifically excluded from availing input tax credit under section 17(5)(c) of the CGST Act, 2017.

Therefore, in the given case M/s A Ltd is not eligible for input tax credit.

Illustration 39

Mr. X being a contractor undertaken

construction work of an individual residential unit otherwise than as part of a residential complex.

You are required to answer:

(a) Mr. X is liable to pay GST where he under taken pure labour contract.

(b) Mr. X is liable to pay GST where he under taken both labour and material contract.

(c) Mr. X is gives contract to sub-contractor, can sub-contractor also get exemption if it is pure labour contract.

Solution:

As per Notification No. 12/2017-Central tax (Rate) "Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex." are exempt from GST.

Since, Mr. X undertaken services by way of pure labour contracts of construction of single residential unit is exempt from GST.

(a) If in case Mr. X providing service with both labour and material i.e. termed as works contract under GST. He will be charged 18% GST.

(b) Yes. Services provided by a sub-contractor to a contractor are also exempt as he is providing labour for the construction of residential house.

Illustration 40

M/s Raji builders appoint M/s Viswa contractors for providing the service of plastering of walls. As per terms of contract M/s Raji builders provides the entire material namely cement, water, bricks and chemicals and so on. As a result, M/s Viswa contractors does not use any material.

Is it works contract service?

Solution:

It cannot be considered as works contract service, as it does not involve the transfer of property.

Illustration 41

M/s MR Ltd. manufacturer of laptops. Company appoints M/s RM Constructions for constructing a new factory building. Terms and conditions of contract are as follows:

S. No.	Particulars	Value in (₹)	Remarks
1.	Land value	2 crores	Land owned by M/s MR Ltd.
2.	Material cost	30 lacs	Material supplied by M/s RM Constructions
3.	Service cost	10 lacs	Supplied by RM Constructions

a. Construction completed in the month of October 2022.
b. Assume Time of supply in the month of October 2022.
c. Applicable rate of GST 18%.
d. Fully payment made in the month of October 2022.

Output supplies of M/s MR Ltd during the month of October 2022 are ₹20,00,000 plus GST 18%.

Find the net liability of GST in the hands of M/s MR Ltd. in the month of October 2022.

Rework, if M/s MR limited is provider of works contract service.

Solution:

Net GST liability in the month of October 2017 is ₹3,60,000.

(20,00,000 × 18%).

Note: works contract service is not input service to M/s MR Ltd.

Re-work:

Net GST liability in the month of October 2022 is as follows

GST on output supply	=	₹3,60,000
Less: ITC on Works contract service		
(₹30 lacs + ₹10 lacs) × 18%	=	₹(7,20,000)
Excess ITC c/f	=	₹(3,60,000)

Note: works contract services are an input service to a supplier of works contract services.

Illustration 42

M/s P Ltd. appoints M/s Q Ltd. for laying of pipelines inside its factory premises which resulting into movable property. For which M/s P Ltd. purchased pipelines for ₹10,00,000 plus GST 12%. On completion of works contract service M/s Q Ltd charged for ₹2,00,000 plus GST 18%. Find the eligible input tax credit to M/s P Ltd.

Solution:

The credit of GST paid on pipelines inside the factory will be available. Since, pipelines laid inside the factory premises are in the course or furtherance of business (i.e. capital goods).

Therefore, input tax credit allowed is ₹1,20,000.

GST paid on works contract services, which are used for laying of pipelines resulting into movable property, is also qualify for claiming input tax credit of ₹36,000.

Therefore, total eligible input tax credit is ₹1,56,000.

Illustration 43

Ram is the chairman of reputed construction company. He ordered certain input goods or services like cement, steel and labour to be used for the construction of his house. Cement purchased was also used partly for the own company building (i.e. captive use).

Whether Input tax credit allowed on purchase of cement?

Solution:

ITC would not be available on purchase of cement including steel and labour (sec. 17(5)(d) of the CGST Act, 2017).

Even if cement is used for own company building purpose ITC is not allowed.

Note: As per Section 17(5)(d) of the CGST Act, 2017, No ITC will be provided for materials used in the construction of immovable property of for furtherance of business. ITC will not be available for the goods or services or both provided to a taxable person used in the construction of an immovable property on his own account including when such goods or services or both are used in the course or furtherance of business.

Illustration 44

Determine the amount of input tax credit available with Arihant Manufacturing Ltd. in respect of the following items procured by them in the month of January 2023:

Items	GST paid in ₹
Raw materials	72,000
Food and beverages & catering services are used in the guesthouse primarily for the stay of the newly recruited employees.	40,000
Inputs used for making structures for support of plant and machinery	1,25,000
Capital goods used as parts and components for use in the manufacture of final product	40,000

Solution:

Statement showing eligible input tax credit to Arihant Manufacturing Ltd.

Items	ITC in (₹)
Raw materials	72,000
Food and beverages & catering services are used in the guesthouse primarily for the stay of the newly recruited employees.	Not allowed
Inputs used for making structures for support of plant and machinery	1,25,000
Capital goods used as parts and components for use in the manufacture of final product	40,000
Total credit allowed	2,37,000

Illustration 45

ABC India Ltd. is engaged in the manufacture of some taxable goods. It purchased the following goods in the month of October, 2022:—

Items	GST paid in (₹)
Raw material used for the production of the final product	1,00,000
Goods used for generation of electricity for captive consumption	20,000
Goods used for providing free warranty – Value of such free warranty provided by ABC India Ltd. is included in the price of the final product and is not charged separately from the customers	10,000
Light diesel oil	5,000

Note: ABC India Ltd. is also purchased High Speed Diesel oil by paying central excise duty of ₹12,000, which is also used in the manufacturer of taxable output.

Compute the amount of input tax credit available to ABC India Ltd.

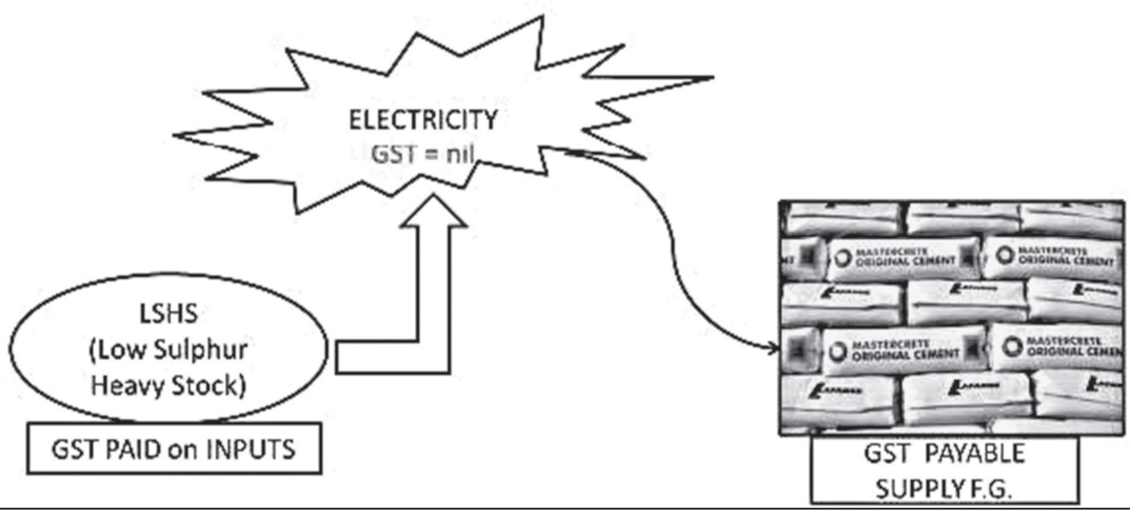
Solution:

Statement showing Input tax Credit of ABC India Ltd.

Items	ITC in ₹
Raw material used for the production of the final product	1,00,000
Goods used for generation of electricity for captive consumption	20,000
Goods used for providing free warranty	10,000
Light diesel oil	5,000
High Speed Diesel oil	Not allowed
Total input tax credit	1,35,000

GOODS CAPTIVELY CONSUMED:

[*CCE v Solaris Chemtech Ltd.* (2007) 214 ELT 481 (SC)]
LSHS used as fuel oil for generation of electricity which is in turn used to produce the final product are considered as inputs for the purpose of availing the ITC credit.



Section 17(5)(e) of the CGST Act, 2017 Goods or services or both on which tax has been paid under section 10;

Goods and/or services on which tax is paid by the supplier is not eligible for ITC under **composition scheme**.

Accordingly, a small supplier who has opted for composition scheme would stand to lose business, because neither supplier nor recipient of supply is eligible for ITC.

Section 17(5)(f) of the CGST Act, 2017 Goods or services or both received by a non-resident taxable person except on goods imported by him;

Input tax credit shall not be available in respect of goods or services or both received by a non-resident taxable person except on goods imported by him. It means IGST on import of goods allowed as ITC. It is to avoid double taxation.

The taxes paid by a non-resident taxable person shall be available as credit to the respective recipients.

Illustration 46

Mr. A of USA being technician came to India to assemble parts of machinery. He also imported goods worth ₹10,00,000 and paid following customs duties:

(i) Basic customs duty is ₹1,00,000.

(ii) Education Cess 2% plus 1% Secondary and Higher Education Cess together it is ₹3,000.

(iii) Integrated Goods and Services Tax (IGST) of ₹1,98,540.

In India Mr. A wants to register as non-resident taxable person and his estimated liability is ₹2,50,000. How much Mr. A is liable to pay as advance tax?

Solution:

Mr. A of USA is liable to pay advance tax of ₹51,460.

(i.e. ₹2,50,000 – ₹1,98,540)

Section 17(5)(g) of the CGST Act, 2017 goods or services or both used for personal consumption;

Input tax paid on goods and or services used for personal consumption is not eligible for ITC.

If the goods or services on which input tax credit has been availed are used for personal consumption, it actually means that the credit on the input or input services to the extent of its use for personal consumption shall be disallowed. It means reverse the credit by debiting to profit and loss account or pay an amount to the department by using electronic cash ledger account.

Example 12

M/s X Ltd. purchased shoes for their employee's personal consumption by paying GST thereon. ITC not allowed on such goods.

Example 13

M/s Y Ltd. for safety reasons purchased hand gloves and shoes for workers as mandatory. Hence, ITC on such goods cannot be considered as used for personal purpose. Therefore, ITC allowed.

Illustration 47

M/s Info Ltd. providing various facilities to their employees like club, sports facilities etc. to ensure that the employees stay comfortably in the colony. It increases the efficiency of employee. Examine the credit applicability in this case.

Solution:

Expenses incurred in colony are in the course or furtherance of business. Hence, credit of GST paid on such services will also be available to the taxable person.

Illustration 48

M/s Andhra ITC Ltd. purchased inputs and capital goods by paying GST to produce electricity or steam for manufacture of taxable goods. The electricity generated for use in manufacture of goods is sometimes also supplied in the residential colony of employees. Whether, M/s Andhra ITC Ltd. is eligible to avail the credit fully?

Solution:

As per the GST Law provisions there is no requirement of use of electricity in manufacture of goods. The only requirement is that the input or capital goods shall be used in the course or furtherance of business. This view also confirmed by Hon'ble Andhra Pradesh High Court in the case of ITC Ltd. 2013(32) STR 283 (AP).

Therefore, M/s Andhra ITC Ltd. is eligible to avail input tax credit.

Section 17(5)(h) of the CGST Act, 2017 goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

Credit of GST paid on input or capital goods is permitted when input or capital goods are used in the course or furtherance of business.

ITC not allowed in the following cases:

- Goods lost
- Goods stolen
- Goods destroyed
- Goods written off or
- Disposed of by way of gift
- Disposed of by way of free samples

Note: As per Section 17(5)(h) of the CGST Act, 2017 input tax credit shall be reversed when the goods have been disposed of by way of gift or free sample. In this case, there is no consideration for sale of goods and GST is not payable on output supply. However, the input tax credit availed on such goods shall be reversed or pay GST to the department as the case may be.

Drugs or medicines – Return of time expired drugs or medicines (CBIC Circular No. 72/46/2018-GST, dated 26-10-2018):

(A) Return of time expired goods to be treated as fresh supply:

(a) The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail Input Tax Credit (ITC).

(b) Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of the provisions of Section 17(5)(h) of the CGST Act, 2017.

Illustration 49

Manufacturer has availed ITC of ₹10,000 at the time of purchase of inputs to manufacture of medicines. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by the retailer/wholesaler is ₹15,000.

If so, how much ITC is required to reverse, at the time expired medicines are destroyed by the manufacturer?

Solution:

Manufacturer would be required to reverse ITC of ₹15,000 and not of ₹10,000.

(B) Return of time expired goods by issuing Credit Note:

	Date of supply of goods from manufacturer/ wholesaler to wholesaler/ retailer	Date of return of time expired goods from retailer/ wholesaler to wholesaler/ manufacturer	Treatment in terms of tax liability & credit note
Case 1	1st July 2021	20th September 2022	Credit note will be issued by the supplier (manufacturer/ wholesaler) and the same to be uploaded by him on the common portal. Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler/retailer) has either not availed the ITC or if availed has reversed the ITC
Case 2	1st July 2021	20th October 2022	Credit note will be issued by the supplier (manufacturer/ wholesaler) but there is no requirement to upload the same on the common portal. Subsequently, tax liability cannot be adjusted by such supplier

It may be noted that though this circular discusses the scenarios in relation to return of goods on account of expiry of the same, it may be applicable to such other scenarios where the goods are retuned on account of reasons other than the one detailed above.

Section 17(5)(i) of the CGST Act, 2017 any tax paid in accordance with the provisions of Fraud, Detention, Seizure and confiscation of goods or conveyance.

(a) Section 74 of the CGST Act, 2017: Show cause notice issued in case of fraud, to recover the GST.

(b) Section 129 of the CGST Act, 2017: Tax is paid, when goods are under detention by the officers for further investigation

(c) Section 130 of the CGST Act, 2017: Tax paid, when the goods or conveyance are being confiscated.

GST paid under the above provisions, credit is not available to a taxable person.

Note: Section 73 of the CGST Act, 2017: Show cause notice issued in case other than fraud to recover the GST. It means duty paid under section 73 of the CGST Act, 2017 can avail the credit by the taxable person (namely receipt of goods or services)

Illustration 50

M/s X Ltd. sold goods to M/s Y Ltd. for ₹2,00,000 plus GST ₹36,000. M/s X Ltd. remitted the GST on or before the due date. During the audit of M/s X Ltd books by the Central Tax Department quantified the GST liability ₹72,000 and demanded to pay differential duty of ₹36,000 under section 74 of the CGST Act, 2017. Finally, M/s X Ltd paid the differential GST of ₹36,000.

M/s Y Ltd wants to avail the input tax credit of differential amount of GST, advise.

Solution:

Since, the differential GST paid by M/s X Ltd. against show cause notice under section 74 of the CGST Act, 2017, will not be available as credit to M/s Y Ltd in view of clause (i) of section 17(5) of the CGST Act, 2017.

Availability of credit in special circumstances [Section 18 of the CGST Act, 2017]

Section 18 (1) Subject to such conditions and restrictions as may be prescribed—

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 (i.e. voluntary registration) shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10 (i.e. from composition levy to normal levy of GST), he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

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

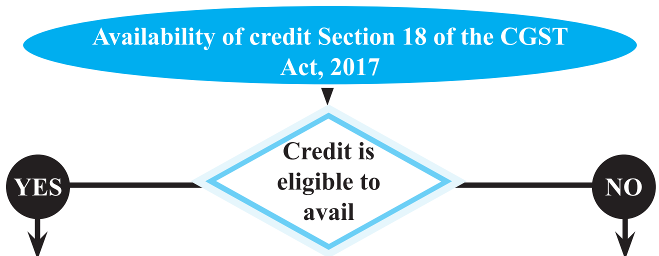
(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the

registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

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

Simplified approach with regard to Section 18 of the CGST Act, 2017:

ITC Capital goods sec 18(1)(c) or (d)	Xxx
Less: 5% p.q of a year or part thereof from the date of invoice (rule 40(1)(a) of the CGST Rues, 2017	(xx)
ITC allowed on C.G.	**XX**



Provision	Goods eligible for ITC
Sec. 18(1)(a): Person got registered $\leq$ 30 days from date need arises.	Inputs held in stock, WIP or F.G. as on the day immediately preceding the date from which he becomes liable to pay GST.
Sec. 18(1)(b): person voluntarily registered.	Inputs held in stock, WIP or F.G. as on the day immediately preceding the date of grant of registration.
Sec. 18(1)(c): person who ceases to pay composition tax.	Inputs held in stock, WIP or F.G. and capital goods as on the day immediately preceding the date from which be becomes liable to pay GST under regular scheme. ITC on capital goods as stated in rule 40(1)(a) of the CGST Rues, 2017.
Sec. 18(1)(d): exempt supply becomes taxable.	Inputs held in stock, WIP or F.G. and capital goods as on the day immediately preceding the date from which such supply becomes taxable. ITC on capital goods as stated in rule 40(1)(a) of the CGST Rues, 2017.
Sec. 18(3): Change in constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business.	ITC remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, lease or transferred business.

Provision	Goods not eligible for ITC.	
Sec. 18(2):	ITC not allowed to take under Sec. 18(1) in respect of goods > 1 Year from the date of issue of tax invoice.	
Sec. 18(4): Person opted to pay GST u/s 10 or goods or services are wholly exempt.	Total ITC as on the day other than C.G	Xx
	Less: input tax on RM, WIP or F.G	(xx)
	Pay an amount through electronic cash ledger account (If excess ITC if any shall lapse).[In case of input tax credit on C.G. involved in the remaining useful life in months shall be computed on pro-rata basis, taking useful life as 5 Years (Rule 44(1)(b) of the CGST Rules, 2017]	xx
Sec. 18(6): supply of capital goods	ITC taken on Capital Goods	Xx
	Less: 5% p.q of a year or part thereof from the date of invoice (rule 40 (2) of the CGST Rues, 2017	(xx)
	Balance ITC (i.e Tax on notional value)orTax on Transaction value u/s 15	Xx Xx
	Whichever is higher, shall pay an amountITC	

Proviso to section 18(6) of the CGST Act, 2017 where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under Section 15. It means 5% per quarter reduction not required to apply.

As per Rule 40(1)(b) of the CGST Rules, 2017 the registered person shall within a period of 30 days from the date of his becoming eligible to avail the input tax credit under sub-section (1) of section 18 shall make a declaration, electronically, on the common portal in **FORM GST ITC-01** to the effect that he is eligible to avail the input tax credit as aforesaid;

As per Rule 40(1)(d) of the CGST Rules, 2017 the details furnished in the declaration under clause (b) shall be duly certified by a practicing **Chartered Accountant** or a **Cost Accountant** if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds ₹2,00,000;

Manner of reversal of credit under special circumstances: As per Rule 44(1)(b) of the CGST Rules, 2017 the amount of tax credit relating to capital goods held in stock shall, for the purpose of Section 18(4) of the CGST Act, 2017 (i.e. person opted to pay composition scheme or supplies are exempted wholly from GST) or section 29(5) of the CGST Act, 2017 (i.e. registration cancelled), be determined in the following manner, namely:—

For capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as **FIVE Years.**

Example 14

Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months = 5 months ignoring a part of the month.

Input tax credit taken on such capital goods = C

Input tax credit attributable to remaining useful life = C × 5/60.

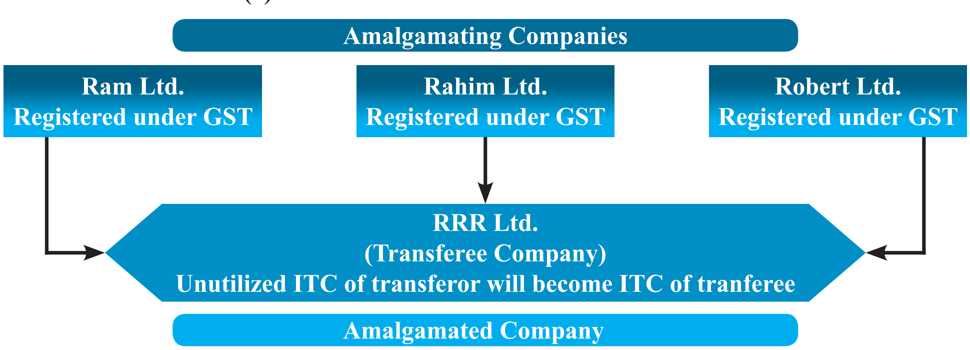
Therefore, input tax credit attributable to remaining useful life shall be reversed or pay as an amount.

vide Notification No. 16/2020-CT, dated 23.03.2020, w.e.f. 01.04.2020:

The amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 [and FORM GSTR3B] and shall not be credited to his electronic credit ledger;

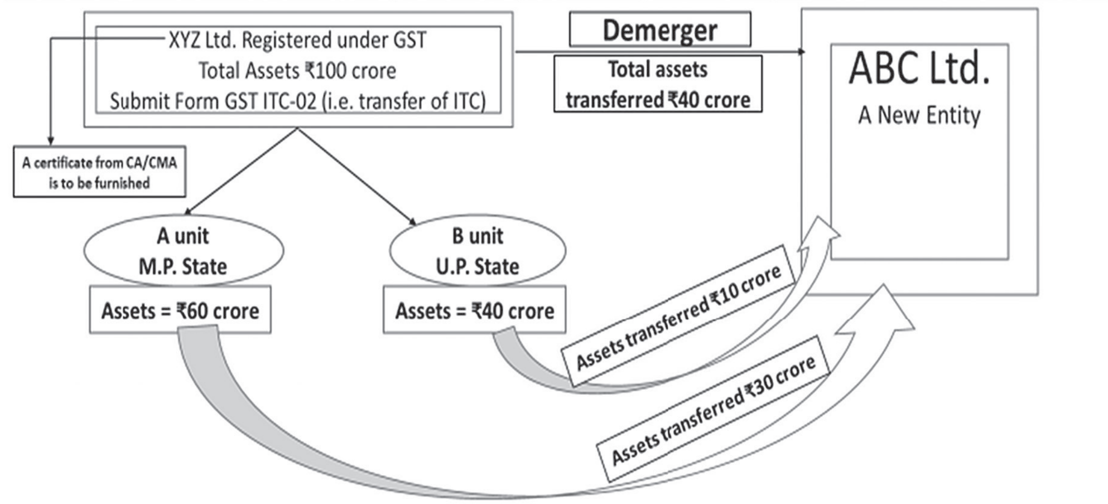
An item of capital goods declared as above on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.

Clarification in respect of apportionment of ITC in cases of business reorganization under section 18(3) of the CGST Act read with rule 41(1) of the CGST Rules.



Circular No. 133/03/2020- GST dated 23rd Mar 2020 **Demerger – ITC apportioned in ratio of value of assets**

	M.P. State (₹)	U.P. State (₹)	Total assets (₹)	clarification
Value of assets	60 crore	40 crore	100 crore	As per Rule 41 of CGST Rules, **the value of assets of the new units is to be taken at the State level** (at the level of distinct person) and not at the all-India level. Applicable for all types of business re-organisation.
Assets transferred on demerger	30 crore	10 crore	40 crore	
Unutilised ITC transferred to the demerged entity	30/60 = 0.50	10/40 = 0.25	~~40/100 = 0.40~~	



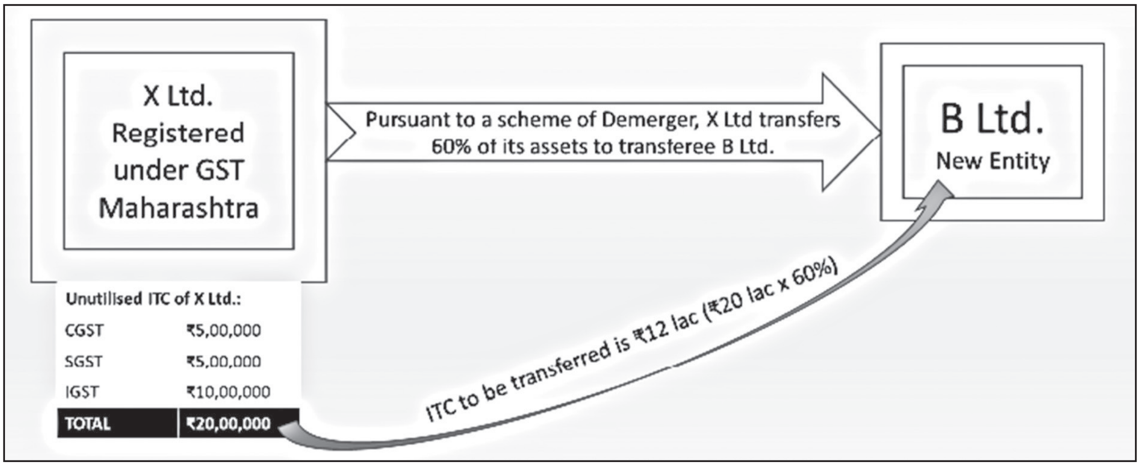
Question:

Is the transferor required to file FORM GST ITC-02 in all States where it is registered?

Answer:

No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

The ratio of value of assets, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.



How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/ CGST/SGST) while filing of FORM GST ITC-02 by the transferor?

The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under Rule 41(1) of the CGST Rules.

However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.

In other words, for the purpose of apportionment of ITC under sub-rule (1) of rule 41 of the CGST Rules, while the ratio of the value of assets should be taken as on the "appointed date of demerger" [Section 232(6) of the Companies Act, 2013], the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC-02 to calculate the amount to transferable ITC.

1	2	3	4	5	6
State	Asset Ratio of Transferee	Tax Heads	ITC balance of transferor (pre-apportionment) as on the date of filing Form GST ITC-02	Total amount of ITC transferred to the Transferee under Form GST ITC-02	ITC balance of Transferor (post apportionment) after filing of Form GST ITC-02 [4-5]
Delhi	70%	CGST	10,00,000	10,00,000	0
		SGST	10,00,000	10,00,000	0
		IGST	30,00,000	15,00,000	15,00,000
		TOTAL	**50,00,000**	**35,00,000**	**15,00,000**
Haryana	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000
		IGST	20,00,000	20,00,000	0
		TOTAL	**70,00,000**	**28,00,000**	**42,00,000**

Illustration 51

M/s X Ltd becomes liable to pay tax on 1st December and has obtained registration on 15th December.

The GST paid goods lying in the premises of M/s X Ltd as on 30th November are as follows:

Particulars	Value in ₹ (Excluding tax)	GST ₹
Raw material	2,00,000	36,000
Capital goods	5,00,000	1,40,000
Raw material lying work in progress	3,00,000	54,000
Raw material lying in Finished Goods	12,00,000	2,16,000

You are required to answer the following:

(a) Eligible amount of input tax credit.

(b) Time limit to submit declaration on common portal.

(c) Whether any certification required while availing the credit, if so from whom.

Solution:

(a) Eligible input tax credit is ₹3,06,000/-

(b) Declaration in Form GST ITC-01 on or before 14th January should be submitted on common portal of GSTN.

(c) Declaration regarding inputs tax credit shall be duly certified by a practicing Chartered Accountant or a Cost Accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds ₹2,00,000.

In the give case, since, input tax credit declared is ₹3,06,000. Therefore, certificate from a practicing Chartered Accountant or a Cost Accountant is required.

Note: M/s X Ltd cannot take ITC on capital goods.

Illustration 52

Mr. A applies for voluntary registration on 22nd November and obtained registration on 25th November.

Mr. A has stock on the following two dates:

Date	Opening balance (units)	Purchased (units)	Sold (units)
21st November	12,000	20,000	8,000

On 24th November, Mr. A purchased 5,000 units and sold 15,000 units.

On 24th November, Mr. A is also purchased plant and machinery for ₹2,00,000 plus GST 28%.

Mr. A purchased goods at uniform rate throughout the year at ₹100 per unit plus GST paid 18%.

You are required to find the eligible input tax credit to Mr. A.

Solution:

Stock as on 24th November = 14,000 units

Value of stock = ₹14,00,000

(i.e. 14,000 units x ₹100 per unit).

Input tax credit eligible is ₹2,52,000/-.

Note: ITC on capital goods not allowed.

Illustration 53

Mr. C a registered taxable person, was paying tax at composition scheme upto 30th July. However, w.e.f. 31st July, Mr. C becomes liable to pay tax under regular scheme.

Other information:

(a) Input as on 30th July for ₹3,54,000 (inclusive of GST paid @18%).

(b) Capital goods purchased for ₹5,00,000 (invoice date 22nd April, GST 18%)

Find the eligible ITC to Mr. C.

Note: Mr. C not availed depreciation on the GST portion paid on capital goods.

Solution:

Statement showing total ITC allowed to Mr. C as on 31st July

Particulars	Value in (₹)	Working note	
ITC allowed on inputs	54,000	3,54,000 × 18/118	
ITC allowed on capital goods	81,000	ITC on Capital goods	90,000
		Less: 5% p.q (₹90,000 × 5% × 2)	(9,000)
		Net allowed	81,000
Total ITC allowed	1,35,000		

Illustration 54

The goods manufactured by Royal Ltd. have been exempted from GST with effect from 15th November 2017. Earlier these goods were liable to tax @18%. Its inputs were liable to GST @12%. Following information is supplied on 15th November 2017:

(i) The inputs costing ₹1,44,720 are lying in stock.

(ii) The inputs costing ₹77,184 are in process.

(iii) The finished goods valuing ₹4,82,400 are in stock, the input cost is 50% of the value. Royal Ltd. also purchased capital goods for ₹2,00,000 by paying GST 28% (invoice dated 10th July 2017)

The balance in electronic credit ledger account shows credit balance of ₹2,79,104.

The department has asked Royal Ltd. to reverse the credit taken on inputs referred above. However, Royal Ltd. contends that credit once validly taken is indefeasible and not required to be reversed. Decide.

What would be your answer if the balance in electronic credit ledger receivable account as on 15th November 2017 were ₹29,104?

Solution:

Statement showing amount to be paid by Royal Ltd. as on 15th November 2017

S. No.	Particulars	Amount to be paid (₹)	Workings
(i)	Inputs lying in stock	17,366	₹1,44,720 × 12/100 = ₹17,366
(ii)	Inputs in process (i.e. Work in Progress)	9,262	₹77,184 × 12/100 = ₹9,262
(iii)	Inputs contained in finished goods lying in stock	28,944	₹4,82,400 × 50% × 12/100 = ₹28,944
(iv)	Capital goods	51,333	Useful life as per rule 44(1)(b) = 5 years (i.e. 60 months). No. of months capital goods have been in use = 4 months 5 days (i.e. 5 months) The useful remaining life in months = 55 months 2,00,000 × 28% × 55/60 = ₹51,333
	Amount to be paid by Royal Ltd.	**1,06,905**	

Amount payable by Royal Ltd.	=	₹1,06,905
Less: ITC Receivable	=	₹(2,79,104)
Excess ITC shall lapse	=	₹ (1,72,199)

Excess ITC in electronic credit ledger of ₹1,72,199 shall lapse as 15th November 2017.

If the balance in electronic credit ledger as on 15th November 2017 is ₹29,104, then amount payable is as follows:

Amount payable by Royal Ltd.	=	₹1,06,905
Less: ITC Receivable	=	₹(29,104)
Amount payable by electronic cash ledger	=	₹77,801

Illustration 55

M/s A Ltd. sold plant and machinery after being used in the manufacture of taxable goods for ₹4,00,000 on 1st November 2018. GST is payable on transaction value of plant and machinery 18%. M/s A Ltd. was purchased this machine vide invoice dated 22nd November 2017 for ₹5,50,000/- plus GST 18%.

M/s A Ltd. availed the credit on said plant and machinery. Find the amount payable by M/s A Ltd. under section 18(6) of the CGST Act, 2017.

Solution:

Particulars	Amount in ₹	Working note
ITC taken on capital goods	99,000	5,50,000 × 18%
Less: 25% reduction	(24,750)	No. of quarters = 5 5% × 5 = 25% reduction
Balance ITC	74,250	
Tax on Transaction value	72,000	4,00,000 × 18%
Therefore, M/s A Ltd is liable to pay an amount of ₹74,250/-.		

Case studies and Illustrations on Input Tax Credit including Job Work, Input Service Distributor

5.3

Taking input tax credit in respect of inputs and capital goods sent for job work [Section 19 of the CGST Act, 2017]

(1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

(2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

(4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

(6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

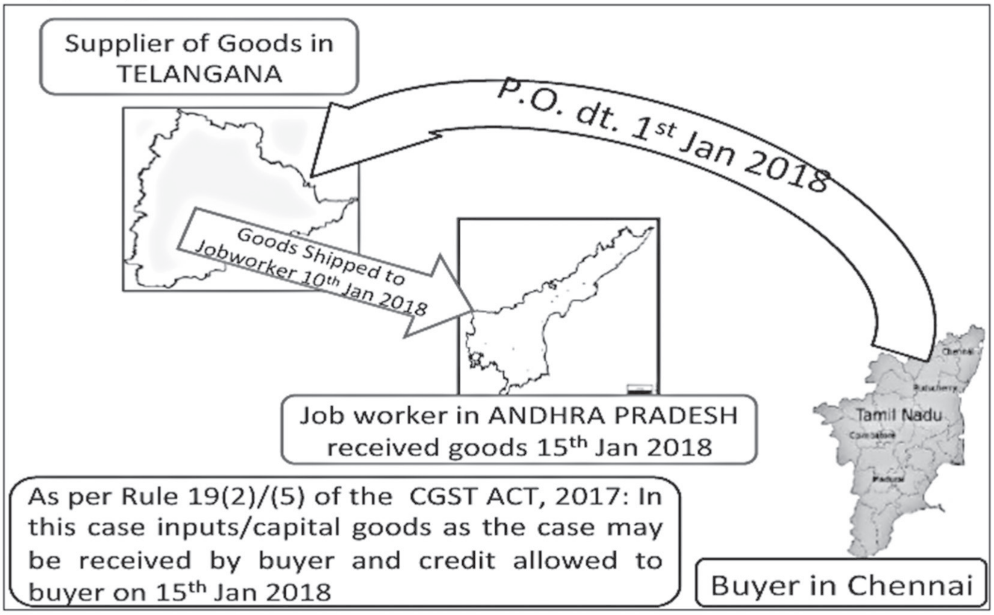
Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

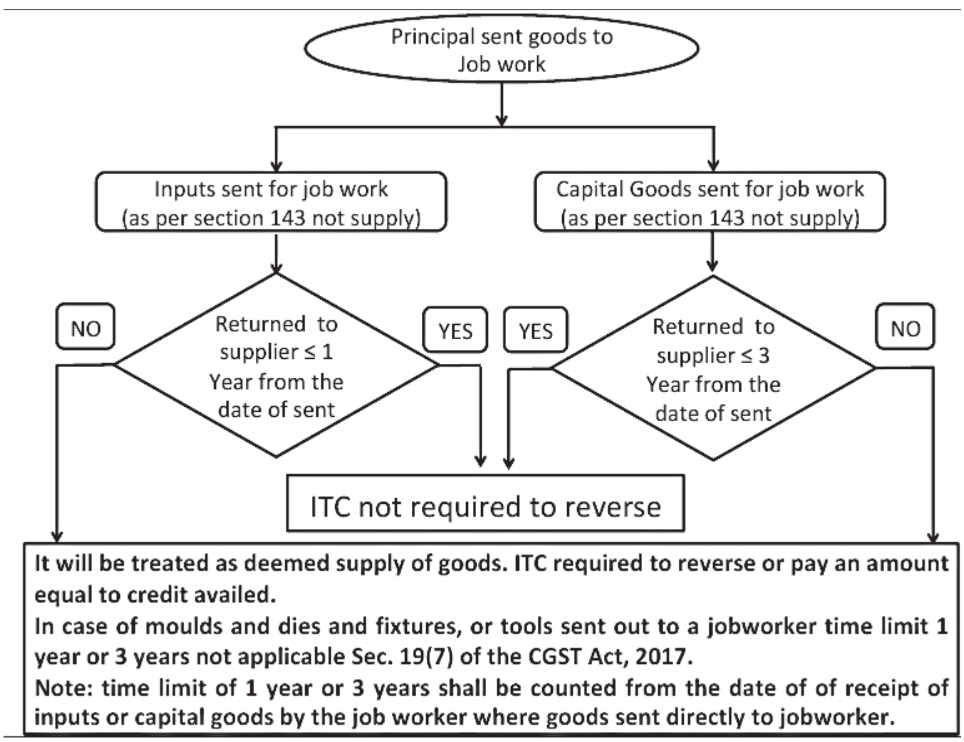
Explanation: For the purpose of this section, "principal" means the person referred to in section 143.

Taking input tax credit in respect of inputs and capital goods sent for job work Section 19 of the CGST Act, 2017:

As per Section 19(2) or (5) of the CGST Act, 2017:



As per Section 19(3)/19(6) of the CGST Act, 2017:



w.e.f. 1-2-2019: 2nd Proviso to section 143 of the CGST Act, 2019:

The period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.

What is 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 'jobworker'.

Contents of a job-work

- 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.

Who is Principal?

Section 143 of the CGST Act, 2017: A registered person (hereafter in this section referred to as the "principal") may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise.

Deemed supply

As per section 143(3) and 143(4) of the CGST Act, 2017 makes provision for payment of tax when the inputs or capital goods respectively are not returned back by the job worker.

The inputs after processing shall be returned back within ONE year of their being sent out. Otherwise it will be treated as deemed supply (i.e. supplied by the principal to the job worker on the day when the said inputs were sent out). Therefore, the principal will have to pay tax along with interest.

Illustration 56

M/s X Ltd. has supplied inputs to job worker M/s Y Ltd on 25th August 2017. These inputs not received back till 24th August 2018 by M/s X Ltd., after processing.

Find the consequences in this regard?

Solution:

As per section 143(3) of the CGST Act, 2017 principal will be required to pay the tax on supply of inputs. The time of supply is 25th August 2017. If the principal decided to pay tax on 25th August 2018 he will have to pay tax with interest of one year.

Illustration 57

M/s X Ltd. (i.e. seller) supplied capital goods on 20th August 2017 directly to job worker M/s Y Ltd and the same received on 25th August, 2017 by the job worker, based on the directions of M/s Z (i.e. Buyer-Principal).

These capital goods not received back till 24th August 2020 by M/s Z Ltd. after processing.

Find the consequences in this regard?

Solution:

These capital goods not received back on 24th August 2020 by M/s Z Ltd., after processing. As per section 143(4) of the CGST Act, 2017 principal will be required to pay the tax on supply of capital goods. The time of supply is 25th August 2017. If the principal decided to pay tax on 25th August 2020 he will have to pay tax with interest of 3 year.

Job-work procedural aspects

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 and can still 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 the principal to the third party directly from the premises of the jobworker on payment of tax in India and 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 the job-worker, the principal would be required to intimate the Jurisdictional Officer containing the details of the 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 the other job-workers, 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.

Waste clearing provisions

As per 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 the principal may clear such waste, in case the job-worker is not registered.

Latest up-dations under job work:

(i) In case of goods sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker as per rule 55 of the CGST Rules, 2017.

(ii) Where the gods are sent by one job worker to another or are returned to the principal, the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods.

Such endorsed challan may be further endorsed by another job worker, indicating therein the quantity and description of goods.

(iii) The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another **during a quarter** shall be furnished for that period on or before the **25th day** of the month succeeding the said quarter (Form GST ITC-04).

(iv) Frequency of filing GST ITC-04 revised from quarterly to annual/half-yearly:

(Notification no. 35/2021 CT dated 24.09.2021)

In respect of a principal whose aggregate turnover during the immediately preceding FY	Form GST ITC-04 is required to be furnished
More than ₹5 crore	On half year basis 25th October and 25th April
Upto ₹5 crore	On annual basis 25th April

(v) CGST Commissioner or SGST/UTGST Commissioner to grant extension of time period for furnishing of the said details. Thus, now the said details may be furnished on or before the 25th day of the month succeeding the said quarter or within such further period as may be extended by the Commissioner by a notification in this behalf [Notification No. 51/2017-CT, dated 28.10.2017]

The due of furnishing of FORM ITC-04 for the quarter ending March, 2020 stands extended upto 30-6-2020 (vide CBIC Circular No. 138/08/2020-GST, dated 6-5-2020).

CBIC has notified that the due dates to furnish ITC-04 for the January-March 2020 and April-June 2020 quarters (falling due between 20th March, 2020 to 30th August, 2020) stands extended till 31st August, 2020.

The due of furnishing of FORM ITC-04 for the quarter ending September 2020 stands extended upto 30-11-2020 (vide Notification No. 87/2020-CT, dated 10-11-2020).

Place of supply in case of job work:

Example 15

The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker's place of business/premises, the invoice will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State supply.

Commissioner empowered to extend the time period for submission of quarterly details of challans relating to job work under rule 45(3) of CGST Rules

Rule 45(3) of the CGST Rules lays down that the details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be furnished for that period on or before the due date.

Rule 45(3) has been amended to empower the CGST Commissioner or SGST/UTGST Commissioner to grant extension of time period for furnishing of the said details. Thus, now the said details may be furnished on or before the due date or **within such further period as may be extended by the Commissioner by a notification in this behalf [Notification No. 51/2017-CT, dated 28.10.2017].**

Manner of distribution of credit by Input Service Distributor [Section 20 of the CGST Act, 2017]

(1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

- (a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;
- (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;
- (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;
- (d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;
- (e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation: For the purposes of this section,—

(a) the "relevant period" shall be—

- (i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or
- (ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(b) the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(c) w.e.f. 1-2-2019, the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied (under entry 84 and 92A) of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

Manner of distribution of credit by Input Service Distributor Section 20 of the CGST Act, 2017 [Notification No. 3/2018-CT, dated 23.01.2018]

Provisions introduced for issuance of invoice/debit note/credit note by registered taxable person (having same PAN and State code as ISD) to ISD to transfer the credit of common input services

A new sub-rule (1A) has been inserted in rule 54 of CGST Rules. The new sub-rule provides as under:

(a) A registered person, having the same PAN and State code as an input service distributor (ISD), may issue an invoice/credit note/debit note to transfer the credit of common input services to the ISD, which shall contain the following details:—

(i) name, address and GSTIN of the registered person having the same PAN and same State code as the ISD;

(ii) a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(iii) date of its issue;

(iv) GSTIN of supplier of common service and original invoice number whose credit is sought to be transferred to the ISD;

(v) name, address and GSTIN of the ISD;

(vi) taxable value, rate and amount of the credit to be transferred; and

(vii) signature or digital signature of the registered person or his authorised representative.

(b) The taxable value in the invoice issued under clause (a) shall be the same as the value of the common services.

Manner of recovery of credit distributed in excess [Section 21 of the CGST Act, 2017]

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Claim of input tax credit and provisional acceptance thereof [Section 41 of the CGST Act, 2017]

Section 41(1) of the CGST Act, 2017 Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

Section 41(2) of the CGST Act, 2017 The credit referred to in sub-section (1) shall be utilised only for payment of self- assessed output tax as per the return referred to in the said sub-section.

17.33.1 Declaration of outward supplies:

As per section 37 of the CGST Act, 2017 every registered person shall electronically furnish Form GSTR-1 details of outward supply of goods or services effected during the tax period on or before 10th of the month succeeding the tax period.

For example, details of outward supply made during January 2018 is required to declare by 10th of February 2018 in Form GSTR-1. It also ensures that the information declared by the registered person tallies with the financial ledger.

Confirming inward supplies:

The information furnished by person making outward supply in various tables of GSTR-1 will be auto populated into GSTR-2A/2B.

As per section 38 of the CGST Act, 2017 every registered person (other than ISD, non-resident taxable person and composition levy assessee) shall verify and validate, modify or delete the details relating to inward supply and credit or debit notes communicated to him.

The registered person who receives the information in Form GSTR-2A shall accept, reject or keep it pending. Accordingly, he should prepare GSTR-2 for the purpose of completing the inward supply and file by 15th of the following month.

Matching or mismatching of ITC:

If the information matches, credit will be finally accepted; otherwise it will be shown as mismatched entry in the—

- Form GST MIS-1 (i.e. sent electronically to recipient of supplies)

  and

- GST MIS-2 (i.e. sent electronically to supplier of supplies)

Provisional acceptance of input tax credit:

One of the conditions for taking ITC by the recipient of the supply is that "the tax charged in respect of such supply has actually been paid to the Government, either in electronic cash ledger or through utilization of electronic credit ledger (section 16(2) of the CGST Act, 2017.

Therefore, law provides that the ITC will first be taken provisionally in the electronic credit ledger as per section 41 of the CGST Act, 2017, thereafter, filing of GSTR-3 (consolidated monthly return) be matched with the available information of tax payment in respect of that supply.

Matching, reversal and reclaim of input tax credit [Section 42 of the CGST Act, 2017]

Matching of input tax credit:

Section 42(1) of the CGST Act, 2017 the details of every inward supply furnished by a registered person (hereafter in this section referred to as the "recipient") for a tax period shall, in such manner and within such time as may be prescribed, be matched—

(a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the "supplier") in his valid return for the same tax period or any preceding tax period;

(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and

(c) for duplication of claims of input tax credit.

As per Rule 69 of the CGST Rules, 2017 the following details relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under section 41, shall be matched under section 42 after the due date for furnishing the return in FORM GSTR-3

(a) GSTIN of the supplier;

(b) GSTIN of the recipient;

(c) invoice or debit note number;

(d) invoice or debit note date; and

(e) tax amount:

Provided that where the time limit for furnishing FORM GSTR-1 specified under section 37 and FORM GSTR-2 specified under section 38 has been extended, the date of matching relating to claim of input tax credit shall also be extended accordingly:

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching relating to claim of input tax credit to such date as may be specified therein.

Explanation 1: The claim of input tax credit in respect of invoices and debit notes in FORM GSTR-2 that were accepted by the recipient on the basis of FORM GSTR-2A without amendment shall be treated as matched if the corresponding supplier has furnished a valid return.

Explanation 2: The claim of input tax credit shall be considered as matched where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.

Thus, where the amount of input tax credit is equal or less than the output tax paid on such tax invoices it shall be considered as matched.

Communication of discrepancy in the claim of input tax credit [Section 42(3) of the CGST Act, 2017 read with CGST Rules]

As per Rule 71(1) of the CGST Rules, 2017 any discrepancy in the claim of input tax credit and addition to output tax liability on account of continuation of discrepancy in respect of tax period shall be communicated to person making claim in the form GST MIS-1 through common portal on or before the last date of the month in which the matching has been carried out. The discrepancies shall be communicated to the supplier in Form GST MIS-2.

Example 16

M/s X Ltd., being a registered person submitted the GSTR-3B for the month of January 2018 by 20th February 2018. After the last date of filing return (i.e. GSTR-3B), matching of information will be made with the information furnished in GSTR-2A/2B (i.e. by the recipient of supplies) on or before 15th February 2018. Discrepancy in matching will be communicated to persons in GST MIS-1 and/ GST MIS-2

Ratification of Discrepancy

As per Rule 71(2) of the CGST Rules, 2017 a supplier to whom any discrepancy is made available under sub-rule (1) of rule 71 may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

As per Rule 71(3) of the CGST Rules, 2017 a recipient to whom any discrepancy is made available under sub-rule (1) of rule 71 may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.

If the recipient or the supplier has rectified the error, the inward supply and outward supply will match and credit will be finally accepted.

Discrepancy not rectified [Section 42(5) of the CSGT Act, 2017 read with CGST Rules, 2017]

As per Rule 71(4) of the CGST Rules, 2017 if the supplier or recipient does not rectify the discrepancy, the amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation: For the purposes of this rule, it is hereby declared that—

(i) Rectification by a supplier means adding or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient;

(ii) Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

Claim of input tax credit on the same invoice more than once [Section 42(4) of the CGST Act, 2017 read rule 72 of the CGST Rules, 2017]

It means that the recipient has claimed credit second time. As per Rule 72 of the CGST Rules, 2017 duplication of claims of input tax credit in the details of inward supplies shall be communicated to the registered person in FORM GST MIS-1 electronically through the common portal.

Final acceptance of input tax credit and communication thereof [Section 42(2) of the CGST Act, 2017]

As per Rule 70 of the CGST Rules, 2017 the claim of input tax credit in respect of invoices or debit notes relating to inward supply received by the recipient is matched with the details of corresponding outward supply declared by supplier, the input tax credit is finally accepted and report shall be communicated electronically to the registered person making such claim in FORM GST MIS-1 through the Common Portal.

Section 42(6) of the CGST Act, 2017 the amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

Section 42(7) of the CGST Act, 2017 the recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.

Section 42(8) of the CGST Act, 2017 a recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

Section 42(9) of the CGST Act, 2017 where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed:

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

Section 42(10) of the CGST Act, 2017 the amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

Simplified approach:

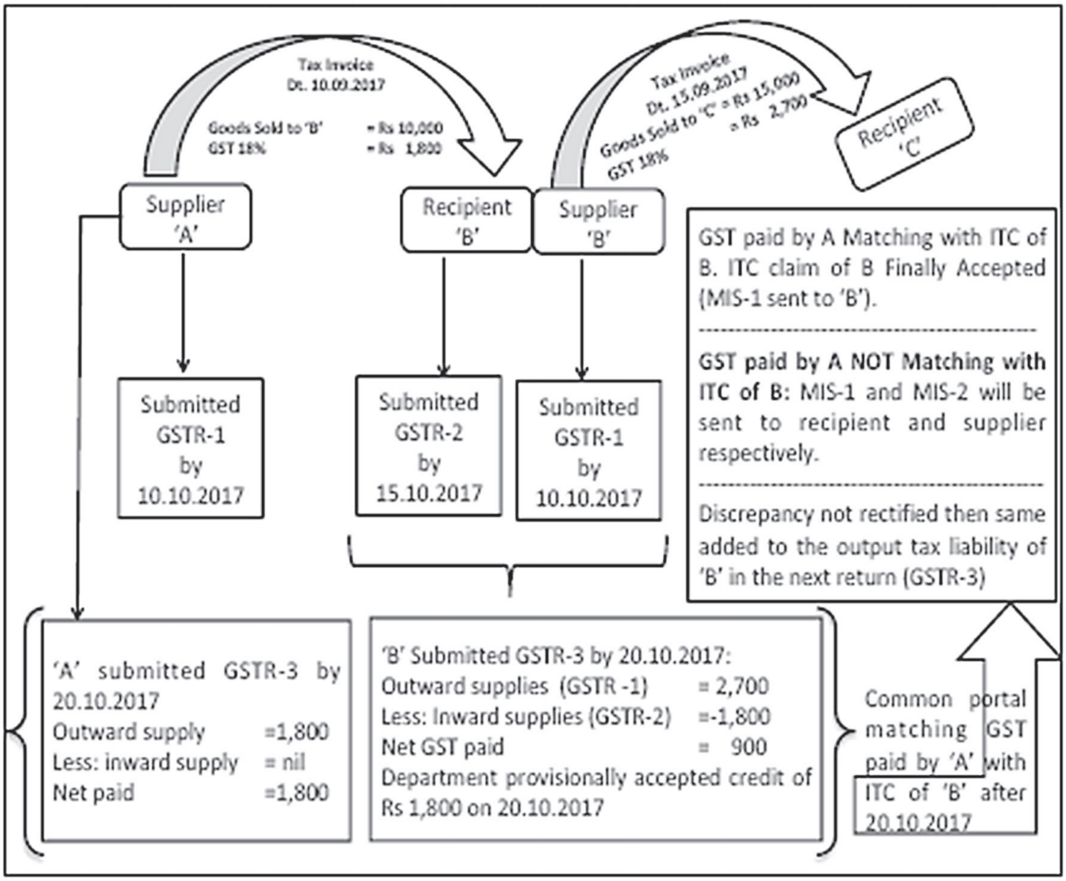


Illustration 58

Mr. A supplied goods to Mr. B for ₹2,00,000 plus GST 18%, vide Invoice No. 99, dated 5th November 2017. Mr. B availed the ITC of ₹36,000 and confirmed in GSTR-2. However, Invoice No. 99, dated 5th November 2017 not reflected in GSTR-1, of Mr. A.

You are required to answer the following:

(a) When matching will take through common portal of GSTN.

(b) To whom discrepancy will be informed.

(c) Time limit for rectification of discrepancy

(d) Whether ITC is allowed to Mr. B, if Mr. A is not paid tax till 20th January, 2018.

(e) Mr. B communicated the problem to Mr. A, who looks into the issue and rectified the discrepancy and included invoice no. 99 in his GSTR-3 for January 2018 accordingly he paid tax on 20th Feb 2018. If so Mr. B can reduce his liability?

Solution:

(a) Matching will take place only after the due date of GSTR-3 for the month of November 2017. In the given case matching will takes place after 20th December 2017.

(b) Discrepancy is to be communicated by the common portal GSTN to supplier (i.e. Mr. A) in the Form GST MIS-2 and GST MIS-1 to recipient of supply.

(c) Time limit for rectification is 20th January 2018 (i.e. Due date of filling FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available). Mr. A should pay tax on it (as per Rule 71(4) of the CGST Rules, 2017).

(d) Input tax credit of ₹36,000 shall be added to the output tax liability of Mr. B in his return to be furnished in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available (i.e. 20th Feb 2018) with interest @18%.

(e) As per section 42(7) of the CGST Act, 2017 Mr. B can reduce the amount from his output tax liability and the interest paid will be refunded to his electronic cash ledger account under section 42(9) of the CGST Act, 2017.

Utilization of input tax credit:

The amount of tax, interest, penalty etc. payable by the person is required to pay either by utilizing balance available in electronic cash ledger or electronic credit ledger. The amount utilized for payment from the balance in electronic credit or cash ledger will be shown in GST PMT-1.

Payment of tax, interest, penalty and other amounts [Section 49 of the CGST Act, 2017]

Section 49(1) of the CGST Act, 2017 every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

Section 49(2) of the CGST Act, 2017 the input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

Electronic Ledgers in GST

There are three types of Ledgers maintained to discharge tax liability under CGST Act, 2017 which are as follows:

S. No.	Ledger name	Amount to be credited	Amount Utilization
(1)	Electronic cash ledger	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	As per Section 49(3) of the CGST Act, 2017: The amount available in the electronic cash ledger may be used for making any payment towards • tax, • interest,

S. No.	Ledger name	Amount to be credited	Amount Utilization
		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.	• penalty, • fees or any other amount payable under the provisions of this Act or the rules made there under in such manner and subject to such conditions and within such time as may be prescribed.
(2)	Electronic credit ledger	The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.	As per Section 49(4) of the CGST Act, 2017: The amount available in the electronic credit ledger may be used for making any payment towards— • output tax under this Act or • under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
(3)	Electronic Liability ledger	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.	

Section 49(5) of the CGST Act, 2017

Section 49(5)	Input	Offset option available against	Not available	Order of Set off
(a)	IGST	• IGST • CGST • SGST • UTGST	-	W.e.f. 1-4-2019 section 49A of CGST Act, 2017 read with Rule 88A of CGST Rules, 2017: IGST credit can be adjusted equally between CGST and SGST or any other proportion at the option of the assessee.
(b)	CGST	• CGST • IGST	• SGST • UTGST	1. CGST 2. IGST
(c)	SGST	• SGST • IGST	• CGST • UTGST	1. SGST 2. IGST

Section 49(5)	Input	Offset option available against	Not available	Order of Set off
(d)	UTGST	• UTGST • IGST	• CGST • SGST	1. UTGST 2. IGST

Section 49(5)(e) of the CGST Act, 2017 the central tax shall not be utilised towards payment of State tax or Union territory tax; and

Section 49(5)(f) of the CGST Act, 2017 the State tax or Union territory tax shall not be utilised towards payment of central tax.

Section 49A of CGST (w.e.f. 1-2-2019) read with rule 88A of CGST Rules, 2017:

Utilisation of Input tax credit subject to certain conditions:

Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

w.e.f. 1-4-2019, The Central Government vide N No. 16/2019-CT, dated 29th March, 2019 has amended Central Goods and Services Tax Rules, 2017. Amendments made are explained below:

Insertion of Rule 88A **(Order of utilization of input tax credit)**	**Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order:** **Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.**	**Comment: As per Section 49 ITC can be utilised in a particular series and 49A provides that credit of CGST/ SGST/UTGST can be utilised only after IGST ITC has been utilised fully. Therefore, combine reading of sec 49 and 49 A, IGST shall be utilised in a given series only.** **However, with this rule it has been provided that IGST shall be utilised for IGST first than in any order convenient to taxpayer.**

Note: As per amendment act the order of utilization after the setoff of IGST liability was compulsory CGST and then SGST/UGST. Now the order has been relaxed wherein either of CGST or SGST/UGST liability can be set off.

Inward supply	Outward supply			Remarks
	CGST	SGST	IGST	
ITC of CGST	Allowed	Not allowed	Allowed	1st CGST next IGST in that order
ITC of SGST	Not allowed	Allowed	Allowed	1st SGST next IGST in that order

Inward supply	Outward supply			Remarks
	CGST	SGST	IGST	
ITC of IGST	Allowed	Allowed	Allowed	W.e.f. 1-4-2019 section 49A of CGST Act, 2017 read with Rule 88A of CGST Rules, 2017: IGST credit can be adjusted equally between CGST and SGST or any other proportion at the option of the assessee.

Illustration 59

M/s X Ltd. being a registered person supplying taxable goods in the following manner:

Particulars	(₹)
Intra-State supply of goods	18,00,000
Inter-State supply of goods	13,00,000
Intra-State purchases	13,00,000
Inter-State purchases	1,50,000
ITC at the beginning of the relevant tax period:	
CGST	1,30,000
SGST	1,30,000
IGST	1,70,000

(i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.

(ii) Inward and outward supplies are exclusive of taxes.

(iii) All the conditions necessary for availing the input tax credit have been fulfilled.

Compute the net GST payable by M/s X Ltd during the tax period. Make suitable assumptions.

Solution:

Statement showing input tax credit (i.e. Electronic Credit Ledger)

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Opening balance	1,30,000	1,30,000	1,70,000
Add: ITC for the tax period	1,17,000	1,17,000	27,000
Total credit	2,47,000	2,47,000	1,97,000

Statement showing Net GST payable by M/s X Ltd for the tax period

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Output tax	1,62,000	1,62,000	2,34,000

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Less: ITC allowed	-2,47,000	-2,47,000	-1,97,000
Sub-total	-85,000	-85,000	37,000
Less: CGST credit adjusted against IGST	37,000	Nil	-37,000
Net GST liability	Nil	Nil	Nil
Excess ITC c/f	48,000	85,000	Nil

Illustration 60

Mr. A has output Tax Liability of ₹1,00,000/- towards CGST & SGST/UGST and ₹20,000 towards IGST and also interest payable of ₹1800/-. Explain the manner of discharge tax liability by Mr. A in the following two independent cases:

1. Input tax credit available of CGST & SGST is ₹25,000/- each & IGST is ₹25,000/-
2. Input tax credit not available.

Solution:

Case 1: In case Input Tax credit available-

Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
Electronic liability ledger	Output tax payable	50,000	50,000	20,000	1,800	1,21,800
Electronic credit ledger	Input Tax Credit	25,000	25,000	25,000		75,000
	Net output tax liability	25,000	25,000	-		50,000
	IGST Credit set off	5,000 (Note-1)	-	-		5,000
Electronic cash ledger	Cash to be deposited	20,000	25,000	-	1800 (Note-2)	46,800

Note:

1. IGST Credit can be adjusted against CGST or SGST in any proportion.
2. Interest cannot be adjusted with Input Tax credit

Case 2: In case Input Tax credit is not available-

Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
Electronic liability ledger	Output tax payable	50,000	50,000	20,000	1,800	1,21,800
Electronic Cash ledger	Amount to be deposited	50,000	50,000	20,000	1,800	1,21,800

Order of claiming input tax credit is as follows-

Illustration 61

Y Ltd is operating in two states Andhra Pradesh and Tamil Nadu. The tax liability for the month of August 20XX is as follows—

S. No.	Tax Liability	Andhra Pradesh (₹)	Tamil Nadu (₹)
1.	Output CGST Payable	25,000	10,000
2.	Output SGST Payable	10,000	5,000
3.	Output IGST payable	3,000	2,500
4.	Input CGST	8,000	13,000
5.	Input SGST	15,000	1,500
6.	Input IGST	12,000	16,000

Calculate the tax payable for the month of August 20XX.

Solution:

Net Tax payable for the month of August is as follows—

Particulars	Andhra Pradesh			Tamil Nadu		
	CGST	SGST	IGST	CGST	SGST	IGST
Output tax	25,000	10,000	3,000	10,000	5,000	2,500
Less: ITC of IGST	(9,000)	Nil	(3,000)	(8,500)	(5,000)	(2,500)
Out tax after adjustment of IGST ITC	16,000	10,000	Nil	1,500	Nil	Nil
Less: ITC of CGST & SGST	(8,000)	(15,000)	nil	(13,000)	(1,500)	nil
Net tax payable by E-cash ledger	8,000	nil	nil	nil	nil	nil
Input credit carry forwarded to next month	-	5,000	-	(11,500)	(1,500)	nil

Notes:

1. IGST Input tax credit should be adjusted against Output tax of liability of IGST. Excess of IGST credit after payment of IGST can be adjusted against payment of CGST or SGST/UTGST in any proportion as decided by the assessee.
2. SGST Input tax credit cannot be adjusted against output CGST & Vice-Versa.
3. CGST & SGST Input tax credit of one State cannot be adjusted against Output CGST & SGST of other state (same principle is applicable to IGST credit also).

As per section 49(6) of the CGST Act, 2017 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 section 49(7) of the CGST Act, 2017 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 section 49(8) of the CGST Act, 2017 every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—

The following order shall be maintained while settling the tax liability:

Step 1	First self-assessed tax, and other dues related to returns of previous tax periods;
Step 2	Self-assessed tax, and other dues related to the return of the current tax period;
Step 3	Any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

As per section 49(9) of the CGST Act, 2017 Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation: For the purposes of this section,—

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression, —

(i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

Illustration 62

X Ltd has following tax liabilities under the provisions of Act—

S. No.	Particulars	Amount (₹)
1.	Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2017	1,00,000
2.	Interest & Penalty on delayed payment and filing of returns belonging to August 2017	20,000
3.	Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2017	1,20,000
4.	Interest & Penalty on delayed payment and filing of returns belonging to September 2017	20,000
5.	Demand raised as per section 73 or section 74 under CGST Act, 2017 belonging to July 2017	8,00,000
6.	Demand raised as per the old provisions of Indirect Taxes	1,00,000

X Ltd has ₹5,00,000 in Electronic cash ledger. Suggest X Ltd in discharging the tax liability.

Solution:

Balance in Electronic cash ledger can be used in the following manner to discharge tax liability by X Ltd—

Particulars	Amount
Balance available in Electronic cash ledger	5,00,000
Less-	
Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2017	(1,00,000)
Interest & Penalty on delayed payment and filing of returns belonging to August 2017	(20,000)
Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2017	(1,20,000)
Interest & Penalty on delayed payment and filing of returns belonging to September 2017	(20,000)
Demand raised as per section 73 or section **74 under CGST Act, 2017**	(2,40,000)
Balance in electronic cash ledger	Nil
The balance amount of ₹5,60,000 towards demand raised under section 73 or section 74 under CGST Act, 2017 to be discharged before discharging liability of demand rose under old provisions of Indirect Taxes.	

As per Finance Act, 2019, w.e.f. 1-8-2019:

As per Section 49(10) of the CGST Act, 2019, A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

As per Section 49(11) of the CGST Act, 2019, Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1)."

Illustration 63

Miss Nitya has following balances in her Electronic Cash Ledger as on 28/02/20XX as per GST portal.

Major Heads	Minor Heads	Amount (₹)
CGST	Tax	40,000
	Interest	1,000
	Penalty	800
SGST	Tax	80,000
	Interest	400
	Penalty	1,200
	Fee	2,000
IGST	Tax	45,000
	Interest	200
	Penalty	Nil

Her tax liability for the month of February, 20XX for CGST and SGST was ₹75,000 each. She failed to pay the tax and contacted you as legal advisor on 12/04/2018 to advise her as to how much amount of tax or interest she is required to pay, if any, by utilizing the available balance to the maximum extent possible as per GST Laws. She wants to pay the tax on 20-04-20XX.

Other Information:—

(i) Date of collection of GST was 18th February, 20XX.

(ii) No other transaction after this up to 20th April 20XX.

(iii) Ignore penalty for this transaction.

(iv) No other balance is available.

You are required to advise her with reference to legal provisions with brief notes on the legal provisions applicable. 5

Solution:

Statement showing GST and Interest liability:

Particulars	CGST (₹)	SGST (₹)	Interest CGST	Interest SGST	IGST (₹)	Remarks
Output tax liability	75,000	75,000	1147	1147	Nil	75,000 × 18% × 31/365= 1147
Less: Electronic Cash ledger of CGST/ SGST	-40,000	-80,000	-1,000	-400		
Less: transfer from e-cash ledger of IGST Major head	-35,000	Nil	-147	-747		
Excess balance in electronic cash ledger c/f	Nil	5,000	Nil	NIL	9,106	45000-35000-147-747

Note:

(1) Major head refers to – Integrated tax, Central tax, State/UT tax and Cess.

(2) Minor head refers to – tax, interest, penalty, fee and others.

(3) Section 49(10) of CGST Act, 2019 permits if amount from one major/minor head is intended to be transferred to another major/minor head. Minor head for transfer of amount may be same or different.

(4) The amount from one minor head can also be transferred to another minor head under the same major head.

(5) Amount can be transferred from the head only if balance under that head is available at the time of transfer.

Illustration 64

Mr. NY, a supplier of goods pays GST under regular scheme. Mr. NY is not eligible for any threshold exemption. He has made the following outward taxable supplies during April 2019:

Particulars	Rate of Tax			Amount (₹)
	CGST	SGST	IGST	
Intra State supply of goods				
Product A	6%	6%	-	8,00,000
Product B	9%	9%	-	2,00,000
Inter State supply of goods				
Product A	-	-	12%	3,00,000
Product B	-	-	18%	1,50,000

He has also furnished the following information in respect of supplies received by him during April 2019:

Particulars	Rate of Tax			Amount (₹)
	CGST	SGST	IGST	
Intra State supply of goods				
Product A	6%	6%	-	2,00,000
Product B	9%	9%	-	1,00,000
Inter State supply of goods				
Product A	-	-	12%	1,50,000
Product B	-	-	18%	80,000

Mr. NY has following ITCs with him at the beginning of April 2019:

Particulars	(₹)
CGST	40,000
SGST	28,000
IGST	44,600

Note:

(i) Both inward and outward supplies are exclusive of taxes, wherever applicable.

(ii) All the conditions necessary for availing the ITC have been fulfilled.

Compute net GST payable by Mr. NY for the month of April 2019.

Make suitable assumptions wherever required.

Solution:

Statement showing Net GST liability of Mr. NY for the month of April 2019:

Particulars	CGST	SGST	IGST
Output Tax liability	66,000	66,000	63,000
Less: ITC of IGST	Nil	Nil	(77,000)

Particulars	CGST	SGST	IGST
Excess IGST credit	Nil	Nil	(14,000)
Less: IGST credit set off first CGST	(14,000)	Nil	14,000
Less: CGST credit set off	(61,000)	Nil	Nil
Less: SGST credit set off	Nil	49,000	
Excess of CGST credit c/f	(9,000)	Nil	Nil
Net GST liability payable by cash ledger	Nil	17,000	Nil

Working Note:

(1) Statement showing ITC on inward supplies

Particulars	CGST	SGST	IGST
Opening Balance	40,000	28,000	44,600
Intra State supply of goods			
Product A (6% + 6%)	12,000	12,000	Nil
Product B (9% + 9%)	9,000	9,000	Nil
Inter State supply of goods			
Product A (12%)	Nil	Nil	18,000
Product B (18%)	Nil	Nil	14,400
Total	61,000	49,000	77,000

(2) Statement showing output tax:

Particulars	CGST	SGST	IGST
Intra State supply of goods			
Product A (6% + 6%)	48,000	48,000	Nil
Product B (9% + 9%)	18,000	18,000	
Inter State supply of goods			
Product A (12%)	Nil	Nil	36,000
Product B (18%)	Nil	Nil	27,000
Total	66,000	66,000	63,000

Alternatively:

Solution:

Statement showing Net GST liability of Mr. NY for the month of April 2019:

Particulars	CGST	SGST	IGST
Output Tax liability	66,000	66,000	63,000

Particulars	CGST	SGST	IGST
Less: ITC of IGST	Nil	Nil	(77,000)
Excess IGST credit	Nil	Nil	(14,000)
Less: IGST credit set off first SGST	Nil	(14,000)	14,000
Less: CGST credit set off	(61,000)	Nil	Nil
Less: SGST credit set off	Nil	(49,000)	
Net GST liability payable by cash ledger	5,000	3,000	Nil

Form PMT-09: Importance and Use in the Electronic Cash Ledger:

w.e.f. 21 April, 2020, The CBIC has recently introduced Form PMT-09 (i.e. a challan) for shifting wrongly paid amount from one head to another head. This enables a registered taxpayer to transfer any amount of tax, interest, penalty, etc. that is available in the electronic cash ledger, to the appropriate tax or cess head under IGST, CGST and SGST in the electronic cash ledger.

Hence, if a taxpayer has wrongly paid CGST instead of SGST, he can now rectify the same using Form PMT-09 by reallocating the amount from the CGST head to the SGST head.

Key points to note about Form GST PMT-09:

1. If the wrong tax has already been utilized for making any payment, then this challan is not useful. This challan only allows shifting of the amounts that are available in the electronic cash ledger.

For instance, in case an amount has been misreported in the GSTR-3B, there is no way to rectify the same as the GSTR-3B is non-editable. In such case, only and adjustment in the next month's return can be made.

2. The amount once utilized and removed from cash ledger cannot be reallocated.
3. Major head refers to- Integrated tax, Central tax, State/UT tax, and Cess.
4. Minor head refers to- Tax, Interest, Penalty, Fee and Others.

Illustration 65

Mr. A. had to pay ₹100 as Central Tax under the major head and ₹50 as interest under the minor head and he has wrongly paid ₹50 under Central tax head and ₹100 as interest under the minor head. What will be the consequences?

Solution:

In this case, he can file PMT-09 to shift the amount from the major head (i.e. Central tax) to the minor head (i.e. interest). This shifting of the amount can be done from minor head to major head as well.

An amount can also be transferred from one minor head to another minor head under the same major head.

For example, in the case of interchange of interest and penalty amount under Central Tax can also be rectified by filing PMT-09.

Rule 86A Conditions of use of amount available in electronic credit ledger

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as—

(a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36—

(i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(ii) without receipt of goods or services or both; or

(b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

(c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

(vide Notification No. 75/2019-CT, dated 26.12.2019)

Amendments in rule 87 of the CGST Rules prescribing provisions relating to electronic cash ledger—

(i) The second proviso to sub-rule (2) which gave an option to a person supplying OIDAR services from a place outside India to a non-taxable online recipient, to generate challan through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax has been omitted.

(ii) Sub-rule (9) provided that any amount deducted under section 51 or collected under section 52 and claimed in Form GSTR-02 by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger in accordance with the provisions of rule 87.

The words, letters and figures "in Form GSTR-02" and words and figures "in accordance with the provisions of rule 87" have been omitted from sub-rule (9).

[Notification No. 31/2019-CT, dated 28.06.2019]

Refund of tax that has been paid wrongly or in excess by utilising ITC [Rule 86]

A new sub rule (4A) has been inserted in rule 86 of the CGST Rules to provide that where a registered person has claimed refund of any tax that has been paid wrongly or in excess through electronic credit ledger, the said refund, if found admissible, will be credited to the electronic credit ledger.

[Notification No. 16/2020-CT, dated 23.03.2020]

Illustration 66

ABC Co. Ltd. is engaged in the manufacture of heavy machinery. It procured the following items during the month of July.

S. No.	Items	GST paid (₹)
(i)	Electrical transformers to be used in the manufacturing process	5,20,000

S. No.	Items	GST paid (₹)
(ii)	Trucks used for the transport of raw material	1,00,000
(iii)	Raw material	2,00,000
(iv)	Confectionery items for consumption of employees working in the factory	25,000

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items.

Note:

(i) All the conditions necessary for availing the ITC have been fulfilled.

(ii) ABC Co. Ltd. is not eligible for any threshold exemption.

Solution:

Computation of ITC available with ABC Co. Ltd. for the month of July

S. No.	Particulars	ITC (₹)
(i)	Electrical transformers	5,20,000
(ii)	Trucks used for the transport of raw material	1,00,000
(iii)	Raw material	2,00,000
(iv)	Confectionery items for consumption of employees working in the factory	nil
	Total ITC allowed	**8,20,000**

Illustration 67

XYZ Ltd., is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 2018 from the following particulars:—

S. No.	Inward supplies	GST (₹)	Remarks
(i)	Inputs 'A'	1,00,000	One invoice on which GST payable was ₹10,000, is missing
(ii)	Inputs 'B'	50,000	Inputs are to be received in two instalments. First instalment has been received in October 2018.
(iii)	Capital goods	1,20,000	XYZ Ltd. has capitalised the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value.
(iv)	Input services	2,25,000	One invoice dated 20.01.2018 on which GST payable was ₹50,000 has been received in October 2018.

Note:

(i) All the conditions necessary for availing the ITC have been fulfilled.

(ii) ABC Co. Ltd. is not eligible for any threshold exemption.

(iii) The annual return for the financial year 2017-18 was filed on 15th September 2018.

Solution:

Computation of ITC available with XYZ Ltd. for the month of October, 2018

S. No.	Inward supplies	GST (₹)	Working note
(i)	Inputs 'A'	90,000	₹1,00,000 – ₹10,000 = ₹90,000
(ii)	Inputs 'B'	Nil	ITC allowed only when all instalments received
(iii)	Capital goods	Nil	ITC not allowed. Since, GST paid on such C.G. claimed depreciation [Sec. 16(3)]
(iv)	Input services	1,75,000	Since, ITC not availed before filing annual return [Sec. 16(4) of CGST Act, 2017]. ₹2,25,000 - ₹50,000 = ₹1,75,000
Total ITC allowed		**2,65,000**	

Illustration 68

Shipra Traders is a registered supplier of goods in Assam. It purchased goods valued at ₹ 10,000 from Kartik Suppliers located within the same State. Kartik Suppliers charged CGST & SGST separately in its invoice. Subsequently, Shipra Traders sold goods valuing ₹ 9,500 to Rabina Manufacturers located in Assam. 20% of the inputs purchased are still lying in stock and there was no opening stock of goods. Rate of CGST and SGST on supply and purchase of goods is 9% each. Calculate the net GST payable by Shipra Traders and input tax credit (ITC) to be carried forward, if any.

Solution:

Statement showing GST payable or ITC carried forward:

Particulars	CGST 9%	SGST 9%
Outward supply	855	855
Less: ITC	(900)	(900)
Excess ITC c/f	(45)	(45)

Illustration 69

Sundar Motors is a car dealer selling cars of an international car company. It also provides maintenance and repair services of the cars sold by it as also of other cars. It seeks your advice on availability of input tax credit in respect of the following expenses incurred by it during the course of its business operations:

(i) Cars purchased from the manufacturer for making further supply of such cars. Two of such cars are destroyed in accidents while being used for test drive by potential customers.

(ii) Works contract services availed for constructing a car washing shed in its premises

Solution:

The availability of input tax credit (ITC) in respect of the various expenses incurred by Sundar Motors is discussed below:

(i) ITC on cars purchased from the manufacturer for making further supply of such cars will be allowed (i.e. exception to section 17(5)(a) of CGST Act, 2017).

However, ITC on the cars destroyed in accident will not be allowed as the ITC on goods destroyed for whichever reason is specifically blocked under section 17(5)(h) of CGST Act.

(ii) the car washing shed is not a plant and machinery and the works contract service is not used for further supply of works contract service, ITC thereon will not be allowed (Section 17(5)(c) of CGST Act, 2017).

Illustration 70

M/s XYZ, a registered supplier, supplies the following goods and services for construction of buildings and complexes—

- excavators for required period at a per hour rate
- manpower for operation of the excavators at a per day rate
- soil-testing and seismic evaluation at a per sample rate.

The excavators are invariably hired out along with operators. Similarly, excavator operators are supplied only when the excavator is hired out.

M/s XYZ receives the following services:

- Annual maintenance services for excavators;
- Health insurance for operators of the excavators;
- Scientific and technical consultancy for soil testing and seismic evaluation.

For a given month, the receipts (exclusive of GST) of M/s XYZ are as follows:

Hire charges for excavators -	₹	18,00,000
Service charges for supply of manpower for operation of the excavator -	₹	20,000
Service charges for soil testing and seismic evaluation at three sites -	₹	2,50,000

The GST paid during the said month on services received by M/s XYZ is as follows:

Annual maintenance for excavators -	₹	1,00,000
Health insurance for excavator operators -	₹	2,11,000
Scientific and technical consultancy for soil testing and seismic evaluation -	₹	1,00,000

Compute the net GST payable by M/s XYZ for the given month.

Assume the rates of GST to be as under:

Hiring out of excavators – 12% Supply of manpower services and soil-testing and seismic evaluation services – 18%

Note: Opening balance of input tax credit of GST is nil.

Solution:

Computation of net GST payable by M/s XYZ

Particulars	GST payable (₹)
Gross GST liability	2,63,400
Less: Input tax credit	2,00,000
Net GST liability	63,400

Working note:

Particulars	Value received (₹)	Rate of GST	GST payable (₹)
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators	20,000	12%	2,400
Service charges for soil testing and seismic evaluation	2,50,000	18%	45,000
Gross GST liability			**2,63,400**

Computation of input tax credit available for set off

Particulars	GST paid (₹)	ITC available (₹)
Annual maintenance services for excavators	1,00,000	1,00,000
Health insurance for excavator operators	2,11,000	Not allowed
Scientific and technical consultancy	1,00,000	1,00,000
Total input tax credit available		**2,00,000**

Case Law

(1) CCEx. v Stelko Strips Ltd. 2010 (255) ELT 397 (P&H)

Decision: The ITC could be taken on the strength of private challans as the same were not found fake and there was proper certification that duty has been paid.

(2) CCus. & CEx. v Sachin Malhotra 2015 (37) STR 684 (Uttarakhand)

Rent-a-cab	Hiring of cab
Under rent-a-cab scheme, the hirer is endowed with the freedom to take the vehicle wherever he wishes, and he is only obliged to keep the holder of the license informed of his movements from time to time.	When a person chooses to hire a car, which is offered on the strength of a permit issued by the Motor Vehicles Department, then the owner of the vehicle, who may or may not be the driver, will offer his service while retaining the control and possession of the vehicle with him-. The customer is merely enabled to make use of the vehicle by travelling in the vehicle. In the case of a passenger, he is expected to pay the metered charges, which is usually collected on the basis of the number of kilometers Travelled.

(3) Commr. of C. Ex., & S.T., LTU v Rane TRW Steering Systems Ltd. 2015 (039) STR 13 (Mad)

Facts of the case: Assessee had availed credit of GST paid on housekeeping and gardening services. However, Revenue disallowed the credit and also imposed penalty on the ground that the assessee was not eligible to avail credit of GST on these services.

Decision: The High Court noted that principle laid down in the case of CCE v Millipore India Pvt Ltd. 2012 (26) STR 514 (Kar). In this case, the Karnataka High Court held that landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. The environmental law expects the employer to keep the factory without contravening any of those laws. That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly manner, certainly, the tax paid on such services would form part of the costs of the final products. Therefore, housekeeping and gardening services would fall within the ambit of input services and the assessee is entitled to claim the benefit of input tax credit on the same.

(4) Sri Desikanathar Textiles Pvt. Ltd. vs Union of India 2022 (62) GSTL 449 (Mad.)

Input Tax Credit – Transitional Credit – Mistake while filing of Form GST TRAN-1 – Revision of Form GST TRAN-1 – Provisions of CGST Act, 2017 do not provide for lapsing of credit, which could not be successfully transitioned under new regime while filing form correctly in TRAN-1 – Assessee having indefeasible right to utilize such credit – Several communication indicating that assessee was in continuous touch with Authorities to ensure that transition of credit was successful – Direction given to Authorities to allow input tax credit, after verification by competent officer that such credit could be transitioned but for wrong declaration in Form TRAN-1 – If credit available to be transitioned, it cannot be denied. Authorities either to allow assessee to file either a revised TRAN-1 or directly make credit entry in assessee's electronic cash register. Rule 117 of CGST Rules, 2017 read with section 140 of the CGST Act, 2017 along with Article 226 of Constitution of India.

(5) No GST ITC on Input Services Using Products' Promotional Scheme: TN AAAR in case of GRB Dairy Foods (2022):

The appellant, M/s GRB Dairy Foods Pvt. Ltd is involved in the business of making and supplying ghee, masalas, instant mixes, and sweets. With the goal of expanding the market share, the appellant has incorporated a sales promotional offer buy and fly, to expand the product sales. According to the scheme the petitioner furnishes the rewards such as Dubai Trip, Gold Voucher, Television, and Air Cooler for those retailers whose target will be achieved.

GRB Dairy Foods submitted that it procured the reward items "in the course of its business" and it has a direct nexus with the business carried on by the company. "Marketing and business expansion is an indispensable activity of every company's operation," it stated.

The AAR Bench factored in a 2018 ruling given by the Maharashtra Bench in the case of Biostadt India (2019 (22) GST L 551 (AAR – GST)), where ITC was held to be not available on procurement of gold coins offered under a sales promotion scheme to tis customers. "the credit of taxes paid on goods/services for personal consumption is explicitly restricted. The (reward) goods and services are used by the retailers and hence are for personal consumption. Thus, the applicant company is ineligible to take Input Tax Credit on the inward supply of these goods and services," held the AAR Bench.

"The appellant submitted that AAR completely ignored the fact that there was a contractual obligation that was based on a scheme that was circulated to the trade-in in advance."

After coming to the contractual obligation, the provided promotional materials cannot be treated as a gift. AAR sees that the promotional materials were said to be the gifts that were provided voluntarily and thus will come beneath eh provisions of section 17(5)(h) and therefore credit has to be restricted.

AAAR sees that the petitioner furnished the rewards through the method of goods and indeed foreign tours via furnishing valid air tickets and that is the cause they coined the reward policy as buying and fly. Hence what they furnished in the policy were the goods and services. The provisions of clause (h) said that the ITC will not be available for the goods lost, stolen, demolished, written off, or disposed of via gift or free samples. Hence this clause is only subjected to goods.

AAAR ruled that under the provision of the CGST act more precisely section 17(5) of the act, the gifts or rewards provided excluding the acknowledgement despite they are provided for the sales promotion do not entitle as inputs for the objectives of Credit, since no GST is furnished upon its disposal. Hence we mentioned that the ITC on the inputs and the input services engaged in the goods and services used towards the goal of the reward is not available for the petitioner and as per that the ruling provided via the Advance Ruling Authority of Tamil Nadu needs no interruption and the appeal is dismissed.

(6) GST ITC not allowable to BMW on demo car or vehicle: The Haryana Appellate Authority of Advance Ruling (AAAR) (2022)

BMW has sought an advance ruling on the issue of whether the unit of BMW is entitled to avail the Input Tax Credit (ITC) of IGST and Compensation Cess paid on receipt of cars (on stock transfer basis) for use in relation to business activities and onwards supply to dealers after use for a limited period of time.

The Authority of Advance Ruling (AAR) ruled that in the motor vehicle industry, demonstration vehicles are an indispensable tool for the promotion of sales by providing trial runs to customers. These demo cars are used for demonstration purposes for prospective customers, and after a specific period of time, they are sold off for their book value, paying the applicable taxes at that point of time.

The AAR observed that the specific provisions regarding the admissibility of the input tax credit on motor vehicles for transportation of persons up to a seating capacity of not more than 13 persons are contained in Section 17(5) of the CGST Act 2017.

The appellant has challenged the order of the AAR and stated that the ruling was vague or cryptic. BMW was entitled to take ITC as the vehicles were further used for specified taxable supply under section 17(5)(a)(i)(A) of CGST Act.

The appellant further added that vehicles were always intended to be further supplied by the appellant after specified use. No time limit has been prescribed under the CGST Act for further supply of vehicles. The appellant added that the authorities has failed to adhere to the provisions of Section 98(6) of the CGST Act.

The AAAR observed that if the argument of the party is allowed, then in that case, all motor vehicles, irrespective of the nature of supply, will be eligible for ITC across the industries. It will no longer be a restrictive clause for car dealers, but will be an open-clause for all the trade and industry to avail of the ITC on all the vehicles purchased by them. This has never been the intent of Parliament.

The AAAR ruled that in the very first demonstration run, demo cars lose the character of the new motor vehicle, and demo vehicles are sold akin to second-hand goods, which are different from new vehicles and accordingly treated differently under GST law, so the demo car is not an input.

"The BMW vehicles received by the Appellant under stock transfer have never been received with the intent to simply 'further supply of such motor vehicles/'sell as such'. The Input Tax Credit on these vehicles, therefore, cannot be allowed," the AAAR added.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Input tax credit is available only when the purchase made is used in the course or furtherance of—
   (a) other than business
   (b) business
   (c) Other than business expenses
   (d) Both (a) & (b)

2. Availability of Input Tax Credit shall be considered only:
   (a) On receipt of goods or services as well as on payment of taxes by supplier to Govt.
   (b) Only on payment of taxes paid by supplier to Govt.
   (c) Taken to manufacturing site or availed services
   (d) Both (b) & (c)
   Ans. (a) On receipt of goods or services as well as on payment of taxes by supplier to Govt.

3. The time limit to pay the value of supply with taxes to the supplier to avail the input tax credit is ....….:
   (a) 3 months
   (b) 6 months
   (c) 180 Days
   (d) Till the date of filling of annual return.

4. Can a registered person under composition scheme claim input tax credit?
   (a) Yes
   (b) No
   (c) Input tax credit on inward supply of goods only can be claimed
   (d) Input tax credit on inward supply of services only can be claimed

5. Exempted supply for the purpose of proportionate common credit includes
   (a) Sale land and building
   (b) Sale of securities
   (c) Supply on which GST apply under RCM
   (d) All the above

6. As per Rule 42(2) of the CGST Rules, 2017 where the aggregate of the amount calculated finally in respect of ineligible credit exceeds the aggregate of the amounts determined under rule 42(1)(i) and (j), such excess shall be added to the output tax liability of the registered person in the month not later than the month of_____
   (a) September following the end of the financial year to which such credit relates
   (b) March following the end of the financial year to which such credit relates
   (c) June following the end of the financial year to which such credit relates
   (d) None of the above

7. As per Rule 42(2) of the CGST Rules, 2017 where the aggregate of the amount calculated finally in respect of ineligible credit exceeds the aggregate of the amounts determined under rule 42(1)(i) and (j), such excess shall be added to the output tax liability of the registered person in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay ________on the said excess amount at the rate specified in sub-section (1) of Section 50 for the period starting from the1st day of April of the succeeding financial year till the date of payment
   (a) interest 24% p.a.
   (b) interest 18% p.a.
   (c) interest 28% p.a.
   (d) interest 12% p.a.

8. Is it mandatory to capitalize the capital goods in books of Accounts?
   (a) Yes
   (b) No
   (c) Optional
   (d) None of the above

9. The term "used in the course or furtherance of business" means?
   (a) It should be directly co-related to output supply
   (b) It is planned to use in the course of business
   (c) It is used or intended to be used in the course of business
   (d) It is used in the course of business for making outward supply

10. Can the recipient avail the Input tax credit for the part payment of the amount to the supplier within one hundred and eighty days?
   (a) Yes, on full tax amount and partly value amount
   (b) No, he can't until full amount is paid to supplier
   (c) Yes, but proportionately to the extent of value and tax paid
   (d) Not applicable is eligible to claim refund in respect of exports of goods le

11. Banking company or Financial Institution have an option of claiming:
   (a) Eligible Credit or 50% credit
   (b) Only 50% Credit
   (c) Only Eligible credit
   (d) Eligible credit and 50% credit

12. Where a supplier of goods or services pays tax under sections 74, 129 and 130 (fraud, willful misstatement etc.), then receiver of goods can avail its credit:
   (a) Yes
   (b) No
   (c) Yes, after receipt of goods or services
   (d) Yes, after receipt of invoice for goods or services

13. An assessee obtains new registration, voluntary registration, change of scheme from composition to regular scheme and from exempted goods/services to taxable goods/services. It can avail credit on inputs lying in stock. What is the time limit for taking said credit?
    (a) 1 year from the date of invoice
    (b) 3 years from the date of invoice
    (c) 5 years from the date of invoice
    (d) None of the above

14. The time limit beyond which if goods are not returned, the inputs sent for job work shall be treated as supply
    (a) One year
    (b) Five years
    (c) Six months
    (d) Seven years

15. The time limit beyond which if goods are not returned, the capital goods sent for job work shall be treated as supply
    (a) One year
    (b) Five years
    (c) Six months
    (d) Three years

16. Provisional Input tax credit can be utilized against
    (a) Any Tax liability
    (b) Self-Assessed Output Tax liability
    (c) Interest and Penalty
    (d) Fine

17. The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in FORM______?
    (a) Form GST ITC-03
    (b) Form GST ITC-04
    (c) Form GSTR-2A
    (d) Form GST REG-01

18. Maximum time limit for availing ITC is
    (a) The date of filing of annual return
    (b) Due date of filing return u/s 39 for the month of September
    (c) Earliest of above two
    (d) Later of above two.

19. In case of supply of plant & machinery on which ITC is taken, tax to be paid on is
    (a) Amount equal to ITC availed less 5% for every quarter or part thereof
    (b) Tax on transaction value

(c) Higher of above two

(d) Lower of above two

20. Mr. X placed an order with Mr. Y of 20,000 pcs on 1st January 20XX & the same order is to be received on last day of every month i.e. 2,000 pcs per month shall be received in next 10 months. When can Mr. X book the credit in his books and electronic ledger?:

(a) 28th February 20XX

(b) 31st October 20XX

(c) 3lst March 20XX

(d) Proportionately with receipt of every installment

21. As per the recent amendments in the CGST Act, ITC on Motor vehicles having the approved seating capacity of …………………….. shall be allowed except in few cases:

(a) 13 persons or less including driver

(b) 13 persons or less excluding driver

(c) 12 persons

(d) Either (a) or (b)

22. Mr. C, a practicing Cost Accountant purchased 3 laptops each having tax element of ₹1,25,000 in his firm name. Two laptops he utilized in his office whereas one laptop he gifted to his sister. What is the amount of ineligible ITC?

(a) ₹1,25,000

(b) ₹2,50,000

(c) ₹2,75,000

(d) None of the

23. Mr. Ajay purchased goods from Mr. Chethan, a composition dealer worth ₹100,000. Since Mr. Chethan was trader so he was supposed to pay only 1% of his turnover as his tax. The item so purchased was otherwise taxable at 12%. What is the amount of credit which Mr. Ajay is eligible to take?

(a) ₹990

(b) ₹12,000

(c) ₹1,000

(d) Not eligible to claim credit

24. ABC Pvt Ltd. purchased a machinery on 15th July 2017 for ₹10 lacs on which IGST was paid @ 18%. He availed the ITC & utilized the capital goods. On 16th October 2018 he sold the machinery as secondhand goods for ₹7,50,000. Calculate the amount of ITC that needs to be paid.

(a) ₹1,26,000

(b) ₹1,35,000

(c) Either of (a) or (b)

(d) None of the above

25. C Pvt Ltd. merges into X Pvt Ltd Can the unutilized balance of ITC in C Pvt Ltd. of ₹80 lacs be transferred to the electronic ledger of X Pvt Ltd.?

(a) Yes

(b) No

(c) Not applicable

(d) Discretion of X Pvt Ltd.

26. M/s XYZ Industries is engaged in the business of refining and marketing of petroleum products. It has one refinery each in the States of Tamil Nadu, West Bengal & Maharashtra and numerous administrative and marketing offices spread across the country. The Company has separate marketing cum administrative offices for every major State and common administrative cum marketing offices for a group of small States e.g., all north-eastern States are covered under one marketing cum administrative office. The Company also blends lubricants in its blending plants located in the States of Maharashtra and Tamil Nadu.

As a policy, all the places of business of the Company in a State are registered under one registration.

Imported crude is used as input in the refinery and following major products are extracted after refining process:

Products chargeable to GST (Group A)	Products not chargeable to GST (Group B)
Base oil (An input for blending lubricants)	Petrol
Furnace oil	Diesel
Bitumen (Used for road construction)	Air turbine fuel
LPG (Domestic and Industrial)	

Base oils are further sent to blending plants where they are blended with additives to produce lubricants. The Company provides the following particulars for States of Tamil Nadu, Maharashtra and Kerala for the month of January 20XX:

Particulars	Tamil Nadu (₹)	Maharashtra (₹)	Kerala (₹)
Value of supply inclusive of all taxes/duties (Group B products)	1,650	3,400	1,575
Value of supply (Group A products) before all taxes/duties	100	200	20
Excise duty leviable on supply of Group B products	500	1,000	110
VAT on supply of Group B products	250	600	65
Tax paid on inputs and input services procured at the blending plant	5	6	0
Tax paid on spares procured at the refinery (Spares are booked in revenue account)	3	8	0

Particulars	Tamil Nadu (₹)	Maharashtra (₹)	Kerala (₹)
Tax paid on inputs and input services procured at the marketing cum administrative office	2	3	1
Tax paid capital asset procured at the blending plant	0	5	0
Tax paid capital asset procured at the refinery	12	0	0

Assume that all of the Group A products are chargeable to GST @ 18% (including both CGST and SGST or IGST, as the case may be)

The Finance department of M/s XYZ Industries seeks your professional advice on following questions:

(i) The value of company's supply in the Union Territory of Puducherry is ₹ 32,34,000 (Group A products) and in the State of Goa is ₹ 18,38,000 (Group A and Group B products) for the year ending March 20XX. GST registration is—

(a) Not required for both Puducherry and Goa

(b) Not required for Goa but required for Puducherry

(c) Required for both Puducherry and Goa

(d) Not required for Puducherry but required for Goa

(ii) The eligible ITC available at marketing cum administrative office located in the State of Maharashtra, for the month of January 20XX, is—

(a) ₹3,000

(b) ₹300

(c) ₹166.67

(d) ₹1,500

(iii) The eligible ITC in respect of the capital asset procured in the State of Tamil Nadu, for the month of January 20XX:

(a) ₹12,000

(b) ₹200

(c) ₹11,811.11

(d) ₹11,820

(iv) Lubricant valued at ₹ 10,000 has been stock transferred from the blending plant located in the State of Tamil Nadu to the refinery located in the same State, in the month of January 20XX. The GST (CGST and SGST) payable on such transaction is?

(a) Nil as the transaction is not a supply

(b) ₹900

(c) ₹1,800

(d) Nil as such supply is exempted from GST

(v) Due to sudden fire in the store room of the refinery located in Maharashtra on January 28th 20XX, the entire quantity of spares procured in the month of January 20XX gets destroyed. What action is required from ABC Petroleum Limited?

(a) No action is required on the part of M/s XYZ Industries under GST Law.

(b) M/s XYZ Industries should report to jurisdictional GST Department for verification of the loss of inputs on account of fire.

(c) M/s XYZ Industries should not avail ITC of tax paid on the spares.

(d) M/s XYZ Industries should avail ITC and reverse the same.

Answer:

1.	**2.**	**3.**	**4.**	**5.**	**6.**	**7.**	**8.**	**9.**	**10.**
b	**a**	**c**	**b**	**d**	**a**	**b**	**a**	**c**	**c**
11.	**12.**	**13.**	**14.**	**15.**	**16.**	**17.**	**18.**	**19.**	**20**
a	**b**	**a**	**a**	**d**	**b**	**b**	**c**	**c**	**b**
21.	**22.**	**23.**	**24.**	**25.**	**26.(i)**	**26.(ii)**	**26.(iii)**	**26.(iv)**	**26. (v)**
a	**a**	**d**	**a**	**a**	**c**	**b**	**d**	**a**	**c**

Zero Rated Supplies and Deemed Exports

6

This Module Includes

Zero Rated Supplies and Deemed Exports

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Identify zero rated supply and exempted supply
- Explain inter State supplies includes supply to/from SEZ units or Developers.
- Understand Deemed Exports
- Identify difference between Export, Deemed export and Merchant Export.
- Explain who is eligible to claim refund of tax in case of Deemed Exports.

Introduction

6.1

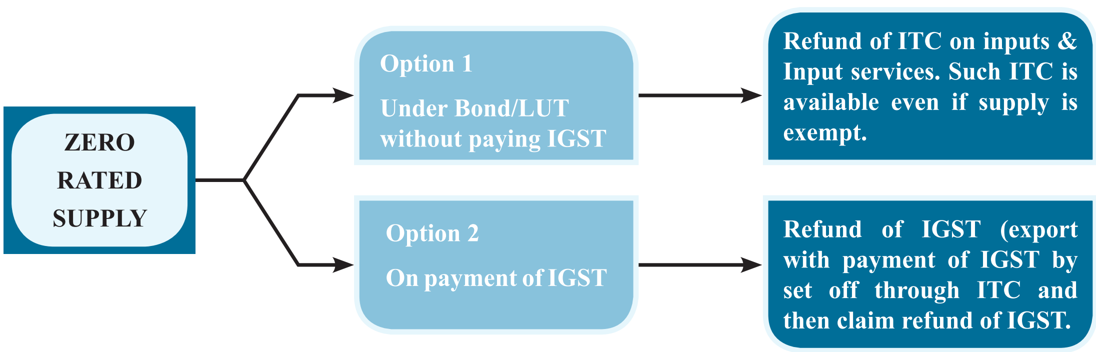
Zero Rate is also a rate of tax. As we all know that numeri's start from Zero. Supply which attracts zero rate of tax is called as taxable supply for claiming Input Tax Credit or Refund etc. Zero-rated supply does not mean that the goods and services have a tariff rate of '0%' but the recipient to whom the supply is made is entitled to pay '0%' GST to the supplier. By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the output exempt from payment of tax, but there is also no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply. Such an approach would in true sense make the goods or services zero rated. All supplies need not be zero-rated. As per the GST Law exports are meant to be zero rated the zero-rating principle is applied in letter and spirit for exports and supplies to SEZ.

Zero Rated Supplies 6.2

The relevant provisions are contained in Section 16(1) of the IGST Act, 2017, which states that "zero rated supply" means any of the following supplies of goods or services or both, namely: —

(a) Export of goods or services or both; or

(b) Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.



Without payment of IGST (LUT/Bond)	With Payment of IGST
Supply of goods and services or both	Supply of goods and services or both
Under Letter of Undertaking LUT or Bond as prescribed in Rule 96A of CGST Rules, 2017	Claim Refund of IGST paid as per Rule 96 of CGST Rules, 2017
Refund of ITC will refunded as per formulae under Rule 89(4) of CGST Rules, 2017 by prescribed Application (GST RFD 01)	No separate Application is required, Shipping Bill, Export Manifest or Departure Manifest or Export Report by conveyance carrying the export goods and Form GSTR 3B submission.

Steps to furnish LUT online:

Step 1: Login to GST website and click on user service

Step 2: click on furnish letter of Undertaking (LUT)

- Select financial year
- Agree with all points given in application
- File details of witnesses

- Select authorised signatory and place of filing application
- Submit your application with EVC or DSC

GST Refund for Zero Rated Supply:

The credit of input tax may be availed for making zero-rated supplies. A registered person making zero rated supply can claim refund under either of the following options, namely: —

(a) He may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) He may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the CGST Act, 2017 or the rules made thereunder.

As per Section 54(3) of the CGST Act, 2017, any unutilised input tax credit in zero rated supplies can be refunded, wherever such supplies are made by using the option of Bond/ LUT.

Provisional refund:

As per section 54(6) of the CGST Act, 2017, @90% of the total amount of refund claimed, on account of zero-rated supply of goods or services or both made by registered persons, may be sanctioned on a provisional basis. The remaining @10% can be refunded later after due verification of documents furnished by the applicant

There is a condition attached to provisional refunds. The provisional refund is not granted if the applicant has been prosecuted for any offense under the GST law or earlier law within past five years. The amount of tax evaded in such prosecution shall be more than Rupees Two Hundred and Fifty Lakhs (₹ 2.5 Crores).

Non-applicability of Principle of Unjust Enrichment:

The principle of unjust enrichment shall not be applicable in case of refund of taxes paid wherever such refund is on accounts of zero-rated supplies. As per section 54 (8) of the CGST Act, 2017, the refundable amount, if such amount is relatable to refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, shall instead of being credited to the Fund, be paid to the applicant.

Features of Zero-Rated Supplies:

1. No tax on the outward supplies; Input supplies also to be tax free.
2. Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply ITC allowed on zero rated supplies.
3. Value of zero-rated supplies shall be added along with the taxable supplies for apportionment of ITC.
4. A person exclusively making zero rated supplies may have to register as refunds of unutilised ITC or integrated tax paid shall have to be claimed.
5. A registered person supplying zero rated supply of goods or services, or both shall issue normal tax invoice.
6. SEZ units are exempt from issuing E-invoice.

Zero Rated vs Exempt Supply:

(a) Export of goods and services and supplies to SEZ units or developers are classified as zero-rated supply.

(b) On the other hand, nil or exempt supply are those supply with 0% GST rate.

(c) Exempted supply means the supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 of CGST Act or under section 6 of the IGST Act, and includes the non-taxable supply.

The following points refers to the exempted supply:

i. GST does not apply on the outward exempted supplies;

ii. Input tax credit of inputs and / or input services used in providing exempted supply is not available i.e. no input tax credit on exempted supplies;

iii. A registered person supplying exempted goods or services or both shall issue 'bill of supply' instead of tax invoice.

iv. A person supplies wholly nil rate of tax is exempt from registration under GST.

Supply of Goods from SEZ to SEZ:

It is interesting to note that section 7(5) of IGST Act, 2017 (and even proviso to section 8(1)) declares that supplies 'to' or 'by' SEZ developer or unit will be treated as an inter-State supply. So, when two SEZ units or one SEZ developer and another SEZ unit supply goods or services to each other (among themselves within the zone) and the zone being located within the same State or UT, such supplies will always be inter-State supplies.

Supply of Goods from SEZ to Domestic Tariff Area (DTA):

Supply of goods by SEZ to non- SEZ area is governed by Customs Act in terms of Rule 47 in Chapter V of SEZ Rules, 2006. Accordingly, duties of customs will be levied by Customs Department.

Supply of Services from SEZ to DTA:

Sub-section (1) of Section 53 of the SEZ Act, 2005 provide that "A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India" for the purposes of undertaking the authorised operations. SEZ is also be called as separate island within the territory of India. Thus, any Supply of Services from SEZ to DTA shall be Treated as Import of Services by the Domestic Tariff Area (DTA). Accordingly Import of services attracts GST under Reverse Charge Basis.

Deemed exports

6.3

Deemed Exports refers to supplies of goods manufactured in India (and not services) which are notified as deemed exports under Section 147 of the CGST/SGST Act, 2017. The supplies do not leave India. The payment for such supplies is received either in Indian rupees or in convertible foreign exchange. Deemed exports are not zero rated supplies by default, unlike the regular exports. Hence all supplies notified as supply for deemed export will be subject to levy of taxes i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT. However, the refund of tax paid on the supply regarded as Deemed export is admissible to either the supplier or the recipient. The application for refund has to be filed by the supplier or recipient (subject to certain conditions) of deemed export supplies, as the case may be.

As per **Section 2(39) of the CGST Act, 2017** "deemed exports" means such supplies of goods as may be notified under Section 147;

As per **Section 147 of the CGST Act, 2017** The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

Difference between Export, Deemed Export, and Merchant export

Export: An export refers to a trade transaction wherein the goods are produced locally and then it is shipped to a foreign country.

Deemed Export: Goods classified as deemed export may not ship out of the country.

Example 1

When a Andhra Pradesh based manufacturer supplies goods to an Export oriented Unit in Maharashtra, who further ships the product to its customer in the USA - the first part of the transaction is classified as deemed export while the second transaction is considered an export.

Merchant Export: Merchant export is the process of procuring the goods locally and then exporting them under their label. A merchant exporter is someone who buys the goods locally and then exports it globally under his name.

Deemed exports are likely to be considered for purpose of GST to claim refund.

Customs notification 79/2017, dated 13th October, 2017 and DGFT's Notification No. 33/2015-2020 contain provisions regarding exemption from GST on imports made under the Duty exemption Schemes.

Exemption from GST and Goods and Service Tax Compensation cess in respect of imports under the Advance Authorization (AA)/Export Promotion Capital Goods (EPCG) from abroad as well as domestic suppliers. The GST Council recommended that the holders of AA/EPCG and EOUs would not have to pay IGST, Cess etc. on imports and Also, domestic supplies to holders of AA/EPCG and EOUs would be treated as deemed exports under Section 147 of CGST/SGST Act and refund of tax paid on such supplies given to the supplier.

Supplier of deemed export also enabled to file application for refund (other than refund of IGST paid on goods exported out of India):

Earlier, only the recipient of deemed exports could file the application for refund under third proviso to rule 89(1) of the CGST Rules. The said proviso has been amended to also enable the supplier of deemed export supplies to file application for refund if 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 [Notification No. 47/2017-CT, dated 18.10.2017].

Supplies against Advance Authorisation scheme not to be used in supply of nil rated/fully exempted supplies, when exports have already been made after availing ITC on inputs used in manufacture of such exports

Notification No. 48/2017-CT, dated 18.10.2017 specifies the supplies which shall be treated as deemed exports. The said notification has been amended as under:

(i) Supply of goods by a registered person against Advance Authorisation is a deemed export in terms of the said notification. The following conditions have been prescribed in this regard:

   1. the goods so supplied, when exports have already been made after availing ITC on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply. 2. No such certificate shall be required if ITC has not been availed on inputs used in manufacture of export goods.

   2. Thus, supplies against Advance Authorisation scheme cannot be used in manufacture and supply of nil rated or fully exempted supplies.

(ii) The definition of advance authorisation has been amended to remove the words "on pre import basis" therefrom. The amended definition reads as under:

   "Advance Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs for physical exports".

   [Notification No. 01/2019-CT, dated 15.01.2019]

Categories of supply of goods notified as Deemed Exports:

1. Supply of goods by a registered person against Advance Authorisation (AA)
2. Supply of capital goods by a registered person against Export Promotion Capital Goods (EPCG) Authorisation.
3. Supply of goods by a registered person to Export Oriented Unit (EOU)
4. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated 30th June, 2017 against Advance Authorisation.

Taxability of deemed exports:

All supplies notified as supply for deemed exports are subject to levy of taxes. However, the refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the recipient.

Filing of departure manifest shall be deemed to be the application filed for refund of tax paid on export of goods (vide Notification No. 74/2018-CT, dated 31.12.2018)

Amendments in provisions relating to grant of provisional refund [Rule 91]

Rule 91(2) provides that the proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund is due to the applicant in accordance with the provisions of section 54(6), shall make an order in prescribed form, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement.

With effect from 01.02.2019, a proviso is inserted in this sub-rule that the order issued under this sub-rule shall not be required to be revalidated by the proper officer.

Further, rule 91(3) stipulates that the proper officer shall issue a payment advice for the amount so sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

With effect from 01.02.2019, a new proviso has been inserted in this sub-rule also that the payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

[Notification No. 03/2019-CT, dated 29.01.2019]

Evidence to be produced by the supplier of deemed exports for claiming refund, notified:

Rule 89(2)(g) of the CGST Rules provides that where refund is on account of deemed exports, the refund application shall be accompanied by a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, to establish that a refund is due to the applicant.

Now, the Central Government has notified the following evidences which are required to be produced by the supplier of deemed export supplies for claiming refund, namely: -

(i) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation (AA) holder or Export Promotion Capital Goods (EPCG) Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said AA or EPCG Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient EOU that said deemed export supplies have been received by it.

(ii) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.

(iii) An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

[Notification No. 49/2017-CT, dated 18.10.2017]

No restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies

As per third proviso to rule 89(1) of the CGST Rules, in respect of supplies regarded as deemed exports, either recipient or supplier is allowed to file the refund application. However, the supplier can seek refund only in case where the recipient does not avail ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund. Otherwise, recipient of deemed export supplies can claim the refund.

In view of aforesaid provisions, it has been clarified that:

In a case where recipient of deemed export supplies claims the refund on such supplies, there is no restriction on such recipient in availing ITC of the tax paid on such supplies.

[Circular No. 147/03/2021 GST dated 12.03.2021]

TDS & TCS under GST 7

This Module Includes

TDS & TCS under GST

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

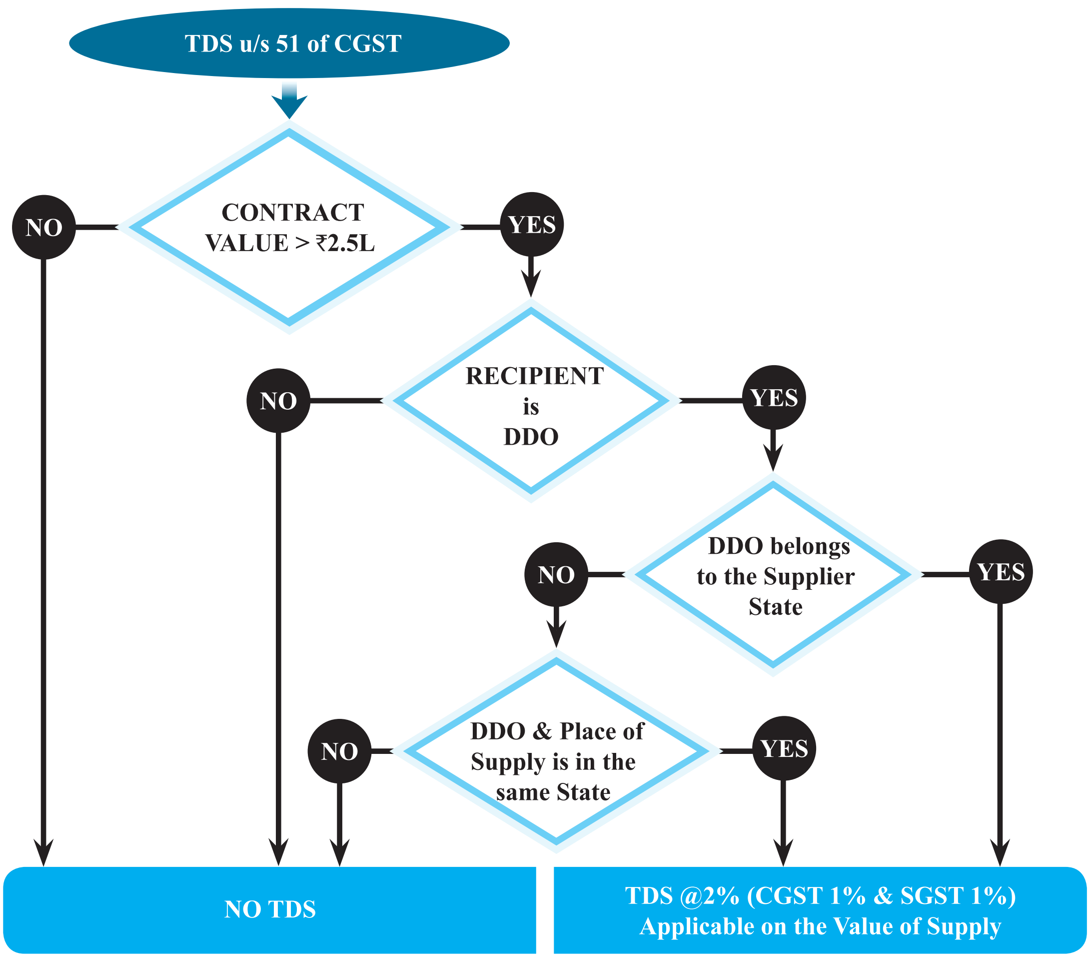
After studying this module, the students will be able to:

- Identify the point in time to deduct TDS and to collect TCS
- Explain transaction for which TDS and TCS is applicable or not.
- Understand practical issues relating to TDS &TCS such as computation and payment to Department.

TDS under GST

7.1

Under the GST regime, section 51 of the CGST Act, 2017 prescribes the authority and procedure for 'Tax Deduction at Source'. TDS is to be deducted at the rate of 2 % on payments made to the supplier of taxable goods and/or services, where the total value of such supply, under an individual contract, exceeds ₹.2,50,000. No deduction of Tax is required when the location of supplier and place of supply is different from the State of the registration of the recipient.



The concept of Tax Deducted at Source (TDS) is one of the ways to collect tax based on certain percentages on the amount payable by the receiver on goods/services under Section 51 of the CGST Act, 2017.

Who could be liable to deduct TDS under GST law?

(a) A department or an 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 fifty-one per cent or more participation by way of equity or control, to carry out any function; or

(e) A society established by the Central or any State Government or a Local Authority and the society is registered under the Societies Registration Act, 1860.

(f) Public sector undertakings.

The above category persons also called as Drawing and Disbursement Officers (DDO's) who are required to deduct tax in accordance with the provisions of the GST Laws.

Effective Date (w.e.f. 01.10.2018):

Now, it has been decided that the TDS provision would be made operative with effect from 01.10.2018. Notification No. 50/2018-CT, dated 13.09.2018 has already been issued in this regard by CBIC.

When tax deduction is required to be made in GST:

Tax is required to be deducted from the payment made/credited to a supplier, if the total value of supply under a contract in respect of supply of taxable goods or services or both, exceeds ₹2,50,000/- (Rupees two lakh and fifty thousand).

This value shall exclude the taxes leviable under GST (i.e. 'Central tax', 'State tax', 'UT tax', 'Integrated tax' & Cess).

Conditions for & amount of deduction:

Tax deduction is required if all the following conditions are satisfied –

(a) Total value of taxable supply > ₹2.5 Lakh under a single contract. This value shall exclude taxes & cess leviable under GST.

(b) If the contract is made for both taxable supply and exempted supply, deduction will be made if the total value of taxable supply in the contract > ₹2.5 Lakh. This value shall exclude taxes & cess leviable under GST.

(c) Where the location of the supplier and the place of supply are in the same State/UT, it is an intra-State supply and TDS @ 1% each under CGST Act and SGST/UTGST Act is to be deducted if the deductor is registered in that State or Union territory without legislature.

(d) Where the location of the supplier is in State A and the place of supply is in State or Union territory without legislature - B, it is an inter-State supply and TDS @ 2% under IGST Act is to be deducted if the deductor is registered in State or Union territory without legislature - B.

(e) Where the location of the supplier is in State A and the place of supply is in State or Union territory without legislature B, it is an inter-State supply and TDS @ 2% under IGST Act is to be deducted if the deductor is registered in State A.

(f) When advance is paid to a supplier on or after 01.10.2018 to a supplier for supply of taxable goods or services or both.

Example 1:

Situation (in all cases taxable contract value is over ₹2.5 lakh)	Location of supplier	Place of supply	State of registration of recipient	Type of supply	Tax	TDS deduction
Govt. of AP purchases taxable goods from a local supplier	Andhra Pradesh	Andhra Pradesh	Andhra Pradesh	Intra-State	CGST + SGST	Yes
Govt. of TN engages a contractor of TN for renovation of TN Bhavan in New Delhi	Tamil Nadu	New Delhi	Tamil Nadu	Inter-State	IGST	Yes
Govt. of Punjab purchases taxable goods from a supplier in New Delhi	New Delhi	Punjab	Punjab	Inter-State	IGST	Yes
Govt. of AP engages a contractor of New Delhi for renovation of Andhra Bhawan in New Delhi	New Delhi	New Delhi	Andhra Pradesh	Intra-State	CGST + SGST	No

When tax deduction is not required to be made under GST:

Tax deduction is not required in following situations:

(a) Total value of taxable supply ≤ ₹2.5 Lakh under a contract.

(b) Contract value > ₹2.5 Lakh for both taxable supply and exempted supply, but the value of taxable supply under the said contract ≤ ₹2.5 Lakh.

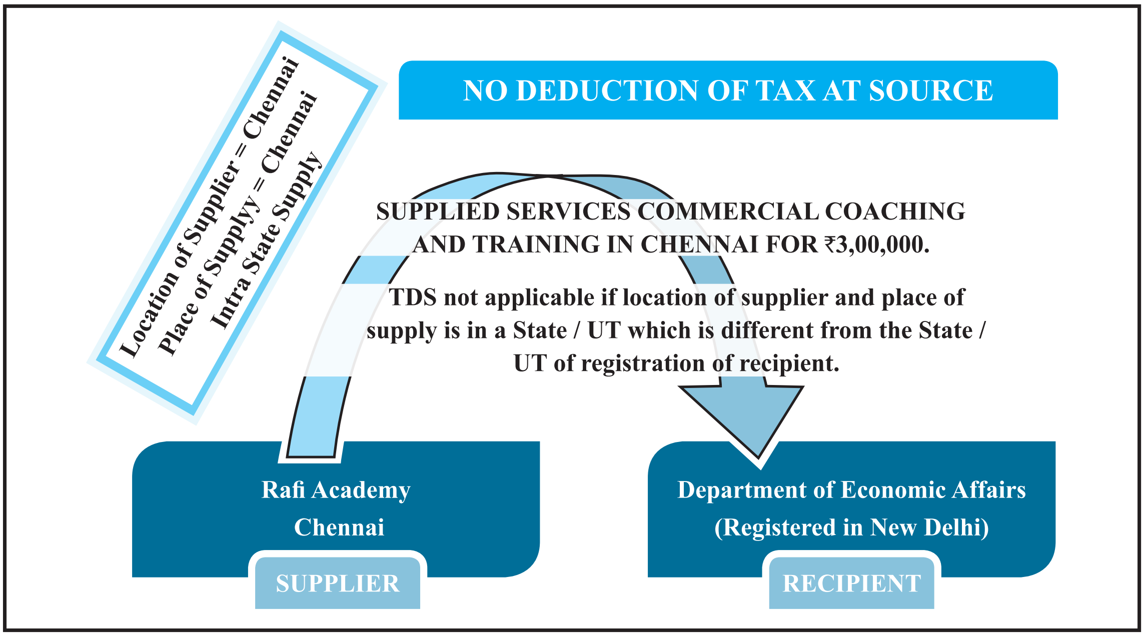
(c) Receipt of services which are exempted. For example, services exempted under notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended from time to time.

(d) Receipt of goods which are exempted. For example, goods exempted under notification No. 2/2017-Central Tax (Rate), dated 28.06.2017 as amended from time to time.

(e) Goods on which GST is not leviable. For example, petrol, diesel, petroleum crude, natural gas, aviation turbine fuel (ATF) and alcohol for human consumption.

(f) Where a supplier had issued an invoice for any sale of goods in respect of which tax was required to be deducted at source under the VAT Law before 01.07.2017, but where payment for such sale is made on or after 01.07.2017 [Section 142(13) refers].

(g) Where the location of the supplier and place of supply is in a State(s)/UT(s) which is different from the State/UT where the deductor is registered.



(h) All activities or transactions specified in Schedule III of the CGST/SGST Acts 2017, irrespective of the value.

(i) Where the payment relates to a tax invoice that has been issued before 01.10.2018.

(j) Where any amount was paid in advance prior to 01.10.2018 and the tax invoice has been issued on or after 01.10.18, to the extent of advance payment made before 01.10.2018.

(k) Where the tax is to be paid on reverse charge by the recipient i.e. the deductee.

(l) Where the payment is made to an unregistered supplier.

(m) Where the payment relates to "Cess" component.

Authorities under Ministry of Defence exempted from TDS provisions:

(Notification No. 57/2018-Central Tax, dated 23.10.2018)

- Central Government has amended the earlier **Notification No 50/ 2018-Central Tax, dated 13th September 2018** to exempt certain authorities of Ministry of Defence from the compliance of TDS provisions.
- CBIC has now notified that TDS provisions prescribed under section 51(1)(a) of CGST Act shall not be applicable to authorities under the Ministry of Defence other than those specified in the annexure to notification, w.e.f 1st October 2018.

Exemption from TDS -Supplies made by Government Departments and PSUs to other Government Departments and vice-versa.

Central Government vide **N. No. 73/2018-CT, dated 31st December, 2018** notified exemption to supplies made by Government Departments and PSUs to other Government Departments and vice-versa from TDS and thus insert the following proviso after the second proviso, namely:—

"Provided also that nothing in this notification **(with effect from 01.10.2018. Notification No. 50/2018-CT,**

dated 13.09.2018 TDS mandatory) shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act.".

Section 51(1) of the CGST Act, 2017, the Government may mandate—

(a) A department or establishment of the Central Govt., or State Govt., or

(b) Local authority; or

(c) Governmental agencies; or

(d) Such persons or category of persons as may be notified by the Government on the recommendations of the Council, to deduct TDS.

Illustrations of various situations requiring deduction of tax:

Situations/Contracts	Deduction required Yes/No	Remarks
Finance Department is making a payment of ₹3 Lakh to a supplier of 'printing & stationery'.	Yes	Where the total contract value of taxable supply is more than ₹2.5 Lakh deduction is mandatory.
Education Department is making payment of ₹5 Lakh to a supplier of 'printed books and printed or illustrated post cards' where payment for books is ₹2 Lakh and ₹3 Lakh is for other printed or illustrated post cards.	Yes, deduction is required in respect of payment of ₹3 Lakh only i.e. for payment in respect of taxable supply.	Books are exempted goods; no deduction is required in respect of supply of books. However, payment involving 'printed or illustrated post cards' is for supply of taxable goods and value of such supply is > ₹2.5 Lakh; so deduction is required.
Finance Department, is making payment of ₹1.5 Lakh to a supplier of 'car rental service'	See Remarks	Deduction is mandatory in case the total value of taxable supply under the contract > ₹2.5 Lakh irrespective of the amount paid. However, if the total value of supply under a contract is < ₹2.5 Lakh, deduction is not required.
Health Department executed a contract with a local supplier to supply "medical grade oxygen" of ₹2.6 Lakh (including GST) and is making full payment.	No	Total value of supply as per the contract is ₹2.6 Lakh (including GST). Tax rate is 12%. So, taxable value of supply (excluding GST) stands at ₹2.6L × 100/112 = ₹2.32 L < ₹2.5 Lakh Hence, deduction is not required.
Municipal Corporation of Kolkata purchases a heavy generator from a supplier in Delhi. Now, it is making payment of ₹5 Lakh and IGST @ 18% on ₹5 Lakh for such purchase.	Yes, deduction is required @ 2%	Deduction is required in case of inter-State supply and if the value of taxable supply under a contract exceeds ₹2.5 Lakh.

Situations/Contracts	Deduction required Yes/No	Remarks
Fisheries Department is making a payment of ₹10 Lakh to a contractor for supplying labour for digging a pond for the purpose of Fisheries.	No	This supply of service is exempt in terms of Sl. No. 3 of notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 and hence deduction is not required
Municipality is making payment of ₹5 Lakh to a supplier in respect of cleaning of drains where the value of supply of goods is not more than 25% of the value of composite supply.	No	This supply of service is exempt in terms of Sl. No. 3A of notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 as amended by notification no. 2/2018- Central Tax (Rate) dated 25.01.2018 and hence deduction is not required.
Government school is making a payment of ₹3 Lakh to a supplier for supply of cooked food as mid-day meal under a scheme sponsored by Central/State Government.	No	This supply of service is exempt in terms of Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended and hence deduction is not required.
Health Department is making payment of ₹10 Lakh to a supplier for supply of Hearing Aids.	No	This supply of goods is exempt in terms of Sl. No. 142 of Notification No. 2/2017-Central Tax (Rate), dated 28.06.2017 as amended and hence deduction is not required.

Valuation of supply for deduction of TDS and applicable rates with illustrations:

For the purpose of deduction of TDS, the value of supply shall exclude the taxes leviable under GST (i.e. 'Central tax', 'State tax', 'UT tax', 'Integrated tax' & Cess). Thus, no tax shall be deducted on 'Central tax', 'State tax', 'UT tax', 'Integrated tax' and cess component levied on supply. No deduction of tax and cess should also be made on the value of exempted goods or services or both even if the exempt and taxable supply are billed together.

Note: Suppose three separate contracts for supply are given to M/s ABC by the Health Department of the Government of West Bengal and the value of taxable supply is below ₹2.5 Lakh in case of each contract though their combined value is more than ₹2.5 Lakh; in such case no deduction is required to be made since value of taxable supply in neither of the contract exceeds ₹2.5 Lakh.

Rate of deduction of tax:

There are 4 types of taxes in GST-Integrated Tax (IGST), Central Tax (CGST) and State Tax (SGST)/Union territory Tax (UTGST). The deduction in case of intra-State supply (supply within a State) will be CGST & SGST (in case of Union territory without legislature, it will be CGST & UTGST), and the deduction in case of inter-State supply (supply from one State to another) will be IGST.

Rate of such deduction is @ 2% [i.e. 1% each on CGST & SGST/UTGST component] on the amount paid/credited in respect of intra-State supply & @ 2% [as IGST] on the amount paid/credited in respect of inter-State supply.

Illustration 1

Supplier X makes supply worth ₹11,800/- (inclusive of GST) to a Municipality where contract for supply is for ₹15,00,000/-. The rate of GST is 18%. Supplier and the deductor are in the same State.

Find the following:

(a) Whether TDS to be deducted by Municipality?

(b) Net payment to Supplier X after TDS?

Solution:

(a) Yes.

(b) Following payment is being made by this Municipality to X: ₹10,000 (value of Supply) + ₹900 (Central Tax) + ₹900 (State Tax).

Value of supply = ₹10,000 (₹11,800 × 100/118)

Tax to be deducted from payment: Central Tax = 1% on ₹10,000 = ₹100; State Tax = 1% on ₹10,000 = ₹100

Payment due to X after TDS as per GST provisions: ₹11600/- (i.e. ₹11,800 – 200)

Illustration 2

Supplier Y of Mumbai makes taxable supply worth ₹10,000 & exempted supply worth ₹20,000/- in an invoice/ bill of supply to Finance Deptt. of GoI located in New Delhi where contract for supply is for ₹6,00,000/- (₹2,60,000 for taxable supply including GST and ₹3,40,000 for exempted supply). The rate of GST is 18%. Following payment is being made by GoI to Y: ₹10,000 (value of taxable Supply) + ₹1,800 (Integrated Tax) + ₹20,000/- (value of exempted Supply). Whether any deduction of tax is required?

Solution:

No.

Value of taxable supply in the contract

= ₹2,60,000 (including GST)

Value of such contract excluding tax= 260000 × 100/118 = ₹2,20,340

Since, the value of taxable supply in the contract does not exceed ₹2.5 Lakh, deduction of tax is not required.

Illustration 3

Supplier ZA is a person registered under the composition scheme in Jharkhand who makes taxable supply worth ₹10,000 to a Local Authority of Jharkhand where value of taxable supply under the contract is for ₹2, 55,000.

Find the TDS if any?

Solution:

Following payment is being made by the Local Authority of Jharkhand to ZA:

₹10,000

Value of taxable supply under the contract is ₹2,55,000 which is more than ₹2.5 Lakh and hence deduction of tax is required.

TDS towards:

CGST = 1% on ₹10,000 = ₹100

SGST = 1% on ₹10,000 = ₹100

Total TDS = ₹200

Brief Diagrammatic presentation of the TDS provisions in GST:

Deductor is required to take registration [Sec 24(vi)]	Registration to be done through the common portal www.gst.gov.in by using PAN/TAN. It is in addition to normal registration.

Enters into Contract for purchase of taxable goods / services or both with any supplier

Total Value of taxable supply under a contract (excluding GST) > ₹ 2.5L ⟶ Deduct tax from payment

Total Value of taxable supply under a contract (excluding GST) ≤ ₹ 2.5L ⟶ Don't deduct tax from payment

Deduct tax while making/crediting payment to the supplier for:

Inter-State supply:	**IGST@2%**
Intra-State supply:	**SGST@1%**
	CGST@1%

Make payment of deducted tax to the Government within 10 days after the end of the month in which deduction was made.

Submit return in Form GSTR - 7 within 10 days after the end of the month in which deduction was made.

Furnish system generated TDS certificate in Form GSTR -7A to the deductee within 5 days of crediting payment of TDS to the Government i.e. furnishing Form GSTR-7

Details of tax deducted and tax collected to be made available to the deductee and collectee respectively on the common portal after filing of GSTR-7 and GSTR-8 respectively [Rule 66(2) of the CGST Rules] [Notification No. 31/2019-CT, dated 28.06.2019]

Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

As per Finance Act, 2020, Deductor of TDS need not issue certificate of TDS (Sec. 51):

Deductor of GST TDS is not required to issue any TDS certificate. It means the deductee can take credit of tax deducted on the basis of details of tax deducted and uploaded by the deductor under section 39(3) of CGST Act, 2017.

The details are available in the GSTR-7 return filed by the deductor will be auto populated in GSTR-2A of deductee. Hence, any further certificate is not required.

Late fee, Interest Penalty (Payable by the deductor) & Refund.

- **Fails to make payment tax: Both deducted tax and interest to be paid [Sec 50(1) read with Sec 51(6)]**
- **Fails to furnish FORM GSTR-7 within due date: Late fee payable (Section 47(1)): ₹ 100 + ₹ 100 per day (Maximum ₹ 5000) under CGST Act & SGST/UTGST Act separately**
- **Fails to furnish FORM GSTR-7A within due date: Late fee payable (Section 51(4)): ₹ 100 + ₹ 100 per day (Maximum ₹ 5000) under CGST Act & SGST/UTGST Act separately**
- **In such cases recovery may be initiated u/s 73 or 74**
- **If excess amount deducted: Refund may be claimed by the deductor / deductee as the case may be (if excess tax gets credited to the deductee then no refund shall be granted to the deductor).**

Illustration 4

X Ltd supplier has received two different purchase orders from Education Department a unit of State Government of Tamil Nadu specified under Section 51. The details of two purchase orders are—

(a) Purchase Order No. 001 for ₹3,00,000 (inclusive of tax ₹60,000)

(b) Purchase Order No. 002 for ₹3,50,000.

Person has received goods in the month of July 20XX. The bills are approved and payment is made on 15-8-20XX.

Find the following—

(a) Quantum of TDS and person liable to deduct TDS u/s 51.

(b) Last date of payment of TDS

(c) Date of furnishing certificate to supplier (i.e. Form GSTR-7A)

(d) Date of furnishing return (i.e. From GSTR-7)

(e) Penalty for late furnishing of Form GSTR-7A

Solution:

(a) TDS @2% on Purchase Order No. 002 = ₹7,000

(₹3,50,000 × 2%)

Person liable to deduct TDS is Education Department of T.N. State.

Note: Purchase Order No. 001, value after deducting tax ₹2,40,000 (i.e. ₹3,00,000 – 60,000) and not attract TDS provision u/s 51 of CGST Act, 2017

(b) Last date of payment of TDS is 10-09-20XX

(i.e. Specified person shall be paid to the credit of the appropriate Government within 10 days after the end of the month in which such deduction is made)

(c) Date of furnishing certificate to supplier (i.e. Form GSTR-7A)

Last date = 15-9-20XX

(i.e. certificate is required to be furnished within 5 days of crediting the amount to the appropriate Government)

(d) Date of furnishing return (i.e. From GSTR-7)

Last date of furnishing return = 10-09-20XX

(i.e. Submit return in Form GSTR-7 within 10 days after the end of the month in which deduction was made).

(e) Penalty for late furnishing of Form GSTR-7A is nil.

Illustration 5

Raj Departments, registered in Delhi, is engaged in supply of various goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017. It has provided the information relating to the supplies made, their contract values and the payment due against each of them in the month of October, 20XX as under:

Sl. No.	Particulars	Total contract value (inclusive of GST) (₹)	Payment due in October, 20XX exclusive of GST wherever applicable (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata	12,60,000	2,15,000
(ii)	Supply of car rental services to Municipal Corporation of Delhi	12,95,000	1,20,000
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand	5,90,000	25,000
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860	6,49,000	50,000
(v)	Interior decoration of Andhra Bhawan located in Delhi. Service contract is entered into with the Government of Andhra Pradesh (registered only in Andhra Pradesh).	12,39,000	12,39,000
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office [Out of total contract value of ₹ 9,72,000, contract value for supply of books (exempt from GST) is ₹7,00,000 and for supply of printed post cards (taxable under GST) is ₹ 2,72,000.]	9,72,000	50,000 for books & 20,000 for printed post cards
(vii)	Maintenance of streetlights in Municipal area of East Delhi* [The maintenance contract entered into with the Municipal Corporation of Delhi also involves replacement of defunct lights and other spares. However, the value of supply of goods is not more than 25% of the value of composite supply.] *an activity in relation to any function entrusted to a Municipality under article 243W of the Constitution	13,50,000	13,50,000

You are required to determine amount of tax, if any, to be deducted from each of the receivable given above assuming the rate of CGST, SGST and IGST as 9%, 9% and 18% respectively.

Will your answer be different, if Raj Departments is registered under composition scheme?

Solution:

Sl. No.	Particulars	Total contract value (₹)	Payment due (₹)	Tax to be deducted		
				CGST (₹)	SGST (₹)	IGST (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata	12,60,000	2,15,000	--		
(ii)	Supply of car rental services to Municipal Corporation of Delhi	12,95,000	1,20,000	--		

Sl. No.	Particulars	Total contract value (₹)	Payment due (₹)	Tax to be deducted		
				CGST (₹)	SGST (₹)	IGST (₹)
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand	5,90,000	25,000			500
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860	6,49,000	50,000	500	500	
(v)	Interior decoration of Andhra Bhawan located in Delhi	12,39,000	12,39,000	--		
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office	9,72,000		--		
(vii)	Maintenance of streetlights in Municipal area of East Delhi	13,50,000	13,50,000	--		

TCS under GST

7.2

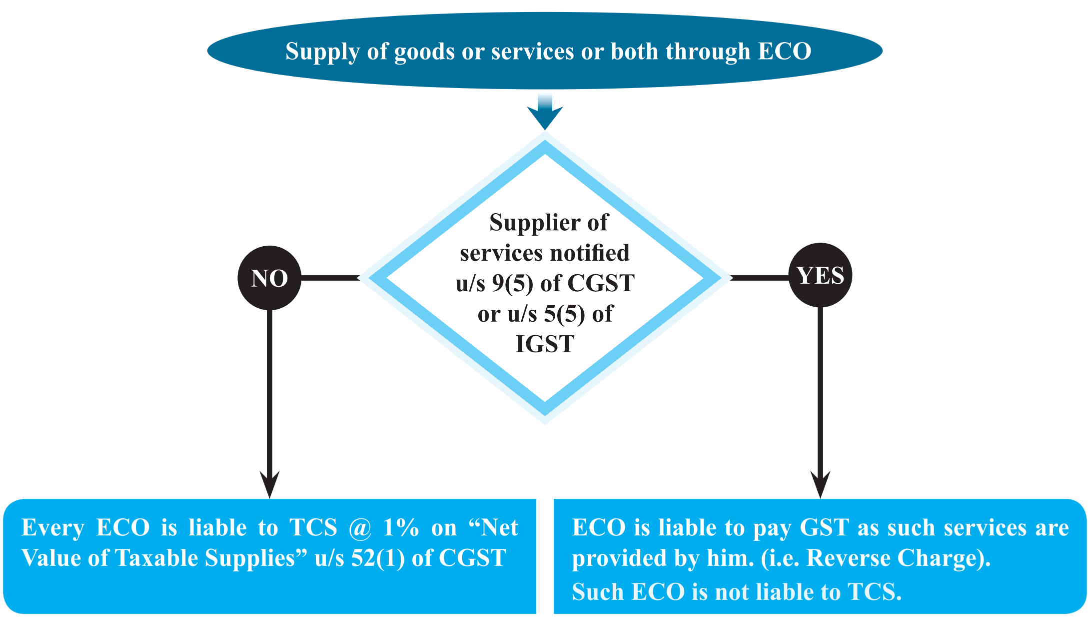
The obligation to collect tax at source has been placed upon Electronic Commerce Operators and no other class of suppliers. When an 'Electronic Commerce Operator' receives payment (which is consideration by another person for a supply made by someone else), he must collect TCS at the rate to be notified (this rate will not exceed 1%) and pay it to the Government. This rate is to be applied to the 'net value' as defined in the Explanation to Section 51(1) CGST. An agent is not covered by the TCS provisions.

'Electronic Commerce Operator' is defined as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

'Electronic Commerce' is defined as the supply of goods or services or both, including digital products over digital or electronic network.

Under section 52, an Electronic Commerce Operator is liable to collect TCS only if the supply has been made through such Operator by other suppliers and the consideration is collected by the Electronic Commerce Operator. Supplies made by the electronic commerce operator on its own account are not subject to TCS requirements.

Applicability of Tax Collected at Source (TCS):



Effective Date of TCS (w.e.f. 01.10.2018):

GST TCS Provisions Effective from 1 Oct 2018 (CGST Section 52): CBIC Notification No. 51/2018 Central Tax, dated 13 Sept 2018.

Important Terms under TCS:

1. **Tax Collector:**

   As per Section 52 of CGST Act every Electronic Commerce Operator shall deduct tax at source on the consideration collected by them where the supplies are made by other supplier through them.

   The power to collect the amount shall be without prejudice to any other mode of recovery from the operator.

2. **TCS Tax Rate:**

   Operator shall collect tax @ 1% of the net value of taxable supplies made through it by other suppliers.

3. **Net Value:**

   Net value has to be ascertained in terms of a formula as provided under sub-section (1) of Section 52 of the Act.

   Net Value of Taxable Supplies = [(Aggregate Value of Taxable Supplies of Goods + Services) – (Section 9(5) Services)]} – (Aggregate Value of Returned Taxable Supplies + Goods)]

4. **Time Period for TCS Tax Payment:**

   Sub-section (3) of Section 52 of the Act provides that Tax Collected at Source shall be paid to the Government within 10 days after the end of the month of collection.

5. **Manner of Payment:**

   Any amount Collects as TCS shall be paid by debiting the e-cash ledger and electronic liability register shall be credited accordingly.

6. **Monthly Statement:**

   The operator who collects tax shall furnish a statement, electronically, containing all the details regarding:

   (a) Outward supplies of Goods and Services

   (b) Return of goods and services

   In **Form GSTR-8** within 10 days from the end of the month in terms of sub-rule (1) of Rule 67 of the rules read with sub-section (4) of Section 52 of the act.

Details of tax deducted and tax collected to be made available to the deductee and collectee respectively on the common portal after filing of GSTR-7 and GSTR-8 respectively [Rule 66(2) of the CGST Rules] [Notification No. 31/2019-CT, dated 28.06.2019]

Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in

GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

7. Annual Statement:

The operator who collects tax at source shall furnish an annual Statement, electronically, containing all the details, under sub-section (3) of Section 52 of the Act, regarding:

(a) Outward supplies of Goods and Services

(b) Return of goods and services during the Financial Year,

Before 31st December following the end of such Financial Year.

w.e.f. 1-4-2019:

"Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner."; the following provisos shall be inserted, namely:— "Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.".

8. Error in Monthly Statement:

In case any errors or omissions are detected in the statement by the operator other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities then he shall rectify the same in the statement of month of such discovery, subject to Payment of interest under sub-section (6) of Section 52 of the Act.

9. Exception to Rectification:

No rectification will be allowed—

(a) After the due date of furnishing the statement for the month of September following the end of Financial Year, or

(b) Actual date of Furnishing the Annual Statement, whichever is earlier.

10. How to Claim TCS Credit:

Supplier of goods and services can claim the amount of credit in their e-Cash Ledger as collected and reflected by the Operator in Statement under sub-section (7) of Section 52 of the Act.

11. Matching:

The Supplies shall match with the corresponding outward supplies of the registered Supplier as the details furnished by the Operator in GSTR-8 shall be made available electronically to each of the suppliers in Part C of Form GSTR-2A on the Common Portal after the due date of filing of Form GSTR-8 in terms of Rule (2) of Rule 67 read with sub-section (8) of Section 52 of the Act.

12. Not Matching:

When the Supplies under sub-section (4) do not match with the corresponding supplies of the supplier then, such discrepancy shall be communicated to both the persons in terms of sub-section (9) of Section 52 of the Act.

13. Furnishing Details:

Operator upon whom a notice has been served needs to furnish the details within 15 days from the date of Service of such Notice under sub-section (13) of Section 52 of the Act.

Section 122 of the Act states that any person committing the offences as stated under the section, shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

CBIC's 29 FAQs on GST TCS by E-commerce Operators u/s 52 of CGST Act, 2017

CBIC has issued a set of 29 Frequently Asked Questions (FAQs) along with their Answers on issues relating to 'GST TCS' by 'E-commerce Operators' under Section 52 of CGST Act, 2017, as under:

CBIC's 29 FAQs on GST TCS by E-commerce Operators u/s 52 of CGST Act, 2017 (dt. 28 Sept. 2017).

Sl. No.	Question	Answer
1	What is Electronic Commerce?	As per Section 2(44) of the CGST Act, 2017, electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network.
2	Who is an e-commerce operator?	As per Section 2(45) of the CGST Act, 2017, electronic Commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
3	What is Tax Collection at Source (TCS)?	As per Section 52 of the CGST Act, 2017 the e-commerce operator, not being an agent, is required to collect an amount calculated at the rate not exceeding one per cent., as notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such operator. The amount so collected is called as Tax Collection at Source (TCS).
4	What is the rate of TCS notified by Government?	Rate of TCS is 0.5% under each Act (i.e. the CGST Act, 2017 and the respective SGST Act/UTGST Act respectively) and the same is 1% under the IGST Act, 2017. Notifications No. 52/2018-Central Tax and 02/2018-Integrated Tax both dated 20th September 2018 have been issued in this regard. Similar notifications have been issued by the respective State Governments also.
5	Is it mandatory for e-commerce operator to obtain registration?	Yes. As per section 24(x) of the CGST Act, 2017, every electronic commerce operator has to obtain compulsory registration irrespective of the value of supply made by him.

Sl. No.	Question	Answer
6	Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption?	As per Section 24(ix) of the CGST Act, 2017, every person supplying goods through an e-commerce operator shall be mandatorily required to register irrespective of the value of supply made by him. However, a person supplying services, other than supplier of services under section 9(5) of the CGST Act, 2017, through an e-commerce platform are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lakhs (or INR 10 lakhs in case of specified special category States) in a financial year. Government has issued the notification No. 65/2017-Central Tax dated 15th November, 2017 in this regard.
7	Whether e-Commerce operator is required to obtain registration in every State/ UT in which suppliers listed on their e-commerce platform are located to undertake the necessary compliance as mandated under the law?	As per the extant law, registration for TCS would be required in each State/ UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In order to facilitate the obtaining of registration in each State/UT, the e-commerce operator may declare the Head Office as its place of business for obtaining registration in that State/UT where it does not have physical presence.
8	Foreign e-commerce operator does not have place of business in India since they operate from outside. But their supplier and customers are located in India. So, in this scenario will the TCS provision be applicable to such e-commerce operator and if yes, how will foreign e-commerce operator obtain registration?	Where registered supplier is supplying goods or services through a foreign e-commerce operator to a customer in India, such foreign e-commerce operator would be liable to collect TCS on such supply and would be required to obtain registration in each State/UT. If the foreign e-commerce operator does not have physical presence in a particular State / UT, he may appoint an agent on his behalf.
9	Is it necessary for eCommerce operators who are already registered under GST and have GSTIN, to have separate registration for TCS as well?	E-Commerce operator has to obtain separate registration for TCS irrespective of the fact whether e-Commerce operator is already registered under GST as a supplier or otherwise and has GSTIN.

Sl. No.	Question	Answer
10	What is meant by "net value of taxable supplies"?	The "net value of taxable supplies" means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by a registered supplier through such operator reduced by the aggregate value of taxable supplies returned to such supplier during the said month
11	Whether value of net taxable supplies to be calculated at gross level or at GSTIN level?	The value of net taxable supplies is calculated at GSTIN level.
12	Is every e-commerce operator required to collect tax on behalf of actual supplier?	Yes, every e-commerce operator is required to collect tax where the supplier is supplying goods or services through e-commerce operator and consideration with respect to the supply is to be collected by the said e-commerce operator.
13	At what time should the e-commerce operator collect TCS?	TCS is to be collected once supply has been made through the e-commerce operator and where the business model is that the consideration is to be collected by the ecommerce operator irrespective of the actual collection of the consideration. For example, if the supply has taken place through the ecommerce operator on 30th October, 2018 but the consideration for the same has been collected in the month of November, 2018, then TCS for such supply has to be collected and reported in the statement for the month of October, 2018.
14	Whether TCS to be collected on exempt supplies?	No, TCS is not required to be collected on exempt supplies.
15	Whether TCS to be collected on supplies on which the recipient is required to pay tax on reverse charge basis?	No, TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.
16	Whether TCS is to be collected in respect of supplies made by the composition taxpayer?	As per section 10(2)(d) of the CGST Act, 2017, a composition taxpayer cannot make supplies through e-commerce operator. Thus, question of collecting TCS in respect of supplies made by the composition taxpayer does not arise.
17	Whether TCS is to be collected on import of goods or services or both?	TCS is not liable to be collected on any supplies on which the recipient is required to pay tax on reverse charge basis. As far as import of goods is concerned since same would fall within the domain of Customs Act, 1962, it would be outside the purview of TCS. Thus, TCS is not liable to be collected on import of goods or services

Sl. No.	Question	Answer
18	Is there any exemption on Gold, owing to the fact that rate of GST is only 3% and TCS on it would erode the margin for the seller?	No such exemption from TCS has been granted.
19	Whether payment of TCS through Input Tax Credit of operator for depositing TCS as per Section 52(3) of the CGST Act, 2017 is allowed?	No, payment of TCS is not allowed through Input Tax Credit of e-Commerce operator
20	It is very common that customers of ecommerce companies return goods. How these sales returns are going to be adjusted?	An e-commerce company is required to collect tax only on the net value of taxable supplies made through it. In other words, value of the supplies which are returned (supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e. on GSTIN basis). In other words, if two suppliers "A" and "B" are making supplies through an ecommerce operator, the "net value of taxable supplies" would be calculated separately in respect of "A" and "B". If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case.
21	Under Section 52, ecommerce operator collects TCS at the net of returns. Sometimes sales return is more than sales and hence can negative amount be reported?	Negative amount cannot be declared. There will be no impact in next tax period also. In other words, if returns are more than the supplies made during any tax period, the same would be ignored in current as well as future tax period(s).
22	What is the time within which such TCS is to be remitted by the e-commerce operator to the Government account?	The amount collected by the operator is to be paid to appropriate government within 10 days after the end of the month in which the said amount was so collected.
23	How can actual suppliers claim credit of TCS?	The amount of TCS deposited by the operator with the appropriate Government will be reflected in the electronic cash ledger of the actual registered supplier (on whose account such collection has been made) on the basis of the statement filed by the operator in FORM GSTR-8 in terms of Rule 67 of the CGST Rules, 2017. The said credit can be used at the time of discharge of tax liability by the actual supplier.

Sl. No.	Question	Answer
24	How is TCS to be credited in cash ledger? Whether the refund of such TCS credit lying in the ledger would be allowed at par with the refund provisions contained in section 54(1) of the CGST Act, 2017?	TCS collected is to be deposited by the ecommerce operator separately under the respective tax head (i.e. Central tax/ State tax/Union territory tax/Integrated tax). Based on the statement (FORM GSTR-8) filed by the ecommerce operator, the same would be credited to the electronic cash ledger of the actual supplier in the respective tax head. If the supplier is not able to use the amount lying in the said cash ledger, the actual supplier may claim refund of the excess balance lying in his electronic cash ledger in accordance with the provisions contained in section 54(1) of the CGST Act, 2017.
25	Is the e-commerce operator required to submit any statement? What are the details that are required to be submitted in the statement?	Yes, every operator is required to furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected by it as TCS during a month within 10 days after the end of such month in FORM GSTR-8. The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected in FORM GSTR-9B
26	Whether interest would be applicable on non-collection of TCS?	As per section 52(6) of the CGST Act, 2017, interest is applicable on omission as well in case of incorrect particulars noticed. In such a case, interest is applicable since it is a case of omission. Further penalty under section 122(vi) of the CGST Act, 2017 would also be leviable
27	What will be the place of supply for ecommerce operator for recharge of talk time of the Telecom Operator/recharge of DTH/in relation to convenience fee charged from the customers on booking of air tickets, rail supplied through its online platform?	As per section 12(11) of the IGST Act, 2017, the address on record of the customer with the supplier of services is the place of supply
28	Under multiple ecommerce model, Customer books a Hotel via ECO-1 who in turn is integrated with ECO-2 who has agreement with the hotelier. In this case, ECO-1 will not have any GST information of the hotelier. Under such	TCS is to be collected by that e-Commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.

Sl. No.	Question	Answer
	circumstances, which e-commerce operator should be liable to collect TCS?	
29	Are there any additional powers available to tax officers under this Act?	As per section 52(12) of the CGST Act, 2017, any authority not below the rank of Deputy Commissioner may serve a notice requiring the operator to furnish the details of their supplies of goods or services or both as well as stock of goods held by the suppliers within 15 working days of the date of service of such notice

Illustration 6

Peter England is a trader who sells his ready-made clothes online on Amazon India. He receives an order for ₹12,000 in the month of July 2022, inclusive of tax and commission 2%. Amazon charges a commission of ₹200. Applicable GST ₹1,800. Find the TCS in the hands of Amazon.

Note: there are sales returns of Peter England products from other customer for ₹2,000 in the month of July 2022.

Solution:

Amazon would therefore need to deduct 1% tax (TCS) on the amount, excluding the money paid as commission and GST. Amazon would thus be deducting tax for ₹80 (1% of ₹8000).

Working note:		₹
Supply of goods	=	12,000
Less: sales returns	=	(2,000)
Balance	=	10,000
Less: GST 18%	=	(1,800)
Less: Commission	=	(200)
Net value of taxable supplies	=	8,000
Tax Collected at Source 1%	=	80

Illustration 7:

Flipkart Online Services Pvt. Ltd an Electronic Commerce Operator (ECO) has supplied product 'A' from supplier Sri Ram Ltd to various customers aggregating to ₹50 lakhs for the month of July 2022. Further there are sales returns of product 'A' sold in the month of May, June and July 2022 amounting to ₹20 lakhs during the month of July 2022.

Find the following:

(a) Who is liable to pay GST and TCS?

(b) Amount of TCS.

(c) Due date of deposit of TCS?

Solution:

(a) GST is liable to pay by Sri Ram Ltd. (i.e. supplier of Goods). TCS is required to deposit into Government account by Electronic Commerce Operator.

(b) TCS = ₹30,000 [(₹50 lakhs – 20 lakhs) x 1%]

(c) Due date of deposit of TCS = 10th Aug 2017

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. What is the rate of TDS?
   (a) 1%
   (b) 4%
   (c) 5%
   (d) 18%

2. On what value TDS needs to be deducted?
   (a) Contract value
   (b) Contract value excluding tax
   (c) Invoice value including tax
   (d) Invoice value excluding tax

3. What is the due date for payment of TDS?
   (a) Last day of the month to which payment relates
   (b) Within 10 days of the subsequent month
   (c) Within 20 days of the subsequent month
   (d) Within 15 days of the subsequent month

4. What is the due date for issue of TDS Certificate?
   (a) The date of payment of TDS
   (b) Within 10 days from the date of payment of TDS
   (c) Within 20 days from the date of payment of TDS
   (d) Within 05 days from the date of payment of TDS

5. Every registered person required to deduct tax at source under section 51 shall furnish return, in ……………, for the month in which such deductions have been made within 10 days after the end of such month.
   (a) Form GSTR-5
   (b) Form GSTR-6
   (c) Form GSTR-7
   (d) Form GSTR-8

6. What is e-commerce?
   (a) Supply of goods and/or services on an electronic platform for commerce other than the e-commerce operator himself
   (b) Supply of goods and/or services on an electronic platform for commerce including the e-commerce operator
   (c) Supply of goods and/or services on an electronic platform for commerce

(d) Supply of goods or services or both including digital products over digital or electronic network.

7. A person who _____ digital or electronic facility or platform for electronic commerce shall be considered as an e-commerce operator
   (a) Owns
   (b) Operates
   (c) Manages
   (d) Any of the above

8. At what rate should the tax be collected at source?
   (a) Not exceeding 0.5%
   (b) Not exceeding 1%
   (c) Not exceeding 2%
   (d) Not exceeding 3%

9. Is there any threshold limit for applying the provisions of Section 52 for collecting tax at source?
   (a) TCS applies if net value of taxable supplies exceeds ₹10,00,000/-
   (b) TCS applies if net value of taxable supplies exceeds ₹15,00,000/-
   (c) TCS applies if net value of taxable supplies exceeds ₹20,00,000/-
   (d) No such limit prescribed, tax should always be collected at source if the conditions envisaged u/s 52 are met.

10. When will Section 52 apply? Or when should the e-commerce operator be liable to collect tax at source?
    (a) E-commerce operator shall collect tax at source in respect of all supplies made through it.
    (b) E-commerce operator should collect tax at source only if the supplier of the goods and is registered
    (c) E-commerce operator shall collect tax at source on the net taxable value of supplies made through it by other supplier where the consideration with respect to such supply is to be collected by the E-commerce operator.
    (d) E-commerce operator shall collect tax at source only if the net value of taxable supplies exceeds the prescribed threshold limit.

11. Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in ……………………., containing details of supplies effected through such operator and the amount of tax collected as required under section 52(1) of the CGST Act.
    (a) Form GSTR-5
    (b) Form GSTR-6
    (c) Form GSTR-7
    (d) Form GSTR-8

12. When should the e-commerce operator collect tax at source?
    (a) When he collects the consideration on behalf of the supplier in respect of such supply
    (b) On the date when the other supplier makes supplies through operator
    (c) Day on which the operator remits the consideration to the supplier

(d) Option (a) or (b) whichever is earlier

(e) Option (a) or (b) whichever is later

13. When should the e-commerce operator remit the amount of TCS to government and file the necessary returns with the government?

    (a) Within 10 days after the end of the month in which such amount was collected

    (b) Within 10 days after the end of the month in which such amount was collected, but no time limit for filing the return

    (c) Within 10 days after the end of the month in which such amount was collected, but no time limit for paying the money

    (d) No time limit for both

14. When can a supplier making supplies through E-commerce operator opt not to register?

    (a) Always

    (b) When the e-commerce operator is not required to collect tax at source u/s 52

    (c) When the supplier doesn't cross the threshold, limit specified under section 22.

    (d) Option (b) and (c), cumulatively fulfilled

15. When an e-commerce operator is required to register under GST?

    (a) When he is required to collect tax at source u/s 52

    (b) When his aggregate turnover exceeds the threshold limit

    (c) It is mandatory to register irrespective of the threshold limit.

    (d) When he is required to collect tax at source u/s 52 and his aggregate turnover exceeds the threshold limit.

Answer:

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
a	d	b	d	c	d	d	c	d	c
11.	12.	13.	14.	15.					
d	a	a	d	d					

E-Way Bill 8

This Module Includes

E-Way Bill

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Identify the persons who is required to issue E-Way bill
- Explain importance of E-Way bill
- Understand blocking of E-Way bill
- Identify cases where E-Way bill is not required to issue
- Explain application of E-Way bill with the help of practical issues.

Introduction

8.1

E-Way Bill is an electronic way bill for movement of goods which can be generated on the E-Way Bill Portal. Transport of goods of more than ₹50,000 (Single Invoice/bill/delivery challan) in value in a vehicle cannot be made by a registered person without an E-Way bill.

Alternatively, E-Way bill can also be generated or cancelled through SMS, Android App and by Site-to-Site Integration (through Application Programming Interface (API).

When an E-Way bill is generated a unique E-Way bill number (EBN) is allocated and is available to the supplier, recipient, and the transporter.

In case of 'Bill To' & 'Ship to', now consignor (seller) or consignee (buyer) either of them can generate E-Way bill.

8.1.1 When Should E-Way Bill be issued:

E-Way bill will be generated when there is a movement of goods in a vehicle/conveyance of value more than ₹50,000 (either each Invoice or in (aggregate of all Invoices in a vehicle/Conveyance) –

- In relation to a 'supply'
- For reasons other than a 'supply' (say a return)
- Due to inward 'supply' from an unregistered person

For this purpose, a supply may be either of the following:

- A supply made for a consideration (payment) in the course of business
- A supply made for a consideration (payment) which may not be in the course of business
- A supply without consideration (without payment) In simpler terms, the term 'supply' usually means a:
    1. Sale – sale of goods and payment made
    2. Transfer – branch transfers for instance
    3. Barter/Exchange – where the payment is by goods instead of in money

Therefore, E-Way Bills must be generated on the common portal for all these types of movements.

For certain specified Goods, the E-Way bill needs to be generated mandatorily even if the Value of the consignment of Goods is less than ₹50,000:

1. Inter-State movement of Goods by the Principal to the Job-worker by Principal/ registered Job-worker,
2. Inter-State Transport of Handicraft goods by a dealer exempted from GST registration.

8.1.2 Who should Generate an E-Way Bill:

1. **Registered Person** – E-Way bill must be generated when there is a movement of goods of more than ₹50,000 in value to or from a Registered Person. A Registered person or the transporter may choose to generate and carry E-Way bill even if the value of goods is less than ₹50,000.
2. **Unregistered Persons** – Unregistered persons are also required to generate E-Way Bill. However, where a supply is made by an unregistered person to a registered person, the receiver will have to ensure all the compliances are met as if they were the supplier.
3. **Transporter** – Transporters carrying goods by road, air, rail, etc. also need to generate E-Way Bill if the supplier has not generated an E-Way Bill.

E-Way Bill is generated electronically in Form GST EWB-01 on the common portal (i.e. www.ewaybillgst.gov.in)

Latest update as on 23rd March 2018:

Until a date yet to be notified, the transporters need not generate the E-Way bill (as Form EWB-01 or EWB-02) where all the consignments in the conveyance:

- Individually (single Document**) is less than or equal to ₹50,000 BUT
- In Aggregate (all documents** put together) exceeds ₹50,000

**Document means Tax Invoice/Delivery challan/Bill of supply

Consolidated E-Way Bill

8.2

Where the consignor/consignee has not generated the E-Way bill in Form **GST EWB-01** and the aggregate of the consignment value of goods carried in the conveyance is more than ₹50,000, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the E-Way bill in Form **GST EWB-01** on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated E-Way bill in **Form GST EWB-02** on the common portal prior to the movement of goods [Rule 138(7)].

However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of Form GST EWB-01 may be furnished by such e-commerce operator or courier agency [Proviso to rule 138(7)].

Thus, a consolidated E-Way bill is generated when the transporter is carrying multiple consignments in a single vehicle. Consolidated E-Way bill allows the transporter to carry a single document, instead of a separate document for each consignment in a conveyance.

Consolidated EWB is like a trip sheet and it contains details of different E-Way bills in respect of various consignments being transported in one vehicle and these E-Way bills will have different validity periods. Hence, Consolidated EWB does not have any independent validity period. Further, individual consignment specified in the Consolidated EWB should reach the destination as per the validity period of the individual EWB.

Cancellation of E-Way Bill 8.3

Where an E-Way bill has been generated, but goods are either not transported or are not transported as per the details furnished in the E-Way bill, the E-Way bill may be cancelled electronically on the common portal within 24 hours of generation of the E-Way bill [Rule 138(9)].

However, an E-Way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B [First proviso to rule 138(9)].

Further, unique number generated is valid for a period of 15 days for updation of Part B [Second proviso to rule 138(9)].

Validity Period

8.4

8.4.1 Validity period of E-Way bill/consolidated E-Way bill [Rule 138(10)] [Notification No. 94/2020-CT, dated 22-12-2020]

Earlier one day was permitted for a distance up to 100 km under e way bill provision. Now one day was permitted for a distance up to 200 km. This means that two-day validity granted to cover a distance up to 200 km, is reduced to one day.

Sl. No.	Distance within country	Validity period from relevant date
1.	w.e.f. 1-1-2021 upto 200 km	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
2.	w.e.f. 1-1-2021 upto 200 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
3.	Upto 20 km	One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
4.	For every 20 km or part thereof thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

The sub-rule (10) has been further amended to lay down that the validity of the E-Way bill can be extended within eight hours from the time of its expiry.

***Relevant date** means the date on which the E-Way bill has been generated and the period of validity shall be counted from the time at which the E-Way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of E-Way bill.

****Over dimensional cargo** means a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988.

Example 1:

A registered person has to transport goods from its warehouse to its depot located at a distance of 500 km. In the given case, if E-Way bill was generated before 01.01.2021, it would have been valid for 5 days. However, an E-Way bill generated on or after 01.01.2021 would be valid for only 3 days.

Extension of validity period:

Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an E-Way bill for certain categories of goods as may be specified therein.

Where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the E-Way bill, the transporter may extend the validity period after updating the details in Part B, if required.

Validity of the E-Way bill for the first day ends by the midnight of the following day.

Example 2

E-Way bill generated on April 1, 2019 at 6pm for transport of cargo which will cover a distance of 90 kms. This E-Way bill will be valid for one day (till mid night of April 2, 2019);

Example 3

E-Way bill generated on April 1, 2019 at 5pm for transport of cargo which will cover a distance of 190 kms. This E-Way bill will be valid for two days.

2. Validity of the E-Way bill commences upon the updation of vehicle number for the first time by the supplier/recipient or by the transporter in Part B of the E-Way bill.

8.4.2 Commencement of validity period:

Supplier handed over the goods to the transporter on April 1, 2019. Part A of the E-Way bill was submitted by the supplier on April 1, 2019 after updating the GSTIN of the transporter. Transporter loaded the goods on the truck on April 3, 2019 and completed Part B of the E-Way bill by updating the vehicle number. In this case, the validity of the E-Way bill commences from April 3, 2019.

Miscellaneous Provisions 8.5

8.5.1 Restriction on furnishing of information in Part A of Form GST EWB-01

No person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in Part A of Form GST EWB-01 in respect of following registered persons, whether as a supplier or a recipient:

(i) A person paying tax under composition scheme or under Notification No. 2/2019-CT(R), dated 07.03.2019 has not furnished the statement for payment of self-assessed tax for 2 consecutive quarters, or

(ii) A person paying tax under regular scheme has not furnished the returns for 2 consecutive months, or

(iii) A person paying tax under regular scheme has not furnished GSTR-1 (Statement of outward supplies) for any 2 months or quarters, as the case may be.

However, Commissioner (jurisdictional commissioner) may, on receipt of an application from a registered person in prescribed form, on sufficient cause being shown and for reasons to be recorded in writing, by order, in prescribed form allow furnishing of the said information in Part A of Form GST EWB-01, subject to prescribed conditions and restrictions. An order rejecting said request shall not be passed without giving the said person a reasonable opportunity of being heard. The permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

[Notification No. 74/2018-CT, dated 31.12.2018 read with Notification No. 36/2019-CT, dated 20.08.2019 and Notification No. 75/ 2019-CT, dated 26.12.2019]

"Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in **FORM GSTR-3B** or the statement of outward supplies in **FORM GSTR-1** or the statement in **FORM GST CMP-08**, as the case may be, has not been furnished for the period February, 2020 to August, 2020" (vide Notification No. 79/2020-Central Tax, dated 15th October, 2020) E-Way bill generated on or before 24-3-2020 (whose validity has expired on or after 20-3-2020 - validity extended till 30-6-2020 (vide NT No. 47/2020 CT dated 9-6-2020.

8.5.2 Blocking of E-Way Bill (EWB) generation facility for taxpayers with AATO over ₹5 Cr., after 15th October, 2020

- In terms of Rule 138E(b) of the CGST Rules, 2017, the E Way Bill generation facility of a person is liable to be restricted, in case the person fails to file their GSTR-3B returns, for a consecutive period of two months or more.
- The GST Council has decided that this provision will be made applicable for the taxpayers whose Aggregate Annual Turn Over (AATO, PAN based) is more than ₹5 Crores.
- Thus, if the GSTIN associated with the respective PAN (with AATO over ₹5 Cr.) has failed to file their

GSTR-3B Return for 02 or more tax periods, up to the month of tax period of August, 2020, their EWB generation facility will be blocked on the EWB Portal. Please note that the EWB generation facility for such GSTINs (whether as consignor or consignee or by transporter) will be blocked on EWB Portal after 15th October, 2020.

- To avail continuous EWB generation facility on EWB Portal, you are therefore advised to file your pending GSTR 3B returns immediately.
- Please ignore this update if:

  You are not registered on the EWB portal; or

  You have already filed your GSTR-3B Return for August, 2020; or

  Your AATO (PAN based) is below ₹5 Cr.

8.5.3 Blocking of E-Way bill generation facility, extended to a person, whose registration has been suspended [Rule 138E]

Blocking of E-Waybill generation facility means disabling a taxpayer from generating the E-Way bill. A user will not be able to generate E-Way bill for a GSTIN if the said GSTIN is not eligible for E-Way bill generation as per rule 138E of the CGST Rules. The GSTINs of such blocked taxpayers cannot be used to generate the E-Way bills either as consignor or consignee.

Clause (b) of rule 138E blocks the E-Way bill generation facility of a person paying tax under regular scheme if he has not furnished the returns for a consecutive period of 2 months.

Said clause has been amended to **replace 2 months with 2 tax periods**.

Accordingly, henceforth, E-Way bill generation facility of a person paying tax under regular scheme will be blocked if he has not furnished the returns for a consecutive period of 2 tax periods.

Further, a new clause (d) has been added to rule 138E to block the E-Way bill generation facility of a person, whose registration has been suspended under rule 21A pending the completion of the proceedings for cancellation of registration.

[Notification No. 94/2020-CT, dated 22.12.2020]

E-Way bill generation facility to be blocked only in respect of outward movement of goods, by the defaulting person (Rule 138E of CGST Rules, 2017):

Blocking of GSTIN for E-Way bill generation would only be for the defaulting supplier GSTIN and not for the defaulting Recipient or Transporter GSTIN. Suspended GSTIN cannot generate the E-Way bill as supplier. However, the suspended GSTIN can get the E-Way bill generated as recipient or as transporter.

Example 4

M/s Potat & Co., a registered person under GST and paying tax monthly basis (located Mumbai). M/s Potat & Co., has not filed Form GSTR-1 for last 2 months. M/s Gada & Co., a regular return filer (located Madhya Pradesh) wants to generate an E-Way bill for goods to be supplied to M/s Potat & Co. As per earlier position of law, M/s Gada & Co., would not have been able to generate E-Way bill with M/s Potat & Co. GSTIN.

In terms of the amended position of law, there will be no more restriction in generating E-Way Bill as M/s Gada & Co., who is making outward movement of goods is a regular return filer.

M/s Potat & Co, wants to generate an E-Way bill in repsect of an outward supply of goods to M/s Roshan & Co.

E-Way bill generation is blocked in this case as it's an outward movement of goods of M/s Potat & Co., who has not filed GSTR-1 for past 2 months.

(Notificaiton No. 15/2021 CT dated 18.05.2021)

8.5.4 Way bill is Not Required

In the following cases it is not necessary to generate E-Way Bill:

1. The mode of transport is non-motor vehicle
2. Goods transported from Customs port, airport, air cargo complex or land customs station to Inland Container Depot (ICD) or Container Freight Station (CFS) for clearance by Customs.
3. Goods transported under Customs supervision or under customs seal
4. Goods transported under Customs Bond from ICD to Customs port or from one custom station to another.
5. Transit cargo transported to or from Nepal or Bhutan
6. Movement of goods caused by defence formation under Ministry of defence as a consignor or consignee
7. Empty Cargo containers are being transported
8. Consignor transporting goods to or from between place of business and a weighbridge for weighment at a distance of 20 kms, accompanied by a Delivery challan.
9. Goods being transported by rail where the Consignor of goods is the Central Government, State Governments or a local authority.
10. Goods specified as exempt from E-Way bill requirements in the respective State/Union territory GST Rules.
11. Transport of certain specified goods- Includes the list of exempt supply of goods, Annexure to Rule 138(14), goods treated as no supply as per Schedule III, Certain schedule to Central tax Rate notifications.
12. Where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply (w.e.f. 16-6-2018).

Note (1): Part B of E-Way Bill is not required to be filled where the distance between the consigner or consignee and the transporter is less than 50 Kms and transport is within the same state.

Note (2): Person-in-charge of the conveyance to carry a copy of the tax invoice/bill of supply where such person is not required to carry an E-Way bill (new rule 55A of CGST Rules w.e.f. 23-1-2018)

Inspection and verification of goods Rule 138C of CGST Rules, 2017:

A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of Form GST EWB-03 within 24 hours of inspection and the final report in Part B of Form GST EWB-03 shall be recorded within 3 days of such inspection.

w.e.f 19-6-2018, where the circumstances, so warrant, the Commissioner, or any other officer authorised by him, may on sufficient cause being shown, extend the time for recording the final report in Part B of Form EWB-03, for a period not exceeding 3 days.

CBIC vide Press Release No. 144/2018, dated 31.03.2018 has clarified following issues regarding the new E-Way bill system:

Illustration 1

Consider a situation where a consignor is required to move goods from City X to City Z. He appoints Transporter

A for movement of his goods. Transporter A moves the goods from City X to City Y. For completing the movement of goods i.e., from City Y to City Z, Transporter A now hands over the goods to Transporter B. Thereafter, the goods are moved to the destination i.e. from City Y to City Z by Transporter B. How would the E-Way bill be generated in such situations?

Solution:

It is clarified that in such a scenario, only one E-Way bill would be required. Part A can be filled by the consignor and then the E-Way bill will be assigned by the consignor to Transporter A. Transporter A will fill the vehicle details, etc. in Part B and will move the goods from City X to City Y.

On reaching City Y, Transporter A will assign the said E-Way bill to the Transporter B. Thereafter, Transporter B will be able to update the details of Part B. Transporter B will fill the details of his vehicle and move the goods from City Y to City Z.

Illustration 2

Consider a situation where a consignor hands over his goods for transportation on Friday to transporter. However, the assigned transporter starts the movement of goods on Monday. How would the validity of E-Way bill be calculated in such situations?

Solution:

It is clarified that the validity period of E-Way bill starts only after the details in Part B are updated by the transporter for the first time.

In the given situation, Consignor can fill the details in Part A on Friday and handover his goods to the transporter. When the transporter is ready to move the goods, he can fill the Part B i.e. the assigned transporter can fill the details in Part B on Monday and the validity period of the E-Way bill will start from Monday.

8.5.5 E-Way Bill for "Bill To Ship To" model of supplies:

As per CBIC Press Release No. 152/2018 dated 23-4-2018:

In a typical "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely:

'A' is the person who has ordered 'B' to send goods directly to 'C'.

'B' is the person who is sending goods directly to 'C' on behalf of 'A'.

'C' is the recipient of goods.

In this complete scenario two supplies are involved and accordingly two tax invoices are required to be issued:

Invoice-1, which would be issued by 'B' to 'A'.

Invoice-2 which would be issued by 'A' to 'C'.

Who would generate the E-Way Bill for the movement of goods which is taking place from 'B' to 'C' on behalf of 'A'? It is clarified that as per the CGST Rules, 2017 either 'A' or 'B' can generate the E-Way Bill, but it may be noted that only one **E-Way Bill** is required to be generated as per the following procedure:

Solved Case 1:

Where E-Way Bill is generated by 'B', the following fields shall be filled in Part A of GST FORM EWB-01:

1.	**Bill From:**	In this field details of 'B' are supposed to be filled.

2.	**Dispatch From:**	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
3.	**Bill To:**	In this field details of 'A' are supposed to be filled.
4.	**Ship to:**	In this field address of 'C' is supposed to be filled.
5.	**Invoice Details:**	Details of Invoice-1 are supposed to be filled

Solved Case 2:

Where E-Way Bill is generated by 'A', the following fields shall be filled in Part A of GST FORM EWB-01:

1.	**Bill From:**	In this field details of 'A' are supposed to be filled.
2.	**Dispatch From:**	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
3.	**Bill To:**	In this field details of 'C' are supposed to be filled.
4.	**Ship to:**	In this field address of 'C' is supposed to be filled.
5.	**Invoice Details:**	Details of Invoice-2 are supposed to be filled.

Goods sent/taken out of India for exhibition or on consignment basis for export promotion (CBIC Circular No. 108/27/2019-GST, dated 18th July 2019)

- **Exporter shall maintain a record of such goods.**
- **Supply treated as sale on approval basis.**
- **A delivery challan to be issued.**
- **It is not a zero-rated supply. Hence, no need to execute Bond/LUT.**
- **Not a supply if the goods are returned ≤ 6 months from the date of removal.**
- **Goods are sold ≤ 6 months from the date of removal, then it is supply. Shall issue tax invoice**

REFUND

It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent / taken out of India earlier.

However supplier can claim refund under Sec. 54(3) of the CGST Act, 2017

Illustration 3

An international trade exhibition is going to be held in United States of America in January. Import Export Makaan (IEM) has participated in it. It intends to send 100 units of taxable goods manufactured by it to USA for display in the said exhibition.

IEM is of the view that the activity of sending the goods out of India for exhibition is a zero-rated supply. However, its tax advisor does not concur with its view. Examine whether the view of IEM is correct.

Assuming that IEM could not sell any goods at the exhibition and brings back entire 100 units to India

(i) in February, (ii) in August,

Discuss the requirement to issue invoice, if any, in each of the above independent cases.

Would your answer be different if IEM sells an aggregate of 65 units of the taxable goods in USA exhibition on different dates in January and remaining 35 units are brought back on 31st January. The tax advisor of IEM advises IEM that the export of 65 units qualify as zero-rated supply and it should apply for refund of the unutilized ITC in respect of the same. Examine the technical veracity of the tax advisor's advice.

Solution:

In the given case, IEM is not required to issue invoice at the time of taking the goods out of India since the activity of merely sending/ taking the taxable goods out of India is not a supply. However, the goods shall be accompanied with a delivery challan.

Since such activity is not a supply, the same cannot be considered as "zero rated supply" as per the provisions contained in section 16 of the IGST Act.

(i) In case the entire quantity of goods (100 units) sent to USA is not sold but brought back by IEM in February, i.e. within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.

(ii) In case, the entire quantity of goods (100 units) sent to USA is not sold and brought back by IEM in August, i.e. after 6 months from the date of removal, a tax invoice is required to be issued for entire 100 units of taxable goods.

However, if an aggregate of 65 units of the goods are sold in USA exhibition by IEM on different dates in January (i.e. within the stipulated period of 6 months), a tax invoice would be required to be issued for these units, at the time of each of these sales. When the goods are sold in exhibition, actual supply from the exporter in India to the importer located abroad takes place and this supply qualifies as export. Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017.

If the remaining 35 units are brought back on 31st January, i.e. within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.

In the given case, tax advisor's advice is technically correct. Since the activity of sending / taking specified goods out of India is not a zero-rated supply, execution of a bond/Letter of Undertaking (LUT), as required under section 16 of the IGST Act, is not required.

However, the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond/LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) of the CGST Act, 2017 read with rule 89(4) of the CGST Rules, 2017 in respect of zero-rated supply of 65 units.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Which document is to be issued by the consignor instead of tax invoice for transportation of goods for job work?
   (a) E-Way Bill
   (b) Delivery Challan
   (c) Debit Note
   (d) Receipt Voucher

2. In case proper officer checks the goods in movement, then what document shall be required apart from delivery challan to satisfy the proper officer where the value of goods exceeds ₹50,000?
   (a) E-Way bill
   (b) Voucher
   (c) Invoice
   (d) All of the above

3. What are the documents required by an unregistered transporter for getting enrolled under E-Way Bill system?
   (a) Income Tax PAN
   (b) AADHAAR details of any one of Director, Partner, Manager or Employee
   (c) Both (a) and (b)
   (d) None of the above

4. The validity period of E-Way Bill is said to initiate when:
   (a) Part A is completely filled
   (b) Part B is completely Filled
   (c) Both Parts are filled completely
   (d) None of the above

5. Can validity of an expired E-Way bill - extended?
   (a) at the option of officer
   (b) not possible
   (c) Only in case of trans-shipment or circumstances of exceptional nature
   (d) None of the above

6. What shall be the validity of E-Way bill in case of vehicles other than over dimensional cargo?
   (a) One day per 200 kms.
   (b) One day per 20 kms.
   (c) Both (a) & (b)
   (d) None of the above

7. What is the relevance of Part-A in E-Way?
   (a) Useful for temporarily storing the documents details on the E-Way Bill portal
   (b) Useful for uploading details of transporter in the E-Way bill system
   (c) Both (a) & (b)
   (d) None of the above

8. Mr. Amar generated an E-Way bill at 00:10 hrs. on 16th September. When shall be first day be considered to end for validity consideration?
   (a) At 11:50 pm of 16th September
   (b) At 12:00 Midnight of 17th September
   (c) At 12:10 am of 17th September
   (d) None of the above

9. In a typical "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely:
   'Ram' is the person who has ordered 'Rahim' to send goods directly to 'Robert'.
   'Rahim' is the person who is sending goods directly to 'Robert' on behalf of 'Ram'.
   'Robert' is the recipient of goods.
   In this complete scenario two supplies are involved and accordingly two tax invoices are required to be issued:
   Invoice-1, which would be issued by 'Rahim' to 'Ram'.
   Invoice-2 which would be issued by 'Ram' to 'Robert'.
   How many E-Way bills required to generate?
   (a) 1
   (b) 2
   (c) 3
   (d) 4

10. E-Way bill generation facility of a person paying tax under regular scheme will be blocked if he has not furnished the returns for a consecutive period of?
   (a) 2 months
   (b) 2 tax periods
   (c) 3 tax periods
   (d) 6 tax periods

Answer:

1.	**2.**	**3.**	**4.**	**5.**	**6.**	**7.**	**8.**	**9.**	**10.**
b	**a**	**c**	**c**	**c**	**a**	**a**	**b**	**a**	**b**

B. Numerical Questions

⊙ Comprehensive Numerical Problems

1. With reference to the provisions relating to the electronic way bill (E- way bill) as prescribed under the GST laws, answer the following questions: (i) Sandhu Toys Manufacturers, registered in Punjab, sold electronic toys to a retail seller in Gujarat, at a value of ₹ 48,000 (excluding GST leviable @ 18%). Now, it wants to send the consignment of such toys to the retail seller in Gujarat. You are required to advise Sandhu Toys Manufacturers on the following issues:

   (a) Whether E-Way bill is mandatorily required to be generated in respect of such movement of goods?

   (b) If yes, who is required to generate the E-Way bill?

2. Sakthi Enterprises Ltd., a registered supplier of air-conditioners, is required to send from Mumbai (Maharashtra), a consignment of parts of air-conditioner to be replaced under warranty at various client locations in Gujarat. The value of consignment declared in delivery challan accompanying the goods is ₹ 70,000. Sakthi Enterprises Ltd. claims that since movement of goods to Gujarat is caused due to reasons other than supply, E-Way bill is not mandatorily required to be generated in this case.

   You are required to examine the technical veracity of the claim made by Sakthi Enterprises Ly=td.

3. Lovely & Lovely Ltd. has multiple wholesale outlets of cosmetic products in Chennai, Tamil Nadu. It receives an order for cosmetics worth ₹ 1,20,000 (inclusive of GST leviable @ 18%) from Reena, owner of a retail cosmetic store in Delhi. While checking the stock, it is found that order worth ₹ 55,000 can be fulfilled from the company's Mylapore (Chennai) store and remaining goods worth ₹ 65,000 can be sent from its Nungambakkam (Chennai) store. Both the stores are instructed to issue separate invoices for the goods sent to Reena. The goods are transported to Reena in Delhi, in a single conveyance owned by Priya Transporters. You are required to advise Lovely & Lovely Ltd. with regard to issuance of E-Way bill(s).

Answer:

1.	(a) Rule138(1) of the CGST Rules, 2017 provides that E-Way Bill is mandatorily required to be generated if per consignment value exceeds ₹ 50,000. Further, explanation 2 to rule 138(1) stipulates that the consignment value of goods shall include CGST, SGST/UTGST, IGST and cess charged, if any and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods. Accordingly, in the given case, the consignment value will be as follows: = ₹ 48,000 × 118% = ₹ 56,640. Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, E-Way bill is mandatorily required to be issued in the given case. (b) Where the goods are transported by railways or by air or vessel, the E-Way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B [Rule 138(2A)]. Where the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the E-Way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A [Rule 138(3)]. Where the consignor or the consignee has not generated the E-Way bill and the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000/, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the E-Way

	bill on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated E-Way bill on the common portal prior to the movement of goods [Rule 138(7)].
2.	The goods to be moved to another State for replacement under warranty is not a 'supply'. However, rule 138(1) of the CGST Rules, 2017, inter alia, stipulates that every registered person who causes movement of goods of consignment value exceeding ₹ 50,000: a. in relation to a supply; or b. for reasons other than supply; or c. due to inward supply from an unregistered person, shall, generate an electronic way bill (E-Way Bill) before commencement of such movement. CBIC clarified that even if the movement of goods is caused due to reasons others than supply [including replacement of goods under warranty], E-Way bill is required to be issued. Thus, in the given case, since the consignment value exceeds ₹ 50,000, E-Way bill is required to be mandatorily generated. Therefore, the claim of Sakthi Enterprises Ltd. that E-Way bill is not mandatorily required to be generated as the movement of goods is caused due to reasons other than supply, is not correct.
3.	Lovely & Lovely Ltd. would be required to prepare two separate e- way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e- way bills. The FAQs on E-Way Bill issued by CBIC clarify that if multiple invoices are issued by the supplier to one recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple E-Way bills have to be generated. In other words, for each invoice, one E-Way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one E-Way bill. However, after generating all these E-Way bills, one consolidated E-Way bill can be prepared for transportation purpose, if goods are going in one vehicle.

GST Refunds - Inverted Duty Structure and Zero Rated Supplies

9

This Module Includes

GST Refunds - Inverted Duty Structure and Zero Rated Supplies

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Identify the inverted duty structure
- Explain Inputs includes spares and consumable which are qualify for refund under inverted duty structure.
- Understand export of goods or services or both under Zero Rated supplies qualify for refund
- Explain procedure of export of goods or services and claiming of refund.

Introduction

9.1

Circumstance in which registered person can claim refund

The various circumstances in which refund will arise has been explained in section 54 of the CGST Act, 2017 read with Chapter X of CGST Rules, 2017. Under this module we are focusing our attention refunds relating to:

(a) Inverted Duty structure

(b) Zero Rated Supplies namely

  a. Export of goods or services

  b. Special Economic Zones (SEZ's)/Developer of SEZ units

Inverted Duty Structure 9.2

Inverted duty structure indicates a situation when the rate of tax on inward supply is higher than rate of tax on outward supply. Section 54 (3) (ii) of the CGST Act, 2017 read with Rule 89 (5) of the CGST Rules, 2017, inter alia, provides for a refund of accumulated input tax credit on account of the inverted duty structure.

As per Section 54(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Formula for claiming refund under inverted duty structure:

$$\text{Maximum Amount of Refund} = \frac{\text{Turnover of inverted rated supply of goods}}{\text{Adjusted total turnover}} \times \text{Net ITC} - \begin{array}{c}\text{Tax payable on such inverted}\\ \text{rated supply of goods}\end{array}$$

"Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

"Adjusted total turnover" means the sum total of the value of -

(a) Turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services and

(b) The turnover of zero-rated supply of services determined in terms of clause (D)

i.e. "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or LUT, calculated in the following manner, namely:—

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period; and non-zero-rated supply of services

Excluding

(i) The value of exempted supplies other than zero-rated supplies; and

(ii) The turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) of Rule 89 or both, if any, during the relevant period;

Conditions for being eligible for a refund in terms of the above provisions are that:

1. Rate of tax on input is higher than rate of tax on output supplies
2. The output supplies are not exempt or nil rated supplies
3. Refund on such supplies is not specifically restricted by the Government
4. ITC on capital goods and input services do not qualify for refund
5. Refund of accumulated ITC on account of reduction in GST rate on goods not available
6. Refund of ITC restricted to the extent of credit reflected in Form GSTR-2A/2B
7. Registered person claiming refund basically a manufacturer.

Illustration 1

Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period:

Products	Turnover* (₹)	Output GST Rates	ITC availed (₹)	Input GST Rates
A (Duty invested good)	5,00,000	5%	54,000	18%
B	3,50,000	5%	54,000	18%
C (Duty invested good)	1,00,000	18%	10,000	18%

*Excluding GST

Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii) of the CGST Act, 2017 provided that Product B is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.

Solution:

$$\text{Maximum Amount of Refund} = \frac{\text{Turnover of inverted rated supply of goods}}{\text{Adjusted total turnover}} \times \text{Net ITC} - \text{Tax payable on such inverted rated supply of goods}$$

Maximum Amount of Refund = ₹37,105/-

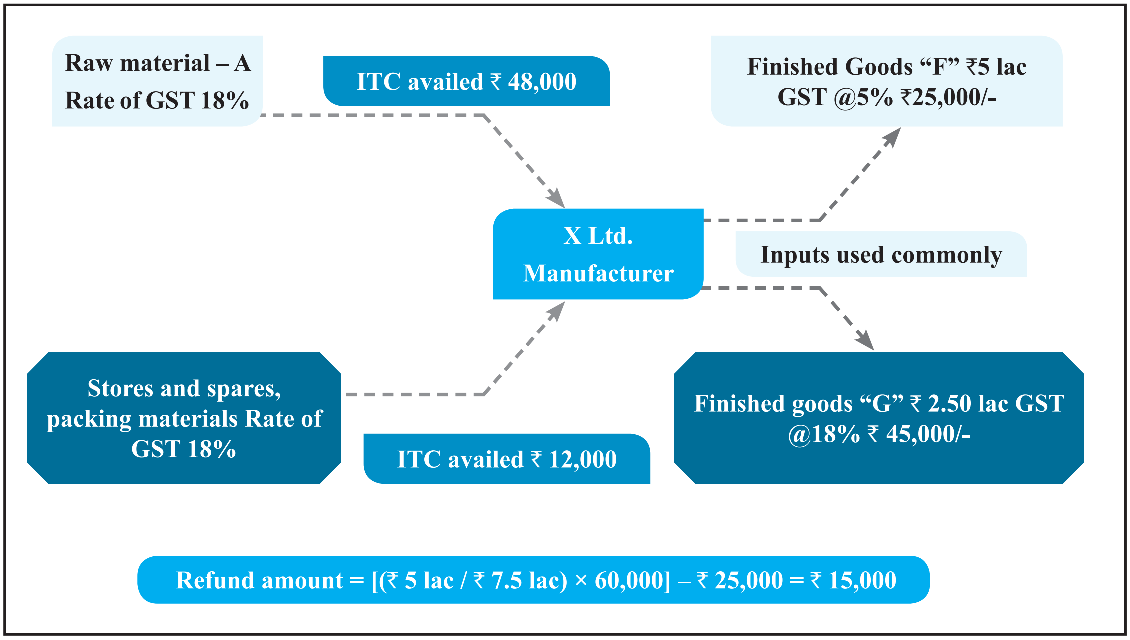
₹[(5,00,000/9,50,000) × 1,18,000] – ₹25,000.

Example 1

An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%.

It is clarified that, in such cases, the input and output being the same, though attracting different tax rates at different points in time, do not get covered under section 54(3)(ii) of the CGST Act, 2017. Thus, refund of accumulated ITC under said clause would not be applicable in cases where the input and the output supplies are the same **[Circular No. 135/05/2020-GST, dated 31.03.2020]**.

Example 2:



Circular No. 37/11/2018-GST, dated 15.03.2018 has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) will be eligible to take credit of the concessional tax so paid by him. The supplier who supplies goods at the concessional rate will be eligible for refund on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act. However, it may be noted that the exporter of such goods can export the goods only under LUT/bond and cannot export on payment of integrated tax.

Clarification on refund amount for claim of refund of accumulated ITC on account of inverted duty structure

Circular No. 79/53/2018-GST, dated 31.12.2018 clarifies that refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability.

Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:

(i) Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).

(ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

(iii) Further assume that the claimant supplies the output Y having value of—

₹ 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be ₹3,000/-.

(iv) If we assume that Input A, having value of ₹500/- and Input B, having value of ₹2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹ 385/- (₹25/- and ₹360/- on Input A and Input B respectively).

(v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of ₹ 385/-.

(vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is ₹360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is ₹25/-.

Clarification on the term "input"

On certain occasions, ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, is not considered as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

Clarification: It is clarified that input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

[Circular No. 79/53/2018-GST, dated 31.12.2018]

Clarification on refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:

Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, section 2(59) of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit.

Accordingly, rule 89(5) of the CGST Rules defines the term 'Net ITC' [as used in the formula for calculating the maximum refund amount under said rule], to mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.

In view of the above, it is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.

[Circular No. 79/53/2018-GST, dated 31.12.2018]

Refund of accumulated ITC on account of reduction in GST rate on goods, not available [Circular No. 135/05/2020-GST, dated 31.03.2020]

The issue which arose for consideration is whether an applicant can seek refund of unutilized ITC on account of inverted duty structure, under section 54(3)(ii) of the CGST Act, 2017, in a case where the inversion is due to change in the GST rate on the same goods.

For example, an applicant trading in goods has purchased, say goods "P" attracting 12% GST. However, subsequently, the rate of GST on "P" has been reduced to, say 5%.

It is clarified that, in such cases, the input and output being the same, though attracting different tax rates at different points in time, do not get covered under section 54(3)(ii) of the CGST Act, 2017. Thus, refund of accumulated ITC under said clause would not be applicable in cases where the input and the output supplies are the same.

Refund of ITC under section 54(3) restricted to the extent of credit reflected in Form GSTR-2A [Circular No. 135/05/2020-GST, dated 31.03.2020]

In wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017, it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in Form GSTR-1 and are reflected in the Form GSTR-2A of the applicant.

Zero-Rated Supplies

9.3

Zero rated supply:

a. Export of goods or services

b. Special Economic Zones (SEZ's)/Developer of SEZ units

We already discussed zero rated supplies and supplies to SEZ units or developers under module 6. Further claiming of refund under Zero Rated Supplies are elaborated here under.

Refund on account of export of goods or services can be granted in the following two methods:

(i) refund of un-utilised credit when exports of goods or services are made without payment of tax (Section 54(3) of the CGST Act, 2017).

(ii) refund of taxes paid on output supply of goods or services (known as rebate).

As per Rule 89(5) of Chapter X of the CGST Rules, 2017 the quantum of input tax credit shall be determined as per the following formula:

$$\text{Refund amount} = \frac{\text{Turnover of zero-rated supply of goods + services}}{\text{Adjusted total turnover}} \times \text{Net ITC}$$

Where —

(A) "Refund amount" means the maximum refund that is admissible.

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or LUT, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or LUT, calculated in the following manner, namely:—

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "Adjusted total turnover" means the turnover in a State or a Union territory, as defined under section 2(112), excluding—

(a) the value of exempt supplies other than zero-rated supplies and

(b) the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both, if any, during the relevant period;

(F) "Relevant period" means the period for which the claim has been filed.

Circular No. 37/11/2018 GST dated 15.03.2018 has clarified that the relevant period has been defined in the context of the refund claim and is not linked to a tax period. The exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters. The calendar month(s)/quarter(s) for which refund claim has been filed, however, cannot spread across different financial years. [Notification No. 75/2017-CT, dated 29.12.2017]

A new sub-rule (4A) has been inserted in rule 89 of the CGST Rules retrospectively from 23.10.2017.

The new sub-rule (4A) lays down that in the case of supplies received on which the supplier has availed the benefit of Notification No. 48/2017-CT, dated 18.10.2017 (i.e., where supplier has claimed refund of tax paid on deemed exports), refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

A new sub-rule (4B) has been inserted in rule 89 of the CGST Rules retrospectively from 23.10.2017.

The new sub-rule (4B) lays down that in the case of supplies received on which the supplier has availed the benefit of Notification No. 40/2017-CT(R), dated 23.10.2017/Notification No. 41/2017-IT(R), dated 23.10.2017 [concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) for supply of goods made to merchant exporters for export] or Notification No. 78/2017-Cus, dated 13.10.2017/ Notification No. 79/2017-Cus, dated 13.10.2017 [imports of goods by EOUs/ Advance Authorisation / EPCG schemes], or all of them, refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

[Notification No. 3/2018-CT, dated 23.01.2018]

Definition of turnover of zero-rated supplies of goods amended [Rule 89(4)(C)]

[Notification No. 16/2020-CT, dated 23.03.2020] and [Circular No. 147/03/2021 GST dated 12.03.2021]

Lower of the two shall be taken:

- Zero Rated Value of supply of goods as per GST Invoice

  or

- 1.5 times the value of like goods domestically supplied by the same or, similarly placed supplier

Rule 89(4) of the CGST Rules provides the formula for determining the refund of ITC in the case of zero-rated supply of goods and/or services without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017.

The formula is as follows:

$$\textbf{Refund Amount} = \frac{\textbf{(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services)}}{\textbf{Adjusted Total Turnover}} \times \textbf{Net ITC}$$

The term **'Turnover of zero-rated supply of goods'** used in the above formula had been redefined to restrict the same to 1.5 times the value of like goods domestically supplied by the same/similarly placed supplier/as declared by the supplier vide Notification No.16/2020-CT, dated 23.03.2020.

Turnover of zero-rated supply of goods means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under rule 89(4A) or 89(4B) or both.

The term **"Adjusted Total Turnover"** as defined under rule 89(4) includes "Turnover in a State or Union Territory". As per section 2(112) of the CGST Act. "Turnover in a State or Union Territory" includes turnover/ value of export/ zero-rated supplies of goods. As seen above, the definition of 'Turnover of zero-rated supply of goods' has been amended In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of "turnover of zero-rated supply of goods", needs to be taken into consideration while calculating "turnover in a State or a Union Territory", and accordingly, in "adjusted total turnover" for the purpose of rule 89(4).

Thus, the restriction of 1.5 times of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "adjusted total turnover" in rule 89(4) of the CGST Rules.

Accordingly, it is clarified that—

For the purpose of rule 89(4), the value of export/ zero-rated supply of goods to be included while calculating "adjusted total turnover" WILL BE SAME as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in the said sub-rule.

The same can explained by the following illustrations where actual value per unit of goods exported is more than 1.5 times the value of same/ similar goods in domestic market, as declared by the supplier:

Adjusted Total Turnover means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding—

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under rule 89(4A) or 89(4B) or both, if any, during the relevant period.

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.

Example 3

	GST Invoice value for export (₹)	Value of like goods supplied Domestically (₹)	1.5 times the value of like goods supplied domestically (₹)	Value for purpose of refund claim (₹)	Adjusted total turnover for formulae (₹)
Case A	1,00,000	90,000	1,35,000	1,00,000	1,90,000
Case B	2,00,000	60,000	90,000	90,000	1,50,000

Example 4

Win India Exports Pvt. Ltd., is supplier of taxable goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

Outward Supply	Value per unit (₹)	No. of units supplied	Turnover (₹)
Local	200	5	1,000
Export	350	5	1,750
Total			2750

Net admissible Input Tax Credit is ₹ 270

Find the refund amount as per rule 89(4) of the CGST Rules, 2017.

Solution:

$$\text{Refund amount} = ₹\ 270 \times \frac{₹\ 1{,}500}{₹\ 2{,}500} = ₹\ 162.$$

Turnover of Zero-rated supply of goods (as per amended definition) = ₹ 1,500

$$\left[\begin{array}{c} \text{Actual export turnover} = ₹\ 1{,}750 \\ \text{Or} \\ ₹200 \times 5 \text{ units} \times 1.5 \text{ times} = ₹\ 1{,}500 \end{array}\right] \quad \text{Whichever is Less}$$

Adjusted Total Turnover = ₹ 2,500

(local is ₹ 1,000 + Export is ₹ 1,500)

Notification No. 54/2018-CT, dated 9-10-2018:

The person claiming refund of Integrated Tax (IGST) paid on exports of goods or services should not have received supplies namely

- Supply of goods by a registered person against Advance Authorisation

  (Except Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation)
- Supply of goods by a registered person to Export Oriented Unit.

Determination of refundable amount in case of refund of unutilised ITC on account of

(i) exports without payment of tax,

(ii) supplies made to SEZ Unit/SEZ Developer without payment of tax or

(iii) accumulation due to inverted tax structure, clarified

[Master Circular on Refunds – Circular No. 125/44/2019-GST, dated 18.11.2019]

In case of refund of unutilized input tax credit (ITC) on account of (i) exports without payment of tax, (i) supplies made to SEZ Unit/SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure, the common portal calculates the refundable amount as the least of the following amounts:

(a) (The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the CGST Rules, 2017 [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax];

(b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in Form GSTR-3B for the said period has been filed; and

(c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

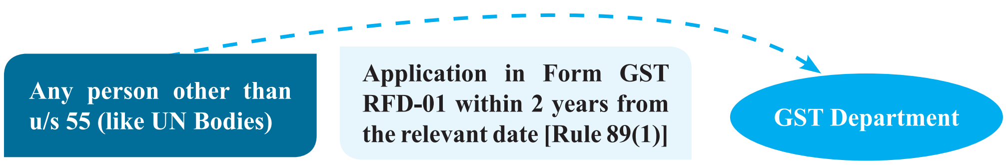
After calculating the least of the above 3 amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

(a) Integrated tax, to the extent of balance available;

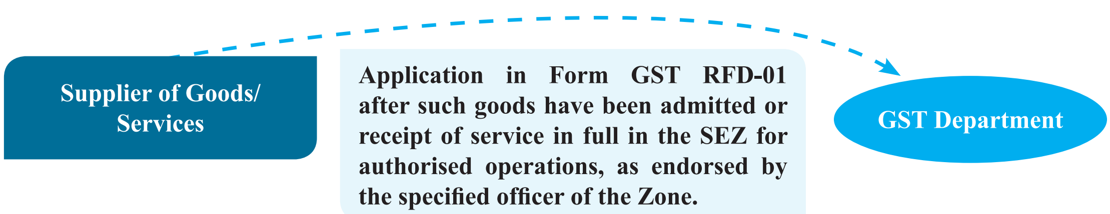
(b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/ Union Territory tax, in this case).

Export Procedure under Goods and Services Tax (GST):

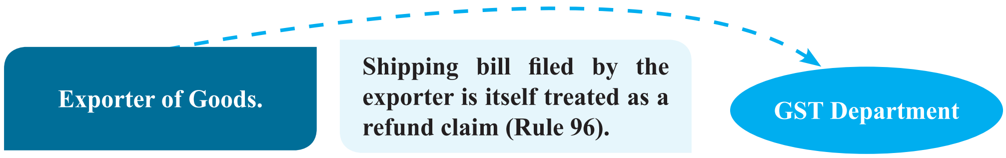
Case A: In general cases:



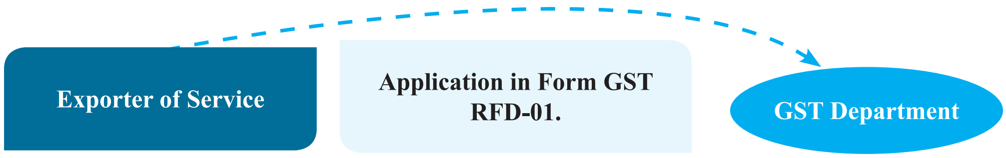
Case B: Refund in case of supplies to SEZ unit/developer:



Case C: Refund of IGST paid on goods exported out of India:



Case D: Refund of IGST paid on services exported:



Refund of tax – Relevant Date

As per section 54(1) of the CGST Act, any person claiming refund of any tax and interest, if any paid on such tax or any other amount paid by him, may make an application before the expiry of 2 Years from the relevant date in such form and manner as may be prescribed.

Explanation (2), to section 54 of the CGST Act, 2017 "relevant date" means—

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

   (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

   (ii) if the goods are exported by land, the date on which such goods pass the frontier; or

   (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

   (i) receipt of payment in convertible foreign exchange (w.e.f. 1-2-2019 or in Indian rupees, wherever permitted by the Reserve Bank of India), where the supply of services had been completed prior to the receipt of such payment; or

   (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) w.e.f. 1-2-2019 in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

In case of deficiency in refund application, limitation period of 2 years for making refund claim to exclude the time period from the date of filing of refund claim till the date of communication of the deficiencies (Notification No. 15/2021 CT dated 18.05.2021)

Submission of documentary evidence and procedure on receipt of refund claim:

APPLICANT

1. Submit self declaration where refund amount ≤ ₹ 2 lakh (a CA/CMA certificate must if refund > ₹2 lakh other than zero rated supply). relevant invoices, shipping bills, BRC/FIRC, final assessment order in case of provisional assessment, etc.

GST Department

2. Within a period of 15 days of filing of the said application, scrutinise the application for its completeness and issue an acknowledgement.

If deficiencies in refund claim issue a deficiency memo.

3. Grant of provisional refund (u/s 54(6) read with Rule 91]: @ 90% of the total refund claim is paid within 7 days where refund arises on account of zero-rated supplies. Balance 10% can be refunded after due verification.

4. Order of refund u/s 54(5), (7) read with Rule 92: After satisfying shall make an order sanctioning the amount of refund after completely adjusted against any outstanding demand.

5. Issue of SCN and rejection of refund claim [Rule 92(3)], in such case applicant will be required to furnish a reply within 15 days of the receipt of such notice in prescribed form.

After considering the reply furnished by applicant and after giving him an opportunity of being heard, make an order, sanctioning the amount of refund in whole or part, or rejecting the said refund claim.

6. Refund order shall be issued by the proper officer within 60 days from the date of receipt of application. Otherwise, refund credited to consumer welfare fund.

Order for release of withheld refund to be issued where refund no longer liable to be withheld. Order for complete adjustment of demand for refund not required to be issued (Rule 92(1) and (2)):

Earlier, in case where refund is completely adjusted against any outstanding demand, an order giving details of the adjustment was issued (proviso to rule 92(1) of the CGST Rules). The said proviso has been omitted. Accordingly, no such order will now be issued.

Further, proviso to rule 92(2) has been inserted to provide that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in prescribed form (Notification No. 15/2021 CT dated 18.5.2021).

Bunching of refund claims across financial years permitted [Circular No. 135/05/2020-GST, dated 31.03.2020]

It has been clarified that while filing the refund claim, an applicant may, at his option, file a refund claim for a tax period or by clubbing successive tax periods. Earlier, there was a restriction on bunching of refund claims across financial years; now the said restriction has also been relaxed.

For instance, a registered person opting to file Form GSTR-1 on quarterly basis can apply for refund on a quarterly basis or clubbing successive quarters and these quarters may spread across different financial years. Thus, he can file refund claim for quarters: Jan-Mar, Apr-Jun and July-Sep, while filing the refund claim.

Exporters can furnish bond or letter of undertaking instead of paying Integrated GST at the time of exporting goods and services with effect from July 1, 2017. In case the IGST has been paid, the exporters can seek refund of the tax paid.

IGST is levied on the supply of any goods and services in the course of inter-state trade or commerce. As per the IGST Act, export and import of goods and services are deemed to be a supply in the course of inter-state trade or commerce. Supplies of goods and services for exports have been categorised as 'Zero Rated Supply' implying that goods could be exported under bond or Letter of Undertaking without payment of integrated tax followed by claim of refund.

Under section 7(5) of IGST Act, 2017 supply will be treated, as inter-state supply when

- the supplier is located in India; and
- the place of supply is outside India; or
- place of supply is SEZ unit.

Further, exports would be considered as **"Zero rated supply"** under section 16 of IGST Act.

Any person making zero rated supply (i.e. any exporter) shall be eligible to claim refund under either of the following options, namely:—

Options:

(i) he may supply goods or services or both under bond or Letter of Undertaking (LUT), subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(ii) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 (Refunds) of the Central Goods and Services Tax Act or the rules made there under.

For the option (i), procedure to file refund has been outlined in the Refund Rules under GST. The exporter claiming refund of ITC will file an application electronically through the Common Portal, either directly or through a Facilitation Centre notified by the GST Commissioner. The application shall be accompanied by documentary evidences as prescribed in the said rules. Application for refund shall be filed only after the export manifest or an export report, as the case may be, is delivered under section 41 of the Customs Act, 1962 in respect of such goods.

For the option (ii), governing under rule 96 of the CGST Rules, 2017 the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export and the applicant has furnished a valid return (i.e. Form GSTR-3 or GSTR-3B).

For both option (i) and (ii) exporters have to provide details of GST invoice in the Shipping bill.

Procedure regarding refund of integrated tax paid on goods exported out of India is governed by rule 96 of the CGST Rules, 2017

Procedure regarding LUT & refund of IGST is governed by rule 96A of CGST Rules, 2017 (w.e.f. 01.07.2017).

Rule 96Aof the CGST Rules provides for Refund of unutilized credit on inputs and input services on export of goods or services under bond or Letter of Undertaking as below:—

(1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of —

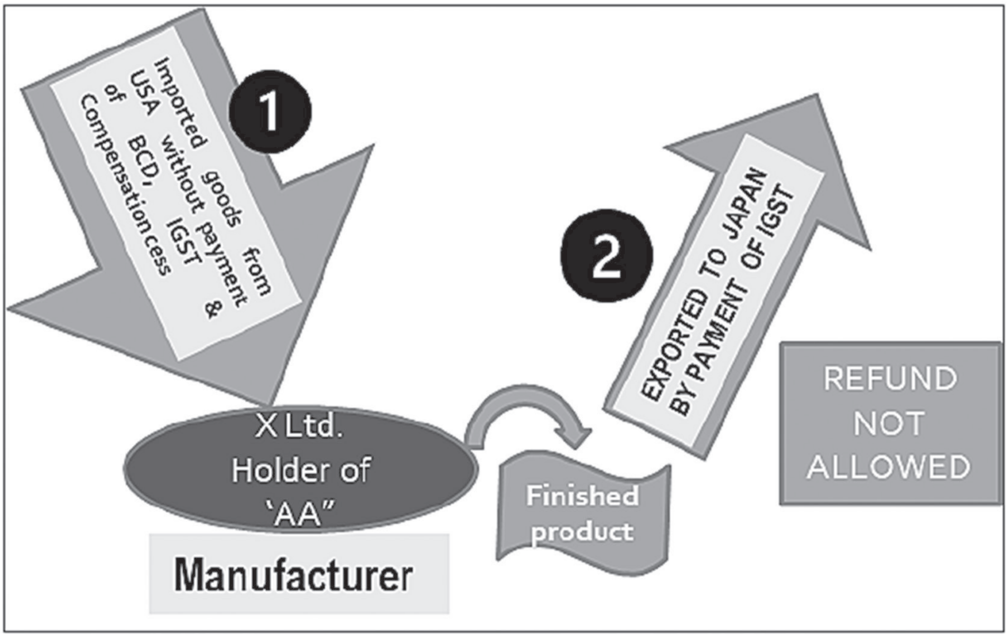
(a) fifteen days after the expiry of three months from the date of issue of the invoice for export, if the **goods** are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such **services** is not received by the exporter in convertible foreign exchange.

Explanation to rule 96(10)(b) inserted [Notification No. 16/2020-CT, dated 23.03.2020]

Rule 96(10)(b) lays down an embargo on the refund claim by a person seeking refund of IGST paid on export of goods/services. The restriction is that such person should not have availed the benefit of exemption from IGST and Compensation Cess, for goods imported by EOU under Notification No. 78/2017-Cus., dated 13.10.2017 or for goods imported under Advance Authorisation (AA)/EPCG under Notification No. 79/2017-Cus., dated 13.10.2017.

An explanation has been inserted to this clause which clarifies that the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid IGST and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.



vide Notification No. 16/2020-CT, dated 23.03.2020:—

Rule 96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.—

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of **3 months** from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

Amendment in Circular No. 08/08/2017-GST, dated 04.10.2017, in view of the amendment carried out in section 2(6) of IGST Act

Circular No. 08/08/2017-GST, dated 04.10.2017 clarified issues related to furnishing of Bond/Letter of Undertaking for export. In view of the amendment carried out in section 2(6) of the IGST Act allowing realization of export proceeds in INR, wherever allowed by the RBI, the Circular No. 08/08/2017-GST, dated 04.10.2017 has been amended to clarify that **the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.**

[Circular No. 88/07/2019 GST dated 01.02.2019]

Explanation to section 2(16) of the IGST Act, 2017 defining "Governmental Authority" amended w.e.f. 1-2-2019

The amended definition reads as under:

"Governmental authority means an authority or a board or any other body,—

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to **a Panchayat under article 243G** or to a municipality under article 243W of the Constitution."

Export of goods or services under bond or LUT [Rule 96A]

Clause (b) of rule 96A(1) provides that any registered person availing the option to supply services for export without payment of integrated tax shall furnish, prior to export, a bond or LUT, binding himself to pay tax due along with interest within period of 15 days after expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of invoice for exports, if the payment of such services is not received by the exporter in convertible foreign exchange.

With effect from 01.02.2019, in view of the amendment carried out in section 2(6) of IGST Act [Discussed in detail in Chapter 3: Charge of tax], the payment of such services can be received by the exporter in Indian rupees, wherever permitted by Reserve Bank of India.

Consequently, aforesaid rule has been amended to provide that any registered person availing the option to supply services for export without payment of integrated tax shall furnish, prior to export, a bond or LUT, binding himself to pay tax due along with interest within period of 15 days after expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of invoice for exports, if the payment of such services is not received by the exporter in convertible foreign exchange or **in Indian rupees, wherever permitted by Reserve Bank of India**.

[Notification No. 03/2019-CT, dated 29.01.2019]

Commissioner empowered to extend the time period for payment of tax and interest under rule 96A(1)(a) of CGST Rules

Rule 96A(1)(a) of CGST Rules lays down that any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a LUT to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under section 50(1) of CGST Act within a period of 15 days after the expiry of 3 months from the date of issue of the invoice for export, if the goods are not exported out of India.

The said rule has been amended to provide that the tax due along with the interest should be paid within a period of 15 days after the expiry of 3 months, or **such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export**, if the goods are not exported out of India [Notification No. 47/2017-CT, dated 18.10.2017].

(2) The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

(3) Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.

(4) The export as allowed under bond or Letter of Undertaking withdrawn in terms of sub-rule (3) shall be restored immediately when the registered person pays the amount due.

(5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

(6) The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.";

CBIC Circular No. 8/8/2017-GST, dated 4th October 2017:

1. **Eligibility to export under LUT:**

   The facility of export under LUT has been now extended to all registered persons who intend to supply goods or services for export without payment of integrated tax except those who have been prosecuted for any offence under the CGST Act or the Integrated Goods and Services Tax Act, 2017 or any of the existing laws and the amount of tax evaded in such cases exceeds ₹250 lakh (i.e. two hundred and fifty lakh rupees) vide Circular No. 8/8/2017-GST, dated 4th October, 2017.

2. **Validity of LUT:**

   The LUT shall be valid for the whole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub-rule (1) of rule 96A of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored.

   As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable integrated tax or under bond with bank guarantee.

3. **Form for bond/LUT:**

   Till the time FORM GST RFD-11 is available on the common portal, the registered person (exporters) may download the FORM GST RFD-11 from the website of the Central Board of Excise and Customs (www.cbic.gov.in) and furnish the duly filled form to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over their principal place of business. The LUT shall be furnished on the letter head of the registered person, in duplicate, and it shall be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor. The bond, wherever required, shall be furnished on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished.

4. Documents for LUT:

Self-declaration to the effect that the conditions of LUT have been fulfilled shall be accepted unless there is specific information otherwise. That is, self-declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Notification No. 37/2017-Central Tax, dated 4th October 2017. Verification, if any, may be done on post - facto basis.

5. Time for acceptance of LUT/Bond:

As LUT/Bond is a priori requirement for export, including exports to a SEZ developer or a SEZ unit, the LUT/bond should be processed on topmost priority. It is clarified that LUT/bond should be accepted within a period of three working days of its receipt along with the self - declaration as stated in para (4) above by the exporter. If the LUT/bond is not accepted within a period of three working days from the date of submission, it shall be deemed to be accepted.

6. Bank guarantee:

Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding Rupees two hundred and fifty lakhs. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

7. Clarification regarding running bond:

The exporters shall furnish a running bond where the bond amount would cover the amount of self - assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. **In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability.** The onus of maintaining the debit/credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

8. Sealing by officers:

Till mandatory self-sealing is operationalised, sealing of containers, wherever required to be carried out under the supervision of the officer, shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.

9. Purchases from manufacturer and Form CT-1:

It is clarified that there is no provision for issuance of CT-1 form which enables merchant exporters to purchase goods from a manufacturer without payment of tax under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

10. Transactions with EOUs:

Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter.

11. **Realization of export proceeds in Indian Rupee: Attention is invited to para A(v) Part-I of RBI**

Master Circular No. 14/2015-16, dated 1st July, 2015 (updated as on 5th November, 2015), which states that "there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees, but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan".

Accordingly, it is clarified that the acceptance of LUT for supplies of goods to Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange.

12. **Jurisdictional officer:**

In exercise of the powers conferred by sub-section (3) of section 5 of the CGST Act, it is hereby stated that the LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

Note: Circular No. 2/2/2017-GST, dated 5th July 2017, Circular No. 4/4/2017-GST, dated 7th July 2017 and Circular No. 5/5/2017-GST, dated 11th August 2017 are hereby rescinded except as respects things already done or omitted to be done.

Clarification on refund related issues (CBIC Circular No. 79/53/2018-GST, dated 31-12-2018):

1. Various representations have been received seeking clarification on various issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

Physical submission of refund claims with jurisdictional proper officer:

2. Due to the non-availability of the complete electronic refund module, a work around was prescribed vide Circular No. 17/17/2017-GST, dated 15.11.2017 and Circular No. 24/24/2017-GST, dated 21.12.2017, wherein a taxpayer was required to file Form GST RFD-01A on the common portal, generate the Application Reference Number (ARN), take print-outs of the same, and submit it physically in the office of the jurisdictional proper officer, along with all the supporting documents. It has been learnt that this requirement of physical submission of documents in the jurisdictional tax office is causing undue hardship to the taxpayers. Therefore, in order to further simplify the refund process, the following instructions, in partial modification of the aforesaid circulars, are issued:

(a) All documents/undertaking/statements to be submitted along with the claim for refund in FORM GST RFD-01A shall be uploaded on the common portal at the time of filing of the refund application. Circular No. 59/33/2018-GST, dated 04.09.2018 specified that instead of providing copies of all invoices, a statement of invoices needs to be submitted in a prescribed format and copies of only those invoices need to be submitted the details of which are not found in FORM GSTR-2A for the relevant period. It is now clarified that the said statement and these invoices, instead of being submitted physically, shall be electronically uploaded on the common portal at the time of filing the claim of refund in FORM GST RFD-01A. Neither the application in FORM GST RFD-01A, nor any of the supporting documents, shall be required to be submitted physically in the office of the jurisdictional proper officer.

(b) However, the taxpayer will still have the option to physically submit the refund application to the jurisdictional proper officer in FORM GST RFD-01A, along with supporting documents, if he so chooses. A taxpayer who still remains unallocated to the Central or State Tax Authority will necessarily have to submit the refund application physically. They can choose to do so before the jurisdictional proper officer of either the State or the Central tax authority, as was earlier clarified vide Circular No. 17/17/2017-GST, dated 15.11.2017.

(c) The ARN will be generated only after the claimant has completed the process of filing the refund application in FORM GST RFD-01A and has completed uploading of all the supporting documents/ undertaking/statements/invoices and, where required, the amount has been debited from the electronic credit/cash ledger.

(d) As soon as the ARN is generated, the refund application along with all the supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system. The application shall be deemed to have been filed under rule 90(2) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement shall be counted from that date. This will obviate the need for a claimant to visit the jurisdictional tax office for the submission of the refund application. Accordingly, the acknowledgement for the complete application or deficiency memo, as the case may be, would be issued by the jurisdictional tax officer based on the documents so received electronically from the common portal. However, the said acknowledgement or deficiency memo shall continue to be issued manually for the time being.

(e) If a refund application is electronically transferred to the wrong jurisdictional officer, he/she shall reassign it to the correct jurisdictional officer electronically within a period of three days. In such cases, the application shall be deemed to have been filed under rule 90(2) of the CGST Rules only after it has been so reassigned. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction. Where the facility of electronic re-assignment is not available, the present arrangement shall continue.

(f) It has already been clarified vide Circular No. 70/44/2018-GST, dated 26.10.2018 that after the issuance of a deficiency memo, taxpayers would be required to submit the rectified refund application under the earlier Application Reference Number (ARN) only. It is further clarified that the rectified application, which is to be treated as a fresh refund application, will be submitted manually in the office of the jurisdictional proper officer.

3. It may be noted that the documents/statements/undertakings/invoices to be submitted along with the refund application in FORM GST RFD-01A are the same as have been prescribed under the CGST Rules and various Circulars issued on the subject from time to time. Only the method of submission of these documents/ statements/ undertakings/invoices is being changed from the physical mode to the electronic mode. It may also be noted that the other stages of processing of a refund claim submitted in FORM GST RFD-01A by the jurisdictional tax officer shall continue to be carried out manually for the time being, as is being presently done.

Calculation of refund amount for claims of refund of accumulated Input Tax Credit (ITC) on account of inverted duty structure:

4. Already discussed under inverted duty structure topic.

Disbursal of refund amounts after sanction:

5. Section 56 of the CGST Act clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified vide notification No. 13/2017-Central Tax, dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the claimant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the claimant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the claimant. Accordingly, all tax authorities are advised to issue the final sanction orders in FORM GST RFD-06 within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days by both Central and State Tax Authorities for CGST/IGST/UTGST/Compensation Cess and SGST respectively.

Refund applications that have been generated on the portal but not physically received in the jurisdictional tax offices:

6. There are a large number of applications for refund in FORM GST RFD-01A which have been generated on the common portal but have not yet been physically received in the jurisdictional tax offices. With the implementation of electronic submission of refund application, as detailed in para 2 above, this problem is expected to reduce. However, for the applications (except those relating to refund of excess balance in the electronic cash ledger) which have been generated on the common portal before the issuance of this Circular and which have not yet been physically received in the jurisdictional offices (list of all applications pertaining to a particular jurisdictional office which have been generated on the common portal, if not already available, may be obtained from DG-Systems), the following guidelines are laid down:
    (a) All refund applications in which the amount claimed is less than the statutory limit of ₹1,000/- should be rejected and the amount re-credited to the electronic credit ledger of the applicant through the issuance of FORM GST RFD-01B.
    (b) For all applications wherein an amount greater than ₹1,000/- has been claimed, a list of applications which have not been received in the jurisdictional tax office within a period of 60 days starting from the date of generation of ARN may be compiled. A communication may be sent to all such claimants on their registered email ids, informing that the application needs to be physical submitted to the jurisdictional tax office within 15 days of the date of the email. The contact details and the address of the jurisdictional officer may also be provided in the said communication. The claimant may be further informed that if he/she fails to physically submit the application within 15 days of the date of the email, the application shall be summarily rejected and the debited amount, if any, shall be re-credited to the electronic credit ledger.

Facility of withdrawal of refund application by taxpayer introduced rule 90(5) and (6):

Earlier the taxpayer had no option to withdraw their refund applications, if they has committed any mistakes, wihle filing the application. A functionality has now been implemented for the taxpayer by inserted subrule (5) and (6) to rule 90 of CGST Rules, 2017.

The applicant may, at any time before issuance of provisional refund sanction order or final refund sanction order or payment order or refund whithold order or show cause notice, in respect of any refund application filed, withdraw the said application for refund by filing an application in the prescribed form.

On submission of such withdrawal application, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing refund application, shall be credited back to the ledger from which such debit was made (Notification No. 15/2021) CT dated 18/05/2021)

7. For the applications generated on the common portal before the issuance of this Circular in relation to refund of excess balance from the electronic cash ledger which have not yet been received in the jurisdictional office, the amount debited in the electronic cash ledger in such applications may be re-credited through FORM GST RFD-01B provided that there are no liabilities in the electronic liability register. The said amount shall be re-credited even though the return in FORM GSTR-3B, as the case may be for the relevant period has not been filed.

8. For the refund applications generated on the common portal after the issuance of this Circular, and for the refund applications generated on the common portal before the issuance of this Circular and which have been physically received in the jurisdictional tax offices before the issuance of this Circular, the existing guidelines, as modified by this Circular may be followed.

Issues related to refund of accumulated Input Tax Credit of Compensation Cess:

9. Several representations have been received requesting clarifications on certain issues related to refund of accumulated input tax credit of compensation cess on account of zero rated supplies made under Bond/Letter of Undertaking. These issues have been examined and are clarified as below:

   (a) Issue: A registered person uses inputs on which compensation cess is leviable (E.g. coal) to export goods on which there is no levy of compensation cess (E.g. aluminium). For the period July 2017 to May 2018, no ITC is availed of the compensation cess paid on the inputs received during this period. ITC is only availed of the CGST, SGST/UTGST or IGST charged on the invoices for these inputs. This ITC is utilized for payment of IGST on export of goods. Vide Circular No. 45/19/2018-GST, dated 30.05.2018, it was clarified that refund of accumulated ITC of compensation cess on account of zero-rated supplies made under Bond/Letter of Undertaking is available even if the exported product is not subject to levy of cess. After the issuance of this Circular, the registered person decides to start exporting under bond/ LUT without payment of tax. He also decides to avail (through the return in FORM GSTR-3B) the ITC of compensation cess, paid on the inputs used in the months of July 2017 to May 2018, in the month of July 2018. The registered person then goes on to file a refund claim for ITC accumulated on account of exports for the month of July 2018 and includes the said accumulated ITC for the month of July 2018. How should the amount of compensation cess to be refunded be calculated? Clarification: In the instant case, refund on account of compensation cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized credit of CGST/SGST/UTGST/IGST was claimed on account of exports made under LUT/Bond. If the aggregate of these recomputed amounts of refund of compensation cess is less than or equal to the eligible refund of compensation cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of compensation cess of the respective months would be admissible. Further, the recomputed amount of eligible refund (of compensation cess) in respect of past periods, as aforesaid, would not be admissible in respect of consignments exported on payment of IGST. This process would be applicable for application for refund of compensation cess (not claimed earlier) in respect of the past period.

   (b) Issue: A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminium) which are exported under Bond/Letter of Undertaking without payment of duty. Refund claim is filed for accumulated Input Tax Credit of compensation cess paid on coal. Can the said refund claim be rejected on the ground that coal is used for the generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available? Clarification: There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.

(c) Issue: A registered person avails ITC of compensation cess (say, of ₹100/-) paid on purchases of coal every month. At the same time, he reverses a certain proportion (say, half i.e. ₹50/-) of the ITC of compensation cess so availed on purchases of coal which are used in making zero rated outward supplies. Both these details are entered in the FORM GSTR-3B filed for the month as a result of which an amount of ₹50/- only is credited in the electronic credit ledger. The reversed amount (₹50/-) is then shown as a 'cost' in the books of accounts of the registered person. However, the registered person declares ₹100/- as 'Net ITC' and uses the same in calculating the maximum refund amount which works out to be ₹50/- (assuming that export turnover is half of total turnover). Since both the balance in the electronic credit ledger at the end of the tax period for which the claim of refund is being filed and the balance in the electronic credit ledger at the time of filing the refund claim is ₹50/- (assuming that no other debits/ credits have happened), the system will proceed to debit ₹50/- from the ledger as the claimed refund amount. The question is whether the proper officer should sanction ₹50/- as the refund amount or ₹25/- (i.e. half of the ITC availed after adjusting for reversals)?

Clarification: ITC which is reversed cannot be held to have been 'availed' in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero-rated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income tax liability of the claimant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under section 16(4) of the CGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in para 9(a) above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.

Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period:

10. Presently, ITC is reflected in the electronic credit ledger on the basis of the amount of the ITC availed on self-declaration basis in FORM GSTR-3B for a particular tax period. It may happen that the goods purchased against a particular tax invoice issued in a particular month, say August 2017, may be declared in the FORM GSTR-3B filed for a subsequent month, say September 2017. This is inevitable in cases where the supplier raises an invoice, say in August 2017, and the goods reach the recipient's premises in September 2017. Since GST law mandates that ITC can be availed only after the goods are received, the recipient can only avail the ITC on such goods in the FORM GSTR-3B filed for the month of September 2017. However, it has been observed that field officers are excluding such invoices from the calculation of refund of unutilized ITC filed for the month of September 2017.

11. In this regard, it is clarified that "Net ITC" as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period. Relevant period means the period for which the refund claim has been filed. Input tax credit can be said to have been "availed" when it is entered into the electronic credit ledger of the registered person. Under the current dispensation, this happens when the

said taxable person files his/her monthly return in FORM GSTR-3B. Further, section 16(4) of the CGST Act stipulates that ITC may be claimed on or before the due date of filing of the return for the month of September following the financial year to which the invoice pertains or the date of filing of annual return, whichever is earlier. Therefore, the input tax credit of invoices issued in August 2017, "availed" in September, 2017 cannot be excluded from the calculation of the refund amount for the month of September, 2017.

Misinterpretation of the meaning of the term "inputs":

12. It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

13. In relation to the above, it is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

Refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure:

14. Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, section 2(59) of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit. Accordingly, in order to align the CGST Rules with the CGST Act, notification No. 26/2018-Central Tax, dated 13.06.2018 was issued wherein it was stated that the term Net ITC, as used in the formula for calculating the maximum refund amount under rule 89(5) of the CGST Rules, shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.

    In view of the above, it is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.

15. All previous Circulars/Instructions issued on the subject stand modified accordingly.

Proper officer to issue payment order instead of payment advice for refunds

Proper officer will now issue payment order instead of payment advice for refunds under GST with effect from 24.09.2019. To give effect to this amendment, with effect from 24.09.2019, rule 91(3), rule 92(4), rule 92(5), rule 94 of the CGST Rules have been suitably amended and rule 91(4) and rule 92(4A) have been newly inserted.

[Notification No. 31/2019-CT, dated 28.06.2019 and Notification No. 49/2019-CT, dated 9.10.2019]

Practical Theory:

Illustration 2

How soon will refund in respect of export of goods or services be granted during the GST regime?

Solution:

(a) In case of refund of tax on inputs used in exports:

- Refund of 90% will be granted provisionally within seven days of acknowledgement of refund application.
- Remaining 10% will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects.
- Interest @ 6% is payable if full refund is not granted within 60 days.

(b) In the case of refund of IGST paid on exports:

Upon receipt of information regarding furnishing of valid return in Form GSTR-3 by the exporter from the common portal, the Customs shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of the exporter.

Illustration 3

M/s X Ltd. manufacture of exempted excisable goods for export. Company availed input stage rebate (ITC on inputs) used in the manufacture of exported goods. Whether the company is eligible for refund of ITC on inputs?

Solution:

Under IGST law a person engaged in export of goods which is an exempt supply is eligible to avail input stage credit for zero rated supplies. Once goods are exported, refund of unutilized credit can be availed under Section 16(3)(a) of IGST Act, 2017 and Section 54 of the CGST Act, 2017 and the rules made there under.

Illustration 4

What do you mean refund under section 54 of CGST Act, 2017?

Solution:

As per explanation to section 54 of the CGST Act 2017 refund includes refund of tax paid on zero-rated supplies of goods or services or both

OR

on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under section 54(3) of the CGST Act, 2017.

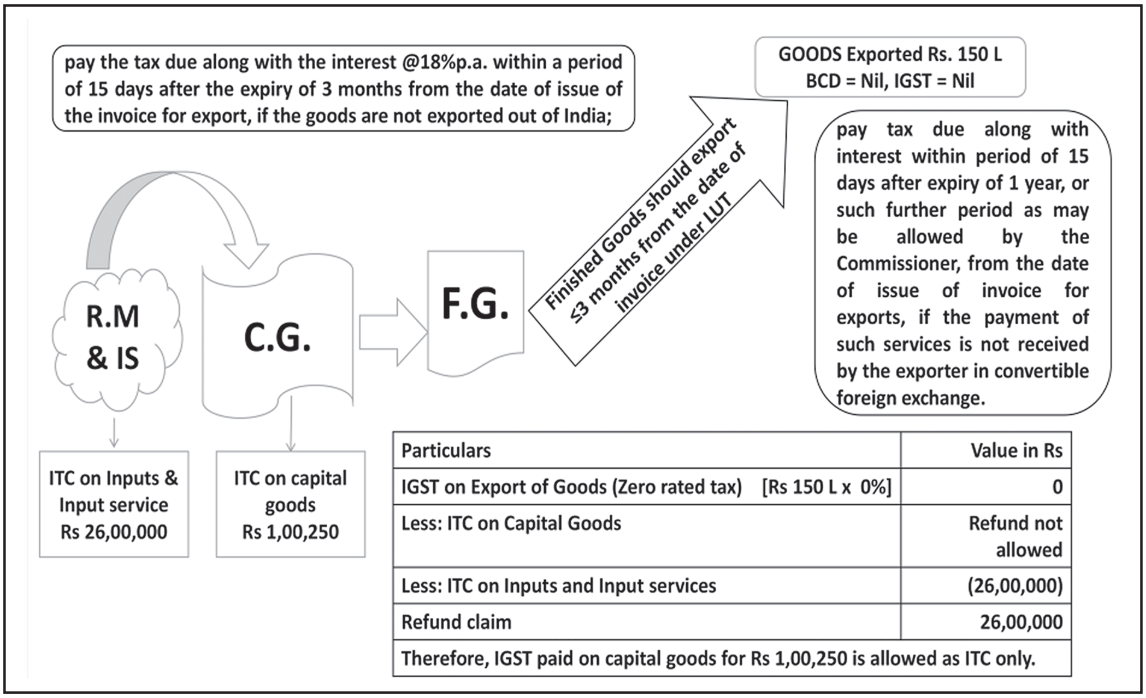
Illustration 5

Under what circumstances it may be beneficial to claim refund of un-utilised credit when exports of goods or services are made without payment of tax. [Section 54(3) of the CGST Act, 2017]

Solution:

If assessee has negligible balance of tax in Capital Goods Input Tax Credit Account, and more credit in inputs and input services it is advisable to claim refund of un-utilised credit when exports of goods or services are made without payment of tax (Section 54(3) of the CGST Act, 2017.

Simplified approach: assume X Ltd purchased goods by paying GST for manufacture. After manufacturing supplied goods to an importer located in USA in the following manner.



Particulars	Value in Rs
IGST on Export of Goods (Zero rated tax) [Rs 150 L x 0%]	0
Less: ITC on Capital Goods	Refund not allowed
Less: ITC on Inputs and Input services	(26,00,000)
Refund claim	26,00,000
Therefore, IGST paid on capital goods for Rs 1,00,250 is allowed as ITC only.	

Note: In general, all our exports free from Basic Customs Duty unless law specifically stated otherwise.

Illustration 6

Under what circumstances it may be beneficial to pay IGST on export of goods and claim rebate (i.e. Refund) under rule 96 of the CGST Rules, 2017.

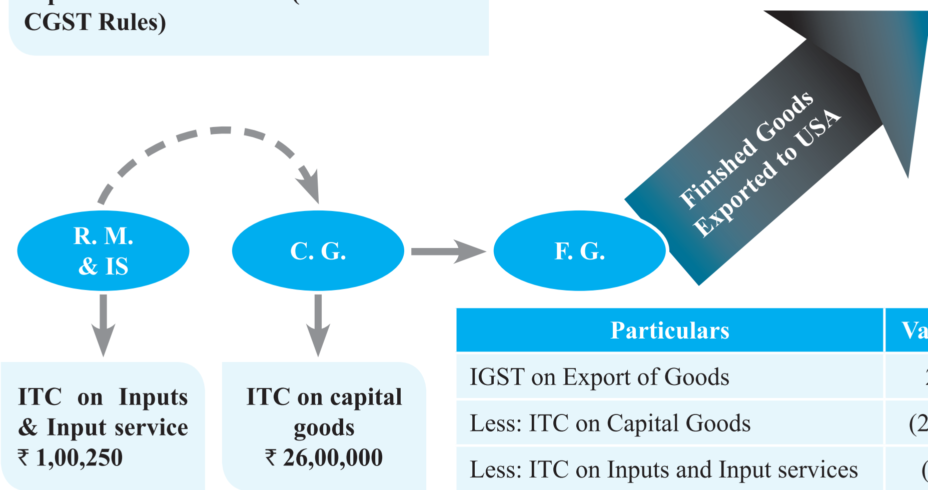
Solution:

If assessee has balance of tax in Capital Goods Input Tax Credit Account, it is advisable to pay duty (i.e. IGST) on export and claim refund, as balance in Capital Goods Input Tax Credit Account is never refundable.

Simplified approach: assume X Ltd purchased goods by paying GST for manufacture. After manufacturing supplied goods to an importer located in USA in the following manner.

Refund of integrated tax paid on goods exported out of India (Rule 96 of the CGST Rules)

Goods Exported ₹ 150 lakh GST @ 18%



Particulars	Value in (₹)
IGST on Export of Goods	27,00,000
Less: ITC on Capital Goods	(26,00,000)
Less: ITC on Inputs and Input services	(1,00,250)
Excess ITC c/f	250
Therefore, IGST paid on export of goods for ₹ 27,00,000 isallowed as refund under section 54 of the CGST Act, 2017 read with rule 96 of the CGST Rules, 2017	

vide Notification No. 16/2020-CT, dated 23.03.2020:

Rule 96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.–

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of 3 months from the date of realisation of sale proceeds, the amount so recovered shall be refunded

by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

Illustration 7

How to execute Bond required for exporting without payment of IGST?

Solution:

Following are the instructions on how to execute Bond required for exporting without payment of IGST.

Step 1: Bond has to be executed when your turnover in the previous year is less than ₹1,00,00,000/- (now please refer master circular **CBIC Circular No. 8/8 /2017-GST, dated 4th October 2017 with regard to export given above)**.

Step 2: Bond of amount equivalent to the tax liability (usually annual liability) has to be executed on non-judicial stamp paper in the favour of President of India, through the concerned Assistant Commissioner.

Step 3: In the bond, exporter has to mention the Bank Guarantee amount which is equivalent to 15% of the bond value (or lesser if allowed by Assistant Commissioner).

Step 4: Stamp Paper for Bond can be of value ₹500/- or more (or as prescribed by concerned Assistant Commissioner). Stamp paper should be purchased from your own State (same jurisdiction) i.e. where the concerned Range Office is located. It should be purchased in the name of exporter (with address).

Bond-Language does not fit well on single page, so you have to use second page. Second page can be any blank page to print the extra content.

Step 5: Exporter has to self-sign the bond on first page as well as on second page. Second page has to be signed by two witnesses. Then, Bond has to be attested by a Notary.

Step 6: Exporter has to submit self-signed copy of own ID-Proof (Like Aadhar Card). You also have to submit the copies of ID-Proofs (Like Aadhar Card) of witnesses, which has to be self-signed by him.

Export of Services under GST – (CBIC Circular No. 78/52/2018-GST, dated 31-12-2018)

S. No.	Issue	Clarification
1	In case an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter? There may be instances where the full consideration for the outsourced services is not received by the exporter in India.	1. Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place:— (i) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value; (ii) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract. Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all

S. No.	Issue	Clarification
		the conditions laid down in section 2(6) of the Integrated Goods and Services Tax Act, 2017 (IGST Act for short) read with section 13(2) of the IGST Act are satisfied. 2. It is clarified that the supplier of services located in India would be liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid. 3. Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the: (i) integrated tax has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India to the recipient of services located outside India; and (ii) RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India.

Export of Service:

Any registered person availing the option to supply services for export without payment of integrated tax shall furnish, prior to export, a bond or LUT, binding himself to pay tax due along with interest within period of 15 days after expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of invoice for exports, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by Reserve Bank of India.

Special Economic Zones (SEZ's)/Developer of SEZ units

Illustration 8

X Ltd., a unit in SEZ, received services from various service providers in relation to authorized operations in SEZ during the month July 2017. The following details are furnished for the month July, 2017:

(i) Value of Taxable services used exclusively for authorised operations within SEZ: ₹5,00,000 (exemption from GST availed).

(ii) Value of Taxable Services used by SEZ units and DTA units: ₹8,00,000. GST paid @18%.

(iii) Value of Taxable Service used wholly for DTA units: ₹3,00,000. GST paid @18%.

(iv) Export Turnover of SEZ Unit: ₹1,00,00,000

(v) Turnover of DTA Unit: ₹60,00,000

Compute the ITC and amount of refund if any?

Note: All input services used by SEZ for its authorized operations only.

Solution:

Statement showing ITC &refund of X Ltd. (a unit of SEZ)

S. No.	Particulars	Value of input services (₹)	ITC (₹)	Refund Amount (₹)	Remarks
1	Input services	5,00,000	Nil	Since, no tax paid on inputs no refund is allowed	Input services used exclusively for authorized operations
2	DTA as well as Zero rated supply	8,00,000	54,000	90,000	(₹8L × 18%) × 100L/160L
3	Input services only for DTA	3,00,000	54,000	Nil	3,00,000 × 18%
	Total		1,08,000	90,000	

Clarification regarding applicability of section 16 of the IGST Act, 2017, relating to zero rated supply for the purpose of compensation cess on exports:

Section 11(2) of the Goods and Services tax (Compensation to States) Act, 2017 provides that provisions of IGST Act, and the rules made thereunder, shall, mutatis mutandis, apply in relation to the levy and collection of the cess leviable under section 8 of that Act on the inter-State supply of goods and services, as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act or the rules made thereunder.

In view of the above, it has been clarified that provisions of section 16 of the IGST Act, 2017, relating to zero rated supply will apply mutatis mutandis for the purpose of compensation cess (wherever applicable), that is to say that:

(a) Exporter will be eligible for refund of compensation cess paid on goods exported by him [on similar lines as refund of IGST under section 16(3)(b) of the IGST, 2017]; or

(b) No compensation cess will be charged on goods exported by an exporter under bond and he will be eligible for refund of input tax credit of compensation cess relating to goods exported [on similar lines as refund of input taxes under section 16(3)(a) of the IGST, 2017]. [Circular No. 01/01/2017-CC, dated 26.07.2017]

Provisions relating to Consumer Welfare Fund under rule 97 of CGST Rules amended

Rule 97 of CGST Rules prescribing provisions relating to Consumer Welfare Fund has been substituted with a new rule. The amended provisions are as under:

(1) All amounts of duty/CGST/IGST/UTGST/cess and income from investment along with other monies specified in section 12C(2) of the Central Excise Act, 1944, section 57 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017, section 21 of the UTGST Act, 2017 and section 12 of the GST (Compensation to States) Act, 2017 shall be credited to the Fund [Sub-rule (1)].

(2) An amount equivalent to 50% of the amount of IGST determined under section 54(5) of the CGST Act, 2017, read with section 20 of the IGST Act, 2017, shall be deposited in the Fund [Proviso to sub-rule (1)].

(3) Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India [Sub-rule (3)].

(4) The following applicants can apply for a grant from Consumer Welfare Fund:

(i) the Central Government or State Government;

(ii) regulatory authorities or autonomous bodies constituted under an Act of Parliament or the Legislature of a State or Union Territory;

(iii) any agency or organization engaged in consumer welfare activities for a minimum period of three years, registered under the Companies Act, 2013 or under any other law for the time being in force;

(iv) village or mandal or samiti or samiti level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes;

(v) an educational or research institution incorporated by an Act of Parliament or the Legislature of a State or Union Territory in India or other educational institutions established by an Act of Parliament or declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956 and which has consumers studies as part of its curriculum for a minimum period of three years; and

(vi) a complainant as defined under clause (b) of sub-section (1) of section 2 of the Consumer Protection Act, 1986, who applies for reimbursement of legal expenses incurred by him in a case instituted by him in a consumer dispute redressal agency. [Notification No. 21/2018-CT, dated 18.4.2018]

Circular No. 03/1/2018 IGST dated 25.5.2018 which clarified on the applicability of IGST on goods supplied while being deposited in a customs bonded warehouse, rescinded

The provisions of the CGST (Amendment) Act, 2018 and SGST Amendment Acts of the respective States have been brought into force w.e.f. 01.02.2019. Schedule III of the CGST Act has been amended vide section 32 of the CGST (Amendment) Act, 2018 so as to provide that the "supply of warehoused goods to any person before clearance for home consumption" shall be neither a supply of goods nor a supply of services.

Accordingly, Circular No. 03/01/2018 IGST dated 25.05.2018 which clarified on the applicability of IGST on goods supplied while being deposited in a customs bonded warehouse, has been rescinded.

[Circular No. 04/01/2019 IGST dated 01.02.2019]

Illustration 9

X Ltd. exported 1000 watches @₹1,100 per per watch. Further watches are also sold in domestic tariff area (i.e. DTA) 1000 watches @ ₹800 per watch. Input tax credit on inputs and input services is ₹10,00,000 is available for the relevant tax period. GST applicable rate is 18%. Find the net GST payable for DTA clearances and refund of tax if any?

Solution:

GST payable on DTA clearances	= ₹1,44,000 [i.e. (₹800 × 1000 units) ×18%]
Less: ITC receivable. (₹10 lakh × ₹8 lakh / ₹19 lakh)	= ₹(4,21,053)
Net GST payable	= nil

Excess credit carried forward is ₹2,77,053/-

Refund = ₹10,00,000 × ₹11,00,000 / ₹19,00,000 = ₹5,78,947/-

Working note:

Total turnover = Export turnover + Domestic turnover

₹19,00,000 = ₹11,00,000 + 8,00,000

₹11,00,000 or 1.5 times of ₹8,00,000 whichever is less ₹11,00,000 or ₹12,00,000 whichever is less Therefore, exported turnover is ₹11,00,000/-

Illustration 10

ABC Ltd. India has received an order for supply of services amounting to $5,00,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in Section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value). Identify exporter, importer and value of exports and imports from the above?

Solution:

ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay integrated tax on the same under reverse charge and also be eligible to take input tax credit of the integrated tax so paid. Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided integrated tax on import of services has been paid on the part of the services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

Illustration 11

Determine refundable amount of M/s X Ltd. for the month of April 2021 exports in case of refund of un-utilised ITC on account of (i) exports without payment of tax, (ii) supplies made to SEZ unit / SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure from the following:- (A) The maximum amount of refund as per the formulae in rule 89(4) or rule 89(5) of the CGST Rules, 2017 is ₹5,00,000/- (B) The balance in the electronic credit ledger of the applicant (M/s X Ltd.) at the end of the tax period for which the refund claim is being filed after the return in in Form GSTR-3B for the said period has been filed is ₹4,00,000/- (C) The balance in the electronic credit ledger of the applicant a the time of filing the refund application is ₹6,00,000.

Solution:

Maximum refund amount is ₹4,00,000/- the common portal calculates the refundable amount as the least of the following amounts:

(a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the CGST Rules, 2017 [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax + Integrated tax];

(b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in Form GSTR-3B for the said period has been filed; and

(c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

After calculating the least of the above 3 amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

- Integrated tax, to the extent of balance available;
- Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

Case Laws:

1. **Union of India v. VKC Footsteps India Pvt Ltd.** [2021] 130 taxmann.com 193 (SC):

   Rule 89(5) which denies refund of unutilised ITC of input services is not ultra vires. The Honorable Supreme Court observed that the purpose of the formula in Rule 89(5) is to give effect to Section 54(3) (ii) which makes a distinction between input goods and input services for grant of refund. The Apex Court also observed that the formula under Rule 89(5) to create a legal bifurcation is a familiar terrain in fiscal legislation including delegated legislation.

   The Supreme Court also noted that the practical effect of the formula might result in certain inequities but it restrained providing any formula saying that it's the field of the legislature. The Court strongly urged the GST Council to reconsider the formula and take a policy decision regarding the same.

   From the above presently unutilised ITC on input services is not allowed to claim refund under inverted duty structure.

2. **Platinum Holdings (P.) Ltd. v. Additional Commissioner of GST & Central Excise, Chennai** [2021] 131 taxmann.com 142 (Madras):

   The petitioner was a Special Economic Zone (SEZ) and made purchases from several suppliers/vendors for the development of the SEZ. The petitioner filed applications for refund of the taxes and it was held that the petitioner was not entitled to the refund on the ground that only a supplier of services would be entitled to claim the refund and not the SEZ itself. It filed an appeal and the appeal was also rejected. The petitioner filed the writ petition.

   The Honorable High Court observed that Section 54 of the CGST Act read with Rule 89 of CGST Rules permits any entity to seek a refund of taxes or other amounts paid under provisions of the Act. The only exclusion is for the person covered under a notification issued under Section 55, admittedly inapplicable to the petitioner. Therefore, it was held that the application filed for refund of taxes paid under the Act would be maintainable if it would be established that no such claim has been made by supplier, and tax has been remitted to treasury.

   Decision: SEZ unit is eligible to claim refund of unutilized Input Tax Credit.

3. **M/s Britannia Industries Vs UOI 2020-TIOL-1495-HC-AHM-GST**

   The department rejected refund of unutilized ITC filed by the Petitioner which is operating as a Special Economic Zone (SEZ) unit. Department contended that Rule 89 of the CGST Rules allows refund of ITC only to supplier of goods or services for supplies made to SEZ unit, however the Petitioner is not supplier of goods or services to SEZ unit but SEZ unit itself, thus, not eligible to claim refund of ITC under Section

54 of the CGST Act. Department further contended that the Petitioner received ITC on services from Input Service Distributor (ISD) which is not supplier of services.

The Hon'ble High Court observed that outward supplies made by SEZ unit is zero rated supply and there is no statutory provision barring refund of accumulated ITC to SEZ unit relatable to zero rated supplies. Accordingly, it has been held that the Petitioner is entitled to claim refund of ITC of GST distributed by ISD and there is no specific supplier who can claim refund under GST laws.

Decision: Gujarat HC at Ahmedabad in the case of M/s Britannia Industries Limited held that Refund of accumulated ITC received from ISD to SEZ unit in relation to zero rated supplies cannot be barred.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Zero rated supply includes:
   (a) Export of goods and services.
   (b) Supply of goods and services to a SEZ developer or SEZ Unit
   (c) Supply of goods and services by a SEZ developer or SEZ Unit
   (d) Both (a) and (b)

2. Is the SEZ developer or SEZ unit receiving zero rated supply eligible to claim refund of IGST paid by the registered taxable person on such supply?
   (a) Yes
   (b) No
   (c) Partially yes
   (d) Partially No

3. A registered taxable person is eligible to claim refund in respect of export of goods and services in the following cases:
   (a) Under bond, without payment of IGST and claim refund of unutilized input tax credit.
   (b) On payment of IGST and claim refund of IGST paid on such goods and services.
   (c) None of the above
   (d) Both (a) and (b)

4. The supply of goods to SEZ unit is treated as ___________ in the hands of the supplier:
   (a) Exempt Supply – Reversal of credit
   (b) Deemed Taxable Supply – No reversal of credit
   (c) Export of Supplies
   (d) Non-Taxable Supply – Outside the Scope of GST

5. Refunds will not be allowed in cases of:-
   (a) Exports made on which export duty is levied
   (b) Exports made without payment of tax
   (c) Inverted duty structures where tax on inputs are higher than tax on outputs
   (d) None of the above

6. Refund application is to be filed before the expiry of ____________ from the relevant date.
   (a) Two years
   (b) One year
   (c) 180 days
   (d) 260 days

7. Refunds would be allowed on a provisional basis in case of refund claims on account of zero-rated supplies of goods and/or services made by registered persons. At what percentage, would such provisional refunds be granted?
   (a) 70%
   (b) 65%
   (c) 80%
   (d) 90%

8. Order sanctioning the amount of refund due to the said applicant on a provisional basis shall be made within __ from the date of the acknowledgement.
   (a) 7 days
   (b) 15 days
   (c) 30 days
   (d) 2 months

9. Refund shall not be paid to the applicant if the amount of refund is less than—
   (a) ₹1000
   (b) ₹5000
   (c) ₹7000
   (d) ₹10000

10. The time limit available to proper officer to pass final order after accepting the refund application is—
    (a) Within sixty days from the date of receipt of application.
    (b) Within eighty days from the date of receipt of application.
    (c) Within ninety days from the date of receipt of application.
    (d) Within thirty days from the date of receipt of application.

11. Can amount credited to consumer welfare fund account be invested?
    (a) Yes, such amount can be invested by the Central/State Government or the authorized persons.
    (b) No, such amount can't be invested by the Central/State Government or the authorized persons.
    (c) 50% of such amount can be invested by the Central/State Government or the authorized persons.
    (d) None of the above

Answer:

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
d	b	d	c	a	a	d	a	a	a	a

GST Returns 10

This Module Includes

GST Returns

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Identify various types of returns under GST
- Explain importance of returns under GST
- Understand content and due dates returns under GST
- Explain QRMP Scheme
- Identify matching, mismatching, reclaiming of Input Tax Credit.
- Understand various types of penalties for late filing of returns.

Introduction

10.1

To meet the concept of digital India, the Government of India made it mandatory to file all returns electronically.

Moreover, one of the basic features of the returns mechanism in GST include electronic filing of returns, uploading of invoice level information and auto-population of information relating to Input Tax Credit (ITC) from returns of supplier to that of recipient, invoice-level information matching and auto reversal of Input Tax Credit in case of mismatch.

The returns mechanism is designed to assist the taxpayer to file returns and avail ITC.

Under GST, a regular taxpayer needs to furnish monthly returns and one annual return. There are separate returns for a taxpayer registered under the composition scheme, non-resident taxpayer, taxpayer registered as an Input Service Distributor, a person liable to deduct or collect the tax (TDS/TCS) and a person granted Unique Identification Number.

It is important to note that a taxpayer is NOT required to file all types of returns. In fact, taxpayers are required to file returns depending on the activities they undertake.

Returns can be filed using any of the following methods:

1. GSTN portal (www.gst.gov.in)
2. Offline utilities provided by GSTN
3. GST Suvidha Providers (GSPs)

Specific Provisions – Monthly Returns, Matching, Reversal and Reclaim of Input Tax Credit

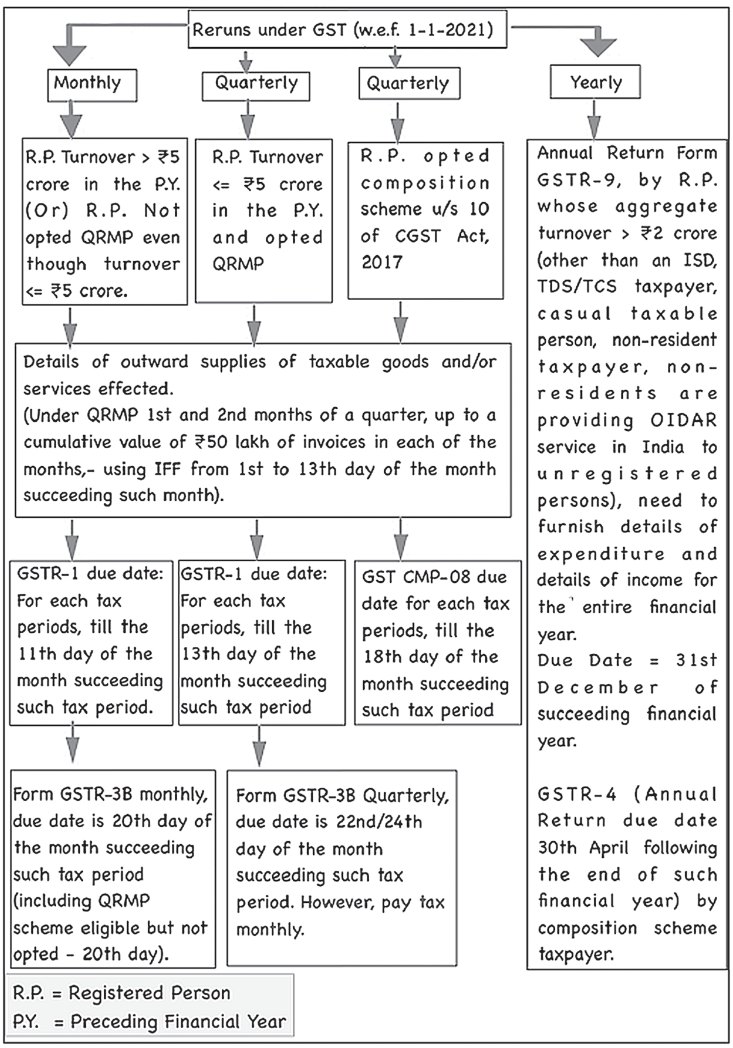
10.2

Following table lists the various types of returns under GST Law:

Return Form	Particulars	Frequency	Due Date
GSTR-1	Details of outward supplies of taxable goods and/or services effected (Section 37 of the CGST Act, 2017).	Monthly	11th of the next month
GSTR-2A/2B	Form GSTR-2A is a system generated Statement of Inward Supplies for a recipient.	-	Don't have to file Form GSTR-2A/2B. GSTR-2A is a read-only document, so that one can view a record of all the invoices received from various suppliers in a given tax period. Form GSTR-2A is a form of a dynamic statement. The details of inward supplies vis-à-vis input tax credit will be updated on a continuous basis. the details will be updated as and when the supplier furnishes the details of outward supplies either in Form GSTR-1 or via using Invoice Furnishing Facility (i.e. IFF). On the other hand, Form GSTR-2B is a form of a static statement. The details will be updated on a constant basis. The details will be updated on a constant basis.

Return Form	Particulars	Frequency	Due Date
GSTR-3B	Monthly return on the basis of finalization of details of outward supplies and inward supplies along with the payment of amount of tax (Section 39(1) of the CGST Act, 2017). **Form GSTR-3B to be treated as a return furnished under section 39 of the CGST Act [Rule 61(5) of the CGST Rules] vide** [Notification No. 49/2019-CT, dated 09.10.2019]	Monthly/ Quarterly	20th of the next month/22nd or 24th of the succeeding quarter.
GSTR-4	Composition taxpayers	Annually	30th April of the succeeding financial year.
GSTR-5	Return for Non-Resident foreign taxable person (Section 39(5) of the CGST Act, 2017)	Monthly	20th of the next month or within 7 days after the last day of the period of registration specified under section 27(1), whichever is earlier
GSTR-6	Return for Input Service Distributor (Section 39(4) of the CGST Act, 2017)	Monthly	13th of the next month
GSTR-7	Return for authorities deducting tax at source (Section 39(3) of the CGST Act, 2017)	Monthly	10th of the next month
GSTR-8	Details of supplies effected through e-commerce operator and the amount of tax collected	Monthly	10th of the next month
GSTR-9	Annual Return (section 44 of the CGST Act, 2017) (a) Who Files: Registered Person other than an ISD, TDS/TCS Taxpayer, Casual Taxable Person and Non-resident Taxpayer. (b) In this return, the taxpayer needs to furnish details of expenditure and details of income for the entire Financial Year. (c) The persons who are non-residents and are providing OIDAR service in India to unregistered persons have been exempted from submitting GSTR-9 and GSTR-9C (vide NT 30/2019 CT dated 28/6/2019) Filing of annual return under section 44(1) of the CGST Act for F.Y. 2017-18 and 2018-19 made optional for small taxpayers whose aggregate turnover is less than ₹2 crores and who have not filed the said return before the due date	Annually	31st December of next financial year

Return Form	Particulars	Frequency	Due Date
GSTR-10	Final Return (Section 45 of the CGST Act, 2017)	Once. When registration is cancelled or surrendered	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR-11	Details of inward supplies to be furnished by a person having UIN and claiming refund.	Monthly	28th of the month following the month for which statement is filed



w.e.f. 1-1-2021, the time limit for furnishing the details of outward supplies in Form GSTR-1 has been extended in the following manner:

Class of registered person	Time limit for furnishing the details of outward supplies in Form GSTR-1 for each quarter/tax period
Registered person opting for QRMP- Scheme	13th day of the month succeeding such tax period
Others	11th day of the month succeeding such tax period

Due dates for taxpayers opting for QRMP Scheme (GSTR-3B):

Class of registered persons	Due date
Taxpayers whose principal place of business in the States of Chhattisgarh, Madya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep	22nd day of the month succeeding such quarter
Taxpayer whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Mizoram, Manipur, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi	24th day of the month succeeding such quarter.

Form and manner of furnishing details of outward supplies Form GSTR-1 (Rule 59 of CGST Rules, 2017)

(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

(2) The registered persons required to furnish return for every quarter under proviso to subsection (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months,- using invoice furnishing facility (hereafter in this notification referred to as the "IFF") electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.

(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in **FORM GSTR-1** for the said quarter.

(4) The details of outward supplies of goods or services or both furnished in **FORM GSTR-1** shall include the —

 (a) invoice wise details of all—

  (i) inter-State and intra-State supplies made to the registered persons; and

  (ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;

(b) consolidated details of all –

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

(5) The details of outward supplies of goods or services or both furnished using the IFF shall include the—

(a) invoice wise details of inter-State and intra-State supplies made to the registered persons;

(b) debit and credit notes, if any, issued during the month for such invoices issued previously."

(vide Notification No. 82 /2020-Central Tax, dated 10th November, 2020)

GSTR-1 is a detailed form containing 13 different heads. The critical headings are:

1. GSTIN of the Taxable Person – Auto-populated result
2. Name – Auto-populated result
3. Gross Turnover in Last Financial Year – This has to be filed only once. From next year onwards, this field will be auto-populated
4. The Period for which the return is being filed – Month & Year shall be available as a drop-down for selection
5. Taxable outward supplies – Here, IGST shall be filled only in the case of inter-state movement whereas CGST and SGST shall be filled in case of intra-state movement. Moreover, details of any exempted sales or sale at nil rate of tax shall also be mentioned here
6. Outward Supplies to end customer, where the value exceeds ₹ 2.5 lakhs – Other than mentioned, all such supplies are optional in nature
7. Any other supplies not covered in above 2 sections
8. Debit Notes or Credit Notes Details
9. Amendments to the details of any outward supplies of previous periods – This does not cover any changes by way of debit/credit notes
10. Exempted, Nil-Rated and Non-GST Supplies – This is a Non-GST section. When the details of exempted sales or nil-rated sales have already been mentioned anywhere above, then only Non-GST shall be filled up here
11. Export Sales
12. Tax Liability arising out of advance receipts
13. Tax Paid

Form GSTR-3B to be treated as a return furnished under section 39 of the CGST Act [Rule 61(5) of the CGST Rules] vide [Notification No. 49/2019-CT, dated 09.10.2019]

Restriction in filing of GST returns **(W.e.f. 1-1-2021, NT 94/2020-CT, dated 22-12-2020 and Notification No. 1/2020-CT, dated 1-1-2021):**

(a) For monthly filers - Such registered person shall not be allowed to file GSTR 1 in case he has not furnished his return in FORM GSTR 3B for the preceding two months.

(b) For quarterly filers - Such registered person shall not be allowed to file GSTR-1 or use invoice furnishing facility in case he has not furnished return in FORM GSTR 3B for preceding tax period.

(c) For monthly filers on whom there is a restriction on utilization of ITC - Such registered persons shall not be allowed to file GSTR-1 or use invoice furnishing facility in case he has not furnished return in FORM GSTR 3B for preceding tax period.

Taxpayer should

- file GSTR-3B even when there has been no business activity (nil return).
- cannot revise/amend GSTR3B after submission.
- file a separate GSTR 3B for every GSTIN separately.

Contents of Form GSTR-3B:

Form GSTR-3B consists of 6 Tables:

1. GSTIN number of Registered Person
2. Legal name of Registered Person
3. Summary of Outward Supply & Inward Supply under Reverse Charge

   Bifurcation of Inter-state outward supplies as follows:

   (a) To unregistered Person

   (b) To Composite taxable Person

   (c) To UIN Holders
4. Summary of eligible ITC claim bifurcated into IGST, CGST & SGST/UTSGT and Cess
5. Summary of Exempted, Nil rated and Non-GST inward supplies
6. Details of payment of tax, which includes Category wise tax payable, ITC availed, TDS credit and Tax) paid in cash along with interest and late fees (Though it is not applicable for initial 2 return. Summary of tax category wise TDS/TCS credit.

Manner of furnishing of return or details of outward supplies by short messaging service (SMS) facility:

As per Rule 67A of the CGST Rules, 2017, "Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in **FORM GSTR-3B** or a Nil details of outward supplies under section 37 in **FORM GSTR-1** or a Nil statement in **FORM GST CMP-08** for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.

Explanation: For the purpose of this rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in **FORM GSTR-3B** or **FORM GSTR-1** or **FORM GST CMP-08**, as the case may be" (vide Notification No. 79/2020-Central Tax, dated 15th October, 2020).

Taxpayers with annual aggregate turnover upto ₹1.5 crore to file GSTR-1 on quarterly basis and taxpayers with annual aggregate turnover greater than ₹1.5 crore to file GSTR-1 on monthly basis.

As per Section 44 of the CGST Act, 2017, every registered taxable person is required to file annual return by 31st December following end of financial year. Thus, for the financial year 2019-20, the annual return is required to be filed by 31st December, 2020.

Composition taxpayers and tax payers paying tax under Notification No. 2/2019-CT, dated 01.03.2019 to file return annually and make payment quarterly

A special procedure for furnishing of return and payment of tax has been prescribed for the following persons:

(i) registered persons paying composition tax

(ii) registered person paying tax by availing the benefit of Notification No. 02/2019-CT(R), dated 07.03.2019.

Such persons will:

(i) furnish a statement in the prescribed form (Form GST CMP-08) containing details of payment of self - assessed tax, for every quarter (or part of the quarter), by 18th day of the month succeeding such quarter.

(ii) furnish a return (GSTR 4) for every financial year (or part of the financial year), on or before 30th day of April following the end of such financial year.

The registered persons paying tax by availing the benefit of Notification No. 02/2019-CT(R), dated 07.03.2019 will be deemed to have complied with the provisions of section 37 and section 39 of the CGST Act if they have furnished the prescribed statement and GSTR 4 as mentioned above.

Details of tax deducted and tax collected to be made available to the deductee and collectee respectively on the common portal after filing of GSTR-7 and GSTR-8 respectively [Rule 66(2) of the CGST Rules] [Notification No. 31/2019-CT, dated 28.06.2019].

Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.

Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

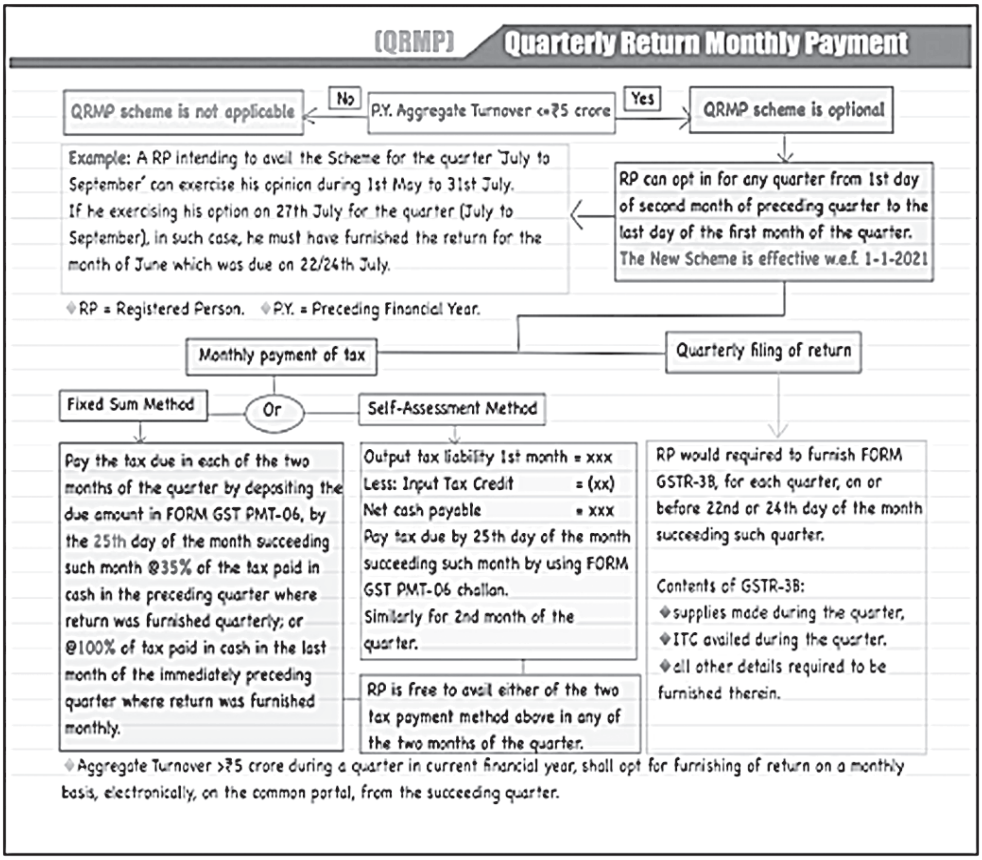
Salient features of Quarterly Return filing & Monthly Payment of Taxes (QRMP) Scheme:

1. **Who can opt for the scheme:** Following registered person (hereinafter RP) can file quarterly returns and pay tax on monthly basis w.e.f. 01.01.2021:
   - An RP who is required to file Form GSTR 3B with Aggregate Annual Turn Over (AATO) of up to ₹5 Cr. in the previous financial year is eligible. If AATO crosses ₹5 Cr. during a qtr., RP will become in-eligible for the Scheme from next quarter.
   - Any person obtaining a new registration or opting out of Composition Scheme can also opt for this Scheme.
   - The option to avail this Scheme can be availed GSTIN wise. Therefore, few GSTINs for that PAN can opt for the Scheme and remaining GSTINs can remain out of the Scheme.
2. **Changes on the GST Portal:** For qtr. Jan., 2021 to March, 2021, all RPs whose AATO for the FY 2019-20

is up to ₹5 Cr. and have furnished the return in Form GSTR-3B for the month of October, 2020 by 30th 2020, will be migrated by default in the GST system as follows:

Sl. No.	Class of RPs with AATO of	Default Return Option
1	Up to ₹1.5 Cr., who have furnished Form GSTR-1 on quarterly basis in current FY	Qtrly
2	Up to ₹1.5 Cr., who have furnished Form GSTR-1 on monthly basis in current FY	Monthly
3	More than ₹1.5 Cr. and up to ₹5 Cr. in preceding FY	Qtrly

3. **When can a person opt for the scheme:**
   - Facility can be availed throughout the year, in any quarter.
   - Option for QRMP Scheme, once exercised, will continue till RP revises the option or his AATO exceeds ₹5 Cr.
   - RPs migrated by default can choose to remain out of the scheme by exercising their option from 5th, 2020 till 31st Jan., 2021.
4. The RPs opting for the scheme can avail the facility of Invoice Furnishing Facility (IFF), so that the outward supplies to registered person is reflected in their Form GSTR 2A & 2B.
5. **Payment of tax under the scheme:**
   - RPs need to pay tax due in each of first two months (by 25th of next month) in the Qtr, by selecting "Monthly payment for quarterly taxpayer" as reason for generating Challan.
   - RPs can either use Fixed Sum Method (pre-filled challan) or Self-Assessment Method (actual tax due), for monthly payment of tax for first two months, after adjusting ITC.
   - No deposit is required for the month, if there is nil tax liability.
   - Tax deposited for first 02 months can be used for adjusting liability for the qtr. in Form GSTR-3B and can't be used for any other purpose till the filing of return for the qtr.



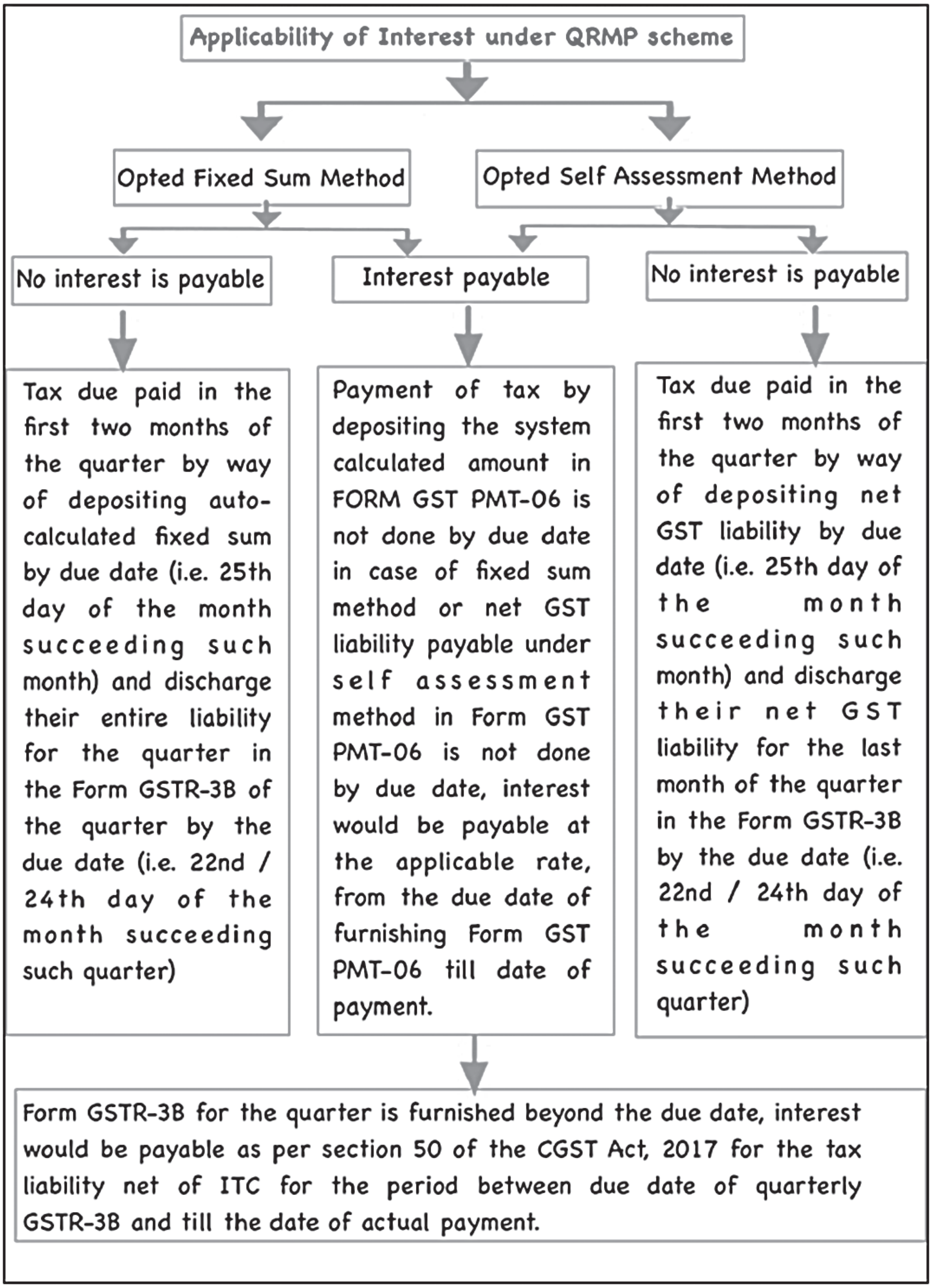
Example 1

A registered person intending to avail of QRMP scheme for the quarter 'July to September' can exercise his option from 1st May to 31st July.

Example 2

A registered person who has availed the QRMP scheme wants to declare 2 invoices out of the total 10 invoices issued in the 1st month of quarter since the recipient of supplies covered by those 2 invoices desires to avail ITC in that month itself. Details of these 2 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 1st month of the quarter and remaining 8 invoices furnished in Form GSTR-1 shall be reflected in Form GSTR-2B of the concerned recipient of the last month of the quarter.


Applicability of Interest under QRMP scheme
Opted Fixed Sum Method
Opted Self Assessment Method
No interest is payable
Interest payable
No interest is payable
Tax due paid in the first two months of the quarter by way of depositing auto-calculated fixed sum by due date (i.e. 25th day of the month succeeding such month) and discharge their entire liability for the quarter in the Form GSTR-3B of the quarter by the due date (i.e. 22nd / 24th day of the month succeeding such quarter)
Payment of tax by depositing the system calculated amount in FORM GST PMT-06 is not done by due date in case of fixed sum method or net GST liability payable under self assessment method 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 date of payment.
Tax due paid in the first two months of the quarter by way of depositing net GST liability by due date (i.e. 25th day of the month succeeding such month) and discharge their net GST liability for the last month of the quarter in the Form GSTR-3B by the due date (i.e. 22nd / 24th day of the month succeeding such quarter)
Form GSTR-3B for the quarter is furnished beyond the due date, interest would be payable as per section 50 of the CGST Act, 2017 for the tax liability net of ITC for the period between due date of quarterly GSTR-3B and till the date of actual payment.

Example 3

A registered person, who has opted for the QRMP Scheme, had paid a total amount of ₹ 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays ₹ 35/- each on 25th February and 25th March for discharging tax liability for the first 2 months of quarter viz. January and February.

In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was ₹40/- and for February it was ₹ 42/-. However, no interest would be payable for the lesser amount of tax (i.e. ₹ 5 and ₹ 7 respectively) discharged in these 2 months provided that he discharges his entire liability for the quarter in the Form GSTR-3B of the quarter by the due date.

Example 4

A registered person, who has opted for the QRMP Scheme, had paid a total amount of ₹ 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays ₹ 35/- each on 25th February and 25th March for discharging tax liability for the first 2 months of quarter viz. January and February.

In his return for the quarter, it is found that total liability for the quarter net of available credit was ₹ 125, but he files the return on 30th April. Interest would be payable at applicable rate on ₹ 55 [₹125 – ₹ 70 (deposit made in cash ledger in first and second month)] for the period between due date of quarterly GSTR 3B and 30th April.

Applicability of late fee in case of QRMP Scheme:

Late fee would be applicable for delay in furnishing the quarterly return/details of outward supply. However, no late fee is applicable for delay in payment of tax in first two months of the quarter.

First Return

As per section 40 of the CGST Act, 2017 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.

Revision of Returns

The mechanism of filing revised returns for any correction of errors/omissions has been done away with. The rectification of errors/omissions is allowed in the subsequent returns.

However, no rectification is allowed after furnishing the return 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.

w.e.f. 1-8-2019 Furnishing of returns Section 39 amended:

Section 39(1) of the CGST Act, 2017 Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.

Section 39(2) of the CGST Act, 2017, A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.;

Section 39(7) of the CGST Act, 2017, Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed."

Matching, Reversal and Reclaim of Input Tax Credit (ITC):

Matching, Reversal and Reclaim of Input Tax Credit are important for taxpayers because it helps in claiming the accurate amount of ITC without any discrepancy.

We will discuss in the following lines

1. ITC Mismatch
2. Officers Communicate the Differences Noticed in Returns
3. Actions of Receivers of Notice
4. Discrepancy Rectification and ITC Reversal
5. ITC Reclaim

1. ITC Mismatch:

Input Tax Credit (ITC) mismatch may be any one of the following reasons such as

- Difference between the credit amounts disclosed in forms GSTR 3B and GSTR 2A
- Discrepancies between forms GSTR 1 and GSTR 3B
- Mismatch in the amount of claimed provisional credit and claimable actual credit (usually arises during transition stages)

Any of these mismatches which are noticed in returns will lead to issuance of scrutiny notices by officers to taxpayers.

2. Officers communicate the differences Noticed in Returns:

The discrepancies noticed by an authorized officer in the filed returns will be communicated to the respective taxpayer through Form GST ASMT-10. This form will include:

- The officer's observations
- Available time in which the taxpayer has to explain his/her position in response to the said notice
- The mismatched amount of tax and the reason for the discrepancy (optional)

3. Actions of Receivers of Notice

Upon receiving the notice, registered person can accept the notice or reject the notice:

Accepting the Notice	Rejecting the Notice
The taxpayer will have to respond to the notice in Form GST AMT-11 (i.e. reply to the notice issued under section 61 scrutiny of returns intimating discrepancies in the return) within 30 days or in the time period mentioned in the notice (whichever is earlier). Acceptance of this response may be communicated by the government in Form GST AMT-12 (i.e. order of acceptance of reply against the notice issued under section 61). It means, reply has been found to be satisfactory and no further action is required to be taken in the matter.	If the taxpayer does not reply to the notice, it will be considered as absence of explanation or justification on the part of the taxpayer. The taxpayer will be proceeded against by the government according to the law so as to recover the mismatched amount of ITC. The taxpayer may also be charged with an interest of 18% for wrongly claiming ITC.

4. Discrepancy Rectification and ITC Reversal

ITC reversed in GST, or ITC reversal as per section 17(5), reversal of ITC wrongly availed but not utilised or any discrepancy which arises in returns or ITC wrongly reversed may be rectified in the following manner:

- Excess claim of ITC with respect to supplier's declaration OR Supplier has not declared outward supply:
  - If there is a discrepancy in the ITC claimed with respect to the supplier's declaration in returns, it will be communicated to the recipient and the supplier. How to reverse ITC wrongly claimed in GSTR-3B. On receiving the communication, the supplier will have to rectify the said discrepancy in valid returns.
  - In reversal of input tax credit under GST case, the supplier fails to rectify the discrepancy, the excess amount of ITC claimed will be added to the recipient's output tax liability in the following month.

    Example 5

    If the discrepancy is communicated in the month of July 20XX and not rectified by supplier, then the ITC claimed earlier shall be added to the output tax liability of the recipient for the following month of August 20XX.
- Duplication of ITC claim by recipient:
  - For any duplication of ITC claim, the recipient will have to face intimation about it. If the issue is not rectified, then the previously claimed ITC will be added to the recipient's output tax liability for the month when duplication was communicated.

    Example 6

    Assuming that the intimation about the duplicate claim was sent in the month of July 20XX, the ITC claimed earlier shall be added to the output tax liability of the recipient in the month of July 20XX itself if the rectification is not made in time.
  - In case of additions, the recipient will have to pay interest for a maximum of 18% on the amount which was added to the output tax liability from the date when ITC was availed to the date when additions in returns were made.

5. ITC Reclaim

It means re-claiming the amount of ITC which was earlier reversed due to discrepancy in amount declared by supplier in his valid return or duplication of the ITC claim. Such re-claims can be made by the supplier only in case the supplier declares the details of invoice and/or debit notes in his valid return pertaining to the period in which the omission or incorrect particulars were noticed by the supplier, or the communication about the same was received.

- Any interest paid earlier on excess claim of ITC will be refunded by crediting the amount to the recipient's Electronic Cash Ledger.
- In case of duplication of ITC claim, no refund will be allowed as it is a contravention of the GST provisions.

Annual Return, Final Return

10.3

Annual Return:

As per Rule 80 of CGST Rules 2017, below are the different types of Returns under GST:

Form	Remarks	Due Date
GSTR-9	To be filed by the regular taxpayers filing GSTR 1, GSTR 2, GSTR 3, GSTR 3B during the financial year.	On or before 31st December following end of financial year.
GSTR-9A	To be filed by Composition Scheme Taxable persons (Currently, the GSTR-9A form has been scrapped with effect from FY 2019-20 after being replaced by revised GSTR-4).	On or before 30th April of the succeeding financial year.
GSTR-9B	To be filed by Electronic Commerce Operator	On or before 31st December following end of financial year.
GSTR-9C	To be filed by Person (self-certified GSTR-9C). Taxpayers with a turnover exceeding ₹.5 crore in the previous financial year are required to file Form GSTR-9C on a self-certification basis. This change is applicable from FY 20-21 onwards.	On or before 31st December following end of financial year.

Form GSTR-9 is an annual return to be filed once for each financial year, by the registered taxpayers who were regular taxpayers, including SEZ units and SEZ developers. The taxpayers are required to furnish details of purchases, sales, input tax credit or refund claimed, or demand created etc. in this return. It is a consolidation of all the monthly/quarterly returns (GSTR-1, GSTR-2A, GSTR-3B) filed in that year. This return helps in extensive reconciliation of data for 100% transparent disclosures.

Annual Return is optional [Notification No. 47/2019-CT, dated 09.10.2019]:

Filing of annual return (GSTR-9) under section 44(1) of CGST Act, read with rule 80(1) of CGST Rules, has been made voluntary for the registered persons whose turnover is less than ₹2 crore and who have not furnished the said annual return before the due date. The annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

Due date of filing Annual Return GSTR-9:

As per Section 44 of the CGST Act, 2017, every registered taxable person is required to file annual return by 31st December following end of financial year. Thus, for the financial year 2022-23, the annual return is required to be filed by 31st December 2023.

w.e.f 1-8-2019:

"Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner."

Non-Applicability of Annual Return (GSTR-9) under GST:

The following taxable persons are not required to file Annual Return under GST:

- Input Service Distributor
- Tax Deductor under Section 51
- Tax Collector under Section 52
- Casual taxable Person
- Non-resident Taxable person
- OIDAR Service Providers

Pre-conditions for filing of Form GSTR-9 are:

1. Taxpayer must have active GSTIN during the relevant financial year as a normal/regular taxpayer even for a single day.
2. Taxpayer has filed all applicable returns i.e. Form GSTR-1/IFF and Form GSTR-3B of the relevant financial year before filing the Annual Return.

Nil Form GSTR-9 can be filed for the Financial year, if you have: -

- NOT made any outward supply (commonly known as sale); AND
- NOT received any goods/services (commonly known as purchase); AND
- NO other liability to report; AND
- NOT claimed any credit; AND
- NOT claimed any refund; AND
- NOT received any order creating demand; AND
- There is no late fee to be paid etc.

Details are required to be provided in Form GSTR-9 are as follows:

1. **Details of advances, inward and outward supplies made during the financial year on which tax is payable:**

   To enter/ view the summary of outward/ inward supplies made during the financial year

2. **Details of Outward supplies made during the financial year on which tax is not payable:**

   To enter/ view the summary of non-taxable outward supplies made during the financial year

3. **Details of ITC availed during the financial year:**

   To enter/ view the summary of ITC availed during the financial year

4. **Details of ITC reversed and Ineligible ITC for the financial year:**

   To enter/ view the summary of ITC reversed or ineligible for the financial year

5. **Other ITC related information:**

   To enter/ view the ITC availed during the financial year

6. **Details of tax paid as declared in returns filed during the financial year:**

   To enter/ view the tax (including Interest, Late Fee, Penalty & Others) paid during the financial year

7. **Details of the previous Financial Year's transactions reported in next Financial Year:**

   To enter/ view the summary of transactions reported in next financial year

8. **Differential tax paid on account of declaration in table no. 10 & 11:**

   To enter/ view the total tax paid on transactions reported in next financial year

9. **Particulars of Demands and Refunds: To enter/ view particulars of demands and refunds during the financial year**

10. Supplies received from Composition taxpayers, deemed supply by job worker and goods sent on approval basis:

    To enter/ view the summary of supplies received from Composition taxpayers, deemed supply by job worker and goods sent on approval basis

11. **HSN wise summary of Outward Supplies:**

    To enter/ view HSN wise summary of outward supplies made during the financial year

12. **HSN wise summary of Inward Supplies:**

    To enter/ view HSN wise summary of inward supplies received during the financial year

Form GSTR-9 has auto-populated data, from already filed Form GSTR-1 and Form GSTR-3B of the relevant financial year:

- Details of advances, inward and outward supplies made during the financial year on which tax is payable
- Details of Outward supplies made during the financial year on which tax is not payable
- Total amount of input tax credit availed through FORM GSTR-3B (sum total of Table 4A of FORM GSTR-3B)
- Input Tax credit received from ISD
- Transition Credit through TRAN-I (including revisions if any)
- Transition Credit through TRAN-II
- Details of tax paid as declared in returns filed during the financial year
- ITC as per GSTR-2A

Edit auto-populated data from filed Form GSTR-1 and GSTR-3B in Form GSTR-9, except following data:

- Total amount of input tax credit availed through FORM GSTR-3B
- ITC as per GSTR-2A
- Details of tax paid as declared in returns filed for the financial year (Except tax payable column)

Negative amount in GSTR-9:

Annual return permit to enter negative amount in Form GSTR-9.

Final Return:

A taxable person whose GST registration is cancelled or surrendered has to file a return in the form GSTR-10. This return is called a final return.

Final return due Date:

GSTR 10 must be filed within 3 months from the date of cancellation or date of cancellation order whichever is later.

Example 7

If the date of cancellation is 1st April 2023 whereas the cancellation order was received on 13th April 2023, then the GSTR 10 must be filed by 13th July 2023.

Final Return vs Annual Return:

Final Return	Annual Return
Final return is required to be filed by the persons whose registration has been cancelled or surrendered.	Annual return has to be filed by every registered person paying tax as a normal taxpayer under GST.
Final return is to be filed only once in Form GSTR-10.	Annual return is to be filed once a year in Form GSTR 9.
Must be filed within 3 months from the date of cancellation or date of cancellation order whichever is later.	On or before 31st December following end of financial year.

Penal Provisions for Return Filing

10.4

Nature of offence	Quantum of late fee Section 47 of CGST Act.
For delay in filing GSTR-1, GSTR-3B, GSTR-4 and GSTR-7 (from the tax period June 2021 onwards or quarter ending June, 2021 or FY 2020-21 onwards, as the case may be)	**Nil Return:** ₹500 (₹250 each under CGST & SGST or ₹500 under IGST). **Tax Return:** Aggregate turnover of ≤₹1.50 crores in the preceding F.Y. ₹2,000 (₹1,000 each under CGST & SGST or ₹2,000 under IGST). Who has an aggregate turnover of more than ₹1.5 crore and up to ₹5 crore in the preceding financial year ₹5,000 (₹2,500 each under CGST & SGST or ₹5,000 under IGST) For those taxpayers that have an aggregate annual turnover in the preceding year more than ₹5 crore, the late fee will be capped to maximum ₹5000 under Section 47. **For delayed filing of GSTR-4:-** Total amount of late fee payable under section 47 of the CGST Act from F.Y. 2021-22 onwards, by the registered person (composition taxpayer) who fail to furnish Form GSTR-4 by the due date, shall be as follows: **Total tax payable in GSTR-4 is nil:** ₹500 (₹250 each under CGST & SGST or ₹500 under IGST) **Tax return:** ₹2,000 (₹1,000 each under CGST & SGST or ₹2,000 under IGST) **For delayed filing of GSTR-7:-** ₹25 for every day during which such failure continues or ₹100 whichever is lower.

Penalty/Late Fee:

Penalty for delay filing of Annual Return (Section 47(2) of the CGST Act, 2017)

Any registered person who fails to furnish the return required under section 44 (i.e. Annual Return) by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.

Maximum Penalty:

₹100 per day of delay

Or

@0.25% of the turnover in the State or Union Territory

Whichever is less

Note: If the GSTR is not filed for a given quarter/month, then the taxpayer cannot file the next quarter's/ month's return either.

If there is no issue regarding the tax payment and person is missed out the GSTR filing due dates, in this case, the person is again liable to pay penalty, which is ₹10 for CGST and ₹10 for SGST per day. The maximum amount in the case of missing the filing is ₹10,000.

Exercise

A. Theoritical Questions

- **Multiple Choice Questions**

1. Late fee for annual return is:
   (a) ₹50 for everyday subject to a maximum of 0.25% of turnover in the State or Union Territory
   (b) ₹100 for everyday subject to a maximum of 0.25% of turnover in the State or Union Territory
   (c) ₹50 for everyday subject to a maximum of 0.50% of turnover in the State or Union Territory
   (d) ₹100 for everyday subject to a maximum of 0.50% of turnover in the State or Union Territory.

2. Annual Audit Report Form GSTR-9C is required to be certified by practicing:
   (a) CA
   (b) CMA
   (c) CA or CMA
   (d) none of the above.

3. Annual Return is summary of:
   (a) GSTR-1
   (b) GSTR-3B
   (c) GSTR-4
   (d) All of the above.

4. Every registered taxable 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:
   (a) first return filed by him after grant of registration
   (b) first two returns filed by him after grant of registration
   (c) FORM GSTR-7
   (d) FORM GSTR-11.

5. Time limit for furnishing the details of outward supplies in Form GSTR-1 for each quarter/tax period by Registered person opting for QRMP- Scheme is
   (a) 20th day of the month succeeding such tax period
   (b) 10th day of the month succeeding such tax period
   (c) 11th day of the month succeeding such tax period
   (d) 13th day of the month succeeding such tax period.

6. A registered person intending to avail of QRMP scheme for the quarter 'July to September' can exercise his option from 1st May to 31st July.
   (a) from 1st May to 31st July
   (b) from 21st May to 31st July
   (c) from 1st Jan to 31st December
   (d) from 1st March to 31st December.

7. Details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductee on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his ________________after validation.
   (a) electronic credit ledger
   (b) electronic cash ledger
   (c) electronic liability ledger
   (d) Both (a) and (b).

8. The rectification of errors/omissions is allowed in the subsequent returns. However, no rectification is allowed after furnishing the return for the month of September following the end of the financial year to which, such details pertain, or furnishing of the relevant annual return, ____________.
   (a) whichever is later
   (b) whichever is earlier
   (c) whichever is earlier as decided by the proper officer
   (d) whichever is later as decided by the Practicing Cost Accountant.

9. The registered persons required to furnish return for every quarter under proviso to subsection (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of _________rupees in each of the months,- using invoice furnishing facility ("IFF") electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.
   (a) fifty lakh
   (b) five lakh
   (c) twenty lakh
   (d) ten lakh.

Answer:

1.	2.	3.	4.	5.	6.	7.	8.	9.
b	d	d	a	d	a	b	b	a

B. Numerical Questions

- **Comprehensive Numerical Problems**

1. Mr. Shiva, a registered person in Andhra Pradesh, supplies goods taxable @ 12% [CGST @ 6%, SGST @ 6% & IGST @ 12%] in the States of Andhra Pradesh and Telangana. He has furnished the following details in relation to independent supplies made by him in the quarter ending June, 20XX:-

Supply	Recipient	Nature of supply	Value in (₹)
1	Mr. A, a registered person	Inter-state	2,20,000
2	Mr. B, a registered person	Inter-state	2,55,000
3	Mr. C, an unregistered person	Intra-State	1,80,000

Supply	Recipient	Nature of supply	Value in (₹)
4	Mr. D, an unregistered person	Intra-State	2,60,000
5	Mr. M, an unregistered person	Inter-State	3,00,000

The aggregate annual turnover of Mr. Shiva in the preceding financial year was ₹ 1.20 crore. With reference to rule 59 of the CGST Rules, 2017, discuss the manner in which the details of above supplies are required to be furnished in GSTR-1.

Solution:

Mr. Shiva should furnish the details of outward supplies of goods made by him during the quarter ending June 20XX in the following manner:

Supply	Recipient	Nature of supply	Value in (₹)	Manner of furnishing details Form GSTR-1
1	Mr. A, a registered person	Inter-state	2,20,000	Invoice-wise details
2	Mr. B, a registered person	Inter-state	2,55,000	Invoice-wise details
3	Mr. C, an unregistered person	Intra-State	1,80,000	Consolidated details of supplies 3 and 4
4	Mr. D, an unregistered person	Intra-State	2,60,000	
5	Mr. M, an unregistered person	Inter-State	3,00,000	Invoice-wise details

Accounts and Records 11

This Module Includes

Accounts and Records

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Identify various types of books of account to be maintained by the registered person
- Understand electronic records under GST
- Explain Records to be maintained by owner or operator of godown or warehouse and transporters.

Introduction

11.1

Every registered person is required to self-assess the taxes payable and furnish a return for each tax period (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.

Accounts and Records

11.2

As per Section 35(1) of the CGST Act, 2017

Every registered person is required maintain a true and correct account of the following:

(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

(f) Any other particulars deemed necessary

The above records must be maintained at each place of business registered under GST.

In addition, the rules (i.e. Rule 56(1) of the CGST Rules, 2017) also provide that the registered person shall keep and maintain records of—

(a) goods or services imported or exported or

(b) supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers and e-way bills

Rule 56(2) of the CGST Rules, 2017 every registered person, other than a person paying tax under section 10, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the—

- opening balance,
- receipt,
- supply,
- goods lost, stolen, destroyed,
- written off or disposed of by way of gift or
- free sample and
- the balance of stock including raw materials, finished goods, scrap and wastage thereof.

It means the above records not required to be maintained by a supplier opting for composition levy.

Rule 56(3) of the CGST Rules, 2017 every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.

Rule 56(4) of the CGST Rules, 2017 every registered person, other than a person paying tax under section 10, shall keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of sub-section (3) and sub-section (4) of section 9), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

It means the above records not required to be maintained by a supplier opting for composition levy.

Rule 56(5) of the CGST Rules, 2017 every registered person shall keep the particulars of—

(a) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;

(b) names and complete addresses of the persons to whom he has supplied goods or services, where required under the provisions of this Chapter;

(c) the complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.

Rule 56(6) of the CGST Rules, 2017 if any taxable goods are found to be stored at any place(s) other than those declared under sub-rule (5) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.

Rule 56(7) of the CGST Rules, 2017 every registered person shall keep the books of account at the principal place of business and books of account relating to additional place of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.

Rule 56(8) of the CGST Rules, 2017 any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter, the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.

Rule 56(9) of the CGST Rules, 2017 each volume of books of account maintained manually by the registered person shall be serially numbered.

Electronic Records: The following requirements have been prescribed for maintenance of records in electronic form.

- Proper electronic back-up of records in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.
- Produce, on demand, the relevant records or documents, duly authenticated, in hard copy or in any electronically readable format.
- Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

Rule 56(10) of the CGST Rules, 2017 unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

Rule 56(11) of the CGST Rules, 2017 every agent referred to in clause (5) of section 2 shall maintain accounts depicting the —

(a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;

(b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;

(c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;

(d) details of accounts furnished to every principal; and

(e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

Rule 56(12) of the CGST Rules, 2017 every registered person manufacturing goods shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

Rule 56(13) of the CGST Rules, 2017 every registered person supplying services shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.

Rule 56(14) of the CGST Rules, 2017 every registered person executing works contract shall keep separate accounts for works contract showing—

(a) the names and addresses of the persons on whose behalf the works contract is executed;

(b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;

(c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;

(d) the details of payment received in respect of each works contract; and

(e) the names and addresses of suppliers from whom he received goods or services.

Rule 56(15) of the CGST Rules, 2017 the records under the provisions of this Chapter may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.

Rule 56(16) of the CGST Rules, 2017 accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

Rule 56(17) of the CGST Rules, 2017 any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.

Rule 56(18) of the CGST Rules, 2017 Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.

Compulsorily Audit 11.3

Compulsorily Audit (Section 35(5) of the CGST Act, 2017 read with rule 80(3) of the CGST Rules, 2017): (W.e.f. 01-08-2021 section 35(5) of CGST Act, 2017 has been omitted):-

Accordingly every registered person, other than an input service distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed.

Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a Chartered Accountant or a Cost Accountant.

As per Rule 80(3) of the CGST Rules, 2017 every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

w.e.f. 1st February 2019, The Central Government vide Notification No. 03/2019-CT, dated 29th January 2019 has amended CGST Rules, 2017 details of which are explained below:

	Revised	Comment
Rule 80 (3) [Annual Return]	Every registered person **other than those referred to in the proviso to sub-section (5) of section 35**, whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.	Consequential changes provided in rule that audit provisions shall NOT apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

Notification no. 16/2020-CT, dated 23.03.2020: Provided that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees shall get his accounts audited as

specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the financial year 2018-2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Rule 80(3) of CGST Rules, 2017 (vide Notification No. 79/2020-Central Tax, dated 15th October, 2020):

"Provided that for the financial year 2018-2019 and 2019-2020, every registered person whose aggregate turnover exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in **FORM GSTR-9C** for the said financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner."

Records to be maintained by owner or operator of godown or warehouse and transporters:

The transporters, owners or operators of godowns, if not already registered under the GST Act(s), shall submit the details regarding their business electronically on the Common Portal in FORM GST ENR-01. A unique enrolment number shall be generated and communicated to them. A person enrolled in any other State or Union territory shall be deemed to be enrolled in the State or Union Territory.

Every person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him and for each of his branches. Every owner or operator of a warehouse or godown shall maintain books of accounts, with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt, and disposal of such goods. The goods shall be stored in such manner that they can be identified item wise and owner wise and shall facilitate any physical verification or inspection, if required at any time.

Period for Retention of Accounts

11.4

Period for Retention of Accounts under GST (Section 36 of the CGST Act, 2017)

As per section 36 of the CGST Act, 2017 every registered taxable person must maintain the accounts books and records for at least 72 months (6 years) from the due date of furnishing of annual return for the year pertaining to such accounts and records. The period will be counted from the last date of filing of Annual Return for that year.

The last date of filing the Annual return is 31stDecember of the following year.

For example: For the year 2017-2018, the due date of filing the annual return is 31.12.2018. The books & records of 2017-2018 must be maintained for 6 years, i.e., 31.12.2024.

If the taxpayer is a part of any proceedings before any authority (First Appellate) or is under investigation, then he must maintain the books for 1 year after the order of such proceedings/appeal has been passed.

Unique Common Enrolment Number

11.5

Unique Common Enrolment Number (Notification No. 28/2018-CT, dated 19-6-2018):

As per Rule 58(1A) of CGST Rules, 2017 (i.e. records to be maintained by transporters) a transporter who is registered in more than one State or Union Territory having the same PAN, he may apply for a unique common enrolment number by submitting the details in FORM GST ENR-02 using any one his GSTIN's, and upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter:

Provided that where the said transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the GSTIN's for the purpose of tax invoice, credit note and debit notes.

Consequences of Not Maintaining Proper Records

11.6

If the taxpayer fails to maintain proper records in respect of goods/services, then the proper officer shall treat such unaccounted goods/services as if the taxpayer had supplied them. The officer will determine the tax liability on such unaccounted goods.

The taxable person will be required to pay the tax liability calculated along with penalty.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Every registered person whose aggregate turnover during a financial year exceeds 2 crore rupees shall get his accounts audited and furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in—
   (a) Form GSTR-9
   (b) Form GSTR-9C
   (c) Form GSTR-11
   (d) Form GSTR-11A

2. Period for Retention of Accounts under GST
   (a) 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.
   (b) 60 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.
   (c) 180 days from the due date of furnishing of annual return for the year pertaining to such accounts and records.
   (d) 365 days from the due date of furnishing of annual return for the year pertaining to such accounts and records.

3. Which records are required to be submitted under section 71(1)?
   (a) Statements of annual financial accounts, duly audited, wherever required
   (b) Cost audit report, if any, under section 148 of the Companies Act, 2013
   (c) The income-tax audit report, if any, under section 44AB of the Income-tax Act
   (d) All of the above

4. Registered person supplying services shall maintain the accounts showing—
   (a) quantitative details of goods used in the provision of services
   (b) details of input services utilized
   (c) details of the services supplied
   (d) All of the above

5. 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—
   (a) principal address of Proprietor/Partner/ Director
   (b) principal place of business
   (c) such places of business
   (d) any of the above

Answer:

1.	b	2.	a	3.	d	4.	d	5.	c

GST Annual Return and GST Audit Return

12

This Module Includes

GST Annual Return and GST Audit Return

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand types of audits under GST
- Explain importance of annual return and GST Audit
- Understand contents of annual return
- Explain how to fill annual return
- Explain how to conduct GST Audit

Introduction

12

The GST annual return is a statement of return that is required to be filed annually by each registered person (except for a few specified categories of persons) under GST, providing summarized details of outward supplies and taxes paid thereon, input tax credits claimed, taxes paid, and refund claimed in the fiscal year in which such annual return is filed.

GST Annual Return is to be filed by all registered taxpayers including composition taxpayers as per Section 44(1) & (2) of CGST Act, 2017. GST annual return (GSTR-9) filing is mandatory for all entities with a turnover of more than ₹ 2 crores in a financial year. Annual Return consists of details regarding the outward and the inward supplies made during the relevant financial year. It is a consolidation of all the monthly/quarterly returns filed in that year.

GSTR-9A is a simplified GST annual return filed by business owners who have chosen the GST composition scheme. This return incorporates all quarterly returns filed by the composite dealers during the fiscal year. Since the introduction of GSTR 4 (Annual), this return has been discontinued.

GSTR-9B is a summary of the information filed in GSTR-8 by taxpayers registered as GST E-commerce operators.

GSTR-9C is a return form that registered taxpayers must file if their total turnover exceeds ₹ 5 crores, but it is optional for taxpayers with a turnover between ₹ 2 and ₹ 5 crores. In this case, the taxpayer must also submit a copy of the audited annual accounts as well as a self-certified Form GSTR-9C reconciliation statement that reconciles the value of supplies declared in the return furnished for the financial year.

The CBIC has notified changes to Sections 35(5) and 44 of the CGST Act. The requirement to get a GST audit and certification done by a Chartered Accountant/Cost Accountant now stands removed. Taxpayers with a turnover exceeding ₹ 5 crore in the previous financial year are required to file Form GSTR-9C on a self-certification basis. This change is applicable from Financial Year 2020-21 onwards. Further, Form GSTR-9C will be modified to support self-certification by the taxpayer.

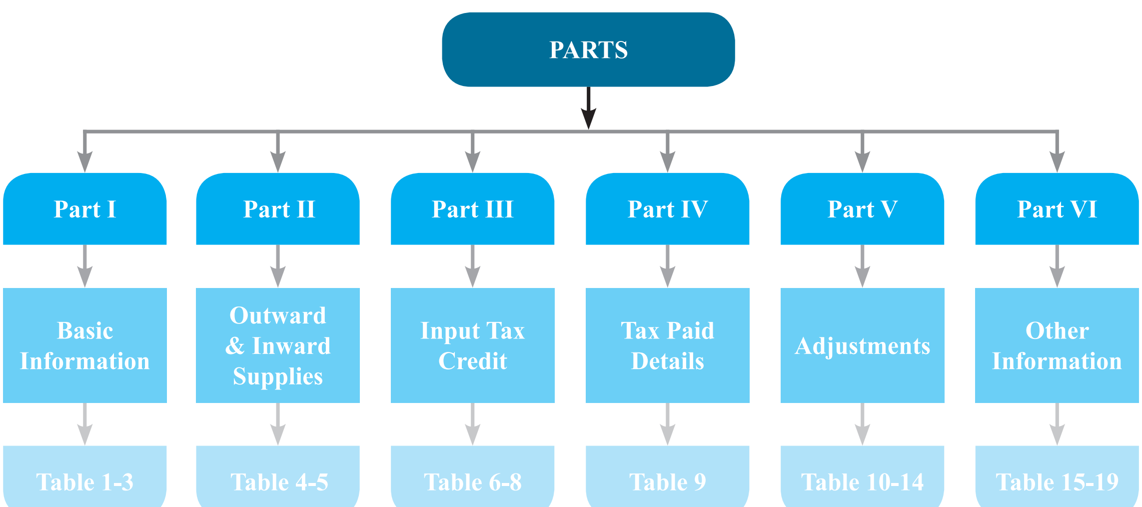
Form GSTR-9	Form GSTR-9C
GSTR-9 is an annual return under GST to be filed once every year only by registered taxpayers under GST under the Regular Scheme (Monthly/Quarterly).	GSTR-9C is a reconciliation statement between GSTR-9 and the audited books of accounts.

Key points for GST Annual Return and GST Audit

12.1

1. It is mandatory to file all the GSTR 1 & 3B forms for the financial year before filing Annual Return in Form GSTR-9.
2. Additional liability for the financial year not declared in Form GSTR-1 & 3B to be declared in this return (GSTR-9).
3. Taxpayers cannot claim unclaimed input tax credit through GSTR-9.
4. In GSTR-9, an option to pay an additional liability declared in this form is provided through Form DRC-03 (select "Annual Return" in drop box) and such tax liability can be paid through electronic cash ledger only.
5. Registered Person having No Transactions shall file NIL Annual Return.
6. A Registered Person who has got his Registration cancelled during the year, is also required to file the Respective Annual Return.
7. A Registered Person who has opted-in or opted-out of Composition Scheme is required to file both GSTR-9 & GSTR-4 for the relevant periods.

Detailed content of Form GSTR-9 Annual Return:



Part I: Basic Information:

Pt. I	Basic Details	
1	Financial Year	
2	GSTIN	
3A	Legal Name	
3B	Trade Name (If any)	

Part II: Details of outward and inward supplies declared during the financial year:

The second part of the GSTR-9 format is split into two sections to collect information about different types of transactions.

Section A:

Pt. II	Details of Outward and inward supplies declared during the financial year					
						(Amount in ₹)
	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
4	Details of advances, inward and outward supplies on which tax is payable as delared in returns filed during the financial year.					
A	Supplies made to un-registered persons (B2C)					
B	Supplies made to registered persons (B2B)					
C	Zero rated supply (Export) on payment of tax (except supplies to SEZs)					
D	Supply to SEZs on payment of Tax					
E	Deemed Exports					
F	Advances on which tax has been paid but invoice has been issued (not covered under (A) to (E) above)					
G	Inward supplies on which tax is to be paid on reverse charge basis					
H	Sub-total (A to G above)					

Pt. II	Details of Outward and inward supplies declared during the financial year					
			(Amount in ₹)			
	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
I	Credit Notes issued in respect of transactions specified in (B) to (E) above (-)					
J	Debit Notes issued in respect of transactions specified in (B) to (E) above (+)					
K	Supplies / tax declared through Amendments (+)					
L	Supplies / tax reduced through Amendments (-)					
M	Sub-total (I to L above)					
N	Supplies and advances on which tax is to be paid (H + M) above					

Section B:

Pt. II	Details of Outward and inward supplies declared during the financial year					
			(Amount in ₹)			
	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
5	Details of Outward supplies on which tax is not payable as declared in return filed during the financial year					
A	Zero rated supply (Export) without payment of tax					
B	Supply to SEZs without payments of tax					
C	Supplies on which tax is to be paid by the recipient on reverse charge basis					
D	Exempted					

Pt. II	Details of Outward and inward supplies declared during the financial year					
			(Amount in ₹)			
	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
E	Nil Rated					
F	Bon-GST supply					
G	Sub-total (A to F above)					
H	Credit Notes issued in respect of transactions specified in A to F above (-)					
I	Debit Notes issued in respect of transactions specified in A to F above (+)					
J	Supplies declared thorugh Amendments (+)					
K	Supplies reduced through Amendments (-)					
L	Sub-Total (H to K above)					
M	Turnover on which tax is not be paid (G + L above)					
N	Total Turnover (including advances) (4N + 5M - 4G above)					

Part III: Details of ITC as declared in returns filed during the financial year

The third part of the GSTR-9 form is split into three questions that ask about ITC balance.

Pt. III	Details of ITC as declared in returns filed during the financial year.					
			(Amount in ₹)			
	Description	Type	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
6	Details of ITC availed as declared in returns filed during the financial year					
A	Total amount of input tax credit availed through FORM GSTR-3B (Sum total of Table 4A of Form GSTR-3B)		Auto	Auto	Auto	Auto

Pt. III	Details of ITC as declared in returns filed during the financial year.					
			(Amount in ₹)			
	Description	Type	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
B	Inward supplies (Other than imports and inward supplies liable to reverse charge but includes services received from SEZs)	Inputs				
		Capital Goods				
		Input Service				
C	Inward supplies received from unregistered persons liable to reverse charge (other than B above) on which tax is paid & ITC availed	Inputs				
		Capital Goods				
		Input Service				
D	Inward supplies received from registered persons liable to reverse charge (other than B above) on which is paid and ITC availed	Inputs				
		Capital Goods				
		Input Service				
E	Import of goods (including supplies from SEZs)	Inputs				
		Capital Goods				
F	Import of services (excluding inward supllies from SEZs)					
G	Input Tax credit received from ISD					
H	Amount of ITC reclaimed (other than B above) under the provisions of the Act					
I	Sub-Total (B to H above)					
J	Difference (I - A above)					
K	Transition Credit through TRAN - I (including rervisions if any)					
L	Transition Credit through TRAN - II					
M	Any other ITC availed but not specified above					
N	Sub-Total (K to M above)					
O	Total ITC availed (I + N above)					

Pt. III	Details of ITC as declared in returns filed during the financial year.					
			(Amount in ₹)			
	Description	Type	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
7	Details of ITC Reversed and Ineligible ITC as declared in returns filed during the financial year					
A	As per Rule 37					
B	As per Rule 39					
C	As per Rule 42					
D	As per Rule 43					
E	As per Section 17(5)					
F	Reversal of TRAN - I credit					
G	Reversal of TRAN - II credit					
H	Other reversals (pl. specify)					
I	Total ITC Reversed (A to H above)					
J	Net ITC Available for Utilization (60 - 71)					
8	Other ITC related information					
A	ITC as per GSTR-2A (Table 3 & 5 thereof)		Auto	Auto	Auto	Auto
B	ITC as per sum total of 6(B) and 6(H) above		Auto			
C	ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during 2017-18 but availed during April to September, 2018					
D	Difference [A - (B + C)]					
E	ITC available but not availed (out of D)					
F	ITC available but ineligible (out of D)					
G	IGST paid on import of Goods (including supplies from SEZ)					
H	IGST credit availed on import of goods (as per 6(E) above)		Auto			
I	Difference (G - H)					

Pt. III	Details of ITC as declared in returns filed during the financial year.					
			(Amount in ₹)			
	Description	Type	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
J	ITC available but not availed on import of goods (Equal to I)					
K	Total ITC to be lapsed in current financial year (E + F +J)		Auto	Auto	Auto	Auto

Part IV: Details of tax paid as declared in returns filed during the financial year

In this part of the form, specify all the details regarding the tax that you have paid and declared in returns filed during the financial year.

Pt. IV	Details of tax paid as declared in returns filed during the financial year						
				Paid through ITC			
	Description	Tax Payable	Paid through cash	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6	7
9							
	Integrated Tax						
	Central Tax						
	State / UT Tax						
	Cess						
	Interest						
	Late Fee						
	Penalty						
	Other						

Part 5: Particulars of the transactions for the previous financial year declared in returns of April to September of current financial year or up to date of filing of annual return of previous financial year, whichever is earlier:

where you can mention all the details related to transactions that occurred during the previous financial year. Fill in the taxable value, central and state tax, integrated tax, and cess value for the following:

Pt. V	Particulars of the transactions for the previous FY declared in returns of April to September of current FY or upto date of filing of annual return of previous FY whichever is earlier.					
			(Amount in ₹)			
	Description	Type	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
10	Supplies / tax declared through Amendments (+) (net of debit notes)					
11	Supplies / tax reduced through Amendments (-) (net of credit notes)					
12	Reversal of ITC available during previous financial year					
13	ITC availed for the previous financial year					
14	Differential tax paid on account of declaration in 10 & 11 above					
	Description		Payable		Paid	
	1		2		3	
	Integrated Tax					
	Central Tax					
	State / UT Tax					
	Cess					
	Interest					

Part 6: Other Information

The final part of the GSTR-9 form collects information that hasn't been provided earlier, such as demands and refunds, certain special kinds of supplies, HSNs, and late fees.

Pt. VI	Other Information							
	Particulars of Demands and Refunds							
15	Details	Central Tax	State Tax / UT Tax	Integrated Tax	Cess	Interest	Penalty	Late Fee / Other
	1	2	3	4	5	6	7	8
A	Total Refund claimed							

Pt. VI	Other Information							
	Particulars of Demands and Refunds							
15	Details	Central Tax	State Tax / UT Tax	Integrated Tax	Cess	Interest	Penalty	Late Fee / Other
	1	2	3	4	5	6	7	8
B	Total Refund sanctioned							
C	Total Refund Rejected							
D	Total Refund Pending							
E	Total demand of Taxes							
F	Total taxes paid in respect of E							
G	Total demands pending out of E above							

	Description	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
16	Information on supplies received from composition taxpayers, deemed supply under section 143 and goods sent on approval basis					
A	Supplies received from Composition tax payers					
B	Deemed supply under Section 143					
C	Goods sent on approval basis but not returned					

17	HSN Wise Summary of outward supplies							
HSN Code	UQC	Total Quantity	Taxable Value	Rate of Tax	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9

18	HSN Wise Summary of outward supplies							
HSN Code	UQC	Total Quantity	Taxable Value	Rate of Tax	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9

19	Late fee payable and paid		
	Description	Payable	Paid
	1	2	3
A	Central Tax		
B	State Tax		

Before filing the GSTR-9 return, the authorised person has to sign and authenticate the return either through a digital signature certificate (DSC) or by using an Aadhar-based signature verification mechanism.

Verification:

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from and in case of any reduction in output tax liability the benefit thereof has been / will be passed on to the recipent of supply.

Place	**Signature**
	Name of Authorised Signatory
Date	**Designation / Status**

GSTR-4 Annual Return to be filed by Composition Taxpayers available on GST Portal

Form GSTR-4 Annual Return: All registered taxpayers who have opted for composition scheme or were under composition scheme under GST, for any period during a financial year, starting from 01.04.2019, need to file Form GSTR-4 Annual Return, annually.

key Points:

- Form GSTR 4 can be filed only if, all applicable quarterly statements in Form CMP 08 of that financial year, have been filed.
- Form GSTR-4 Annual Return, once filed, can't be revised o After successfully filing, ARN will be generated and intimated through email and SMS

Detailed contents of GSTR-4:

The GSTR-4 annual returns form format is made up of a total of 9 tables. They are as follows:

Table 1 to 3: The first three tables contain the basic details of the taxpayer.

1. GSTIN	The PAN-based 15-digit-long GSTIN of the taxpayer who is filing the return. (This section is auto-populated)
2. Taxpayer name	The legal as well as the trade name of the taxpayer (This section is auto-populated when the taxpayer files the returns.)
3. Total turnover details	Turnover details pertaining to the previous financial year (This part will have to be filled by the taxpayer once. Thereon, this particular field will be auto-populated along with the closing balance for each form after thereafter.)

Table 4: This table will contain details regarding the inward supplies that the taxpayer has been a part of during the tax period, inclusive of the supplies on which tax has to be paid as per the reverse charge mechanism.

4A: Supplies from a supplier that is GST-registered. (Other than the ones attracting reverse charge)	The taxpayer will be needed to provide details regarding all supplies that have been received from a GST registered supplier (This section will include interstate as well as intrastate supplies) on which the reverse charge mechanism will not be applicable.
4B: Supplies from a GST-registered supplier (The ones attracting a reverse charge)	The taxpayer will be required to provide information concerning all supplies that have been received from a GST-registered supplier (Inclusive of both interstate as well as the intrastate supplies) on which the reverse charge mechanism will be applicable.
4C: Supplies from a non GST-registered supplier	The taxpayer will be required to furnish details concerning all supplies that have been received from a supplier not registered with GST (This will include both interstate as well as the intrastate supplies.)
4D: Import of services	The taxpayer will have to share details regarding all the services that have been imported and attract tax.

Table 5: A Summary of the Self-Assessed Liability of the Taxpayer as per Form GST CMP-08.

This particular table will include details about taxes that are paid on the outward supplies, including advance taxes paid and the taxes paid on returned goods during the tax period that the taxpayer is filing the returns for.

Table 6: Tax Rate-Wise Details Pertaining to Outward as Well as Inward Supplies That Attract Reverse Charge During the Tax Year.

In this section, the taxpayer will be required to furnish details concerning all the inward as well as the outward supplies that attract reverse charge as well as the GST rate applicable on it. The applicable CGST, IGST, SGST as well as the CESS amount will be auto-populated by the system in the relevant fields.

Table 7: TDS/TCS Credit Received

This table will contain details concerning any TDS/TCS credit that has been received from a registered supplier or an e-commerce operator. This section will be auto-populated in the table below. But, the GSTIN of the deductor, the gross value of the invoice as well as the TDS amount that has been deducted will have to be mentioned in this table by the taxpayer.

Table 8: Tax, Interest, Late fee Payable and Paid

Total payable tax amount	This particular section will get auto-populated from details mentioned in Table 6
Tax amount already that has already been paid	This particular section will get auto-populated as per the information provided in the Form GST CMP-08

Balance payable tax	This part of the table will include information concerning the difference between table 1 and 2. This section will also be auto-populated.
Interest that is payable and paid	Here, the interest payable for filing the GSTR-4 form late and the interest that has actually been paid will be mentioned.
Late fee that is payable and paid	The applicable late fee that is going to be payable for the late payment of GST and the amount which has actually been paid will be mentioned.

Note: The taxpayer must note that the amount which is paid under the various tax heads must be mentioned separately, such as CGST, IGST, SGST as well as CESS.

Table 9: Refund That has Been Claimed From the Electronic Cash Ledger

The taxpayer can make refund claims for any excess taxes that have been paid in the past. The taxpayer can claim refunds under the sections of, interest, tax, fees, penalty as well as others.

Form GSTR-9B Annual Return:

GSTR-9B is an annual return to be filed by every E-commerce operator who is required to collect tax at source under section 52 (5) of the CGST Act, 2017. It contains the details of outward supplies of goods and services, returns if any, and the amount collected during the financial year. It summarizes the details filed in GSTR-8, which is the monthly return to be filed by E-Commerce operators.

Form GSTR-9C Annual Return

GSTR 9C is an annual GST reconciliation statement. Earlier, GSTR 9C was applicable for a business individual who has a turnover of more than ₹2 crore in the financial year. This form required a books audit and record audits by the certified cost accountant or chartered accountant.

The CBIC has notified changes to Sections 35(5) and 44 of the CGST Act. The requirement to get a GST audit and certification done by a Chartered Accountant/Cost Accountant now stands removed. Taxpayers with a turnover exceeding ₹5 crore in the previous financial year are required to file Form GSTR-9C on a self-certification basis. This change is applicable from FY 20-21 onwards. Further, Form GSTR-9C will be modified to support self-certification by the taxpayer.

At present, this GSTR 9C needs to be self-certified by the taxpayers themselves. GSTR 9C has to be filed, after completing the process of filing GSTR 9.

GSTR-9C is a statement of reconciliation between:

- the Annual Returns in GSTR-9 filed for a FY, and
- the figures as per the audited annual Financial Statements of the taxpayer.

It can be considered to be similar to that of a tax audit report furnished under the Income-tax act. It will consist of gross and taxable turnover as per the Books reconciled with the respective figures as per the consolidation of all the GST returns for a financial year. Hence, any differences arising from this reconciliation exercise will be reported here along with the reasons for the same. The certified statement shall be issued for every GSTIN. Hence, for a PAN there can be several GSTR-9C forms to be filed.

Contents of Form GSTR-9C: The GSTR-9C consists of two main parts:

- Part-A: Reconciliation Statement
- Part-B: Self-certification

Part-A: The Reconciliation Statement is divided into five parts as follows:

Part-I: Basic details: Consists of FY, GSTIN, Legal Name and Trade Name. The taxpayer must also mention if he is subject to audit under any other law.

Part-II: Reconciliation of turnover declared in the Audited Annual Financial Statement with turnover declared in Annual Return (GSTR-9): This involves reporting the gross and taxable turnover declared in the Annual return with the Audited Financial Statements. One must note that most often, the Audited Financial statements are at a PAN level. This might require the break up of the audited financial statements at GSTIN level for reporting in GSTR-9C.

Part-III: Reconciliation of tax paid: This section requires GST rate-wise reporting of the tax liability that arose as per the accounts and paid as reported in the GSTR-9 respectively with the differences thereof. Further, it requires the taxpayers to state the additional liability due to unreconciled differences noticed upon reconciliation.

Part-IV: Reconciliation of Input Tax Credit (ITC): This part consists of the reconciliation of input tax credit availed and utilised by taxpayers as reported in GSTR-9 and as reported in the Audited Financial Statement.

Further, it needs a reporting of Expenses booked as per the Audited Accounts, with a breakup of eligible and ineligible ITC and reconciliation of the eligible ITC with that amount claimed as per GSTR-9. This declaration will be after considering the reversals of ITC claimed, if any.

Part-B: Self-certification:

The amended section 44 clearly states now only self-certification of reconciliation statement in Form GSTR-9C is required. Earlier the same also required certification either by the Chartered accountant or the cost accountant. The GST annual return should be accompanied by a self-certified reconciliation statement.

GST Audit:

Audit is a systematic and independent examination of books of accounts, statutory records, and documents as required by the relevant law applicable to the organisation. Audit by the tax authorities entails a deeper scrutiny of tax compliance by a taxpayer from such examination and the effort is not only to ensure that the books of accounts and documents etc., of a tax payer are maintained as required under the law but they also reflect the correct liability and its compliance thereof.

As per section 2(13) of CGST Act, 2017 “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 major outcomes of Audit envisaged are:

1. Verification of complete and correct recording/accounting of all transactions relating to supply of goods and services, their correct classification and their correct tax liability.

2. Verification of the correctness of turnovers declared, taxes paid, refund claimed and input tax credit availed.
3. Verify whether the taxpayers have applied the correct rates of taxes on supply of goods and services.
4. Verification of compliance of relevant notifications, circulars, clarifications, Government Orders.
5. Verification of compliance of the relevant judicial precedents applicable to the registered person.
6. Data compilation relating to nature and patterns of incorrect claims of input tax /exemptions for taking corrective/preventive administrative/statutory measures, .
7. Identification and understanding of any suspected/doubtful tax management practices adopted by the registered persons.
8. Facilitating better and improved tax compliance through tax payer education and bringing any changes / reforms required to make compliance simpler and easy.
9. Audit results in facilitating better and improved tax compliance through tax payer education and bringing any changes/reforms required to make compliance simpler and easy

Types of Audits

GST envisages two types of Audits.

1. By Tax Authorities
2. Special Audit (By a Chartered Accountant or a Cost Accountant).

1. By Tax Authorities (section 65 of the CGST Act, 2017)

The Commissioner or any officer authorised by him, can undertake audit of any registered person for such period, at such frequency and in such manner as maybe prescribed.

Section 65(3) **of the CGST Act, 2017** 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.

Section 65(4) **of the CGST Act, 2017** the audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation: For the purposes of this sub-section, the expression "commencement of audit" shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

Illustration 1

X Pvt Ltd., received a notice under Section 65(3) of the CGST Act, 2017 on 15th November 2017.

Date on which documents required	1st December 2017
Date on which documents made available to the Department	15th December 2017
Date of actual institution of audit at X Pvt Ltd., premises	5th January 2018

Find the following:

(a) Date of commencement of audit?

(b) Date by which audit should be completed in normal course?

(c) Date by which audit should be competed (including extended period)?

Solution:

Particulars	Date	Remarks
(a) Date of commencement of Audit	5th January 2018	Date on which documents made available to the Department (i.e. 15th December 2017) or Date on actual institution of audit at the place of business (i.e. 5th January 2018), whichever is later
(b) Date by which audit should be completed in normal course	4th April 2018	Section 65(4) of the CGST Act, 2017 the audit under sub-section (1) shall be completed within a period of 3 months from the date of commencement of the audit.
(c) Date by which audit should be competed (including extended period)	4th October 2018	Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Section 65(5) **of the CGST Act, 2017** 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.

Section 65(6) **of the CGST Act, 2017** 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.

Section 65(7) of the CGST Act, 2017 where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

2. Special Audit Section 66 of the CGST Act, 2017

Special Audit the registered person can be directed to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case.

Procedure

During the scrutiny, inquiry, investigation or any other proceedings of a registered person, the Assistant Commissioner or any officer senior to him, having regard to the nature and complexity of the case and the interest of revenue, might be of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.

In such cases, with the prior approval of the Commissioner, the Assistant Commissioner or any officer senior to him can direct the registered person in FORM GST ADT-03 to get his records including books of account examined and audited by a specified chartered accountant or a cost accountant. The chartered accountant or a cost accountant will be nominated by the Commissioner.

The Chartered Accountant or Cost Accountant so nominated has to submit a report of such audit within the period of ninety days, duly signed and certified by him to the Assistant Commissioner.

On an application made by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, the Assistant Commissioner can extend the said period by a further period of ninety days.

The provisions of special audit shall have effect even if the accounts of the registered person have been audited under any other provisions of the GST Act or any other law for the time being in force.

The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit and which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

The expenses of the examination and audit of records, including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner.

On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.

Where the special audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the process of demand and recovery will be initiated against the registered person.

Summary:

Difference between the two audits Section 65 and 66 of the CGST Act, 2017:

Issue	Audit under Section 65	Audit under Section 66
Purpose	General audit; audit of business transactions, no specific reason to be cited	Nature and complexity of case, interest of revenue, incorrect value of supply or abnormal availment of credit.
Nature of audit	Departmental Audit	Special Audit
Conducted by	Officers of department authorized by Commissioner	Chartered Accountant/Cost Accountant appointed by Commissioner
Frequency	Discretionary	Discretionary
Prior notice to auditee	Yes. 15 days' prior notice is required	No such notice/intimation envisaged
Time for conclusion of audit	3 months, further extension of 6 months allowed	90 days, further extension of 90 days allowed
Audit Report	To be intimated soon on completion of audit to Commissioner	Report to Deputy/Assistant Commissioner

Issue	Audit under Section 65	Audit under Section 66
Intimation to auditee	Conclusion of audit, the proper officer shall, within 30 days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.	On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.
Audit expenses	Borne by department	Borne by department
Opportunity of being heard	No specific provision	Yes. Where material gathered during audit is to be used in any proceedings against the auditee.
Action based on report	Yes. Adjudicating Authority can issue show cause notice under Sec. 73 or Sec. 74	Yes. Adjudicating Authority can issue show cause notice under Sec. 73 or Sec. 74

Approach for GST Audit- Audit Plan, Checklists, Methodology, Management Representations, Reconciliations

12.2

GST Audit demands significant preparation from the auditor as well as the Auditee. While the statutory audit (under the Companies Act) and tax audit (under the Income-tax Act) primarily rely on the financial records, GST audit would require coverage of a larger cluster of records. The GST audit requires deep understanding of the GST laws, IT infrastructure of the auditee, the method in which the GST portal operates, applicability of the various notifications, circulars, clarifications, classification of goods and / or services, the nature of supplies, the manner of availment of credits together with its allowability or otherwise, maintenance of various records and documents specified therein, requirements of reporting and source of information, understanding of the business of the auditee etc. Apart from these issues, it is imperative that an auditor understands the basic functioning of the e-governance model.

Audit Plan

The objective of preparing an audit plan is to outline a logical series of review and examination steps that would meet the goals and standards of an audit in an efficient and effective manner.

Audit Plan is the most important stage before conduct of audit. All the previous steps are actually aimed at preparation of a purposeful Audit Plan. By now, the Audit Officer is in a position to take a reasonable view regarding the vulnerable areas, the weak points in the systems, abnormal trends and unusual occurrences that warrant detailed verification. Certain unanswered or inadequately answered queries about the affairs of the assessee/taxpayer may also be added to this list.

Audit plan should be a detailed plan of action. The audit plan should be consistent with the complexity of the audits.

Checklists: An Illustrative checklist to conduct audit under GST are as follows:

1. GST Registration: It is most important to check and verify all the details specified in the GST registration certificate.
2. Detail Analysis of Particulars of Invoice Documents: The second most important part to be analyzed by the auditor is invoicing under GST.

   Following are the crucial points which one needs to keep in mind – Tax invoice contains all the particulars as prescribed under rule 46 of the Central Goods and Service Tax Rules, 2017. It is important to verify that the invoice number reflected in the tax invoice is as per rule 46(b) of the Central Goods and Service Tax Rules, 2017. Auditor should check e-invoice is issued or not where it is mandatory to issue. HSN Code has been mentioned in the tax invoice as per the specification provided under the law. Check E-way bills properly generated in the e-way bill portal where is it mandate to generate.

3. Verification of Time of Issuance of Tax Invoice Needs To Be Done Following are the rules for the same –

   In Case of Supply of Goods

   (a) On or before the date of removal, in the case of actual movement of goods.

   (b) In the case where GST is payable on a reverse charge basis, on receipt of such goods.

   In Case of Supply of Services

   (a) Within a period of 30 days from the date of supply of service.

   (b) In case of continuous supply, where the due date can be ascertained, 30 days from the due date.

   (c) In case of continuous supply, where the due date cannot be ascertained, 30 days from the date of actual payment.

   (d) When there is the cessation of supply before the expiry of the contract, at the time of such cessation.

   (e) In the case of banking and other financial institutions, the due date will be 45 days

4. Check debit and credit note. It should be checked that the debit and credit note, if applicable, has been issued as per the GST law. If the issuance of the bill of supply is applicable the same needs to be checked.

5. Correct Availment of Input Tax Credit After GST registration certificate and invoicing, the next most important point is to verify the input tax credit availed during the specified period. Following are some of the important points which need to be verified – Invoice particulars on the basis of which input tax credit has been availed. Verification of input tax credit availed as per books of accounts against the input tax credit reflected in the GST returns. Going through the applicability of list of the restricted tax credit as per GST law. Verification of reversal entries, if any, in the input tax credit. Date of invoice of supply and Date of payment should be checked that the difference does not exceed i8o days. ITC should be reversed for non-payment of invoice within 180 days and this should be checked by the auditor. This is most common mistake and need to be taken care of.

6. Verification of Job-Work Transactions It must be verified that the goods have been sent to a job-work under the cover of delivery challan. In case of a job-work transaction, the registered person is required to file FORM ITC 04 on the half yearly or yearly basis as the case may be, and filing of the same needs to be confirmed. The return date of the goods from the job-work needs to be checked in order to confirm that the same has been received back in time.

7. GST Returns GST monthly / quarterly returns, as applicable, should be verified and confirmed that the same is duly filed as per GST law. Figures reflected in the respective returns should be verified with the books of accounts and any difference in the same should be reconciled. While every care has been taken to ensure the accuracy/ authenticity of the above, the readers are advised to recheck/ reconfirm the same from the original sources/ relevant departments.

8. Interest calculations on liability @ 18% p.a. is required to be made and auditor is required to check whether same has been deposited timely by the taxpayer. Also, if notices have been issued by department for the payment of interest, whether same has been properly dealt with. If claimed excess Input Tax Credit (ITC), payment of interest at 24% on the excess tax amount is required.

9. As GST Turnover definition is somewhat different from Income Tax Turnover. However, now both the department will exchange the information with each other. Therefore, one needs to take care in reporting turnover under Income Tax and GST.

10. GST Audit is applicable when Total Turnover on PAN India basis exceeds ₹5 crores in a financial year. However, GST Audit will be done GSTIN wise. Turnover will be checked on PAN basis that means all

supplies made inclusive of exempted supplies made throughout the country either from 1 place or multiple branches will be considered, while checking turnover for GST audit.

Methodology and Management:

The objective of audit of assessees/taxpayers is to measure the level of compliance of the assessee/ taxpayer in the light of the provisions of the GST Act, 2017 and the rules made thereunder. It should be consistent with departmental instructions and should make use of professional audit methodology and procedures.

The basic principles are:

i. The audit should be conducted in a systematic manner.

ii. Emphasis should be on the identified risk areas and on scrutiny of records maintained in the normal course of business.

iii. Audit efforts should be based on materiality and the degree of scrutiny will depend on the nature of risk factors identified.

iv. Recording of all checks and findings. v. Audit should normally be distinct from enforcement activity in as much as it can detect irregularities only to the extent of their reflection in the books of accounts and other documents.

Standards for conduct of audit:

In keeping with the principles of audit outlined above, audit has to be conducted in a transparent and systematic manner with focus on business records of the assessee/taxpayer and according to the audit plan for each assessee/ taxpayer. The assessee/ taxpayer participation in the course of audit is also envisaged so that instead of raising purely technical discrepancies (without any revenue implications), substantive issues are focused upon. The Audit Officer should ensure that audit is conducted in a focused manner with optimum utilization of time and resources available at hand.

The Audit Officer must use his judgement and experience to determine the materiality of any discrepancies and/ or irregularities observed and decide what action is necessary under the circumstance, for example,

i. Cumulative effect of small items: An error of one isolated item might be insignificant but the cumulative effect of many individually unimportant items would signify systemic failure. In fact, the relative materiality of an individual item has to be viewed against the net effect on over-all compliance and interest of revenue.

ii. General or Particular Items: An error made in a particular transaction may be an aberration if it is a stray, single instance but the effect may be material, if it is of recurring nature. Thus, frequency of error is of importance.

iii. Effect in relation to scale of operations of an assessee / taxpayer: An error may appear to be small in itself but may have sizable implication due to the huge scale of operations of an assessee/taxpayer.

Period to be covered during audit:

Audit may cover a particular financial year or part thereof or multiples thereof.

Duration of audit

Efforts should be made to complete each audit within the following general time limits:-

The indicative duration for conduct of audit that is inclusive of desk review, preparation of audit plan, actual audit and preparation of audit report wherever necessary, for each category would be as follows:

i. Top taxpayers – 10-15 working days

ii. Middle taxpayers – 6 to 8 working days

iii. Other taxpayers – 2 to 5 working days

The above classification is based on the GST Pro portal and may be subjected to revision. The above-mentioned working days are indicative and applicable for conduct of GST audit covering a period of one financial year. The duration, as above, covers the effective number of working days spent by the audit team for the audit of a particular assessee and taxpayer from desk review to preparation of audit report (i.e. days spent in office as well as at the assessee/ taxpayer premises).

Stage wise action for audit

i. Preparation/updating of assessee master file containing comprehensive assessee/taxpayer profile.

ii. Collection of all relevant documents, data reconciliation statement and preparation of questionnaire.

iii. Desk review on the basis of relevant documents. iv. Formulation of audit plan based on Scrutiny/Desk Review.

iv. Conducting audit on the basis of the audit plan.

v. Raise Audit observation and obtain reply/explanation from taxpayer/ assessee

vi. Preparation and Issue of final audit report.

vii. Follow up action, for monitoring the compliance of various points.

viii. Adjudication/Assessment Proceedings under Section 73/74

ix. Ensuring timely issuance of SCNs, wherever warranted.

x. Recovery of revenue detected.

Case Studies and Illustrations 12.3

Solved Case

1. **A.C.L. Education Centre (P) Ltd. v UOI 2014 (33) S.T.R. 609 (All.)**

   Facts of the case: Central Tax Department of GST issued intimation under Section 65(3) of the CGST Act, 2017, demanding necessary documents from the petitioners for making a reference to conduct an audit. The petitioners objected and also challenged the vires of Section 65(3) of the CGST Act, 2017, inter alia, on the ground that the provisions of Section 65 of the CGST Act, 2017 are contrary to the provisions of section 66 of the CGST Act, 2017.

   Decision: In the light of the aforesaid discussion, the High Court held that Section 65 of the CGST Act, 2017. It is in consonance with section 66 of the CGST Act, 2017.

2. **Suresh Kumar P.P. v. Deputy Director, Directorate General of GST Intelligence [2021] 123 taxmann.com 376 (Kerala)**

   Facts of the Case: The petitioners were Managing Director and Director of a Media Company engaged in providing cable services to its customers as Multi-Service Operator under the regulation issued by the Telecom Regulatory Authority of India (TRAI). The GST Authorities initiated search and seizure proceedings against them. The authorities issued notice and further passed an order of seizure. Thereafter, the GST Authorities issued notice to petitioners under section 65 for auditing of books. The petitioners submitted that they had never defaulted to any of the statutory responsibilities. They filed the writ petition seeking relief in this regard.

   Decision: The Honorable High Court observed that provisions of the CGST Act, 2017 like inspection of the premises, powers of arrest and summons to produce documents have been incorporated with the aim to prevent evasion of GST at the hands of unscrupulous taxpayers. The process issued for auditing of the books as well as the order of seizure of the documents would help the department in co-relating the entries in the documents and at the time of auditing of the account. Therefore, it would be too premature to comment upon the act of the GST Authorities and writ petition accordingly dismissed.

   As a result, Authorities can initiate audit and investigation simultaneously in GST

3. **Tuli Motors v. Union of India - [2021] 128 taxmann.com 336 (Delhi)**

   Facts of the Case: The petitioner received the show cause notices in the year 2021 which were related to the old assessments for the period 2015 to 2017. It filed writ petition and submitted that the old assessments for the period 2015 to 2017 cannot be reopened in the year 2021 and emphasized that after the repeal of the

Chapter V of the Finance Act, 1994 by the Goods and Services Tax Act, 2017, there is no power to initiate any fresh proceeding under the repealed Act i.e. Chapter V of the Finance Act, 1994.

The department submitted that this Court, in Vianaar Homes Private Limited v. Assistant Commissioner (Circle-12), [2020] 121 taxmann.com 54 (Delhi), has held that there is power to initiate fresh proceedings under Chapter V of the Finance Act, 1994 despite coming into force of the Goods and Services Tax Act, 2017.

High Court Held: The Honorable High Court after hearing both the parties directed that proceedings pursuant to the impugned Show Cause Notices and summons shall continue but the final orders shall not be given effect to till disposal of the writ petition.

Illustration 2

Assessee accounts have already been audited under Income-tax Act, 1961 by a Chartered Accountant, and thus, do not require any other audit under Section 66 of the CGST Act, 2017.

Solution:

Section 66 of the CGST Act, 2017 provides that Commissioner may order such special audit even if the accounts of such person have been audited under any other law for the time being in force.

Therefore, the fact that assesses accounts have been audited under Income-tax Act, 1961 will not have any bearing on special audit ordered under Section 66 of the CGST Act, 2017.

Transition to GST (Transitional Provisions)

13

This Module Includes

Transition to GST (Transitional Provisions)

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Identify transitional provisions about duties and taxes paid under pre-GST regime.
- Explain Input Tax Credit allowed under GST to Manufacturer, Service Provider & Trader as per transitional provisions
- Understand transitional provisions in case of job worker, principal, and agent etc.

Introduction

13.1

GST is a multi-stage value added tax on consumption of goods or ser-vices or both. As GST seeks to consolidate multiple taxes into one, it is very essential to have transitional provisions to ensure that the transition to the GST regime is very smooth and hassle-free and no ITC (Input Tax Credit)/benefits earned in the existing regime are lost.

Transition Provisions

13.2

The transition provisions can be categorized under three heads:

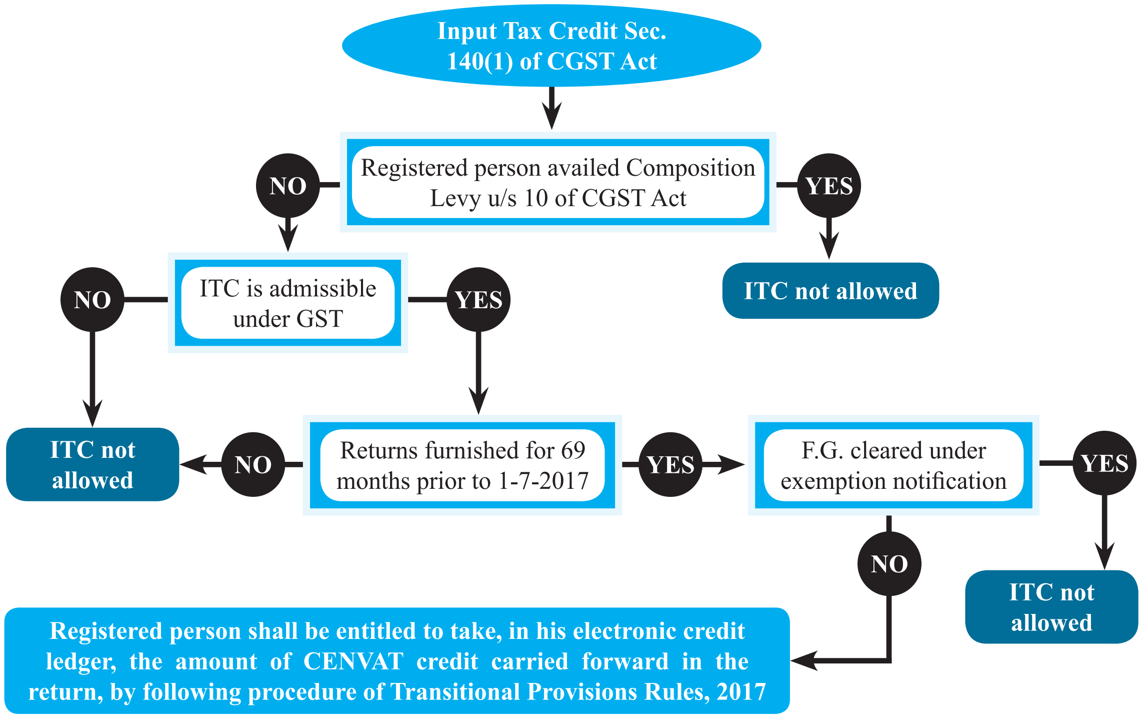
A. Relating to Input Tax Credit

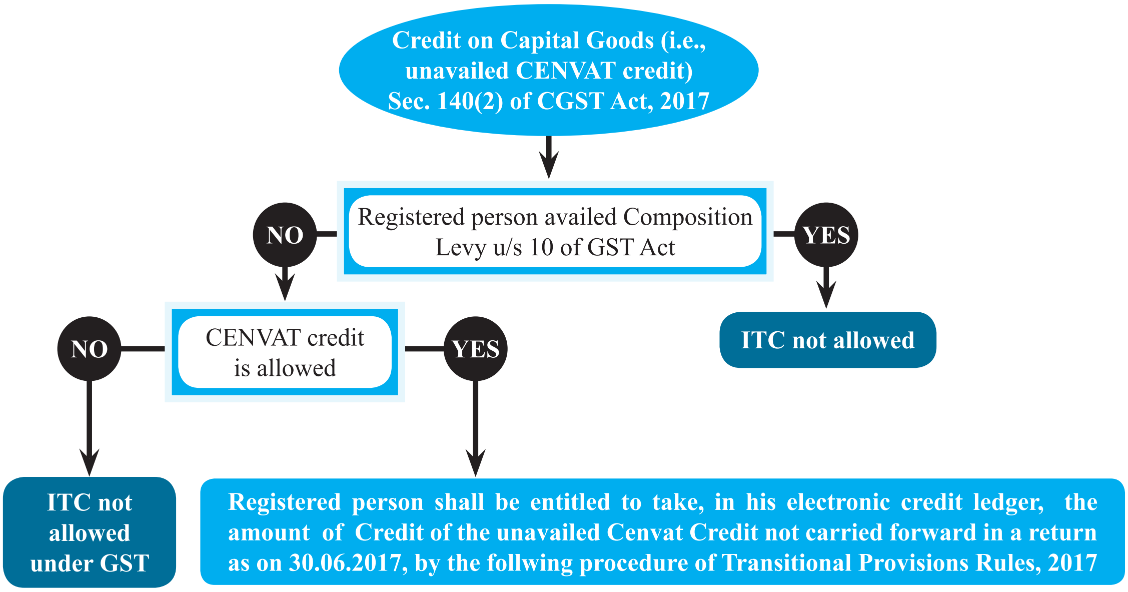
B. Continuance of existing procedures such as job work for a reasonable period without any adverse consequence under GST law

C. All claims (pending as well as future) pertaining to existing laws filed before, on or after the appointed day (i.e. 1-7-2017).

A. Relating to Input Tax Credit:

Elaborate provisions have been made to carry forward the ITC earned under the existing law. Such credit should be permissible under the GST law. However, the taxable person opting for composition scheme would not be eligible for carry forward of the existing ITC.





ITC of various taxes under the existing laws (CENVAT credit, VAT etc.) would be carried forward as under:

(a) Closing balance of the credit in the last returns:

The closing balance of the CENVAT credit /VAT in the last returns filed under the existing law can be taken as credit in electronic credit ledger. Such credit would be available only when returns for the previous last six months have been filed under the existing law. In order to claim this credit, declaration in form GST TRAN 1 is required to be furnished on the common portal within ninety days from the appointed day i.e. 1st July, 2017 or within such extended time. The balance instalment of un-availed credit on capital goods credit can also be taken by filing the requisite declaration in the GST TRAN 1. Inputs purchased from 100% EOU/EHTP credit is allowed to the extent as provided in rule 3(7) of Cenvat Credit Rules, 2004.

Under FORM GST TRAN-1 (Part-B) DETAILS of un-availed tax on CAPITAL GOODS where such ITC is not carried forward in their respective returns.

S. No.	Nature of ITC carried forward in last return filed	Tax carried forward as
1	Central Excise & NCCD	CGST
2	CVD	CGST
3	SAD (i.e. Spl. CVD)	CGST
4	VAT	SGST

Also specify the separately the following:

(i) Amount of ITC already availed or utilized under the existing laws till 01-07-2017 and

(ii) Amount of ITC yet to be availed or utilized under the existing laws till 01-07-2017

(b) Credit on duty paid stock:

A registered taxable person, other than the manufacturer or service provider, may have duty paid goods in his stock on the appointed day. GST would be payable on all supplies of goods or services made after the appointed day. It is not the intention of the Government to collect tax twice on the same goods.

Credit of duties on INPUTS held in Stock, WIP or F.G. as on 01-07-2017 Section. 140(3) of CGST Act, 2017:

A registered person,

(a) Who was not liable to be registered under the existing law (C.Ex, S.T. & VAT), or

(b) who was engaged in the manufacture of exempted goods and provision of exempted services, or

(c) who was providing works contract service and was availing of the benefit of NT No. 26/2012 or

(d) a first state dealer or a second stage dealer or a registered importer or a depot of manufacturer

shall be entitled to take, in his electronic credit ledger, subject to the following conditions, namely

(i) Such inputs used or intended to be used for making taxable supplies under this Act;

(ii) Such registered person is eligible for input tax credit on such inputs under this Act;

(iii) Such registered person is in possession of invoice evidencing payment of duty under the existing law (C.Ex, S.T. & VAT) in respect of such inputs;

(iv) Such invoices were issued not earlier than 12 months immediately preceding 1st July 2017 (it means the duty paid document shall not be of the date prior to 1-7-2016);

(v) The supplier of services is not eligible for any abatement under this Act.

S. No.	Nature of ITC carried forward in last return filed	Tax carried forward as
1	Service tax	CGST
2	Central Excise	CGST
3	CVD under Customs Act	CGST
4	SAD (Spl. CVD) under Customs Act (not available to service Providers)	CGST
5	NCCD on inputs	CGST

S. No.	Nature of ITC carried forward in last return filed	Tax carried forward as
1	State VAT	SGST
2	Entry Tax	SGST
3	CST	SGST

(c) Credit on duty paid stock when Registered Person does not possess the document evidencing payment of excise duty/VAT:

For traders who do not have excise or VAT invoice, there is a scheme to allow credit to them on the duty paid stock. The features of this scheme are as under:

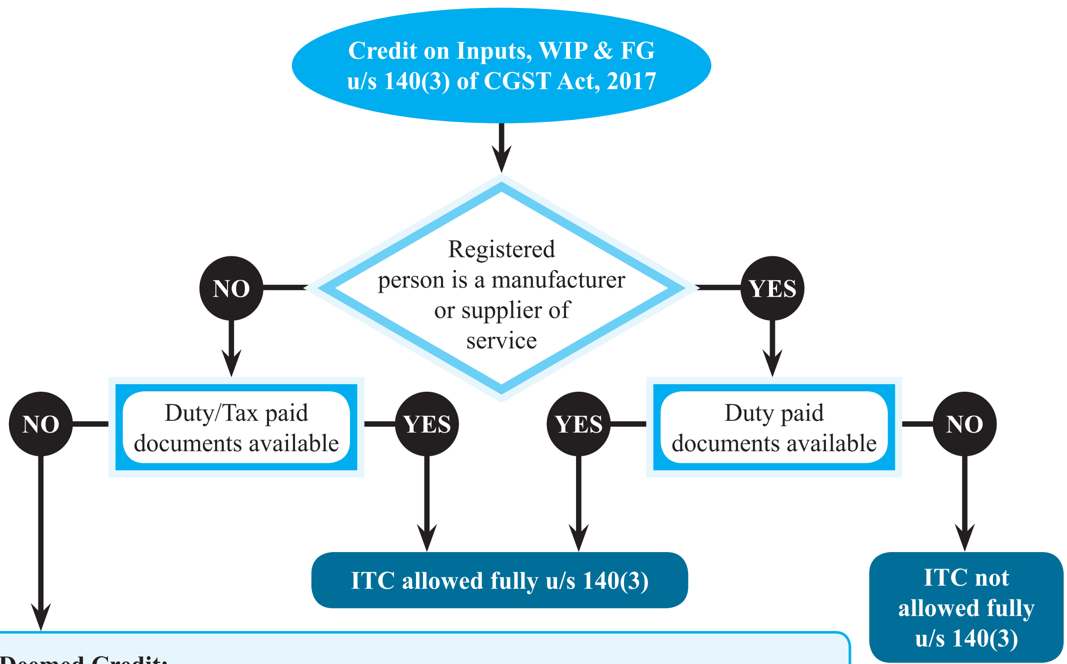
(i) The scheme is operative only for six months from the appointed day. It is not available to manufacturer or supplier of service. It is available to traders only.

(ii) Credit @ 60% on such goods which attract central tax @ 9% or more and @ 40% for other goods of GST paid on the stock cleared after the appointed day would be allowed. However, such goods should not be unconditionally exempted goods or taxed at nil rate under the existing law. It has also been provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at @ 30% and 20% respectively of the said tax.

(iii) Credit would be allowed after the GST is paid on such goods subject to the condition that the benefit of such credit is passed on to the customer by way of reduced prices.

(iv) The statement of supply of such goods in each of the six tax periods has to be submitted.

(v) Stocks stored should be easily identifiable.



Deemed Credit:
ITC shall be allowed 60% on such goods which attract central tax 9% or more (As per Rule 1(3)(a)(ii) of Transitional Provisions Rules, 2017) and 40% for other goods of GST paid on the stock cleared after the appointed day. ITC shall be allowed 30% on such goods which attract integrated tax 18% or more and 20% for other goods of GST paid on the stock cleared after the appointed day.

Deemed Credit in case of no invoice – Applicable to Traders only:

Rate of GST on Goods	Intra-State Credit to CGST	Inter-State Credit to IGST
18% or more	60%	30%
Less than 18%	40%	20%

Example 1

Mr. Ayaan is a trader in the state of Tamil Nadu having a stock of ₹50,000/- as on appointed date. He supplied goods for ₹60,000/- and on which he has paid CGST @14% i.e. ₹8,400 (₹60,000 × 14%). As per section 140(3) of CGST Act, 2017 and rules made thereunder, he can claim credit to the extent of 60% of CGST paid i.e. 5,040 (₹8,400 × 60%).

Illustration 1

Mr. X is a taxable person under GST (who is a wholesaler), is having a stock worth of ₹ 5,00,000/- as on 01-07-2017. Such person has supplied goods for ₹ 5,60,000/- and on which he has paid CGST @9% and SGST @9%.

How much ITC is allowed under sec. 140(3) of GST in the following independent cases:

(a) If he is in possession of duty paid document for the stock (namely BED is ₹ 62,500 and VAT ₹ 28,125).

(b) If he is not in possession of duty paid document for the stock, but has invoice evidencing purchase of good.

Solution:

(a) ITC allowed is equal to BED is ₹ 62,500 as CGST credit and VAT of ₹ 28,125 as SGST credit.

(b) In accordance with the provisions of Transition Rules, he can claim credit to the extent of 60% of CGST paid, i.e., ₹ 30,240/- (₹ 50,400 @60%) as CGST credit. In accordance with the provisions of Transition Rules, he can claim credit to the extent of 60% of SGST paid, i.e., ₹ 30,240/- (₹ 50,400 @60%) as SGST credit.

(d) Credit in respect of exempted and non-exempted goods or provisions of exempted as well as non-exempted services under section 140(4)

Registered person is liable to tax under this Act, on all his goods and services, shall be entitled to take, in his electronic credit ledger

(a) The amount of CENVAT credit c/f in a return furnished under the existing law by him in accordance with the provisions of Sec. 140(1); and

(b) The amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished goods or F.G. held in stock on as on 1-7-2017, relating to such exempted goods or services, in accordance with the provisions of Sec 140(3).

In other words Input Tax Credit of CENVAT/VAT in respect of input, semi-finished and finished goods in stock attributable to exempted goods or services which are now taxable can also be taken in the same manner.

Illustration 2

M/s X Ltd. manufacturer of product ‘A’ and ‘B’. Product ‘A’ is cleared on payment of duty whereas product ‘B’ is exempt from payment of excise duty. Inputs used exclusively for product ‘A’ of ₹ 2,00,000 suffered excise duty ₹ 25,000 and product ‘B’ of ₹ 1,00,000 suffered excise duty paid ₹ 12,500. Common inputs of ₹ 3,00,000 is used for product ‘A’ as well as ‘B’ which also suffered excise duty ₹ 37,500.

As on 1-7-2017, Finished goods of Product ‘A’ worth ₹ 10,00,000 and Product ‘B’ worth of ₹ 5,00,000 is in Stock.

How much ITC credit is allowed to M/s X Ltd under GST under Section 140(1) and 140(4) of the CGST Act, 2017.

w.e.f. 1-7-2017 Product 'A' as well as 'B' taxable with CGST 6% as well as SGST 6%.

Note: Manufacturer is in possession of relevant duty paid documents on inputs.

Solution:

ITC c/f under Sec 140(1) is as follows:

Inputs used exclusively for Product 'A'	=	₹ 25,000
Inputs used commonly for "A & B"	=	₹ 25,000
(₹ 37,500 × ₹ 10 Lakhs / ₹ 15 Lakhs)		

ITC allowed under Sec 140(3) is as follows:

Inputs used exclusively for Product 'B'	=	₹ 12,500
Inputs used commonly for "A & B"	=	₹ 12,500
(₹ 37,500 × ₹ 5 Lakhs / ₹ 15 Lakhs)		
Total ITC under section 140(4)	=	₹ 75,000

(e) Input/input services in transit:

There might be a scenario where input or input services are received on or after the appointed day but the duty or tax on the same was paid by the supplier under the existing law. Registered person (RP) may take credit of eligible duties and taxes, provided the invoice has been recorded in the books within 30 days from the appointed day. The period can be extended by the Commissioner GST by another 30 days. A statement of such invoices have to be furnished. Input Service Distributor (ISD) can also distribute such credit.

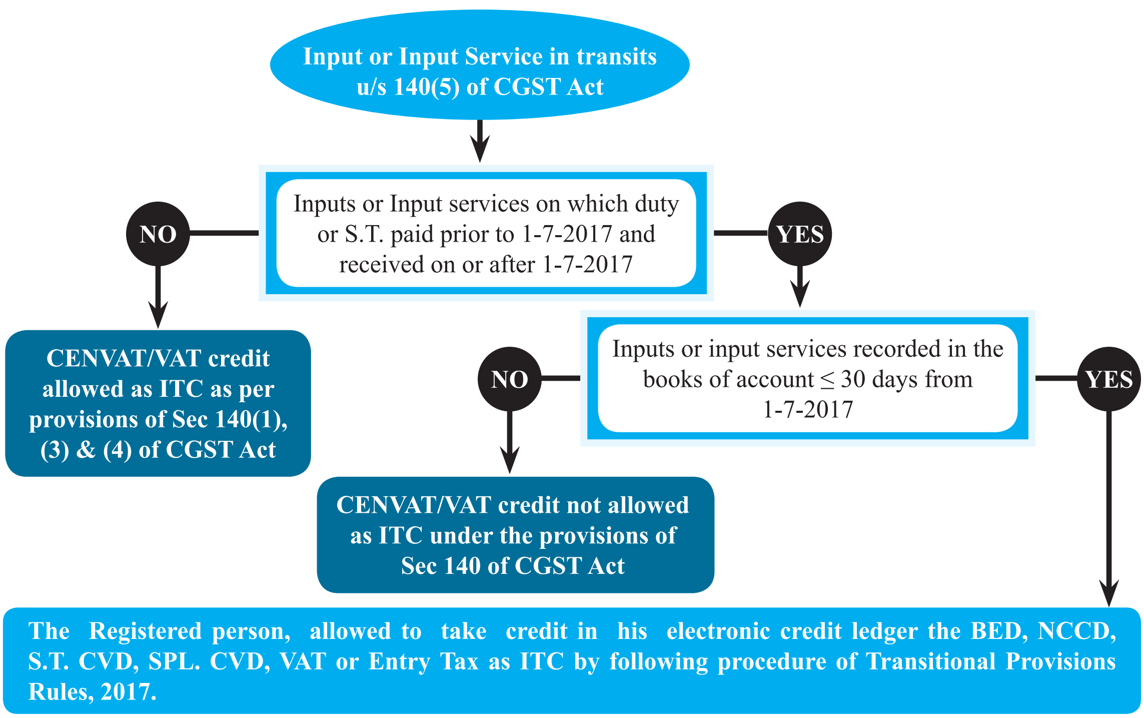


Illustration 3

Mr. X has cleared goods from his factory on 20th May 2017 for sale to Mr. Y for Rs 5,00,000. Effective rate of Excise Duty (E.D) @12.5%. However, E.D Rs 62,500 has been paid on 6th June 2017. The consignment received by Mr. Y on 5th July 2017.

Find the following:

(a) Mr. Y is eligible for ITC if so what amount?

(b) Time limit within which receipt of inputs should record in the books of account of Mr. Y.

(c) Mr. Y recorded receipt of inputs in the books of account on 15-8-2017, if so can be avail the ITC?

Solution:

(a) Yes. Mr. Y is eligible to avail the ITC of Rs 62,500 provided he deals with taxable supplies being registered person.

(b) Inputs or Input Services recorded in the books of account ≤ 30 days from 1-7-2017. Therefore, Mr. Y should be account for by 30th July 2017.

(c) Since, period of 30 days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding 30 days.

In the given case Mr. Y can take credit on inputs on 15th Aug 2017, provided permission granted by the Commissioner for extension not exceeded 30 days.

Illustration 4

Mr. X imported goods from USA on 28th June 2017 for Rs 5,00,000. Customs duties like BCD Rs 50,000, CVD Rs 68,750, Cess Rs 3,563 and Spl.CVD. of Rs 24,893 also paid on 29th June 2017. The consignment received by Mr. X into his factory on 20th July 2017. The services of Customs Broker and C&F are used for imported inputs. Service Tax Rs 10,000, Swachh Bharat Cess (SBC) of Rs 500 and Krishi Kalyan Cess (KKC) of Rs 500 has been paid on 30th June 2017 along with value of services to the provider of services.

Mr. X is eligible for ITC if so what amount?

Solution:

Statement showing ITC to Mr. Y under GST

S. No.	Duties and Taxes	Tax Amount in (₹)	Remarks
1	BCD	Nil	Not allowed as ITC
2	CVD	68,750	Allowed as ITC under CGST
3	Cess	Nil	Not allowed as ITC
4	Spl. CVD	24,893	Allowed as ITC under CGST
5	Service Tax	10,000	Allowed as ITC under CGST
6	SBC	Nil	Not allowed as ITC
7	KKC	nil	Not allowed as ITC
	Total u/s 140(5)	**1,03,643**	

(f) Tax paid under the existing law under composition scheme:

Those taxpayers who paid tax at fixed rate or fixed amount in lieu of the tax payable under the existing law but are working under normal scheme under GST can claim credit on their input stock, semi-finished and finished stock on the appointed date, subject to the following conditions:

(i) Such input stock used for taxable supply under this Act

(ii) Registered Person is not covered under section 10 (composition scheme) of this Act

(iii) Registered Person is eligible for ITC under this Act

(iv) Registered Person is in possession of the invoice or other duty payment documents

(v) Such invoices are not more than twelve months old on the appointed day

DUTY BASED ON CAPACITY OF PRODUCTION

↓

MANDATORY APPLICATION
(SECTION 3A OF CEA, 1944)

↓

Products covered under Sec. 3A of CEA, 1944 (i.e. paid atx at fixed rate or fixed amount) like:

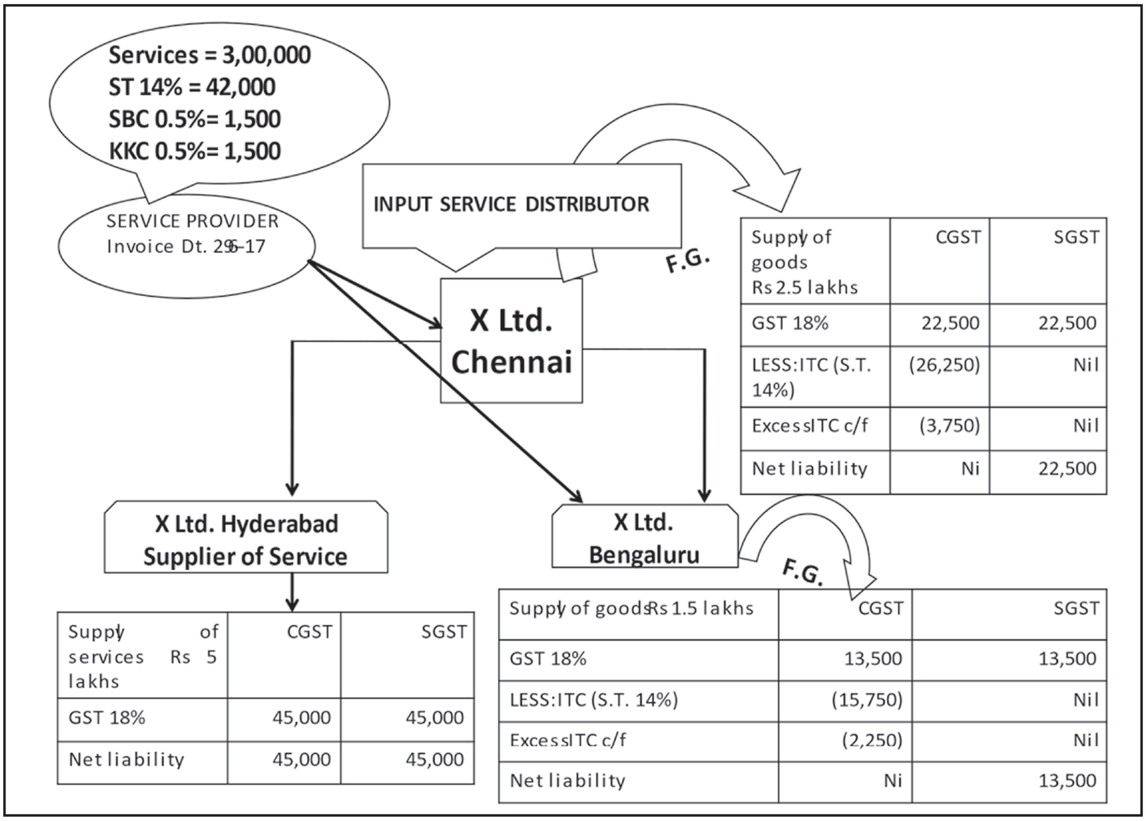
- Pan masala containing tobacco (i.e Gutkha) manufactured with the aid of packing machine and packed in pouches.
- Unmanufactured tobacco bearing a brand name
- Chewing tobacco
- Jarda scented tobacco
- Pan masala (except containing not more than 15% betel nut)

↓

Not eligible to avail CENVAT credit on inputs. Such registered person, is eligible to take credit on inputs, inputs containing in WIP and F.G. as on 30-6-2017 u/s 140(6) of CGST Act

(g) Credit on input service by an INPUT SREVICE DISTRIBUTOR under section 140(7) of CGST Act, 2017:

The input tax credit on account of any services received prior to 1-7-2017 by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after 1-7-2017.



(h) ITC in case of Centralized Registration under service tax:

Centralized registered person under existing law is allowed to take credit under section 140(8) of the CGST Act, 2017. Such Registered Person can take credit of the amount of CENVAT carry forwarded in return furnished under the existing law, if the original/revised return under the existing law has been filed within three months. Such credit may be transferred to any of the Registered Persons having the same PAN for which the centralized registration was obtained.

Illustration 5

M/s X Academy being provider of taxable services has obtained centralized registration in Chennai for its offices in Hyderabad and Cochin under the Finance Act, 1994. The Chennai Office has the balance credit of Rs 5 Lakhs as on 30-06-2017.

Can M/s X Academy distribute the credit to Hyderabad and Cochin. If so in which ratio. Explain?

Solution:

Registered person, can be filed the return for the period ending 30th June 2017 by showing credit that can be carried forward by him on or before the due date or within 3 months from 1-7-2017 as the case may be.

In the given case, credit can be distributed by M/s X Academy to Hyderabad and Cochin. Since, all the units has same PAN.

It is not necessary that to distribute the credit in the ratio of the turnover of these locations.

(i) Reclaim the reversed Input Service credit or Reversal of Service tax credit on input services due to non-payment u/s 140(9) of CGST Act, 2017:

- As per Rule 4(7) of CCR, 2004: Cenvat Credit on input service allowed on credit basis, provided payment should be made within three months from the date of invoice.
- In case the amount is not paid within 3 months from the date of invoice, the credit is required to be reversed by the service provider/manufacturer.
- CENVAT credit reversed on account of non-payment of consideration within three months can be reclaimed if payment is made to the supplier of service within 3 months from 1st July, 2017

(j) Where any goods or capital goods belonging to the principal are lying at the premises of the agent on the appointed day:

This provision is specific to SGST law. In such cases, agent shall be entitled to take credit, subject to the following conditions:

(i) The agent is a registered taxable person

(ii) Both the principal and the agent declare the details of stock

(iii) The invoices are not older than twelve months

(iv) The principal has either reversed or not been availed on the input tax credit

B. Continuance of existing procedures such as job work for a reasonable period without any adverse consequence under GST law:

(a) Job work Inputs, semi-finished goods or finished goods were sent to the job worker or any other premises without payment of duty/VAT under the existing law. No GST is payable by the job worker when such goods are returned by him within six months after the appointed day. The period can be extended by the Commissioner, GST by another two months.

If not returned within the prescribed period, then ITC shall be liable to be recovered from the principal as per second provision to section 141(1) of the Act. In addition, the job worker will have to pay the GST on such supplies. In case of semi-finished goods, the manufacturer may transfer the goods to premises of a Registered Person without payment of tax within the prescribed period. In case of finished goods, the manufacturer may transfer the goods on payment of tax or clear for export within the prescribed period.

(b) Goods removed before 6 months of the appointed day i.e. 1st July, 2017 but returned within 6 months from 1st July, 2017:

If such goods are returned by an unregistered person, then refund of the duty/VAT paid under the existing law can be claimed.

If returned by a Registered Person, then the return of goods shall be treated as supply of goods (ITC can be claimed).

(c) Goods sent on approval basis before 6 months of the appointed day i.e. 1st July, 2017 but returned within 6 months from 1st July, 2017:

No tax is payable by the person returning the goods. Commissioner may extend the peri-od by 2 months. If returned after that, tax is payable if the supply is taxable under GST (by the recipient). If not returned, tax is payable by the person who sent the goods on approval basis.

(d) TDS deducted in VAT:

Where a supplier has made any sale of goods, and tax was required to be deducted under VAT Act, and invoice was issued before the appointed day. however, the payment was made on or after the appointed day. In such cases, no TDS under GST is to be deducted.

(e) Price revision in respect of existing contracts:

In case of upward price revision, a registered person will issue a supplementary invoice or debit notes within 30 days from the date of revision and such revision shall be treated as supply under GST, and tax is payable under this Act. In case of downward revision, Registered Person may issue credit note within 30 days from such revision and credit note shall be deemed to have been issued in respect of outward supply made under this Act. A Registered Person will reduce his tax liability for such credit note, subject to reversal of credit by the recipient.

(C) All claims (pending as well as future) pertaining to existing laws filed before, on or after the appointed day (i.e. 1-7-2017) (i.e. Proceedings under the existing laws):

GST law has become operational w.e.f. 1st July, 2017 and existing laws have been repealed. Elaborate provisions have been made to save the pending as well future claims relating to existing law made before, on or after the appointed day i.e. 1st July, 2017. Such proceedings may pertain to refund claims of CENVAT credit/VAT or export related rebate or service tax, such proceedings may either result in recovery of tax or refund. All such cases would be disposed of under the existing law. If any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse. Refund of CENVAT credit shall be paid in cash. There will be no refund of CENVAT if already carry forwarded. If any amount becomes recoverable, the same shall be recovered as arrear of tax under GST Act. Statutory provisions relating to transition are contained in chapter XX (section 139 to 142) of the CGST Act, 2017, SGST Act(s), 2017 and Rule 117 to 121 of the CGST Rules, 2017.

Case Laws 13.3

1. **Adfert Technologies (P.) Ltd.[2019] 111 taxmann.com 27 (Punj. & Har.)**

   Decision: Where petitioners, migrated from VAT regime to GST regime on introduction of GST, sought direction to respondents to permit carry forward of unutilized CENVAT credit of duty paid under Central Excise Act, 1944 and Input Tax Credit (ITC) of VAT paid under Punjab VAT Act, 2005 or Haryana VAT Act, 2003 on account of non-filing or incorrect filing of prescribed statutory Form i.e., TRAN-1 by stipulated last date, i.e., 27-12-2017 due to technical glitches, petitioners were permitted to file Form TRAN-1 either electronically or manually on or before 30-11-2019.

   While doing so, the Hon'ble Court noted that the Respondent authorities were having complete record of already registered persons and at present they are free to verify fact and figures of any Petitioner thus in spite of being aware of complete facts and figures, the Respondent cannot deprive Petitioners from their valuable right of credit.

   Note: Against this order of the Hon'ble P&H HC SLP was filed by the Revenue Dept. which was dismissed by the Apex Court in Adfert Technologies (P.) Ltd. (supra).

2. **Rohan Dyes and Intermediates Ltd. v. Union of India[2020] 115 taxmann.com 387 (Guj.)**

   In this case, Hon'ble Gujarat High Court relying on its earlier decision given in Siddharth Enterprises held that:

   In case where petitioner could not upload the form GST TRAN-1 due to technical glitches and in spite of various representations made by the petitioner, he was not allowed to upload the form GST TRAN-1, the petitioner is entitled to claim credit of CENVAT as on 30th June 2017 as per the provisions under section 140(1) of the Act, 2017 read with Rule 117 of the Rules 2017.

   Taking into consideration Order No. 01/2020-GST dtd. 07.-2.2020 of CBEC, the Hon'ble Court directed the Department to consider the Petitioner's declaration till 31-3-2020

3. **Brand Equity Treaties Ltd. v. Union of India [2020] 116 taxmann.com 415 (Delhi)**

   This is a case is of immense importance wherein Hon'ble Delhi HC interalia resolved the following issues:

   Basis the decision of the Apex Court given in Eicher Motors Ltd. (supra) and Dai Ichi Karkaria Ltd. (supra) (wherein the Apex Court held that the provision for facility of credit as a vested right (which is indefeasible in nature) and also held that the facility of credit is as good as tax paid till the tax is adjusted on future good) noted that "..On enactment of the CGST Act, no mechanism was provided for the refund of the credit that existed on the said date. The only mechanism was for utilization of such credit by migrating the same to the GST regime by way of filing declaration Form TRAN-1. The manner and procedure to carry forward the said CENVAT credit under Sub-Section (1) of Section 140 was to be 'prescribed'….Evidently, there is no other provision in the Act prescribing time limit for the transition of the CENVAT credit, and the same has been introduced only by way of Rule 117. This provision also contains a proviso, which vests power with the Commissioner to extend the period on the recommendations of the Council….there is nothing sacrosanct about the time limit so provided. It is not as if the Act completely restricts the transition of CENVAT credit in the GST regime by a particular date, and there is no rationale for curtailing the said period, except under the law of limitations. The period of 90 days has no rationale and as noted above, extensions have been granted by the Government from time to time, largely on account of its inefficient network."

High Court further opined that "Conscious of the circumstances that are prevailing, we feel that taxpayers cannot be robbed of their valuable rights on an unreasonable and unfounded basis of them not having filed TRAN-1 Form within 90 days, when civil rights can be enforced within a period of three years from the date of commencement of limitation under the Limitation Act, 1963."

In view of the above, Hon'ble Delhi High Court held that entitlement of credit of taxes/duties paid on purchases made under the erstwhile regime is a vested right and cannot be taken away by virtue of Rule 117 of the CGST Rules, 2017.

4. In **Eicher Motors Ltd. v. Union of India 1999** taxmann.com 1769, the Hon'ble Supreme Court of India considered MODVAT Credit as an 'absolute right' regarding the input is used in the manufacture of the final product and on the date when the Assessee paid the tax on the raw materials or the inputs. In this regard, the Hon'ble Court observed that:

   "..Thus, the right to the credit has become absolute at any rate when the input is used in the manufacture of the final product. The basic postulate, that the scheme is merely being altered and, therefore, does not have any retrospective or retro-active effect, submitted on behalf of the State, does not appeal to us. As pointed out by us that when on the strength of the rules available certain acts have been done by the parties concerned, incidents following thereto must take place in accordance with the scheme under which the duty had been paid on the manufactured products and if such a situation is sought to be altered, necessarily it follows that right, which had accrued to a party such as availability of a scheme, is affected and, in particular, it loses sight of the fact that provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assessees concerned.

   Therefore, the scheme sought to be introduced cannot be made applicable to the goods which had already come into existence in respect of which the earlier scheme was applied under which the assessees had availed of the credit facility for payment of taxes. It is on the earlier scheme necessarily the taxes have to be adjusted and payment made complete. Any manner or mode of application of the said rule would result in affecting the rights of the assessees. We may look at the matter from another angle. If on the inputs the assessee had already paid the taxes on the basis that when the goods are utilised in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus, a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed."

   Notably, the Supreme Court in addition to the above also held that provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assessees concerned.

5. R.R. Distributors Pvt. Ltd v. Commissioner Of Central Tax, GST [W.P. (C) 4143 of 2020, dated 27-5-2021]

Very recently i.e. on 27-5-2021, Hon'ble Delhi High Court in this case aptly held that the non-filing of part 7B of table 7(a) and table 7(d) of TRAN-1 Form cannot impair the rights of the petitioner to claim transitional ITC, if he is otherwise eligible. The Hon'ble Court further noted that failure on the part of the Petitioner to give relevant details in TRAN-1 Form can only be taken as a procedural lapse which should not cause any impediment to its right to claim transitional ITC. In view thereof, the Court directed the Respondents to either open the online portal so as to enable the Petitioner to file the rectified TRAN-1 Form electronically or accept the same manually with necessary corrections, on or before 30th June 2021.

Dispute Resolution Mechanism under GST

14

This Module Includes

Dispute Resolution Mechanism under GST

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Explain intimation, summons, show cause notice and order in original
- Understand various types of assessments under GST
- Explain Appeals under GST
- Identify cases for which advance ruling is applicable
- Understand various types of offences and penalties under GST.

Demands

14.1

GST is payable on a self-assessment basis. If the assessee pays the tax on self-assessment correctly then there will not be any problem. As result demand of tax from department does not arise. Demand under GST and the recovery provisions will be initiated if there is a failure to pay the tax in compliance with the Goods and Services Tax (GST) laws.

If there is any short payment or wrong utilisation of input tax credit, then the GST authorities will initiate demand and recovery provisions against the assessee.

The GST demand notice can be issued by the Proper Officer (i.e Adjudicating Authority) for short payment or non-payment of GST in following two different situations:

1. When there is no reason of fraud or wilful misstatement or suppression of facts
2. When there is reason of fraud or wilful misstatement or suppression of facts

Adjudicating Authority

As per Section 2(4) of the CGST Act, 2017 "**adjudicating authority**" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include—

- The Central Board of Excise and Customs,
- The Revisional Authority,
- The Authority for Advance Ruling,
- The Appellate Authority for Advance Ruling,
- The Appellate Authority; and
- The Appellate Tribunal;

Definition of "Adjudicating Authority" amended Effective from 01.02.2019 [Section 2(4) of the CGST Act]

Anti profiteering authority has been excluded from the definition of Adjudicating authority and the term CBEC used therein has been changed to CBIC. The CGST (Amendment) Act, 2018 has amended section 2(4) of the CGST Act, which defines adjudicating authority, as under:

"Adjudicating authority means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the **Central Board of Indirect Taxes and Customs**, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the **Authority referred to in sub-section (2) of section 171**.

Demand and Adjudication:

Show Cause Notice can be issued by proper officer to a registered person where it appears to him that tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, asking him to show cause as to why the said tax be not demanded and recovered from him.

Where it appears to the proper officer that any tax has not been paid or short-paid or erroneously refunded, or where input tax credithas been wrongly availed or utilised for reason, other than of fraud or any willfull misstatement or suppression of facts to evade tax, he can issue show cause notice upto 3 months prior to normal period of demand within 3 years from the due date for furnishing of annual return for the financial year to which said demand pertains (i.e. show cause notice to be issued within 2 years and 9 months) as per section 73(1) and (2) read with section 73(10) of the CGST Act, 2017.

Where it appears to the proper officer that any tax has not been paid or short-paid or erroneously refunded, or where input tax credithas been wrongly availed or utilised for reason, by reason of fraud or any willfull misstatement or suppression of facts to evade tax, he can issue show cause notice upto 6 months prior to extended period of demand within 5 years from the due date for furnishing of annual return for the financial year to which said demand pertains (i.e. show cause notice to be issued within 4 years and 6 months) as per section 74(1) and (2) read with section 74(10) of the CGST Act, 2017.

Time limit for Show Cause Notice (SCN) and Adjudication (Order)

Nature of transaction	Time for issuance of SCN	Time of issuance of order
Other than fraud	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.Section 73(2) of the CGST Act, 2017	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 73(10) of the CGST Act, 2017
Fraud case	Within 4 years and 6 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 74(2) of the CGST Act, 2017	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund. Section 74(10) of the CGST Act, 2017
Any amount collected as tax but not paid Section 76(1) and (2) of the CGST Act, 2017.	No time limit	Within 1 Year from the date of issue of notice. Section 76(6) of the CGST Act, 2017
Non-payment of self-assessed tax	No need to issue a show cause notice	Recovery proceedings can be started directly.

Proper Officer under Section 73 and 74 of CGST and under IGST (*vide* CBIC Circular No. 31/05/2018-GST, dated 9-2-2018):

Superintendents of Central Tax can issue show cause notices and orders under section 73 and 74 of the CGST Act, 2017.

All officers upto the rank of Additional/Joint Commissioner of Central Tax are assigned as the proper officer for issuance of show cause notices and orders under subsections (1), (2), (3), (5), (6), (7), (9) and (10) of sections 73 and 74 of the CGST Act.

Further, they are so assigned under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") as well, as per section 3 read with section 20 of the said Act.

Monetary limits to issue notices and orders are notified:

Monetary limit of the amount of central tax (including cess)/IGST not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders under sections 73 and 74 of CGST Act.

S. No.	Officer of Central Tax	CGST (including cess)	IGST (including cess)	CGST & IGST (including cess)
1	Superintendent of Central Tax	≤ ₹10 lakhs	≤ ₹20 lakhs	≤ ₹20 lakhs
2	Deputy or Assistant Commissioner of Central Tax	> ₹10 lakhs ≤ ₹1 crore	> ₹20 lakhs ≤ ₹2 crore	> ₹20 lakhs ≤ ₹2 crore
3	Additional or Joint Commissioner of Central Tax	> ₹1 crore without any limit	> ₹2 crore without any limit	> ₹2 crore without any limit

The central tax officers of Audit Commissionerate's and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerate's, the show cause notice shall be adjudicated by the competent central tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls.

Notwithstanding anything contained in above, a show cause notice issued by DGGSTI in which the principal places of business of the noticees fall in multiple Commissionerate's and where the central tax and/or integrated tax (including cess) involved is more than ₹5 crores shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer.

In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).

Section 73:		Section 74	
Sub-sections		Sub-sections	
(1)	Non-payment of tax other than for any reason other than fraud	**(1)**	Non-payment of tax by any reason of fraud
(2)	The proper officer shall issue the notice under sub-section (1) at least 3 months prior to the time limit specified in sub-section (10) for issuance of order. (i.e. 2 years 9 months)	**(2)**	The proper officer shall issue the notice under sub-section (1) at least 6 months prior to the time limit specified in sub-section (10) for issuance of order. (i.e. 4 years 6 months)
(3)	Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.	**(3)**	Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.
(4)	The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.	**(4)**	The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.
(5)	The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.	**(5)**	The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.
(6)	The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.	**(6)**	The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

Section 73:		Section 74	
Sub-sections		Sub-sections	
(7)	Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.	**(7)**	Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.
(8)	Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.	**(8)**	Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 30 days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.
(9)	The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to 10% of tax or ₹10,000, whichever is higher, due from such person and issue an order.	**(9)**	The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.
(10)	The proper officer shall issue the order under sub-section (9) within 3 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 3 Years from the date of erroneous refund.	**(10)**	The proper officer shall issue the order under sub-section (9) within a period of 5 Years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within 5 Years from the date of erroneous refund.
(11)	Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax. As per Circular No. 76/50/2018-GST, dated 31st December, 2018: It is clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax.	**(11)**	Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1: For the purposes of section 73 and this section,—

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2: For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Intimation before show cause notice under section 73 or 74 of CGST Act, 2017 [Notification No. 49/2019-CT, dated 09.10.2019]:

With effect from 09.10.2019, the proper officer shall, before serving of such a notice, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty under section 73 or section 74. Further, where such person has made partial payment of amount communicated to him or desires to file any submission against the proposed liability, he may make such submission in the prescribed form. Taxpayer will be able to take advantage of nil or reduced penalty under sections 73(5) and 74(5) of the CGST Act.

Where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act whether on his own ascertainment or, as communicated by the proper officer as mentioned above, he shall inform the proper officer of such payment and the proper officer shall issue an acknowledgement, accepting the payment made by the said person.

Dispensation of SCN (i.e. SCN not required to issue)

(a) once a SCN has been issued, where for normal priod or extended period, for subsequent demand period, a statement showingdetails demand can be served if grounds of demand are same. It means for subsequent period no separate show cause notice is requried to issue as per section 73(6) or 74(6) of the CGST Act, 2017.

(b) In a normal demand case (other than fraud), where assessee on the basis of his own ascertainment or ascertainment of the proper officer pays the tax short levied or short paid etc. along with interest and informs the proper officer in writing, then no SCN will be issued.

(c) In an extended perioddemand case (i.e. fraud case), where assessee on the basis of his own ascertainment or ascertainment of the proper officer pays the tax short levied or short paid etc., along with interest with 15% of the amount as penalty and informs the proper officer in writing, then no SCN will be issued.

Clarification on levy of penalty under section 73 of the CGST Act in case of delayed filing of return

Issue: Whether penalty in accordance with section 73(11) of the CGST Act should be levied in cases where the return in Form GSTR-3B has been filed after the due date of filing such return?

Clarification: As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid.

It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.

[Circular No. 76/50/2018-GST, dated 31.12.2018]

Proceedings under section 129 and section 130 delinked from proceedings under section 74 of CGST Act, 2017:

Section 74 deals with Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.

w.e.f. 1-1-2022, Section 74 of the CGST Act has been amended so as make seizure (section 129) and confiscation of goods and conveyances (section 130) in transit a separate proceeding from recovery of tax.

This makes detention, seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.

General provisions relating to determination of tax [Section 75 of the CGST Act, 2017]

1. **Period of Stay:** Period of stay on issuance of SCN ordered by Court or Tribunal to be excluded for determining limitation (i.e. 3 years or 5 years).
2. **Deemed Notice:** Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.
3. **Order issued in pursuance of the Court:** Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.
4. **Opportunity of hearing:** An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
5. **Adjournment not more than 3 times:** The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

   Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.
6. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
7. **Order should not be passed more than the demand mentioned in SCN:** The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

8. **Court findings final:** Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

9. **Interest mandatory:** The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

10. **Time barred Orders:** The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

11. An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

12. Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79 (i.e. recovery of tax from various modes).

13. Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Important points:

(a) A summary of demand has to be be furnished electronically in Form GST DRC-01 along with SCN simulteneously. In case of extended period a summary of demand has to be furnished electronically in Form GST DRC-02.

(b) the assessee will reply/make representation against SCN in Form GST DRC-06 within the prescribed time or time as extended.

(c) A summary of the order issued shall be uploaded electronically in Form GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. This order shall be treated as Recovery Notice.

(d) Cross empowerment between CGST and SGST/UTGST officers has been doen so as to ensure that if a proper officer of one Act (say CGST Act, 2017) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction.

Tax collected but not paid to Government [Section 76 of the CGST Act, 2017]

Every person who has collected any amount as representing the GST and has not paid same to the Government, is required to pay said amount with interest, irrespective of whether the supplies in respect of which such amount was collected are taxable or not (as per section 76(1) of the CGST Act, 2017).

In case of failure, proper officer can issue a SCN to him proposing recovery and imposition of penalty equalent to the amount specified in the notice (as per section 76(2) of the CGST Act, 2017)

As per section 76(3) of the CGST Act, 2017,the proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

As per section 76(4) of the CGST Act, 2017, the person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

As per section 76(5) of the CGST Act, 2017, an opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

As per section 76(6) of the CGST Act, 2017, the proper officer shall issue an order within one year from the date of issue of the notice and such order issued in Form GST DRC-07. This order shall be treated as Recovery Notice.

As per section 76(7) of the CGST Act, 2017, where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

As per section 76(8) of the CGST Act, 2017, the proper officer, in his order, shall set out the relevant facts and the basis of his decision.

As per section 76(9) of the CGST Act, 2017, the amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

As per section 76(10) of the CGST Act, 2017, where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

As per section 76(11) of the CGST Act, 2017, the person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Summary:

GST Collected but not paid u/s 76(1) of the CGST Act, 2017

↓

SCN can be issued (no time limit) to recover the same irrespective of such supply is taxable or not [Sec. 76(2)]

↓

Officer will determine the amount due after considering the representation of the person [Sec. 76(3)]

↓

Interest has to pay in addition to amount as per section 50 [Sec. 76(4)]

↓

An opportunity of hearing shall be granted where a request is received in writing from such person [Sec. 76(5)]

↓

Within One year proper office should issue an Order (Form GST DRC-07) from the date of issue of SCN. Such order shall be treated as Recovery Notice [Sec. 76(6)]

↓

Stay order issued by the court then period of such stay shall be excluded in computing the period of One Year [Sec. 76(7)]

↓

Proper officer shall set out the relevant facts in his order [Sec. 76(8)]

↓

Amount paid under Sec. 76(1) or 76(3) = xxxx
Less: Adjust against the tax [Sec. 76(9)] = (xx)
Surplus [Sec. 76(10)] shall be paid to such person who claims refund under Sec 54 [Sec. 76(11). Otherwise credited to the Fund.

Tax wrongly collected and paid to Central Government or State Government [Section 77 of the CGST Act, 2017]

(1) In case of wrong charging and deposit of tax considering it to be intra-State supply which is later found to be inter-State supply, the tax paid shall be refunded.

(2) However, in case of payment of tax considering the supply as inter-State which is later found to be intra-State supply, no interest shall be payable on the amount of Central and State/UT tax paid.

Initiation of recovery proceedings [Section 78 of the CGST Act, 2017]

The adjudication order passed by proper officer in pursuant to demand SCN is to be treated as recovery notice.

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of **three months** from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

Recovery of Tax [Section 79 of the CGST Act, 2017]

(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

(a) Recovery by deducting from any money owed: 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. For this purpose, the proper officer shall issue Form GST DRC-09.

(b) Recovery by sale of goods under the control of proper officer: 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. The sale will be by auction including e-auction by issuing a notice in Form GST DRC-10.

Perishable or hazardous goods can be auctioned immediately, but in other cases a 15 days notice is required. The successful bidder will be informed in Form GST DRC-11 requiring him to make the payment within a period of 15 days from the date of auction. On payment of full bid amount, the proper officer shall transfer the possession of the said goods by issuing a certificatein Form GST DRC-12.

(c) Recovery from a third person:

(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) Recovery by sale of movable or immovable property: 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 30 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. The Proper Officer shall issue an order of attachment or distraint and a notice for sale in Form GST DRC-16.

(e) Recovery through land revenue authority: The proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(f) Recovery through Court: Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the

said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

Explanation: w.e.f. 1-2-019 For the purposes of theis section, the word "person" shall include "distinct person" as referred to in sub-section (4) or, as the case may be, sub-section (5) of Section 25 of CGST Act, 2017.

Thus, recovery of taxes under GST law can now be made from distinct persons present in different States/ UTs also.

Recovery in installments [Section 80 of the CGST Act, 2017]

- Commissioner can allow payment with interest by defaulter in monthly installments not exceeding 24 installments.
- In case of default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become due.
- For seeking installment facility, taxable person can file application electronically in Form GST DRC-20.

The installment facility will not be allowed if:

- The taxable person has already defaulted on the payment of any amount under GST law and recovery process is already undergoing;
- The taxable person has not been allowed to make paymentin installments in the preceding financial year under GST law; and
- The amount for which instalment facility is sought is less than ₹25,000/-.

Transfer of property to be void in certain cases [Section 81 of the CGST Act, 2017]

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

Tax to be first charge on property [Section 82 of the CGST Act, 2017]

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.

Provisional attachment to protect revenue in certain cases [Section 83 of the CGST Act, 2017]

(1) Where assessment or adjudication are pending under

Section 62 Assessment of non-filers of returns;

Section 63 assessment of unregistered persons;

Section 64 summary assessment in certain special cases;

Section 73 determination of tax not paid other than fraud;

Section 74 determination of tax not paid by reason of fraud;

The Commissioner for protecting the interest of the Government revenue, by order in writing in Form GST DRC-22 can attach provisionally any property, including bank account, belongingto thetaxableperson.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Amendment of section 83 Provisional Attachment as per Finance Act, 2021 (w.e.f. 1-1-2022):

In section 83 of the Central Goods and Services Tax Act, for sub-section (1), the following sub-section shall be substituted, namely:–

Where, after the initiation of any proceeding under Chapter XII (Advance Ruling), Chapter XIV (i.e. Transitional Provisions) or Chapter XV (i.e. Anti-Profiteering), 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 or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

Vide this Modification Powers of Provisional attachment of the Commissioner have been extended to proceeding under Chapter XII (Assessment), XIV (Inspection, Search, Seizure and Arrest) or XV (Demands and Recovery) for attachment of property including bank account belonging to the taxable person / person who has retained benefits of offences under 122(1A) e.g Fake Invoice Transactions, where he feels that provisional attachment is necessary to protect the Interest of the Revenue.

Further, earlier the person whose property is attached could file an objection to such attachment within 7 days of the attachment. However, said provision has been amended by aforesaid notification to provide that the objections to such attachment can be filed at any time. Further, amendment in rule 159 of the CGST Rules, 2017 is also effective from 1-1- 2022. Further, a copy of the order of provisional attachment of the property including bank account shall also be sent to the person whose property is being attached.

As per CBIC Letter F. No. CBEC-20/16/05/2021-GST/359, dated 23-2-2021 - Guidlines:

1. **Grounds for provisional attachment of property**

   (a) Commissioner must exercise due diligence and duly consider as well as carefully examine all the facts of the case, including the nature of offence, amount of revenue involved, established nature of the business, and extent of investment in capital assets before attaching the property.

   (b) Commissioner must have reasons to believe that the taxable person may dispose of or remove the property if not attached provisionally.

   (c) Commissioner should duly record the 'reasons to believe' on file.

   (d) CBIC has directed that the power of provisional attachment must not be exercised in a routine/mechanical manner and should be based on careful examination of all the facts of the case. It has been mandated that the collective evidence, based on the proceedings/ enquiry conducted in the case, must indicate that prima-facie a case has been made out against the taxpayer, before going ahead with any provisional attachment.

(e) As the provisional attachment of property may affect the working capital of the taxable person, the investigation and adjudication should be completed at the earliest.

2. Cases fit for provisional attachment of property

Provisional attachment should not be invoked in cases of technical nature and should be resorted to mainly in cases where there is an evasion of tax or where the wrongful input tax credit ("ITC") is availed or utilized or wrongfully passed on. Provisional attachment can be resorted to in following cases (illustrative list):

(a) Where taxable person has supplied any goods or services without issue of any invoice with an intention to evade tax; or

(b) Where taxable person has issued any invoice without supply; or

(c) Where taxable person has availed ITC using the invoice or bill issued without any corresponding supply or fraudulently availed ITC without any invoice; or

(d) Where taxable person has collected any amount as tax but has failed to pay the same to the Government beyond a period of 3 months; or

(e) Where taxable person has fraudulently obtained refund; or

(f) Where taxable person has passed on ITC fraudulently to the recipient(s) but has not paid the commensurate tax.

3. Procedure for provisional attachment of property

(a) Commissioner should duly record the 'reasons to believe' on file and pass an order in Form GST DRC-22 with proper Document Identification Number ("DIN") recording the details of property being attached.

(b) Copy of order in Form GST DRC-22 to be sent to the concerned revenue authority/transport authority/ bank or the relevant authority to place encumbrance on the attached property. The property, thus attached, shall be removed only on the written instructions from the Commissioner.

(c) Copy of such attachment order shall be provided to the taxable person as early as possible so that objections, if any, to the said attachment can be made by the taxable person within 7 days.

(d) If such objection is filed by the taxable person, Commissioner should provide an opportunity of being heard. After considering the facts presented by the person in his written objection as well as during the personal hearing, if any, the Commissioner should form a reasoned view whether the property is still required to be continued to be attached or not, and pass an order in writing.

(e) In case, the Commissioner is satisfied that the property was or is no longer liable for attachment, he may release such property by issuing an order in FORM GST DRC- 23.

(f) Even in cases where objection is not filed within the time prescribed under Rule 159(5) of CGST Rules i.e. 7 days, the Commissioner should pass a reasoned order.

(g) Each such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order of attachment.

(h) In case the attached property is of perishable/hazardous nature, then such property shall be released to the taxable person by issuing order in FORM GST DRC-23, after taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, and submits proof of payment.

(i) In case the taxable person fails to pay the said amount, then the perishable/hazardous property may be disposed of and the amount recovered from such disposal of property shall be adjustable against the tax, interest, penalty, fee or any other amount payable by the taxable person.

(j) Further, the sale proceeds thus obtained must be deposited in the nearest Government Treasury or branch of any nationalised bank in fixed deposit and the receipt thereof must be retained for record, so that the same can be adjusted against the amount determined to be recoverable from the said taxable person.

4. Types of property that can be attached

(a) Value of property attached should not be excessive and should be reasonable to the estimated amount of pending revenue. More than one property can be attached.

(b) Provisional attachment can be made only of the property belonging to the taxable person, against whom the proceedings under Section 83 of the Act are pending.

(c) Movable property should normally be attached only if the immovable property, available for attachment, is not sufficient to protect the interests of revenue.

(d) As far as possible, it should also be ensured that such attachment does not hamper normal business activities of the taxable person. This would mean that raw materials and inputs required for production or finished goods should not normally be attached by the Department.

(e) In cases where the movable property, including bank account, belonging to a taxable person has been attached, such movable property may be released if taxable person offers any other immovable property which is sufficient to protect the interest of revenue.

5. Attachment period:

(a) Every provisional attachment shall cease to have effect after the expiry of a period of ONE Year from the date of the provisional attachment order.

(b) Besides, the provisional attachment order shall also cease to have effect if an order in Form GST DRC-23 for release of such property is made by the Commissioner.

6. Investigation and Adjudication:

(a) The investigation and adjudication are completed at the earliest, well within the period of attachment, so that the due liability of tax as well as interest, penalty etc., arising upon adjudication can be recovered from the said taxable person and the purpose of attachment is achieved.

(b) Where the property to be provisionally attached consists of the share or interest of the concerned taxable person in property belonging to him and another as co-owners, the provisional attachment shall be made by order to the concerned person prohibitting him from transferring the share or interest or charging it in any way.

7. Property exempt from attachment:

All such property as is by the Code of Civil Procedure, 1908 exempt from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachemnt.

Assessment and Appeals 14.2

Assessment means determination of tax liability and includes—

- self-assessment,
- final assessment,
- re-assessment,
- provisional assessment,
- summary assessment and
- best judgment assessment.

Self-Assessment (Section 59 of the CGST Act, 2017)

"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".

The registered person is required to compute his output, take the available input credit and pay the balance amount and file the returns in the prescribed forms. Prima-Facie the department shall accept such self-assessed returns and declarations, subject to scrutiny and other modes of assessment in the selected cases and in the prescribed manner.

Self-assessed tax to include tax payable on outward supplies furnished in GSTR-1 but not included in return under Section 39 of the CGST Act, 2017:

General provisions relating to determination of tax section 75, An explanation has been inserted in sub-section (12) of section 75 of the CGST Act to clarify that "self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37 (output tax liability GSTR-1), but not included in the return furnished under section 39 (payment of tax GSTR-3B).

Example 1

A typographical error/wrongly reported details in GSTR-1 or GSTR-3B which may be rectified in subsequent GSTR_1 or GSTR-3B.

Example 2

Where a supply could not be declared in GSTR-1 of an earlier tax period, though the tax on the same was paid by correctly reporting the same in GSTR-3B of said tax period; details may now be reported in the GSTR-1 of the current tax period.

Therefore, in case of mismatch between GSTR-1 and GSTR-3B, the proper officer may first send a communication to the registered person to pay the self-assessed tax short paid /not paid, or to explain the reasons for the same, within a reasonable time 23prescribed in the communication.

Recovery proceedings under section 79 will be initiated by the proper officer only when the said person either (i) fails to reply to the proper officer, or (ii) fails to make the payment of such amount short paid/not paid within the prescribed time or (iii) fails to explain the reasons for such amount short paid/not paid (instruction No. 01/2022 GST dated 07/01/2022).

Final Assessment

If the department accept the self-assessment, it will become final assessment.

Re-assessment

If department noticed any discrepancies, it will become re-assessment.

Provisional assessment (Section 60 of the CGST Act, 2017)

As per section 60(1) of the CGST Act, 2017 where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis.

The proper officer (i.e. The Asst. Commissioner/Dy. Commissioner of Central Tax) shall pass an order, within a period not later than 90 days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

The Asst. Commissioner/Dy. Commissioner of Central Tax provisionally determines the amount of tax payable by the supplier and is subject to final determination.

On provisional assessment, the supplier can pay tax on provisional basis but only after he executes a bond with security, binding them for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed. [Section 60(2) of the CGST Act, 2017]

Time limit to finalise provisional assessment [Section 60(3) of the CGST Act, 2017]

The proper officer shall, within a period not exceeding 6 months from the date of the communication of the order issued under section 60(1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment.

Extension of time limit

Proviso to section 60(3) of the CGST Act, 2017 on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner or Additional Commissioner for a further period not exceeding 6 months and by the Commissioner for such further period not exceeding 4 years.

On finalization of the provisional assessment, any amount that has been paid on the basis of such assessment is to be adjusted against the amount that has been finally determined as payable. In case of short payment, the same has to be paid with interest and in case of excess payment, the same will be refunded with interest. [Section 60(4)/(5) of the CGST Act, 2017]

Interest liability

In case any tax amount becomes payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the supplier from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) at the specified rate will be payable to the supplier.

Illustration 1

M/s Ram Ltd. manufactured and cleared goods under provisional assessment, in the month of July 20XX, by paying tax of ₹50,000 on the 20th August 20XX [i.e. due date of filing GSTR-3B], a further tax of ₹90,000 is paid on the 15th November, 20XX, and on the same day the documents for final assessment are submitted by the assessee. Final assessment order is issued on the 18th November 20XX, assessing the tax payable on goods as ₹1,50,000, and consequently the assessee paid a tax of ₹10,000 on the 30th November 20XX. Find the total interest payable by the assessee?

Solution:

No interest shall be payable on ₹50,000.

Interest shall be payable on ₹90,000 from the 21st August 20XX to 15th November 20XX.

Therefore No. of days delay = 87 days.

Interest shall be payable on ₹10,000 from the 21st August 20XX to 30th November 20XX as due date for payment of tax of ₹1,50,000 is the 20th August 20XX.

Therefore, No. of days delay = 102 days.

₹90,000 × 18/100 × 87/365	=	₹ 3,861
₹10,000 × 18/100 × 102/365	=	₹ 503
Total interest payable	=	₹ 4,364

Illustration 2

Anna & Sons has entered into a contract to supply two consignments of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12.01.20XX, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Anna & Sons complies with the same and supplies both the consignments of goods on 25.01.20XX thereafter paying the tax on provisional basis in respect of both the consignments on 19.02.20XX.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21.03.20XX, a tax of ₹1,80,000 becomes due on 1st consignment whereas a tax of ₹4,20,000 becomes refundable on 2nd consignment.

Anna & Sons pays the tax due on 1st consignment on 09.04.20XX and applies for the refund of the tax on 2nd consignment same day. Tax was actually refunded to it on 05.06.20XX.

Determine the interest payable and receivable, if any, by Anna & Sons in the above case.

Solution:

In the given case, due date for payment of tax on goods cleared on 25.01.20XX under provisional assessment is 20.02.20XX.

In view of the provisions of section 60(4), in the given case, Anna & Sons is liable to pay following interest in respect of 1st consignment:

= ₹1,80,000 × 18% × 48/365

= ₹4,261 (rounded off)

Further, section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05.06.20XX) within 60 days from the date of receipt of application of refund (09.04.20XX), interest is not payable to Anna & Sons on tax refunded in respect of 2nd consignment.

Procedure

(1) The supplier requesting for payment of tax on a provisional basis has to furnish an application along with the documents in support of his request, electronically in FORM GST ASMT-01 on the common portal.

(2) The Asst. Commissioner/Dy. Commissioner of Central Tax will scrutinize the application in FORM GST ASMT-01.

In case, additional information or documents in support is required by the Asst. Commissioner/Dy. Commissioner of Central Tax to decide the case, notice in FORM GST ASMT-02 will be issued to the supplier requesting for submission of the same

(3) The supplier has to file a reply to the notice in FORM GST ASMT-03, and if he desires can also appear in person before the Asst. Commissioner/Dy. Commissioner of Central Tax to explain his case.

(4) The Asst. Commissioner/Dy. Commissioner of Central Tax will then issue an order in FORM GST ASMT-04 within a period not later than ninety days from the date of receipt of the request, allowing the payment of tax on a provisional basis.

(5) The security will not exceed **twenty-five percent of the amount covered under the bond**. The supplier has to execute the bond in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as mentioned in FORM GST ASMT-04.

(6) On executing the bond, the process of the provisional assessment is complete and the supplier can supply the goods or services or both and pay the tax at the rate or on the value that has been indicated in the order in FORM GST ASMT-04.

(7) The provisional assessment will be finalized, within a period not exceeding six months from the date of issuance of FORM GST ASMT-04.

(8) The Asst. Commissioner/Dy. Commissioner of Central Tax will issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment 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.

(9) Once the order in FORM GST ASMT-07 is issued, the supplier has to file an application in FORM GST ASMT-08 for the release of the security furnished.

(10) On receipt of this application the Asst. Commissioner/Dy. Commissioner of Central Tax will issue an order in FORM GST ASMT-09 within a period of seven working days from the date of the receipt of the application, releasing the security after the amount payable if any as specified in FORM GST ASMT-07 has been paid.

Summary:

Provisional Assessment Procedure:

Taxable person can apply Form GST ASMT - 01

AC / DC of Central Tax may issue notice in Form GST ASMT-02

Taxable person file reply in Form GST ASMT-03

AC / DC within 90 days from the date of receipt of request issue order in Form GST ASMT-04

Taxable person execute a bond with security 25% of Bond value in Form GST ASMT-05

AC / DC will call for information for finalisation of assessment in Form GST ASMT-06

AC / DC shall issue final assessment order in Form GST ASMT-07

Taxable person can apply for release of the security in Form GST ASMT-08

AC / DC within 7 working days will issue an order in Form GST ASMT-09

Section 61 of CGST Act 2017: Scrutiny of Returns (CHAPTER XII – ASSESSMENT)

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly, and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

Summary Assessment [Section 64 of the CGST Act, 2017]

As per Section 64(1) of CGST Act, 2017, the proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

As per Section 64(2) of CGST Act, 2017, 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.

Summary:

Summary Assessment can be resorted to by proper officer on any evidence showing a tax liability of a person. A summary assessment can be passed if he has sufficient grounds to believe that any delay in doing so many adversely affect the interest of Revenue. The taxable person may file an application for withdrawal of the summary assessment, within 30 days of receipt of summary assessment order.

Summary assessment in certain special cases (Section 64)

Illustration 3

Whether proper officer can proceed suo-moto to assess the tax liability of any person on possession of relevant evidence?

Solution:

No, the proper officer has to obtain prior permission of Additional/Joint Commissioner to proceed to assess the tax liability.

Illustration 4

Whether the summary assessment can be initiated based on mere change in opinion of proper officer?

Solution:

No, mere change in opinion cannot be treated as evidence for initiation of summary assessment.

Illustration 5

Whether summary assessment can only be initiated on previously filed return (u/s 34 and u/s 40)?

Solution:

Summary assessment can be initiated on any taxable person. Submission of return u/s 39 and u/s 45 is not prerequisite.

Illustration 6

Is there any form prescribed for order of summary assessment?

Solution:

The order of summary assessment under Section 64(1) shall be issued in FORM GST ASMT-16.

Illustration 7

What is the remedy available to the taxable person if the order passed u/s 64 is erroneous?

Solution:

On an application made in FORM GST ASMT–17 within 30 days by taxable person from the date of receipt of order passed summary assessment order the Additional/Joint Commissioner may withdraw such order and follow the procedure laid down in Section 73 or 74 which provides for determination of tax liability on account of tax not paid other than fraud, willful misstatement etc., or otherwise. (Sub-section 2)

Illustration 8

Whether the Additional/Joint Commissioner can withdraw the summary assessment order only on application by the taxable person?

Solution:

The Additional/Joint Commissioner can, on his own motion may withdraw the summary assessment order in the event such order is erroneous and thereafter may follow the procedure laid down in Section 73 or 74 which provides for determination of tax liability on account of tax not paid other than fraud, willful misstatement etc., or otherwise.

The order of withdrawal or, rejection of the application under Section 64(2) shall be issued in FORM GST ASMT-18.

Best Judgment Assessment

As per Section 62 of the CGST Act, 2017 (i.e. assessment of non-filers of return) provides for best judgment assessment where a registered person fails to furnish the return even after the service of a notice and pass order taking into account all the relevant material which is available or which he has gathered within a period of five years from the due date of filing annual return. Similar provision exists for unregistered persons under Section 63 of the CGST Act, 2017.

Appeals under GST

A person who is aggrieved by a decision or order passed against him by an adjudicating authority, can file an appeal to the Appellate Authority (i.e. Commissioner (Appeals) also in short called as AA). It is important to note that it is only the aggrieved person who can file the appeal. Also, the appeal must be against a decision or order passed under the Act.

It is to be noted that no appeals whatsoever can be filed against the following orders:—

(a) Board can fix monetary limits below which no departmental appeal would be filed with respective authorities.

(b) An order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;

(c) An order pertaining to the seizure or retention of books of account, register and other documents; or

(d) An order sanctioning prosecution under the Act; or

(e) An order passed under section 80 (payment of tax in installments).

Important definitions

Section 2(8) of the CGST Act, 2017 "Appellate Authority" means an authority appointed or authorised to hear appeals as referred to in section 107;

Section 2(9) of the CGST Act, 2017 "Appellate Tribunal" means the Goods and Services Tax Appellate Tribunal constituted under section 109;

Section (24) of the CGST Act, 2017 "Commissioner" means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;

Section 2(99) of the CGST Act, 2017 "Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108;

Right to appeal against an adverse decision or order is a statutory right available with all assessees under any law and GST law also. However, this right is not an absolute right and is conditioned by fetters of timely filing of appeal and mandatory payment of part dues as pre-deposit. Under GST regime the taxable supplies of goods or services are attracting the levy which is being leviable by both Central Tax and State Tax.

Illustration 9

Person aggrieved should approach both the authorities of Central and State for exercising the right of appeal?

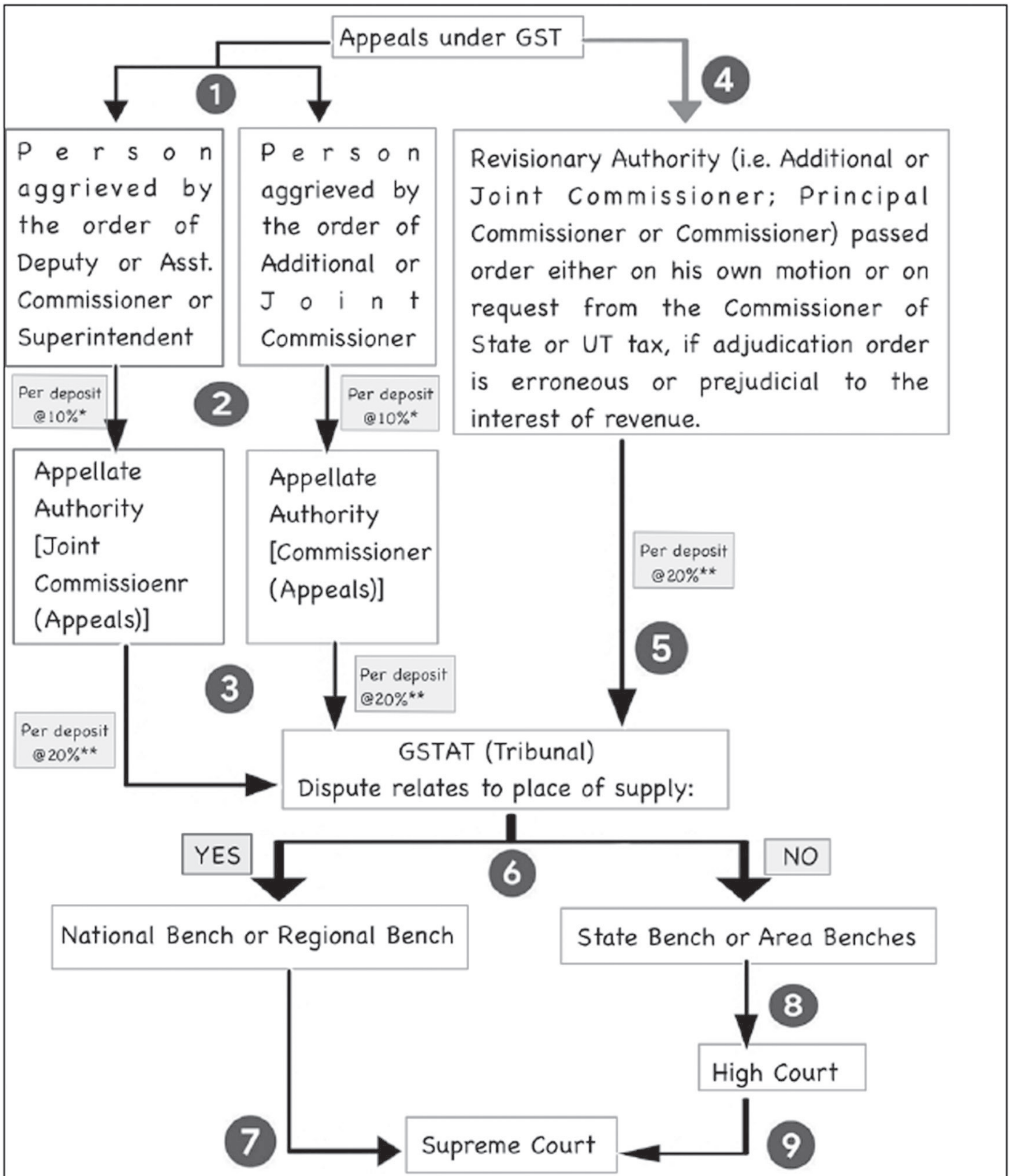
Solution:

As per CBIC clarification the answer to this question is NO.

The Act makes provisions for cross empowerment between CGST and SGST/UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act asthe proper officer of SGST for the same transaction andissue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction. The Act also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/revision/rectification against the said order will lie only with the proper officers of that Act only (CGST Act).

So also if any order is passed by the proper officer of SGST, any appeal/review/revision/rectification will lie with the proper officer of SGST only.

Hierarchy of appeals under GST



*Maximum amount of pre deposit is ₹25 crore of CGST & ₹25 crore of SGST/UTGST u/s 107(6) of the CGST Act 2017.

**Maximum amount of pre deposit is ₹50 crore of CGST & ₹50 crore of SGST/UTGST u/s 112(8) of the CGST Act 2017.

w.e.f. 1-1-2022, A proviso to sub-section (6) of section 107 of the CGST Act has been inserted to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of penalty has been paid by the appellant. Accordingly, no appeal shall be filed to Appellate Authority against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the applicant. In all other cases it is 10% of the amount of tax in dispute.

Appointment of Appellate Authority [Notification No. 60/2018-CT, dated 30.10.2018]

A new rule 109A has been inserted in CGST Rules to appoint Appellate Authority as under:

in rule 109A of CGST Rules, 2017,

(a) in sub-rule (1), in clause (b), for the words and brackets "the Additional Commissioner (Appeals)", the following words and brackets shall be substituted, namely:- "any officer not below the rank of Joint Commissioner (Appeals)";

(b) in sub-rule (2), in clause (b), for the words and brackets "the Additional Commissioner (Appeals)", the following words and brackets shall be substituted, namely:- "any officer not below the rank of Joint Commissioner (Appeals)".

Mandatory pre-deposit for entertaining appeal

As per section 107(6) of the CGST Act, 2017 No appeal shall be filed under sub-section (1) of Section 107 i.e. Appeals to Appellate Authority ('AA'), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to 10% of the remaining amount of tax in dispute arising from the said order, (w.e.f. 1-2-2019 subject to a maximum of ₹25 crore) in relation to which the appeal has been filed.

As per section 112(8) of the CGST Act, 2017

No appeal shall be filed under sub-section (1) of Section 112 i.e. Appeals to Appellate Tribunal, unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, (w.e.f. 1-2-2019 subject to a maximum of ₹50 crore) in relation to which the appeal has been filed.

With effect from 01.02.2019, section 20 of the IGST Act has also been amended vide the IGST (Amendment) Act, 2018 to provide that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be ₹50 crore and ₹100 crore rupees respectively. Section 20 of the IGST Act specifies the provisions of the CGST Act which are applicable in case of IGST Act as well.

Interest on refund of amount paid for admission of appeal

As per Section 115 of the CGST Act, 2017 Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Pre-deposit will be refunded with Interest @ 6% where said amount becomes refundable on account of order in favour of assessee.

Illustration 10

X Ltd. received a protective demand notice from the department Assistant Commissioner of Central Tax on 1.9.20XX under Section 73 of the CGST Act, 2017 where

		Amount (₹)
CGST & SGST due	=	5,00,000
Interest	=	@15% p.a. for no. of days delay.
Penalty	=	10% of tax due or ₹10,000 whichever is higher

The assessee went for appeal and filed the case in the Appellate Authority on 25.9.20XX. This appeal has been taken up for hearing on 06-10-20XX.

Case 1: How much has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017 and date of pre-deposit of duty by X Ltd. to entertain appeal by the Appellate Authority (i.e. Commissioner (Appeals)).

Case 2: Whether your answer is different if the assessee appeals only part of the amount say ₹3,00,000 is in dispute arising from the said order.

Solution:

Case 1: Pre-deposit is ₹50,000 (5,00,000 × 10%) is to deposit on or before 6th October 20XX.

Case 2: Disputed amount ₹3,00,000:

Pre-deposit is ₹2,00,000 plus ₹30,000 (₹3,00,000 × 10%) together is ₹2,30,000. It should be deposited on or before 6th October 20XX.

Illustration 11

Considered the previous Illustration where Appellate Authority passed the order against the assessee, if so how much has to pay as pre-deposit of duty under section 112(8) of the CGST Act, 2017 to entertain appeal by the Goods and Services Tax Appellate Tribunal (GSTAT).

Solution:

Pre-deposit is ₹1,00,000 (5,00,000 × 20%) it is in addition to pre-deposit of ₹50,000.

Case 2: Disputed amount ₹3,00,000:

Pre-deposit is ₹2,00,000 plus ₹60,000 (₹3,00,000 × 20%) together is ₹2,60,000, it is inaddition to pre-deposit of ₹30,000.

Illustration 12

In an order dated 30.08.20XX issued to M/s. Ram & Sons, the Commissioner of Central Tax (i.e. Revisionary Authority) has confirmed a tax demand of ₹50,50,000 and imposed a penalty of equal amount under CGST Act, 2017.

M/s. Ram& Sons deposits the required amount of pre-deposit on 10.09.20XX and files an appeal with GSTAT. GSTAT decides the appeal in favour of M/s. Ram& Sons on 10.11.20XX. M/s. Ram& Sons submits a letter seeking refund of the pre deposit on 30.11.20XX and the department acknowledge the application on the same day. The pre-deposit is refunded to M/s Ram& Sons on 15.03.20XX.

Compute the amount of interest payable on refund of such pre-deposit, if any under section 115 of the CGST Act, 2017.

Solution:

Interest = ₹30,881/- (As per Section 115 of the CGST Act, 2017)

(₹50,50,000 × 20%) × 6/100 × 186/365

Month	No. of day delay
Sep 20XX	21
Oct 20XX	31
Nov 20XX	30
Dec 20XX	31
Jan 20XX	31
Feb 20XX	28
Mar 20XX	14
Total	**186**

Note:

(1) Refund granted on 15.03.20XX, hence no interest is to be paid on the day of on which refund is paid.

(2) Interest of ₹30,881/- has to pay as per respective SGST Act in addition to CGST.

Appeals to Appellate Authority (i.e. Commissioner (Appeals) [Section 107 of the CGST Act, 2017)]

Step by step approach:

1. Any person aggrieved by any decision or order passed by an adjudicating authority may appeal to Appellate Authority (AA).
2. Time limit for filing appeal is 3 months from the date on which the decision or order is communicated. However, the Commissioner (Appeals) namely Appellate Authority is empowered to condone delay of 30 days if sufficient cause is shown.
3. Appeal has to be filed in Form GST APL-01. A provisional acknowledgement shall be issued to the appellant immediately on filing appeal.
4. A hard copy of the appeal then shall be submitted in triplicate and shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents within 7 days of filing electronic appeal. Acknowledgment shall be issued by the Department in Form GST APL-02.
5. The date of filing will be issuance of provisional acknowledgement if the hard copy is submitted after 7 days, then relevant date would this date of submission.
6. As per section 107(2) of the CGST Act, 2017 the Commissioner of Central Tax or State Tax or UT Tax may call for and examine the records of any proceedings in which the authority subordinate to him has passed

any decision or order under this Act, or SGST or UTGST Act. In case he is not satisfied about the legality or propriety of the said decision or order, then he shall direct any GST Officer subordinate to him to apply to the Appellate Authority (AA) for determination of points arising out of the said decision or order as my be specified by the Commissioner.

7. In case of Department appeal has to be filed within 6 months from the date of communication of the said decision or order by the Commissioner. The authorised officer can file an appeal in Form GST APL-03 electronically and also submit hard copies thereof accompanied by a certified copy of the decision or order appealed against along with the supporting documents within 7 days.
8. The Appellate Authority will grant an opportunity of hearing to appellant. The hearing can be adjourned for maximum 3 occasions by recording reasons in writing.
9. The Appellate Authority can also allow to add/include grounds of appeal if satisfied that their omission was not wilful or unreasonable.
10. The Appellate Authority as far as possible within ONE year of appeal, shall pass such order in writing, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed.
11. The Appellate Authority shall not remand the matter back to the adjudicating authority. Accordingly, AA shall also issue a summary of the order in Form GST APL-04 clearly indicating the final amount of demand confirmed.

Revisionary proceedings by Commissioner against Adjudication orders:

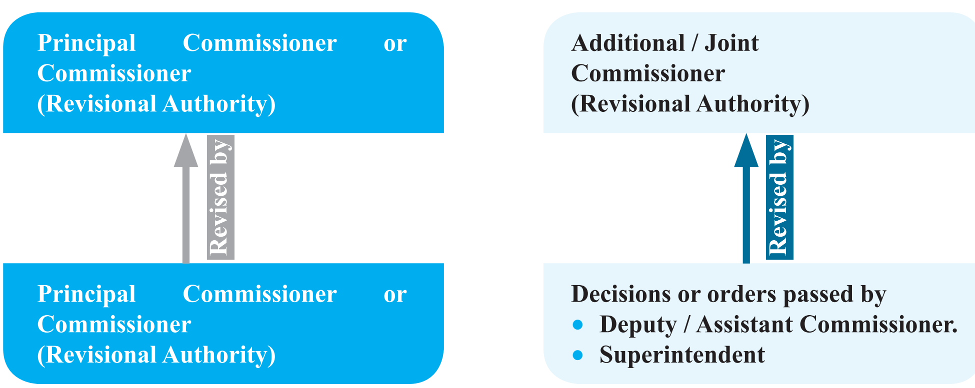
As per section 108 of the CGST Act, 2017 provides revisionary powers to the Commissioner. It provides that the Commissioner shall examine the records of any proceedings passed under the Act by officers' subordinate to him. If he considers that any decision or order passed under the Act is not proper or legal and it is prejudicial to the interest of the revenue, the Commissioner can stay the operation of such decision or order for such period as it is deemed fit. It is further provided that the Commissioner can after giving the person an opportunity of being heard and after making such further inquiry, he can pass such order as it thinks just and proper.

Revisional Authority under section 108 [Notification No. 05/2020-CT, dated 13.01.2020]:

The following officers have been authorised as the Revisional Authority under section 108 of the CGST Act:

(a) Principal Commissioner or Commissioner for decisions or orders passed by the Additional or Joint Commissioner; and.

(b) Additional or Joint Commissioner for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent.



Conduct of personal hearing in virtual mode under CGST Act, 2017, IGST Act, 2017, Customs Act, 1962 Revised guidelines (vide CBIC Instruction F.No. 390/Misc./3/2019-JC, dated 21-8-2020):

1. In any proceedings before the Commissioner (Appeals)/Additional/Joint Commissioner (Appeals), the authority shall mandatorily indicate that the personal hearing would take place through video conferencing facility. For this purpose he/she shall also indicate the email address for correspondence etc.
2. The date and time of hearing along with a link for the video conference shall be informed to the appellant/respondent or their authorized representative and the concerned Commissioner representing revenue through the official email, giving the details of officer in-charge who would provide assistance to the party, for conducting the virtual hearing. This link should not be shared with any other person without the approval of the Appellate Authority.
3. The appellant/respondent or authorized representative, appearing in virtual hearing, should file his vakalatnama or authorization letter along with a copy of his photo ID card and contact details to the appellate authority through official e-mail address of the concerned authority after scanning the same.
4. All persons participating in the video conference should be appropriately dressed and maintain the decorum required for such an occasion.
5. Virtual hearing through video conference shall be held from the office of the Appellate authority or any official video conference facility set up in the office of the Commissioner (Appeals).
6. The virtual hearing through video conference will be conducted through available applications like VIDYO, or other secured computer network. The appellant/respondent should download such application in their computer system/laptop/mobile phone beforehand for ready connectivity during virtual hearing, and join the video conference at the time allotted to them, as given in point (2) above
7. In case where the appellant/respondent wishes to participate in the virtual hearing proceeding along with their advocate, they should do so under proper intimation to this office as mentioned at point (2) above. They may participate in virtual hearing along with their advocate/authorized representative or join the proceedings from their own office.
8. The submissions made by the appellant or their representative through the video conference will be reduced in writing and a statement of the same will be prepared, which shall be known as "record of personal hearing". A soft copy of such record of personal hearing in PDF format will be sent to the appellant through email ID provided by appellant/respondent/authorized representative, within one day of such hearing.
9. If the, appellant/their representative wants to modify the contents of emailed record of personal hearing, they can do so and sign the modified record, scan and send back the signed record of personal hearing to the Appellate Authority within 3 days of receipt of such e-mail or else it will be presumed that they agree with the contents of e-mailed record of personal hearing. No modification in e-mailed record of personal hearing will be entertained after 3 days of its receipt by appellant/their authorized representative. The date or receipt of the email by the appellate authority will not be counted for this purpose.
10. The record of personal hearing submitted in this manner shall be deemed to be a document for the purpose of the relevant statue read with Section 4 of the Information Technology Act, 2000.
11. If the appellant/their authorized representative prefers to submit any document including additional submissions during the virtual hearing, he may do so by self-attesting such document and scanned copy of the same may be emailed to the appellate authority immediately after virtual hearing and in no case after 3 days of virtual hearing. The date of the hearing will be excluded for this purpose.
12. Any official representing the Department's side can also participate in the virtual hearing through video

conferencing. The Commissionerate concerned shall inform the details in advance regarding such participation, on receipt of intimation as mentioned at point (2) above.

13. While the conduct of personal hearing through video conferencing is being made mandatory, there may yet be rare and accentuating circumstances on the part of the assessee or his authorized representative on account of which this cannot be done. Each such request shall be approved by the appellate authority and the reasons for the same recorded in writing.

As per Section 108(2) of the CGST Act, 2017, the Revisional Authority shall not exercise any power under sub-section (1) of Section 108, if—

(a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or

(b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or

(c) the order has already been taken for revision under this section at an earlier stage; or

(d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) of Section 108 on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

It means in the following cases Revisional Authority has no power to enhance or modify or annual the decision or order of adjudicating authority subordinate to him:

(a) if the assessee has filed the appeal to the AA, the Commissioner GST (i.e. Revisionary Authority) cannot make the review of such order under section 108 of the CGST Act, 2017.

(b) If the appeal against any Order is pending before the appellate Tribunal under section 112 of the CGST Act or before the High Court under section 117 of the CGST Act, or before the Supreme Court under section 118 of the CGST Act, 2017, the Commissioner GST (i.e. Revisionary Authority) cannot make the review of such order under section 108 of the CGST Act, 2017.

(c) The Commissioner cannot exercise the powers under section 108(1) of the CGST Act, 2017 if the appeal period (i.e. 3 months for filing the appeal has not expired or more than 3 years have expired after passing the decision or Order sought to be reviewed.

(d) If the Order has already been taken up for revision earlier and certain decision has been taken, the order cannot be again taken up for revision by the Commissioner.

(e) The order has already been passed under section 108 of the CGST Act, 2017. Therefore, the Commissioner cannot take the order again for revision.

Exceptions:

(i) proviso to section 108(2) provides revisionary powers to the Commissioner to pass the order on any point which has not been raised and decided in any appeal filed either before the Appellate Authority under section 107 or Appellate Tribunal under section 112 or High Court under section 117 or Supreme Court under section 118, before the expiry of the period of ONE year from the date of order in such appeal or before the expiry period of 3 years after the passing of the decision or order whichever is later.

Prior notice to person in case of adverse order by Revisional Authority

If the Revisional Authority decides to pass an order in revision under section 108 of the CGST Act which is likely to affect the person adversely, an obligation has been cast on the Revisional Authority to serve a notice on such person and give him a reasonable opportunity of being heard.

Along with the order under section 108(1), the Revisional Authority will also issue a summary of the order clearly indicating the final amount of demand confirmed.

[Notification No. 74/2018-CT, dated 31.12.2018]

Example 3

A taxpayer is served with an adjudication order on 25th May 2021. The RA can revise the order during the period between 26th November 2021 (after expiry of 6 months) and 25th May 2024

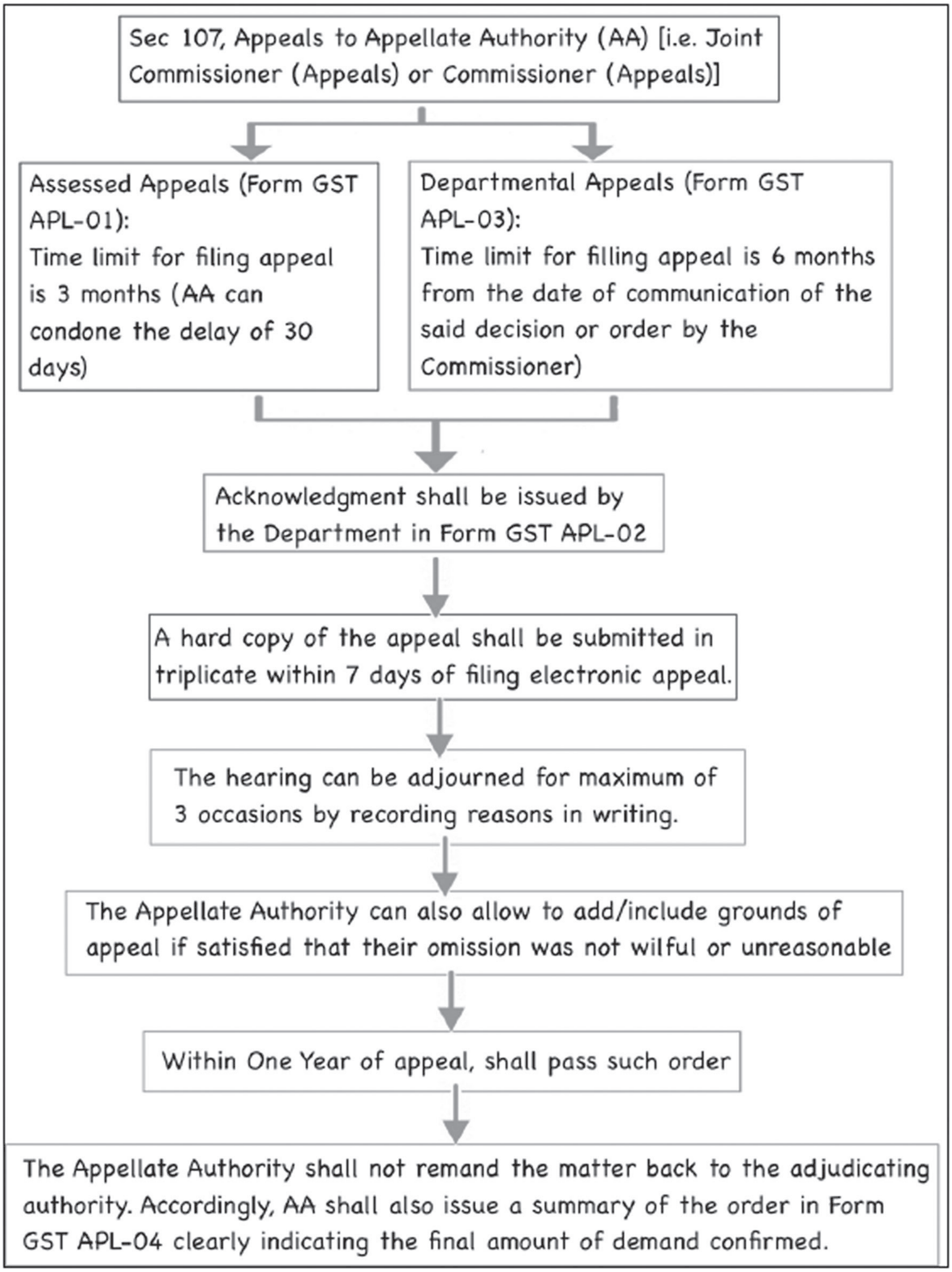
Example 4

PQR Pvt. Ltd. manufactures product 'P' and 'Q'. The company avails benefit of exemption notification in respect of product 'P' and pays tax on product 'Q' @ 12%. Show cause notice was issued to the company alleging that product 'P' was not eligible for exemption and product 'Q' was liable to tax @ 18%.

The adjudicating authority concluded that the rate of tax in respect of product 'Q' was correct but the exemption on product 'P' was being availed wrongly. Consequently, an order confirming demand of ₹15 lakh was passed by the adjudicating authority on 15th January 2020.

The company filed an appeal against the order before the AA on 16th February 2020. The AA passed the order in favour of the company in respect of product 'P' on 31st October 2020.

The RA can pass the revised order in respect of tax rate on product 'Q' before 31st October 2021 (1 year from the date of order passed by the AA) or 15th January 2023 (3 years from the date of adjudication order), whichever is later. Thus, the RA can pass the revised order by 15th January 2023.


Sec 107, Appeals to Appellate Authority (AA) [i.e. Joint Commissioner (Appeals) or Commissioner (Appeals)]
Assessed Appeals (Form GST APL-01): Time limit for filing appeal is 3 months (AA can condone the delay of 30 days)
Departmental Appeals (Form GST APL-03): Time limit for filling appeal is 6 months from the date of communication of the said decision or order by the Commissioner)
Acknowledgment shall be issued by the Department in Form GST APL-02
A hard copy of the appeal shall be submitted in triplicate within 7 days of filing electronic appeal.
The hearing can be adjourned for maximum of 3 occasions by recording reasons in writing.
The Appellate Authority can also allow to add/include grounds of appeal if satisfied that their omission was not wilful or unreasonable
Within One Year of appeal, shall pass such order
The Appellate Authority shall not remand the matter back to the adjudicating authority. Accordingly, AA shall also issue a summary of the order in Form GST APL-04 clearly indicating the final amount of demand confirmed.

Appeal to Appellate Tribunal

The Tribunal is the second level of appeal, where appeals can be filed against the orders-in-appeal passed by the AA or order in revision passed by revisional authority, by any person aggrieved by such an Order-in-Appeal/ Order-in-Revision.

The law envisages constitution of a two-tier Tribunal namely

(1) The National Bench/Regional Benches and

(2) The State Bench/Area Benches.

Jurisdiction of the two constituents of the GST Tribunal is also defined. If place of supply is one of the issues in dispute, then the National Bench/Regional benches of the Tribunal will have jurisdiction.

Step by step approach

- The National bench or regional Benches shall have jurisdiction to hear appeals against the orders passed by the appellate authority i.e., Commissioner (Appeals) or the Revisional Authority in the cases **where one of the issues involved relates to the place of supply.**
- Other matters will fall in jurisdiction of State bench or Area Bench.
- Appellate Tribunal can refuse to admit any appeal where the amount involved **does not exceed fifty thousand rupees**.
- Time limit of **three months from the date of communication** is available to aggrieved person for filing appeal. Tribunal can condone delay for another three months.
- The appeal has to be filed electronically, in FORM GST APL-05, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.
- A hard copy of the appeal then shall be submitted in triplicate and shall be accompanied by a certified copy of the decision or order appealed along with the supporting documents within seven days of filing electronic appeal.
- A final acknowledgement, indicating appeal number shall be issued FORM GST APL-02 to appellant.
- The date of filing will be issuance of provisional acknowledgement if the hard copy as above is submitted within time. If hard copy is submitted after 7 days, then relevant date would be the date of submission.
- Department can also file appeal to Tribunal against order passed by an Appellate or Revisionary Authority.
- For this purpose, the Commissioner can call for and examine the records for the purpose of satisfying himself as to the legality or propriety of the said decision or order.
- If not satisfied he may pass an order directing any officer subordinate to him to apply to the appellate tribunal.
- The appeal has to be filed **within six months from the date of communication** of the said decision or order. Delay in filing can be condoned by Tribunal by **another three months**.
- Authorized officer will file appeal in FORM GST APL-07 electronically and also submit hard copies thereof accompanied by a certified copy of the decision or order appealed against along with the supporting documents within seven days.
- Cross-objection can be filed in prescribed Memorandum (Form GST APL -06) by the opposite party to the appeal within 45 days of the receipt of notice of appeal. Such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal.

Procedure before Appellate Tribunal

- Appellate Tribunal will grant an opportunity of hearing to appellant.
- The hearing can be adjourned for **maximum three occasions** by recording reasons in writing.
- Appellate Tribunal can also allow to add/Include grounds of appeal if satisfied that their omission was not wilful or unreasonable.
- The Appellate Tribunal, as far as possible **within one year of appeal**, shall pass such order in writing, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against.
- The Appellate Tribunal can also remand the **case back to the Appellate or Provisional Authority**.
- The Appellate Tribunal has the power to **rectify any error apparent** on the face of records, if such error is noticed by it on its own accord, or is brought to its notice by the appellant or department **within a period of three months from the date of the order**.
- Rectification which has the effect of enhancing an assessment or reducing a refund or Input tax credit or otherwise increasing the liability of the other party can only be done after the party has been given an opportunity of being heard.
- The Appellant Tribunal shall have power to regulate its own procedures.
- It shall be guided by the principles of natural justice.
- The Tribunal has same powers as are vested in a Civil court for summoning or seeking the attendance of any person and examining him on oath or requiring the discovery and production of documents or receiving evidence on affidavits or setting aside any order of dismissal of any representation for default or any order passed by it ex party etc.

Fee for filing Appeal

Fee for filing Appeal to Appellate tribunal is **one thousand rupees for every lakh rupees** of tax or input credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of twenty five thousand rupees.

Appeal to GSTAT (Appellate Tribunal) Sec 112

↓

Appellate Tribunal can refuse to admit any appeal where the amount <= ₹50,000/-

↓

Assessed appeal (Form GST APL-05):
Time limit is 3 months from the date of receipt of the order.
Tribunal can condone the delay for another 3 months.
Fee for appeal is ₹1,000 for every ₹1 lakh of amount, Maximum ₹25,000/- (same as per SGST).

Departmental appeal (Form GST APL-07):
Time limit is 6 months from the date on which the said order passed.
Tribunal can condone delay for another 3 months

↓

Acknowledgment, indicating appeal number shall be issued in Form GST APL-02.

↓

A hard copy of the appeal shall be submitted in triplicate within 7 days of filing electronic appeal.

↓

Cross-objection can be filed in prescribed Memorandum (Form GST APL-06) by the opposite party to the appeal within 45 days of the receipt of notice of appeal. Such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal.

↓

The hearing can be adjourned for maximum 3 occasions

↓

Appellate Tribunal can also allow to add/include grounds of appeal if satisfied that their omission was not wilful or unreasonable.

↓

Within One Year of appeal, shall pass such order sec. 113.
The Appellate Tribunal can also remand the case back to the Appellate or Revisional Authority.
The Appellate Tribunal has the power to rectify any error apparent on the face of records, if such error is noticed by it on its own accord or is brought to its notice by the appellant or department within a period of 3 months from the date of the order.

Appeal to High Court

Appeal against orders passed by the State Bench or Area Bench of the Appellate Tribunal shall lie to the High Court and the High Court may admit such appeal, if it is satisfied that the case **involves a substantial question of law and does not involve any issue relating to place of supply**.

This appeal in FORM GST APL-08 shall be filed within a period of **one hundred and eighty days (180 days) from the date on which the order** appealed against is received by aggrieved party.

High court can condone delay in filing appeal without any limit.

The Appeal shall be heard by a bench of not less than two judges.

"Circulars of CBIC v Judgments of the Supreme Court and the High Courts:
Which one is binding on the authorities under the respective statutes?

Ratan Melting & Wire Industries v CCE 2008 (231) ELT 22 (SC):

The Supreme Court has held that so far as the clarifications/circulars issued by the Central Government and of the State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. A circular which is contrary to the statutory provisions has really no existence in law.

Therefore, "Circulars issued by the Central Board of Excise and Customs (CBIC), which are contrary to the judgements of the Supreme Court and the High Courts are not binding on the authorities under the respective statutes."

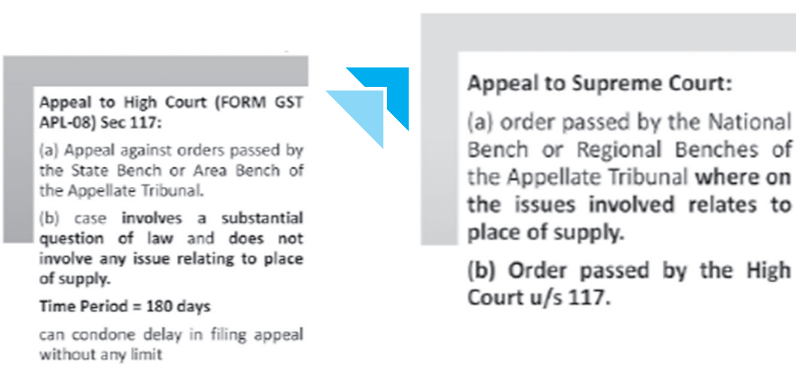
Circular No. 1006/13/2015-CX, dated 21.09.2015:

In the light of the aforesaid judgment, CBIC, has instructed its officers not to follow the Board Circulars contrary to the judgements of Hon'ble Supreme Court and High Court where Board has decided not to file an appeal on merit as such circulars become non-est in law.

Appeal to Supreme Court

An Appeal shall lie to the supreme court from any order passed by the National Bench or Regional Benches of the Appellate Tribunal where on the issues involved relates to place of supply.

Appeal would also lie to Supreme Court from any judgment or order passed by the High Court in an appeal in any case which the High Court certifies to be a fit case for appeal to the Supreme Court.



Power of Government to extend time limit in special circumstances [Section 168A]

The Central Government has issued Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 on 31.03.2020 which empowers it to extend the due dates for compliances under various tax laws.

The Ordinance has inserted a new section 168A in the CGST Act which enables the Government to extend the time limits provided under the said Act in respect of actions which cannot be completed or complied with due to force majeure. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively. The new section has become effective from 31.03.2020.

Advance Ruling

14.3

An advance ruling helps the applicant in planning his activities which are liable for payment of GST, well in advance. It also brings certainty in determining the tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as Government Authorities. It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration.

A legally constituted body called Authority for Advance Ruling (AAR) can give a binding ruling to an applicant who is a registered taxable person or is liable to be registered. The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR).

There are timelines prescribed for passing an order by AAR and by AAAR.

What is an Advance Ruling?

It means **knowing the law in advance.**

"Advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or subsection (1) of section 100 of the CGST Act, 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

The definition of Advance ruling given under the Act is a broad one and an improvement over the existing systems of advance rulings under Customs and Central Excise Laws. Under the present dispensation, advance rulings can be given only on a proposed transaction, whereas **under GST, Advance ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the appellant**.

34.0.2 Objectives of Advance Ruling:

The broad objectives for setting up a mechanism of Advance Ruling are:

(i) Provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;

(ii) Attract Foreign Direct Investment (FDI)

(iii) Reduce litigation

(iv) Pronounce ruling expeditiously in a transparent and inexpensive manner

To whom the Advance Ruling is applicable:

An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant.

This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Example 5

Obama, a non-resident intends to supply taxable services under a joint venture in collaboration with a non-resident but has entertained some doubts about its valuation.

Rafi, Obama's friend, has obtained an 'Advance Ruling' from the Authority for Advance Rulings on an identical point. Obama proposes to follow the same ruling in his case. Obama has sought your advice as his consultant whether he could follow the ruling given in the case of Rafi. Explain with reasons.

Solution:

An advance ruling is binding only on the applicant who has sought it. In the given problem, in view of the aforesaid provision, Obama cannot make use of the advance ruling pronounced in the identical case of his friend, Rafi. Obama should obtain a ruling from the Authority of Advance Ruling by making an application along with a fee of ₹5,000.

Time period for applicability of Advance Ruling:

The law does not provide for a fixed time period for which the ruling shall apply. Instead, it has been provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have not changed.

Section 95 of CGST Act, 2017 deals with the provisions of Advance ruling.

In this Chapter, unless the context otherwise requires,—

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority (**or the National Appellate Authority w.e.f. 1-8-2019**) to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

(b) "Appellate Authority" means the Appellate Authority for Advance Ruling referred to in section 99;

(c) "applicant" means any person registered or desirous of obtaining registration under this Act;

(d) "application" means an application made to the Authority under sub-section (1) of section 97;

(e) "Authority" means the Authority for Advance Ruling referred to in section 96.

(f) W.e.f. 1-8-2019 "National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A.'.

Authority in respect of State and Union Territory

As per Section 96 of CGST Act, 2017 Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

AAR and AAAR

It can be seen that both the Authority for Advance Ruling (AAR) & the Appellate Authority for Advance Ruling (AAAR) is constituted under the respective State/Union Territory Act and not the Central Act.

This would mean that the ruling given by the AAR & AAAR will be applicable only within the jurisdiction of the concerned state or union territory.

It is also for this reason that questions on determination of **place of supply** cannot be raised with the AAR or AAAR.

Application to Authority [Section 97 of CGST Act, 2017]

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- classification of any goods or services or both;
- applicability of a notification issued under the provisions of this Act;
- determination of time and value of supply of goods or services or both;
- admissibility of input tax credit of tax paid or deemed to have been paid;
- determination of the liability to pay tax on any goods or services or both;
- whether applicant is required to be registered;
- whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Advance ruling can be sought ONLY ON THE ABOVE MENTIONED ASPECTS

Procedure of Authority with respect to Application [Section 98 of CGST Act, 2017]

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant.

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

Appellate Authority for Advance ruling

As per Section 99 of CGST Act, 2017 — Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

Appeal to Appellate Tribunal [Section 100 of CGST Act, 2017]

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Constitution of National Appellate Authority for Advance Ruling w.e.f. 1-8-2019 (NAAAR):

"Section 101A of the CGST Act, 2017, —

(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B.

(2) The National Appellate Authority shall consist of—

(i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;

(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by the reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.

(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

(6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.

(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.

(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.

(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who— (a) has been adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or (c) has become physically or mentally incapable of acting as such President or Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the

Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12)

(14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

Appeal to National Appellate Authority.

Section 101B.

(1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such Advance Ruling, may prefer an appeal to National Appellate Authority:

Provided that the officer shall be from the States in which such Advance Rulings have been given.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers:

Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:

Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.

Explanation: For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Order of National Appellate Authority

Section 101C.

(1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.

(2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.

(3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.

(4) A copy of the Advance Ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement."

Orders of Appellate Authority [Section 101 of CGST Act, 2017]

(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

As NAAAR is already enacted and passed in both the houses of Parliament, what is remaining is notifying the same and bringing it to so the aggrieved parties can take benefit of the NAAAR.

Rectification of Advance ruling [Section 102 of CGST Act, 2017]

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant **within a period of six months from the date of the order**:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard

w.e.f. 1-8-2019: after the words "Appellate Authority", at both the places where they occur, the words "or the National Appellate Authority" shall be inserted under sec 102 of CGST Act, 2017;

Ruling applicability

Section 103 of CGST Act, 2017—

(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—

   (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling

   (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

w.e.f 1-8-2019:

"(1A) The Advance Ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—

(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961;

(b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.";

Advance ruling to be void [Section 104 of CGST Act, 2017]

(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by

- **fraud or**
- **suppression of material facts or**
- **misrepresentation of facts,**

it may, by order, declare **such ruling to be void ab-initio** and thereupon all the provisions of this Act or the rules made there under shall apply to the applicant or the appellant as if such advance ruling had never been made (but excluding the period when advance ruling was given and upto the period when the order declaring it to be void is issued).

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

Powers of Authority or Appellate Authority [Section 105 of CGST Act, 2017]

(1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—

(a) discovery and inspection;

(b) enforcing the attendance of any person and examining him on oath

(c) issuing commissions and compelling production of books of account and other records

have all the powers of a civil court under the Code of Civil Procedure, 1908.

(2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

Section 106 of CGST Act, 2017, The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

w.e.f.1-8-2019:

"Powers of Authority, Appellate Authority and National Appellate Authority.";

- in sub-section (1), after the words "Appellate Authority", the words "or the National Appellate Authority" shall be inserted;

- in sub-section (2), after the words "Appellate Authority", the words "or the National Appellate Authority" shall be inserted.

Procedure for obtaining Advance Ruling:

The applicant desirous of obtaining advance ruling should make application to AAR in a prescribed form and manner. The format of the form and the detailed procedure for making application have been prescribed in the Advance Ruling Rules.

Upon receipt of an application, the AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records.

The AAR may then examine the application along with the records and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.

Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.

If the application is admitted, the AAR shall pronounce its ruling within ninety days of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.

Before giving the ruling, AAR must hear the applicant or his authorised representative as well as the jurisdictional officers of CGST/SGST.

If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.

Illustration 13

Mr. R owns a sole proprietorship firm, 'Safe and Super Importers'. Mr. R has never been to any place outside India. The firm proposes to purchase a product. Mr. R is not sure of the correct classification of the product under GST. His Tax Consultant has informed him that the said classification issue has been decided by the GSTAT in a different case. However, Mr. R does not want to take any chances and is desirous of obtaining a ruling from the Authority for Advance Ruling under GST Law with respect to the classification of the product to be purchased by it.

In the light of recent amendments, state whether Safe and Super Importers can seek advance ruling in the present case under the GST?

Solution:

A resident firm can also apply for AAR. The sole proprietorship will have to satisfy the test of residency as per section 2(42) of the Income Tax Act, 1961 to be eligible to apply for an advance ruling.

Therefore, Safe and Super Importers, being a resident proprietorship firm, is an eligible applicant for advance ruling.

Since in the given case, question intended to be raised by Safe and Super Importers is already decided by the GSTAT, advance ruling cannot be sought by it.

Appeals against order of AAR:

If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the prescribed or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR.

The word prescribed officer of CGST/SGST means an officer who has been designated by the CGST/SGST administration in regard to an application for advance ruling.

In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. In such cases the concerned officer will be the jurisdictional CGST/SGST officer.

Any appeal must be filed within thirty days from the receipt of the advance ruling.

The appeal has to be in prescribed form and has to be verified in prescribed manner. The format has been prescribed in the Advance Ruling Rules.

The Appellate Authority must pass an order after hearing the parties to the appeal within a period of ninety days of the filing of an appeal. If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.

Rectification of Mistakes:

The law gives power to AAR and AAAR to amend their order to rectify any mistake apparent from the record within a period of six months from the date of the order. Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the prescribed or the jurisdictional CGST/SGST officer. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed.

Section 161 of CGST Act 2017: Rectification of Errors Apparent on the Face of Record (CHAPTER XXI – MISCELLANEOUS):

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

CHAPTER XII

Advance Ruling (From CGST Rules, 2017)

103. Qualification and appointment of members of the Authority for Advance Ruling.— The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.

104. Form and manner of application to the Authority for Advance Ruling.—

(1) An application for obtaining an advance ruling under sub-section (1) of section 97 shall be made on the common portal in FORM GST ARA-01 and shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49.

(2) The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26.

105. Certification of copies of advance rulings pronounced by the Authority.— A copy of the advance ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Ruling.

106. Form and manner of appeal to the Appellate Authority for Advance Ruling.—

(1) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by an applicant on the common portal in FORM GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.

(2) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by the concerned officer or the jurisdictional officer referred to in section 100 on the common portal in FORM GST ARA-03 and no fee shall be payable by the said officer for filing the appeal.

(3) The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all the relevant documents accompanying such appeal shall be signed,—

(a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and

(b) in the case of an applicant, in the manner specified in rule 26.

107. Certification of copies of the advance rulings pronounced by the Appellate Authority — A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to—

(a) the applicant and the appellant;

(b) the concerned officer of central tax and State or Union territory tax;

(c) the jurisdictional officer of central tax and State or Union territory tax; and

(d) the Authority, in accordance with the provisions of sub-section (4) of section 101 of the Act.

Simplified approach:

The question on which the **advance ruling** is sought against the order of Commissioner or before the issuance of order as the case may be:

- ✓ classification
- ✓ applicability of a notification
- ✓ determination of time and value of supply
- ✓ admissibility of ITC of tax paid or deemed to have been paid;
- ✓ determination of the liability to pay tax
- ✓ whether applicant is required to be registered;
- ✓ whether any particular thing done by the applicant amounts to supply.

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Appeals to Auhtority for Advance Ruling (AAR)

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1. The application for obtaining advance ruling shall be made on the common portal in Form GST ARA-01. It shall be accompanied by a fee of ₹5,000/- (and equal amount as per SGST) and the relevant documents as may be prescribed. The Application must contain the question upon which the advance ruling is sought. It must be supported by the statement of relevant facts bearing on the questions raised.

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2. The Applicant must state in the application his interpretation to the law and or facts in respect of the question upon which advance ruling has been sought by him.

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3. The application must not contain a question
   (i) which is pending under any proceeding in the applicant's case under the Act.
   (ii) which was already decided in any proceeding in the applicant's case under the provisions of the Act.

4. On receipt of the Application the authority will examine it and may call for the relevant records. The Authority after hearing the applicant and the concerned officer may either accept or reject the application.

↓

5. When the application is accepted by the authority, the authority will pronounce its ruling within 90 days of the receipt of the application. The same will be after giving due opportunity of being heard to all parties to the ruling. The advance ruling will be binding upon to the applicant and the concerned jurisdictional officer.

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Appeal to Appellate Authority for Advance Ruling (AAAR)

Appeal to Appellate Authority for Advance Ruling (AAAR)

6. Any party aggrieved by the ruling may prefer an appeal to the appellate authority u/s 100 within 30 days of its communication to him. Such period may be extended up to a further period of 30 days by the appellate authority on befitting grounds.
If the appeal is made by the applicant then it must be made in Form GST ARA-02 and be accompanied with a fee of ₹10,000 (and equal amount as per SGST). Further if the appeal is made by the concerned jurisdictional officer than it must be made in Form GST ARA-03 and no fee is payable.

↓

7. The Appellate authority shall within 90 days from the date of filing of the appeal and after giving due opportunity of being heard to the parties to the appeal, will pass the order. Further if the members of the appellate authority differ on any point or points referred in the appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under appeal or reference.

↓

8. The Authority or Appellate authority may amend any order passed by it under section 98 or 101, so as to rectify any error apparent on face of the record, within a period of 6 months from the date of the order. Provided no rectification having effect of enhancing the tax liability unless opportunity of being heard is given.

↓

9. Advance ruling will be void abnitio if obtained by the applicant or the appellant by means of fraud, misrepresentation, suppression of facts etc.

(1) Conflicting Advance Rulings are given by the Appellate Authorities of two or more States or UT's.

(2) Where the members of the Appellate Authority differ on any point or points referred to in an appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

Appeal to National Appellate Authority Sec. 101B

- Appeals should be ≤ period of 30 days (90 days in case of Dept.) of the order of AAAR.
- Delay in filing appeal can condone by NAA further period not exceeding 30 days.
- The order shall be passed as far as possible within a period of 90 days from the date of filling of the appeal under section 101B.
- If the members of the NAA differ in opinion on any point, it shall be decided according to the opinion of the majority.

Illustration 14

Kiran intends to start selling certain goods in Mumbai. However, he is not able to determine

(i) the classification of the goods proposed to be supplied by him [as the classification of said goods has been contentious] and

(ii) the place of supply if he supplies said goods from Mumbai to buyers in U.S.

Kiran's tax advisor has advised him to apply for the advance ruling in respect of these issues. He told Kiran that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Kiran agreed with his view but has some apprehensions.

In view of the information given above, you are required to advise Kiran with respect to following:

(i) The tax advisor asks Kiran to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Kiran needs to get registered?

(ii) Can Kiran seek advance ruling to determine (a) the classification of the goods proposed to be supplied by him and (b) the place of supply, if he supplies said goods from Mumbai to buyers in U.S.?

(iii) Kiran is apprehensive that if at all advance ruling is permitted to be sought, he has to seek it every year. Whether Kiran's apprehension is correct?

(iv) The tax advisor is of the view that the order of Authority for Advance Ruling (AAR) is final and is not appealable. Whether the tax advisor's view is correct?

(v) Rahim - Kiran's friend - is a supplier registered in Mumbai. He is engaged in supply of the goods, which Kiran proposes to supply at the same commercial level that Kiran proposes to adopt. He intends to apply the classification of the goods as decided in the advance ruling order to be obtained by Kiran, to the goods supplied by him in Mumbai. Whether Rahim can do so?

Solution:

(i) Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c) of the CGST Act, 2017]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.

(ii) Section 97(2) of the CGST Act, 2017 stipulates the questions/matters on which advance ruling can be sought. It provides that advance ruling can be sought for, inter alia, determining the classification of any goods or services or both. Therefore, Kiran can seek the advance ruling for determining the classification of the goods proposed to be supplied by him.

Determination of place of supply is not one of the specified questions/matters on which advance ruling can be sought under section 97(2). Further, section 96 of the CGST Act, 2017 provides that AAR constituted under the provisions of an SGST Act/UTGST Act shall be deemed to be the AAR in respect of that State/ Union territory under CGST Act also.

(iii) Section 103(2) of the CGST Act, 2017 stipulates that the advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. Therefore, once Kiran has sought the advance ruling with respect to an eligible matter/question, it will be binding till the time the law, facts and circumstances supporting the original advance ruling remain same.

(iv) No, the tax advisor's view is not correct. As per section 100 of the CGST Act, 2017, if the applicant is aggrieved with the finding of the AAR, he can file an appeal with Appellate Authority for Advance Ruling (AAAR). Similarly, if the concerned/ jurisdictional officer of CGST/SGST does not agree with the findings of AAR, he can also file an appeal with AAAR.

(v) Section 103 of the CGST Act provides that an advance ruling pronounced by AAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. This implies that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Thus, Rahim will not be able to apply the classification of the goods that will be decided in the

Case law:

Global Reach Education Services Pvt. Ltd. (2018) 96 taxmann.com 107 (AAAR-West Bengal)

Recently, in the case of Global Reach Education Services Pvt Ltd, (2018) 96 taxmann.com 107 (AAAR-West Bengal), the Appellant Authority for Advance Rulings (AAAR), West Bengal has confirmed the decision of Authority for Advance Ruling (AAR), that the services of-

- promoting the courses of the foreign university in India;
- finding suitable prospective students to undertake the course;

- recruiting and
- assisting in recruiting the suitable students

shall be treated as intermediary services in terms of Section 2(13) of the IGST Act, 2017, and not 'Export of Services'.

Here, the assessee appealed against the ruling of the AAR, that they are 'intermediary' of the Foreign Universities. The appellant contended that they are providing 'business auxiliary services' to the Foreign Universities rather than intermediary services, as they provide services of promoting and marketing of Foreign Universities courses in India on their own account which does not include the function of an intermediary as to facilitation and arrangement of supply of goods or services between two or more persons.

The AAAR here observed that the in the instant case, the appellant was free to refer students to various foreign universities of its choice. Further, the fee paid to the Appellant was not tied to the promotional activities or expenses incurred to promote the courses of foreign universities but as a percentage of fee paid by the students who got admitted to the universities. Thus, no consideration was paid in spite of incurring expenses by the Appellant for promoting activities of universities, if no student joined the university.

Whereas, in the case of M/s Sunrise Immigration Consultants Private Ltd. v CCE & ST, Chandigarh, cited by the appellant, the AAAR observed that the order passed there by the Tribunal was completely different from this case. As in that case, the tribunal considered the 'intermediary' under Rule 2(f) of the Place of Provision of Service Rules, 2012 (POPS), in relation to 'main service'. Further, the definition of 'intermediary' under Section 2(13) of the IGST Act, is not same as that under Rule 2(f) of the POPS Rules, 2012, in as much as under GST an intermediary is an entity who arranges/facilitates for the supply of services of another entity, which may include the ancillary services, whereas under POPS Rules, the intermediary arranges/facilitates for the provisions of services of the main service provider.

Therefore, the services provided carried out by the appellant would be considered as an intermediary in terms of Section 2(13) of the IGST Act.

Offences and Penalties

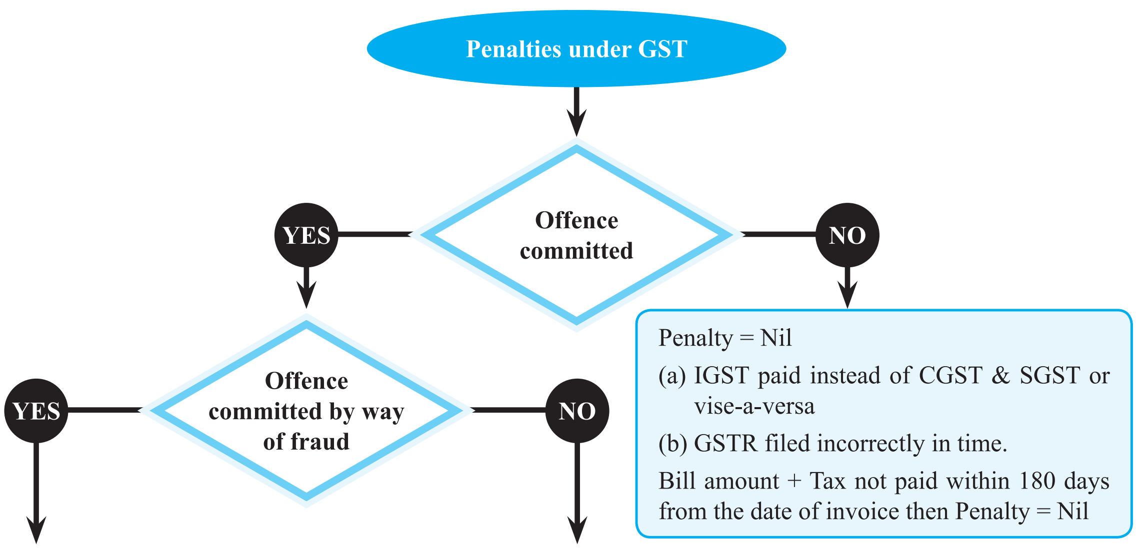
14.4

An offence under GST is a breach of the provisions of GST Act and GST Rules and hence penalty can be imposed.

A penalty is a punishment imposed by law for committing an offence or failing to do something that was the duty of a registered person to do.

Sections 122 to 131 contained in Chapter XIX of CGST Act, 2017 makes provisions relating to offence and penalties.

Summary of these provisions are as follows:



Nature of offence	Quantum of penalty	Nature of offence	Quantum of late fee Section 47 of CGST Act.
Penalty for opting for composition scheme even though he is not eligible	• Penalty 100% of tax due or	For delay in filing GSTR-1, GSTR-3B, GSTR-4 and GSTR-7	Nil Return: ₹500 (₹250 each under CGST & SGST or ₹500 under IGST).

Nature of offence	Quantum of penalty
Penalty for wrongfully charging GST rate (charging higher rate)	• ₹10,000 whichever is higher
Penalty for not issuing invoice	
Penalty for not registering under GST	

Nature of offence	Quantum of late fee Section 47 of CGST Act.
(from the tax period June 2021 onwards or quarter ending June, 2021 or FY 2020-21 onwards, as the case may be)	Tax Return: Aggregate turnover of ≤₹1.50 crores in the preceding F.Y. ₹2,000 (₹1,000 each under CGST & SGST or ₹2,000 under IGST). Who has an aggregate turnover of more than ₹1.5 crore and up to ₹5 crore in the preceding financial year ₹5,000 (₹2,500 each under CGST & SGST or ₹5,000 under IGST) For those taxpayers that have an aggregate annual turnover in the preceding year more than ₹5 crore, the late fee will be capped to maximum ₹5000 under Section 47. For delayed filing of GSTR-4:- Total amount of late fee payable under section 47 of the CGST Act from F.Y. 2021-22 onwards, by the registered person (composition taxpayer) who fail to furnish Form GSTR-4 by the due date, shall be as follows: Total tax payable in GSTR-4 is nil: ₹500 (₹250 each under CGST & SGST or ₹500 under IGST) Tax return: ₹2,000 (₹1,000 each under CGST & SGST or ₹2,000 under IGST)

Nature of offence	Quantum of penalty	Nature of offence	Quantum of late fee Section 47 of CGST Act.
			For delayed filing of GSTR-7:- ₹25 for every day during which such failure continues or ₹100 whichever is lower.
Penalty for incorrect invoicing Penalty for helping a person to commit fraud	Upto ₹25,000	Penalty for not filing GSTR. Penalty for opting for composition scheme even though he is not eligible	• Penalty 10% of tax due or • ₹10,000 whichever is higher

Illustration 15

M/s R Pvt Ltd. supplied goods worth ₹10,00,000 to M/s Y Ltd in the month of October 20XX plus GST 12%. M/s R Pvt Ltd. paid the GST on 5th January 20XX. ITC of ₹70,000 is available in the books in September 20XX. Calculate interest and penalty for delay in filing of October 20XX return if any.

Rework if dues paid against order under section 74 (dated 1st July, 20XX) of the CGST Act, 2017 (i.e. recovery of dues in case of fraud).

Solution:

Interest = ₹10,134

[i.e. (1,20,000 – 70,000) × 18% × 411/365]

Total Penalty is ₹10,000.

[i.e. ₹5,000 (CGST) plus ₹5,000 (SGST)].

(411 days × ₹50 = ₹20,550 CGST and SGST of ₹20,550 or ₹10,000 whichever is less)

rework:

Interest = ₹32,430/-

[i.e. 1,20,000 × 24% × 411/365]

Total penalty is ₹1,20,000

100% × ₹1,20,000 = ₹1,20,000 (CGST + SGST)

or

₹20,000 (i.e. ₹ 10,000 each Act.)

whichever is higher.

Illustration 16

Answer the following questions:

(i) Prathap started supply of goods in Vasai, Maharashtra from 01.01.20XX. His turnover exceeded ₹40 lakh on 25.01.20XX. However, she didn't apply for registration. Determine the amount of penalty, if any, that may be imposed on Prathap on 31.03.20XX, if the tax evaded by her, as on said date, on account of failure to obtain registration is ₹1,26,000.

(ii) Jal, managing director of Technical Tech Ltd., is issued a summon to appear before the central tax officer to produce the books of accounts of Technical Tech Ltd. in an inquiry conducted on said company. Determine the amount of penalty, if any, that may be imposed on Jal, if he fails to appear before the central tax officer.

Solution:

(i) Section 122(1)(xi) of the CGST Act, 2017 stipulates that a taxable person who is liable to be registered under the CGST Act, 2017 but fails to obtain registration shall be liable to pay a penalty of:

(a) ₹10,000 or

(b) an amount equivalent to the tax evaded [₹1,26,000 in the given case],

whichever is higher.

Thus, the amount of penalty that can be imposed on Prathap is ₹1,26,000.

(ii) Section 122(3)(d) of the CGST Act, 2017 stipulates that any person who fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry is liable to a penalty which may extend to ₹25,000. Therefore, penalty upto ₹25,000 can be imposed on Jal, in the given case.

As per the Finance Act, 2020, sub-section (1A) inserted in Section 122 of CGST Act, 2017, w.e.f. 1-1-2021:

namely,

Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of subsection (1) of Section 122 and at whose instance such transaction is conducted, shall be liable to pay penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

Note:

Section 122(1)(i): supplies any goods or services or both without issuance of any invoices or issues an incorrect of false invoice with regard to any such supply;

Section 122(1)(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;

Section 122(1)(vii): takes or utilses input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

Section 122(1)(ix): takes or distributes ITC in contravention of section 20 of the CGST Act, 2017 or the rules made thereunder.

Section 126 of CGST Act, 2017, General disciplines related to penalty:

Section 126(1) of CGST Act, 2017, no officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation: For the purpose of this sub-section,—

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹5,000;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

Illustration 17

Nandini, registered under the CGST Act, 2017 has made a breach in payment of tax amounting to ₹7,200. Assessing authority has imposed a penalty as per law applicable to the breach. Invoking the provisions of Section 126, Nandini argues that it is a minor breach and therefore no penalty is impossible.

In another instance, Nandini has omitted certain details in documentation that is not easily rectifiable. This has occurred due to the gross negligence of his accountant and he makes a plea that he was unaware of it and therefore no penalty should be levied.

Nandini voluntarily writes accepting a major procedural lapse from his side and requests the officer to condone the lapse as the loss caused to the revenue was not significant.

Also a lapse on the part of Nandini has no specific penalty provision under the CGST Act, 2017. He is very confident that no penalty should be levied without a specific provision under this Act.

Discuss, what action may be taken by the Assessing Authority under law for each of the above breaches.

Solution:

As per Section 126(1) a breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹5,000; no penalty is imposed on such minor breach.

In the given case it is ₹7,200, hence, it is not minor breach. Therefore, argument of Nandini is not correct.

As per Section 126(1) of the CGST Act, 2017, 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 and made without fraudulent intent or gross negligence. No penalty is imposed on such omission or mistake in documentation.

In the given case Nandini has omitted certain details in documentation that is not easily rectifiable. Hence, penalty will be imposed.

As per Section 126(5) of CGST Act, 2017, 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.

In the given case proper officer may consider condoning the lapse.

Section 126(6) of CGST Act, 2017, 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. In the given case as per section 126 penalty can be imposed.

Power to impose penalty in certain cases Section 127 of the CGST Act, 2017:

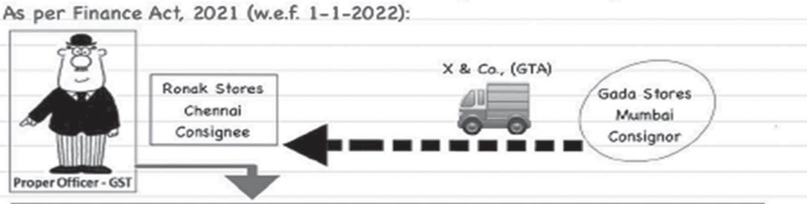
Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

Power to waive penalty or fee or both Section 128 of the CGST Act, 2017:

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

Section 129, Detention, seizure and release of goods and conveyances in transit has been amended, w.e.f. 1-1-2022:

Section 129, Detention, seizure and release of goods and conveyances in transit, As per Finance Act, 2021 (w.e.f. 1-1-2022):



As per section 129(1) of the CGST Act, 2017 where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,-- Upon payment of penalty in addition to tax and interest. W.e.f. 1-1-2022, only penalty is payable for release of such goods but amount of penalty is now higher.

Particulars	Taxable Goods		Exempted Goods	
	When owner comes forward	When owner does not come forward	When owner comes forward	When owner does not come forward
Penalty Sec 129(1) (a)/(b)	200% of Tax payable on such goods	50% of the value of goods or 200% of the tax payable on such goods, whichever is higher.	@2% of the value of goods Or ₹25,000 Whichever is less	@5% of the value of goods Or ₹25,000 Whichever is less

Sec 129(1)(c), Upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) of Section 129(1), in such form and manner as may be prescribed.

Question:

Who will be considered as the "owner of the goods" for the purposes of section 129(1) of the CGST Act?

Answer:

As per the CBIC Circular No. 76/50/2018-GST, dated 31st Dec. 2018, It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

Sec 129(3), The Proper Officer shall issue notice within 7 days of such detention or seizure, specifying the penalty payable, and thereafter pass an order within 7 days from the date of service of such notice, for payment of penalty u/s 129.

Sec 129(6), Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within 15 days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed in newly inserted rule 144A, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of

- penalty under sub-section (3) or
- one lakh rupees,

whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

As a result, proceedings under section 129 delinked from the proceedings under section 130 of CGST Act, 2017.

Illustration 18

Calculate the amount to be paid for release of goods detained or seized under section 129 of the CGST Act, 2017, if owner of the goods does not come forward for payment of applicable tax and penalty.

Particulars	Amount in (₹)
Value of goods	15,00,000
GST payable on such goods	2,70,000

Solution:

In the given case, the amount payable under section 129 is ₹7,50,00/-

Penalty only is payable.

15,00,000 × 50% = 7,50,000

Or

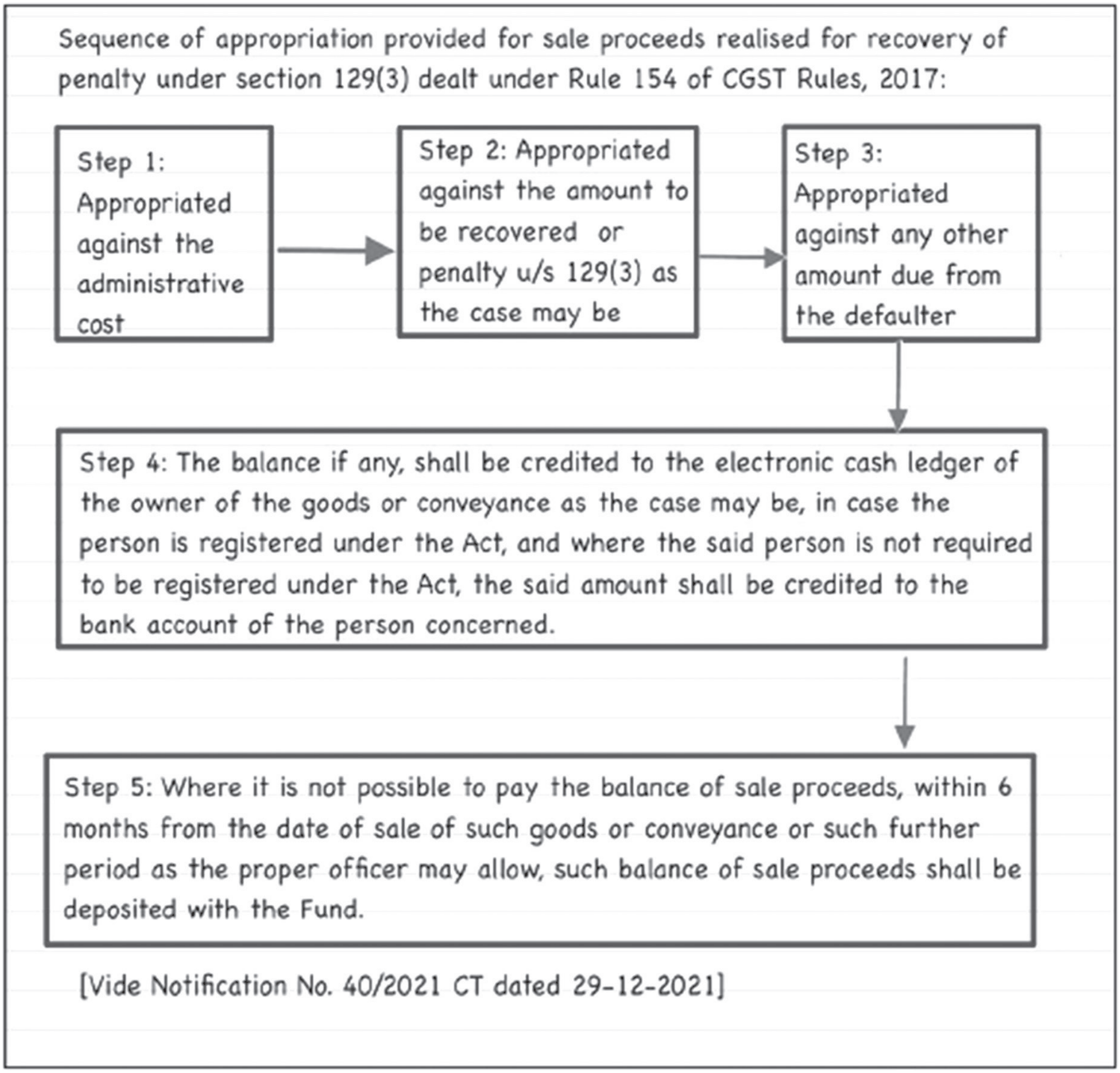
2,70,000 × 200% = 5,40,000

Whichever is higher.

A new rule 144A (Recovery of penalty by sale of goods or conveyance detained or seized in transit) has been inserted with effect from 01.01.2022. The new rule lays down that that where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under section 129(1) within fifteen days from the date of receipt of the copy of the order passed under section 129(3), the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance.

If the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer. The said goods or conveyance shall be sold through a process of auction, including e-auction.

Sequence of appropriation of sale proceeds realized for recovery of penalty under section 129(3):



Confiscation of goods or conveyances and levy of penalty Section 130 of the CGST Act, 2017:

As per Section 130(1) of the CGST Act, 2017—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

As per Section 130(2) of the CGST Act, 2017, Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall **not exceed the market value of the goods confiscated, less the tax chargeable thereon:**

Provided further that the aggregate of such fine and penalty leviable shall not be less than the penalty equal to 100% of the tax payable on such goods (w.e.f. 1-1-2022).

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a **fine equal to the tax payable on the goods** being transported thereon.

As per Section 130(3) of the CGST Act, 2017 (Omitted w.e.f. 1-1-2022), Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

As per Section 130(4) of the CGST Act, 2017, No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

As per Section 130(5) of the CGST Act, 2017, Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

As per Section 130(6) of the CGST Act, 2017 The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

As per Section 130(7) of the CGST Act, 2017, The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

Illustration 19

From the details given below determine the maximum amount of fine in lieu of confiscation leviable under 130 of CGST Act, 2017 on:

(i) the goods liable for confiscation.

(ii) On the conveyance used for carriage of such goods.

Details are as follows:

Cost of the goods for owner before GST	15,00,000
Market value of goods	20,00,000
GST on such goods	3,60,000

You are also required to explain relevant legal provisions in brief.

Solution:

(i) Fine in lieu of confiscation u/s 130 of CGST Act, 2017 = ₹16,40,000/-

(₹20,00,000 – ₹3,60,000)

(ii) Fine in lieu of confiscation on the conveyance used for carriage of such goods u/s 130 of CGST Act, 2017 = ₹3,60,000/-

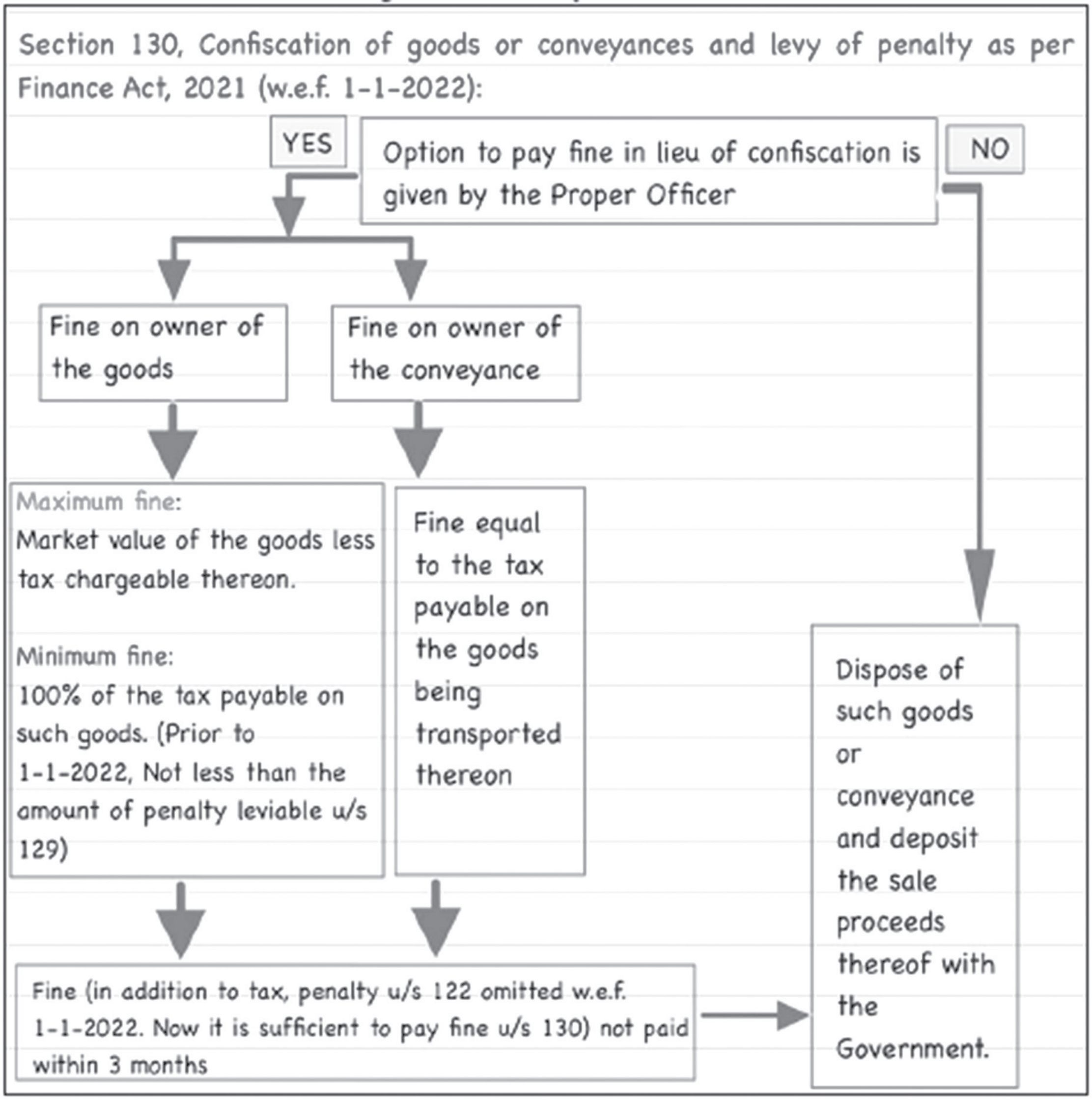
Note:

(a) Fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

(b) Any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

Proceedings under section 130 delinked from proceedings under section 129:

w.e.f. 1-1-2022, Section 130 of the CGST Act (i.e. Confiscation of goods or conveyances and levy of penalty) has been amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.


Section 130, Confiscation of goods or conveyances and levy of penalty as per Finance Act, 2021 (w.e.f. 1-1-2022):
YES
Option to pay fine in lieu of confiscation is given by the Proper Officer
NO
Fine on owner of the goods
Fine on owner of the conveyance
Maximum fine:
Market value of the goods less tax chargeable thereon.
Minimum fine:
100% of the tax payable on such goods. (Prior to 1-1-2022, Not less than the amount of penalty leviable u/s 129)
Fine equal to the tax payable on the goods being transported thereon
Dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.
Fine (in addition to tax, penalty u/s 122 omitted w.e.f. 1-1-2022. Now it is sufficient to pay fine u/s 130) not paid within 3 months

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. What is the time limit for issue of order in case of fraud, misstatement or suppression?
   (a) 15 days
   (b) 180 days
   (c) 5 years
   (d) 3 years

2. What is the time limit for issue of order in case of other than fraud, misstatement or suppression?
   (a) 3 months
   (b) 180 days
   (c) 5 years
   (d) 3 years

3. Is it obligatory on the part of the Department to take on record the assessee's representation during adjudication and issue of order?
   (a) Yes
   (b) No
   (c) At proper officer's discretion
   (d) If requested by notice

4. What is the maximum amount of demand for which the officer can issue an order under section 73 in case of other than fraud, misstatement or suppression?
   (a) Amount of tax + interest + penalty of 10% of tax
   (b) Amount of tax + interest + penalty of 10% of tax or ₹10,000/- whichever is higher
   (c) ₹10,000/-
   (d) Amount of tax + interest + 25% penalty

5. What is the maximum amount of demand for which the officer can issue an order under section 74 in case fraud, misstatement or suppression?
   (a) Amount of tax + interest + penalty of 15% of tax
   (b) Amount of tax + interest + penalty of 25% of tax
   (c) Amount of tax + interest + penalty of 50% of tax
   (d) Amount of tax + interest + penalty of 100% of tax

6. What is the prescribed monetary limit of Central Tax for Superintendent of Central Tax for issuance of show cause notices and orders under Section 73 and 74?
   (a) Not exceeding ₹ 10 lakhs
   (b) Above ₹ 100 lakhs and not exceeding ₹ 2 crore
   (c) Above ₹ 1 crore without any limit
   (d) Not exceeding ₹ 200 lakhs

7. What is the prescribed monetary limit of Integrated Tax for Superintendent of Central Tax for issuance of show cause notices and orders under Section 73 and 74 read with Section 20 of the IGST Act?
   (a) Not exceeding ₹ 10 lakhs
   (b) Above ₹ 10 lakhs and not exceeding ₹ 2 crore
   (c) Above ₹ 1 crore without any limit
   (d) Not exceeding ₹ 20 lakhs

8. What is the prescribed monetary limit of Central Tax for Deputy or Assistant Commissioner of Central Tax for issuance of show cause notices and orders under Section 73 and 74?
   (a) Not exceeding ₹ 10 lakhs
   (b) Above ₹ 10 lakhs and not exceeding ₹ 1 crore
   (c) Above ₹ 2 crore without any limit
   (d) Any amount without any limit

9. What is the prescribed monetary limit of Integrated Tax for Deputy or Assistant Commissioner of Central Tax for issuance of show cause notices and orders under Section 73 and 74 read with Section 20 of the IGST Act?
   (a) Not exceeding ₹ 20 lakhs
   (b) Above ₹ 20 lakhs and not exceeding ₹ 2 crore
   (c) Above ₹ 2 crore without any limit
   (d) Any amount without any limit

10. What is the prescribed monetary limit of Central Tax for Additional or Joint Commissioner of Central Tax for issuance of show cause notices and orders under Section 73 and 74?
   (a) Not exceeding ₹ 10 lakhs
   (b) Above ₹ 10 lakhs and not exceeding ₹ 1 crore
   (c) Above ₹ 1 crore without any limit
   (d) Any amount without any limit

11. What is the prescribed monetary limit of Integrated Tax for Additional or Joint Commissioner of Central Tax for issuance of show cause notices and orders under Section 73 and 74 read with Section 20 of the IGST Act?
   (a) Not exceeding ₹ 10 lakhs
   (b) Above ₹ 200 lakhs and not exceeding ₹ 2 crore
   (c) Above ₹ 2 crore without any limit
   (d) Any amount without any limit

12. Where the service of Notice or issuance of order is stayed by a Court order, can the period of such stay be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or in sub-sections (2) and (10) of section 74?
   (a) Yes
   (b) No
   (c) At proper officer's discretion
   (d) None of the above

13. What is the maximum number of times a hearing can be adjourned?
    (a) 1
    (b) 3
    (c) 5
    (d) None of the above

14. Whether the amount of tax, interest and penalty demanded in the order can exceed the amount specified in the Notice?
    (a) Yes
    (b) No
    (c) At proper officer's discretion
    (d) None of the above

15. Whether penalties under any other provisions of the Act be imposed in respect of adjudication proceedings under section 73 or 74?
    (a) Yes
    (b) No
    (c) At proper officer's discretion
    (d) None of the above

16. What is the time limit for issue of order in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a Court, from the date of communication of the said direction?
    (a) 30 months
    (b) 18 months
    (c) 2 years
    (d) 5 years

17. Whether interest is payable on the tax short paid or not paid even if it is not specified in the order determining the tax liability?
    (a) Yes
    (b) May be
    (c) Only if concluded by an order later
    (d) none of the above

18. Any amount of tax collected shall be deposited to the credit of the Central or State Government:
    (a) Only when the supplies are taxable
    (b) Regardless of whether the supplies in respect of which such amount was collected are taxable or not
    (c) Only when the supplies are not taxable
    (d) None of the above

19. Is there any time limit for issue of notice under section 76 in cases where tax collected but not paid?
    (a) No time limit
    (b) 1 year
    (c) 3 years
    (d) 5 years

20. Within how many years should the proper officer issue an order from the date of issue of notice?
    (a) 1 year
    (b) 2 years
    (c) 3 years
    (d) 4 years

21. What happens if a taxable person has paid CGST & SGST or, as the case may be, CGST & UTGST (in SGST/UTGST Act) on a transaction considered by him to be an intra-state supply but which is subsequently held to be an inter-state supply?
    (a) Seek refund
    (b) Adjust against future liability
    (c) Take re-credit
    (d) File a suit for recovery

22. The time limit for payment of tax demand is ……… from the date of service of the order,
    (a) 3 months
    (b) 90 days
    (c) 6 months
    (d) 1 year

23. If it is expedient in the interest of the revenue, can the proper officer after recording reasons in writing, require a taxable person to make payment of tax demand within shorter period as may be specified by him?
    (a) Yes
    (b) No
    (c) With prior permission of not below the rank of Joint Commissioner
    (d) None of the above

24. Recovery of amount payable by a defaulter can be made from:
    (a) Customer
    (b) Bank
    (c) Post Office
    (d) All of the above

25. After how many days, the proper officer may cause the sale of distressed property?
    (a) 30 days
    (b) 60 days
    (c) 90 days
    (d) 120 days

26. The following amounts due cannot be paid through instalments,
    (a) Self-assessed tax shown in return
    (b) Short paid tax for which notice has been issued
    (c) Arrears of tax
    (d) Concealed tax

27. Maximum number of monthly instalments permissible under section 80 is:
    (a) 36
    (b) 12
    (c) 48
    (d) 24
28. Which officer/s has the power to grant permission for payment of tax through installment?
    (a) Commissioner
    (b) Principal Commissioner
    (c) Assistant Commissioner
    (d) Both (a) and (b)
29. What is the meaning of applicant?
    (a) Person registered under the Act.
    (b) Person desirous of obtaining registration under the Act.
    (c) Tourist as defined under section 15 of IGST Act, 2017.
    (d) (a) or (b).
30. Where shall the Advance Ruling Authority be located?
    (a) The Authority shall be located in each State/ Union Territory.
    (b) The Authority shall be located in Centre.
    (c) The Authority shall be located in both Centre & State.
    (d) None of the above.
31. The AAR shall comprise of:
    (a) One member from amongst the officers of Central tax and one member from amongst the officers of State tax/Union Territory tax.
    (b) One sitting High Court Judge.
    (c) (a) & (b)
    (d) (a) and (b)
32. The Appellant Authority for Advance Ruling shall comprise of:
    (a) Chief Commissioner of Central tax as designated by the Board and Commissioner of State tax/ Union Territory tax, having jurisdiction over the applicant.
    (b) Principal Chief Commissioner of Central tax and Commissioner of State tax/union Territory tax, having jurisdiction over the applicant.
    (c) Two sitting High Court Judges.
    (d) None of the above.
33. Who may make an application for Advance Ruling?
    (a) Applicant
    (b) Jurisdictional officer
    (c) Both Applicant and Jurisdictional officer
    (d) Concerned Officer

34. Within how many days the Authority shall pronounce its decision on Advance Ruling from the date of receipt of application?
    (a) 30 days
    (b) 60 days
    (c) 90 days
    (d) 120 days

35. Who can appeal to the AAAR?
    (a) Jurisdictional CGST/SGST officer or the applicant
    (b) Any Taxable Person
    (c) Any citizen concerned about the ruling passed
    (d) All of the above

36. Appeal before AAAR can be filed within how many days?
    (a) 30 days
    (b) 60 days
    (c) 90 days
    (d) 120 days

37. Under what circumstances, the members of the Appellate Authority deem that no advance ruling can be issued in respect of the questions covered under the appeal
    (a) If the members of the AAAR differ on any point or points referred to in appeal
    (b) If the members of the AAR differ on any point or points referred to in appeal
    (c) Applicant wants to withdraw the application
    (d) Both (a) and (c)

38. Who has the power to amend the order issued under section 98 or 101, to rectify any error apparent from record?
    (a) Advance Ruling Authority
    (b) Appellate Authority for the Advance Ruling
    (c) Authority or, as the case may be, the Appellate Authority.
    (d) None of the above.

39. Who can apply for rectification of error on record?
    (a) Applicant
    (b) Concerned officer or Jurisdictional Officer
    (c) Advance Ruling Authority or the Appellate Authority on its own accord can rectify the error
    (d) All of the above

40. An applicant may seek Advance Ruling in relation to supply of goods and/or services-
    (a) being undertaken by him
    (b) proposed to be undertaken by him
    (c) already undertaken by him
    (d) all of the above

41. AAR or AAAR shall be constituted
    (a) Under respective State GST Act
    (b) Under Central GST Act
    (c) Both under Central GST and State GST Act

42. An Advance Ruling can be sought by:
    (a) Only by a registered person
    (b) By a person desirous of obtaining registration
    (c) Both (a) and (b)
    (d) None of the above

43. A member of AAR shall not be below the rank of:
    (a) Deputy Commissioner
    (b) Assistant Commissioner
    (c) Joint Commissioner
    (d) Commissioner

44. The fee for filing an application for Advance Ruling is:
    (a) ₹5000/- under CGST Act
    (b) ₹5000/- under SGST Act
    (c) ₹5000/- each under CGST and SGST Act
    (d) ₹10000/- under any of the above Act

Answer:

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
c	d	a	b	d	a	d	b	b	c	c
12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.
a	b	b	b	d	a	b	a	a	a	a
23.	24.	25.	26.	27.	28.	29.	30.	31.	32.	33.
a	d	a	a	d	d	d	a	a	a	a
34.	35.	36.	37.	38.	39.	40.	41.	42.	43.	44.
c	a	a	a	c	d	d	c	c	c	c

Inspection, Search, Seizure, Arrest and Prosecution

15

This Module Includes

Inspection, Search, Seizure, Arrest and Prosecution

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Identify inspection, search and seizure under GST
- Explain power to arrest under GST
- Understand arrest and prosecution under GST

Introduction

15.1

Inspection, Search and Seizure are provided to protect the interest of genuine taxpayers as the Tax evaders by evading the tax get an unfair advantage over the genuine taxpayers. These provisions are also required to safeguard and protect interest of revenue. It is well-settled law that search and seizure being an encroachment on the fundamental right of citizen which adversely affects his/her reputation and paralyze his/her business. Therefore, while exercising such powers, the authorities should be rather careful and cautious and must exercise it strictly under the authority of the law.

Thus, to ensure that these provisions are used very carefully, effectively and the rights of taxpayers are also protected, it is stipulated that Inspection, Search or Seizure can only be carried out by a proper officer, not below the rank of Joint Commissioner under GST law, only when such proper officer has 'reasons to believe' regarding the existence of such exceptional circumstances.

Inspection, Search, Seizure (Section 67 of CGST Act, 2017)

15.2

The term '**Inspection**' has not been specifically defined in GST. Inspection is a softer provision than search which enables officers to access any place of business of a taxable person or of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown,

The term '**Search**' has not been specifically defined in GST. Search in simple language, denotes an action of government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of an offence or a crime.

The term '**seizure**' has not been specifically defined in GST. In legal parlance, seizure is the act of taking over something or someone by force through legal process, such as the seizure of evidence found at the scene of a crime. It generally implies taking possession forcibly against the wishes of the owner.

Under GST, inspection, as well as search, can be carried out only after authorization by a proper officer not below the rank of Joint Commissioner and such proper officer must have reason to believe for the existence of exceptional circumstances to justify invoking provisions of Search and Seizure. Sections 67 to 72 of the CGST Act read with rules 139 to 141 of CGST Rules deal with powers and procedure of Inspection, Search & Seizure.

It is imperative to mention here that application of the provisions of the Code of Criminal Procedure arises only when the premises are searched and not inspected.

As per Section 67(1) of the CGST Act, 2017, 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 authorize 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.

section 67(1) read with Rule 139 of the CGST Rules envisage procedural aspects of Inspection, Search and Seizure. Rule 139 of the CGST Rules are as follows:

"(1) Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in FORM GST INS-01 authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.

(2) Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorised officer shall make an order of seizure in FORM GST INS-02.

(3) The proper officer or an authorised officer may entrust upon the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer.

(4) Where it is not practicable to seize any such goods, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in FORM GST INS-03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(5) The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, inter alia, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized."

It is pertinent to note that, section 67(1) categorically provides that Inspection can be at the place of business of the assessee. It further needs to be noted here that section 2(85) of the CGST Act defines the phrase 'place of business' which reads as follows:

"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;"

Definition of the place of business is inclusive which includes godown or any other place where a taxable person stores his goods or maintains his books of accounts or place of agent. Accordingly, if books of accounts are being maintained or kept at residence of director or any other key managerial person the same may be treated as place of business and inspection can be carried out there as well.

The Hon'ble Gujarat High Court, in the case of **Patran Steel Rolling Mill** v. Assistant Commissioner of State Tax [2019] 101 taxmann.com 80 (Guj.) held that provision of section 67, should not be exercised as a matter of course, but only after due application of mind to the relevant factors.

As per Section 67(2) of the CGST Act, 2017, Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

As per Section 67(3) of the CGST Act, 2017, 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.

As per Section 67(4) of the CGST Act, 2017, The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

As per Section 67(5) of the CGST Act, 2017, The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

As per Section 67(6) of the CGST Act, 2017, 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.

As per Section 67(7) of the CGST Act, 2017, 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.

As per Section 67(8) of the CGST Act, 2017, The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

As per Section 67(9) of the CGST Act, 2017, 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.

As per Section 67(10) of the CGST Act, 2017, The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that 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.

As per Section 67(11) of the CGST Act, 2017, 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.

As per Section 67(12) of the CGST Act, 2017, The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

Section 68 of CGST Act, 2017, Inspection of goods in movement:

As per section 68(1) of CGST Act, 2017, The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

As per section 68(2) of CGST Act, 2017, The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

As per section 68(3) of CGST Act, Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

Section 68 of the CGST Act, 2017 mandates that the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed (i.e. E-way Bill).

Section 69 of CGST Act, 2017 Power to arrest:

As per Section 69(1) of CGST Act, 2017, 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.

As per section 69(2) of CGST Act, 2017, 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.

As per Section 69(3) of CGST Act, 2017, 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.

Section 70 of CGST Act 2017 - Power to summon persons to give evidence and produce documents:

As per Section 70(1), The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

As per Section 70(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code

Section 71 of CGST Act 2017 - Access to Business Premises:

(1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66-

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013;

(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.

Section 72 of the CGST Act, 2017 – Officers to assist proper officers:

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 section 72(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.

Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation:

Under CGST Act, 2017, the taxpayers have an option to make voluntary payment of tax through Form DRC-03. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should, however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

The Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers. [Instruction No. 01/2022-23 [GST-Investigation] dt. 25.05.2022].

Arrest and Prosecution

15.3

The person committing the offence will be punishable depending on the amount involved which is as follows:

Prosecution is the conducting of legal proceedings against someone in respect of a criminal charge.

Any person committing the following offences (i.e., deliberate intention of fraud) becomes liable to prosecution, i.e., face criminal charges Section 132(1) of the CGST Act, 2017:

The following are cognizable offences if the tax evaded > ₹500 lakh (section 132(5) of the CGST Act, 2017):

Whoever commits any of the following offences (from the Finance Act, 2020, dated 27-3-2020 read as Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences), namely (Section 132(1) of the CGST Act, 2017):—

(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), (this clause shall be substituted from the Finance Act, 2020 dated 27-3-2020 namely- 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;

Note: all the above offences shall be non-cognizable and bailable where tax evaded ≤ ₹500 lakh (Section 132(4) of the CGST Act, 2017).

The following are non-cognizable and bailable offences irrespective of the tax amount evaded (Section 132(4) of the CGSG Act, 2017):

Whoever commits any of the following offences, namely (Section 132(1) of the CGST Act, 2017):—

(e) evades tax, (fraudulently avails input tax credit omitted from the Finance Act, 2020, dated 27-3-2020) or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

Cognizable or non-cognizable:

Section	Tax amount involved	Quantum of punishment by imprisonment	Cognizable or non-cognizable	Bailable or non-bailable
132(1)(i)	> ₹500 lakhs	Upto 5 years with fine	Cognizable	Non-bailable
132(1)(ii)	> ₹200 lakhs ≤ ₹500 lakhs	Upto 3 years with fine	Non-cognisable	Bailable
132(1)(iii)	> ₹100 lakhs ≤ ₹200 lakhs	Upto 1 years with fine	Non-cognisable	Bailable
132(1)(iv)	Offence specified in clauses (f), (g) or (j) of Section 132(1) of the CGST Act, 2017	Upto 6 months or with fine or with both	Non-cognisable	Bailable

Simplified approach:

OFFENCES

Cognizable offences if the tax evaded > ₹500 lakh (section 132(5) of the CGST Act, 2017)

Whoever commits any of the following offences, namely (Section 132(1) of the CGST Act, 2017):

a. Supplies any goods or services or both without issue of any invoice, with the intention to evade tax.

b. issues any invoice or bill without supply of goods or services or both.

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.

Non-Cognizable offences (Section 132(4) of the CGST Act, 2017)

Whoever commits any of the following offences, namely (Section 132(1) of the CGST Act, 2017):

Clause (a), (b), (c) & (d) (where tax evaded ≤ ₹500 lakh) as well as

Clause (e), (f), (g), (h), (i), (j), (k), & (l) tax evaded ≤ ₹ 500 lakh or > ₹500 lakh as the case may be.

Second and subsequent offence

Section 132(2) of the CGST Act, 2017 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**.

Minimum imprisonment is 6 months

Section 132(3) of the CGST Act, 2017 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.

Prior permission from the Commissioner

Section 132(6) of the CGST Act, 2017 a person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation: For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

Illustration 1

Discuss the prosecution, arrest and bail implications, if any, in respect of the following cases pertaining to the period November 2017:

(i) 'Ram' avails input tax credit of ₹162 lakh without actual receipt of excisable goods. However, he is yet to utilize the same (i.e. Yet to confirm this credit in his GSTR-2A return).

(ii) 'Rahim' wilfully evades payment of tax of ₹275 lakh.

(iii) 'Robert' fails to supply information sought by the Central Tax Officer. The amount of GST involved is ₹8 lakh.

(iv) 'Lakshman' collects ₹585 lakh as tax from its clients but deposits only ₹25 lakh with the Central Government.

(v) 'Karthik' collects ₹265 lakh as IGST from its clients and deposits ₹261 lakh with the Central Government by falsifies or substitutes financial records or produces fake accounts or documents.

What will be the prosecution implications, if Rahim, Robert, Lakshman and Karthik are convicted for subsequent offences?

Solution:

Person	Offence	Prosecution/ Imprisonment	Arrest	Bail
'Ram'	No offence. Because utilization of ITC not confirmed in his return GSTR-2A	Not applicable	Not applicable	Not applicable

Person	Offence	Prosecution/ Imprisonment	Arrest	Bail
'Rahim'	Non-cognizable offence [Section 132(1)(e)]	Upto 3 years with fine [Section132(1)(ii)]	Arrest can be ordered by Commissioner of Central Tax.	Bailable Offence [Section 132(4)]
'Robert'	Non-cognizable offence [Section 132(1)(k)]	Not applicable [since, tax evasion does not exceed ₹100 lakh]	No Arrest can be ordered by Commissioner of Central Tax.	Not applicable
'Lakshman'	Cognizable offence Section 132(1)(d)	Upto 5 years with fine [Section 132(1)(i)]	Arrest can be ordered by Commissioner of Central Tax without arrest warrant	Non-Bailable Offence [Section 132(5)]
'Karthik'	Non-cognizable offence [Section 132(1)(f)]	Upto 6 months or with fine or with both [Section 132(1)(iv)	Arrest can be ordered by Commissioner of Central Tax.	Bailable Offence [Section 132(4)]

If Rahim, Robert, Lakshman and Karthik are convicted for subsequent offences:

Person	Prosecution for subsequent offences [Section 132(2) of the CGST Act, 2017]
'Rahim'	Imprisonment upto 5 years with fine
'Robert'	Imprisonment upto 5 years with fine
'Lakshman'	Imprisonment upto 5 years with fine
'Karthik'	Imprisonment upto 5 years with fine

Illustration 2

M/s X Pvt Ltd., issued invoice without supply of goods for ₹20 crore. Central Tax Authority issued a show cause notice by demanding following:

CGST & SGST 18% = ₹3.60 crore

Penalty 100% of tax due = ₹3.60 crore

Interest 24% p.a

You are required to answer the following:

(a) Is it cognizable offence?

(b) Quantum of punishment if M/s X Pvt Ltd., has been convicted.

Solution:

(a) It is non-cognizable Offence.

(b) Quantum of punishment:

Section	Tax amount involved	Quantum of punishment by imprisonment	Cognizable or non-cognizable	Bailable or non-bailable
132(1)(ii)	> ₹200 lakhs ≤ ₹500 lakhs	Upto 3 years with fine	Non-cognizable	Bailable

Note:

(i) Minimum imprisonment is 6 months unless special or adequate reasons are noticed by the Judiciary.

(ii) If the assessee committed second and subsequent time then irrespective of evasion of tax, maximum imprisonment upto 5 years.

Compounding of Offences 15.4

Compounding of offences under GST [Section 138 of the CGST Act, 2017]

Compounding of offenses is a short cut method to avoid litigation. In the case of prosecution for an offense in a criminal court, the accused has to appear before the Magistrate at every hearing through an advocate. Court proceedings are time-consuming and expensive. In compounding, the accused is not required to appear personally and can be discharged on payment of compounding fee which cannot be more than the maximum fine leviable under the relevant provisions.

Compounding will not be available for —

(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;

(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;

(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;

(d) a person who has been convicted for an offence under this Act by a court;

(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132 of the CGST Act, 2017; and

(f) any other class of persons or offences as may be prescribed.

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

Amount payable for compounding

The amount payable for compounding of offences shall be 50% of the tax involved subject to a minimum ₹10,000.

Maximum amount for compounding is —

150% of the tax OR ₹30,000

-Whichever is higher.

Abatement of further proceedings:

On payment of the compounding amount, no further proceedings shall be initiated against the accused person for the same offence and any criminal proceedings, if already initiated, will be abated.

Apart from prosecution, the offender can also be arrested.

Example 1

Are there any monetary limits prescribed for compounding of offence?

Solution:

Yes. The lower limit for compounding amount is to be the greater of the following amounts:—

- 50% of tax involved, or
- ₹10,000.

The upper limit for compounding amount is to be greater of the following amounts:—

- 150% of tax involved, or
- ₹30,000.

Example 2

Answer whether the following offences are compoundable as per section 138 of CGST Act, 2017.

Particulars	Compoundable –Yes/No	Reason
1. X Pvt Ltd is making taxable supplies and not issuing tax invoice with the Intention to evade tax	Yes	This offence falls in Section 132(1)(a). Such offence is compoundable once. If X Pvt Ltd commits it for Second time, then it is not compoundable
2. (a) X firm issued tax invoice to few customers without actually making supply in order to give input tax benefit to customers (b) Customers availed Input tax credit or claimed refund with the above said Invoices issued by X Firm	**In case of X Firm-** (a) Committed offence for First time – Yes Committed offence for Second time – No **In case of customers-** (b) Committed offence for First time – Yes Committed offence for Second time – No	**In case of X Firm-** This offence falls in Section 132(1)(b). Such offence is compoundable once. If X Firm commits it for Second time, then it is not compoundable **In case of Customers-** This offence falls in Section 132(1)(c). Such offence is compoundable once. If X Firm commits it for Second time, then it is not compoundable

Particulars	Compoundable –Yes/No	Reason
3. Z LLP has a tax liability of ₹10 Lakhs for the month of August 2017. Z LLP failed to pay till 30th December 2017. Due date of payment for Z LLP is 20th September.	Committed offence for First time – Yes Committed offence for Second time – No	This offence falls in Section 132(1)(d). Such offence is compoundable once. If Z LLP commits it for Second time, then it is not compoundable
4. Y, an exporter intentionally availed excess refund of Input Tax credit	Committed offence for First time – Yes Committed offence for Second time – No	This offence falls in Section 132(1)(e). Such offence is compoundable once. If Y commits it for Second time, then it is not compoundable
5. F a dealer has intentionally furnished wrong information in return in order to evade or minimize tax outflow	Committed offence for First time – Yes Committed offence for Second time – No	This offence falls in Section 132(1)(f). Such offence is compoundable once. If Y commits it for Second time, then it is not compoundable
6. T Ltd manufacturer of Chemicals has not allowed an officer to allow the business premises wherein it the duty of the officer to visit the premises and also given moneys to officer not to investigate company as order in the Act.	NOT COMPOUNDABLE	This offence falls in Section 132(1)(g). Such offence is not compoundable
7. ABC Ltd have tampered or destroyed material evidence under this Act for Assessment	NOT COMPOUNDABLE	This offence falls in Section 132(1)(j). Such offence is not compoundable
8. Z Pvt Ltd company Intentionally fails to provide information or supplied wrong information to the officer	NOT COMPOUNDABLE	This offence falls in Section 132(1)(k). Such offence is not compoundable
9. Mr. A being a GTA knowingly transported drugs or goods without proper Invoice to other place. Such goods are liable to confiscation. **If the Value of above supplies is** (a) ₹50 Lakhs (b) ₹150 Lakhs The value the amount involved in such offence is ₹50 Lakhs	Compoundable without any limit. (a) Compoundable without any limit. (b) Committed offence for First time – Yes Committed offence for Second time – No	This offence falls in Section 132(1)(h) for which no restriction is mentioned in Section 138(a). (a) This offence falls in Section 132(1)(h) for which no restriction is mentioned in Section 138(a). (b) This offence falls in Section 132(1)(h) though not mentioned in section 138(a) it falls under section 138(b) since value

Particulars	Compoundable –Yes/No	Reason
		exceeded ₹One Crore rupees. Such offence is compoundable once. If Y commits it for Second time, then it is not compoundable
10. Mr. B is committed an offence for which court has convicted him.	NOT COMPOUNDABLE	This offence falls in Section 138(d) which is not compoundable.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Under GST, inspection, as well as search, can be carried out only after authorization by a proper officer not below:

   (a) the rank of Commissioner

   (b) the rank of Assistant Commissioner

   (c) the rank of Principal Commissioner.

   (d) the rank of Joint Commissioner.

2. The documents, books or things referred to in sub-section (2) of section 67 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__________of the issue of the said notice:

   (a) 60 days

   (b) 180 days

   (c) 30 days.

   (d) 14 days.

3. As per Section 67(7) of the CGST Act, 2017, where any goods are seized under sub-section (2) and no notice in respect thereof is given within__________of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

   (a) sixty months

   (b) sixteen months

   (c) sixty six months

   (d) six months

4. As per section 69(2) of CGST Act, 2017, 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__________hours:

   (a) four hours

   (b) twenty-four hours

   (c) twenty-five hours

   (d) twenty-six hours

5. Are there any monetary limits prescribed for compounding amount? If so, how much?

   (a) (i) The minimum limit for compounding amount is to be the higher of the following amounts:—

   - ₹5,000; or
   - 50% of tax involved,

(ii) The upper limit for compounding amount is to be higher of the following amounts:—

- ₹30,000; or
- 50% of tax involved.

(b) (i) The minimum limit for compounding amount is to be the higher of the following amounts:—

- ₹1,00,000; or
- 150% of tax involved,

(ii) The upper limit for compounding amount is to be higher of the following amounts:—

- ₹25,000; or
- 150% of tax involved.

(c) (i) The minimum limit for compounding amount is to be the higher of the following amounts:—

- ₹10,000; or
- 150% of tax involved,

(ii) The upper limit for compounding amount is to be higher of the following amounts:—

- ₹30,000; or
- 150% of tax involved.

(d) (i) The minimum limit for compounding amount is to be the higher of the following amounts:—

- ₹10,000. Or
- 50% of tax involved,

(ii) The upper limit for compounding amount is to be higher of the following amounts:—

- ₹30,000; or
- 150% of tax involved.

Answer:

1.	**2.**	**3.**	**4.**	**5.**
d	**c**	**d**	**b**	**d**

Anti-Profiteering 16

This Module Includes

Anti-Profiteering

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Identify Profiteering and Anti-Profiteering.
- Explain importance of Screening Committee and Standing Committee.
- Understand role of National Anti-Profiteering Authority.

Introduction

16

Any reduction in GST rate or benefit of input tax credit should be passed on to the end consumer and not retained by the business. This is the basis of anti-profiteering provisions under GST. Under anti-profiteering provisions, its illegal for a business to not pass on benefits of GST rate benefits to the end consumer and thereby indulging in illegal profiteering. The Anti-Profiteering Rules, 2017 lay down details about the selection of the members of the National Anti-Profiteering (NAA) and the other committees that will assist the NAA in investigating the complaints, the procedure to be followed in investigations and the powers given to the authority.

Tenure of Anti-Profiteering Authority extended to five years

With effect from 30.11.2021, rule 137 of the CGST Rules, 2017 has been amended to extend the tenure of National Anti-Profiteering Authority from existing 4 years to 5 years. Thus, the Authority shall cease to exist after the expiry of five years from the date on which the Chairman enters upon his office unless the Council recommends otherwise [Notification No. 37/2021 CT dated 1.12.2021].

Provisions

16.1

Anti Profiteering [Section 171]

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.

Detailed analysis of above provision is as follows

Any reduction in rate of tax on any supply of goods or services

For Example, Under the Service Tax regime, Tour operator services are charged at abated rate of 9% whereas in Goods & Services Tax Act, 2017 rate of tax fixed is 5% which resulted in reduction of tax from 9% to 5%. The tax rate reduction benefit to the extent of 4% to be passed on to recipient.

Particulars	Service tax regime	GST regime	Remarks
Taxable value	100	100	
ST/GST rate (%)	9%	5%	
ST/GST (₹)	9	5	
Total Invoice value	109	105	Reduction of ₹4 is benefit to be passed on to recipient

The benefit of input tax credit

Any additional benefit by way of Input tax credit is arising to the supplier due to implementation of GST the same benefit to be passed on to recipient by way of reduction in prices which is explained as follows—

X Ltd being an Interior designing service provider while providing output service has availed Input services and material 'M' for which tax paid is as under

Particulars	Service tax regime	GST regime
Tax paid towards service tax on Input services availed	15	15
Tax paid towards VAT for Material 'M'	5	5

Output tax liability of X Ld is ₹25 before deducting Input tax credit available.

In the given case benefit of input tax credit accruing to X Ltd due to implementation of GST is as follows—

Particulars	Service tax regime	GST regime	Remarks
Output tax liability	25	25	
Input allowed - Towards Input services Towards Material 'M'	 15 NIL	 15 5	Service provider cannot avail VAT paid as Input tax credit in Service tax regime
Total Input Tax credit eligible for set off	15	20	
Net tax payable	10	5	
Input tax benefit due to GST	-	5	Benefit of ₹5 to be passed to recipient by way reduction in prices

Anti-Profiteering committee [Section 171(2)]

The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

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 or have held an equivalent post under existing laws.
- The Additional Director General of Safeguards under the CBIC (Board) shall be the Secretary to the Authority.

The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Duties & Powers of Anti-profiteering committee-Section 171(3)

The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

The Authority can 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.

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,—

- reduction in prices;
- 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;
- imposition of penalty; and
- cancellation of registration.

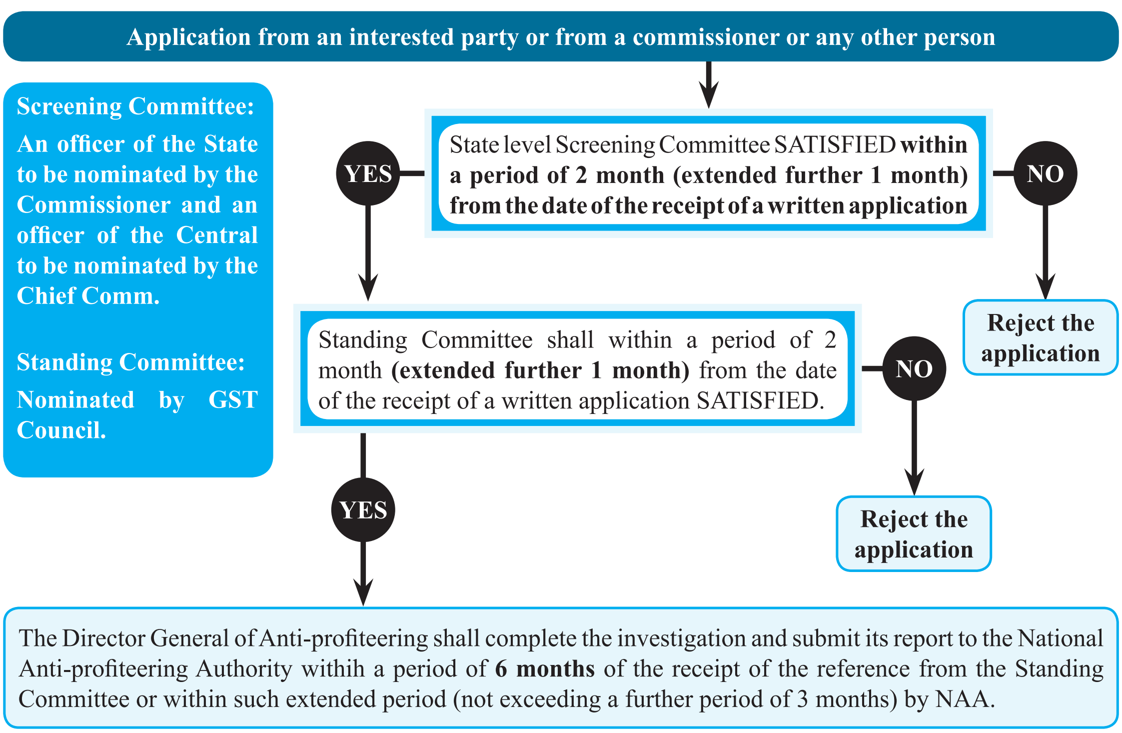
w.e.f. 1-8-2019:

as per section 171(3A) of the CGST Act, 2017 Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to **ten per cent of the amount so profiteered**:

Provided that no penalty shall be leviable if the profiteered amount is deposited **within thirty days of the date of passing of the order by the Authority**.

Explanation: For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.'.

Application& process flow of Anti profiteering hierarchy mechanism:

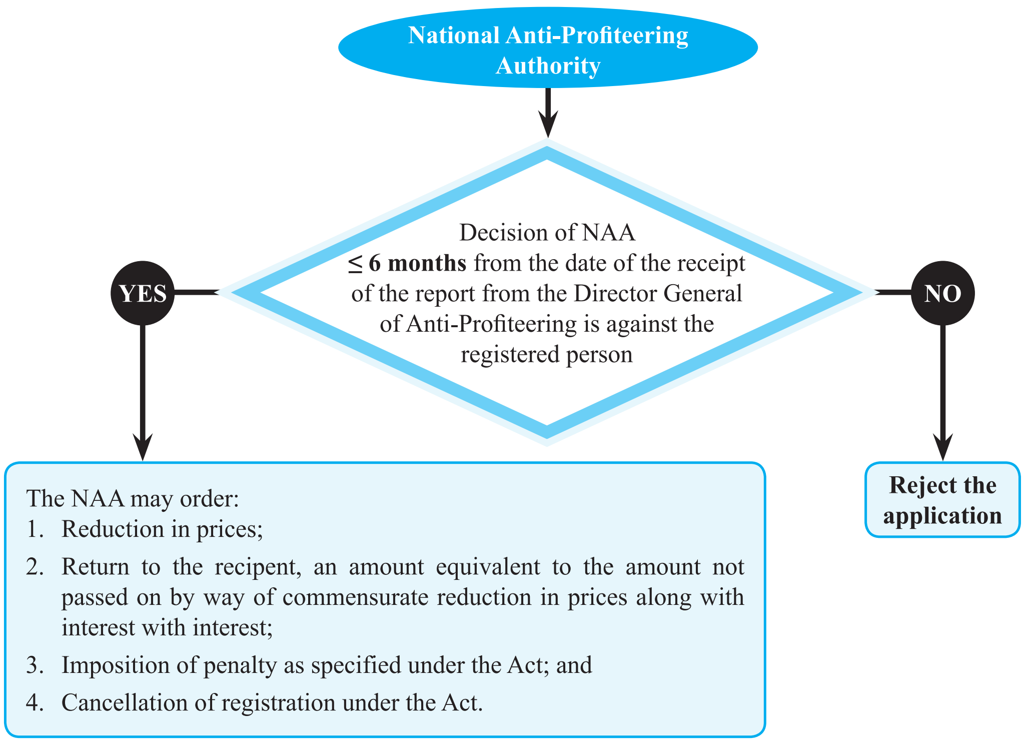


Anti-profiteering measure – Due date of compliance which falls during the period from 20-3-2020 to 29-11-2020 extended upto 30-11-2020:

(vide Notification No. 65/2020-Central Tax, dated 01-09-2020) & (NT No. 91/2020 CT dated 14-12-2020)

"Provided that where, any time limit for completion or compliance of any action, by any authority, has been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020 (further extended to 30th day of March, 2021), and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action, shall be extended up to the 30th day of November, 2020 (further extended to 31st March, 2021."

With insertion of above proviso said Authority get further breather of three months to complete any action or comply with any action as now any such action falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020 (further extended to 30th day of March, 2021), can be completed by the anti profiteering authority by 30-11-2020 (further extended to 31st March, 2021).



Key Rulings

16.2

Amendments have been made in anti-profiteering provisions prescribed under rules 128, 129, 132, 133 & 137 of the CGST Rules as under: Notification No. 31/2019-CT, dated 28.06.2019

Rule 128 provides that on receipt of written application from an interested party or from a Commissioner or from any other person, the Standing Committee have to examine the accuracy and adequacy of the evidence provided in the application within a period of **2 months** from the date of the receipt of application and determine whether there is prima facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

The said period of 2 months can now be extended up to a further period of 1 month for reasons to be recorded in writing as may be allowed by the Authority.

Rule 128 has been amended to provide that all applications from interested parties on issue of local nature **as well as those forwarded by Standing Committee** shall first be examined by the State level Screening Committee and the Screening Committee shall, **within 2 months from the date of receipt of a written application (further extendable up to 1 month)**, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

Earlier, Screening Committee used to examine application on issues of local nature only and there was no time limit for forwarding the application to Standing Committee for further action.

Rule 129 provides that where Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit to the recipient, it shall refer the matter to the Director General of Anti-Profiteering [DGAP] for detailed investigation.

Earlier, DGAP had to complete the investigation within a period of **3 months** of the receipt of the reference from the Standing Committee. Now the said period of **3 months has been extended to 6 months**.

Therefore, now DGAP has to complete the investigation within a period of 6 months of the receipt of the reference from the Standing Committee which is further extendable up to 3 months.

In addition to DGAP and an officer authorized by him in this behalf, **the Authority has also been empowered to summon any person** whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 of the CGST Act and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 [Rule 132].

As per rule 133, the Authority had to determine as to whether the 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 ITC to the recipient by way of commensurate reduction in prices, within **3 months** from the date of receipt of investigation report from DGAP. The said period of **3 months has now been extended to 6 months**.

In terms of rule 133, the **Authority can now seek a clarification from DGAP on the Investigation report** submitted by it during the process of determining as to whether the benefit of reduction in rate of tax or benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices.

The procedure followed in decision making/investigation (Notification No. 31/2019 CT dated 28.06.2019):

As per rule 133, the Authority may, inter-alia, order to deposit an amount equivalent to 50% of the amount not passed on by way of commensurate reduction in prices, in the Consumer Welfare Fund of the Centre and remaining 50% in the Consumer Welfare Fund of the concerned State* where the eligible person does not claim return of the amount or is not identifiable.

The rule has been amended to provide that the **said amount shall now be deposited along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount**.

*Here, the expression "concerned State" means the **State or Union Territory** in respect of which the Authority passes an order.

A new sub-rule (5) has been inserted in rule 133 to provide that where upon receipt of the report of the DGAP, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods and/or services other than those covered in the said report, it may, for reasons to be recorded in writing, within a period of six months, direct the DGAP to cause investigation or inquiry with regard to such other goods and/or services.

Such investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry

As per rule 137, the Authority ceases to exist after the expiry of 2 years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise. Rule 137 has been amended to increase the said period of 2 years to 4 years.

w.e.f. 12-7-2018 the Director General of safeguards replaced as the Director General of Anti-Profiteering.

Note 1:

The Director General of Safeguards 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 Safeguards 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 Safeguards can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Director General of Safeguards, 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 will be deemed to be a judicial proceeding.

The Director General of Safeguards 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 Standing Committee and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

Note 2

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 Safeguards determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices. 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;

(c) imposition of penalty as specified under the Act; and

(d) cancellation of registration under the Act.

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 Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union territory Goods and Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be. The Authority can direct any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Does the Adjudicating Authority include the Anti-profiteering authority?
   (a) Yes
   (b) No
   (c) Sometimes
   (d) upon the direction of the CBIC

2. What action should be taken by an assessee to satisfy with anti-profiteering provision?
   (a) Reduce rate of tax on any supply of goods or services, if such assessee has got the benefit of such reduced rate
   (b) Pass on the benefit of input tax credit, if such assessee has got such input tax credit
   (c) Both (a) and (b)
   (d) none of the above

3. Who constitutes National Anti-profiteering Authority u/s 171(2)?:
   (a) State Government
   (b) Central Government
   (c) Deputy Commissioner of Income Tax
   (d) All of the above

4. The Authority shall consist of-
   (a) 1 Chairman & 1 Technical member
   (b) 1 Chairman & 2 Technical members
   (c) 1 Chairman & 3 Technical members
   (d) 1 Chairman & 4 Technical members

5. The chairman must be a person who holds or has held a post equivalent in rank to:
   (a) A Central Tax Officer
   (b) A Secretary to the Government of India
   (c) A State Tax Officer
   (d) An Income Tax Officer

6. Technical Member must be a person who is or has been for at least 1 year:
   (a) Commissioner of State tax
   (b) Commissioner of Central tax
   (c) (a) or (b)
   (d) (a) and (b) both

7. It is the responsibility of the authority to examine whether—
   (a) ITC availed by a taxable person or the reduction in price on account of reduction in tax rate have

resulted in commensurate reduction in price of goods/services;

(b) ITC availed by a taxable person or the reduction in price on account of reduction in tax rate has actually resulted in an increase in price of goods/services.

(c) Payment of tax on profit is made by the registered persons on time.

(d) (a) and (b) both

8. Who constitutes a Standing Committee?

(a) Central Government

(b) State Government

(c) GST Council

(d) Any of the above

9. A person shall not be selected as the Chairman/Technical member, if he has attained the age of ....

(a) 60 years

(b) 61 years

(c) 62 years

(d) 65 years

10. If the Show Cause Notice mentions the tax as ₹1,11,156.30 and penalty as ₹572.6, then what is the amount payable as per section 170 of the CGST Act?

(a) ₹1,1800

(b) ₹1,11,156.30 + 572.6 = 111728.9

(c) ₹1,1700

(d) ₹1,11,729

11. What does the Anti-Profiteering Measure provision seek to do?

(a) Anti-Profiteering measure seeks to pass on:

1. Reduction in rate of tax on any supply of goods or service

2. Benefit of input tax credit received by supplier to the recipient by way of commensurate reduction in prices of goods or services.

(b) Anti-Profiteering measure seeks to pass on:

1. Reduction in rate of tax on any supply of goods or service

2. Profit received by supplier to the recipient by way of commensurate reduction in prices of goods or services.

(c) Anti-Profiteering measure seeks to pass on:

1. Benefit of Depreciation under section 32 of the Income Tax Act, 1961

2. Benefit of input tax credit received by supplier to the recipient by way of commensurate reduction in prices of goods or services.

(d) Anti-Profiteering measure not seeks to pass on:

1. Reduction in rate of tax on any supply of goods or service

2. Benefit of input tax credit received by supplier to the recipient by way of commensurate reduction in prices of goods or services.

12. What action should be taken by an assessee to satisfy with anti-profiteering provision?
    (a) Reduce rate of tax on any supply of goods or service, if such assessee has got the benefit of such reduced rate
    (b) Pass on the benefit of input tax credit, if such assessee has got such input tax credit
    (c) Both (a) and (b)
    (d) none of the above

Answer:

1.	**2.**	**3.**	**4.**	**5.**	**6.**	**7.**	**8.**	**9.**	**10.**	**11.**	**12.**
b	**c**	**b**	**d**	**b**	**c**	**a**	**c**	**c**	**d**	**a**	**c**

Walkthrough of GSTN Portal 17

This Module Includes

Walkthrough of GSTN Portal

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Identify vision, mission, and guiding principles of GSTN Portal.
- Explain services provided in the GSTN Portal.
- Understand Pre-login and post login details in GSTN Portal.

Introduction

17.1

Goods and Services Tax Network (GSTN) Portal is an Indian government's official website hosted at **https://www.gst.gov.in/**. Once we register and complete the login process, we can access consent GST details. Using this portal, users can register their taxes, file returns, payments, and apply for a refund etc. The user can also cancel the registration and access various GST-related analyses. Taxpayers can clarify their doubts on GST using this portal. They also receive important announcements of Government notices. This portal allows the users to respond to such intimations. This portal helps taxpayers to file taxes on their own.

The GSTN portal acts as a common interface for the taxpayers, center and state governments. Unlike the previous indirect tax regime, taxpayers will no longer have to visit the tax departments in person for filing tax returns and submit other applications. Be it approving, rejecting, or responding to applications, all types of communications can be carried out on the GST portal (i.e. online).

The GSTN Portal has been designed for lodging complaints by taxpayers and other stakeholders. They can lodge Complaint here indicating issues or problems faced by them while working on GST portal instead of sending emails to the Helpdesk. It has been designed in a manner that the user can explain issues faced and upload screenshots of pages where they faced the problem, for quick redressal of grievances.

Provisions Relating to GSTN

17.2

Vision of GSTN:

To become a trusted National Information Utility (NIU) which provides reliable, efficient and robust IT Backbone for the smooth functioning of the GST regime in India as "One Nation, One Tax" enabling economic agents to leverage the entire nation as "One Market" with minimal Indirect Tax compliance cost.

Mission of GSTN:

- Provide common and shared IT infrastructure and services to the Central and State Governments, Tax Payers and other stakeholders for implementation of the Goods & Services Tax (GST).
- Provide common Registration, Return and Payment services to the Tax payers.
- Partner with other agencies for creating an efficient and user-friendly GST Eco-system.
- Encourage and collaborate with GST Suvidha Providers (GSPs) to roll out GST Applications for providing simplified services to the stakeholders.
- Carry out research, study best practices and provide Training and Consultancy to the Tax authorities and other stakeholders.
- Provide efficient Backend Services to the Tax Departments of the Central and State Governments on request.
- Develop Tax Payer Profiling Utility (TPU) for Central and State Tax Administration.
- Assist Tax authorities in improving Tax compliance and transparency of Tax Administration system.
- Deliver any other services of relevance to the Central and State Governments and other stakeholders on request.

Guiding Principles of GSTN:

- Inclusiveness
- Efficiency
- Transparency
- Commitment
- Collaboration
- Excellence
- Innovation
- Accountability

GSTN Portal has the following advantages:

1. Enable the user to lodge his complaint and raise tickets himself.
2. To provide all required information and reducing to and fro communication between helpdesk and the taxpayers, helping to reach a faster resolution.
3. Enable the taxpayer to check the progress of resolution of his complaint by using the ticket number (acknowledgement number generated after a complaint is lodged).
4. Check the resolution comments in case the complaint/ticket is closed.
5. Based on selection of category/subject and sub-category, portal provides relevant FAQ/pages of User manual to help the user resolve the problem faced by him.

Services Provided in the GSTN Portal:

Sl. No.	Services on the GST Portal
1	Accessing various Transition Forms
2	Application for registration for normal taxpayer, casual dealer, ISD
3	Facility of filing GST Returns
4	Online GST Payments
5	Claiming return for the excess GST paid
6	Application for GST practitioner
7	Availing Composition Scheme
8	Opting out of Composition Scheme
9	Intimation of stock for Composition Dealers
10	Filing Table 6A of GSTR-1 for Export Refund
11	Furnishing Letter of Undertaking (LUT)
12	Viewing E-Ledgers

Registration on GST Portal:

STEP 1

- https://www.gst.gov.in/
- Click on Register now.
- Select 'New Registration'. Provide the relevant details and upload the necessary documents.

STEP 2

Once you provide all the details, you will receive One-Time Password (OTP). Enter the OTP, enter the characters given in the image into the box, and then click on proceed.

STEP 3

After submission of application forms, you will receive an acknowledgment number. The application process ends when you receive a GST number, User ID and password. You can use this detail to log in to the GST gov portal.

Cancellation of GST registration in GSTN Portal

STEP 1

- https://www.gst.gov.in/
- Click on 'Login' and then enter your User ID and Password to login.
- Click on 'Services'. Then click 'Registration' and then click on 'Application for cancellation of Registration'.

STEP 2

- Select the reason why you want to cancel your GST registration and then click on 'Save and Proceed'.
- Check the verification statement and provide the relevant details as required. Verify the details using your Digital Signature Certificate (DSC), or the EVC option.

STEP 3

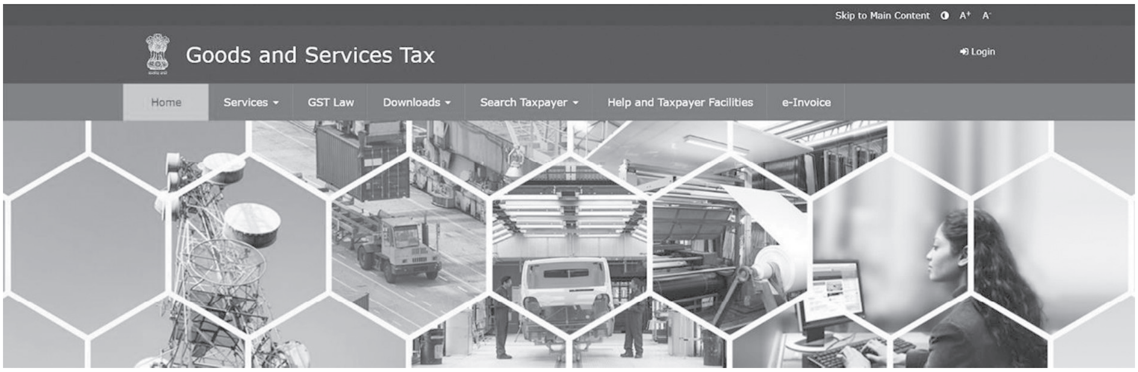
- Once you submit the form, you will receive the generated ARN number. You can use it for future reference.

Pre-Login Details in GSTN Portal Home Page

17.3

The home page of the GST online login Portal contains the following sections:

Home, Services, GST Law, Downloads, Search Taxpayer, Help and Taxpayer Facilities and e-invoice



Services:

The 'Services' section contains the following tabs:

(a) Registration

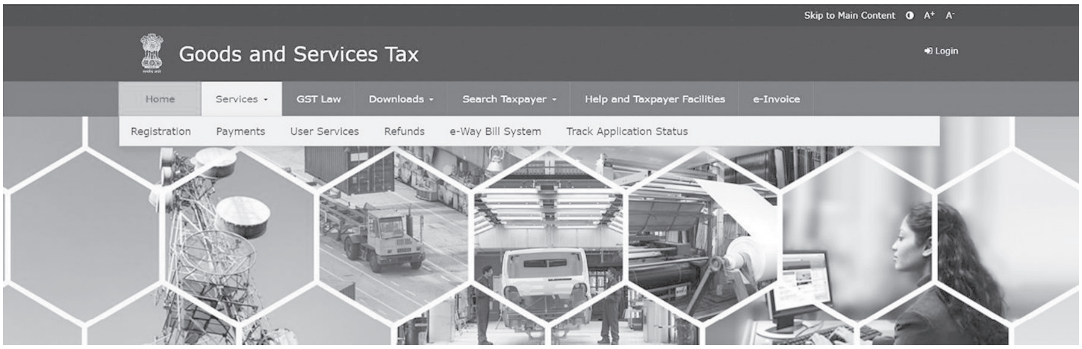
(b) Payments

(c) User Services

(d) Refunds

(e) e-way bill system

(f) Track Application Status.



(a) Registration

A taxpayer can apply afresh through the 'New Registration' link provided on this page. The taxpayer can track the status of GST Registration. One can also submit an application seeking clarification. Get clarity on GST filing-related issues through the sub-menus given on the page.

The 'Track Application Status' link will redirect the user to a new page. One can check the GST Registration application with the help of the ARN number.

(b) Payments

Click 'Payments' sub-menu. The taxpayer can access 'Challan Creation' and 'Track Payment Status'. It will help him/her to create challan and track the status of payment as a part of the online GST payment system.

(c) User Services

The 'User Services' sub-menu shows several links. The taxpayer can view office addresses, generate user ID for advance ruling. One can also view holiday list, file grievances/complaints, locate GST Practitioner, etc. Click 'Contact' and 'Search Office Addresses' tabs. Search and find the contact details of various central/state level tax officials. One can also find addresses of local GST offices.

(d) Refunds

The 'Track Application Status' redirects the taxpayer to the page. Here one can also track the status of the refund application, if the filing already exists.

(e) E-Way Bill System

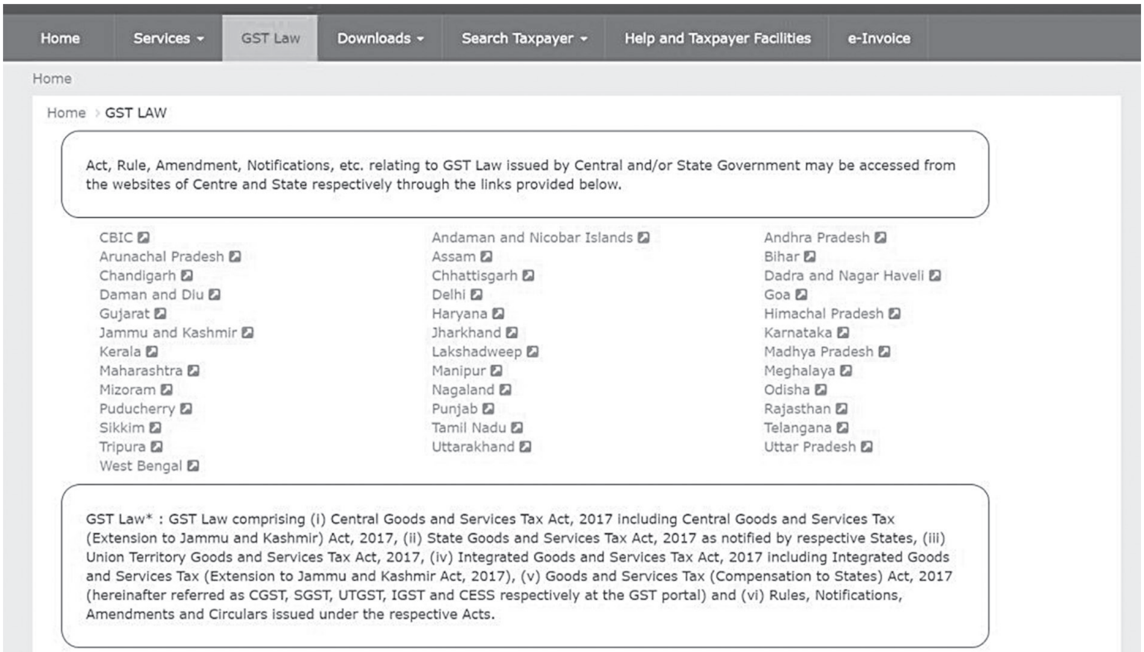
The 'E-way Bill System' section helps the taxpayer to navigate through the e-way bill portal. The user can also access the user manual and FAQs on the e-way bill portal.

(f) Track application Status:

After login the GSTN portal go to 'Services' and select 'Registration' then click on 'Track Application Status'. Select 'ARN' and enter the ARN number and click on 'Search'. Follow the instructions to view the status of your registration application.

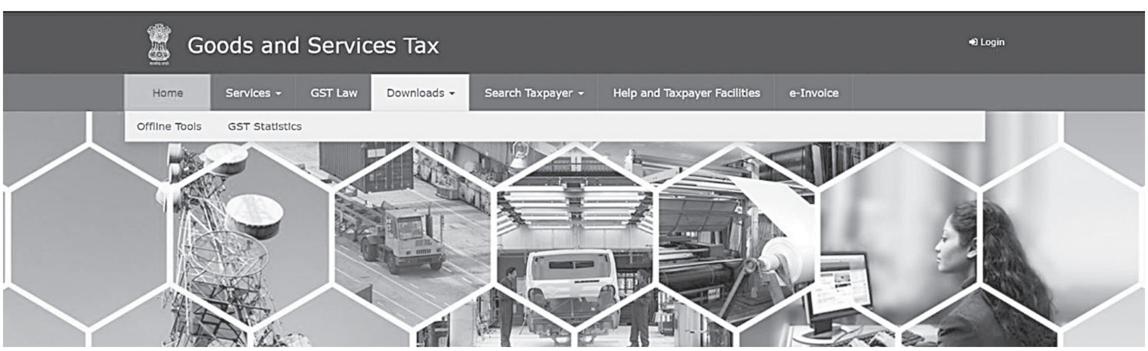
GST Law

Under the 'GST Law'' tab, the Acts and Rules associated with GST are available for download. The taxpayers can access the recent circulars, amendments, and notifications. Get access to anything related to GST under this section on the GST portal.



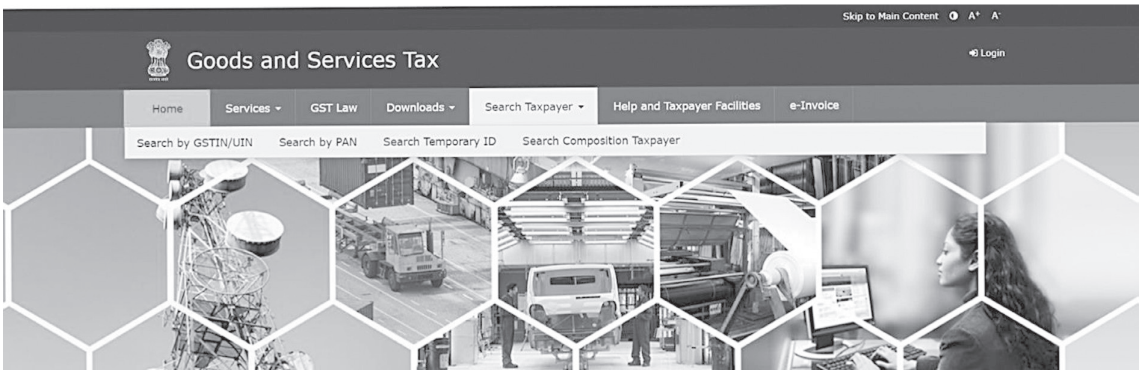
Download

This section is available on the homepage. It helps the taxpayer to file the GST Returns offline. The required forms for registration are available here. The user can download the 'Returns offline' tools and various other offline tools.



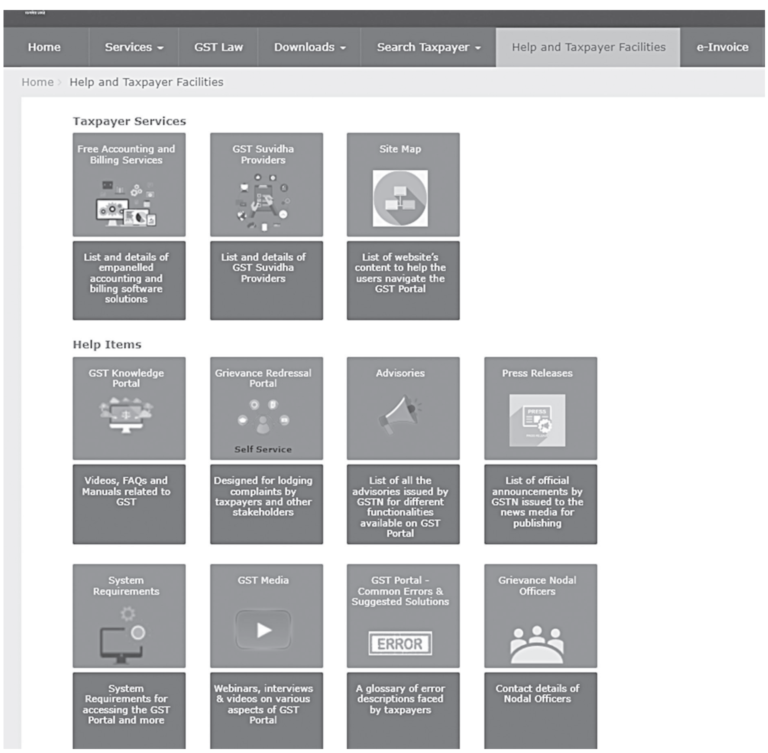
Search Taxpayer

Under this tab, one can search for taxpayer's GSTIN or PAN to verify the details of the taxpayer. One can search for a composition taxpayer who has Opted In or Opted out of the scheme. One can access this feature before and after logging into the portal.



Help and Taxpayer facilities:

The 'Help' section guides the taxpayers through the GST return filing process. It contains several user manuals, how-to guides, FAQs, videos, and system requirements. In case of any doubts on GST registration or GST return filing process, the taxpayers can refer it.



e-invoice:

Under this tab one can find all details and information on e-invoicing, please visit the URL: **https://einvoice1.gst.gov.in**.

Apart from the above GSTN allows the user to see all the important dates related to GST returns deadlines for the year. One can view the upcoming monthly and quarterly GST return filing due dates. Moreover, if there are any changes in the notified dates, the taxpayer can refer to the updates. Under this section, the taxpayer receives regular updates on GST. It includes changes in due dates or change in GST processes, etc.

Post-Login Details in GSTN Portal

17.4

Dashboard

After the login process, the taxpayer will get access to certain new services on the home page.

The 'Dashboard' section appears immediately after a taxpayer logs in to the portal. The user can check all notices and orders, edit the profile, file GST returns on this page. Under this section, the tax challan preparation occurs.

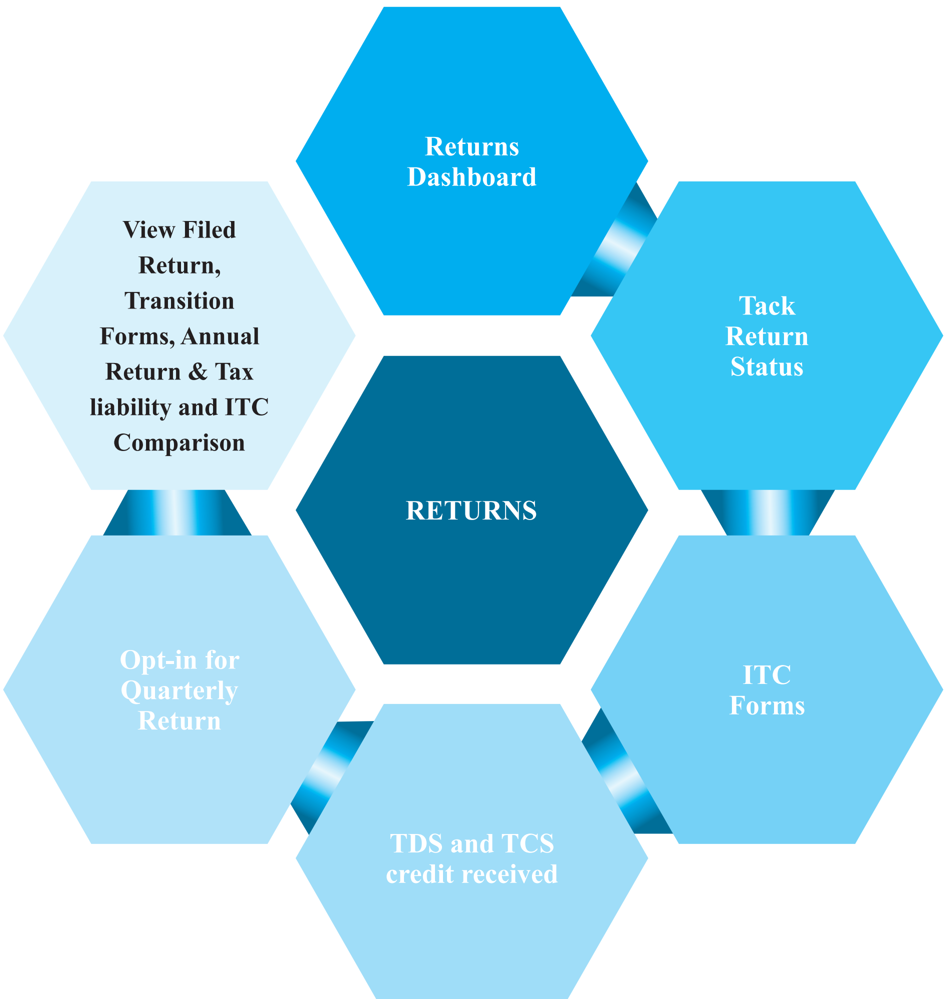
Under **Services** Tab one can view the following:

REGISTRATION

- **New Registration**
- **Amendment of registration core fileds**
- **Application to opt for composition scheme**
- **Track application status**
- **Application for filing clarifications**
- **Amendment of registration non-core fileds**
- **Application for withdrawal of composition levy**
- **Application for cancelation of registration**

Ledgers: The ‘ledgers’ section consists of following:

Returns: The ‘returns’ section consists of following different options



Payments: The 'Payments' section consists of follwoing different options

- Create Challan
- Challan History
- Instalment Calender
- Saved Challans
- Application for Deferred Payment / Payment in Instalments
- Grievance against Payment (GST PMT-07)

User Services: The 'user services' section consists of following different options

USER SERVICES

- My saved applications
- View / Download certificates
- View my submissions
- Holiday List
- Furnish letter of undertaking (LUT)
- Locate GST Practitioner (GSTP)
- ITC-02 Pending for action
- Cause List
- My Master
- Search Advance Ruling
- My applications
- View notices and orders
- Search HSN Code
- Feedback
- View my submitted LUTs.
- Engage / disengage GST Practitioner (GSTP)
- View additional notices / orders
- Communication between taxpayers
- Search Bill of Entry (BoE)

Refunds: The 'Refunds' section consists of following different options:

- **Application for Refund**
- **My saved / filed applications**
- **Track status of invoice data to be shared with ICEGATE**
- **Refund pre-application form**
- **Track application status**
- **Intimation on account of refund not received**

e-Way Bill System: The 'e-way bill system' section consists of following different information:

- **Movement of goods under GST**
- **CGST Rules Chapter XVI Rule 138 & Annexure of exempted goods**
- **e-Way Bill Portal FAQ's**
- **e-Way Bill Portal user manual**

SECTION- B

CUSTOMS ACT AND RULES

Valuation and Related Party Transactions

18

This Module Includes

Valuation and Related Party Transactions

SLOB Mapped against the Module

1. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules.
2. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand valuation of imported and exported goods.
- Explain related party transactions
- Apply practically how to arrive value for imported and exported goods
- Understand valuation in case of related party transactions

Introduction

18

Once the duty liability arises, such duty can be calculated only on the assessable value. As per section 2(41) of the Customs Act, 1962 the term value means in relation to any goods as the value thereof determined in accordance with the provisions of sections 14(1) and sections 14(2) of the Customs Act, 1962. There are basically specific duties based on the quantity of the goods like ₹5,000 per Kg of Steel or Ad valorem rate of duty expressed as percentage of the value of the goods say 20% ad valorem. However, Government of India will lose its revenue if it follows specific rate of duty due to continuous upward trend in the price of goods.

As per the World Trade Organization (WTO), Transaction Value (i.e. ad valorem) is the base and our Customs Valuation Rules were prepared based on these lines. The Central Board of Indirect Taxes and Customs (CBI&C) empowers to fix tariff values of imported goods or export goods by issuing notifications under section 14(2).

Valuation of Imported and Exported Goods

18.1

Transaction Value

As per section 14(1) of the Customs Act, 1962 valuation based on transaction value is applicable for export as well as imported goods

Transaction Value means:

- Price at which such or like goods are ordinarily sold or offered for sale
- For delivery at the time and place of importation
- In the course of international Trade
- When Seller and buyer have no interest in the business of each other and
- Price is the sole consideration for sale
- At rate of exchange as on the date of presentation of Bill of Entry as fixed by the CBIC.

The conditions laid down above are common to imports as well as exports. Export goods are to be valued as per section 14(1) of the Customs Act, 1962. If any one of the above conditions are not satisfied valuation for export goods should be done based on the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

However, in case of imported goods, assessable value is to be determined in accordance with the Customs (Determination of Price of Imported Goods) Rules, 2007. Basically, there is no conflict between section and rules because main focus is on transaction value which is arrived at based on the valuation rules either in case of export or import.

Valuation for Export Goods

Valuation is essential for export goods even though many products are exempted from export duty under the Customs Law.

Importance of valuation of export goods:

- Duty Drawback
- Export incentives like DEPB License
- Refund of CENVAT credit, if any.
- Payment of duty on export, if any.

The Customs Valuation (Determination of Value of Export Goods) Rules, 2007 is applicable only if the aforesaid conditions are not satisfied:

Rule 1:

(i) These rules may be called the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

(ii) They shall come into force on the 10th day of October 2007.

(iii) They shall apply to export goods.

Rule 2: Definitions

Some important definitions are:

(a) "goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and

(b) "transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962.

Rule 3: Determination of the method of valuation

1. Subject to rule 8, the value of export goods shall be the transaction value.
2. The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
3. If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

Rule 4: Determination of export value by comparison

(1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

(2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including—

- difference in the dates of exportation,
- difference in commercial levels and quantity levels,
- difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
- difference in domestic freight and insurance charges depending on the place of exportation

Rule 5: Computed value method

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:—

- cost of production, manufacture or processing of export goods;
- charges, if any, for the design or brand;
- An amount towards profit.

Rule 6: Residual method

Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

Rule 7: Declaration by the exporter

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

Rule 8: Rejection of declared value

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response from such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

(2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the exported goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Presently the following goods are subject to export duty:

Commodity	**Rate of Duty**
Luggage leather	25%
Hides, Skins and leather	15%
Snake skins and lamb skins	10%
Steel product [w.e.f. 10-5-2008]	15%
Iron ores	₹300 per metric tonne
Chromium ores	₹2,000 per metric tonne

Refund of Export duty:

Refund of export duty is permissible in the following circumstances subject to satisfaction of certain conditions

- Goods are reimported within one year from the date of export
- These goods are not for resale
- Refund claim is lodged within six months from the date of clearance by Customs Officer for re-importation

Illustration 1

M/s SP Ltd. has exported some goods to Mexico by air. The FOB price of goods exported is US$1,00,000. Compute the value of exported goods and export duty payable by M/s SP Ltd with help of following details provided:

Particulars	Date	Basic Customs Duty	Exchange rate declared by the CBIC	Exchange rate declared by RBI
Presentation of Shipping Bill	17-06-20XX	12%	1 USD = ₹ 75	1 USD = ₹ 74
Let export order	19-06-20XX	10%	I USD = ₹ 74	1 USD = ₹ 73

Solution:

Working notes:

(1) The transaction value, i.e. FOB price of export goods, is considered as assessable value in terms of section 14(1) of the Customs Act, 1962.

(2) As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by CBIC on date of presentation of shipping bill of export.

(3) The rate of duty prevalent on the date of let export order is considered for computing export duty in terms of section 16(1)(a) of the Customs Act, 1962.

(4) In case of export duty is imposed by the Government, exporter is liable to pay only BCD. Other duties and cesses are not applicable.

Therefore, Assessable value (i.e. FOB value) is ₹ 75,00,000 (i.e USD 1,00,000 × ₹75).

Export duty (only BCD) @10% is ₹7,50,000/-

Valuation of Imported Goods

The Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2017 [Notification No. 91/2017-CUSTOMS (N.T.), dated 26th September, 2017]

Rule 1: Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Rule 2: Various terms defined like Relative, Transaction Value, Computed Value, Deductive Value, Similar Goods, and Identical Goods etc.,

Rule 2(1) In these rules, unless the context otherwise requires, -

Rule 2(1)(a) "computed value" means the value of imported goods determined in accordance with rule 8.

Rule 2(1) (b) "deductive value" means the value determined in accordance with rule 7.

Rule 2(1)(c) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods;

Rule 2(d) "identical goods" means imported goods -

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Rule 2(1)(da) "**place of importation**" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse;"

Rule 2(1)(e) "produced" includes grown, manufactured and mined

Rule 2(1)(f) "similar goods" means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Rule 2(1)(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;

Rule 2(2): For the purpose of these rules, persons shall be deemed to be "**related**" only if -

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

(ii) they are legally recognised partners in business;

(iii) they are employer and employee;

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

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

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

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

(viii) they are members of the same family.

Explanation I: The term «person» also includes legal persons.

Explanation II: 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 for the purpose of these rules, if they fall within the criteria of this sub-rule.

Illustration 2

M/s. XYZ Ltd. (assessee) imported certain goods at US $ 20 per unit from an exporter who was holding 30%

equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US $ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction values taking that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e. at US $ 20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, viz., transaction value of identical goods. State briefly, whether the Department's action is sustainable in law, with reference to decided cases, if any.

Solution:

Persons shall be deemed to be "related" if one of them directly or indirectly controls the other. The word "control" has not been defined under the said rules. As per the common parlance, the control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, Exporter Company did not exercise a control over the assessee. So, the two parties cannot be said to be related.

The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under-valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable. Therefore, the Departmental action is not sustainable in law.

Rule 3: Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

Transaction Value of import goods under section 14(1) of the Customs Act and Rule 3(1) of the Imported Goods Rules:

This method is applicable only when importer satisfies the following conditions:

- There are no restrictions as to the disposition or use of the goods by the buyer,
- The sale or price is not subject to some conditions or considerations for which a value cannot be determined in respect of the goods being valued,
- No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules, and
- The buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of rule 3(3).

Case 1:

Commissioner of Cus., Vishakhapatnam v Aggarwal Industries Ltd. 2011 ELT 641 (SC):

Statement of Facts: The importer entered into contract for supply of crude sunflower seed oil U.S. $ 435 C.l.F./ Metric ton. Under the contract, the consignment was to be shipped in the month of July 2011. The period was extended by mutual agreement and goods were shipped on 5th August 2011 at old agreed prices.

In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August 2011 were at higher prices.

Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports.

Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.

Decision: No. Department view is not correct. It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion.

Thus, the appeal was allowed in the favour of the respondent- assessee.

Assessable Value of Imported Goods = (Free on Board (FOB) + Insurance + Freight)

Statement Showing Computation of Assessable value for Imported Goods

	Value of Material (at ex-factory price)	=	xxxx
	Carriage/freight/insurance upto the port (sea/air) of shipment in the exporter's country	=	xxxx
	Charges for loading on to the ship at the shipping port in the exporter's country	=	xxxx
	Free on Board (FOB)	=	xxxx
FOB		=	xxxx
Add:	If not included in the above [Rule 10(1)]		
	Commission and brokerage (except buying commissions)	=	xxxx
	Packing cost (except cost of durable and returnable packing)	=	xxxx
	Cost of engineering, development and plan or sketches	=	xxxx
	(Undertaken outside India)		
	Royalties and license fee	=	xxxx
	Value of subsequent re-sale if payable to foreign supplier	=	xxxx
	Value of material supplied by the buyer free of cost	=	xxxx
	FOB value as per the Customs	=	xxxx
	Cost of freight if not specified @ 20% of FOB value as per Customs [Rule 10(2)]	=	xxxx
	Ship demurrage charges on chartered vessels, lighterage or barge charges [Rule 10(2)]	=	xxxx
	Insurance if not specified @1.125% of FOB value as per Customs [Rule 10(2)]	=	xxxx
	Cost, Insurance and Freight (CIF) [i.e. ASSESSABLE VALUE]	=	xxxx

Note:

1. The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.
2. Any expenditure like right to reproduce the imported goods in India shall not be added. However, if importer imports software and pays license fee with permission to use its copies at various branches, making additional copies for its own use at various branches does not amount to reproduction. Right to use countrywide is not right to reproduce. Therefore, the whole license fee is includible in assessable value [State Bank of India v Commissioner of Customs (2000) (SC)].
3. Cost of actual air freight exceeds @ 20% of FOB, only @ 20% of FOB price will be added for Customs

Valuation. However, cost of transport within India is not to be included in the Assessable Value of imported goods.

4. Apportioning cost of tools are not consumed immediately by the importer, in such a case he may request Customs Officer to apportion full cost of tooling on first consignment itself.

   Example 1:

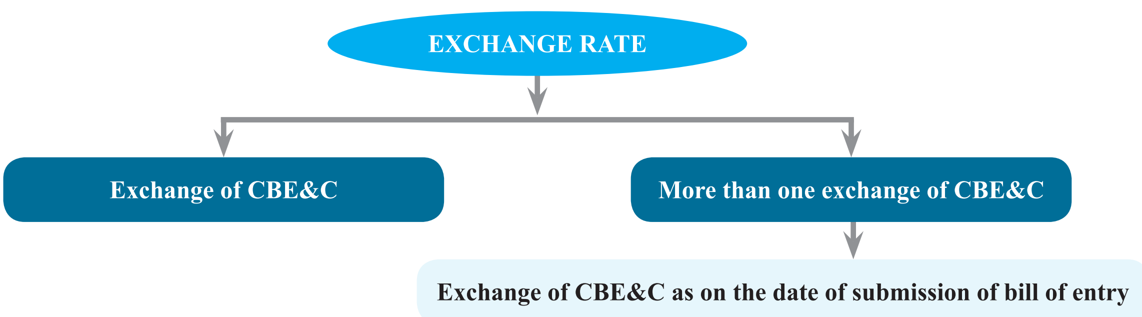
   Cost of tooling is ₹2,00,000 and the tool expected to produce 20,000 pieces. If the importer imports 2,000 pieces in the first lot, 10% of cost of such tooling i.e. ₹20,000 may be apportioned to the 2,000 pieces and ₹20,000 may be added to transaction value for ascertaining assessable value.

5. The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighterage or barge charges. Sometimes the ship is not brought upto jetty because deep draught at port or ports are very busy or Odd dimensional or heavy lifts or hazardous cargo discharged at anchorage. Hence, charges for bringing goods from outer anchorage to the jetty are called as barging/lighterage charges.

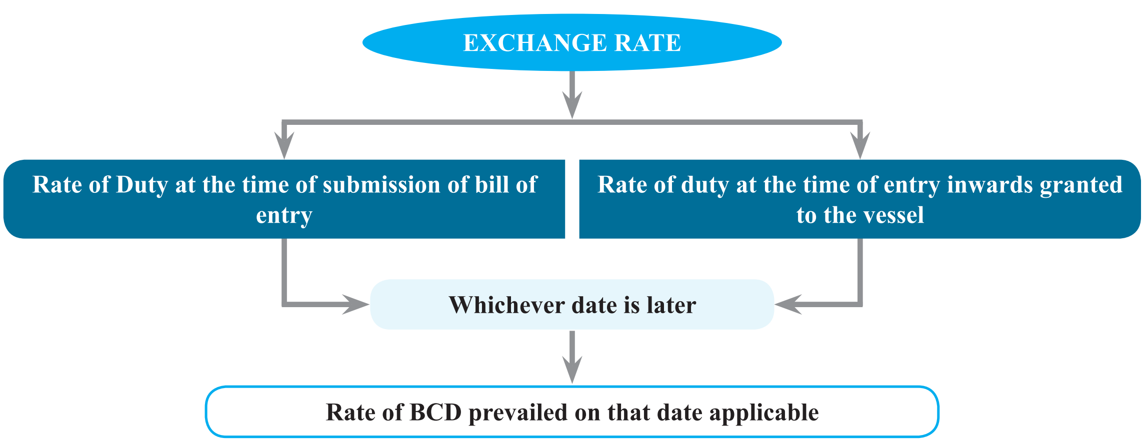
6. However, demurrage charges payable to port trust authorities for delay in clearing goods are not to be added in the transaction value.

7. **Free on Board (FOB):** FOB means 'Term of sale' under which the price invoiced or quoted by a seller includes all charges up to placing the goodson board a ship at the port of departure specified by the buyer.

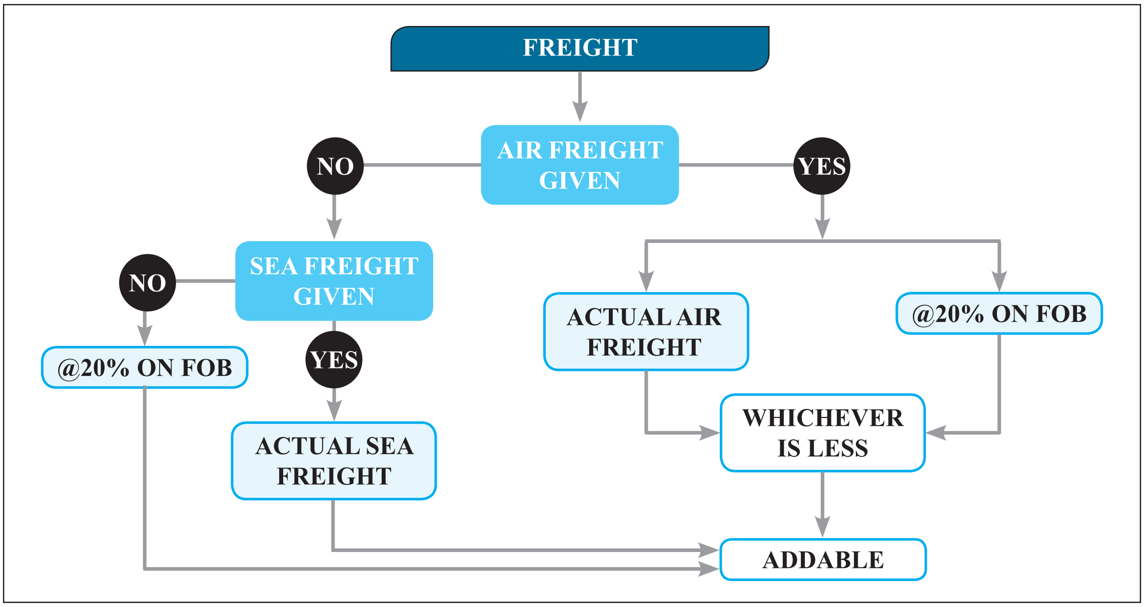
8. **Exchange Rate:** we should consider the exchange rate of CBE&C for finding assessable value in Indian Rupees.



9. Rate of determination of Basic Customs Duty:



10. Freight from the exporter country to importer port or airport addable into assessable value.

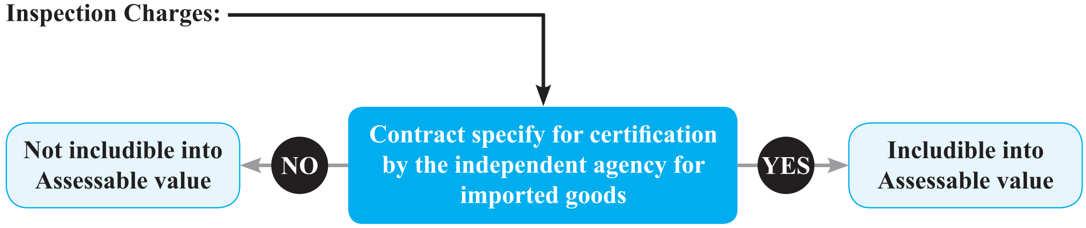


11. **Service charges paid to canalizing agent:** It is includible in the assessable value of imported goods.

    Canalizing agent: Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other.

    The importer may either place the order directly or through the agent. In case of canalized items, he obtains the imports through the canalizing agency. Canalisation means channelization of goods through a government agency like Metals and Minerals Trading Corporation of India (MMTC). The importer cannot directly import such canalized items. They have to place an order with the canalizing agency who shall import and supply the same.

12. **Inspection Charges:**



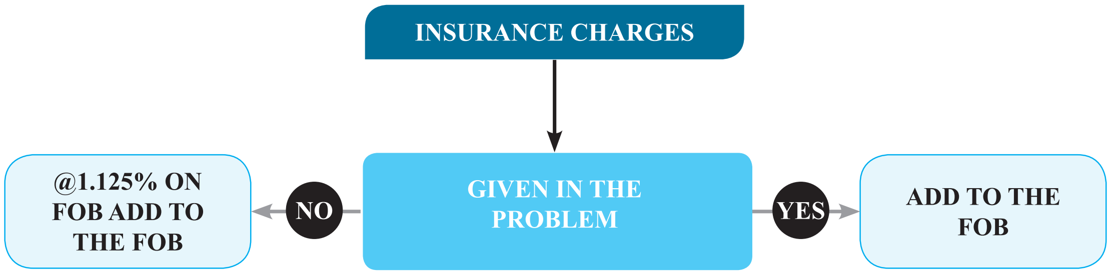
Case 2:

Commissioner of Central Excise, Mangalore v Mangalore Refinery & Petrochemicals Ltd. (2016) 66 taxmann.com 108 (SC)

Revenue contended that demurrage charges paid by the assessee are includible in the assessable value for the levy of custom duty.

Decision: Demurrage charges are incurred after the goods reached at Indian Ports, thus it is a post-importation event; relying on the case of Commissioner of Customs v Essar Steel Ltd. (2015) 51 GST 181/58 taxmann.com 191, the Apex Court has held that Demurrage charges are not includible in assessable value of imported goods.

13. Insurance charges



Demurrage charges:

Case 3:

Commissioner of Central Excise, Mangalore v Mangalore Refinery & Petrochemicals Ltd. (2016) 66 taxmann.com 108 (SC)

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Decision: Demurrage charges are incurred after the goods reached at Indian Ports, thus it is a post-importation event; relying on the case of Commissioner of Customs v Essar Steel Ltd. (2015) 51 GST 181/58 taxmann.com 191, the Apex Court has held that Demurrage charges are not includible in assessable value of imported goods.

Illustration 3

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962.

		US $
(i)	Cost of the machine at the factory of the exporting country	10,000
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment.	500
(iii)	Handling charges paid for loading the machine in the ship	50
(iv)	Buying commission paid by the importer	50
(v)	Freight charges from exporting country to India	1,000
(vi)	Exchange Rate to be considered 1$ = ₹ 75	

Solution:

Statement showing assessable value for imported goods:

Sl. No.	Particulars	Value US $	Workings
(i)	Cost of the machine at the factory of the exporting country	10,000	

Sl. No.	Particulars	Value US $	Workings
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment	500	
(iii)	Handling charges paid for loading the machine in the ship	50	
	FOB Value of Exporter	**10,550**	
(iv)	Buying commission paid by the importer	-	Not addable into the assessable value
(v)	Cost of insurance	118.6875	@1.125% on FOB value
(vi)	Freight charges from exporting country to India	1,000	
(vi)	CIF Value	11,668.6875	
(viii)	Assessable value (in INR)	₹8,75,152	₹75 × US $ 11,668.6875

Illustration 4

ABC Technologies Ltd., has imported certain equipment from Japan at an FOB cost of 2,00,000 Yen (Japanese). The other expenses incurred by M/s. ABC Technologies in this connection are as follows:

(i) Freight from Japan to India Port 20,000 Yen

(ii) Insurance paid to Insurer in India ₹10,000

(iii) Designing charges paid to Consultancy firm in Japan 30,000 Yen

(iv) M/s. ABC Technologies had expended ₹1,00,000 in India for certain development activities with respect to the imported equipment

(v) ABC Technologies had incurred road transport cost from Mumbai port to their factory in Karnataka ₹30,000

(vi) The Central Board of Indirect Taxes and Customs had notified for purpose of section 14(3)* of the Customs Act, 1962 exchange rate of 1 Yen = ₹0.3948. The interbank rate was 1 Yen = ₹0.40

(viii) M/s ABC Technologies had effected payment to the Bank based on exchange rate 1 Yen = ₹0.4150

(viii) The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rupees Arrive at the assessable value for purposes of customs duty under the Customs Act, 1962 providing brief notes wherever required with appropriate assumptions.

Solution:

Statement showing computation of Assessable Value for the imported goods

Particulars	Amount in Yen	Remarks	Working note
Free on Board (FOB)	2,00,000		
Designing charges	30,000	Addable into the assessable value	

Particulars	Amount in Yen	Remarks	Working note
Development charges	—	Not addable into the assess-able value, because these are post shipment expenses	
Road transport charges	—	Not addable into the assess-able value, because these are post shipment expenses	
Commission	10,000	Addable into the assessable value	2,00,000 × 5% = 10,000
FOB value of the Customs	2,40,000		
	Amount in (₹)		
Total	94,752	Exchange rate of the Central Board of Indirect Taxes and Customs (CBI&C) is relevant	2,40,000 Yen × 0.3948
Insurance	10,000	Addable into the assessable value	
Freight	7,896	Addable into the assessable value	20,000 × 0.3948
Assessable Value (i.e. C I F value)	1,12,648		

Illustration 5

BSA & Company Ltd have imported a machine from U.K. From the following particulars furnished by them, arrive at the assessable value for the purpose of customs duty payable:

(i)	F.O.B. cost of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. Cost
(v)	Materials and components supplied by the buyer free of cost valued	₹20,000
(vi)	Insurance paid to the insurer in India	₹6,000
(vii)	Buying commission paid by the buyer to his agent in U.K. 100 U.K. Pounds	

Other Particulars:

(i) Inter-bank exchange rate as arrived by the authorized dealer: ₹72.50 per U.K. Pound.

(ii) CBIC had notified for purpose of Section 14 of the Customs Act, 1962, exchange rate of ₹70.25 per U.K. Pound.

(iii) Importer paid ₹5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)

Solution:

		UK Ponds
FOB value	=	10,000
Add: Engineering and Design charges (paid in UK)	=	500
Add: License fee (20% on 10,000 UKP)	=	2,000
Sub-total	=	12,500
		Value in (₹)
Sub-total (12,500 UKP × ₹70.25)	=	8,78,125
Add: Material supplied by the buyer freely	=	20,000
FOB value as per customs	=	8,98,125
Add: Air freight (8,98,125 × 20%)	=	1,79,625
Or 3,000 USD × ₹70.25 = ₹2,10,750 whichever is less		
Add: Insurance	=	6,000
Assessable value (i.e. CIF value)	=	10,83,750

Rule 4: Transaction value of Identical Goods

Identical goods means that the goods must be same in all respects, including physical quantity

This method is applicable only when following conditions are satisfied:

- Identical goods can be compared with the other goods of the same country from which import takes place.
- These goods must be valued at a price which is produced by the same manufacturer.
- If price is not available, then the price of other manufacturers of the same country is to be taken into account.
- If more than one value of identical goods is available, lowest of such value should be taken.

A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities.

Example 2

A consignment of 800 metric tonnes of edible oil of Gulf origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of import of this gift consignment, there were following imports of edible oil of Malaysian origin:

Sl. No.	Quantity imported in metric tonnes	Unit price in US $ (CIF)
1.	20	260

Sl. No.	Quantity imported in metric tonnes	Unit price in US $ (CIF)
2.	100	220
3.	500	200
4.	900	175
5.	400	180
6.	780	160

The rate of exchange on the relevant date was 1 US $ = ₹63.00 and the rate of basic customs duty was 15% ad valorem. There is no IGST. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required.

Solution:

Calculation of amount of duty payable:—

exchange rate of $ 1 = ₹63

CIF Value (800 metric × 160 USD × ₹63) (i.e. Assessable Value)	=	₹80,64,000
15% Basic Customs duty on ₹80,64,000	=	₹12,09,600
Add: SWS 10% of ₹ 12,09,600	=	₹1,20,960
Total custom duty payable	=	₹13,30,560

Notes: more than one transaction value for identical goods are given, we are supposed to take the lowest price of the quantity which is nearest to the quantity of import.

Example 3

If the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to be made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under the provisions of rule 4 is not appropriate.

Case 4:

Gira Enterprises v CCus. 2014 (307) ELT 209 (SC)

Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?

Facts of the Case: The appellant imported some goods from China. On the basis of certain information obtained through a computer printout from the Customs House, Department alleged that during the period in question, large number of such goods were imported at a much higher price than the price declared by the appellant. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the appellant. However, Department did not provide these printouts to the appellant.

Decision: The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist, and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable.

Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

Rule 5: Transaction value of Similar Goods

"Similar goods" includes—

- Which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark.
- Produced in the country in which the goods being valued were produced; and
- Produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Difference between identical and Similar Goods

Identical goods	Similar goods
Goods must be same in all respects, except for minor differences in appearance	Goods have like characteristics and components and perform same functions
Example 4 Hero Honda Two-Wheeler Products namely Splendor and Passion	**Example 5** Hero Honda Splendor and Bajaj scooter.

Rule 6: Determination of value

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Rule 7: Deductive Value

Based on the request of the importer if the Customs Officer approves, either deductive method or computed value method as the case may be adopted.

In case of deductive method, the valuation is as follows:

- Assessable value is calculated by reducing the post-importation costs and expenses from this selling price.

  Example 6

  Selling price minus selling commission, transportation, insurance associated costs within India and duties and taxes paid in India.
- This method may be used when goods are extracted on High Seas (e.g. minerals, crude oil etc.) and brought into India for sale. It will be import and dutiable.

Example 7

Valuation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95

Sale quantity	Unit price
25 units	105
35 units	90
5 units	100

(b) Totals

Total quantity Sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is ₹90.

Illustration 6

X Ltd. imported 500 units of minerals from High Seas for sale in India. Selling price exclusive of duties and taxes. Freight from port to depot in India is ₹10,150 and Insurance ₹1,250.

Sale quantity	Unit price ₹
400 units	100
300 units	90
150 units	100
500 units	95
250 units	105
350 units	90
50 units	100

Basic Customs Duty 12% and SWS as applicable. Calculate total customs duty as per Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Assume there is no IGST applicable for the product.

Solution:

Total quantity Sold	**Unit price**
650	90
500	95
600	100
250	105

The greatest number of units sold at a particular price is 650 units;

Therefore, the unit price in the greatest aggregate quantity is ₹90.

		(₹)
Selling Price	=	45,000 (i.e. 500 units × ₹90)
Less: Freight (post shipment)	=	(10,150)
Less: Insurance (post shipment)	=	(1,250)
Assessable Value	=	33,600

Total Customs Duty = ₹4,435 (i.e. 33,600 × 13.20%)

Illustration 7

A Ltd., sell in India from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price in ₹ (Exclusive of duties and taxes)	Number of sales
1-10 units	100	10 sales of 5 units 5 sales of 3 units
11-25 units	95	5 sales of 11 units
Over 25 units	90	1 sale of 30 units 1 sale of 50 units

The selling price includes the following post shipment expenses:

Freight from port to factory in India for ₹24,000

Insurance to cover transit damage from port to factory in India for ₹6,000

Number of units imported from high seas 5,000 units. Find the assessable value and total customs duty.

Note: BCD @12%.

Solution:

Sale quantity	Unit price in ₹ (exclusive of duties and taxes)	Total quantity sold at each price
1-10 units	100	65

Sale quantity	Unit price in ₹ (exclusive of duties and taxes)	Total quantity sold at each price
11-25 units	95	55
Over 25 units	90	80

The greatest number of units sold 80, therefore, the unit price in the greatest aggregate quantity is ₹90.

		(₹)
Sale value	=	4,50,000 (i.e. ₹90 × 5,000 units)
Less: Freight & insurance	=	30,000
Assessable value	=	4,20,000
Total customs duty	=	₹55,440 (₹4,20,000 × 13.20%)

Rule 8: Computed Value

The value of imported goods shall be based on a computed value, which shall consist of the sum of:—

- The cost or value of materials and fabrication or other processing employed in producing the imported goods;
- an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- The cost or value of all other expenses under sub-rule (2) of rule 10.

<table>
<tr><td rowspan="5">This method is normally possible when the importer in India and foreign exporter are closely associated and the foreign exporter is willing to give necessary costing.</td><td>Cost of Materials and General expenses for producing the imported goods</td><td>=</td><td>₹
xxx</td></tr>
<tr><td>Add: profit of the exporter</td><td>=</td><td>xxx</td></tr>
<tr><td>Add: all expenditure as per Rule 10</td><td>=</td><td>xxx</td></tr>
<tr><td>Assessable Value</td><td>=</td><td>XXX</td></tr>
</table>

Rule 9: Residual method

Residual method is also called as Best Judgment Method. This method is applicable when all aforesaid methods are not applicable. The value determined under this method cannot exceed normal price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in course of International Trade, when seller or the buyer are non-relatives and the price is sole consideration for such sale.

While determining Assessable Value, we should not consider the following

- The selling price in India of the goods produced in India;
- A system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- The price of the goods on the domestic market of the country of exportation;
- The cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

- The price of the goods for the export to a country other than India;
- Minimum customs values; or
- Arbitrary or fictitious values.

Rule 10: Cost and Services:

The following shall be added to the invoice price (i.e. FOB value) to determine the transaction value for imported goods:

Rule 10(1):		Value in Rupees
Commission and brokerage (except buying commissions)	=	xxxx
Packing cost (except cost of durable and returnable packing)	=	xxxx
Cost of engineering, development and plan or sketches	=	xxxx
(Undertaken outside India)		
Royalties and license fee	=	xxxx
Value of subsequent re-sale if payable to foreign supplier	=	xxxx
Rule 10(2)		
Cost of freight and insurance up to place of importation	=	xxxx
Cost of freight if not specified @ 20% of FOB	=	xxxx
Insurance if not specified @1.125% of FOB	=	xxxx
Ship demurrage charges on chartered vessels, lighterage or barge charges	=	xxxx
	=	xxxx

The following shall not be added to the invoice price (i.e. FOB value) to determine the transaction value for imported goods:

		Value in Rupees
Duties and taxes in India	=	xxx
Cost of erection charges in India	=	xxx
Cost of transport and insurance from port to factory of importer in India	=	xxx
Cost of development charges in connection with imported machinery	=	xxx
Port demurrage charges and unloading charges in India	=	xxx
Any other charges incurred after importation (i.e. Post shipment charges, unless such post shipment charges are pre-condition for importation)	=	xxx

Important points for imported goods:

The Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2017 [Notification No. 91/2017-Customs (NT), dated 26th September, 2017]

Rule 10(2): For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and shall include—

Clause (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;

Clause (b) the cost of insurance to the place of importation:

Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be 20% of the free on-board value of the goods:

Provided further that where the free on-board value of the goods is not ascertainable but the sum of free on-board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be 20% of such sum:

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on-board value of the goods:

Provided also that where the free on-board value of the goods is not ascertainable but the sum of free on-board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed 20% of free on-board value of the goods:

Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

Explanation: The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on charted vessels, lighterage or barge charges."

Illustration 8

Determine the assessable value of imported goods in the following cases:

Case I:

Particulars	US $
FOB value	1,000
Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known
Insurance charges	10

Solution:

Particulars	US $	Working note
FOB value	1,000	
Add: Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	200	1,000 × 20% (As per 1st Proviso to Rule 10(2) of the Customs Valuation Rules for imported goods.

Particulars	US $	Working note
Add: Insurance charges	10	
Assessable value (i.e. CIF value)	1,210	

Case II:

Particulars	US $
FOB Value plus insurance charges	1,010
Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known

Solution:

Particulars	US $	Working note
FOB value plus insurance charges	1,010	
Add: Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	202	1,010 × 20% (As per 2nd Proviso to Rule 10(2) of the Customs Valuation Rules for imported goods.
Assessable value (i.e. CIF value)	1,212	

Case III:

Particulars	US $
FOB value	1,000
Sea freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	60
Insurance charges	Not known

Solution:

Particulars	US $	Working note
FOB value	1,000	
Add: Sea freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	60	
Add: Insurance charges	11.25	1,000 × 1.125% (As per 3rd Proviso to Rule 10(2) of the Customs Valuation Rules for imported goods.
Assessable value (i.e. CIF value)	1,071.25	

Case IV:

Particulars	US $
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060
Insurance charges	Not known

Solution:

Particulars	US $	Working note
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060	
Add: Insurance charges	11.925	1,060 × 1.125% % (As per 4th Proviso to Rule 10(2) of the Customs Valuation Rules for imported goods.
Assessable value (i.e. CIF value)	1,071.925	

Case V:

Particulars	US $
FOB value	1,000
Air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	250
Insurance charges	10

Solution:

Particulars	US $	Working note
FOB value	1,000	
Add: Air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation Note: Restricted to 20% of the FOB value.	200	1,000 × 20% % (As per 5th Proviso to Rule 10(2) of the Customs Valuation Rules for imported goods.
Insurance charges	10	
Assessable value (i.e. CIF value)	1,210	

Rule 11: Declaration by the Importer:

As per this rule, the importer shall declare value and furnish all documents or information called for by the proper officer for the purposes of valuation. Wrong declaration of value under Rule 10 may call for penal provisions in Customs Act, 1962

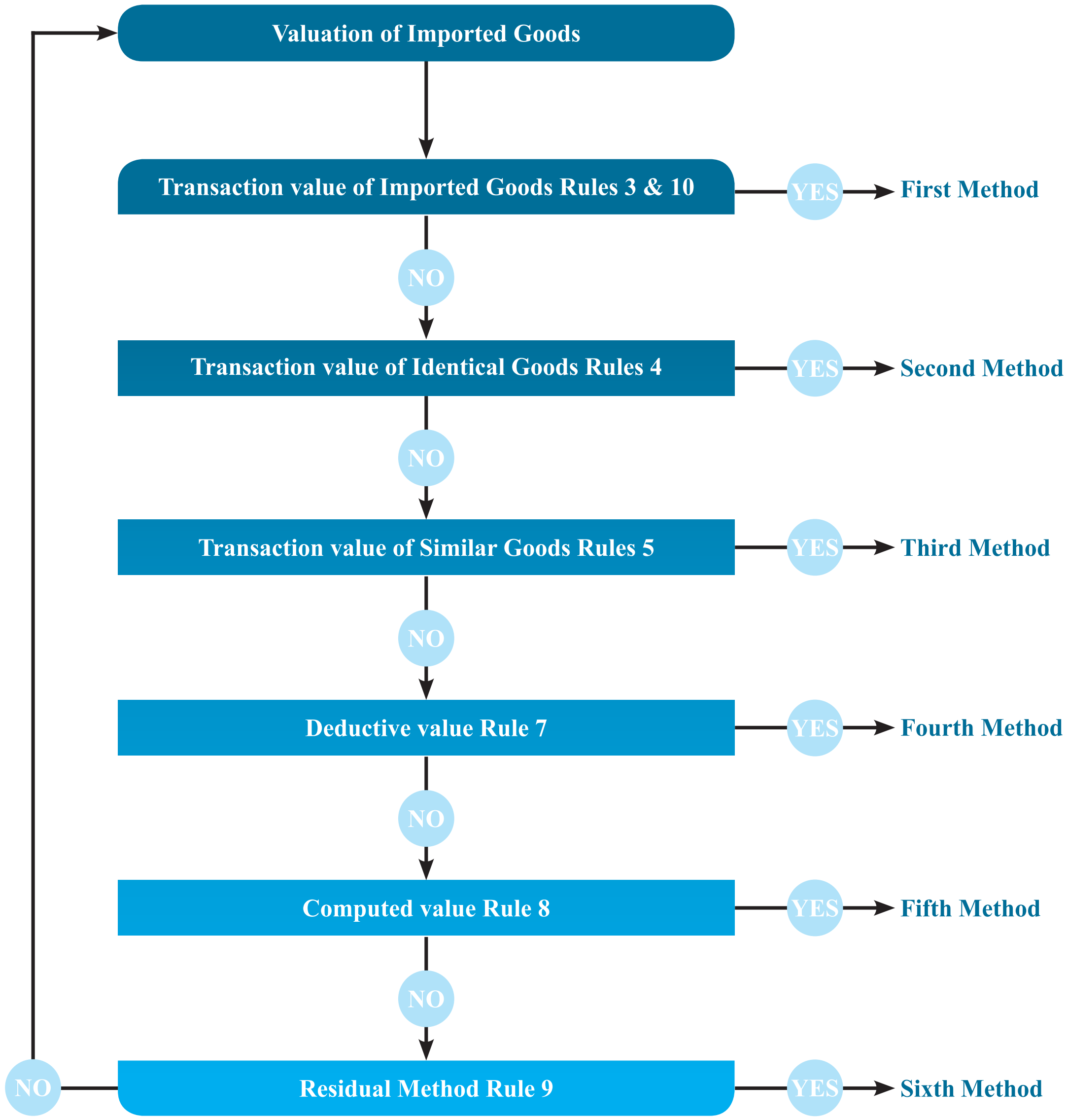
Rule 12: Rejection of Declared Value:

If the proper officer feels that the declaration made under Rule 11 are not fair values, he may reject it as not suitable in the determination of Transaction value under Rule 3, after procuring further information or documents. However, final decision under Rule 12 shall be taken after proper hearing only.

Rule 13: Interpretative Notes:

These notes specified in the schedule to these rules are meant to render help in the interpretation of these rules. These interpretative notes are explained already in the aforesaid rules.

The following methods can be applied in sequential order for imported goods



Related Party Transactions:

The World Trade Organisation (WTO) Customs Valuation Agreement addresses transfer pricing through its provisions regarding related party transactions. In examining whether the relationship influences the price, certain tests are used to determine **whether a transfer price may form the basis of the transaction value**.

The transaction value method cannot be applied in cases where the buyer and seller are related and the relationship has influenced the price. The scope of relationship is defined in Sub-Rule 2 (2) of the Customs Valuation Rules. In such cases the burden of proof shifts to the importer, who should satisfy the Customs that the declared price closely approximates to the arm's length. If the importer fails to discharge this responsibility, the declared value could be rejected, and valuation done under any of the subsequent methods applied in hierarchical order.

Transactions Involving Transfer Pricing:

Under the Customs Law some of the imports involving transfer pricing are as follows:-

(i) Imports by wholly owned subsidiary from the foreign holding company or its subsidiaries/associates in other countries;

(ii) Imports by a joint venture company from its foreign partners who has substantial stake in joint venture;

(iii) Import by branches from their overseas principals;

(iv) Import of new or used construction machinery/equipment by engineering construction companies for their own projects;

(v) Goods imported under leasing contract from a related party;

(vi) Goods imported on loan basis from a related party.

Customs Valuation in Case of Related Party Transactions:

The valuation for the purpose of assessment and recovery of customs duty on any imported goods in case of 'Related Party Transactions' involves the following three stages as per the provisions contained under Section 14 of the Customs Act, 1962 read with the Customs Valuation Rules, 1988 (now the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:-

(i) Examination of relationship between the foreign supplier and the Indian Importers to verify that both of them are 'Related Party' and the transactions are not at arm's length.

(ii) In case the foreign supplier and the Indian Importers are 'Related Party,' it is required to be examined as to whether the relationship has influenced the prices or not.

(iii) In case the foreign supplier and the Indian Importers are 'Related Party' and the relationship has influenced the prices, the extent of influence of relationship is required to be examined, the additions are required to be quantified and the valuation of the imported goods is required to be computed.

Valuation where relationship not influencing the price:

Once it is established that the buyer and the seller are 'related party', the importers are required to demonstrate that the relationship has not influenced the prices and the price for the said goods closely approximates to one of the following values ascertained at or about the same time -

- The transaction value of identical goods, or of similar goods, in respect of sales to unrelated buyers in India;
- The deductive value for identical goods or similar goods; and
- The computed value for identical or similar goods.

If the importer is able to furnish evidence of the transaction value or the deductive value or the computed value of identical or similar goods in respect of sales to unrelated buyers in India at the same price and establish that the relationship has not influenced the prices, the declared value is accepted, and clearance allowed.

If the importer is not able to furnish evidence of the transaction value or the deductive value or the computed value of identical or similar goods in respect of sales to unrelated buyers in India at the same price and there are no contemporaneous imports, and there is no way to compare the values at the time of assessment of the Bill of Entry, the circumstances of sale are examined to ascertain as to whether the relationship has influenced the prices or not. In case relationship has influenced the prices then the valuation of the goods is required to be done.

Illustrative list where relationship influencing the price:

Importers in their imports from their foreign principals or associated companies resort to large scale manipulations in prices either to evade the customs duties, income tax or to circumvent any other provision of law. The modus operandi adopted by them are as follows:

1. In case of imports from their foreign principals or associated companies is to declare higher value for goods exempted from duty or entitled to lower rate and to declare lower value for the goods having higher rate of duty.
2. Over invoicing of imported capital goods in order:-
   a. to obtain higher amount of soft loans from Banks and financial institutions;
   b. to increase the book value of plant and machinery and to obtain higher income tax depreciation;
   c. to increase their stake in Indian company without making the requisite remittance of foreign exchange.
3. Over invoicing of exports from SEZ, 100% EOUs etc to avail higher income tax exemption by diversion of profits from domestic sales to export income.
4. Over invoicing of exports under export promotion schemes to claim higher Drawback, export promotions etc.
5. Under-invoicing in imports and under-invoicing in exports- the difference in value of under invoiced imports is settled by way of under invoiced exports.
6. Over-invoicing in imports and over-invoicing in exports - the difference in value of over invoiced imports is adjusted by way of over invoiced exports.
7. In case of import of machinery/equipment etc. the higher values for the elements exempted from customs duty are declared in order to evade customs duty, like:
   a. the cost of engineering drawings , designs etc.;
   b. software;
   c. the cost of technical know how;
   d. interest.
8. In case of second hand goods, motor vehicle etc. the expenses like dismantling charges, packing charges, inland transportation, inland insurance, reconditioning, refurbishing charges incurred by the foreign principals etc. are not declared.
9. In case of goods procured by the foreign principals and supplied to their Indian counterparts, the country of origin is sometimes mis-declared to claim exemption from customs duty applicable under a trade agreement or to declare lower values applicable for the goods of origin of that country; e.g. goods of Japan or Korean origin are declared as goods of Chinese origin and lower values applicable for Chinese goods are declared.

Valuation where relationship influencing the price:

In case the buyer and the seller are 'related party' and the relationship has influenced the price, the transaction value under Rule 3 of the Customs Valuation Rules, is ruled out. The valuation is done by sequential application of Rule 4 to Rule 8. In such cases normally the value of identical or similar goods are not available and the valuation on the basis of deductive value method or computed value method is also not possible. The valuation is normally done under Rule 9 (Residual method) using reasonable means consistent with general principles of law. As contained under rule 10 (Cost and Services) , the additions for the following services provided by the foreign suppliers either free or at reduced cost are made to the invoice price:-

(i) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:-

- materials, components, parts and similar items incorporated in the imported goods;
- tools, dies, moulds and similar items used in the production of the imported goods;
- materials consumed in the production of the imported goods;
- engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(ii) Royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(iii) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

(iv) All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Solved Cases

Case 1

The assessee-respondent had been importing "Orange Shock Tube" from the exporter at a unit price of US$0.0150 per ft till November 2000 when the price was reduced to US$0.0141 per ft. However, in June 2001, the importer declared the value of the imported tubes at a unit price of US$0.0100 per ft. Revenue contended that declared value was substantially lower than the actual value i.e. the assessee had under-valued the goods. Therefore, the value had to be determined as per erstwhile rule 5 of Customs Valuation Rules, 1988 [now rule 4 of Customs Valuation (Determination of value of Imported Goods) Rules, 2007], viz., transactional value of identical goods. In this regard, the assessee provided the explanation that the reduction in price was subject to mutual agreement that he would purchase 100% of its annual requirement from the same exporter.

Solution:

There is no undervaluation and hence, transactional value should be accepted as assessable value. [CCus. v Initiating Explosives Systems (I) Ltd. 2008 (224) ELT 343 (SC)]

Case 2

The assessee was a manufacturer of printers. The shuttle, an integral part of a printer, was imported by him. The question which arose for determination was whether the adjudicating authority was entitled to load the royalty/ license fee payment on the price of the imported goods, viz., shuttle by taking its peak price.

Solution:

Any post shipment expenses are includible in the assessable value only when it is pre-requisite to the sale or purchase. Hence, in the given case the royalty was not a pre-requisite condition for sale of shuttle. Therefore, the Department's contention is not tenable in the eyes of law. [Wep Peripherals Ltd. v CCus., Chennai 2008 (224) ELT 30 (SC)].

Case 3

The goods initially exported by the assessee were re-imported back to India on being rejected by the foreign buyer as defective. The assessee initially claimed in the Bills of Entry the benefit of notification no. 158/95-Cus and also executed bonds for re-export, as required under the said notification. The assessee could not re-export the goods due to recessionary conditions in the textile industry. It claimed before the adjudicating authority that since it was not possible for it to re-export the goods, it should be allowed the benefits of another Notification No. 94/96-Cus. which was in force at the time of clearance from the factory originally. The main contention raised by the assessee was that if the benefits were available under the two notifications to the assessee, then the assessee could avail of the benefits under either of them.

Revenue's reply to the said contention was that it was not correct to say that if two notifications were applicable, assessee after having opted to take the benefit under one of the notifications could change its option and avail the benefit under the other scheme because of the nature and contents of the notification. Whether the assessee can change its option and avail the benefit under other notification?

Solution:

Once the assessee had claimed the Notification No. 158/95 for import of goods without payment of duty, then he has to fulfil all conditions mentioned in the said notification. Therefore, it is not open to the assessee to opt for another notification because he had not fulfilled the conditions of the earlier notification. [CCus., Calcutta v Indian Rayon & Industries Ltd. 2008 (229) ELT 3 (SC)]

Case 4

Gujarat Dry Fruits Limited imported dry fruits and declared the value as under:

Date of imports	Quantity (MT)	Declared value ₹per MT	Country of import
November 2017	250	25,000	Egypt
November 2017	150	25,000	Egypt

It was found that imports were also made by some other dealers as indicated below:

Date of imports	Importer	Quantity (MT)	Declared value ₹per MT	Country of import
September 2017	Mumbai Intil	50	35,000	Dubai
October 2017	Chennai Fruits Ltd.	20	40,000	Persia

The Customs Department has sought to assess the imports made by the Gujarat Dry Fruits Ltd. as Contemporaneous imports under section 14 read with Rule 4 of the Customs Valuation Rules, 2007. Briefly examine whether the action proposed by the Department is correct.

Solution:

The goods are said to be identical only if the goods to be valued have been produced in the same country. In the given question, the goods in question have been imported from Egypt, while other importers have imported goods from other countries. Therefore, the department action is not correct.

Case 5

The assessee X Ltd. entered into a joint venture with a foreign collaborator N for promotion and selling of antennas, accessories and other communication equipment. The agreement between them indicates that N owned majority of equity shares in X Ltd. Technical Services were provided by N to X Ltd, for various functions that were carried out in respect of manufacture of antenna system in India, for which technical services fee was paid to N by X Ltd. Based on the above facts, the department opined that both X Ltd. and N were related persons in terms of rule 2(2)(1) and 2(2)(iv) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and that the technical fee paid by X Ltd. was includible in the assessable value of the imported components in terms of Rule 9(1)(c) of the Rules. Decide referring to decided case law.

Solution:

Technical fee cannot be added simply because the importer and exporter are 'Related Persons'. It can be added only if it is related to imported goods itself. Here, import was for components while technical fee was for manufacture of antenna systems. The fee is not connected to imported goods. Hence, not includible. [CCus. v Prodelin India (P) Ltd. (2006) 202 ELT 13 (SC)]

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Transaction Value means—
   (a) the price actually paid for the goods
   (b) the price payable for the goods
   (c) Both (a) & (b)
   (d) None of the above

2. 1,00,000 MT goods are imported for ₹10 lakh but goods actually received are 95,000 MT. In this case, value of goods liable to duty is—
   (a) 10,00,000
   (b) 9,50,000
   (c) 50,000
   (d) 10,50,000

3. Assessable value of goods is ₹5,00,000 (US $10,000 at ₹50 per US $) as per bill of entry for warehousing and BCD is 15%. The goods were cleared from warehouse on date when BCD is 10% and rate is? ₹60 per $. IGST & GST Cess is NIL and Social Welfare Surcharge is 10%. Total duty =
   (a) ₹55,000
   (b) ₹66,000
   (c) ₹82,500
   (d) ₹99,000

4. Which of the following persons is not a 'related' person —
   (a) officers or directors of one another's businesses
   (b) legally recognized partners in business
   (c) members of the same family
   (d) all the above

5. Calculate Free on Board value from following: Ex-factory price of exporter- ₹10,000; Expenses upto loading of goods by foreign exporter- ₹12,000. Post importation cost- ₹8000:
   (a) ₹30,000
   (b) ₹22,000
   (c) ₹18,000
   (d) ₹22,250

6. Calculate Custom Free on Board value from following: Ex-factory price of exporter- ₹10,000; Expenses upto loading of goods by foreign exporter- ₹12,000; Post importation activity cost (included in ex-factory price) - ₹8000; Cost under Rule 10[1]- ₹5,000 (not included earlier).:
   (a) ₹35,000
   (b) ₹22,000

(c) ₹19,000

(d) None of the above

7. Calculate Cost of transport/handling under Rule 10(2)(a) if FoB and insurance cost [total] is $5000:

   (a) $2,500

   (b) $6,000

   (c) $1,000

   (d) None of the above

8. Calculate Cost of insurance under Rule 10(2)(b) if FoB and transport/handling is $15,000.:

   (a) $ 1,500

   (b) $ 3,000

   (c) $ 168.75

   (d) None of the above

9. From following data, find out the assessable value of imported goods: Cost of the machine at the factory of the exporting country- $ 5,000; Transport charges incurred by the exporter from his factory to the port for shipment- $ 250; Handling charges paid for loading the machine in the ship- $25; Buying commission paid by the importer- $25; Freight charges from exporting country to India (including handling charges $ 100)- $500. Exchange rate to be considered: 1 $ = ₹45.

   (a) ₹2,62,545.47

   (b) ₹2,37,375

   (c) ₹2,59,875

   (d) None of the above

10. Compute value: Machinery imported from USA by air (FOB price)- $8,000; Accessories compulsorily supplied along with the machinery $ 2,000; Air freight $2400; Insurance charges not available; Local agent's commission to be paid in Indian Currency- ₹18,600; Exchange rate US $ 1 = ₹48:

   (a) ₹4,98,600

   (b) ₹6,03,929.25

   (c) ₹5,98,320

   (d) None of the above.

11. Which of following deductions is allowed from value of imported goods vide rule 7 (deductive value) —

   (a) commission on sales in India;

   (b) transport from foreign port;

   (c) Both of the above

   (d) none of the above

12. Determine price to be taken for computing deductive value in rule 7: Sale quantity- 80 units @ ₹90, 50 units @ ₹95, 25 units @ ₹105, 40 units @ ₹100:

   (a) ₹105

   (b) ₹100

   (c) ₹95

   (d) ₹90

13. Computed value DOES NOT consist of:
    (a) cost of materials and fabrication or other processing employed in producing the imported goods.
    (b) reasonable profit of foreign exporter
    (c) the cost or value of all other expenses under rule 10(2)
    (d) reasonable profit of Indian importer.

14. The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include:
    (a) the sale involves an abnormal discount or abnormal reduction from ordinary competitive price.
    (b) the sale involves special discounts limited to exclusive agents.
    (c) Both (a) & (b)
    (d) None of the above.

Answer:

1.	**2.**	**3.**	**4.**	**5.**	**6.**	**7.**
c	**b**	**a**	**d**	**b**	**c**	**c**
8.	**9.**	**10.**	**11.**	**12.**	**13.**	**14.**
c	**a**	**b**	**a**	**d**	**d**	**c**

Customs Procedures- Baggage & Courier/Post

19

This Module Includes

Customs Procedures- Baggage & Courier/ Post

SLOB Mapped against the Module

1. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules.
2. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand baggage, general free or duty-free allowance.
- Explain how to compute duty on baggage
- Understand procedure about postal articles.

Introduction

19

The term Baggage means luggage of the passenger if they travel by Air or Sea from one country to another country. Sometimes this baggage amounts to import thereby import duty may be levied. It is essential for us to know the provisions relating to levy, exemption and non-levy of duty on baggage.

Provisions relating to levy and non-levy of duty on baggage are contained in Chapter XI [Special Provisions Regarding Baggage, Goods Imported or Exported by Post and Stores] of Customs Act, and Baggage Rules, 1988.

Provision Regarding Baggage 19.2

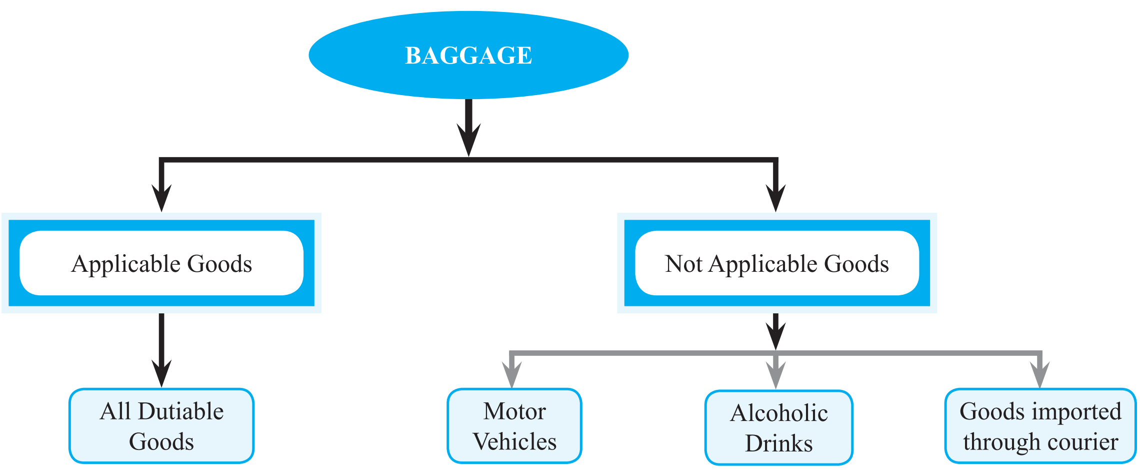
General Meaning: Baggage means all dutiable goods imported by a passenger or a member of a crew in his baggage.

Statutory Meaning u/s 2(3) of Customs Act: Baggage includes:

(a) unaccompanied baggage (i.e., baggage not carried by passenger at the time of his arrival, but sent before or after arrival of passenger).

(b) but does not include motor vehicles.

Baggage can be classified as follows:



Green Channel means if a person does not have any dutiable goods, he can go through green channel without undergoing any check along with baggage.

Red Channel means if carrying dutiable goods he should pass through red channel and should submit the declaration and his baggage can be inspected by the customs authorities.

IMPORTANT NOTE:

Full exemption from IGST has been provided on passenger baggage. However, basic customs duty shall be leviable at the rate of 35% and social welfare surcharge as applicable on the value which is in excess of the duty-free allowances provided under the Baggage Rules, 2016.

Therefore, effective rate of customs duty on baggage @38.50% on the value over and above duty-free allowance (i.e. general free allowance).

Section 77: Declaration by owner of baggage: The owner of any baggage shall make a declaration of its contents to the proper officer for the purpose of clearing it.

International passengers, when coming to India, need not fill Customs Declaration Form if they are not carrying dutiable goods as part of their baggage w.e.f. 1-4-2016.

Section 78: Determination by rate of duty and tariff valuation in respect of baggage: The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under section 77.

Rate of Duty on Baggage is @ 35% plus social welfare surcharge.

Additional Customs Duty u/s 3(1) or 3(5) (Special CVD) – Nil [Notification No. 183/86-Cus and Notification No. 21/2012-Cus]

Exemption to 1 Laptop: The Central Government has exempted one laptop computer (notebook computer) when imported into India by a passenger of the age of 18 years or above (other than member of crew) from whole of the BCD [Notification No. 11/2004-Cus]

Section 80: Temporary Detention of Baggage:

- The proper officer may detain the baggage of a passenger which contains any article which is dutiable or the import of which is prohibited and in respect which a true declaration has been made under section 77.
- The proper officer may do so, at the request of the passenger for the purpose of being returned to the passenger either:
  - At the time of his leaving India or
  - Through any other passenger authorized by him and leaving India or
  - As a cargo consigned in his name.

Section 79: Bona fide baggage exempted from duty:

- The proper office may, subject to rules made under this section, pass free of duty—
  - (a) Any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules
  - (b) Any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

General Free Allowances for Passengers

Duty Free Allowance or General Free Allowance (GFA) (w.e.f. 1-4-2016):

Eligible Passenger	Origin Country	Duty Free Allowance
Passengers of Indian origin and foreigners residing in India, excluding infants	Other than Nepal, Bhutan, Myanmar	₹50,000

Eligible Passenger	Origin Country	Duty Free Allowance
Tourists of foreign origin, excluding infants	Other than Nepal, Bhutan, Myanmar	₹15,000
Passengers of Indian origin and foreigners residing in India, excluding infants AND Tourists of foreign origin, excluding infants	Nepal, Bhutan and Myanmar	₹15,000 (by Air) NIL (By Land)
Indian passenger who has been residing abroad for over one year	Anywhere	Gold Jewellery Gentleman- 20 gms. with a value cap of ₹50,000 Lady - 40 gms with a value cap of ₹1,00,000
All passengers	Anywhere	Alcohol liquor or wine: 2 liters
All passengers	Anywhere	Cigarettes: 100 numbers or Cigars upto 25 or Tobacco 125 grams
Passenger of 18 years and above	Anywhere	One laptop computer (notebook computer). It is in addition to GFA.

Important note:

1. For infant, only used personal effects shall be allowed duty free.
2. The free allowance cannot be allowed to be pooled with the free allowance of any other passenger.
3. Bona fide baggage means used personal effects, travel souvenirs and articles other than those mentioned in Annexure I.
4. Annexure I include:
   - i. Firearms.
   - ii. Cartridges of firearms exceeding 50.
   - iii. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
   - iv. Alcoholic liquor or wines in excess of two liters.
   - v. Gold or silver in any form other than ornaments.
   - vi. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

No restriction on age and minimum period of stay (w.e.f. 1-4-2016):

Restrictions on age and minimum period of stay abroad have been withdrawn.

Free baggage allowances are same for all passengers irrespective of their age and period of stay.

Customs Declaration Form:

International passengers, when coming to India, need not fill Customs Declaration Form if they are not carrying dutiable goods as part of their baggage w.e.f. 1-4-2016.

Jewellery — Duty Free Allowance

Duty Free Jewellery (w.e.f. 1-4-2016):

Coming to India by an Indian Passenger after stay abroad more than one year

(i) Jewellery upto a weight, of 20 grams with a value cap of ₹50,000 if brought by a gentleman passenger

(ii) Jewellery upto a weight, of 40 grams with a value cap of ₹1,00,000 if brought by a lady passenger.

Illustration 1

Mr. Gopal, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.20XX. His wife also joined him in London on 01.12.20XX. The following details are submitted by them with the Customs authorities on their return to India on 30th April (next year).-

(a) used personal effects worth ₹95,000

(b) a music system worth ₹34,000

(c) the jewellery brought by Mr. Gopal for ₹44,000 and the jewellery brought by his wife worth ₹25,000

Determine their eligibility with regard to duty free allowance.

Duty drawback under Customs

Solution:

As per the Baggage Rules, in case of passengers other than tourists there is no customs duty on used personal effects and general free allowance is ₹50,000 per passenger. Thus, their duty liability is nil for the personal effects and a music system.

However, the additional duty-free allowance, that is jewellery allowance is applicable to non-tourist passenger of Indian origin who had stayed abroad for period exceeding one year. The additional jewellery allowance is as follows:-

Gentleman Passenger - ₹50,000

Lady Passenger - ₹1,00,000

Thus, there is no duty liability on the jewellery brought by Mr. Gopala, he had stayed abroad for period exceeding one year. However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period less than a year. Thus, she has to pay customs duty on the amount of jewellery brought by her. However, she is eligible to avail GFA of ₹50,000.

Transferring residence to India

Transfer of residence w.e.f. 1-4-2016:

A person, who is engaged in a profession abroad, or is transferring his residence to India can bring, used household items as below:

Passengers who have stayed abroad	GFA for personal household items upto ₹
3-6 months	₹60,000

Passengers who have stayed abroad	GFA for personal household items upto ₹
6-12 months	₹1,00,000
1-2 years	₹2,00,000
Above 2 years	₹5,00,000

Postal Articles

As per sections 82 to 84 of the Customs Act, 1962, goods can be cleared by post. Any label or declaration accompanying the goods showing the description, quantity and value thereof, shall be treated as "an entry for import" under the Customs Act.

The rate of duty and tariff value applicable to goods imported by post shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessment of duty.

The procedure for clearance:

(i) Post parcels are allowed to pass from port/airport to Foreign Parcel Department of Government Post Offices without payment of customs duty.

(ii) The Postmaster hands over to Principal Appraiser of Customs the memo showing

- Total number of parcels from each country of origin,
- Parcel bills or senders' declaration,
- Customs declaration and dispatch notes, and
- Other information that may be required.

(iii) The mail bags are opened and scrutinized by Postmaster under supervision of Principal Postal Appraiser of Customs.

(iv) Packets suspected of containing dutiable goods are separated and presented to Customs Appraiser with letter mail bill and assessment memos.

(v) The Customs Appraiser marks the parcels which are required to be detained if—

- necessary particulars are not available, or
- mis-declaration or undervaluation is suspected, or
- goods are prohibited for import.

Appraiser has the power to examine any parcel. After inspection, the parcels are sealed with a distinctive seal. Any mis-declaration or undervaluation is noted or goods are prohibited goods for imports these be detained and the same intimated to Commissioner of Customs.

If everything is in order after verification, goods will be handed over to Postmaster, who will hand over the same to the addressee on receipt of customs duty.

Import of Samples

In the International trade it is considered often necessary that samples of the goods manufactured in one country be sent to another country for being shown or demonstrated for Customer appreciation. There are duty free imports of genuine commercial samples into the country for smooth flow of trade.

The commercial samples are basically specimens of goods that may be imported by the traders or representatives of manufacturers. However, goods which are prohibited under Foreign Trade (Development and Regulation) Act, 1992 are not allowed to be imported as samples (i.e. wild animals, wild birds and parts of wild animals, arms and ammunitions and so on).

Samples can be imported by the traders, industry, individuals, research institutes and so on. These samples can also be brought by the persons as part of their personal baggage or through port or in courier.

The current limit of ₹1 lakh per annum for duty free import of samples in terms of NT 154/94-Customs, dated 13.7.1994 is enhanced to ₹3 lakh per annum (w.e.f. 27.2.2010).

Illustration 2

After visiting USA, Mrs. & Mr. X brought to India a laptop computer valued at ₹80,000 personal effects cloths valued at ₹90,000 and a personal computer for ₹52,000. What is the customs Duty payable?

Solution:

Duty payable on baggage is ₹771

[₹(52,000 – 50,000) × 38.5%]

Illustration 3: Mrs. & Mr. Kapoor visited Germany and brought following goods while returning to India after 6 days stay abroad on 8th November 20XX.

(i) Their personal effects like clothes, etc., valued at ₹1,35,000.

(ii) A personal computer bought for ₹1,36,000.

(iii) A laptop computer bought for ₹95,000.

(iv) Two liters of liquor bought for ₹1,600.

(v) A new camera bought for ₹87,400.

(vi) Plasma T.V. for ₹1,25,000

What is the amount of customs duty payable?

Solution:

		(₹)
Their personal effects like clothes, etc.,	=	exempt
A personal computer bought for	=	1,36,000
A laptop computer bought for	=	exempt
Two liters of liquor bought for	=	1,600
A new camera bought	=	87,400
Total	=	2,25,000
Less: General Free Allowance ₹50,000 + ₹50,000	=	1,00,000
Baggage taxable	=	1,25,000
Plasma T.V. (fully taxable i.e. duty 100% of value)	=	1,25,000
Total	**=**	**2,50,000**

Customs Duty is ₹48,125 (i.e. 1,25,000 x 38.50%) payable by Mrs. & Mr. Kapoor

GFA w.e.f. 1-4-2016 is ₹50,000 for each individual.

Therefore, total customs duty is ₹1,73,125/-

Illustration 4

Jagirdar, an IT professional and a person of Indian origin, is residing in Denmark for the last 14 months. He wishes to bring a used microwave oven (costing approximately ₹1,24,200 and weighing 15 kg) with him during his visit to India. He purchased the oven in Denmark 6 months back and he has been using that oven for his personal use in his kitchen. He is not aware of Indian customs rules. Could you please provide him some advice in this regard?

Solution:

Transfer of residence w.e.f. 1-4-2016:

A person, who is engaged in a profession abroad, or is transferring his residence to India can bring, used household items as below:

Passengers who have stayed abroad	GFA for personal household items upto ₹
3-6 months	₹60,000
6-12 months	₹1,00,000
1-2 years	₹2,00,000
Above 2 years	₹5,00,000

In the given illustration Jagirdar brings the used household articles worth ₹1,24,200 which is free of duty. He is not liable to pay any duty.

Note:

Mr. Jagirdar can bring upto ₹2,00,000/- without payment of duty.

Illustration 5

Mr. Vijay, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2022. His wife also joined him in London on 01.12.2022. The following details are submitted by them with the Customs authorities on their return to India on 30.04.2023.—

(a) used personal effects worth ₹80,000

(b) a music system worth ₹35,000

(c) Jewellery brought by Mr. Vijay for ₹48,000 and Gold Bars (i.e. other than ornaments) brought by his wife worth ₹20,000

Determine their eligibility with regard to duty free allowance.

Solution:

Statement showing customs duty in the hands of Mr. Vijay:

Particulars	Amount (₹)	Workings
Personal effects	Nil	Fully exempted from duty

Particulars	Amount (₹)	Workings
Music system	35,000	Dutiable within the limit of GFA
Less: GFA	-35,000	(w.e.f. 1-4-2016 GFA increased to ₹50,000)
Dutiable goods	Nil	
Jewellery	48,000	
Less: exemption	48,000	Upto ₹50,000 is free from duty, since, he stayed outside abroad for a period more than one year.
Dutiable goods	Nil	

Statement showing customs duty in the hands of Mrs. Vijay:

Particulars	Amount (₹)	Workings
Gold bars (other than jewellery)	20,000	Fully taxable
Less: exemption	Nil	General free allowance not allowed.
Dutiable goods	20,000	
Customs duty	7,700	(₹20,000 × 38.50%)

Illustration 6

Mr. Rajini an Indian Entrepreneur, went to China to explore new business opportunities on 05-04-2022. The following details, regarding imports are submitted by him with the Customs authorities on return to India on 20-02-2023.

(a) 2 Music systems each worth ₹23,000.

(b) Jewellery brought by Mr. Rajini worth ₹49,000 (18 Grams).

Write a brief note on his eligibility with regard to duty free baggage allowances as per the Baggage Rules, 2016.

Solution:

Music system ₹ 23,000 × 2	=	₹46,000
Add: Jewellery	=	₹49,000
Sub-total	=	₹95,000
Less: GFA	=	₹(50,000)
Dutiable goods	=	₹45,000

Total duty payable is ₹17,325 (i.e. 45,000 × 38.5%)

Note:

Since, Mr. Rajini stay abroad does not exceeds one year, he will not be eligible for additional jewellery allowance under the Baggage Rules, 2016.

Illustration 7

Mr. Technot of foreign origin has come on travel visa, to tour in India. He carries with him, as part of baggage, the following:

Particulars	Value in ₹
Travel Souvenir	1,85,000
Other articles carried on in person	1,50,000
120 sticks of cigarettes of ₹100 each	12,000
Fire arm with 100 cartridges (value includes the value of cartridges at ₹500 per cartridge)	100,000

Determine Customs Duty payable, if the effective rate of customs duty is 38.50% inclusive of social welfare surcharge, with short explanations where required.

Solution:

Statement showing customs duty on Baggage:

Particulars	Value in ₹	Remarks
Travel Souvenir	Nil	Bona fide baggage not taxable
Value for 100 cigarettes = ₹10,000 Less: GFA. = ₹10,000 Taxable goods. = nil	Nil	Up to 100 cigarettes allowed under GFA.
Cartridges of firearms Value for 50 cartridges = ₹25,000 Less: GFA. = ₹5,000	20,000	Up to 50 cartridges of fire allowed under GFA.
Other articles carried on in person	1,50,000	Dutiable Goods
Total Taxable goods	1,70,000	
Duty on Baggage 38.5%	65,450	
20 cigarettes at ₹100 each	2,000	100% Taxable
Firearm (₹1,00,000 – 50,000)	50,000	100% Taxable
Cartridges exceeds 50	25,000	100% Taxable
Taxable goods	77,000	

Note: (1) General Free Allowance (GFA) for tourists of foreign origin, excluding infants is ₹15,000/-

(1) Firearms, cartridges of firearms exceeding 50 and cigarettes exceeding 100 sticks are not chargeable to rate applicable to baggage [Notification No. 26/2016-Cus., dated 31.03.2016]. These items are charged @ 100% applicable to baggage under Heading 9803 of the Customs Tariff.

Solved Case 1

Hemal K. Shah 2012 (275) ELT 266 (GOI)

Facts of the Case: Shri Hemal K. Shah, a passenger, who arrived at SVPI Airport, Ahmedabad, had declared the total value of goods as ₹13,500 in the disembarkation slip. On detailed examination of his baggage, it was found to contain Saffron, Umicore Rhodium Black, Titan Wrist watches, Mobile Phones, assorted perfumes, Imitation stones and bags.

Since, the said goods were in commercial quantity and did not appear to be a bona fide baggage; the same were placed under seizure. The passenger in his statement admitted the offence and showed his readiness to pay duty on seized goods or re-shipment of the said goods.

The adjudicating authority determined total value of seized goods; ordered confiscation of seized goods under section 111(d) and 111(m) of the Customs Act, 1962; imposed penalty on Hemal K. Shah; confirmed and ordered for recovery of customs duty on the goods with interest and gave an option to redeem the goods on payment of a fine which should be exercised within a period of three months from date of receipt of the order.

On appeal by Hemal K. Shah, the appellate authority allowed re-export of the confiscated goods. Against this order, the Department filed a revision application before the Revisionary Authority under section 129DD of the Customs Act, 1962.

Point of Dispute: The Department questioned the re-export of confiscated goods. They contended that the goods which had been confiscated were being smuggled in by the passenger without declaring the same to the Customs and were in commercial quantity. In view of these facts, the appellate authority had erred in allowing the re-export of the goods on payment of redemption fine.

Revisionary Authority's Decision: The Government noted that the passenger had grossly mis-declared the goods with intention to evade duty and to smuggle the goods into India. As per the provisions of section 80 of the Customs Act, 1962 when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under section 77, the proper officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs authorities at the time of his arrival at airport, the re-export of said goods could not be allowed under section 80 of the Customs Act.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Does the Adjudicating Authority incluValue of Personal Computer is ₹1,10,000 and Personal Effects is ₹60,000 and duty-free allowance is ₹1,00,000. What is the value of the baggage liable to duty?
   (a) ₹50,000
   (b) ₹60,000
   (c) ₹70,000
   (d) ₹10,000.

2. After visiting UK for 10 days, Mr. K brought to India a laptop computer valued at ₹76,000, personal effects valued at ₹1,20,000 and a personal computer for ₹72,000. What is the customs Duty payable?
   (a) ₹22,000
   (b) ₹8,470
   (c) ₹10,000
   (d) ₹15,000.

3. Mr. Raj resident of India, returned back to India from London after 2 years of stay and brought jewellery ₹42,000 (18 grams). Duty payable by Mr. Raj:
   (a) ₹770
   (b) ₹2,000
   (c) ₹2,200
   (d) Nil.

4. What is the General Free Allowance for passengers coming from Nepal by land route?
   (a) Nil
   (b) ₹50,000
   (c) ₹15,000
   (d) ₹25,000.

5. Annexure I include:
   (a) Firearms
   (b) Cloths
   (c) Radio
   (d) Watch.

6. The current limit of ₹1 lakh per annum for duty free import of samples in terms of NT 154/94-Customs, dated 13.7.1994 is enhanced to:
   (a) ₹30 lakh per annum (w.e.f. 27.2.2010)
   (b) ₹3 lakh per annum (w.e.f. 27.2.2010)
   (c) ₹13 lakh per annum (w.e.f. 27.2.2010)
   (d) ₹3 lakh per month (w.e.f. 27.2.2010).

7. Bona fide baggage means
   (a) used personal effects, travel souvenirs and articles other than those mentioned in Annexure I.
   (b) used personal effects, travel souvenirs and articles other than those mentioned in Annexure II.
   (c) used personal effects, travel souvenirs and articles other than those mentioned in Annexure III.
   (d) None of the above.

8. A Gentleman passenger returning to India having resided abroad for more than a year shall be allowed clearance free of duty jewellery in his bona fide baggage to the extent of the following:
   (a) ₹50,000
   (b) ₹1,00,000
   (c) ₹1,50,000
   (d) None of the above.

9. A Lady passenger returning to India having resided abroad for more than a year shall be allowed clearance free of duty jewellery in his bona fide baggage to the extent of the following:
   (a) ₹50,000
   (b) ₹1,00,000
   (c) ₹1,50,000
   (d) None of the above.

10. A person, who is engaged in a profession abroad, or is transferring his residence to India after stayed abroad more than 2 years can bring, used household items without payment of duty up to:
   (a) ₹50,00,000
   (b) ₹25,00,000
   (c) ₹5,00,000
   (d) ₹50,000.

Answer:

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
d	b	d	a	a	b	a	a	b	c

Manufacture in Bond 20

This Module Includes

Manufacture in Bond

SLOB Mapped against the Module

1. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules.
2. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Explain features of the Manufacture and other Operations in Bonded Warehouse
- Understand step by step approach to start manufacturing in bond.
- Explain how to clear goods from bonded warehouse

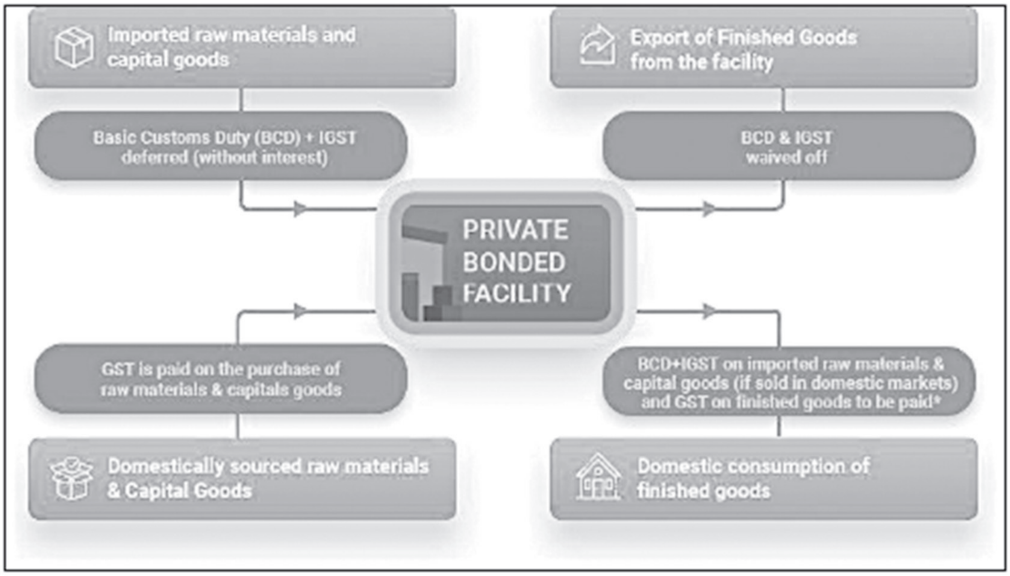
Introduction

20.1

Central Board of Indirect Taxes and Customs has launched a revamped and streamlined program to attract investments into India and strengthen Make in India through manufacture and other operations under bond scheme, under Customs Act, 1962. Section 65 of the Customs Act, 1962 enables conduct of manufacture and other operations in a customs bonded warehouse.

With the Government's continuous efforts to promote India as the manufacturing hub globally and the commitment towards ease of doing business, another initiative in this direction by the Central Board of Indirect Taxes (CBIC) is **allowing import of raw materials and capital goods without payment of duty** for manufacturing and other operations in a bonded manufacturing facility.

When the raw materials or capital goods are imported, the import duty on them is deferred with no interest liability. If these **imported inputs are utilised for exports after manufacture, the deferred duty is exempted**. Only when the **finished goods are cleared to the domestic market, import duty is to be paid** on the imported raw materials used in the production or imported goods cleared in the domestic market (ex-bonding). Import duty on capital goods is to be paid if and when the capital goods are cleared to the domestic market.



- When finished goods are exported, in addition to the waiver of BCD + IGST on the imported goods used, the GST on the finished goods can be zero-rated.

Manufacture and other Operations in Warehouse

20.2

Salient features of the Manufacture and other Operations in Warehouse:

(i) No geographical limitation on where such units can be set up. New manufacturing facility can be set up or an existing facility can be converted into a bonded manufacturing facility irrespective of its location in India.

(ii) A single application cum approval form for uniformity of practice with a single point of approval to set up the operations of such units. Commissioner of Customs Acts as the single point of contract for all approvals. Common application cum approval form for a license for private bonded facility and permission for manufacturing and other operations.

(iii) Improved liquidity with deferment of import duty and no interest liability.

(iv) Allows procurement of GST compliant goods from the domestic market for use in manufacture and other operations.

(v) A single digital account for ease of doing business and easy compliance. Maintain all records of manufacturing and other operations digitally in a single format as per Annexure-B

(vi) Enables efficient capacity utilization, as there is no limit on quantum of clearances that can be exported or cleared to the domestic market. It means an entity may manufacture in a bonded facility and sell up to 100% of the output in the domestic market.

(vii) Duty free transfer of goods allowed from one warehouse to another.

(viii) Capital goods and non-capital goods (namely raw materials, components, etc.) can remain warehoused until clearance or consumption.

Who is eligible for applying for manufacture and other operations in a bonded warehouse:

The following persons are eligible to apply for manufacture and other operations in a bonded warehouse, -

(i) A person who has been granted a licence for a private warehouse under Section 58 of the Customs Act, in accordance with Private Warehouse Licensing Regulations, 2016.

(ii) A person can also make a combined application for licence for a warehouse under Section 58, along with permission for undertaking manufacturing or other operations in the warehouse under Section 65 of the Act.

The persons mentioned have to be a citizen of India or an entity incorporated or registered in India.

There is no physical control of a unit licensed under Section 65 and Section 58 of the Customs Act, 1962, on a day-to-day basis. The unit will be subject to risk-based audits.

Manufacture in Bond

20.3

Through bonded manufacturing, all types of businesses can avail exemption on customs duty on imported inputs used in the production of finished goods to be exported. In the case of domestic consumption, the duty on imported inputs is deferred until the finished goods are cleared to the domestic market.

Example 1

M/s X Inc. a leading Japanese automobile manufacturer incorporated and intends to manufacture vehicles in India. They file an application for licensing a facility near Nagpur, Maharashtra and imported inputs for production like airbags, gearboxes, and capital goods. The duty on such imports is deferred, which provides additional capital support to the manufacturer. The manufacturer exports 70% of the total produced vehicles and deferred duty on that portion is waived while deferred Customs Duty and IGST are paid on the remaining 30% vehicles at the time of their sale domestically across India. The manufacturer benefits from deferred duty on imported inputs and from reduced production cost due to duty-free imports.

Licensing of Public, Private and Special Warehousing

20.4

Licensing of public warehousing:

Section 57 The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.

Licensing of private warehouses:

Section 58 the Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

Licensing of Special Warehousing:

Section 58A (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited, and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

At present, manufacture and other operations in a bonded warehouse is allowed only in a Private Bonded Warehouse licensed under Section 58 of the Customs Act. Hence, manufacture and other operations in a Public Bonded Warehouse licensed under section 57 and Special Warehouse licensed under section 58A(1) of the Customs Act are not allowed.

Manufacture and other operations in relation to goods in a warehouse Section 65:

As per Section 65(1) of the Customs Act, 1962, with the permission of the Principal Commissioner of Customs Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

Step by Step Approach to Start Manufacturing in Bond

20.5

Step 1: Fill online application as per Annexure A along with the following details:

- Nature of manufacturing
- Particulars of imported inputs
- Anticipated trade volume, etc.

Documents That Are Mandatory To Upload

Application For License	Site Plan	Lease Deed
NOC From Owner	PAN Card Copy	Aadhar Card
Bank Solvency Certificate	Undertakings	ID Proof Of Directors
Certifiacte Of Incorporation	List Of Director	Board Resolution
General Continuity Bond	Indemnity Bond	Fire Fighting Installation
Insurance	ITR and Balance Sheet	Memorandum & Articles
Appointment Letter Of Warehouse Keeper	Work Experience Certificate Of Warehouse Keeper	Importer Exporter Code

Step 2: Execute a Bond:

(i) Execute a bond as per Annexure-C and submit a physical copy to your Jurisdictional Commissioner of Customs.

(ii) Maintain detailed accounts as per Annexure B

Note: Before execution of a Bond, a Customs Officer visits the facility to evaluate the compliances in order to issue the license.

Step 3: Grant of Sanction:

(i) Commissioner of Customs grants the permission for manufacturing or other operations in the bonded facility

(ii) Permission also includes:

- Manufacturing process or other operations permitted
- Conditions regarding manufacturing

Step 4: Approved:

Start manufacturing or other operations in a Bonded Warehouse.

Note:

(1) Annexure-A: The processes for availing the license for a private bonded facility (as per Section 58) and for manufacturing or performing other operations (as per Section 65) are combined under single application as per Annexure A.

(2) Annexure-B: Form to be maintained by a unit operating under section 65 of the Customs Act for the receipt, processing and removal of goods.

(3) Annexure-C: General Bond (To be executed under sub-section (2) of Section 59 of the Customs Act, 1962 by a unit operating under section 65 of the Customs Act1962).

Clearance of Warehoused Goods

20.6

Clearance of warehoused goods to domestic market for home consumption:

Warehouse goods can be utilized for home consumption or sold out in the domestic market only if:

- a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
- the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- an order for clearance of such goods for home consumption has been made by the proper officer

Clearance of warehoused goods for Export:

Warehouse goods can be exported to a place outside India without payment of import duty if:

- a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form;
- the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- an order for clearance of such goods for exportation has been made by the proper officer

Clearance of warehoused goods to another bonded manufacturing facility:

When goods are transferred from one bonded facility to another, incidence to pay deferred duty is also transferred to the owner of the new facility. The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

Conditions for Transportation and Receipt of Goods from another Warehouse:

1. Fill Form for Transfer of goods from a facility appended in Warehouse Goods (Removal) Regulations Act, 2016 to transport warehoused goods.
2. Licensee of the originating warehouse affixes a one-time-lock, unless permitted by the Commissioner of Customs to transport without the lock, depending upon the nature of goods or the manner of transport. This one-time-lock affixed on the load compartment of the means of transport carrying the goods to the warehouse to be verified on receipt.
3. Produce 'Acknowledgement' received from the licensee of the recipient warehouse stating arrival of goods to Bond Officer of the originating warehouse. The bond officer to be informed immediately if the one-time-lock is not found intact and refuse the unloading of the goods.
4. Allow unloading, provided the one-time-lock is found intact and verify the quantity of goods received
5. Report any discrepancy in the quantity of the goods within twenty-four hours to the bond officer
6. Endorse the Form for transfer of goods from a warehouse with quantity received and retain a copy thereof
7. Acknowledge the receipt of the goods by endorsing the transportation document presented by the carrier of the goods and retain a copy thereof

Clearances of Waste/Refused Goods:

As per Section 65(2) of the Customs Act, 1962, where in the course of any operation permissible in relation to any warehoused goods under sub-section (1) of Section 65 there is any waste or refuse, the following provisions shall apply:—

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported:

Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it has been imported into India in that form;

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

Maintenance of records and filing monthly returns

20.7

Licensees namely owner of warehoused goods need to maintain following records: -

(1) Maintain detailed records of receipt, handling, storing and removal of goods into/ from the facility as per **Annexure B**.

(2) Keep record of each activity, operation or action taken in relation to the warehoused goods.

(3) Keep record of drawl of samples from the warehoused goods.

(4) Keep copies of the following documents:

   a. Bills of Entry

   b. Transport documents

   c. Forms for transfer of goods from warehouse

   d. Shipping Bills

   e. Bills of Export

   f. Any other documents indicating receipt/ removal of goods from the warehouse

(5) Preservation of physical and digital records - Update records and accounts accurately and preserve for a minimum 5 years from the date of removal of goods from the facility.

(6) Preserve updated digital copies of records at a place other than the facility to prevent loss of records due to natural calamities.

(7) Filing monthly returns within 10 days from the end of relevant month.

If licensees fail to comply with any of the provisions of these regulations, they shall be liable to pay penalty in accordance with the provisions of the Customs Act, 1962.

Illustration 1

Can a unit undertaking manufacture and other operations in a bonded warehouse import inputs without payment of duty? If yes, whether only BCD or both BCD and IGST on imports is covered? For how long is duty deferment available? Is interest payable after some time?

Solution:

Manufacture and other operations in a bonded warehouse is a duty deferment scheme. Thus, both BCD and IGST on imports stand deferred. In the case of goods other than capital goods, the import duties (both BCD and IGST) stand deferred till they are cleared from the warehouse for home consumption, and no interest is payable on duty. In case the finished goods are exported, the duty on the imported inputs (both BCD and IGST) stands remitted i.e. they will not be payable. The duty deferment is without any time limitation.

Illustration 2

Is import of raw material without BCD and IGST allowed? Will there be any interest obligation if IGST is paid when finished goods are sold in domestic markets?

Solution:

Inputs/raw materials can be imported and deposited in the licensed warehouse without payment of BCD and IGST. No interest liability arises when the duties are paid at the time of ex-bonding the resultant goods. The duties (without any interest) are to be paid only when the resultant goods are being cleared for home consumption.

Illustration 3

Would it be mandatory to appoint a warehouse keeper in the factory licensed under Section 65 of the Customs Act? Would all goods cleared from the said factory be subject to inspection by the warehouse keeper/ Customs authorities?

Solution:

A warehouse keeper has to be appointed, for a premise to be licensed as a private warehouse under Section 58 of the Customs Act. The warehouse keeper is expected to discharge duties and responsibilities, maintain accounts and also sign the documents, on behalf of the licensee. The warehouse keeper is expected to supervise and satisfy himself about the veracity of the declaration/accounts that he is signing. The inspection of goods by customs at the stage of ex-bonding would be done, only if there is indication of risks and not as a matter of routine practice. Approval of the bond officer is not required for clearance of the goods from the warehouse.

Illustration 4

What are the customs document/ form for movement of imported goods on which duty has been deferred to/ from a unit undertaking manufacture and other operations in a bonded warehouse? Are such goods required to be under customs escort during their movement?

Solution:

Following are the customs document for movement of imported goods on which duty has been deferred to/ from a unit undertaking manufacture and other operations in a bonded warehouse:

(i) Customs Station to Section 65 unit: Bill of entry for warehousing. It is clarified that no separate form is prescribed for movement from Customs station to Section 65 unit as the goods are already accompanied by the Bill of entry for warehousing.

(ii) From another warehouse (non-Section 65) to a Section 65 Unit: Form for transfer of goods from a warehouse as prescribed under the Warehoused Goods (Removal) Regulations, 2016. This is because warehouse which is not a Section 65 unit has to follow the Warehoused Goods (Removal) Regulations, 2016.

(iii) From Section 65 Unit to another warehouse (the other warehouse can be a Section 65 unit or a non-Section 65 warehouse): Form prescribed in Manufacture and Other Operations in Warehouse (no. 2) Regulations, 2019.

The goods will not be under customs escort during movement.

Illustration 5

If the imported capital goods are cleared for home consumption after use, is depreciation available?

Solution:

No. Depreciation is not available if imported capital goods (on which duty has been deferred) are cleared for home consumption after use in a Section 65 unit.

Illustration 6

If the imported capital goods are cleared for export after use, is depreciation available?

Solution:

The imported capital goods (on which duty has been deferred) after use in a Section 65 unit can be exported without payment of duty as per Section 69 of the Customs Act. For the purposes of valuation of the export goods, the same will be as per the Section 14 of the Customs Act read with the Customs Valuation (Determination of Value of Export Goods) Rules 2007.

Illustration 7

What are the procedure and documentation requirements for re-entry of manufactured goods, returned by the customers for repair, in the premises?

Solution:

Once the goods are cleared from the warehouse, they will no longer be treated as warehoused goods. Thus if the resultant goods cleared from the warehouse are returned by the customer for repair, they will be entered as DTA receipts (this is provided in the accounting form). After repair, when the same is cleared from the warehouse, the same will be entered in the prescribed accounting form. If the goods were exported and subsequently rejected or sent back for repair by the customer, then the goods upon re-import have to be entered as Imports receipts in the accounting form. The relevant customs notification for re-imports has to be followed while filing the Bill of Entry for re-import of the goods.

Illustration 8

What is the procedure for surrender of licence for a Section 65 unit?

Solution:

Since the unit operating under Section 65 is also licensed as a Private Bonded warehouse under Section 58 of the Customs Act, the procedure for surrender of licence will be as per the regulation 8 of the Private Warehouse Licensing Regulations, 2016.A licensee may therefore, surrender the licence granted to him by making a request in writing to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be. On receipt of such request, the licence will be cancelled subject to payment of all dues and clearance of remaining goods in such warehouse.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Section 58 the Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a _________wherein dutiable goods imported by or on behalf of the licensee may be deposited.
   (a) private warehouse
   (b) public warehouse
   (c) special warehouse
   (d) warehouse
2. When goods are transferred from one bonded facility to another, incidence to pay deferred duty is also ________to the owner of the new facility.
   (a) Not transferred
   (b) Transferred
   (c) May be transferred to warehouse keeper
   (d) Can not be transferred to owner of the warehoused goods
3. Preservation of physical and digital records by the Licensees namely owner of warehoused goods needs to maintain update records and accounts accurately and preserve for a minimum 5 years from the date of.
   (a) removal of goods from the facility
   (b) import of goods
   (c) export of goods
   (d) removal of goods from the place of job worker.
4. ____________grants the permission for manufacturing or other operations in the bonded facility.
   (a) Assistant Commissioner of Customs
   (b) Deputy Commissioner of Customs
   (c) Additional Commissioner of Customs
   (d) Commissioner of Customs
5. At present manufacture, and other operations in which bonded warehouse is not allowed?
   (a) Public Bonded Warehouse
   (b) Special Bonded warehouses
   (c) Only Private Bonded warehouse
   (d) Both (a) and (b)

Answer:

1.	2.	3.	4.	5.
a	b	a	d	d

Duty Drawback 21

This Module Includes

Duty Drawback

SLOB Mapped against the Module

1. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules.
2. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand various types of duty drawbacks.
- Explain cases wherein duty draw back not allowed
- Apply practically to claim duty drawback

Introduction

21.1

The term 'duty drawback' means drawing back of the duties paid. As per section 75 of the Customs Act, 1962, drawback is given as an amount to the exporter which represents:

- The duty paid on imported inputs which are used in the manufacture of export goods.
- The excise duty paid on the indigenously produced inputs used in the manufacture of export goods (prior to GST.
- The service tax paid on input services (prior to GST).

No drawback is allowed on GST

However, the amount of drawback paid would not exactly relate to the actual import duty and excise duty components. It is determined by the government on the basis of an average amount of duty having regard to all the circumstances and facts of the manufacturing industry. Such a rate is called 'all industry rates' which may vary from time to time depending upon the duty prevalent on the inputs.

Brand rate of duty drawback is applicable in either of the following circumstances.

- When individual rate fixed in respect of goods on which all industry rate is not applicable

  Or

- All industry rate does not cover 80% of the drawback amount due

The Brand Rate of Duty Drawback fixed by the Central Government after necessary verification of the manufacturing processes and the documents provided giving details of input output ratio, duty paid on inputs, etc.

Types of Duty Drawbacks 21.2

Special Brand Rate of duty drawback

As per Rule 7 of Drawback Rules the special brand rate of duty drawback can be applied based on the satisfaction of following conditions:

- Exporter has to apply for fixation of special brand rate within 30 days from the date of export.
- All industry rates do not cover 80% of the duties paid by the exporter.
- Rate of Duty Drawback should not be less than 1% of Free on Board.
- Amount of Drawback should not be less than ₹500 per shipment, in case rate of Duty Drawback is less than 1% of FOB.
- Exported goods value is more than the value of imported goods.

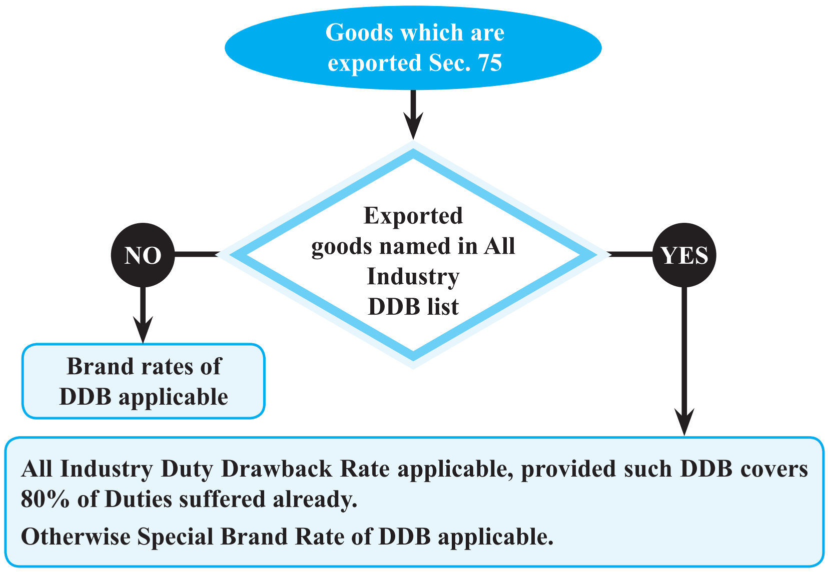
All Industry Rates

Generally, these rates are fixed by the Drawback Directorate once in every year on 1st June. The Brand rate is fixed for those products in respect of which All Industry Rate is not announced. In that case, the manufacturer or exporter must get the brand rate fixed by furnishing the prescribed data within 3 months from the relevant date for determination of rate of duty and tariff valuation to the Commissioner of Central Excise and Customs.

As per Rule 3(2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, all industry rate of duty drawback will be determined by the Drawback Directorate shall have regard to

- The average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.
- The average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;
- The average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods.
- The average amount of duties paid on materials wasted in the process of manufacture.
- The average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;
- The average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the export goods.
- Any other information, which the Central Government considers relevant or useful.

Types of duty drawbacks concept and its applicability explained here in a simplified manner:



Where the exporter has already filed a duty, drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate. [w.e.f. 22.11.2014].

Duty Drawback on Re-Export

21.3

Section 74 of the Customs Act, 1962, provides facility of claiming duty drawback on the re-export of duty paid goods.

Drawback of import duty paid is not allowed if these goods are exported: Wearing apparel (after being used), Tea chests, Exposed cinematograph film passed by the Board of Film Censors in India, Unexposed photographic films, paper and plates and X-Ray films.

- Originally the goods should have been imported into India;
- Customs duty on import should have been paid.
- The imported goods should be capable of being easily identifiable as the same goods which were originally imported.
- The goods have been exported after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export by the proper officer.
- The goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
- The goods should have been entered for export within **two years** from the date of payment of duty on the importation thereof.

The Central Board of Indirect Taxes and Customs has the power to extend the period of two years. Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback. 98% duty drawback is allowed only when these goods are re-exported without being used in the industry. If the goods are taken into use after importation then the duty drawback is allowed based on the period of usage as per section 74(2) of the Customs Act, 1962.

Drawback rates on re-export if the goods are taken into use after importation (NT No. 23/2008-Cus., dated 1-3-2008)

The following duty drawback rates have been notified by the Central Government under section 74(2) of the Customs Act, 1962. These rates are applicable if the goods are re-exported only after being used in the business.

Length of period between the date of clearance for home consumption and the date when goods are placed under Customs control for export.	% of import duty to be paid as Drawback
Not more than 3 months	95%
More than 3 months but not more than 6 months	85%
More than 6 months but not more than 9 months	75%

Length of period between the date of clearance for home consumption and the date when goods are placed under Customs control for export.	% of import duty to be paid as Drawback
More than 9 months but not more than 12 months	70%
More than 12 months but not more than 15 months	65%
More than 15 months but not more than 18 months	60%
More than 18 months	NIL

Duty drawback rates on personnel goods under section 74(2) of the Customs Act

The following duty drawback rates are allowable on goods imported for personal use (like Motor cars or other goods) after payment of duty and subsequently re-exported: These rates are applicable if the goods are re-exported after being used.

Year	Quarter or part thereof	Rate of drawback to be reduced	Cumulative reduction	Allowable drawback
1	1st Quarter	4%	4%	96%
	2nd Quarter	4%	8%	92%
	3rd Quarter	4%	12%	88%
	4th Quarter	4%	16%	84%
2	1st Quarter	3%	19%	81%
	2nd Quarter	3%	22%	78%
	3rd Quarter	3%	25%	75%
	4th Quarter	3%	28%	72%
3	1st Quarter	2.50%	30.5%	69.5%
	2nd Quarter	2.50%	33%	67%
	3rd Quarter	2.50%	35.5%	64.5%
	4th Quarter	2.50%	38%	62%
4	1st Quarter	2%	40%	60%
	2nd Quarter	2%	42%	58%
	3rd Quarter	2%	44%	56%
	4th Quarter	2%	46%	54%

Part of the quarter is also considered as full quarter for allowing duty draw back rate.

Motor car or goods used more than 2 years:

where the period of usage is more than 2 years, drawback shall be allowed only if the CBIC, on sufficient cause being shown, has in that particular case extended the period beyond 2 years and also that no drawback shall be allowed if such motor car has been used for more than 4 years.

Illustration 1

Mr. Ram wants to take back with him (i.e. re-export) a car that he was imported on duty payment, when came to India. Can he get any duty drawback from the government? He has imported motor car for his personal use and paid ₹2,50,000 as import duty. Car used in India for 3 months and 2 days.

Solution:

Yes, he can claim the duty drawback @92% on the value of import duty i.e. ₹2,30,000.

The entire concept with regard to duty drawback on re-export has been explained hereunder:

Re-export of Duty paid imported goods Sec. 74

Goods are imported for business purpose

After Use

Exported ≤ 18 months from the date of payment duty	% of DDb on import duty
≤3M →	95%
>3M ≤6M →	85%
>6M ≤9M →	75%
>9M ≤12M →	70%
>12M ≤15M →	65%
>15M ≤18M →	60%
>18M →	Nil

Without Use

DDB = @98%
Exported ≤ 2 years from the date of payment duty

Goods are imported for personal purpose

After Use

	QTR	DDB (%)
Year 1	I	96
	II	92
	III	88
	IV	84
Year 2	I	81
	II	78
	III	75
	IV	72
Year 3	I	69.5
	II	67
	III	64.5
	IV	62
Year 4	I	60
	II	58
	III	56
	IV	54

Without Use

DDB = @98%
Re-exported IMMEDIATELY

Statements/Declaration to be made on export other than by post

As per Rule 4 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, the exporter shall at the time of export of the goods—

- State on shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export the following:
  - the export is being made under a claim for drawback under section 74 of the Customs Act;
  - that the duties of customs were paid on the goods imported;
  - that the imported goods were, or were not, taken into use after importation;
- Furnish to the proper officer of customs, copy of bill of entry, import invoice, Documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary

Time limit for claiming the duty drawback

As per Rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 a claim for drawback, in case of goods exported other than by post, shall be filed in the specified from at Annexure II **within three months** from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

In case of delay in filing the claim, the proper officer namely the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, if he satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, allow the exporter to file his claim within **a further period of three months**.

Extension of time period for filing drawback claim under rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Proviso to rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 has been substituted with a new proviso. Rule 5(1) provides that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.

The new proviso lays down that the said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ₹1,000/- whichever is less and a further period of six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹2,000/- whichever is less. [Notification No. 48/2010-Cus. (NT), dated 17.06.2010]

Change in time periods available under rules 6, 7, 15 and 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

Following amendments have been made in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995: [Notification No. 49/2010-Cus.(NT), dated 17.06.2010]

(i) The time period for the following has been extended from sixty days to three months:

(a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback, if no, All Industry Rate is specified [Rule 6].

(b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low (i.e. All Industry Rate is lower than 80% of the duty or tax paid) [Rule 7].

Further, the aforesaid periods of three months may be extended by a period of three months by Assistant/ Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ₹1000/- whichever is less and a further period of six months by Commissioner of Central Excise/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹2000/- whichever is less.

Supplementary Claim [Rule 15]:

Where an exporter finds that the amount of duty drawback paid to him is less than what he is entitled to on the basis of amount or rate of duty drawback as determined by the Commissioner of Central Excise/ Commissioner of Customs and Central Excise, he may prefer supplementary claim in prescribed form:

The claim shall be made within 3 months of the following dates—

- Where rate of duty drawback is determined or revised under Rule 3 or 4, date of publication of such date
- Where the rate is determined under Rule 6 or 7, the date of communication of rate to person

The said 3 months period further extended for a period of nine months for filing a supplementary claim under rule 15, by making an application accompanied with fees of 1% of the FOB value of exports or ₹1,000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with fees of 2% of the FOB value or ₹2,000/- whichever is less.

Recovery of duty drawback where export proceeds are not realized Rule 16A:

Where the duty drawback has been paid to the exporter but the sale proceeds in respect of such goods have not been realized by the exporter within the period permissible by the Foreign Exchange Management Act, 1999 (FEMA), such duty drawback shall be recovered by the Government except under circumstances or conditions specified in rule 16A(5).

Where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him and the exporter produces evidence about such realization within a period of 3 months from the date of realization of sale proceeds provided the sale proceeds have been realized within the period permitted by the Reserve Bank of India. The amount of drawback so recovered shall be repaid the Assistant Commissioner or Deputy Commissioner of Customs to the exporter.

Further, the aforesaid period of three months may be extended by a period of nine months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with fees of 1% of the FOB value of exports or ₹1000/- whichever is less.

Drawback shall not be recovered (Notification No. 30/2011-Cus., dated 11-4-2011):

As per Rule 16A (5) the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 where sale proceeds are not realized by an exporter within the period allowed under the FEMA, the amount of drawback paid to the exporter or the claimant shall not be recovered if—

- such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. (ECGC), under an insurance cover; and

- the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits; and
- the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

Clarification regarding duty drawback allowed in cases of short realisation of export proceeds due to bank charges deducted by foreign banks. Circular No. 33/2019-Customs dated 19th September 2019:

In view of the above, it is clarified that duty drawback may be permitted on FoB value without deducting foreign bank charges. It is further clarified that since agency commission up to the limit of 12.5% of the FoB value has been allowed, such deduction on account of foreign bank charges is allowed within this overall limit of 12.5% of the FoB value. From the average rates of agency commission and foreign bank charges in respect of export shipments, it is seen that these deductions fall within the aforesaid overall limit of 12.5% of FoB value allowed by the Board. Agency commission and foreign bank charges, separately or jointly, exceeding this limit should be deducted from the FoB value for granting duty drawback.

Circular No. 23/2015-Cus, dated 29.09.2015]

Safeguard duties are rebatable as duty drawback (section 75 of the Customs Act).

Since safeguard duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of the same can be claimed under an application for Brand Rate under rule 6 or rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

This implies that drawback shall be admissible only where the inputs which suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

Further, where imported goods subject to safeguard duties are exported out of the country as such, then the drawback payable under section 74 of the Customs Act would also include the incidence of safeguard duties as part of total duties paid, subject to fulfilment of other conditions.

Refund of drawback of basic customs duty paid on inputs for deemed exports also allowed on "All Industry Rate" basis [Notification No. 28/2015-2020 dated 31.10.2019]

DGFT vide Notification No. 28/2015-20 dated 31st October 2019 has amended the said provision and provided that refund of drawback on the inputs used in manufacture and supply under the deemed exports category can be claimed on 'All Industry Rate' of Duty Drawback Schedule notified by Department of Revenue from time to time provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on 'Brand rate basis' upon submission of documents evidencing actual payment of basic custom duties. Accordingly, the refund of drawback of duty paid on inputs is also allowed on All Industry Rate basis.

Note: Earlier, the refund of drawback in the form of Basic Customs duty of the inputs used in manufacture and supply under the deemed exports category was given on brand rate basis upon submission of documents evidencing actual payment of basic custom duties.

Documents to be filed for claiming of duty drawback on re-export

As per Rule 5(2) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, the claim shall be filed along with the following documents, namely

- Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.
- Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation;

- Import invoice;
- Evidence of payment of duty paid at the time of importation of the goods;
- Permission from Reserve Bank of India for re-export of goods, wherever necessary;
- Export invoice and packing list;
- Copy of Bill of lading or Airway bill;
- Any other documents as may be specified in the deficiency memo.

As per Rule 5(3) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 the date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims, which are complete in all respects, and for which are acknowledgement shall be issued in the form prescribed by the Commissioner of Customs.

As per Rule 5(4)(a) of the Any claim which is incomplete in any material particulars or is without the documents specified above shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

Incomplete claim if any shall not be accepted for the purpose of section 75A and the same shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

Where the exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under Rule 5(1).

Payment of Erroneous or Excess Payment of Duty Drawback and Interest

21.4

Where an amount of drawback and interest, if any, has been paid erroneously or amount so paid in excess of what the claimant is entitled to, the claimant shall, on demand by an officer of customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in Section 142(1) of the Customs Act, 1962 namely recovery of sums due to Government.

As per section 75A(2) of the Customs Act, 1962, the claimant (assessee) is liable to pay the excess amount of drawback, he is liable to pay interest as well. No notice need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid. **[CPS Textiles P Ltd. v Joint Secretary 2010 (255) ELT 228 (Mad)].**

Re-Export of Imported Goods by POST

21.5

Procedure to claim the duty drawback when import duty paid on imported goods which are taken for re-export:

- The parcel carrying the address of the consignee shall also carry in bold letters the words "DRAW BACK EXPORT";
- The exporter shall deliver to the competent Postal Authority, along with the parcel of package, a claim, in quadruplicate, duty filled in specified form.
- The relevant date for filing of drawback claim in such a case shall be the date of receipt of the aforesaid 'claim form' by the proper officer of customs from the postal authorities. This date is important for the purpose of calculation of interest on drawback under Section 75A of the Act.
- An intimation of the same shall be given by the proper officer of customs to the exporter in the form prescribed by the Commissioner of Customs.
- Deficiencies, if any, in the claim form shall be intimated to the exporter within 15 days of its receipt by postal authorities through a deficiency memo. In such circumstances such claim shall be deemed not to have been received.
- Where the exporter complies with the requirements specified in deficiency memo, within 30 days of receipt of the deficiency memo, he shall be issued an acknowledgement by the proper officer. The date of such acknowledgement shall be deemed to be the date of filing the claim for purposes of section 75A.

Negative List of Duty Drawback

21.6

Section 76 of the Customs Act, 1962 contains the provisions in respect of prohibition and regulation of drawback and no drawback shall be allowed in the following circumstances:

(a) In respect of any goods, the market price of which is less than the amount of drawback due thereon.

(b) If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this Chapter are likely to be smuggled back into India.

(c) CENVAT credit claim is on inputs and input services then no duty drawback is allowed. However, if the goods have already suffered the customs duty then duty drawback is allowed to the extent of customs duties.

(d) Duty drawback is not allowed if the exporter has already availed the Duty Entitlement Pass Book (DEPB) or other export incentives.

(e) If the sale proceeds not received within the time period allowed by Reserve Bank of India.

(f) Export to Nepal and Bhutan and the export proceeds are not received in hard currency (it means USD, GBP or Pounds).

(g) drawback in respect of iron and steel, cement and rice is not allowed. [w.e.f. 29-5-2008]

(h) duty drawback is more than 1/3rd of market value of exported goods, then amount of duty drawback is restricted to 1/3rd of market value.

(i) No amount or rate of drawback is to be determined except where the amount of drawback exceeds or equal to ₹500/- or it is 1% or more of the FOB value of export

(j) Where the amount of drawback in respect of any goods is less than ₹50.

(h) Duty drawback amount exceeds market value of exported goods.

Example 1

Particulars	Situation 1	Situation 2	Situation 3	Situation 4
Free On Board (FOB) in ₹	1,000	10,000	1,00,000	1,00,000
Duty Draw Back (DDB) in ₹	40	200	450	750
DDB (%)	4%	2%	0.45%	0.75%
DDB	Not allowed	Allowed	Not allowed	Allowed

Particulars	Situation 1	Situation 2	Situation 3	Situation 4
Remarks	Since, DDB is <₹50	Since, DDB ≥1% and amount also ≥₹50	Since, DDB < 1% and DDB amount also <₹500	Since, DDB amount is ≥ ₹500 even though DDB < 1%

The above list is only illustrative but not exhaustive.

Upper limit of drawback money or rate

As per the Rule 8A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 the drawback amount or rate determined under rule 3(i.e. the all industry rate) shall not exceed 1/3rd of the market price of export product.

Minimum and Maximum Duty Drawback Rates:

- Minimum duty drawback rate @1% on FOB value of exports.
- Maximum duty drawback rate @33% on FOB value of exports.

Interest on Draw Back Amount 21.7

Any drawback payable to a claimant u/s 74 or 75 is not paid within specified time period (i.e. one month from the date of filing of drawback claim), the @6% per annum interest is payable to the claimant after the expiry of said one month till the date of payment of such drawback.

Drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or rules made there under, within two months from the date of demand has to pay back. Otherwise, @13% per annum interest will be levied from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

Duty Deferment 21.8

Duty deferment [provisions of this section have been omitted w.e.f. 10.05.2013]

The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit clearance of material under an import licence without payment of duty leviable thereon. This is permissible subject to satisfaction of the following conditions [Section 143A of the Customs Act, 1962].

- While permitting clearance, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may require the importer to execute a bond with such surety or security as he thinks fit.
- The duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act
- If the imported goods are not exported within the period specified in Advance Authorisation or within such extended period not exceeding six months by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, be liable to pay the amount of duty not so adjusted together with simple interest thereon at the rate of twelve per cent per annum from the date the said permission for clearance is given to the date of payment.

New Customs and Central Excise Duties Drawback Rules, 2017

21.9

Any goods are produced or manufactured from imported materials or excisable materials, on some of which only the duty chargeable thereon has been paid and not the rest, or only a part of the duty chargeable has been paid, or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the customs Act, 1962 or the Central Excise Act, 1944, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained.

1. **No drawback in certain cases:**

   (i) if the said goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;

   (ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid;

   (iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Bimlipatam jute or mesta fibre) yarn, twist, twine, thread, cords and ropes;

   (iv) if the said goods, being packing materials have been used in or in relation to the export of -

   (A) jute yarn (including Bimlipatam jute or mesta fibre), twist, twine, thread and ropes in which jute yarn predominates in weight;

   (B) jute fabrics (including Bimlipatam jute or mesta fibre), in which jute predominates in weight;

   (C) jute manufactures not elsewhere specified (including Bimlipatam jute or mesta fibre) in which jute predominates in weight.

2. **Factors considered while determining amount/rate of drawback:**

   In determining the amount or rate of drawback under this rule, the Central Government shall have regard to—

   (a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.

   (b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods.

   (c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods.

   (d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents.

   However, if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted.

(e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods.

(f) any other information which the Central Government may consider relevant or useful for the purpose.

3. Cases where amount or rate of drawback has not been determined [Rule 6]:

Where no amount or rate of drawback has been determined in respect of any goods, any exporter of such goods may, within 3 months from the date relevant for the applicability of the amount/rate of drawback, apply to the Principal Commissioner/Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.

However, in case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner/Commissioner of Customs, having jurisdiction over any one of the said places of export.

On receipt of an application, the Principal Commissioner/Commissioner of Customs, as the case may be, shall, after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods.

Provisional drawback:

While making an application under above rule 6, an exporter may apply for a provisional amount of drawback pending determination of the amount or rate of drawback.

The Principal Commissioner/Commissioner of Customs, may, after considering the application, allow provisionally payment of an amount not exceeding the amount claimed by the exporter in respect of such export.

For the said purpose, he may require the exporter to enter into **a general bond** for such amount, and subject to such conditions, as he may direct; or to enter into a bond for an amount not exceeding the full amount claimed by such exporter as drawback in respect of a particular consignment and binding himself to refund the amount so allowed provisionally, if for any reason, it is found that the duty drawback was not admissible; or to refund the excess, if any, paid to such exporter provisionally if it is found that a lower amount was payable as duty drawback. **The bond may be required to be furnished with prescribed surety or security**.

When the amount or rate of drawback payable on such goods is finally determined, the amount provisionally paid to such exporter shall be adjusted against the drawback finally payable and if the amount so adjusted is in excess or falls short of the drawback finally payable, such exporter shall repay to the Principal Commissioner/Commissioner of Customs, as the case may be, the excess or be entitled to the deficiency, as the case may be.

4. Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 amended Effective from 01.07.2017:

Under the GST regime, goods upon import shall be subject to integrated tax and compensation cess in terms of sections 3(7) and 3(9) respectively of the CTA, 1975. Further, in terms of section 3(12) of the CTA, 1975, the provisions of the Customs Act, 1962 and rules and regulations made thereunder relating inter alia to drawback shall apply to integrated tax and compensation cess also. Accordingly, drawback under section 74 would include refund of integrated tax and compensation cess along with basic customs duty, etc.

Illustration 1

An exporter exported 2,000 pairs of leather shoes @ ₹750 per pair. All industry rate of drawback in fixed on average basis i.e. @ 11% of FOB subject to maximum of ₹80 per pair. The exporter found that the actual duty paid on inputs was ₹1,95,000. He has approached you, as a consultant, to apply under Rule 7 of the drawback rules for fixation of 'special brand rate'. Advise him suitably.

Solution:

- Drawback Amount ₹1,65,000 (i.e. 2,000 × 750 × 11%) or ₹1,60,000 (i.e. ₹80 × 2,000) whichever is less.
- Therefore, duty drawback allowed is ₹1,60,000.
- All Industry duty drawback rate = @82.05% [(1,60,000/1,95,000) × 100%]
- Exporter is not eligible to apply for Special Brand rate.
- Therefore, exporter is eligible for claiming All Industry Duty Drawback.

Note: special brand rate of duty is applicable only when all industry rates do not cover 80% of the duties paid by the exporter.

Illustration 2

ABC Ltd., who is an exporter, finds that the amount of drawback refunded to it is less than what it is entitled to, on the basis of the rates of drawback announced by the Central Government. Briefly discuss whether ABC Ltd. can claim the difference of drawback short refunded and procedure to be followed in this regard.

Solution:

Yes, ABC Ltd. is eligible for claiming the difference of the drawback on the basis of the amount of rate of drawback determined by the Central Government of India for claiming the difference by filing a supplementary claim in the prescribed form under rule 15 of the Customs Act and Central Excise Duties Drawback Rules, 1995 within a period of 3 months.

The said 3 months period further extended for a period of nine months for filing a supplementary claim under rule 15, by making an application accompanied with fees of 1% of the FOB value of exports or ₹1000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/ Commissioner of Customs and Central Excise on an application accompanied with fees of 2% of the FOB value or ₹2000/- whichever is less.

Illustration 3

Calculate the amount of duty drawback allowable under section 74 of the Customs Act, 1962 in following cases:

(a) Salman imported a motor car for his personal use and paid ₹5,00,000 as import duty. The car is re-exported after 6 months and 20 days.

(b) Nisha imported wearing apparel and paid ₹50,000 as import duty. As she did not like the apparel, these are re-exported after 20 days.

(c) Super Tech Ltd. imported 10 computer systems paying customs duty of ₹50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.

Solution:

(a) The amount of duty drawback is ₹4,40,000 (i.e. ₹5,00,000 @ 88%), since these goods are used in India.

(b) Duty drawback is ₹nil, assumed that wearing apparels are re-exported after being used.

(c) Duty drawback is ₹49,00,000 (i.e. 50,00,000 × 98%), since these good are re-exported without being used.

Illustration 4

With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:

(i) What is the time limit for re-exportation of goods as such?

(ii) What is the rate of duty drawback if the goods are exported without use?

(iii) Is duty drawback allowed on re-export of wearing apparel without use?

Solution:

(i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation.

This period can be extended by CBIC if the importer shows sufficient reason for not exporting the goods within two years.

(ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.

(iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used.

Illustration 5

Abdul Overseas Pvt. Ltd. was erroneously refunded a sum of ₹ 30,000 in excess of actual drawback on 16-6-2017. A demand for recovery of the same was issued by the Department on 24.08.2017. Abdul Overseas Private Limited returned the erroneous refund to the Department on 16-10-2017. You are required to calculate the amount of interest chargeable from Abdul Overseas Pvt. Ltd. Provide brief reasons for your answer.

Solution:

Interest = ₹1,516/- (30,000 × 15% × 123/365)

Computation of duty drawback:

Illustration 6

'A' exported a consignment under drawback claim consisting of the following items—

Particulars	Chapter Heading	FOB value ₹	Drawback rate
200 pieces of pressure stores mainly made of beans @ ₹80/piece	74.04	16,000	4% of FOB
200 Kgs. Brass utensils @ ₹200 per Kg.	74.13	40,000	₹24/Kg.
200 Kg. Artware of brass @ ₹300 per Kg.	74.22	60,000	17.50% of FOB subject to a maximum of ₹38 per Kg.

On examination in docks, weight of brass Artware was found to be 190 Kgs. and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party.

Solution:

The drawback on each item and total drawback admissible to the party shall be—

Particulars	FOB value (₹)	Drawback rate	Drawback Amount (₹)
200 pcs, pressure stoves made of brass	16,000	4% of FOB	640
200 Kgs. Brass utensils	40,000	₹24 per Kg.	4,800
200 kgs. Artware of brass, whose actual weight was 190 Kgs. only. (60,000 × 190/200) ×17.5% = 9975 190 kgs x ₹38 = ₹7,220		17.50% of FOB subject to maximum of ₹38 per Kg. (₹9,975 or ₹7,220 whichever is less)	7,220
Total Drawback admissible (in ₹)			12,660

Illustration 7

X Ltd has exported following goods to USA. Discuss whether any duty drawback is admissible under section 75 of the Customs Act, 1962.

Product rate	FOB Value of Exported goods	Market Price of goods	Duty drawback
A	2,50,000	1,80,000	30% of FOB
B	1,00,000	50,000	0.75% of FOB
C	8,00,000	8,50,000	3.50% of FOB
D	2,000	2,100	1.50% of FOB

Note: Imported value of product C is ₹9,50,000.

Solution:

Duty draw back amount for all the products are as follows:

Product A:

Drawback amount = 2,50,000 × 30% = ₹75,000 or ₹1,80,000 × 1/3 = ₹60,000

Allowable duty draw back does not exceed 1/3 of the market value.

Hence, the amount of duty drawback allowed is ₹60,000

Product B:

Drawback amount allowed is ₹750 (i.e. ₹1,00,000 × 0.75%).

Since, the amount is more than ₹500 even though the rate is less than 1%.

Product C:

No duty drawback is allowed, since the value of export is less than the value of import (i.e. negative sale)

Product D

No duty drawback is allowed, since the duty drawback amount is ₹30

(which is less than ₹50).

Though rate of duty drawback is more than 1%, no duty drawback is allowed.

Illustration 8

Calculate the amount of duty drawback allowable under the Customs Act, 1962 in the following cases:

(a) Jaggi Mehta imported a car from U.K. for his personal use and paid ₹4,50,000 as import duty. However, the car is re-exported immediately without bringing it into use.

(b) Meenakshi imported a music player from Dubai and paid ₹12,000 as import duty. She used it for four months but re-exports the same after four months.

(c) XYZ Ltd. exported 1000 kgs of a metal of FOB value of ₹1,00,000. Rate of duty drawback on such export is ₹60 per kg. Market price of goods is ₹40,000 (in wholesale market).

Solution:

(a) Jaggi Mehta can claim duty drawback of ₹4,41,000 (98% of ₹4,50,000).

(b) Meenakshi can claim duty drawback of ₹10,200 (i.e. 85% of ₹12,000)

(c) XYZ Ltd. is not entitled to claim duty drawback in this case.

Since, market value of exported goods is less than the value of Duty Drawback.

Solved Cases

Case Law 1

XYZ Company Limited exported a consignment of manufactured goods. The company has paid import duty and central excise duty on the components used in the manufacture. A duty drawback rate has been fixed for these goods. The ship carrying the consignment runs into trouble and sinks in the Indian territorial waters. The customs department refused to grant drawback for the reason that the goods did not reach their destination. As a consultant for M/s XYZ Limited you are required to prepare a brief note with the reason whether the stand taken by the customs department is correct in law.

Solution:

The term “export” means “taking out of India to a place outside India”. The term “taking out of a place outside India” would also mean a place in high seas, if that place is beyond territorial waters of India. If the goods cross the territorial waters of India, then it is an export and duty drawback cannot be denied.

In the given case, the vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. [Union of India v Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC)].

Case Law 2

Sun industries sent certain goods by a ship from Kolkatta to Colombo in Sri Lanka under claim for drawback on the said goods under section 75 of the Customs Act, 1962 against shipping bill. The ship had passed beyond the territorial waters of India and the engine developed trouble while the ship was on high seas falling within the ambit of the expression ‘taking out a place outside India’. The ship returned back and ran aground in Indian territorial waters at the port of Para deep. The fittings, stores and cargo were salvaged. Discuss the admissibility of claim for drawback by the company.

Solution:

In the given case it is apparent that the goods are exported. The fact that the ship was brought back to India because of the damages in the ship does not affect the position. The assessee was entitled to the benefit of section 75 of the Customs Act, 1962. Once the ship carrying goods crosses the territorial waters, export is complete and duty drawback is allowable and it's running aground in India due to engine trouble makes no difference.

Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

22

This Module Includes

Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

SLOB Mapped against the Module

1. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules.
2. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand importance of import of goods at concessional rate of duty.
- Explain procedure of customs import of goods at concessional rate of duty.
- Apply practically import of goods at concessional rate of duty.

Introduction 22.1

Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, are meant for importers who are desirous of availing the benefit of an exemption notification issued under sub-section (1) of section 25 of the Customs Act, 1962. The benefit of such exemption hinges on the utilization of imported goods covered in the notification for the manufacture of any commodity or provision of output service [Rule 2(1)]. These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules [Rule 2(2)].

The Ministry of Finance on 1st February 2022 published the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2022 to make certain amendments to existing Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. These changes come into effect from 1st March 2022. The new process aims at removing manual intervention and simplifying the procedure with focus on automation and faceless procedure to avail the benefit of concessional rate of duty. The amendments are aimed at simplifying the procedures with a focus on automation and making the entire process contactless. These provisions also incorporated under this module.

Miscellaneous Provisions 22.2

Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 notified w.e.f. 01.07.2017 Rule 1[Notification No. 68/2017-Cus.(NT), dated 30.06.2017] read with Notification No. 07/2022 - Customs (N. T.) dated 1st February 2022 w.e.f. 1-3-2022:

Definitions:

Rule 3(a): "Act" means the Customs Act, 1962;

Rule 3(aa): Capital goods: means goods, the value of which is capitalised in the books of account of the importer.

Rue 3(ab): 'common portal' means the common customs electronic portal as referred to in section 154C of the Act;

Rule 3(ac): 'customs automated system' means the Indian Customs Electronic Data Interchange System;

Rule 3(ad): 'date of import' means the date of the order made under section 47 of the Act permitting clearance of such goods;

Rule 3(b): "exemption notification" means a notification issued under sub-section (1) of section 25 of the Act;

Rule 3(c): "information" means the information provided by the manufacturer who intends to avail the benefit of an exemption notification;

Rule 3(ca): Job work: means any treatment, process or manufacture, consistent with the exemption notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones; and the term "job worker" shall be construed accordingly.

Rule 3(d): "Jurisdictional Custom Officer" means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services;

Rule 3(e): "Manufacture" means the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name; and the term "manufacturer" shall be construed accordingly.

Rule 3(f): "Output service" means supply of service excluding after-sales service, utilizing imported goods.

Rule 4: Importer to give prior information. –

(1) The importer shall provide one-time information on the common portal in Form IGCR-1 (Import of Goods at Concessional Rate of Duty) containing the following particulars, namely:—

(i) The name and address of the importer and his job worker, if any;

(ii) The goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both;

(iii) The nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any;

(iv) Particulars of the exemption notification applicable on such import ;

(v) Nature of output service rendered utilising the goods imported; and

(vi) The intended port(s) of import

(2) On acceptance of the above information, an Import of Goods at Concessional Rate Identification Number (IIN) shall be generated against such information furnished: Provided that such information may be updated on the common portal in case of a change in the details furnished in such Form.

(3) The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of import, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay."

Rule 5: Procedure to be followed: -

(1) The importer who intends to avail the benefit of an exemption notification shall mention the IIN as indicated in sub-rule (2) of rule 4 and continuity bond number and details while filing the Bill of Entry.

(2) Accordingly, the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, at the Custom Station of importation, shall allow the benefit of the exemption notification to the importer.

(3) Once a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the Jurisdictional Custom Officer.

Rule 6: Importer to maintain records. –

(1) The importer shall maintain an account in such manner to clearly indicate the quantity-

(i) and value of goods imported;

(ii) and date of receipt of the goods imported in the relevant premises;

(iii) of such goods consumed;

(iv) of goods sent for job work, nature of job work carried out;

(v) of goods received after job work;

(vi) of goods re-exported, if any, under rule 7; and

(vii) remaining in stock, according to Bills of Entry

and shall produce the said account as and when required by the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service:

Provided that in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the Form IGCR-2 (Import of Goods at Concessional Rate of Duty).

(2) The importer shall submit a monthly statement on the common portal in the Form IGCR-3 (Import of Goods at Concessional Rate of Duty) appended to these rules by the tenth day of the following month.

Rule 6A: Procedure for allowing imported goods for job work. –

(1) The importer shall maintain a record of the goods sent for job work during the month and mention the same in the monthly statement specified in sub-rule (2) of rule 6.

(2) The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable through an e-way bill, as specified in the Central Goods and Services Tax Act, 2017 (12 of 2017), mentioning the description and quantity of the goods.

(3) The maximum period for which the goods can be sent to the job worker shall be six months from the date of invoice or an e-way bill as specified in sub-rule (2).

(4) In case the importer is not able to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the Jurisdictional Custom Officer shall take necessary action against the importer under rules 8 and 8A.

(5) The job worker shall,-

(i) maintain an account of receipt of goods, manufacturing process undertaken thereon, and the waste generated, if any, during such process;

(ii) produce the account details before the Jurisdictional Custom Officer as and when required by the said officer; and

(iii) after completion of the job work, send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or an e-way bill.

Rule 6B: Procedure for allowing imported goods for unit transfer. –

(1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the monthly statement specified in sub-rule (2) of rule 6.

(2) The importer shall send the goods under an invoice or wherever applicable through an e-way bill, as specified in the Central Goods and Services Tax Act, 2017 (12 of 2017), mentioning the description and quantity of the goods.

(3) The importer shall in relation to transfer of goods to another unit,-

(i) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;

(ii) produce the account details before the Jurisdictional Custom Officer as and when required by the said officer; and

(iii) after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or an e-way bill."

Rule 7: Re-export or clearance of unutilised or defective goods. –

(1) The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions specified in the concerned exemption notification within six months from the date of import and with respect to unutilised or defective goods so imported, the importer has an option to either re-export such goods or clear the same for home consumption within the said period.

(2) The importer who opts to re-export such goods as specified in sub-rule (1), shall record the details of necessary export documents in the monthly statement: Provided that the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

(3) The importer who opts to clear the unutilised or defective goods for home consumption as specified in sub-rule (1), shall pay the duty along with interest on the common portal and the particulars of such clearance and the payment of duty shall be recorded by the importer in the monthly statement.

(4) The importer has an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by the notification issued under section 28AA of the Act, on the depreciated value allowed in straight line method, as specified below, namely: —

(i) for every quarter in the first year @ 4%;

(ii) for every quarter in the second year @ 3%;

(iii) for every quarter in the third year @3%;

(iv) for every quarter in the fourth and fifth year @ 2.5%;

(v) and thereafter for every quarter @ 2%.

Explanation:

(i) For the purpose of computing rate of depreciation for any part of a quarter, a full quarter shall be taken into account.

(ii) The depreciation shall be allowed from the date when the imported capital goods have come into use for the purpose as specified in the exemption notification upto the date of its clearance.

(5) The importer shall, in relation to sub-rule (4) record the particulars of such clearance and payment of duty in the monthly statement.

Illustration 1

M/s X Ltd., imported capital goods under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 worth ₹2 crore after payment of customs duty of ₹20 lakh on 10th October 2022 and duty concession is ₹10 lakh. Imported capital goods have come into use for the purpose as specified in the exemption notification w.e.f. 1st January 2023. M/s X Ltd., clear the capital goods imported, after having been used for the specified purpose on 15th June 2023. The applicable rate of customs duty is @15% (ignore any other cess or duty).

Find the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by the notification issued under section 28AA of the Customs Act 1962, on the depreciated value allowed in straight line method?

Note: difference duty has been paid on 30th June 2023.

Solution:

Customs duty payable on depreciated value of capital goods (see note 1)	=	₹27,60,000
Less: duty already paid at the time of import of capital goods	=	₹20,00,000
Difference duty to be paid	=	₹ 7,60,000

Interest under section 28AA of the Customs Act, 1962 is ₹75,584/- (see note 2)

Note 1:

Particulars	Working in ₹	Duty in ₹
Depreciated value of capital goods (The depreciation shall be allowed from the date when the imported capital goods have come into use for the purpose as specified in the exemption notification upto the date of its clearance.	₹2 crore - (₹2 crore × 4% × 2 quarters) = ₹1.84 crore From 1st January 2023 to 15th June 2023 = 2 quarters	₹1.84 crore × 15% = ₹27,60,000

Note 2:

Rate of interest is 15% p.a.

Period for which interest payable: from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

From 1st November 2022 to 30th June 2023 = 242 days

Interest = ₹7,60,000 × 15% × 242 / 365 = ₹75,584/-

Rule 8: Recovery of duty in certain case:

(1) In the event of any failure on the part of the importer to comply with the conditions specified in sub-rule (1) of rule 7 or where the payment referred in sub-rule (3) and (4) of rule 7 is not paid or short paid, the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall take action by invoking the bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by the notification issued under section 28AA of the Act, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that the importer is liable to pay

(2) Notwithstanding anything specified in these rules in relation to removal and processing of imported goods for job work, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the exemption notification and in the event of failure to do so, the Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering

output service, shall take action under these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

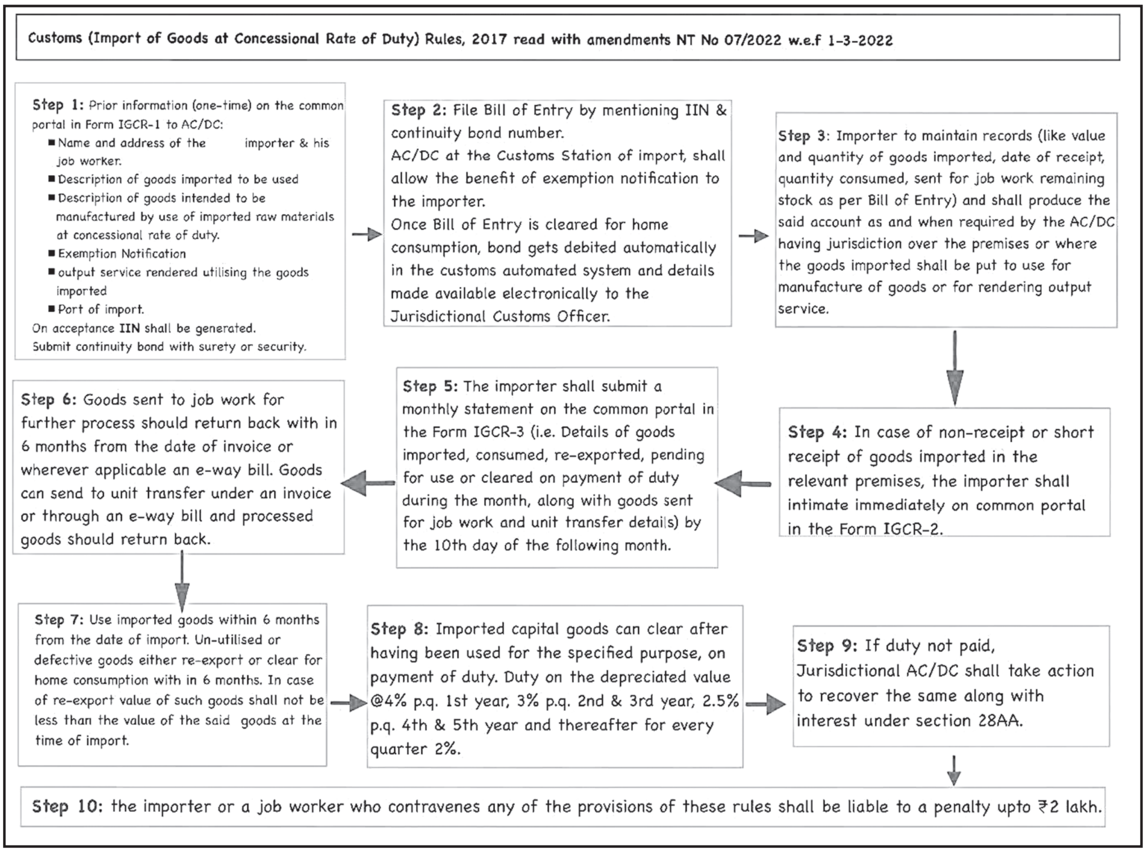
Rule 8A: Penalty:

The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention, shall be liable to a penalty to an extent of the amount specified under clause (ii) of sub-section (2) of section 158 of the Act (i.e. ₹2 lakh) without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

Rule 9:

Form IGCR-1 [i.e. Prior information to be provided by the importer – Rule 4(1)], Form IGCR-2 [i.e. Intimation regarding non-receipt of goods imported – Rule 6(1)] and Form IGCR-3 [i.e. Monthly Statement – Rule 6(2)].

Quick revision of IGCR:



Form IGCR-1

[*See* rule 4(1)]

(Prior information to be provided by the importer)

PART-A

I. Details of importer

S.No	Information	Details
1	I.E.C No.	
2	Name of the importer :	
3	Principal address of the importer :	
4	GSTIN	
5	Port of import	

II. Goods imported at concessional rate intended to be used at premises of importer or job worker:

S.No	CTH	Description of goods imported to be used
(1)	(2)	(3)

III. The exemption benefit availed

S.No	Notification number	Description of goods intended to be manufactured by use of raw materials or components imported at concessional rate of duty
(1)	(2)	(3)

IV. Goods intended to be manufactured

S.No	CTH	Description of goods intended to be manufactured by use of raw materials or components imported at concessional rate of duty
(1)	(2)	(3)

V. Manufacturing facilities intended to be used by importer

S.No.	GSTIN	Address of the manufacturing unit	Goods produced or process undertaken at the manufacturing facility of the importer.
(1)	(2)	(3)	(4)

VI. Manufacturing facilities intended to be used by job worker (in case of more than one job worker, above information should be furnished in respect of each job worker)

S.No.	GSTIN of Job worker or PAN of job worker	Address of the manufacturing unit of job worker	Goods produced or process undertaken at the manufacturing facility of the job worker.
(1)	(2)	(3)	(4)

VII. Nature of out-put service to be provided by the importer with use of goods imported.

S.No	SAC Code	Description of goods intended to be manufactured by use of raw materials or components imported at concessional rate of duty
(1)	(2)	(3)

PART-B

(To be filled after submission of Part A)

Bond details

1	Continuity bond number and date	
(a)	Amount of bond	
(b)	Balance amount of bond	

Note:- The amount of bond will be the estimated duty foregone during the financial year.

Form IGCR-2

[*See* rule 6(1)]

(Intimation regarding non-receipt of goods imported)

I. IIN: ________________

II. Details of goods not received

Bill of entry no	BE date	Port of import	Invoice No	Item no	Quantity not received	Amount paid
(1)	(2)	(3)	(4)	(5)	(6)	(7)

FORM IGCR -3

[*See* rule 6(2)]

(MONTHLY STATEMENT for __________, 20__)

I. IIN :

II. Details of goods imported, consumed, re-exported, pending for use or cleared on payment of duty during the month

BE Number	BE Date	Port of import	Invoice No	Item No	Description of goods	Specified purpose	Quantity of import	Date of clearance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Contd...

Value of goods	Duty foregone				Quantity received	Date of receipt of goods	Quantity not received	Quantity used for intended purpose
	BCD	Other Customs duties	IGST	Cess				
(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)

Contd...

Goods Re exported (Quantity)	Goods cleared on payment of duty (Quantity)	Quantity pending in stock	
		Quantity pending in the importer's premises	Quantity pending with job worker or other units of the importer
(19)	(20)	(21)	(22)

III. Job work and unit transfer details

BE Number	BE Date	Port of import	Invoice No	Item No	Quantity sent for Job work	Job worker GSTIN	Delivery challan/e way bill	Date	Quantity used for intended purpose and removed directly from the JW premises	Quantity used for intended purpose and received back at the importer's premises	Quantity used for intermediate product and received back at importer's premises	Quantity received at the importer's premises from the JW without processing
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)

IV. Re-export details

BE Number	BE Date	Port of import	Invoice No	Item No	Quantity re-exported	SB No.	SB Date	Port of export
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

V. Clearance on payment of duty

BE Number	BE Date	Port of import	Invoice No	Item No	Quantity cleared	Amount paid	Capital goods cleared after depreciation (Yes or No)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, are meant for importers who are desirous of availing the benefit of an exemption notification issued under
   (a) sub-section (1) of section 15 of the Customs Act, 1962.
   (b) sub-section (10) of section 25 of the Customs Act, 1962.
   (c) sub-section (1) of section 35 of the Customs Act, 1962.
   (d) sub-section (1) of section 25 of the Customs Act, 1962.

2. Once a __________ is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the Jurisdictional Custom Officer.
   (a) Bill of Entry
   (b) Shipping Bill
   (c) Entry inwards
   (d) Enty outwards

3. Full form of IIN
   (a) Import of goods at concessional rate of duty Identification Number
   (b) Import of Goods at Concessional Rate Identification Number
   (c) Import of Goods Identification Number
   (d) Import at Concessional Rate Identification Number

4. The importer who intends to avail the benefit of an exemption notification shall mention the __________ as indicated in sub-rule (2) of rule 4 of Customs (Import of goods at Concessional rate of duty) Rules, and continuity bond number and details while filing the _________.
   (a) IIN
   (b) NII, Bill of Entry
   (c) Bill of Entry
   (d) Both (a) & (c)

5. The importer shall submit a monthly statement on the common portal in the Form IGCR-3 (Import of Goods at Concessional Rate of Duty) appended to these rules by the _____ day of the following month.
   (a) Tenth
   (b) Twentieth
   (c) Fiftieth
   (d) Eleventh

Answer:

1.	2.	3.	4.	5.
d	a	b	d	a

Remission of Duties 23

This Module Includes

Remission of Duties

SLOB Mapped against the Module

1. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules.
2. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand remission of duty, refund of duty and rebate of duty
- Identify cases for which remission of duty is applicable.

Introduction

23.1

Remission of duty in simple terms "duty levied goods subsequently got exempted from payment of duty". In other words, remission is waiver or cancellation / exemption of duty legally payable. Such remission of duty can be granted in case the goods are lost or destroyed by natural causes or unavoidable accident or become unfit for consumption or marketing, but only in situations where the loss or destruction occurs any time before removal of goods from customs area. For example, warehoused goods after import got destroyed due to fire or natural calamities (i.e. loss occurred within the warehouse).

Under the make in India initiative, government launched a new scheme called as Remission of Duties and Taxes on Exported Products ('RoDTEP'). This scheme has replaced the existing MEIS scheme with the objective to reimburse the taxes and duties paid at the Central, State and Local level incurred by the exporters such as Local Taxes, Coal Cess, Mandi Tax, Electricity Duties, Tax on petroleum products for transportation of goods, etc. which are not getting exempted or refunded under any other existing scheme so that benefit of zero rate can be achieved. This scheme has been discussed in Module 26 "Export Promotion Schemes under Foreign Trade Policy".

Remission of Duty on Loss, destroyed or abandoned goods [Section 23 of the Customs Act, 1962]

23.2

- Section 23(1) of Customs Act provides for remission of duty on imported goods lost (other than pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption.
- Burden of proof is on importer to prove loss or destruction under section 23
- Loss or destruction may be due to fire, accident etc., but not pilferage
- Section 23(2) provides that at any before an order for clearance of goods for home consumption or order for permitting warehousing has been made, the owner of the goods may relinquish his title to the goods and thereupon no duty shall be levied.
- However, relinquishment of title of goods will not be permissible if offence appears to have been committed in respect of such goods under Customs Act or any other law

Cases where Importer may relinquish his title to the goods

23.3

Importer may relinquish his title to the goods in the following cases [Section 23(2)]:

(i) The goods may not be according to the specifications;

(ii) The goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;

(iii) There might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.

In all the above cases, the goods having been imported, the liability to customs duty is imposed and, therefore, the importer may relinquish his title to the goods unconditionally and abandon them. If the importer does so, he will not be required to pay the duty amount.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Note: It is open to the importer to exercise the option to relinquish the title on the imported goods at any time before the passing of order for clearance for home consumption or before order permitting the deposit of goods in a warehouse.

Pilferage of Goods 23.4

Remission of duty does not arise in case of pilferage under section 13 of the Customs Act, 1962. Section 13 deals with only pilferage, it does not deal with loss/destruction of goods.

Distinction between section 13 and section 23:

Pilferage of goods Sec. 13	Loss or destruction of goods Sec. 23
No duty payable on such goods	Duty paid on such goods to be remitted
Department gets compensation from the custodian (Section 45(3) of Customs Act, 1962)	No such compensation
Petty theft by human being	Loss/destruction by fire, flood etc (i.e. Act of God)
Restoration possible	Restoration is not possible
Occurrence is after unloading and before Customs clearance order for home consumption or warehousing	Occurrence may be at any time before clearance for home consumption
Occurrence in warehouse not recognised	Occurrence in warehouse is recognised
Duty need not be calculated	Duty should be calculated for determining the remission amount
No need to prove pilferage	Should be proved and remission sought for

Difference between Refund of Duty, Rebate of Duty and Remission of Duty

23.5

It is pertinent to note difference between Refund of Duty, Rebate of Duty and Remission of Duty

Refund of duty	Rebate of duty	Remission of duty
It means person paid tax or duty where subsequently noticed that not required to pay. Hence, such person is entitled to claim refund.	It means duty or tax paid where required to pay, thereafter, on account of satisfying certain conditions qualify for rebate of duty paid earlier.	It means duty or tax is levied but not paid, subsequently got exempted from payment of duty or tax.
Example 1	**Example 2**	**Example 3**
Duty paid on exempted goods is qualify for refund	Rebate of duty can be understood as duty draw back. Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.	Warehoused goods after import got destroyed due to fire or natural calamities (i.e. loss occurred within the warehouse).

Power to Grant Exemption from Duty

23.6

Power to grant exemption from duty (Section 25 of the Customs Act, 1962).

The Central Government of India has the power to issue Notification under Section 25 of the Customs Act, 1962 to exempt the excisable goods from the duty either by way of generally

- Subject to such conditions
- Whole or any part of duty

As per section 25(4), the notification becomes effective on the date it is issued for publication in Gazette or the date specified in the said notification as the case may be.

Section 25(4A) where any exemption is granted subject to any condition under sub-section (1) of Section 25 such exemption shall, unless otherwise specified or varied or rescinded, be valid upto 31st day of March falling immediately after two years from the date of such grant or variation.

Provided that in respect of any such exemption in force as on the date on which the Finance Bill, 2021 receives the assent of the President of India, the said period of two years shall be reckoned from the 1st day February 2021.

under section 25(6) of the Customs Act, 1962, no duty shall be collected if the amount of duty leviable is equal to, or less than, ₹100 .

The exemption Notification issued under section 25 of Customs Act, 1962, is not applicable if the EOU or SEZ unit cleared the goods for domestic tariff area, unless a specific provision is mentioned under the notification.

1. **Inward processing of goods (Section 25A of the Customs Act, 1962):**

   Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

   (a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;

   (b) the imported goods are identifiable in the export goods; and

   (c) such other conditions as may be specified in that notification.

2. **Outward processing of goods (Section 25B of the Customs Act, 1962):**

   Notwithstanding anything contained in section 20, where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

(a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;

(b) the exported goods are identifiable in the re-imported goods; and

(c) such other conditions as may be specified in that notification.".

Solved Cases

Case 1

The assessee had imported resin and impregnated paper and had bonded the same in the warehouse. The assessee had also sought the extension of the said warehousing period by contending that the goods were in good condition but could not be used for manufacture due to recession in the market and the extension was granted. Thereafter another application was made at a later date by contending that the resin impregnated papers which were stored in the ware house had lost its shelf life and had become unfit for use on account of non-availability of orders for clearance and accordingly an application for remission of duty was made.

The department rejected the remission of duty claim on the grounds that section 23 is applicable only when the imported goods have been lost or destroyed at any time before clearance for home consumption.

Discuss in the light of decided case law, if any, whether the department is correct in law?

Decision: CCE v Decorative Laminates (I) Pvt. Ltd. 2010 (257) ELT 61 (Kar)

The High Court held that the circumstances made out under section 23 of the Customs Act, 1962, were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section.

There will be no remission of duty if the goods had become unfit for use on account of non-availability of orders for clearance within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

Therefore, from the above it is evident that the department is correct.

Case 2

CVD (now called as IGST) on an imported product be exempted if the Indirect Taxes duty (now GST) on a like article produced or manufactured (now called as supply) in India is exempt?

Aidek Tourism Services Pvt. Ltd. v CCus. 2015 (318) ELT 3 (SC)

Decision: Supreme Court held that rate of additional duty leviable under section 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the Central Excise Act, 1944 on a like article. Therefore, the importer would be entitled to payment of concessional/reduced or nil rate of countervailing duty if any notification is issued providing exemption/remission of excise duty with respect to a like article if produced/manufactured in India.

Case 3

KSJ Metal Impex (P) Ltd. v Under Secretary (Cus.) M.F. (D.R.) 2013 (294) ELT 211 (Mad)

Facts of the case: Section 3(5) of the Customs Tariff Act, 1975 provides for levy of special additional duty (under GST Law it is called as IGST) in addition to duty leviable under section 3(1) of the Customs Tariff Act, 1975 to counter balance sales tax, value added tax, local tax or any other charges. Notification No. 102/2007-Cus, dated 14.09.2007, issued under section 25(1) of the Customs Act, 1962, grants exemption in respect of such special CVD subject to certain conditions.

The exemption under the said notification is being granted by way of refund of the special CVD. In other words, exemption is not given ab initio but duty has to be paid first and thereafter, refund for the same needs to be claimed.

The assessee paid the special CVD and applied for the refund of the same under section 27 of the Customs Act, 1962 along with interest in pursuance of the above-mentioned notification.

The Department, however, rejected the assessee's claim for the interest in view of paragraph 4.3 of CBIC Circular No. 6/2008-Cus., dated 28.04.2008 which stipulated that interest could not be granted as Notification No. 102/2007-Cus. did not have any specific provision for payment of the same on refund of duty.

Decision: When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and Customs Tariff Act, 1975.

Paragraph 4.3 of the Circular No. 6/2008-Cus., dated 28.04.2008 being contrary to the statute has to be struck down as bad.

The provisions relating to payment of interest on delayed refund of duty as contained in section 27A of the Customs Act also become applicable in respect of delayed refunds of special CVD which is granted to give effect to the exemption contained in an exemption notification.

Refund 24

SLOB Mapped against the Module

1. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules.
2. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Explain refund of duty paid on import or export.
- Understand conditions to satisfy for claiming refund of duty.
- Identify time limit to claim refund of duty and interest.
- Explain procedure to claim refund of duty and interest.

Refund

24

On import or export of goods, at times, it is found that duty has been paid in excess of what was actually leviable on the goods. Such excess payment may be due to lack of information on the part of importer/exporter or non-submission of documents required for claim of lower value or rate of duty. Sometimes, such excess payment of duty may be due to shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, refund of excess amount of duty paid can be claimed by the importer or exporter. If any excess interest has been paid by the importer/exporter on the amount of duty paid in excess, its refund can also be claimed. Importer or Exporter who has actually paid the duty on import or export, which is not required to be paid alone, is eligible to claim refund.

1. Refund of Export Duty

As per Section 26 of the Customs Act, 1962, duty paid on exported goods can be claim for refund in the case of combined reading of the following if:

- The goods are returned to such person otherwise than by way of re-sale;
- The goods are re-imported within One year from the date of exportation and
- An application for refund of such duty is made before the expiry of six months from the date on which the Customs officer makes an order for importation.

Example 1

X Ltd. exported product 'P' to Y Ltd of USA on 1.1.2023. The duty paid on export of product 'P' for ₹1,00,000. Y Ltd. returned product 'P' to X Ltd., on 1.8.2023. The return is otherwise than by way of sale (i.e. it may be sale return or rejected goods, goods sent on consignment returned by the overseas agent or goods sent for exhibition coming back etc.). It means to say that Y Ltd. should not be sold 'P' to X Ltd. Moreover, exported goods are returned within One year from the date of exportation. Hence, X Ltd. can claim for refund of ₹1,00,000 within Six months from Customs clearances order for imported goods (i.e. 1.8.2023).

2. Refund of Import Duty

As per Section 26A of the Customs Act, 1962, duty paid on imported goods can be claimed for refund on account of satisfying the following conditions:

(a) Goods are found defective

The goods are found to be defective or otherwise not in

Moreover, nothing contained in this section (Sec. 26A of the Customs Act, 1962) shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

conformity with the specifications agreed upon between the importer and the supplier of goods:

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) Goods are easily identifiable as imported goods

The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) No drawback claim is made

The importer does not claim drawback under any other provisions of this Act; and

(d) Activities carried out after importation

(i) The goods are exported; or

(ii) The importer relinquishes his title to the goods and abandons them to customs; or

(iii) Such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed and within a period not exceeding 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such form and in such manner as may be prescribed

Note:

(1) However, the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months.

(2) No refund under section 26 is allowed in respect of perishable goods and goods which have exceeded their shelf life.

3. Relevant Date

Relevant date in case of filing refund claim may be any one of the following:

- Let export order issued or
- Date of abandonment or
- Date of destruction of goods as the case may be.

4. Claim for Refund of Duty

Claim for Refund of duty (Section 27 of the Customs Act, 1962)

Section 27 of the Customs Act, 1962 deals with refund of duty paid on imported or exported goods in excess of what was actually payable. Sometimes, such excess payment of duty may be due to shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, any excess interest has been paid by the importer or exporter can also be claimed for refund.

5. Consequence if duty involved is less than ₹ 100

No refund and recovery if the amount of customs duty involved is less than ₹100:

Third proviso to section 27(1) of Customs Act, provides that where the amount of refund claimed is less than ₹100, the same shall not be refunded. In other words, there would be no refund if the amount of customs duty involved is less than ₹100. (w.e.f. 10.05.2013)

A refund claim can be made u/s 27 if the payment of higher duty and interest in ignorance of a notification which allowed payment of duty at a concessional rate even if there was no assessment order and the payment u/s 27(i) has not been made pursuant to an assessment order. Section 27(ii) covers those classes of cases where the duty is paid by a person without an order of assessment. It means a refund claim can be filed under section 27 of the Customs Act, 1962 even if the payment of duty has not been made pursuant to an assessment order **[Aman Medical Products Ltd. v CCus., Delhi 2010 (250) ELT 30 (Del.)]**.

Attested Xerox copy of the GAR-7 Challan sufficient for claiming refund:

Refund claim CAN NOT BE DENIED purely on a technical contention that the assessee had produced the attested copy of GAR-7 (earlier TR-6) challan and not the original of the GAR-7 challan. Also, as per clarification issued vide F. No. 275/37/2K-CX.8A, dated 2-1-2002, a simple letter from the person who made the deposit, requesting for return of the amount, along with the appellate order and attested Xerox copy of the Challan in Form GAR-7 would suffice for processing the refund application. [Narayan Nambiar Meloths v CCus. 2010 (251) ELT 57 (Ker)].

6. Time Limit for claiming refund

Person claiming refund	Time limit for claiming refund	Remarks
Individual – imported goods for his personnel use, Government or Any educational institutions or Any research institutions or Charitable institutions or hospitals	Application for refund can be made before the expiry of ONE year from the date of payment of duty and interest	The application for refund in duplicate has to be filed before the Assistant Commissioner or Dy. Commissioner of Customs.
Individual – for business use Companies or Firm etc.	Application for refund can be made before the expiry of ONE year (w.e.f. 8-4-2011) from the date of payment of duty and interest	The application for refund in duplicate has to file before the Assistant Commissioner or Dy. Commissioner of Customs.

7. Interest on delayed refunds

As per section 27A of the Customs Act, 1962, if the refund ordered is not paid within 3 months from the date of receipt of refund application by the Assistant Commissioner or Deputy Commissioner of Customs, then the department is liable to pay interest at the rate of 6% p.a. (i.e. interest is liable to be paid after expiry of three months from the date of receipt of the application for refund).

8. Differences between section 26 and section 27

Few differences between section 26 and section 27 of the Customs Act, 1962:

Section 26 deals with refund of export duty whereas Section 27 deals with refund of any export duty, import duty interest paid thereon.

Refund of duty under section 26 is allowed on account of satisfying certain conditions whereas refund under section 27 is allowed only when duty paid in excess of normal duty.

Refund is payable to the exporter who paid the duty under section 26 whereas refund is payable to the importer who paid the duty or to the buyer by whom the duty was borne.

Chartered Accountant Certificate not sufficient to claim refund under section 27:

As per section 27 of the Customs Act, 1962 the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.

However, if importer had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim.

In the given case Madras High Court held that, the certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the importer could not be granted refund merely on the basis of the said certificate **[CCus., Chennai v BPL Ltd. 2010 (259) ELT 526 (Mad)]**.

9. Computation of Time Period of Limitation

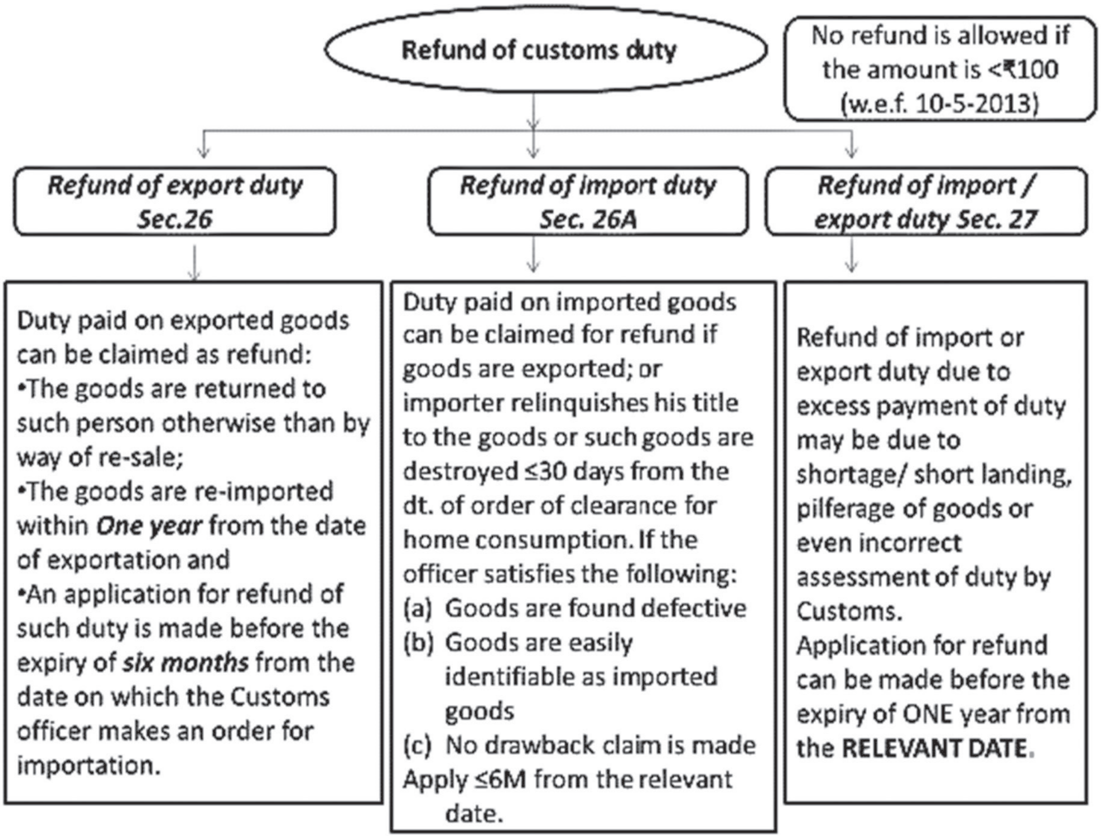
The period of limitation of one year for the purpose of refund of duty under section 27(1B) shall be computed in the following manner, namely:

(a) In the case of goods which are exempt from payment of duty by a special order issued under section 25(2) of the Custom Act, the limitation of one year shall be computed from the date of issue of such order;

(b) Where the duty becomes refundable as a consequence of any judgment, the limitation of one year shall be computed from the date of such judgment.

(c) Where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.

10. Refund of customs duties can be recollected in the following table:



11. Form and manner of filing application for refund

(1) An application for refund shall be made in the prescribed Form appended to these regulations in duplicate to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, having jurisdiction over the Customs port, Customs airport, land customs station or the warehouse where the duty of customs was paid.

(2) The application shall be scrutinised for its completeness by the Proper Officer and if the application is found to be complete in all respects, the applicant shall be issued an acknowledgement by the Proper Officer in the prescribed Form appended to these regulations within ten working days of the receipt of the application.

(3) Where on scrutiny, however, the application is found to be incomplete, the Proper Officer shall, within ten working days of its receipt, return the application to the applicant, pointing out the deficiencies. The applicant may resubmit the application after making good the deficiencies, for scrutiny.

Explanation: For the purposes of payment of interest under section 27A of the Act, the application shall be deemed to have been received on the date on which a complete application, as acknowledged by the Proper Officer, has been made.

1. **Processing of refund claim:**

   The application of refund found to be complete in all respects by Customs, is processed to see if the whole or any part of the duty and interest paid by the applicant is refundable. In case, the whole or any part of the duty and interest is found to be refundable, an order for refund is passed. However, in view of the provisions of unjust enrichment enshrined in the Customs Act, the amount found refundable has to be transferred to the Consumer Welfare Fund. Only in following situations, the amount of duty and interest found refundable, instead of being credited to the Consumer Welfare Fund, is to be paid to the applicant:

   a. if the importer has not passed on the incidence of such duty and interest to any other person;
   b. if imports were made by an individual for his personal use;
   c. if the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;
   d. if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26;
   e. if amount relates to drawback of duty payable under section 74 and 75;
   f. if the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.

2. **Interest on delayed refund:**

   a. The Customs has to finalize refund claims immediately after receipt of the refund application in proper form along-with all the documents. In case, any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund, an interest @ 15% is to be paid to the applicant. The interest is to be paid for the period from the date immediately after the expiry of 3 months from the date of receipt of such application till be date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.
   b. Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal or by the Court, as the case may be is deemed to be an order for the purpose of payment of interest on delayed refund.
   c. The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.

Solved Case

Case 1:

Facts of the case:

Krish Flame Ltd., imported during June 2022, by sea, a consignment of metal scrap weighting 3,000 M.T. (metric tonne) from U.K. They filed a bill of entry for home consumption and the Assistant Commissioner of Customs passed an order for clearance of goods, and applicable duty was also paid. The importer thereafter found on taking delivery from the port trust authorities, that only 2,500 M.T. of scrap were available at the docks although they had paid duty for the entire 3,000 M.T., since there was no short landing of cargo. The short-delivery of 500 M.T. was also substantiated by the Port-Trust Authorities, who gave a "weighment certificate" to the importer.

On filing a representation to the Customs Department, the importer has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for restoration of duty on 500 M.T. scrap not delivered by Port-Trust. You are approached by the importer as "counsel" for an opinion or advice. Examine the issues and tender your opinion as per law, giving reasons.

Decision:

In the given case it is clear that 500 M.T. scrap has been lost while in custody of the Port-Trust and the weighment certificate also substantiate the fact of loss.

Hence, the assessee or importer intimate the Department by a representation about the facts and legal position supra, justifying their claim for refund or restoration of duty under Section 23 of the Customs Act, 1962 (i.e. Section 23 deals with those cases where goods are lost after the proper officer has made an order for home consumption, but before the goods are cleared by the importer, such as in the instant case) read with Section 27 of the Customs Act, 1962, which deals with general refunds.

Case 2:

Facts of the case:

Pipa Industries Ltd. imported copper scrap for using it as raw material in the manufacture of copper oxy-chloride. It cleared the imported goods by paying the applicable customs duties including additional customs duty. However, on coming to know that imported copper scrap was exempt from payment of additional customs duty under Notification, it filed an application for refund of the same. The refund claim was rejected on the ground of unjust enrichment. The contention of the company is that the doctrine of 'unjust enrichment' is not applicable in case of captive consumption of imported material. Discuss the validity of the contention of the company in the light of the decided case law, if any.

Decision:

As per the Hon'ble Supreme Court of India in the case of Union of India (UOI) v Solar Pesticide Pvt. Ltd. (2000) (SC), the doctrine of unjust enrichment is attracted even if the incidence of duty is passed on to another person indirectly as in the case of captive consumption of imported materials. Refund of import duty is made to the importer provided he has not passed on the incidence of duty to any other directly or indirectly (Section 27(2) of the Customs Act, 1962).

In the given case Pipa Industries Ltd. imported copper scrap by paying customs duties, not allowed as refund under said notification even though imported goods are used for captive consumption. It means to say that the principle of unjust enrichment applies even in the case of captive consumption of goods.

Therefore, contention of Pipa Industries Ltd. is not valid in law.

Case 3:

Facts of the case:

Importer imported "Kari Mayer High Speed Draw Warping Machine" claimed exemption notification.

Department contended that exemption notification is for "High Speed Warping Machine" but not for Drawing Unit.

Importer further stated that as per opinion of the expert (i.e. Textile Commissioner) the goods imported are covered under Exemption Notification.

Decision:

Commissioner of Customs (Import) v Konkan Synthetic Fibres 2012(278) ELT 37 (SC):

When no statutory definition was provided in respect of an item in the Customs or Central Excise the opinion of the expert cannot be ignored, rather it should be given due importance.

Decision is in favour of the importer and against the department

Case 4:

Facts of the case:

The importer entered into contract for supply of crude sunflower seed oil U.S. $ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July 2022. The period was extended by mutual agreement and goods were shipped on 5th August 2013 at old agreed prices.

In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August 2022 were at higher prices.

Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports.

Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.

Decision:

Commissioner of Cus., Vishakhapatnam v Aggarwal Industries Ltd. 2011 ELT 641 (SC):

Decision: No. Department view is not correct.

It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion.

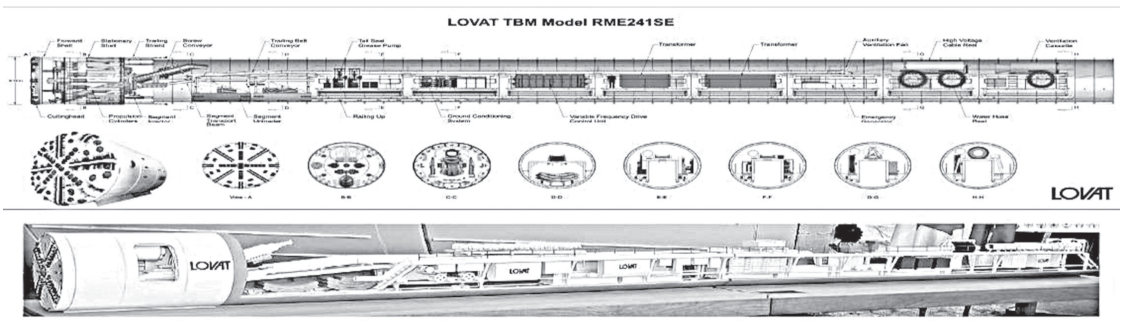
Thus, the appeal was allowed in the favour of the respondent-assessee.

Case 5:

Facts of the case:

The petitioners imported tunnel boring machines which were otherwise fully exempt from customs duty. However, owing to erroneous classification of such machines, they paid large amount of customs duty.

TUNNEL BORING MACHINE



4 Tunnel Boring Machines to be manufactured by Lovat Inc. and ready for start of tunnelling for end of 2010.

After expiry of more than 3 years, the petitioners filed a writ petition claiming the refund of the amount so paid. The said refund claim was rejected on the ground that the petitioners failed to make a proper application of refund under section 27 of the Customs Act, 1962 within the stipulated period of 1 year of payment of duty.

Decision: The High Court held that law of limitation under section 27 of the Customs Act, 1962 is applicable to duty or interest paid under the Act. However, any sum paid into the exchequer by the assessee is not duty or excess duty but is simply money paid into the account of Government. Therefore, the assessee is entitled to refund of the sum paid by it to the customs authorities [Parimal Ray v CCus. 2015 (318) ELT 379 (Cal)].

Trade Facilitation Measures 25

This Module Includes

Trade Facilitation Measures

SLOB Mapped against the Module

1. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules.
2. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand need of Trade Facilitation
- Explain Trade Facilitation Measures

Introduction

25.1

In a globalized world where goods often cross borders many times as both intermediate and final products, trade facilitation helps lower overall trade costs and increase economic welfare, for developing and emerging economies. Trade facilitation efforts, such as simplifying required paperwork, modernizing procedures, and harmonizing customs requirements, can slash the costs and time needed to export and import goods. Reductions in time and costs to trade can thus make the difference between a country seamlessly linking up to an integrated global production chain or being left on the margins of a big part of world trade. Moreover, amid a global slowdown in trade, easing trade processes can provide a critical boost to international trade and the global economy.

In 2013, members of the World Trade Organization (WTO) finalised negotiations of the WTO Trade Facilitation Agreement (TFA), which set multilateral rules that seek to address specific procedural hurdles in order to facilitate trade procedures. The TFA entered into force in 2017, and represents a significant opportunity for countries to reap the economic benefits from improving the speed and efficiency of border procedures.

Accordingly, National Committee on Trade Facilitation (NCTF) has been constituted for implementation of WTO Trade Facilitation agreement. As a result steps taken by Indian Customs for ensuring "Ease of Doing Business". Various trade facilitation measures have been taken by Indian Customs in recent times.

Indian Customs Trade Facilitation Measures

25.2

Various trade facilitation measures have been taken by Indian Customs in recent times. Some of the major initiatives include:

1. Facility of deferred payment
2. Introduction of Revised Authorised Economic Programme(AEO)
3. Relaxation in Insurance cover/Bond/BG
4. Setting Up of Customs Clearance Facilitation Committee (CCFC)
5. Amendments in Warehousing provisions for introducing record based controls
6. Indian Customs Single Window Project –Online message exchange
7. Reduction in mandatory documents for imports and exports
8. Adoption of Digital Signature:
9. 24x7 Customs Clearance
10. Abolition of Mate Receipt
11. Reducing/eliminating printouts in Customs Clearance
12. The Courier Imports and Exports (Clearance) Amendment Regulations,2016
13. Import Data Processing and Management System (IDPMS)
14. Email notification
15. Single Window Interface for Facilitation of Trade has now been extended to Export
16. Roll Out of Express Cargo Clearance System (ECCS) at Courier Terminal, Sahar Mumbai
17. Ease of doing business
18. Streamlining of process of Arrival Manifest or Import Manifest amendment for import through sea.

Trade Facilitation Measures are elaborated here under:

1. Facility of deferred payment:

Customs, Deferred Payment of Import Duty Rules, 2016 have been notified to come into effect from 16.11.2016. Further, importers certified under Authorised Economic Operator (AEO) Programme (Tier-Two) and (Tier-Three) respectively have been notified for availing the benefit of these Rules.

It is based on the principle 'Clear first-Pay later'. As a part of the ease of doing business focus of the Government of India, the Central Board of Indirect Taxes and Customs (CBIC) has rolled out the AEO

(AUTHORIZED ECONOMIC OPERATOR) programme. This scheme is in force w.e.f. 16 Nov 2016. AEO means Authorised Economic Operator certified by the Directorate General of Performance Management under CBIC.

Eligible importers:

This benefit is currently being extended to importers holding AEO T-2 or T-3 status.

AEO-T2 CERTIFICATE: This certificate may be granted only to an importer or to an exporter. For the purpose of this certificate, the economic operator should fulfil the criteria set out by the Board.

AEO-T3 CERTIFICATE: This certificate may be granted only to an importer or to an exporter. For the purpose of this certificate, the economic operator must have continuously enjoyed the status of AEO-T2 for at-least a period of two years preceding the date of application for grant of AEO-T3 status or the economic operator must be an AEO-T2 certificate holder, and its other business partners namely importers or exporters, Logistics service providers, Custodians/Terminal operators, Customs Brokers and Warehouse operators are holders of AEO-T2 or AEO-LO certificate or any other equivalent AEO certificate granted by a foreign Customs.

Note: For the economic operators other than importers and the exporters, the new programme offers only one tier of certification (i.e. AEO-LO) whereas for the importers and the exporters, there will be three tiers of certification (i.e. AEO-T1, AEO-T2 and AEO-T3).

Intimation about intent to avail benefit of notification:

An eligible importer who intends to avail the benefit of deferred payment shall intimate to the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, having jurisdiction over the port of clearance, his intention to avail the said benefit.

Once, Customs Authority satisfied with the eligibility of the importer allow him to pay the duty by due dates.

Registration to pay duty under deferred payment scheme:

Every importer certified as AEO-T2/AEO-T3 shall obtain ICE GATE (Indian Customs Electronic Commerce/ Electronic Data interchange (EC/EDI) Gateway) Login which is essential to avail benefits envisaged in the Duty Deferment Scheme.

Electronic payment of duty:

The eligible importer shall pay the duty electronically: However, the Assistant/Deputy Commissioner of Customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.

Deferred payment not to apply in certain cases:

If there in default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the bill of entry.

Due dates for payment of duty:

The eligible importer has to pay the duty by the dates mentioned below inclusive of the period (excluding holidays) as mentioned in section 47(1):—

1st to 15th day of any month	16th day of that month
16th day till the last day of any month other than March	1st day of the following month
16th day till the 31st day of March	31st March

2. Introduction of Revised Authorised Economic Programme(AEO):

As a further step towards trust based compliance, Indian Customs has introduced the new Authorised Economic Operator(AEO) Programme wherein extensive benefits, including greater facilitation and self certification, have been provided to those entities who have demonstrated strong internal control system and compliance with CBIC.

3. Relaxation in Insurance cover/Bond/BG:

Requirement of Insurance cover to be taken by Customs Cargo Service Providers (CCSP) in respect of goods stored in Customs Areas has been brought down from 30 days to 10 days. Similarly, requirement of submitting a Bond equal to the value of imported goods stored in a Customs Area for a period of 30days has been brought down to 10 days. Due to this measure, the Bank Guarantee (BG) amount to be tendered was linked to duty of goods likely to be stored for 30 days. By reducing the period to 10 days, the BG amount would also come down thereby, reducing the transaction cost.

4. Setting Up of Customs Clearance Facilitation Committee (CCFC):

High level administrative Committee i.e. 'Customs Clearance Facilitation Committee' (CCFC) has been set-up at every major Customs seaport and airport under the chairmanship of Chief Commissioner of Customs/ Commissioner of Customs. Its membership includes the senior-most functionary of all the departments/ agencies/ stakeholder at the particular seaport/airport. CCFCs have now been ordered to be set up for ICDs and Land Customs Stations.

5. Amendments in Warehousing provisions for introducing record based controls:

The department has made significant amendments in warehousing provisions to leverage the benefits of automation for facilitating trade and to enable the department to monitor the permitted period for which goods remain in the warehouse. The amended provisions provide a single point for the importer or owner to seek extension of the warehousing period and pay duties online.

6. Indian Customs Single Window Project – Online message exchange:

Indian Customs has introduced SWIFT (Single Window Interface for Facilitating Trade) for ensuring ease of doing business. Under Indian Customs Single Window Project, the importers electronically lodge their Customs clearance documents at a single point only with the Customs. The required permission, if any, from other regulatory agencies (such as Animal Quarantine, Plant Quarantine, Drug Controller, Textile Committee etc.) is obtained online without the importer/exporter having to separately approach these agencies. Benefits of Single Window Scheme include:

(a) Reduced cost of doing business;

(b) Enhances transparency;

(c) Integration of regulatory requirements at one common platform reduces duplicity and cost of compliance;

(d) Optimal utilization of man power;

Integrated Declaration under Indian Customs Single Window Project w.e.f. 1-4-2016

(i) CBIC has taken-up the task of implementing 'Indian Customs Single Window Project' to facilitate trade. This project envisages that the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs.

(ii) The required permission, if any, from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug Controller, Food Safety and Standards Authority of India, Textile Committee etc. would be obtained online without the importer/exporter having to separately approach these agencies.

(iii) This would be possible through a common, seamlessly integrated IT systems utilized by all regulatory agencies, logistics service providers and the importers/exporters. The Single Window would thus provide the importers/exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.

(iv) This online clearance under Single Window Project has been rolled out at main ports and airports in Delhi, Mumbai, Kolkata and Chennai so far. It will be gradually extended across the country.

(v) CBIC has since developed the 'Integrated Declaration', under which all information required for import clearance by the concerned government agencies has been incorporated into the electronic format of the Bill of Entry.

(vi) The Customs Broker or Importer shall submit the "Integrated Declaration" electronically to a single-entry point, i.e. the Customs Gateway (ICEGATE). Separate application forms required by different PGAs would be dispensed with.

(vii) The Integrated Declaration will be applicable for consignments to be cleared under the Indian Customs EDI Systems. For the clearance of imported goods in the manual mode, separate documents prescribed by the respective agencies will continue to apply.

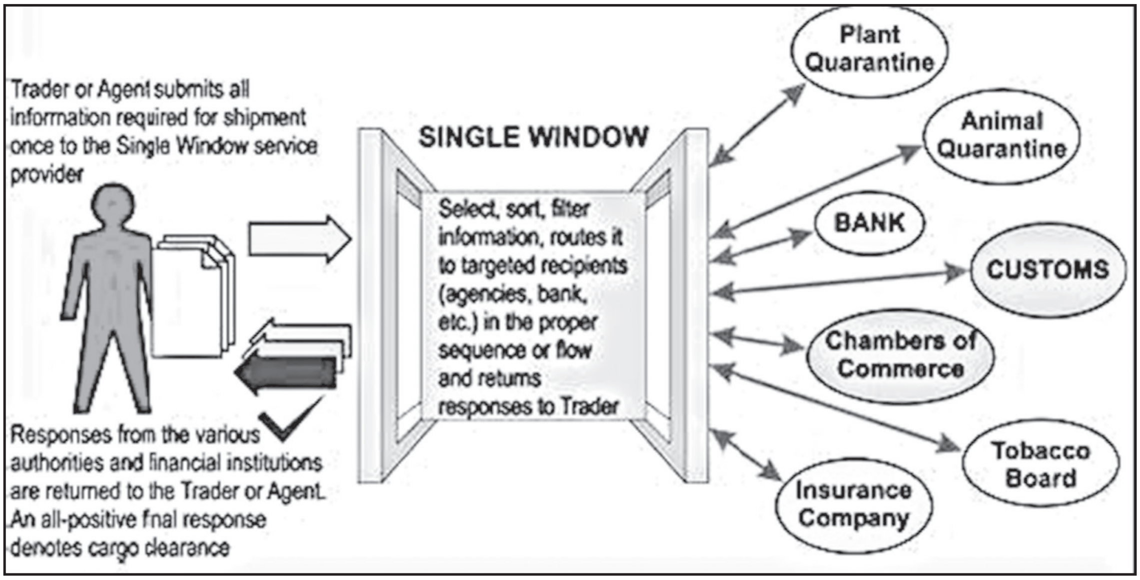
(viii) Apart from incorporating such forms, the Integrated Declaration will also include different types of undertakings, declarations, and letters of guarantee that are presently required to be submitted on company letter heads.

(ix) Upon filing of the Integrated Declaration, the bill of entry will automatically be referred to concerned agency, if required, based on risk. The system has been modified to enable simultaneous processing of bill of entry by PGA and Customs. The Integrated Declaration has become effective from 1st April, 2016. **[Circular No. 10/2016-Cus., dated 15.03.2016].**

Consequently, w.e.f. 01.04.2016, in the Bill of Entry (Electronic Declaration) Regulations, 2011, the term Electronic Declaration has been substituted with the term, Electronic Integrated Declaration vide **Notification No. 45/2016 Cus (NT) dated 01.04.2016**.

Overall view:

Integrated Declaration under Indian Customs Single Window Project w.e.f. 1-4-2016



7. **Reduction in mandatory documents for imports and exports:**

   In order to simplify procedures to facilitate genuine trade, CBIC has reduced the number of mandatory documents and prescribed only three mandatory documents for general import/export. Packing list and commercial invoice has been merged into a single document for Customs purposes. Also Self Declaration Form (SDF) required to be submitted along with shipping bill (export declaration) is no longer required. However, for import and export of special nature under preferential agreements etc, other documents may be required to be submitted by the importer/exports.

8. **Adoption of Digital Signature:**

   In order to encourage paper less working and dispense with the requirement of physical submission of documents 'Digital Signature' has been introduced for importers, exporters, airlines, shipping lines etc

9. **24x7 Customs Clearance:**

   CBIC introduced the facility of 24x7 Customs clearance in the year 2012 for 'facilitated' Bills of Entry and factory stuffed containers and goods exported under free Shipping Bills at 19 sea ports and 17 air cargo complexes. The 24X7 Customs clearances have now been extended to all Bills of Entry (and not just facilitated Bills of Entry) at 19 seaports and 17 Air Cargo Complexes. Further, no Merchant Overtime (MOT) charges are required to be collected in respect of the services provided by the Customs officers at 24X7 Customs Ports and Airports.

10. **Abolition of Mate Receipt:**

    With the automation of Customs procedures, manual issuance of mate receipt for containerized cargo has become redundant and therefore dispensed with.

11. Reducing/eliminating printouts in Customs Clearance:

With the aim of ease of doing business and promoting paperless clearance, Board has decided to do away with routine printouts of several documents including GAR 7 Forms/ TR 6 Challans, TP copy, Exchange Control Copy of Bill of Entry and Shipping Bill, and Export Promotion copy of Shipping Bill.

12. The Courier Imports and Exports (Clearance) Amendment Regulations,2016:

Several reforms have been initiated in Courier regulations including liberalization of norms for outsourcing and Courier Shipping Bill (CSB) form.

13. Import Data Processing and Management System (IDPMS):

IDPMS has been jointly launched with RBI to facilitate efficient data processing for payment of imports and effective monitoring.

14. Email notification service:

Email facilitation services to importers for all important stages related to import clearances has been initiated.

15. Roll Out of Express Cargo Clearance System (ECCS):

Express Cargo Clearance System (ECCS), an automation programme, doing away the manual filing of documents for clearance of Courier parcels, gifts and documents has been made on pilot basis. The ECCS would carry out automated assessment and clearance under Courier Imports and Exports (Electronic Declaration & Processing) Regulations, 2010.

16. Ease of doing business:

As per Finance Act, 2021, Section 46(3), The importer shall have to present the bill of entry u/s 46(1) of the Customs Act, 1962 before the end of the day (including holidays) preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing.

Time limit for submission of Bill of Entry (B.E.): It may be noted that, the existing provision that a BE may be presented upto 30 days prior to the expected arrival of the aircraft or vessel or vehicle carrying the imported goods continues. Thus, with certain exceptions, as notified, the BE can now be filed anytime from 30 days prior to the expected arrival of the aircraft or vessel or vehicle upto the end of day preceding the day of such arrival.

17. Streamlining of process of Arrival Manifest or Import Manifest amendment for import through sea:

For streamlining and simplifying the process of Arrival Manifest or Import Manifest amendment in case of goods imported through sea route, Board has issued fresh guidelines for arrival manifest amendment in order to ensure that all requests for amendment in arrival manifest are disposed off within prescribed time limits. Further, all requests for minor amendments shall be decided administratively without recourse to adjudication or levy of penalty.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

Export Promotion Schemes under Foreign Trade Policy

26

This Module Includes

Export Promotion Schemes under Foreign Trade Policy

SLOB Mapped against the Module

1. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules.
2. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand various types of export promotion schemes.
- Explain terms and conditions to avail export promotion schemes.
- Apply practically to redeem export promotion schemes.

Introduction

26

Foreign Trade Policy is a set of guidelines and instructions established by the Director General of Foreign Trade (DGFT) in matters related to the import and export of goods in India. The Government of India, Ministry of Commerce and Industry announces Export Import Policy every five years. Section 3 of Foreign Trade (Development and Regulation) Act, 1992 [FT(D&R) Act, 1992, empowers Central Government to the make provisions for development and regulation of foreign trade. Section 5 of FT (D&R) Act, 1992, empowers Central Government to formulate and announce by notification in Official gazette, the export and import policy and also amend the same by issuing a notification.

In India, the Union Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade. The Foreign Trade Policy 2015-20 which was valid till 31 March, 2020, is extended up to 30th September 2022 (Notification No. 64/2015-2020 dated 31.03.2022).

The Director General of Foreign Trade (DGFT) advises Central Government in formulating policy and exercise specified powers under the Foreign Trade (Development and Regulation) Act, 1992. DGFT issues public notices, policy circulars, notifications or decisions from time to time. DGFT is to work in close coordination with other agencies like CBIC, RBI.

Government is encouraging and promoting Indian exports in international markets and initiate suitable interventions from time to time. The Foreign Trade Policy has formulated a number of incentive schemes for Indian exporters.

The major schemes announced for exporters are

- Merchandise Exports from India Scheme (MEIS),
- Service Exports from India Scheme (SEIS),
- Advance Authorization Scheme,
- Duty Free Import Authorization (DFIA) Scheme,
- Export Promotion Capital Goods Scheme (EPCG),
- New Scheme RODTEP,
- EOU, EHTP, STP & BTP Schemes and
- Deemed Exports.

Merchandise Export from India Scheme (MEIS)

26.1

The objective of MEIS is to compensate infrastructural inefficiencies and associated cost involved in export of goods/products, which are produced/manufactured in India, especially goods having high export intensity, employment potential and thereby enhancing India's export competitiveness.

1. MEIS Reward Rates:

Reward rates are prescribed under Appendix 3B-MEIS Schedule Table 2. ITC (HS) code wise list of products with rewards rates are incorporated under Appendix 3B. There are three types of reward rates are prescribed namely 2%, 3% and 5%. Applicability of these rates depends up on the country group and description of goods.

On request, split certificates of Duty Credit Scrip subject to a minimum of ₹5 Lakh each and multiples thereof may also be issued, at the time of application.

Once Duty Credit Scrip has been issued, request for splits can be permitted with same port of registration as appearing on the original Scrip.

The above procedure shall be applicable only in respect of EDI enabled ports.

In case of export through non-EDI ports, the facility of splits shall not be allowed after issue of Scrip. Social Welfare Surcharge (SWS) cannot be paid by utilizing MEIS/SEIS Scrip.

2. Basis of calculation of MEIS reward or Duty Credit Scrip:

Duty Credit Scrip = [(**FOB value of exports realized in free foreign exchange**) **OR** (**FOB value of exports as given in the Shipping Bills in free foreign exchange**) **WHICHEVER IS LESS**] **Reward Rate**

3. Entitlement under MEIS for exports made through courier or foreign post office enhanced:

Presently, export of handicraft items, handloom products, books/periodicals, leather footwear, toys and tailor made fashion garments through courier or foreign post office using e-commerce of FOB value upto ₹25000 per consignment are entitled for reward under MEIS.

However, DGFT vide Notification No. 22/2015-20, dated 26th July 2018 has amended the said provision and provided that for export of aforesaid items through courier or foreign post office of FOB value upto ₹5,00,000 per consignment will be entitled for reward under MEIS. If the value of exports is more than ₹5,00,000 per consignment then MEIS reward would be calculated on the basis of FOB value of ₹5,00,000 only.

4. MEIS duty credit scrip's are not allowed in the following cases

(1) EOUs/EHTPs/BTPs/STPs who are availing direct tax benefits/exemption.

(2) Supplies made from DTA units to SEZ units.

(3) Exports through trans-shipment, i.e., exports that are originating in third country but trans-shipped through India.

(4) Deemed Exports.

(5) SEZ/EOU/EHTP/BTP/FTWZ products exported through DTA units.

(6) Export products which are subject to Minimum export price or export duty.

(7) Ores and concentrates of all types and in all formations.

(8) Cereals of all types.

(9) Sugar of all types and all forms unless specifically notified.

(10) Crude/petroleum oil and crude/primary and base products of all types and all formulations.

(11) Export of milk and milk products and meat and meat products unless specifically notified.

5. Export of goods through courier/foreign post offices using e-commerce

The following products are eligible for rewards under MEIS:

- Exports of handicraft items,
- Export of handloom products,
- Export of books/periodicals,
- Export of leather footwear,
- Export of toys and
- Export of tailor made fashion garments

through courier or foreign post office using e-commerce of FOB value up to ₹25,000 per consignment shall be entitled for rewards under MEIS.

In case the value exceeds ₹ 25000, MEIS reward would be limited to FOB value of ₹ 25000 only.

However, DGFT vide Notification No. 22/2015-20, dated 26th July 2018 has amended the said provision and provided that for export of aforesaid items through courier or foreign post office of FOB value upto ₹5,00,000 per consignment will be entitled for reward under MEIS. If the value of exports is more than ₹5,00,000 per consignment then MEIS reward would be calculated on the basis of FOB value of ₹5,00,000 only.

Last date for filing application for obtaining Duty Credit Scrip under MEIS shall be Later of:

(1) Twelve months from the Let Export Order date OR

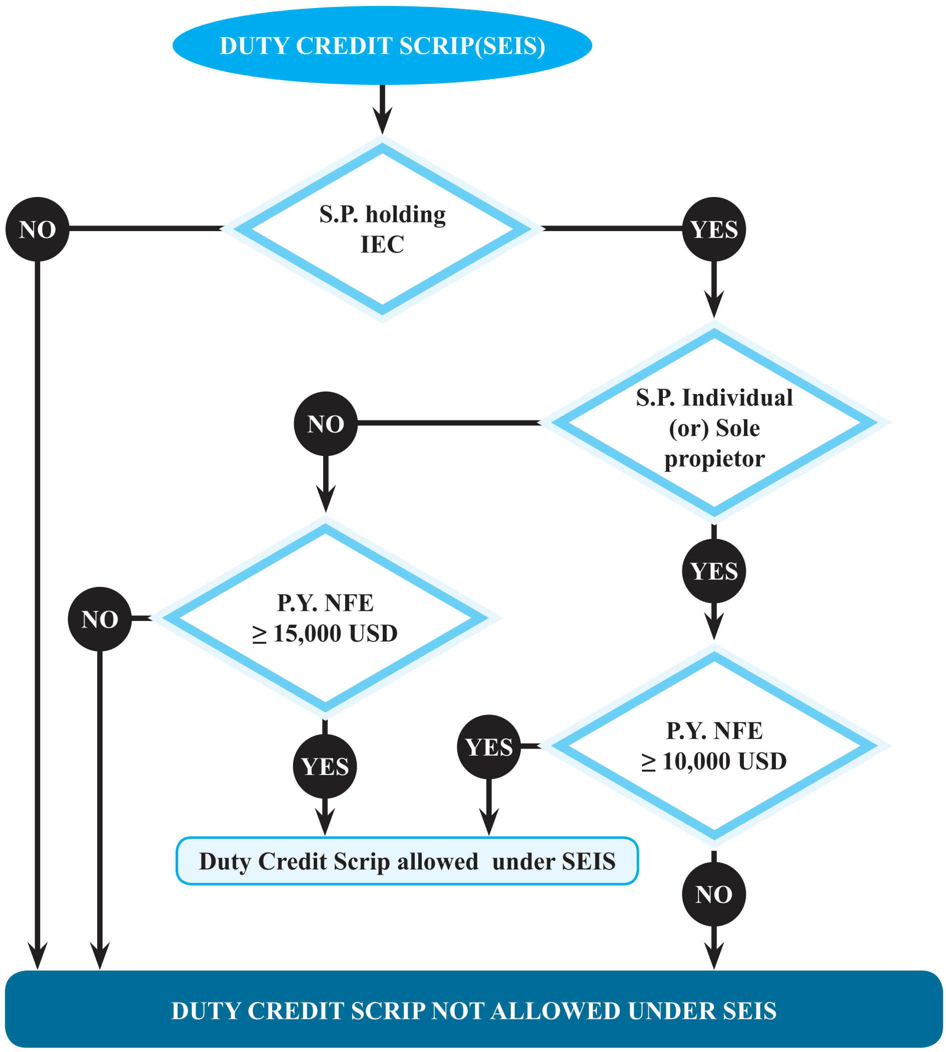
(2) Three months from the date of:

- Uploading of EDI shipping bills into the DGFT server by Customs
- Printing/release of shipping bills for Non EDI shipping bills.

Service Export from India Scheme (SEIS)

26.2

Objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.



S.P. = Service provider

P.Y. = Previous Year

NFE = Net Foreign Exchange

1. Net Foreign Exchange Earnings:

Particulars	Value in USD
Gross Earnings of Foreign Exchange	XXXX
LESS: Payments made by IEC holder relating to service sector in the financial year	(xxxx)
Net Foreign Exchange Earnings (NFE)	Xxxx

Note:

(a) If exporter is a manufacturer of goods as well as service provider, then the foreign exchange earnings and Total expenses/payment shall be taken into account for service sector only.

(b) Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme.

2. Ineligible categories under SEIS:

1. Foreign exchange earnings from
   (a) Equity or debt participation
   (b) Donations
   (c) Receipts of repayment of loans
2. Raising of all types of foreign currency Loans
3. Export proceeds realization of clients
4. Issuance of Foreign Equity through ADRs/GDRs or other similar instruments
5. Issuance of foreign currency Bonds
6. Sale of securities and other financial instruments
7. Other receivables not connected with services rendered by financial institutions.
8. Earned through contract/regular employment abroad (e.g. labour remittances)
9. Payments for services received from EEFC Account
10. Foreign exchange turnover by Healthcare Institutions like equity participation, donations etc.
11. Foreign exchange turnover by Educational Institutions like equity participation, donations etc. Under education services, SEIS shall not be available on Capitation fee.
12. Export turnover relating to services of units operating under EOU/EHTP/STPI/BTP Schemes or supplies of services made to such units.
13. Clubbing of turnover of services rendered by SEZ/EOU/EHTP/STPI/BTP units with turnover of DTA Service Providers
14. Exports of Goods

15. Foreign Exchange earnings for services provided by Airlines, Shipping lines service providers plying from any foreign country X to any foreign country Y routes not touching India at all.
16. Service providers in Telecom Sector.

3. Rate of SEIS Reward:

Appendix 3D of Foreign Trade Policy 2015-20 gives list of Notified Services & rate of reward on such services. There are two types of rates namely 3% and 5%. Many services are entitled for 5% duty credit scrip.

4. Calculation of Reward:

The reward under SEIS will be calculated at rate notified in Appendix 3D of Foreign Trade Policy 2015-20 and on Net Foreign Exchange Earned.

Payment in INR:

Payment in Indian Rupees for service charges earned on specified services shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in Appendix 3E.

5. Procedure for getting SEIS:

- Online Application is to be filed in Form ANF 3B
- Application should be enclosed with CA/CMA/CS Certificate in the form specified.

Last date of filing of application for Duty Credit Scrips under SEIS shall be 12 months from the end of relevant financial year of claim period.

6. Common Provisions applicable for both the schemes (MEIS & SEIS):

(i) The following duties and taxes are allowed as CENVAT Credit, if paid by utilizing Duty Credit Scrip:

(a) Additional Customs duties (CVD &Spl. CVD).

(b) Excise duty.

(c) Service Tax

Note: Basic Customs duty paid by utilizing duty credit scrip shall be adjusted for Duty Drawback.

MEIS & SEIS is not allowed as ITC against GST liability. It means GST has to pay without adjustment of MEIS & SEIS.

(ii) Transfer of export performance from one IEC hold to another IEC holder shall not be permitted. Thus, a shipping bill containing name of applicant shall be counted in export performance/turnover of applicant only if export proceeds from overseas are realized in applicant's bank account and this shall be evidenced from e-BRC/FIRC.

(iii) However, MEIS rewards can be claimed either by the supporting manufacturer (along with disclaimer from the company/firm who has realized the foreign exchange directly from overseas) or by the company/firm who has realized the foreign exchange directly from overseas.

(iv) Utilization of Duty Credit Scrip shall be permitted for payment of duty in case of import of capital goods under lease financing.

(v) Duty Credit Scrip can be utilised/debited for payment of Custom Duties in case of EO defaults for Authorizations. However, penalty/interest shall be required to be paid in cash.

(vi) Duty Credit Scrip under MEIS & SEIS will be valid for 18 months from the date of issue and must be valid on the date on which actual Debit of duty is made.

(vii) Incentives of MEIS & SEIS are available to units located in SEZs also.

Levy and collection of Social Welfare Surcharge (SWS) on imports under various schemes such as Merchandise Exports from India Scheme (MEIS), Services Exports from India Scheme (SEIS) etc. vide CBIC Circular No. 02/2020-Customs, dated 10th January, 2020; Social Welfare Surcharge (SWS) cannot be debited through duty credit scrips and therefore has to be paid by the importer in cash.

Advance Authorization Scheme

26.3

Duty Exemption Schemes consist of Advance Authorization Scheme and Duty-Free Import Authorization Scheme:

Duty Exemption Schemes

Advance Authorization Scheme

Duty Free Import Authorization Scheme

Meaning	Inputs which are used in the export product can be imported without payment of BCD, Anti-Dumping Duty & Safeguard duty. IGST will have to be paid on imports. IGST paid on import will be refunded on making exports.
Validity	12 months from the date of issue of such Authorization.
Export Obligation	18 months from the date of issue of Authorization.
Items not eligible for import	Items reserved for imports by STEs cannot be imported against Advance Authorization.
Items eligible (Actual user condition for Advance Authorisa-tion)	Inputs which are physically incorporated in export product. Mandatory spare parts up to 10% of CIF value of Authorization to export along with F.G. Specified Spices only when used for crushing/sterilization/manufacture of oils and not simply cleaning, grading.
Who are eligible	Manufacturer exporter, Merchant exporter, DEEMED EXPORTER, Supplied made to UNO or SEZ'S Supply of 'stores' on board of foreign going vessel/aircraft provided there is specific SION in respect of items supplied.

Annual Advance Authorisa-tion	CIF Value of Import = Up to 300% of FOB value of physical exports in preceding financial and or FOR value of deemed exports in preceding year or ₹1 Crore, whichever is higher
Value addition	15% (in case of Tea product 50%).

Advance Authorization:

(i) Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorization for Annual Requirement.

(ii) Materials imported under Advance Authorization will 'Actual User Condition'. These imported goods will not be transferable even after completion of export obligation. However, holder of Advance Authorization will have an option to dispose off product manufactured out of duty free inputs once export obligation is completed.

(iii) Advance Authorization is issued for inputs in relation to the resultant product on the basis of SION. If SION for a particular item is not fixed, Regional Authority (RA) based on self-declaration by applicant, except certain specified products, can issue Advance Authorization.

(iv) It is necessary to establish that inputs actually used in manufacture of the export product should only be imported under Advance Authorization and inputs actually imported must be used in the export product, for redeeming the Authorization.

Amendments in FTP:

Exemption from IGST and GST compensation cess extended upto 30th June 2022, in case of imports under Advance Authorization for physical exports (vide Notification No. 66/2015-2020 dated 1-4-2022).

According to a notification issued by the Directorate General of Foreign Trade (DGFT) on July 1, 2022, exemption from integrated tax and compensation cess under Advance Authorization under Paragraph 4.14 of Foreign Trade Policy 2015-2020 will continue after June 30, 2022.

"Provided further that notwithstanding anything contained hereinabove for the said Authorizations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only", and not for deemed exports under the Foreign Trade Policy.

Further the exemption from integrated tax and Goods and Service tax compensation cess leviable under sub-section (7) and sub-section (9) of the Section 3 of the Customs Tariff Act is available only upto 31st March, 2018.

Exemption from IGST and GST Compensation Cess extended to deemed exports in case of Advance Authorization and pre-import condition for said exemption dispensed with:

Exemption from IGST and GST Compensation Cess is available to imports under Advance Authorization. Earlier, this exemption was restricted to only physical exports and was subject to pre-import condition.

Now, pre-import condition for said exemption has been dispensed with and said exemption has been extended to following deemed exports:

(a) Supply of goods by registered person against Advance Authorization

(b) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization.

1. Standard Input Output Norms:

Standard Input Output Norms or SION in short is standard norms which define the amount of input/inputs required to manufacture unit of output for export purpose. Input output norms are applicable for the products such as electronics, engineering, chemical, food products including fish and marine products, handicraft, plastic and leather products, etc. SION is notified by DGFT in the Handbook and is approved by its Boards of Directors.

An application for modification of existing Standard Input-Output norms may be filed by manufacturer exporter and merchant-exporter. The Directorate General of Foreign Trade (DGFT) from time to time issue notifications for fixation or addition of SION for different export products. Fixation of Standard Input Output Norms facilitates issues of Advance License to the exporters of the items without any need for referring the same to the Headquarter office of DGFT on repeat basis.

2. Basics Requirements of Standard Input Output Norms

For fixation/modification of Standard Input Output Norms (SION) following details are required:

- Technical Details of the export product as per the details given in Appendix 33.
- Chartered Engineer certificate certifying the import requirements of raw materials in the format given in Appendix 32B.
- Production and Consumption data of the manufacturer/supporting manufacturer of the preceding three licensing years as given in Serial No. 3 of sub-section XII, duly certified by the Chartered accountant/Cost Accountant/Jurisdictional Excise Authority.

Duty Free Import Authorization (DFIA) Scheme

26.4

Meaning	Inputs which are used in the export product, can be imported without payment of customs duty only for those products for which Standard Input and Output Norms (SION) have been notified. Imported goods are exempted ONLY from Basic Customs Duty.
When to obtain DFIA from RA	Within 12 months from date of export or 6 months from the date of realisation of export proceeds, whichever is later. DFIA shall be issued on POST EXPORT basis.
Validity	12 months from the date of issue of such Authorization (i.e. transferable DFIA). Holder of DFIA has an option to procure inputs from indigenous manufacturer.
DFIA not allowed	No DFIA shall be issued for an export product where SION prescribe 'Actual User' condition for any input.
Who are eligible	Manufacturer exporter Merchant exporter, Supplies made to SEZ's
Conditions for redeeming DFIA	Inputs actually used in manufacture of the export product should only be imported under DFIA and inputs actually imported must be used in the export product, for redeeming the DFIA.
Value addition	20%

Export Promotion Capital Goods Scheme (EPCG)

26.5

This scheme permits exporter to procure capital goods at concessional rate of customs duty/zero customs duty in return exporter is under an obligation to fulfill the export obligation.

Authorization shall be valid for 18 months from the date of issue of Authorization.

Import of capital goods shall be subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.

1. Export Obligation:

Export obligation means obligation to export product(s) covered by Authorization/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority. Export obligation consists of average export obligation and specific export obligation.

Specific Export Obligation (Specific EO) for such EPCG Authorizations would be 6 times of duty saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization.

Duty Saved Amount:	(₹)
Effective duty under Project Imports	Xxxx
Less: Concessional duty under the EPCG Scheme	(xx)
Duty Saved amount	Xxxx

In case of indigenous sourcing of capital goods, specific EO shall be 25% less than the EO mentioned above, i.e. EO will be 4.5 times (75% of 6 times) of duty saved on such goods procured.

Average Export Obligation (Average EO) means is the average level of exports made by the applicant in the preceding 3 licensing years for the same and similar product. It has to be achieved within the overall EO period (i.e. within 6 years reckoned from the date of issue of authorization).

In cases where Authorization holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned, and the Authorization redeemed.

Shipments under Advance Authorization, DFIA, Drawback scheme, or reward schemes; would also be counted for fulfillment of EO under EPCG Scheme.

EO can also be fulfilled by the supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.

Both physical exports as well as specified deemed exports shall also be counted towards fulfillment of export obligation.

In case the Authorization Holder wants to export through a third party, export documents viz., shipping bills/ Bill of exports etc. shall indicate name of both authorization holder and supporting manufacturer, if any, along with EPCG authorization number. BRC, GR declaration, export order and invoice should be in the name of third party exporter. The goods exported through third party should be manufactured by the EPCG Authorization Holder or the supporting manufacturer where the capital goods imported under the Authorization have been installed.

Amendments in FTP:

Exemption from IGST and GST compensation cess extended upto 30th June 2022, in case of imports under Export Promotion Capital Goods for physical exports, (vide Notification No. 66/2015-2020 dated 1-4-2022).

According to a notification issued by the Directorate General of Foreign Trade (DGFT) on July 1, 2022, exemption from integrated tax and compensation cess under EPCG scheme will also continue, stated the DGFT circular.

2. Post Export EPCG Duty Credit Scrip(s):

Under this scheme, capital goods are imported on full payment of applicable duties in cash. Later, basic customs duty paid on Capital Goods is remitted in the form of freely transferable duty credit scrip(s) and it can be utilized in the similar manner as the scrip's issued under reward schemes.

Specific EO shall be 85% of the applicable specific EO stipulated under EPCG scheme. Average EO remains unchanged.

Duty Drawback can be claimed for the duties paid like CVD & Spl. CVD paid on import of capital goods provided CENVAT Credit not availed.

3. The following are eligible for EPCG Scheme:

1. Manufacturer exporters with or without supporting manufacturer(s),
2. Merchant exporters tied to supporting manufacturer(s), and
3. Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

Note: "Common Service Provider" (CSP) means a service provider who is designated or certified as a Common Service Provider by the DGFT, Department of Commerce or State Industrial Infrastructural Corporation in a Town of Export Excellence;

Eligible capital goods for import under EPCG Scheme:

1. Capital Goods including capital goods in CKD/SKD condition
2. Computer software systems
3. Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories
4. Capital goods for Project Imports notified by CBIC.

Ineligible capital goods for import under EPCG Scheme:

1. Second hand capital goods
2. Power Generator Sets.

New Scheme: RODTEP 26.6

The Government had recently announced the introduction of a new scheme "Remission of Duties and Taxes on Exported Products" (RoDTEP) to replace the Merchandise Exports from India Scheme (MEIS) available to exporters of goods. Accordingly, the items covered under the existing MEIS scheme would be shifted in a phased manner to the new RoDETP scheme.

RoDTEP has been made effective for exports from 1st January 2021 in respect of those exports where intention to claim the benefit has been manifested on the shipping bills. RoDTEP is going to give a boost to Indian exports by providing a level playing field to domestic industry abroad.

1. RoDTEP Benefits:

Being WTO-compliant, the RoDTEP scheme can make available from the government benefits to the exporters seamlessly.

(a) The scheme is more exhaustive in that certain taxes that were not covered under the previous scheme are also included in the list, for example, education cess, state taxes on oil, power and water.

(b) It will add more competitiveness in the foreign markets, with assured duty benefits by the Indian Government.

(c) It will also help exporters meet international standards and promote business growth etc.,

2. Objective of RODTEP Scheme:

The Scheme's objective is to refund, currently un-refunded duties and taxes. The scheme has been introduced with an objective to neutralize the taxes and duties suffered on exported goods which are otherwise not credited or remitted or refunded in any manner and remain embedded in the export goods. This scheme provides for rebate of all hidden Central, State, and Local duties/taxes/levies on the goods exported which have not been refunded under any other existing scheme namely:

- Mandi Tax,
- Municipal Taxes,
- Property Taxes,
- VAT,
- Coal Cess,
- Central Excise duty on fuel,
- Electricity duty on purchase of electricity,
- Stamp duty on export documents; etc.

will now be refunded under this particular scheme.

All the items under the MEIS and the RoSCTL (Rebate of State and Central Taxes and Levies) are now under the purview of the RoDTEP Scheme.

3. RODTEP Scheme Operating Principles:

1. RoDTEP support will be available to eligible exporters at a notified rate as a percentage of Freight On Board (FOB) value. Rebate on certain export products will also be subject to value cap per unit of the exported product.

   However, for the purpose of calculation of duty credit, value of exported shall be least of the following:

   (a) FOB value of said goods, or

   (b) 1.5 times of the market price of the goods.

2. Identified export sectors and rates under RoDTEP cover 8555 tariff lines in addition to similar support being extended to apparel and made-ups exports under RoSCTL scheme of Ministry of Textiles.

3. Employment Oriented Sectors like Marine, Agriculture, Leather, Gems & Jewellery etc. are covered under the Scheme. Other sectors like Automobile, Plastics, Electrical / Electronics, Machinery etc. also get support. The entire valve chain of textiles also gets covered through RoDTEP & RoSCTL.

4. Rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

5. The determination of ceiling rates under the scheme will be done by a Committee in the Department of Revenue/Drawback Division with suitable representation of the DoC/DGFT, line ministries and experts, on the sectors prioritized by Department of Commerce and Depart of Revenue.

6. No provision for remission of arrears or contingent liabilities is permissible under the Scheme to be carried over to the next financial year.

7. The rebate allowed is subject to the receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999 failing which such rebate shall be deemed never to have been allowed. The rebate would not be dependent on the realisation of export proceeds at the time of issue of rebate. However, adequate safeguards to avoid any misuse on account of non-realisation and other systemic improvements as in operation under Drawback Scheme, IGST and other GST refunds relating to exports would also be applicable for claims made under RoDTEP Scheme.

4. Mechanism of Issuance of Rebate:

(a) Scheme would be implemented through end to end digitalization of issuance of rebate amount in the form of a transferable duty credit/electronic scrip (e-scrip), which will be maintained in an electronic ledger by the Central Board of Indirect Taxes and Customs (CBIC).

(b) Necessary rules and procedure regarding grant of RoDTEP claim under the scheme and implementation issues including manner of application, time period for application and other matters including export realisation, export documentation, sampling procedures, record keeping etc. would be notified by the CBIC, Department of Revenue on an IT enabled platform with a view to end to end digitalisation.

(c) Necessary provisions for recovery of rebate amount where foreign exchange is not realised, suspension / withholding of RoDTEP in case of frauds and misuse, as well as imposition of penalty will also be built suitably by CBIC.

5. Eligible Sectors for RoDTEP Scheme:

The following sectors are eligible to avail of benefits under the scheme.

1. All sectors shall be covered under the scheme. Labour-intensive sectors will be accorded a priority.
2. Both manufacturer exporters and merchant exporters (traders) are eligible.
3. There is no turnover threshold for availing benefits under the scheme.
4. Re-exported products are not eligible under this scheme.
5. The exported products should have India as their country of origin to be eligible for benefits under the scheme.
6. Special Economic Zone Units and Export Oriented Units are also eligible.
7. The scheme also applies to goods that have been exported via courier through e-commerce platforms.

6. Ineligible categories under the Scheme for claiming benefit:

The following categories of exports/exporters which shall not be eligible for rebate under the RoDTEP Scheme:

(i) Exports of imported goods as per para 2.46 of FTP i.e. Import for Export;

(ii) Exports through trans-shipments, meaning thereby exports originating in third country but trans-shipped through India;

(iii) Export products which are subject to minimum export price or export duty;

(iv) Products which are restricted for exports under Schedule-2 of Export Policy in ITC (HS);

(v) Products which are prohibited for exports under Schedule-2 of Export Policy in ITC (HS);

(vi) Deemed Exports;

(vii) Supplies of products manufactured by DTA units to SEZ/FTWZ units;

(viii) Products manufactured in EHTP and BTP;

(ix) Products manufactured partly or wholly in a warehouse under section 65 of Customs Act, 1962 ;

(x) *Products manufactured or exported in discharge of export obligation against advance Authorization or Duty Free Import Authorization (DFIA) or Special Advance Authorization issued under a duty exemption scheme of relevant Foreign Trade Policy;

(xi) *Products manufactured or exported by a unit licensed as 100% Export Oriented Unit (EOU) in terms of the provisions of the Foreign Trade Policy;

(xii) *Products manufactured or exported by any of the units situated in Free Trade Zone (FTZ), Export Processing Zones (EPZ) or Special Economic Zone (SEZ);

(xiii) Products manufactured or exported availing the benefit of Notification No 32/1997- Customs dated 01.04.2017 (i.e. jobbing transactions);

(xiv) Exports for which electronic documentation in ICEGATE EDI has not been generated or Exports from Non-EDI port; and

(xv) Goods which have been taken into use after manufacture (i.e. second-hand goods);

[*** As per para 4.55B of the FTP (inserted vide DGFT Notification No. 19/2015-20 dated 17.08.2021), the inclusion of exports made by categories mentioned in Sr. No. X, XI and XII above i.e. the exporters under the categories of SEZ, EOU, Advance Authorization etc. and the RoDTEP rates for export items under such categories would be decided later based on the recommendations of the RoDTEP Committee.]

7. RoDTEP vs MEIS

Feature	RoDTEP	MEIS
Incentive Scheme	Refund of indirect taxes on inputs used in the manufacture of exported products that are not being currently reimbursed in any other existing schemes.	Incentive on exports of goods in form of transferable scrips
Mode of issue	Issued in the form of transferable duty credit/ electronic scrip, which will be maintained in electronic ledger	Issued in the form of transferable scrips (physical copy)
WTO compliant	Yes. It is as per WTO norms.	No.
Incentive	At a notified rate as a percentage of Freight On Board (FOB) value. Rebate on certain export products will also be subject to value cap per unit of the exported product.	As a % of realised FOB value of exports in free foreign exchange or FOB value of exports as per shipping Bill, whichever is lower.
Transferable	Transferable in open market	Transferable in open market

8. The process of generating and claiming scrips as per the RoDTEP scheme is shown below.

The exporter should file a claim declaration for RoDTEP in the shipping bill.

↓

Upon filing the Export General Manifest (EGM), the Customs initiate the processing of the claim.

↓

Post-processing, a scroll with all Shipping Bills for the mentioned amount shall be generated and then shared on the user's account at the ICEGATE portal.

↓

The exporter must log in to the said portal and create a credit ledger account.

↓

Next, the exporter can log into the portal and generate scrips via choosing the relevant shipping bills.

↓

Next, the refund shall be credited to the exporter account for specific utilization purposes.

The common documents required for RoDTEP Scheme include

- Shipping bills,
- Digital Signature Certificate (DSC) – Class 3,
- Electronic Bank Realisation Certificate (eBRC), and
- RCMC Certificate.

Electronic Bank Realisation Certificate: An eBRC (electronic Bank Realisation Certificate) refers to a digital certificate for those engaged with the export business. It is granted by the designated bank as confirmation that the concerned exporter has received payment against the exports of goods or services.

Registration Cum Membership Certificate: As per the Foreign Trade Policy, a RCMC is required to avail benefits under the policy. The certificate mainly benefits the exporters and helps reduce immediate liabilities relating to shipping.

9. Utilisation of Duty Credit

The created and approved Scrips can either be used for debiting Basic Customs Duty for own imports or the approved Scrip can be transferred to another IEC holder who is also created RODTEP Ledger under his log in Credentials.

The current owner of the Scrip can use the scrip credits for debiting to his imports in the same manner in the past like all other scrips like MEIS, RoSCTL etc as in the past.

EOU, EHTP, STP & BTP Schemes

26.7

These units may import or procured from DTA without payment of duty provided they are not prohibited items.

w.e.f. 1-7-2017 100% EOU will not get ab initio exemption of IGST for imports. In GST regime, EOUs will have to pay IGST on imports. Refund of Input Tax Credit (ITC) can be taken after exports as per ITC/Refund Rules.

Amendments in FTP:

Exemption from IGST and GST compensation cess extended upto 30th June 2022, in case of goods imported by EOU/EHTP/STP/BTP units (vide Notification No. 66/2015-2020 dated 1-4-2022). According to a notification issued by the Directorate General of Foreign Trade (DGFT) on July 1, 2022, exemption from integrated tax and compensation cess will continue after June 30, 2022.

EOU scheme is administered by Ministry of Commerce and Industry, while EHTP, STP & BTP schemes are administered by their respective administrative ministries. STP/EHTP Scheme is administered by Ministry of Information Technology. Bio Technology Park (BTP) is established on the recommendation of Department of Biotechnology.

Trading units are not covered under these schemes.

Only projects having a minimum investment of ₹1 crore in plant & machinery shall be considered for establishment as EOUs. However, Board of Approvals (BoA) may allow establishment of EOUs with a lower investment criteria also.

Approval for setting up of units under EOU scheme shall be granted by the Units Approval Committee within 15 days as per prescribed criteria. In other cases, approval may be granted by Board of Approval (BoA) set up for this purpose.

On approval, concerned authority will issue a Letter of Permission (LoP)/Letter of Intent (LoI) which will have initial validity of 2 years (extendable by 2 years and further extension, if necessary, by BoA), by which time unit should have commenced production.

1. Positive Net Foreign Exchange (NFE) earnings:

EOU/EHTP/STP/BTP unit must be a positive net foreign exchange earner.

NFE Earnings shall be calculated cumulatively in blocks of 5 years, starting from commencement of production.

Items of manufacture for export specified in LoP/LoI alone shall be taken into account for calculation of NFE.

Positive NFE = A – B> 0

'A' is FOB value of exports;

'B' is CIF value of imported inputs, Capital goods and value of all payments made in foreign exchange by way of commission/royalty etc. plus goods are obtained from another EOU/SEZ/ international exhibition held in India or bonded warehouses

In case units not able to achieve NFE due to any reason 5 years block period, may be extended suitably by BoA. In case of adverse market conditions 5 years period can be extendable up to 1 year.

Units Approval Committee shall monitor performance of EOU's with regard to NFE earnings.

2. The following sales to DTA can be counted for positive NFE:

(a) Supplies in DTA to holders of Advance Authorization/Advance Authorization for annual requirement/DFIA under duty exemption/remission scheme/EPCG scheme subject to certain exceptions.

(b) Supplies affected in DTA against foreign exchange remittance received from overseas.

(c) Supplies to other EOU/EHTP/STP/BTP/SEZ units.

(d) Supplies made to bonded warehouses set up under FTP and/or under section 65 of Customs Act and Free Trade and Warehousing Zones (FTWZ), where payment is received in foreign exchange.

(e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF.

(f) Supplies of Information Technology Agreement (ITA-1) items and notified zero duty telecom/ electronics items.

(g) Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.

3. Benefits to EOU/EHTP/STP/BTP units:

(i) Exemption from industrial licensing for manufacture of items reserved for SSI sector.

(ii) Export proceeds will be realized within 9 months.

(iii) Units will be allowed to retain 100% of its export earnings in the EEFC account.

(iv) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, subject to fulfilment of required conditions.

(v) 100% FDI investment permitted through automatic route like SEZ units.

4. Sales by EOU to DTA units

Up to 50% of FOB value of exports (including sales made to SEZ unit from Foreign Exchange Account of such unit), subject to fulfillment of positive NFE, on payment of concessional duties.

In case of units manufacturing and exporting more than one product, sale of any of these products into DTA, up to 90% of FOB value of export of the specific products is permitted, provided total DTA sales does not exceed the overall entitlement of 50% of FOB value of exports for the unit.

In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year (2 years for pharmaceutical units).

Deemed Exports 26.8

Deemed Exports (i.e. Supply of goods from DTA to EOU):

Goods manufactured in India and supplies from DTA to EOU, EHTP, STP & BTP units will be regarded as deemed exports and DTA supplier shall be eligible for export incentives.

1. The following supplies considered as deemed exports:

A. Goods supplied by a manufacturer:

1. Supply of goods against Advance Authorization/Advance Authorization for Annual Requirement/ DFIA.
2. Supply of goods to units located in EOU/STP/BTP/EHTP.
3. Supply of capital goods against EPCG authorization.
4. Supply of marine freight containers by 100% EOU provided said containers are exported within 6 months by another 100% EOU.

B. Goods supplied by a Main contractor/sub-contractor:

1. Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.
2. Supply of goods to any project where import is permitted at zero customs duty.
3. Supply of goods to mega power projects against International Competitive Bidding.
4. Supply to goods to UN or international organisations.
5. Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).

2. BENEFITS FOR DEEMED EXPORTS

Deemed exports shall be eligible for any/all of following benefits:

1. Advance Authorization/Advance Authorization for Annual requirement/DFIA
2. Deemed Export Drawback
3. Domestic supplies to EOUs would be treated as deemed exports under Section 147 of CGST/SGST Act and refund of tax paid on such supplies given to the supplier or recipient as the case may be.

Illustration 1

During F.Y. 2021-22 S Pvt Ltd has made Exports of "Safety Valves" coming under Chapter Heading 8481.

Country of Export – USA & UK.

Realised FOB value of exports in free foreign exchange: ₹50 Crore

FOB value of exports as given in the Shipping Bills in free foreign exchange (Covered in ₹): ₹55 Crore. As per Appendix 3B of Foreign Trade Policy, reward for Export of Safety Valves to USA & UK is 3%.

Find the Duty Credit Scrip or MEIS reward available to S Ltd.

Solution:

Realised FOB value of exports = ₹50 crore or

FOB value of exports = ₹55 crore (as given in the Shipping Bills)

Whichever is LESS.

Therefore, MEIS Reward available to S Pvt Ltd for F.Y. 2015-16 would be ₹1.5 Crores

(i.e. ₹50 Cr × 3%).

Illustration 2

Classmate Printers Pvt. Ltd., manufactured register account books & letter pads and exported the same by courier at FOB value of 4,000 USD per consignment to USA and 6,500 UK Pounds per consignment to UK. During the year, 40 consignments sent to USA. Exchange rate is ₹70 per USD. 20 consignments sent to UK. Exchange rate is ₹88 per Pound. Classmate Printers Pvt. Ltd., entitled 2% reward rate. Find the reward amount under MEIS for Classmate Printers Pvt. Ltd.

Solution:

Export to USA:

Reward amount in ₹2,24,000 [(i.e. ₹2,80,000 × 40 consignments) × 2%]

[i.e. (4,000 USD × ₹70) = ₹2,80,000

(Maximum permissible per consignment is ₹5,00,000)

Export to UK:

Reward amount in ₹2,00,000/-

[i.e. (6,500 UK Pounds × ₹88 = ₹5,72,000)

however, maximum is ₹5,00,00 per consignment.

[i.e. ₹(5,00,000 × 20) × 2%] = ₹2,00,000.

Illustration 3

M Pvt Ltd is provides services of Technical Testing & Analysis Services.

During F.Y. 2022-23, Gross earning in foreign exchange from providing of services is $ 2 Million. (₹12 Crore) from USA and $ 1.5 Million. (₹ 9 Crore) from Nepal & Bhutan. Payment made in foreign Currency on services received from abroad is $ 50,000 (₹ 30 lakhs) and purchase of Capital Equipment of $ 1 million (₹ 6 Crore).

Calculate eligibility of SEIS Scheme to M Pvt Ltd.

During F.Y. 2021-22, Net Foreign Exchange Earning was $ 2.5 Million.

Note: Reward for export of Technical Testing & Analysis Services is 3%.

Solution:

SEIS Reward available to M Pvt. Ltd., for F.Y. 15-16 would be ₹44.10 lakhs

[i.e. (12+9) – (0.3+6) × 3%].

Illustration 4

Examine whether benefit of Service Exports from India Scheme (SEIS) can be availed with respect to notified services provided by service providers located in India in the current financial year in the following independent cases:

(a) Net Foreign Exchange (NFE) earned by Mr. Vijay, a service provider, in the preceding financial year is USD 9,500.

(b) X & Co., is a partnership firm, supplier of taxable services, has earned net foreign exchange to the tune of USD 17,500 in the preceding financial year.

(c) Mr. Roshan, a service provider, has earned net foreign exchange of USD 18,000 in the preceding financial year. Out of this, USD 4,000 has been paid to Mr. Roshan through the credit card of the foreign client.

Note: all the above services providers have an active IEC at the time of rendering services.

Solution:

(a) Mr. Vijay is not eligible for SEIS Scheme as his net foreign exchange earnings are less than USD 10,000 (minimum limit for individuals).

(b) X& Co., being a partnership firm eligible for SEIS Scheme as their net foreign exchange exceeds the limit of USD 15,000 (minimum limit for firms).

(c) Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme. Thus, Mr. Roshan is eligible for SEIS Scheme.

Illustration 5

Victory Inc., a US based company, sought architectural services from ABC India Pvt. Ltd. with regard to its newly established business in New York in April 2022. ABC India Pvt. Ltd. charged US $50,000 as a consideration for the architectural services provided to Victory Inc. In addition, ABC India Pvt. Ltd., also exported goods worth US $15,000 to Victory Inc. and received the entire consideration of US $65,000 on 28-04-2022.

Discuss the eligibility of ABC India Pvt. Ltd., for duty credit scrip entitlement under the Service Exports from India Scheme (SEIS).

Notes:

(i) ABC India Pvt Ltd., has an active Importer Exporter Code (IEC) at the time of rendering such services.

(ii) Net Foreign Exchange earnings of ABC India Pvt Ltd., in the financial year 2021-22 are US $16,000.

(iii) Notified rate of reward for architectural services is 5%

Will your answer be different if ABC India Pvt. Ltd. had provided telecom services to Victory Inc.?

Solution:

Duty credit scrip entitlement of ABC India Pvt. Ltd. is 5% of US $ 50,000 i.e., US $ 2,500.

Further, if ABC India Pvt. Ltd. had provided telecom services to Victory Inc., it would not have been eligible for the duty credit scrip entitlement under the SEIS.

Illustration 6

XYZ Co. Ltd., Delhi, with an active IEC, has provided research and development services on natural sciences* to a US based company in the current financial year. It has earned net foreign exchange to the tune of USD 14,000 in the preceding financial year. Can XYZ Co. Ltd. avail the benefit of Service Exports from India Scheme (SEIS) with respect to services provided by it?

*notified for availing benefit under Service Exports from India Scheme (SEIS)

Solution:

For availing SEIS by a person (other than individual or sole proprietor) need to fulfil minimum NFE is 15,000 USD.

In the given case XYZ & Co. Ltd. Delhi is not entitled to avail the SEIS, since, their NFE in the preceding previous year is 14,000 USD only.

Illustration 7

Answer the following questions with reference to the provisions of Foreign Trade Policy:

Jig Ltd. manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations. The payment for such supply is received in free foreign exchange. Can Jig Manufacturers seek Advance Authorization in relation to the supplies made by it?

Solution:

Advance Authorization can be issued for supplies made to United Nations Organisations or under Aid Programme of the United Nations or other multilateral agencies and such supplies need to be paid for in free foreign exchange.

Illustration 8

LMN Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is ₹20,00,000. The inputs are processed and the final product is exported. The exports made by LMN Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by LMN Ltd. in the processing. What should be the minimum FOB value of the exports made by the LMN Ltd. as per the provisions of Advance Authorization?

Solution:

Advance Authorization necessitates exports with a minimum of 15% value addition (VA).

Therefore, the minimum FOB value of the exports made by LMN Ltd. should be ₹23,00,000 (i.e. ₹20 L × 115/100).

Illustration 9

Ram Infra has imported inputs, having CIF value of ₹25,00,000 without payment of duty under Advance Authorization. Inputs are supplied free of cost valued at ₹5,00,000 to meet eventualities of quality issues arising during manufacture.

On manufacturing, the products are supplied to units in SEZ and realization is in Indian currency.

Ram Infra wants to know whether it is entitled to Advance Authorization scheme and what should be the minimum value addition.

And you are required to compute FOR value of supplies to SEZ.

Ram Infra has manufactured and supplied goods to international organizations in India from imported inputs for their office use. The payment for such supply is received in Indian currency. Can Advance Authorization be denied as payment has not been received in free foreign exchange?

Solution:

Supplies to SEZ unit is entitled to Advance Authorization even payment received in Indian currency.

Value addition = 15%

Minimum FOB value of supply to SEZ = ₹34,50,000 [₹25,00,000 + ₹5,00,000) x 115%]

Note: Items are supplied free of cost by foreign buyer, its notional value will be added in the CIF value of import and FOB value of export for purpose of calculating value addition.

Advance Authorization can be issued for supplies made to international organizations in India (like United Nations Organisations or under Aid Programme of the United Nations or other multilateral agencies) and such supplies need to be paid for in free foreign exchange.

In the given case Ram Infra is not entitled for Advance Authorization since, payment has not been received in free foreign exchange.

Illustration 10

Neel Pvt. Ltd., a manufacturer, wants to import capital goods in CKD condition from a foreign country and assemble the same in India. The import of the capital goods will be under Project Imports. The capital goods will be used for pre-production processes. The final products of Neel Pvt. Ltd. would be supplied in SEZ. Neel Pvt. Ltd. wishes to sell the capital goods imported by it as soon as the production process starts.

Neel Pvt. Ltd. seeks your advice whether it can avail the benefit of EPCG Scheme for importing the intended capital goods.

Note: Assume that all other conditions required for being eligible to the EPCG Scheme are fulfilled in the above case.

Solution:

Export Promotion Capital Goods Scheme (EPCG) permits exporters to procure capital goods at concessional rate of customs duty/zero customs duty. In return, exporter is under an obligation to fulfil the export obligation. Export obligation means obligation to export product(s) covered by Authorization/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority.

Exports to SEZ unit/developer/co-developer will be considered for discharge of export obligation of EPCG Authorization, irrespective of currency.

The license holder can either procure the capital goods (whether used for pre-production, production or post-production) from global market or domestic market. The capital goods can also be imported in CKD/SKD to be assembled in India.

An EPCG Authorization can also be issued for import of capital goods under Scheme for Project Imports'.

Export obligation for such EPCG Authorizations would be 6 times of duty saved.

Duty Saved Amount	(₹)
Effective duty under Project Imports	Xxx

Duty Saved Amount	(₹)
Less: Concessional duty under the EPCG Scheme	(xxx)
Duty Saved amount	xxxx

However, import of capital goods is subject to 'Actual User' condition till export obligation is completed.

Therefore, based on the above discussion, Neel Pvt. Ltd. can import the capital goods under EPCG Scheme.

However, it has to make sure that it does not sell the capital goods till the export obligation is completed.

Illustration 11

X Ltd., imported a machine from USA under EPGC Scheme with zero customs duty in the financial year 2022-23 for production of product 'P'.

Customs duty otherwise payable is ₹20 lakhs. Find the specific export obligation and average export obligation.

Exports of finished goods 'P' in the preceding 5 licensing years are as follows:

Particulars	2021-22	2020-21	2019-20	2018-19	2017-18
FOB value of exports in ₹	80 lakhs	72 lakhs	45 lakhs	50	25

Solution:

Specific Export Obligation is ₹120 lakhs. It means capital goods imported under EPCG scheme should produce finished goods worth ₹120 lakhs for export over a period of 6 years reckoned from the date of issue of Authorization.

Average Export Obligation is ₹65.67 lakhs. It has to be achieved within the overall EO period (i.e. within 6 years reckoned from the date of issue of authorization).

Export obligation consists of average export obligation and specific export obligation. Hence, to redeem export obligation both specific and average export obligation should be fulfilled.

Illustration 12

With reference to the provisions relating to Export Oriented Unit (EOU) Scheme as contained in Foreign Trade Policy, answer the following questions:

(i) An EOU has started production after 4 years 10 months from the date of grant of Letter of Permission (LoP). Is it correct?

(ii) A unit intending to trade in handicrafts wants to set up an EOU. Is it allowed?

Solution:

(i) On approval, concerned authority will issue a Letter of Permission (LoP)/Letter of Intent (LoI) which will have initial validity of 2 years (extendable by 2 years and further extension, if necessary, by BoA), by which time unit should have commenced production.

In the given can EOU commenced production after 4 years 10 months from the date of LoP without obtaining extension. Hence, the given statement is incorrect.

(ii) Trading unit cannot setup an EOU. Manufacturing units (i.e. make in India) can set up an EOU.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. Mandatory documents required for export of goods from India are—
   (a) Shipping Bill/Bill of Export
   (b) Bill of entry
   (c) Either (a) or (b)
   (d) Both (a) & (b)

2. DGFT may, through a Notification, impose restrictions on export and import, necessary for:—
   (a) Prevention of use of prison labour
   (b) Protection of national treasures of artistic, historic or archaeological value
   (c) Protection of trade of fissionable material or material from which they are derived
   (d) All of these

3. In case of Secondhand goods, import policy is RESTRICTED for ………:
   (a) Photocopier machines/digital multifunction print & copying machines
   (b) Refurbished/re-conditioned spares of capital goods
   (c) Secondhand goods imported for the purpose of repair/refurbishing/re-conditioning or re-engineering.
   (d) None of the above

4. Value of goods to be exported as gift can't exceed ………..in a licensing year
   (a) 7,00,000
   (b) 10,00,000
   (c) 50,00,000
   (d) None of the above

5. Free of cost exports for export promotion of pharma products by pharma companies is restricted to—
   (a) 2% of average annual export realization during preceding 3 licencing years
   (b) 8% of average annual export realization during preceding 3 licencing years
   (c) 2% of average annual export realization during preceding 3 licencing years
   (d) 8% of average annual export realization during preceding 2 licencing years

6. Value of inputs covered by Advance authorization ₹25 lakh. Export must be of ………….. minimum value addition:
   (a) 10%
   (b) 15%
   (c) 20%
   (d) 50%

7. Trading Units undertaking to export may be set up under EOU, EHTP, STP or BTP Scheme for:
   (a) Rendering of services

(b) Agriculture including agro-processing
(c) bio-technology
(d) None of these.

8. EOU Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, where the unit has a turnover ………:
(a) 5 crores or above
(b) 10 crores or above
(c) Below 5 crores
(d) 100 crore or above

9. Minimum value addition required to be achieved under DFIA is …………:
(a) 10%
(b) 15%
(c) 20%
(d) 5%

10. If any doubt arises in respect of interpretation of FTP, the said doubt should be forwarded to………… :
(a) CBIC
(b) DGFT
(c) Government
(d) Courts

Answer:

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
a	d	a	d	a	b	d	a	c	b

Special Economic Zone Scheme (with Amended SEZ Rules) 27

SLOB Mapped against the Module

1. To acquire adequate knowledge relating to valuation and duty calculation, remission and refund under Customs Act and Rules.
2. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- Understand various types of Special Economic Zones
- Explain Incentives to Special Economic Zone Units
- Apply practically for SEZ approval.

Special Economic Zone Scheme (with Amended SEZ Rules)

27

A Special Economic Zone (SEZ) is a specially dedicated zone built by a nation for businesses. An SEZ is developed by a nation to promote the economic growth of the country. As the companies set up in the SEZ get relaxation on the taxes by the government and other benefits such as the incentives on export duties and ease in transportation. The Kandla SEZ was the first Special Economic Zone that was set up in India in 1965 near Kandla port, Gujarat. Approximately there are 265 operational SEZs in India. Interestingly highest number of SEZs are in Tamil Nadu.

The provisions relating to SEZ are contained in Special Economic Zone Act, 2005 and SEZ Rules, 2006.

- SEZs are like a separate island within territory of India.
- SEZs are projected as duty free area for the purpose of trade, operation, duty and tariffs.
- Goods and services coming to SEZ units from domestic tariff area are treated as exports from India and goods and services rendered from SEZ to the DTA are treated as import into India.

Any proposal for setting up of SEZ unit in the Private/Joint/State Sector is routed through the concerned State government who in turn forwards the same to the Department of Commerce with its recommendations for consideration.

A Special Economic Zone or SEZ is a specially marked territory or enclave within the national borders of a country that has more liberal economic laws than the rest of the country.

1. Applicability of Taxes and Duties to SEZ units:

SEZs are treated as foreign territory for tax purposes even though they are located within a country's borders. Supplies into SEZs are exempt from paying GST because they are considered as exports. However, when an SEZ supplies goods/services to a Domestic Tariff Area (DTA), it is exempt from paying taxes, although the receiver in the DTA has to pay IGST under reverse charge mechanism (RCM).

2. Incentives to Special Economic Zone Units:

The government offers many incentives for companies and businesses established in SEZs. some of the important ones are:

- Duty-free import or domestic procurement of goods for developing, operating and maintaining SEZ units.
- 100% Income tax exemption on export income for SEZ units under the Income Tax Act, 1961 for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years.
- Units are exempted from Minimum Alternate Tax (MAT).
- They were exempted from GST. Supplies to SEZs are zero-rated under the IGST Act, 2017.

- Single window clearance for Central and State level approvals.
- There is no need for a license for import.
- In the manufacturing sector, barring a few segments, 100% Foreign Direct Investment (FDI) is allowed.
- Profits earned are permitted to be repatriated freely with no need for any dividend balancing.
- There is no need for separate documentation for customs and export-import policy.
- Many SEZs offer developed plots and ready-to-use space.
- SEZ units are eligible for MEIS, SEIS and RoDTEP duty credit scripts.

Apart from the firms operating in SEZs, developers of SEZs also receive many benefits and incentives from the government.

3. Benefits of Special Economic Zone (SEZ):

(a) SEZ units are permitted to import or get duty-free goods/materials etc. from domestic sources.

(b) SEZ units import capital goods, raw materials, consumables, spares, packing materials, office equipment, etc. for operating their business in the SEZ, without the need for a license or other specific sanction.

(c) Products imported or bought locally duty-free could be used for five years after approval.

(d) After paying the necessary customs duties, finished goods and by-products may be sold domestically.

(e) Domestic sales of waste, scrap, and rejected goods are permitted with payment of any applicable customs taxes.

4. Types of Special Economic Zones in India:

Some of the different types are:

- Multi sector SEZ
- Sector specific SEZ;
- Free Trade and Warehousing Zone (FTWZ);
- IT/Information Technology Enabled Services (ITeS)/handicrafts/bio-technology/non-conventional energy/gems and jewellery SEZ; and
- International Financial Services Centre (IFSC).

5. Special Economic Zones Act, 2005

As per Section 2(za) of the SEZ Act, 2005, The Special Economic Zone means each special Economic Zone notified under the proviso to sub-section (4) of Section 3 (i.e. set up and notify the SEZ) and sub-section (1) of Section 4 (i.e. provisions relating Developer of SEZ) including Free Trade and Warehousing Zone and an existing Special Economic Zone.

The SEZ Act to provide for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto."

The main objectives of the SEZ Act are:

1. To create additional economic activity.
2. To boost the export of goods and services.
3. To generate employment.
4. To boost domestic and foreign investments.
5. To develop infrastructure facilities.

6. SEZ Approval Mechanism:

The SEZ approval mechanism is a single-window process provided by a 19-member inter-ministerial SEZ Board of Approval (BoA).

- The developer has to submit the proposal to the state government.
- The state government forwards this proposal to the BoA along with its recommendation within forty-five days.
- The developer or applicant can also directly submit the proposal to the BoA.
- The Board, which has been constituted by the Central Government, and is a 19-member Board takes the decision considering the merits of the proposal. All decisions taken by the Board are by consensus.
  - The Board is chaired by the Secretary of the Dept. of Commerce, Ministry of Commerce and Industry.
  - The other members are from various bodies and ministries such as the Central Board of Indirect and Customs (CBIC), the Central Board of Direct Taxes (CBDT), Department of Economic Affairs, Dept. of Commerce, Ministry of Science and Technology, Ministry of Home Affairs, Ministry of Law and Justice, Ministry of Urban Development, etc.
- Once the BoA gives its approval, and the central government notifies the area of the SEZ, units are allowed to be established inside the SEZ.

7. SEZ Rules, 2006

The Rules provide for:

1. Simplified procedures to develop, operate and maintain SEZs and also to set up units and conduct businesses in the SEZs.
2. Single-window clearance to set up a Special Economic Zone, and also to set up a unit in an SEZ.
3. Single-window clearance for matters connected to the Central and State governments.
4. Simplified compliance procedures and documentation with a focus on self-certification.
5. Different minimum land requirements for different classes of Special Economic Zones.

Key amendments to Special Economic Zone Rules, 2006:

The Ministry of Commerce and Industry has announced significant amendments to the Special Economic Zone (SEZ) Rules, 2006. Certain procedural changes have been synced with Goods and Services Tax (GST).

1. Alignment of the existing SEZ law with GST.
2. No minimum area required for setting up SEZs in Biotechnology & Health Sector.
3. Merger of two or more units in the same SEZ of the same legal entity has been permitted.
4. Specified categories of supplies to Domestic Tariff Area (DTA) would not to be considered for computation of Net Foreign (Exchange) Earnings (NFE).
5. A new rule 21A has been inserted which deals with setting up of unit by Multilateral or Unilateral or International agencies in International Financial Services Centre. A Multilateral agency shall be allowed to set up their local or regional office in the International Financial Services Centre as an Unit.

   The application for setting up and operation of such Unit in the International Financial Services Centre shall be made before the Board of Approval through the concerned Development Commissioner and the terms and conditions for setting up and operations by such Units shall be laid down by the Board of Approval based on the recommendation of the Development Commissioner.

6. In case of gems and jewellery unit, the semi-finished goods, precious metals and any other raw material (excluding diamonds or precious and semi-precious stones or lab grown diamonds) taken outside the Special Economic Zone for sub-contracting of studding by the unit shall be brought back into the unit within **45 days**".
7. work from home: As per The Ministry of Commerce and Industry on 14th July, 2022, the Special Economic Zones (Third Amendment) Rules, 2022, the insertion of new Rule 43A in the Special Economic Zones Rules has provided the companies or industries flexibility to allow a maximum 50% of their employees to work from home and along with prior permission to temporarily remove goods such as laptops, computers, electronic equipment, etc., from the SEZ unit to a domestic tariff area without payment of duty.

8. Special Economic Zone (SEZ) vs Export Oriented Unit (EOU): Few differences between SEZ and EOU are as under

SEZ	EOU
Supply to SEZ is called as export	Supply to EOU is called as deemed export
Supply from DTA to SEZ will attract IGST at zero rate	Supply from DTA to EOU will attract GST as per applicable rate.
Refund of tax does not arise. Since, no tax suffered by SEZ unit	Refund of GST allowed to supplier or receiver (i.e. either one can claim refund of GST)
For SEZ units, export and import customs clearance is achieved within the zone itself.	For the clearance of imported consignments for EOU, there is a Fast Track Clearance Scheme (FTCS).
In SEZ, units can be set up only at the designated sites.	It can be set up anywhere in India. In other words, it is not bound by the location or any boundaries across India.
For SEZ units no specific minimum investment is required.	Only projects having a minimum investment of ₹1 crore in plant & machinery shall be considered for establishment as EOUs. However, Board of Approvals (BoA) may allow establishment of EOUs with a lower investment criteria also.

Exercise

A. Theoritical Questions

Multiple Choice Questions

1. First Special Economic Zone that was set up in India in 1965 near Kandla port, Gujarat.
   (a) The Kandla SEZ near Kandla port, Gujarat
   (b) The MEPZ Chennai
   (c) Cochin Special Economic Zone, Kakkanad, Cochin
   (d) Visakhapatnam SEZ

2. Goods and services coming to SEZ units from domestic tariff area are treated as
   (a) Deemed Exports
   (b) exports from India
   (c) import into India
   (d) both (a) and (b)

3. The companies or industries flexibility to allow a maximum _____ of their employees to work from home and along with prior permission to temporarily remove goods such as laptops, computers, electronic equipment, etc., from the SEZ unit to a domestic tariff area without payment of duty.
   (a) 50%
   (b) 100%
   (c) 25%
   (d) 15%

4. In case the developer submit the proposal to the State Government for The SEZ approval, then state government forwards this proposal to the Board of Approval (BoA) along with its recommendation within.
   (a) five days
   (b) forty days
   (c) fifty-five days
   (d) forty-five days

5. When an SEZ supplies goods/services to a Domestic Tariff Area (DTA), it is exempt from paying taxes, although the receiver in the DTA has to pay:
   (a) IGST under reverse charge mechanism (RCM).
   (b) CGST and SGST under reverse charge mechanism (RCM).
   (c) CGST and UTGST under reverse charge mechanism (RCM).
   (d) IGST under forward charge

Answer:

1.	2.	3.	4.	5.
a	b	a	d	a