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

www.icmai.in

First Edition : August 2022
Revised Edition : February 2024
Revised Edition : February 2025
Reprint : May 2025
Reprint : August 2025

Price : ₹ 700.00

Published by :

Directorate of Studies
The Institute of Cost Accountants of India
CMA Bhawan, 12, Sudder Street, Kolkata - 700 016
studies@icmai.in

Printed at:

M/s. Print Plus Pvt. Ltd.
212, Swastik Chambers
S. T. Road, Chembur
Mumbai - 400 071

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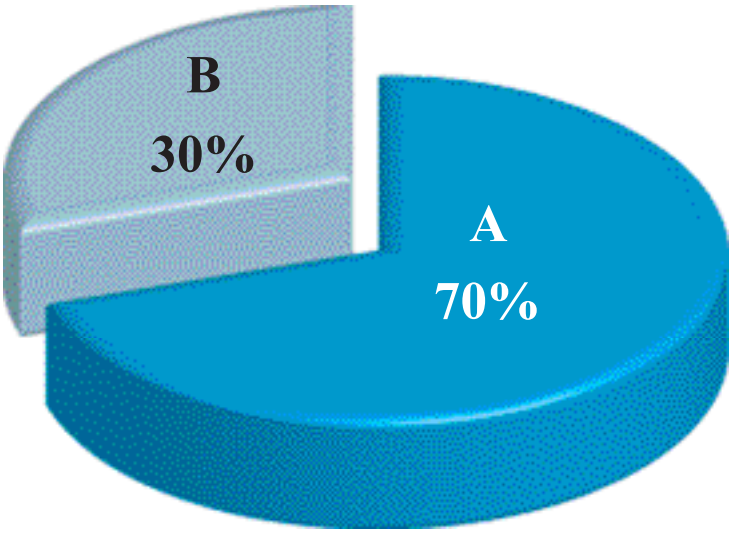
PAPER 19 : INDIRECT TAX LAWS AND PRACTICE

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.

Subject Learning Objectives [SLOB(s)]	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)
Subject Learning Outcome [SLOC(s)] and Application Skill [APS]	**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.

Module wise Mapping of SLOB(s)

Module No.	Topics	Additional Resources (Research articles, books, case studies, blogs)	SLOB Mapped
Section A: Goods and Services Tax Act and Rules			
1	Supplyunder GST-ARefresh		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
2	Timeof Supply(Advanced)		
3	Placeof Supply		
4	Valuation(Advanced)		
5	Input TaxCredit(Advanced)		
6	Zero RatedSuppliesandDeemed Exports		
7	TDS & TCSunderGST		
8	E-Way Bill		
9	GSTRefunds-InvertedDutyStructure and Zero-Rated Supplies		
10	GSTReturns		
11	Accounts and Records		
12	GSTAnnualReturnand GSTAudit Return		
13	Transitionto GST(TransitionalProvisions)		

Module wise Mapping of SLOB(s)			
Module No.	**Topics**	**Additional Resources (Research articles, books, case studies, blogs)**	**SLOB Mapped**
14	Dispute ResolutionMechanismunder GST		better compliance. 3. To facilitate strategic decision making by appropriate management of various indirect tax issues.
15	Inspection, Search, Seizure, Arrest andProsecution		
16	Anti-Profiteering		
17	Walkthrough of GSTNPortal		
Section B: Customs Act and Rules			
18	ValuationandRelatedPartyTransactions		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.
19	CustomsProcedures-Baggage &Courier/ Post		
20	Manufacture in Bond		
21	DutyDrawback		
22	Customs(Import of GoodsatConcessionalRateof Duty)Rules, 2017		
23	RemissionofDuties		
24	Refund		
25	Trade FacilitationMeasures		
26	Export PromotionSchemesunder ForeignTrade Policy		
27	Special EconomicZone Scheme (With AmendedSEZRules)		

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1.3 Notifications on Exempted Supplies

1.4 Important Circulars covering Clarifications on Supply

1.5 Analysis of Key Advance Rulings

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2.3 International Transactions including Reverse Charge

2.4 Case Studies / Analysis of Advance Rulings

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SECTION- A

GOODS AND SERVICES TAX (GST) ACT & RULES

Supply under GST - A Refresh 1

This Module Includes

1.1 Introduction

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

1.3 Notifications on Exempted Supplies

1.4 Important Circulars covering Clarifications on Supply

1.5 Analysis of Key Advance Rulings

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:

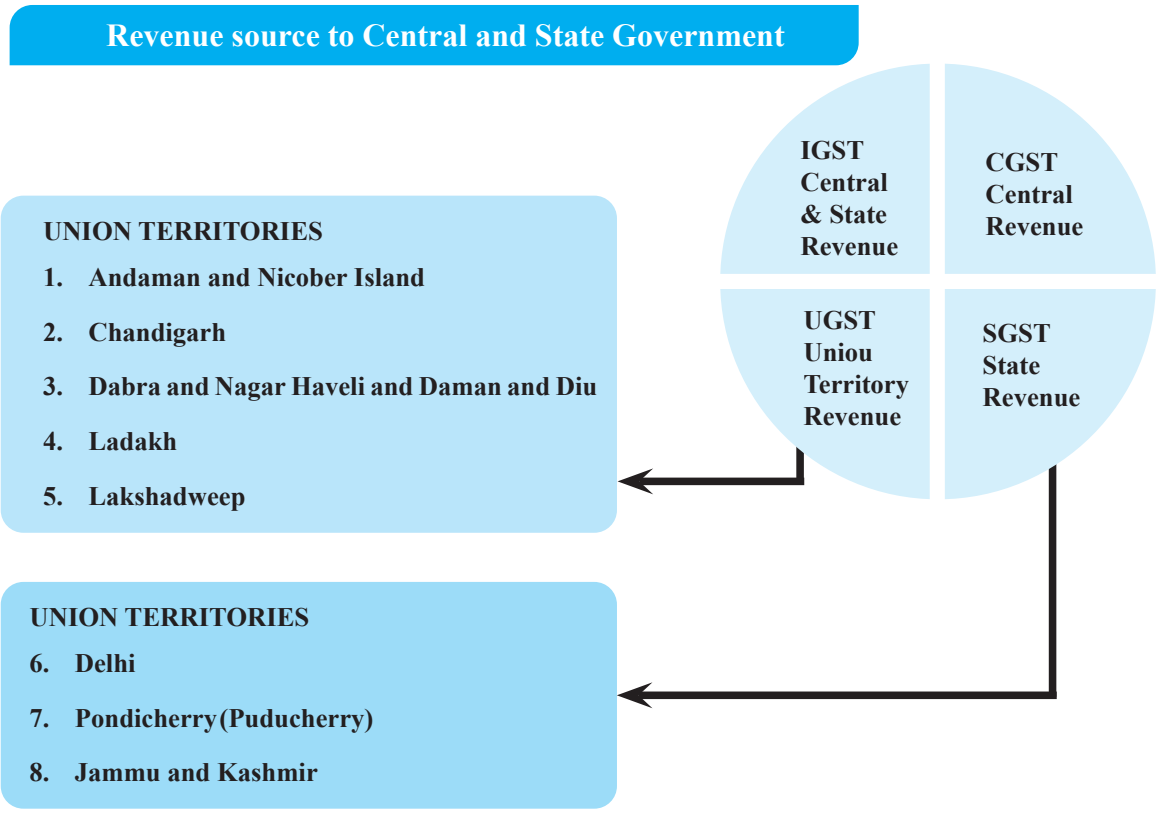
Supplies within such Union territory, Central GST will apply to whole of India and hence, it would be applicable to all Union territories, with or without Legislature.

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.



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 (w.e.f. 1st October 2023) specified actionable claims. As per Finance Act, 2023 the following applicable with retrospective **1st July, 2017** 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."; **Inserted in Schedule – III, by F.A. 2024, dated 16-8-2024, w.e.f. 1-11-2024:** 9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

As per Section 7(1) Supply includes	As per Section 7(2) Supply excludes
	Inserted in Schedule – III, by F.A. 2024, dated 16-8-2024, w.e.f. 1-11-2024: 10. Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.". **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(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.	

Amendment of Schedule II of CGST Act, 2017: (Activities or transactions to be treated as supply of goods or supply of services)	Consequent to the amendment in section 7 of the CGST Act, paragraph 7 of Schedule II to the CGST Act has been omitted retrospectively, with effect from the 1st July, 2017.

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.

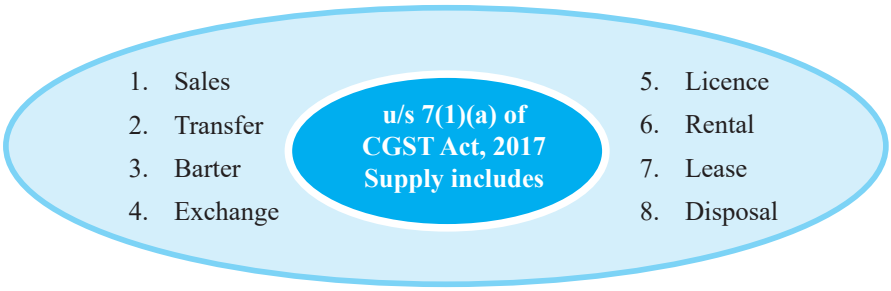
GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition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

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;

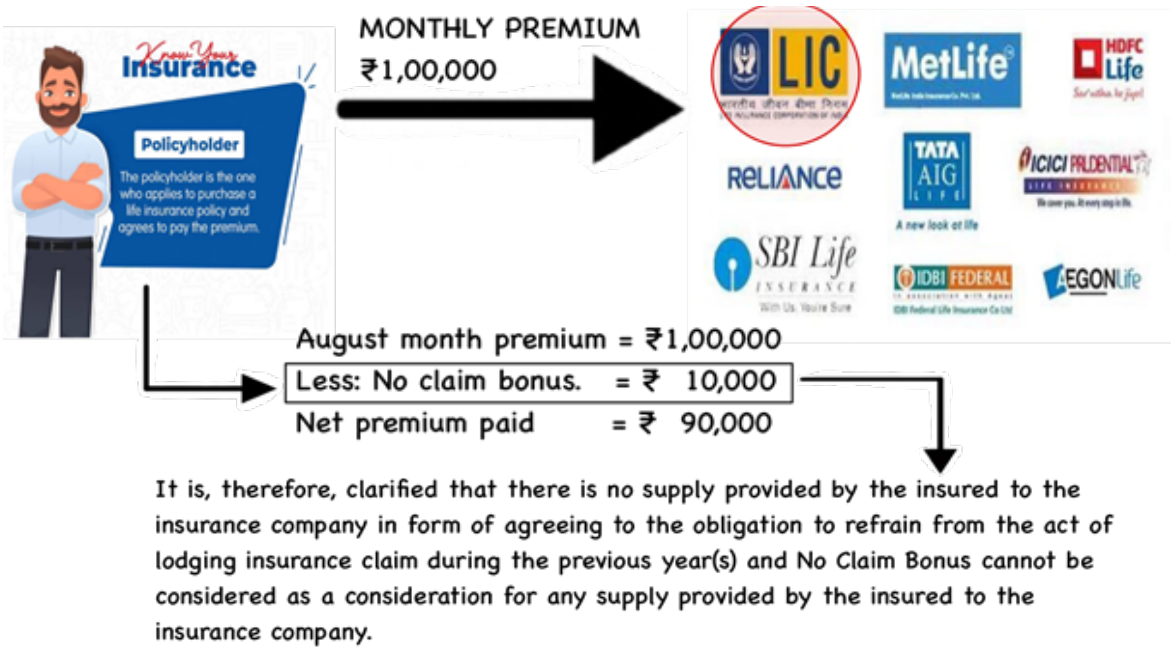
(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

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;

No Claim Bonus is not a consideration vide Circular No. 186/18/2022-GST-dt. 27.12.2022 has been issued to clarify as under:

S. No.	Issue	Clarification
1.	Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year (s)?	As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus. It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.

Simplified approach:



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?

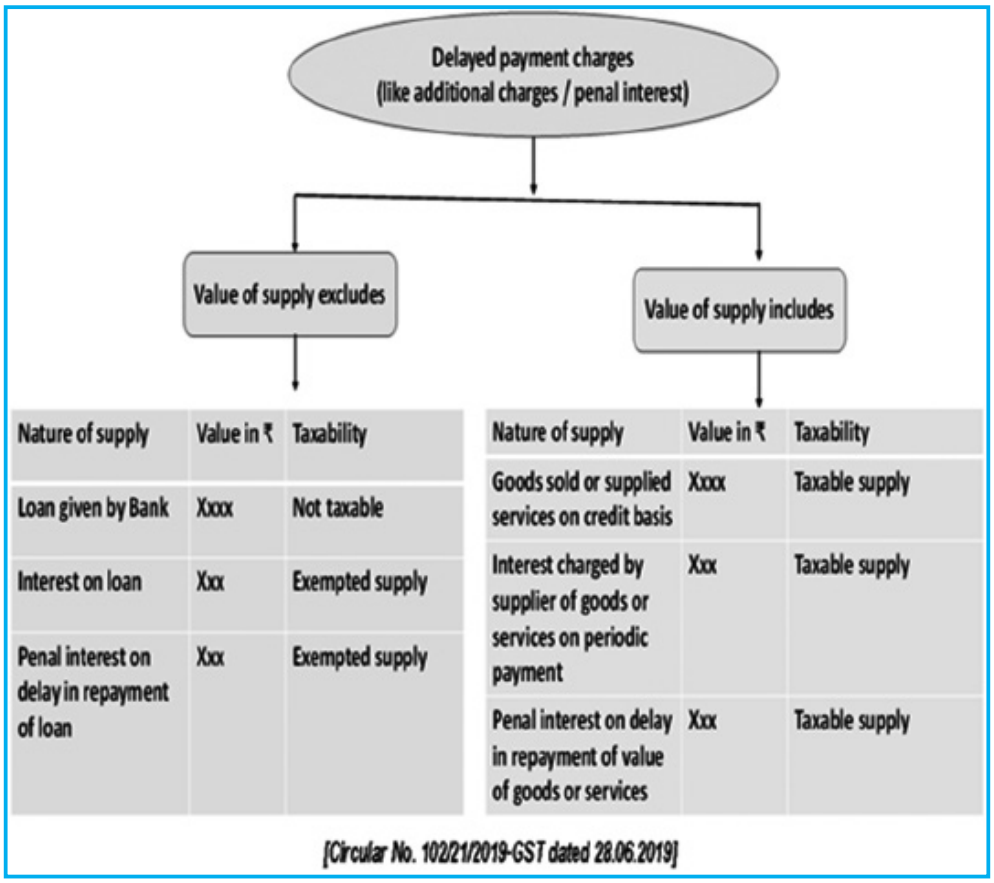
Solution: It is not supply.

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)

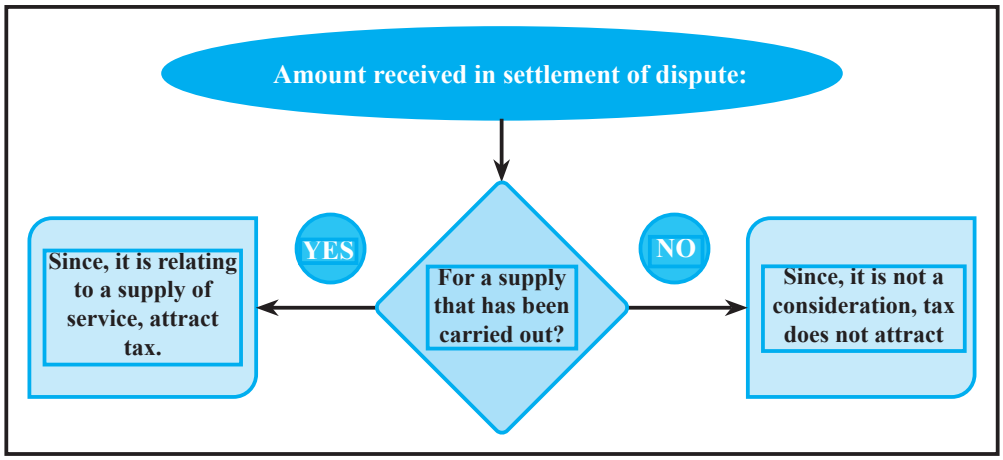


Nature of supply	Value in ₹	Taxability
Loan given by Bank	Xxxx	Not taxable
Interest on loan	Xxx	Exempted supply
Penal interest on delay in repayment of loan	Xxx	Exempted supply

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'.

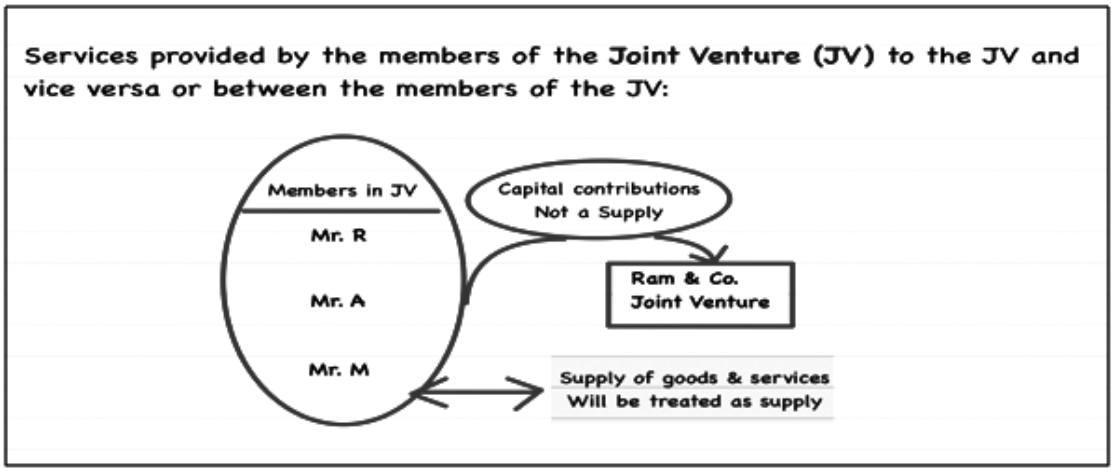
Illustration 6

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

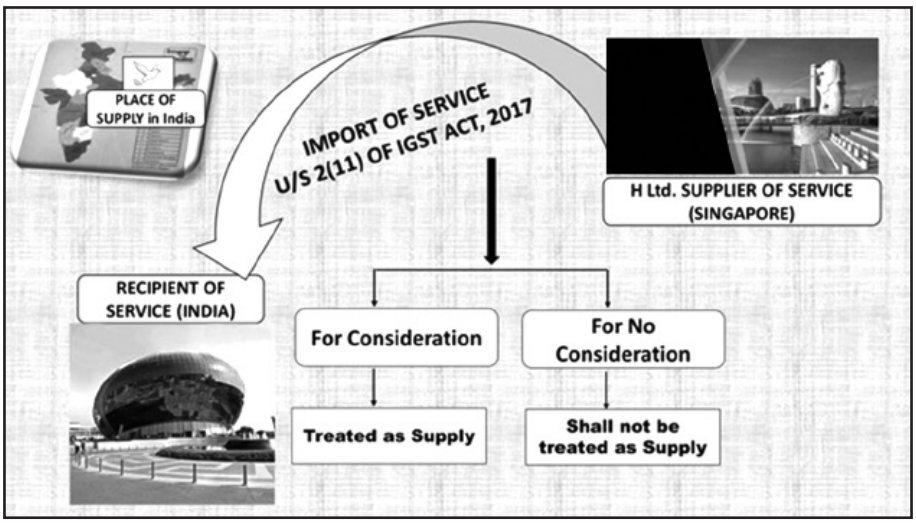
  (i) The supplier of service is located outside India;

  (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:

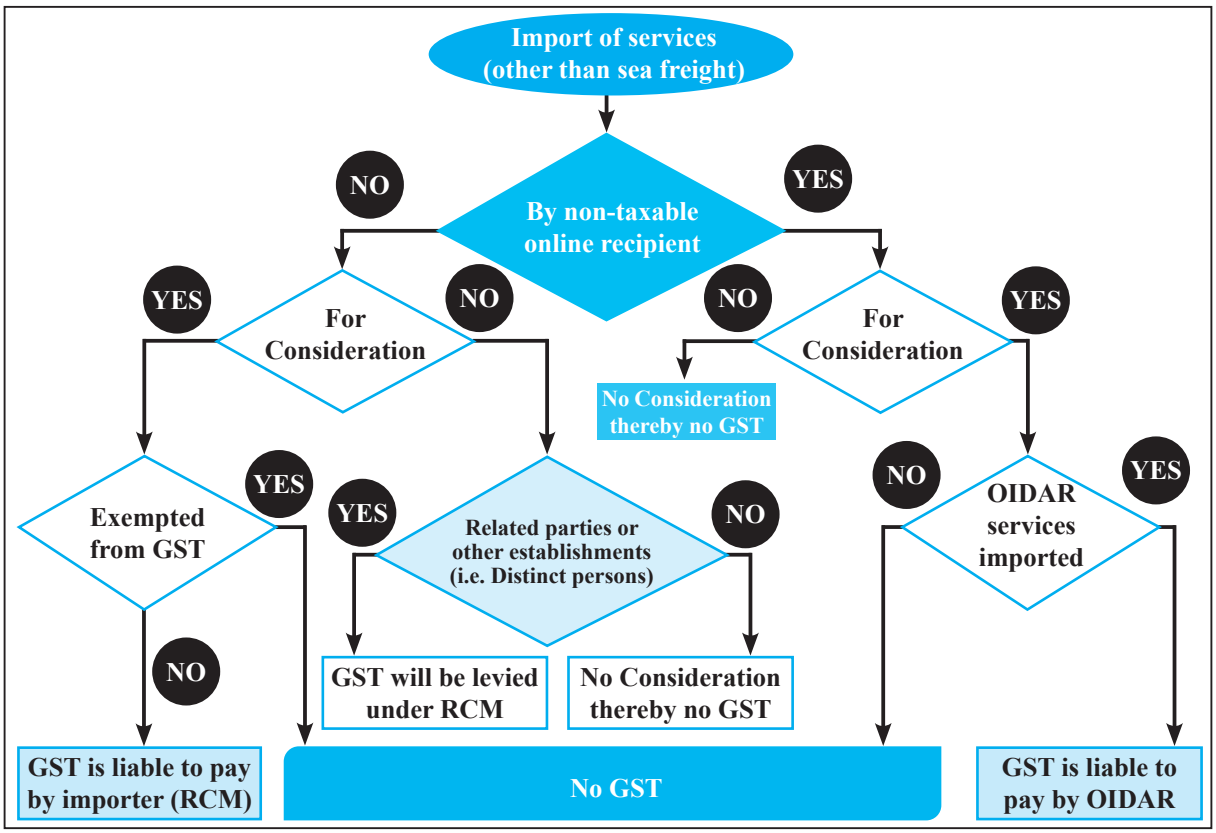
(1) As per the provisions contained in Section 21 of the IGST Act, 2017, all imports of services made on or after the appointed day (i.e. 1st July 2017) will be liable to IGST regardless of whether the transactions for such import of services had been initiated before the appointed day.

(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—

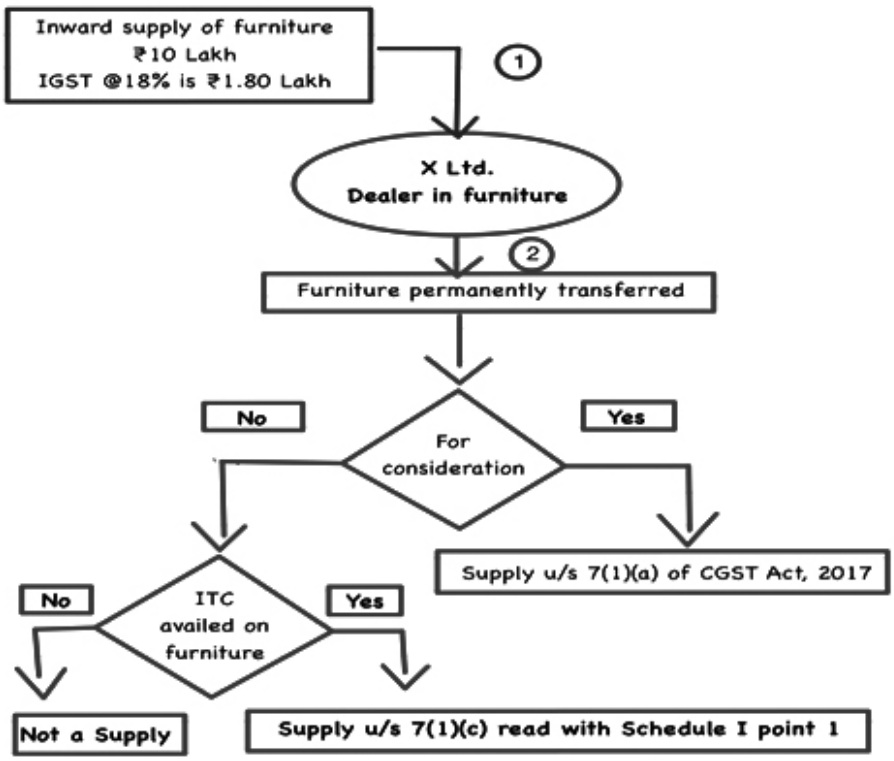
   (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

   (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;

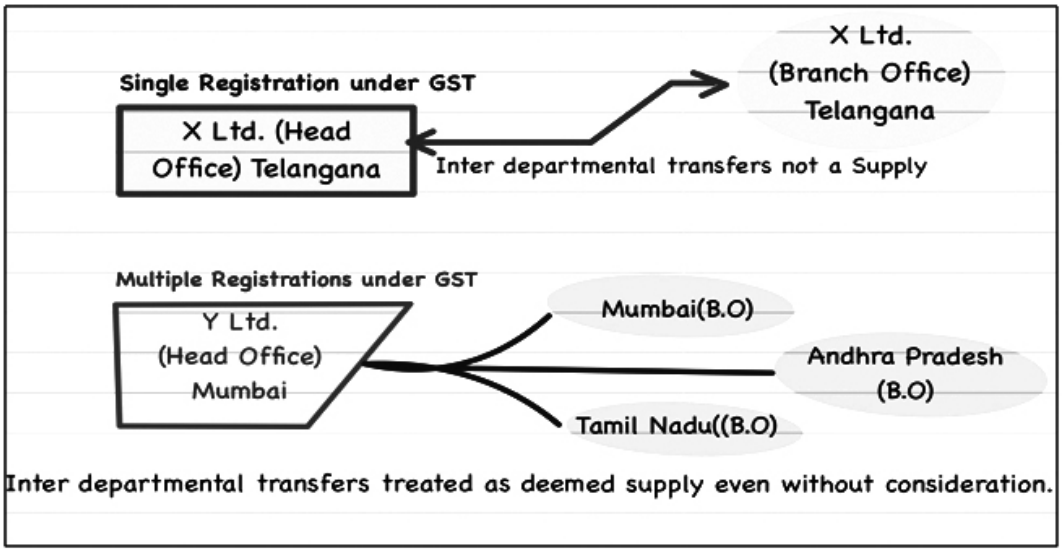
(vi) both of them are directly or indirectly controlled by a third person;

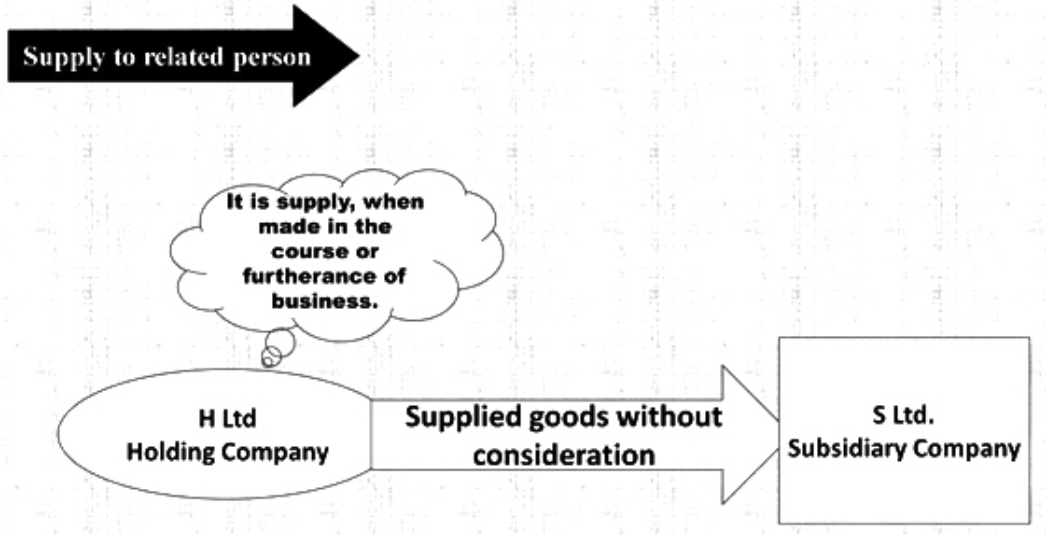
(vii) together they directly or indirectly control a third person; or

(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.

Question:

Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not?

Answer:

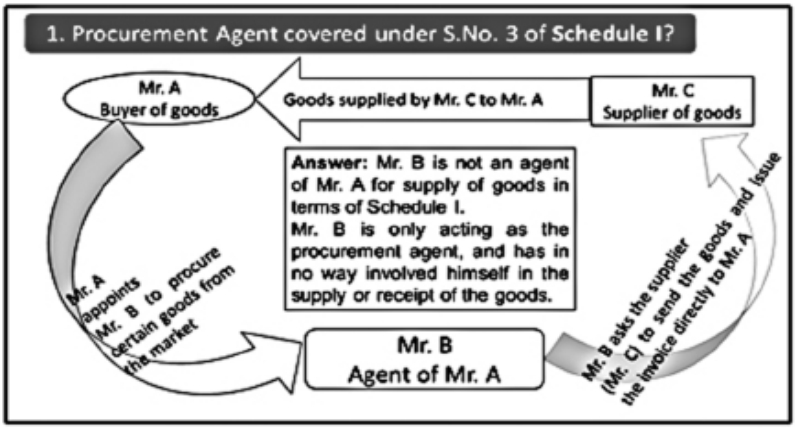
As per CBIC Circular No. Circular No. 196/08/2023-GST dated 17th July 2023, Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST Act and the definition of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.

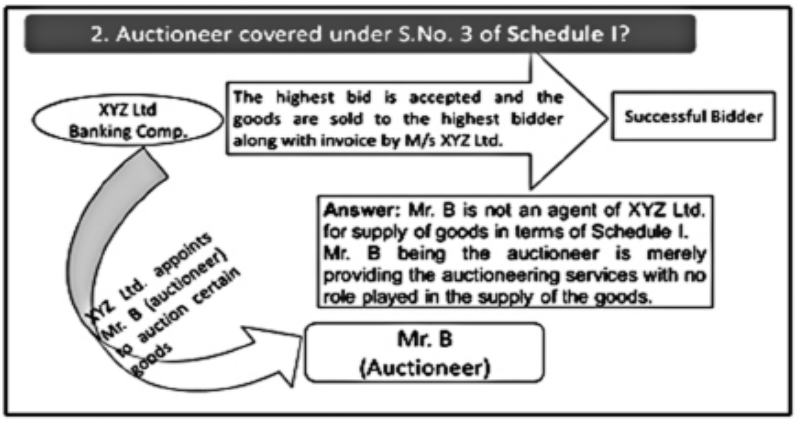
This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act.

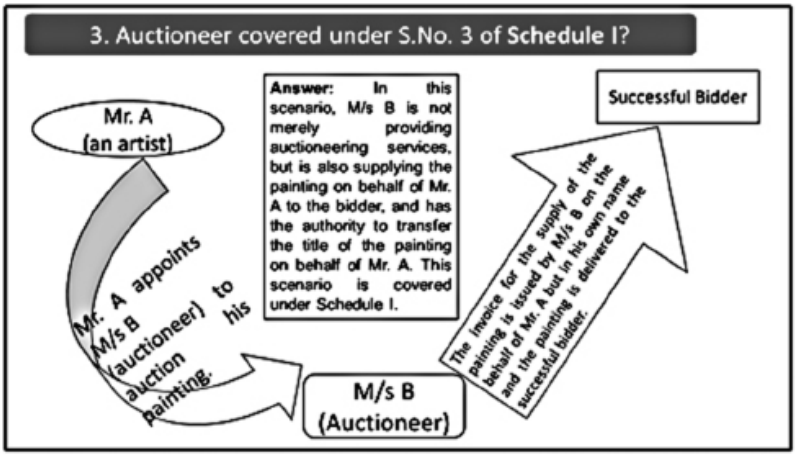
Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

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

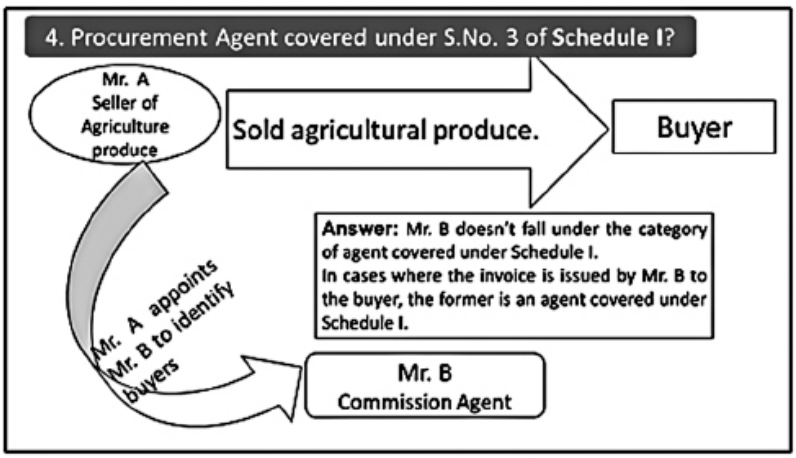
Simplified approach:







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.

Import of services by foreign airline companies (w.e.f. 10-10-2024): Vide Notification No. 08/2024- Integrated Tax (Rate), dated 08-10-2024, CBIC exempted Import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration.

This GST exemption is applicable provided that:

- Indian establishment of the foreign airline company is required to pay GST at the applicable rates on the transport of goods and passengers, as per the GST law
- Certification is obtained from the Ministry of Civil Aviation
- Reciprocal treatment is confirmed, ensuring that Indian airlines are not subject to similar taxes by the foreign country for identical services

GST on Import of Services by Foreign Airlines' Establishments (vide CBIC Circular No. 234/28/2024-GST dated October 11, 2024]:

The GST Council recommended exempting the import of services by foreign airlines' establishments from related entities abroad when made without consideration.

- **Clarification:** Services imported by an establishment of a foreign airline from a related person or another establishment outside India are exempt from GST when made without consideration, effective from October 10, 2024. GST paid from July 1, 2017, to October 9, 2024, is regularized on an "as is where is" basis.

Illustrative Example:

Scenario 1: Exempt Import of Services

- **Foreign Airline:** XYZ Airlines is a foreign airline headquartered in the USA.
- **Indian Establishment:** XYZ Airlines has an office in Mumbai (Indian establishment).
- **Imported Service:** The Mumbai office receives IT support services from the airline's headquarters in the USA (a related entity) to manage its operations in India.
- **Consideration:** No payment is made for the IT support services (i.e., no consideration).

Analysis:

1. The imported services are between related persons (Mumbai office and USA headquarters).
2. No consideration is involved.
3. XYZ Airlines' Indian establishment pays GST on passenger and cargo transport services provided in India.
4. Certification from the Ministry of Civil Aviation and reciprocal tax treatment are confirmed.

Outcome:

The imported IT services are exempt from GST under Notification No. 08/2024.

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."

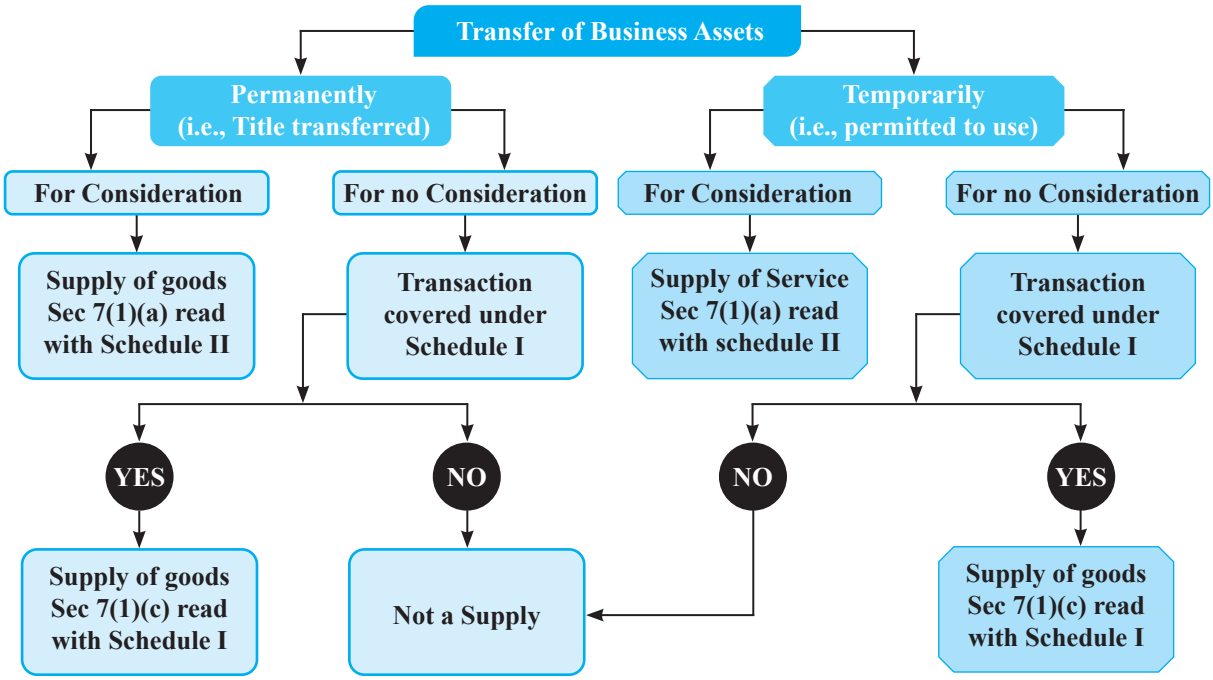
Schedule II of the CGST Act, 2017 has certain ACTIVITIES or w.e.f. 29th August, 2018 the term TRANSACTIONS inserted retrospectively w.e.f. 1st July 2017) transactions clearly classified as goods or services under GST to avoid any such confusion.

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))	Yes	No

Sl. No.	Transaction	Supply of Goods	Supply of Service
	(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). 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/employee.	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. (4) (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 early.	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;	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

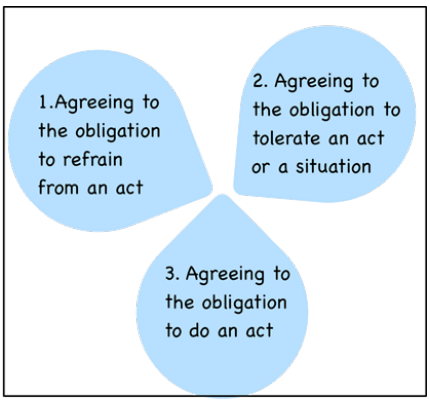
As per the Finance Act, 2010

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



Para (e) of Schedule II of CGST Act, 2017, Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; specifically declared to be a supply of service:

The said expression has following three limbs (CBIC Circular No. 178/10/2022-GST, dated 03.08.2022):



Situation	Examples
1. Agreeing to the obligation to refrain from an act	1. Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party. 2. A builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or 3. An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.
2. Agreeing to the obligation to tolerate an act or a situation	1. A shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or 2. An Residential Welfare Association (RWA) tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.
3. Agreeing to the obligation to do an act	An industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the industrial unit to do so.

Issue	Clarification
1. Liquidated damages	1. Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.
	2. Amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively. Therefore, such payments, even though referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where the principal supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Hence, such payments will not be taxable if the principal supply is exempt.

2. Compensation for cancellation of coal blocks	There was no contract/ agreement between the prior allottees and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.
3. Cheque dishonour fine/penalty	The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.
4. Penalty imposed for violation of laws	Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to GST.
5. Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the agreed period.	The employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.
6. Late payment surcharge or fee	The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. Since it is ancillary to and naturally bundled with the principal supply it should be assessed at the same rate as the principal supply.
7. Fixed Capacity charges for Power	The minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are not taxable as electricity is exempt from GST. Power purchase agreements which ensure assured supply of power to State Electricity Boards/ DISCOMS are ancillary arrangements, the contract is essentially for supply of electricity.
8. Cancellation charges	For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel. The amount forfeited in the case of non-refundable ticket for air travel or security deposit, or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services. However, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

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 eligible 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 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 of 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?

Solution:

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.

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:

Builder obtained completion certificate from GHMC on 31st March	**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.
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.	

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 January 2024 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 (w.e.f. 1st October 2023) specified actionable claims.

   As per Finance Act, 2023 supply excludes the following with retrospective 1st July, 2017:

   However, no refund of such tax paid shall be available in cases where any tax has already been paid in respect of such transactions/ activities during the period from July 01, 2017 to January 31, 2019.

   [Notification No. 38/2023- Central Tax dated August 04, 2023]
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.

Inserted in Schedule – III, by F.A. 2024, dated 16-8-2024, w.e.f. 1-11-2024:

9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

   Example: New India Assurance (lead insurer) bears responsibility for managing all tax obligations on the total premium amount, regardless of how the risk is shared. Consider a co-insurance policy for a large commercial property valued at ₹10 million:

   - **Premium split:** New India Assurance (40%) = ₹4 million, United India Insurance (30%) = ₹3 million, Oriental Insurance (30%) = ₹3 million
   - **Tax responsibility:** New India Assurance pays IGST of 18% on full ₹10 million = ₹1.8 million
   - United India Insurance and Oriental Insurance receive their share without additional tax burden

Inserted in Schedule – III, by F.A. 2024, dated 16-8-2024, w.e.f. 1-11-2024:

10. Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance

premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.".

Example: An insurance company (Insurer A) enters into a reinsurance agreement with a reinsurer (Reinsurer B) to mitigate its risk exposure.

- Insurer A cedes 50% of its insurance risk portfolio worth ₹2,00,00,000 to Reinsurer B.
- Reinsurer B pays a ceding commission of ₹10,00,000 to Insurer A as consideration for transferring the risk.

The ceding commission of ₹10,00,000 paid by Reinsurer B to Insurer A is treated as no supply under Schedule III of the CGST Act, 2017, meaning it is outside the scope of GST.

No refund of tax paid or input tax credit reversed.

- No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had section 114 been in force at all material times.

Clarification on "No Supply" Status for Co-Insurance Premiums and Reinsurance Commissions – Regularized on 'As Is Where Is' Basis [Circular No. 228/22/2024-GST dated 15.07.2024]:

1. Co-Insurance Premium Apportioned by Lead Insurer Declared as No Supply:

   Scenario:

   An individual purchases a comprehensive insurance policy worth ₹1,00,00,000, which is under a co-insurance agreement between two insurers:

   - Lead Insurer (Insurer A): Responsible for 60% of the policy risk and ₹60,00,000 of the premium.
   - Co-Insurer (Insurer B): Responsible for 40% of the policy risk and ₹40,00,000 of the premium.

   The insured pays the full premium of ₹1,00,00,000 to the lead insurer (Insurer A). Insurer A subsequently transfers ₹40,00,000 to Insurer B as the latter's share of the premium.

   Clarification as Per Circular:

   The transfer of ₹40,00,000 by Insurer A to Insurer B is treated as no supply under Schedule III of the CGST Act, 2017. This means such transactions are not taxable under GST.

   Impact (Regularization on 'As Is Where Is' Basis):

   1. If GST was charged:
      - Insurer A had charged GST on the ₹40,00,000 transfer to Insurer B and deposited it.
      - Under this circular, no refund will be issued for the GST paid earlier, even though the transaction is now classified as no supply.
   2. If GST was not charged:
      - Insurer A had not charged GST on the ₹40,00,000 transfer.
      - Under this circular, no retrospective tax demand will be raised for such non-compliance.
   3. Conclusion:
      - The regularization of past cases 'on an as is where is basis' ensures that no further disputes arise, and the ambiguity over GST treatment of co-insurance agreements is eliminated.

2. Ceding Commission/Reinsurance Commission Declared as No Supply

   Scenario:

   An insurance company (Insurer A) enters into a reinsurance agreement with a reinsurer (Reinsurer B) to mitigate its risk exposure.

   - Insurer A cedes 50% of its insurance risk portfolio worth ₹2,00,00,000 to Reinsurer B.

- Reinsurer B pays a ceding commission of ₹10,00,000 to Insurer A as consideration for transferring the risk.

Clarification as Per Circular:

The ceding commission of ₹10,00,000 paid by Reinsurer B to Insurer A is treated as no supply under Schedule III of the CGST Act, 2017, meaning it is outside the scope of GST.

Impact (Regularization on 'As Is Where Is' Basis):

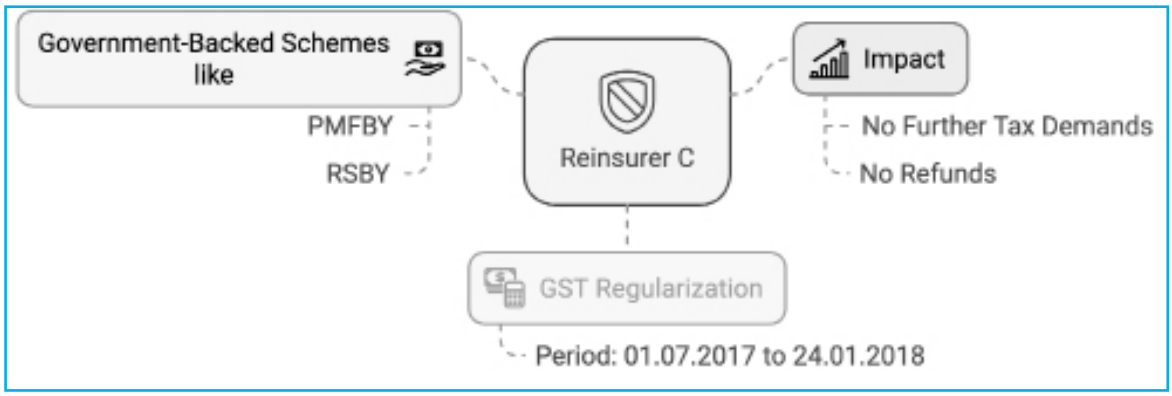
1. If GST was charged:
   - Insurer A had charged GST on the ₹10,00,000 commission and deposited it.
   - No refund will be issued for the GST already paid, even though the transaction is now clarified as no supply.
2. If GST was not charged:
   - Insurer A had not charged GST on the ₹10,00,000 commission.
   - No retrospective tax demand will be raised for this past non-compliance.
3. Conclusion:
   - By regularizing past cases 'on an as is where is basis,' the circular provides clarity and finality, avoiding unnecessary compliance disputes for insurers and reinsurers.

Key Clarifications on GST Provisions in Insurance and Reinsurance Services – Circular No. 228/22/2024-GST dated 15.07.2024:

- GST liability on reinsurance services of specified insurance schemes covered by Sr. Nos. 35 & 36 of notification No. 12/2017-CT (Rate) dated 28.06.2017 have been regularized on 'as is where is' basis for the period from 01.07.2017 to 24.01.2018 [Circular No. 228/22/2024-GST dated 15.07.2024].

  Example: Suppose a reinsurer (Reinsurer C) provides reinsurance services for government-backed schemes like the Pradhan Mantri Fasal Bima Yojana (PMFBY) or Rashtriya Swasthya Bima Yojana (RSBY) for the period 01.07.2017 to 24.01.2018.

- **Clarification:** GST liability on reinsurance services for these specified schemes during the above period has been regularized.
- **Impact:** Even if GST was incorrectly charged or not charged during this period, the issue is settled on an 'as is where is' basis. No further tax demands or refunds will be issued.

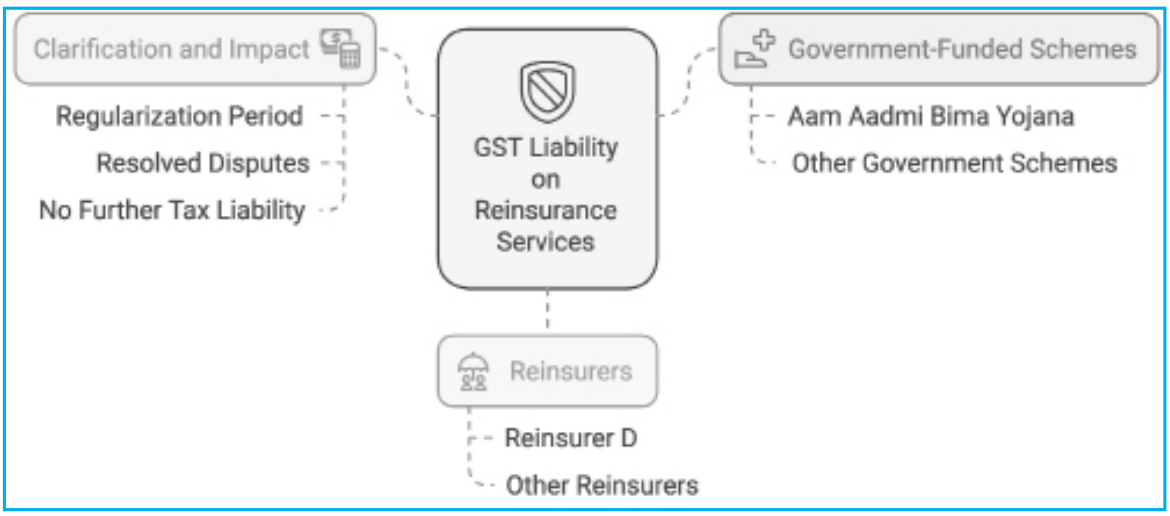


- GST liability on reinsurance services of the insurance schemes for which total premium is paid by the Government that are covered under Sr. No. 40 of notification No. 12/2017-CTR dated 28.06.2017 have been regularized on 'as is where is' basis for the period from 01.07.2017 to 26.07.2018 [Circular No. 228/22/2024-GST dated 15.07.2024].

  Example: The Aam Aadmi Bima Yojana (AABY) is a fully government-funded scheme where the government pays 100% of the insurance premium. A reinsurer (Reinsurer D) provides reinsurance services to the primary insurer (Insurer A) for this scheme.

Clarification from Circular:

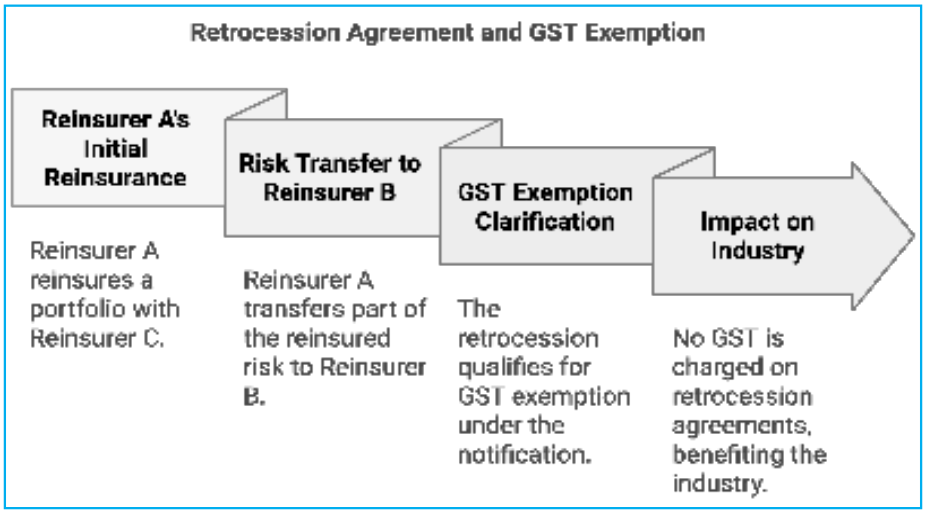
- The government has regularized all past cases for the period 01.07.2017 to 26.07.2018 on an 'as is where is' basis.
- If GST was charged and paid, no refund will be issued.
- If GST was not charged, no tax demand will be raised.



- Clarification has been issued that retrocession is 're-insurance of re- insurance' and therefore, eligible for the exemption under Sl. No. 36A of the notification No. 12/2017-CTR dated 28.06.2017 [Circular No. 228/22/2024- GST dated 15.07.2024].

  Example: A retrocession agreement is where a reinsurer (Reinsurer A) transfers part of its reinsured risk to another reinsurer (Reinsurer B). For instance:

  - Reinsurer A had reinsured a portfolio of ₹50,00,000 with another reinsurer (Reinsurer C).
  - Reinsurer A now transfers part of this reinsurance risk worth ₹20,00,000 to Reinsurer B (retrocession).
  - Clarification: The retrocession (re-insurance of re-insurance) qualifies for GST exemption under Sr. No. 36A of Notification No. 12/2017-CTR.
  - Impact: No GST is charged on retrocession agreements, providing clarity and relief to the industry.



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:

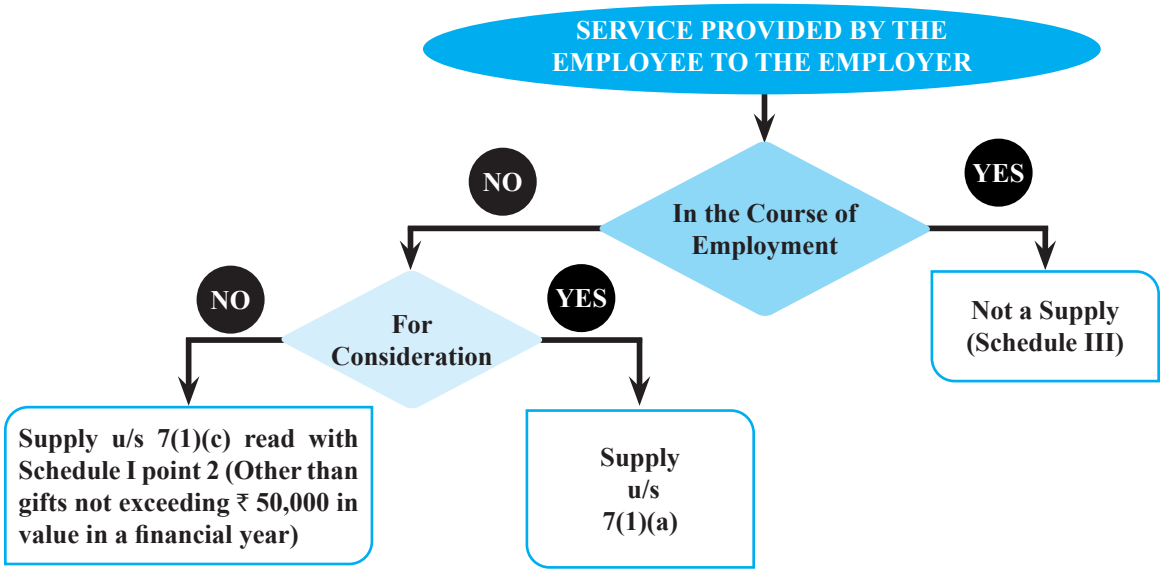


Illustration 33

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.

Question:

Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?

Answer:

Perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST (CBIC Circular No. 172/04/2022 GSTdt. 6th July 2022).

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:

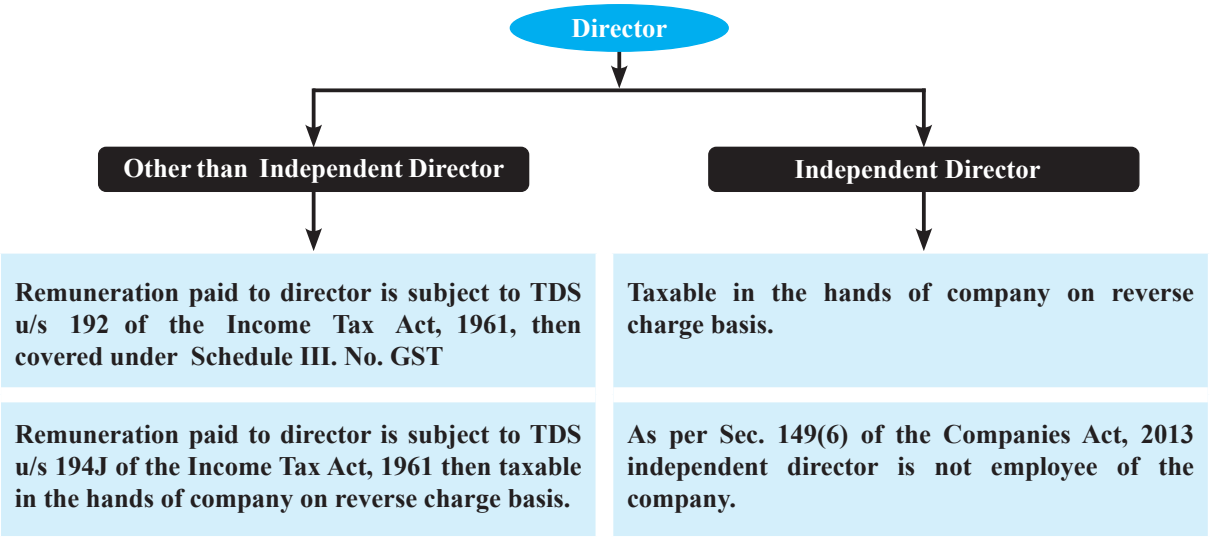
It would constitute a taxable supply under GST and be subject to levy and collection of taxes.

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

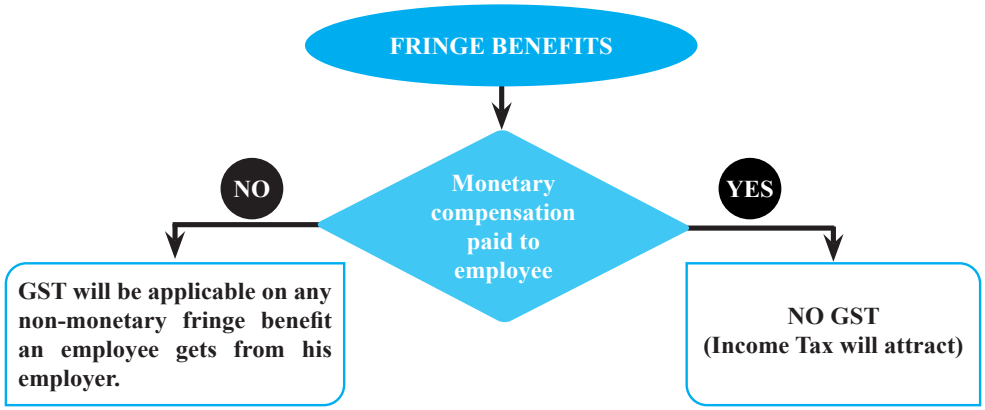
"The compensation to employees in the form of money is not a supply.

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 defined 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/-

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:

   CBIC Circular No. 177/09/2022 TRU dt 03.08.2022:

   It has been clarified that sale of a land after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc., is also a sale of land and is covered by Sr. No. 5 of Schedule III and thus, does not attract GST.

   However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

6. Actionable claims, other than (w.e.f. 1st October 2023) specified actionable claims.

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.

W.e.f. 1st October 2023, Section 2(102A) "specified actionable claim" means the actionable claim involved in or by way of-

(i) betting;

(ii) casinos;

(iii) gambling;

(iv) horse racing;

(v) lottery; or

(vi) online money gaming.

the amendments made under this Act shall be without prejudice to provisions of any other law for the time being in force, providing for prohibiting, restricting or regulating betting, casino, gambling, horse racing, lottery or online gaming.

It implies that the amendment provisions would prevail despite there being provisions in any other law which prohibit, restrict or regulate specified actionable claims of any kind.

Note: IGST rate on such specified actionable claims is @ 28% (New entry 227A inserted in Sch IV)

W.e.f. 1st October 2023: Section 2(80A) "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming;

W.e.f. 1st October 2023: Section 2(80B) "online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

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:

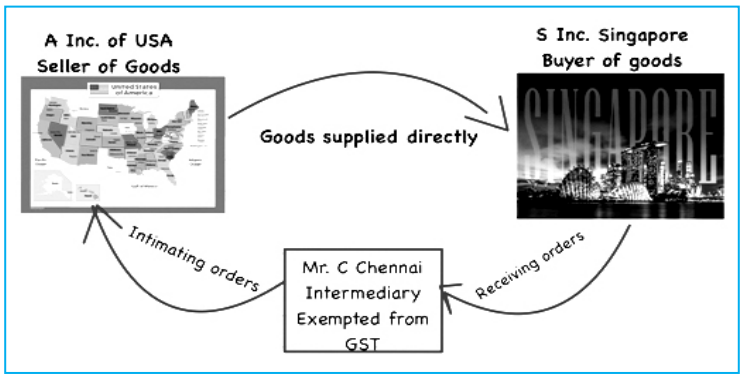
Illustration 41

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 Notification No. 20/2019 (IT Rate) date September 30, 2019).



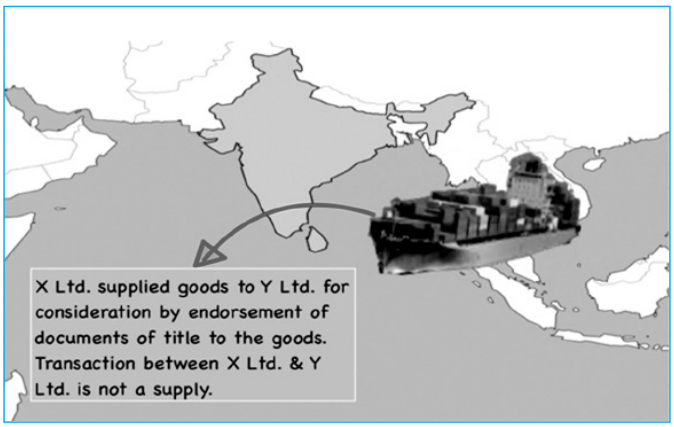
8. (a) Supply of warehoused goods to any person before clearance for home consumption;

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

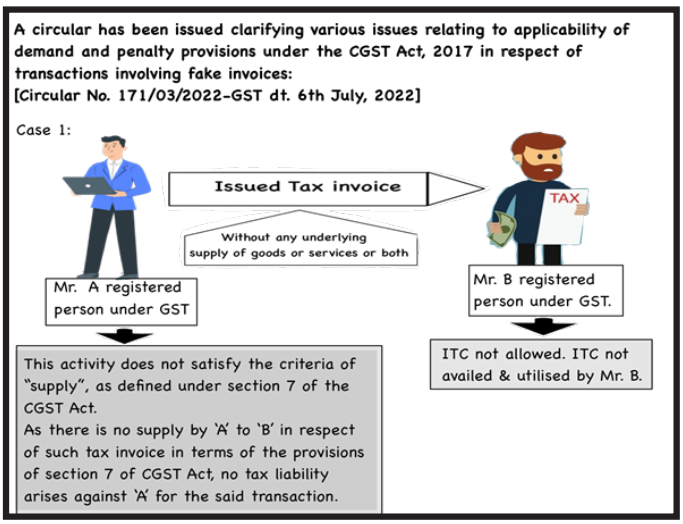
Mr X is working as a Manager in a company M/s ABC Pvt Ltd. On the basis of his past year's performance, the Director of the company Mr. D provided him with free housing facility for which, Mr X will not have to pay 72 categorized in return. Will this transaction be subjected to GST and termed as supply 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 condition in Section 7 is satisfied which states that activity which involved supply 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.



Clarification on taxability of salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle (Circular No.-215/9/2024- dated 26th June 2024 GST)):

Taxability of wreck and salvage values in motor insurance claims.

Insurance companies provide services of insuring vehicles for damages, charging premiums from the vehicle owners. It is the responsibility of the insurance company to either get the vehicle repaired or compensate the insured person, as per the terms of the insurance contract.

Clarification:

No GST Liability for Insurance Companies: If the insurance company deducts the salvage value from the claim amount, the salvage remains with the insured (due to deduction in claim settlement). In such cases, there is no supply of salvage by the insurance company, and hence, no GST liability on the insurance company for the salvage value.

GST Liability for Insurance Companies: If the insurance company settles the claim for the full IDV (Insured's Declared Value) without deducting the salvage value, the salvage becomes the property of the insurance company. In such cases, the insurance company is liable to discharge GST on the disposal or sale of the salvage.

Example 1: Salvage Value Deducted by Insurance Company

- **Scenario:**
  - Insurance Company: ABC Insurance Ltd.
  - Insured Vehicle Owner: Mr. Kumar.
  - Vehicle's IDV (Insured Declared Value): ₹5,00,000.
  - Assessed Salvage Value: ₹50,000.
  - Damage Claim: ₹3,00,000.
- **Claim Settlement:**
  - ABC Insurance Ltd. settles the claim by deducting the salvage value of ₹50,000 from the claim amount.
  - Amount Paid to Mr. Kumar = ₹3,00,000 (claim amount) - ₹50,000 (salvage value) = ₹2,50,000.
  - The salvage remains with Mr. Kumar, who may dispose of it.
- **GST Implication:**
  - **No GST Liability** on ABC Insurance Ltd. for the salvage value since the salvage remains with Mr. Kumar, and no supply of salvage occurs by the insurance company.

Example 2: Salvage Retained by Insurance Company

- **Scenario:**
  - Insurance Company: XYZ Insurance Pvt. Ltd.
  - Insured Vehicle Owner: Ms. Priya.
  - Vehicle's IDV (Insured Declared Value): ₹8,00,000.
  - Assessed Salvage Value: ₹80,000.
  - Total Damage: Complete loss of vehicle.

- **Claim Settlement:**
  - XYZ Insurance Pvt. Ltd. pays Ms. Priya the full IDV of ₹8,00,000 without deducting the salvage value.
  - The salvage is retained by XYZ Insurance Pvt. Ltd., which later sells it for ₹90,000.
- **GST Implication:**
  - The sale of salvage by XYZ Insurance Pvt. Ltd. is considered a supply under GST.
  - XYZ Insurance Pvt. Ltd. is liable to pay GST on the sale of salvage (₹90,000).
  - Assume GST Rate = 18%, GST Payable = ₹90,000 × 18% = ₹16,200.

Summary:

1. **No GST Liability:** When the salvage value is deducted from the claim amount, and the salvage remains with the insured.
2. **GST Liability:** When the insurance company pays the full claim (IDV) and retains the salvage, GST is applicable on the subsequent sale of the salvage.

Circular No. 218/12/2024-GST dated 26 June 2024 -

Taxability of the transaction of providing a loan by an overseas affiliate to its Indian affiliate or by a person to a related person:

Interest or discount charged on loan amounts is exempt from GST.

When no consideration is charged for processing, administering or facilitating a loan, processing fees, which are generally non-refundable, cover the administrative costs. For related entities, credit assessment may not be necessary, and the administrative costs may be absent, distinguishing these services from those provided by banks or independent lenders. Even between unrelated parties, administrative charges might be waived based on the relationship. Therefore, no service or supply exists between related persons for processing, administering or facilitating loans, and no GST is applicable as per section 7(1)(c) read with Schedule I of the CGST Act.

However, when a fee is charged for processing, administering or facilitating a loan, it qualifies as consideration for the supply of services and is subject to GST.

Example: Taxability of Loan Transactions Between Related Entities

Scenario 1: No Fee Charged for Loan Processing

1. **Entities Involved:**
   - **Overseas Affiliate:** ABC Global Ltd., located in the USA.
   - **Indian Affiliate:** ABC India Pvt. Ltd.
2. **Transaction:**
   - ABC Global Ltd. provides a loan of ₹50,00,000 to ABC India Pvt. Ltd.
   - **Interest Charged:** 5% per annum (₹2,50,000 annually).
   - **Processing Fee:** No processing, administration, or facilitation fee is charged.
3. **GST Implications:**

- The interest on the loan (₹2,50,000) is **exempt from GST** as per GST laws.

- Since no processing fee or other charges are involved, there is **no taxable supply** between ABC Global Ltd. and ABC India Pvt. Ltd.
- Hence, **no GST is applicable** on this transaction.

Scenario 2: Fee Charged for Loan Processing

1. **Entities Involved:**
   - **Unrelated Entities:** XYZ Finance Inc. (Lender) and DEF Enterprises (Borrower), both registered under GST.
2. **Transaction:**
   - XYZ Finance Inc. provides a loan of ₹1,00,00,000 to DEF Enterprises.
   - **Interest Charged:** 6% per annum (₹6,00,000 annually).
   - **Processing Fee:** ₹50,000 is charged by XYZ Finance Inc. for processing the loan.
3. **GST Implications:**
   - The interest on the loan (₹6,00,000) is exempt from GST.
   - The processing fee (₹50,000) qualifies as consideration for the supply of services.
   - XYZ Finance Inc. must charge GST on the processing fee. Assuming a GST rate of 18%:
   - GST = ₹50,000 × 18% = ₹9,000.
4. **Total Payable for Processing Fee:**
   - ₹50,000 (processing fee) + ₹9,000 (GST) = ₹59,000.

Key Points

1. **No Fee Charged:**
   - If no fee is charged for loan processing, administration, or facilitation, no GST applies as there is no taxable supply.
2. **Fee Charged:**
   - When a fee is charged for processing or facilitating the loan, it qualifies as consideration for a supply of services, and **GST is applicable.**

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.

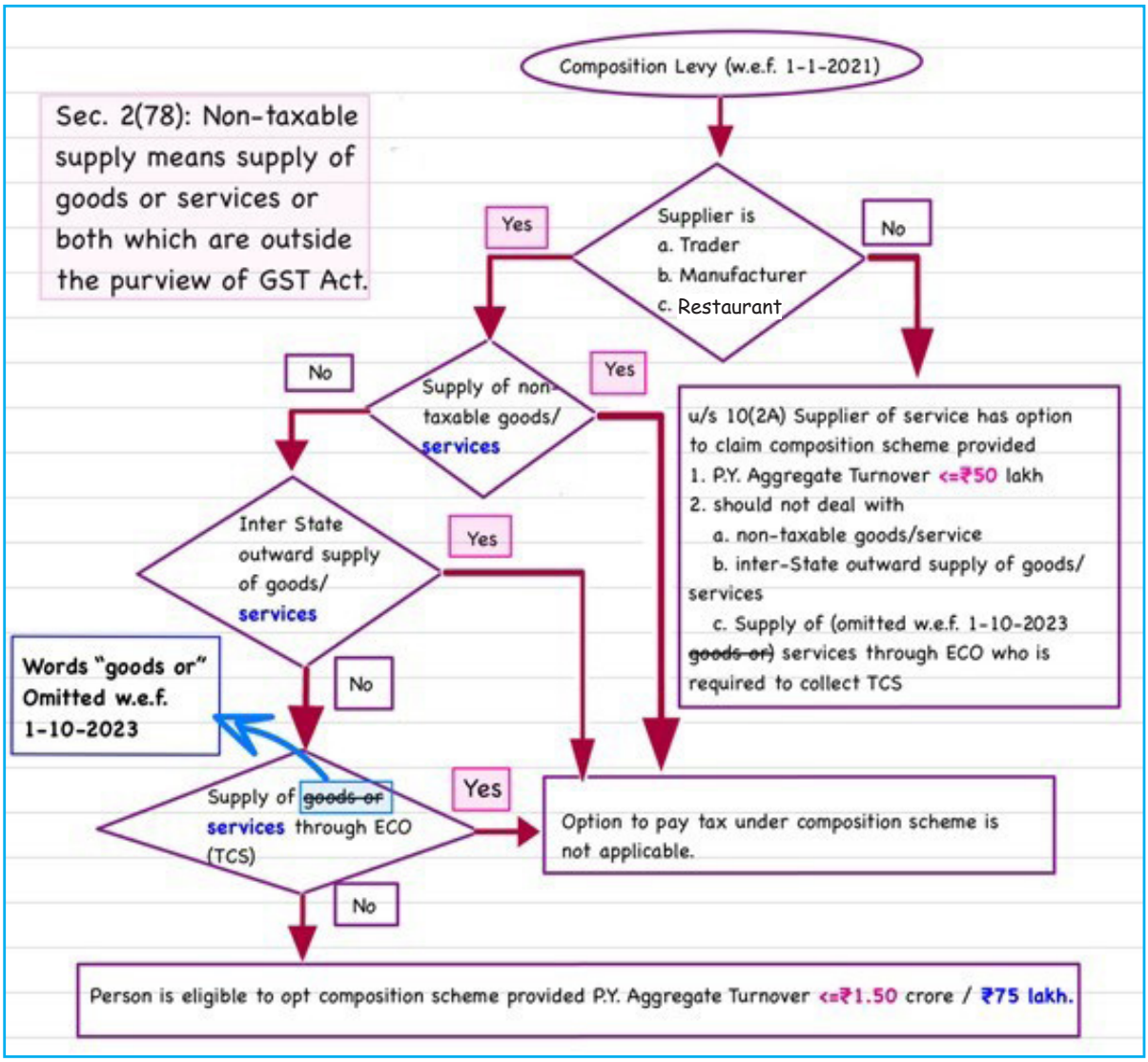
Indicators for determining whether the supply is a Composite or Mixed

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

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 Restaurant 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 composition 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)
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 (omitted w.e.f. 1st October 2023 the term "goods") services 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

With effect from 01.10.2023, following procedure shall be followed by an electronic commerce operator who is required to collect tax at source under section 52 in respect of supply of goods made through it by a composition taxpayer-

i. It shall not allow any inter-State supply of goods made through it by the said persons;

ii. It shall collect tax at source under section 52(1) in respect of supply of goods made through it by the said persons and pay to the Government as per provisions of 52(3);

iii. It shall furnish the details of supplies of goods made through it by the said persons in Form GSTR-8 electronically on the common portal.

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:

w.e.f. 1st October 2023, a composition scheme tax payer is allowed to sell goods through electronic comece operator. In the given case, 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 eligible for composition scheme provided it should not be an inter-state supply of goods.

Illustration 52

Hot Breads Pvt. Ltd is the supplier of bakery products registered in the current financial year (2025-26) w.e.f. 1st April 2025 in the State of Tamil Nadu. In the month of April 2025 total taxable supplies ₹88 lakhs.

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	
Particulars	**Value in (₹)**
Cost of inputs	7,80,000
Add: GST 18% on inputs	1,40,400
Total cost	9,20,400
Add: Profit margin 40%	3,68,160
Invoice Price	12,88,560
CGST 2.5%	32,214
SGST 2.5%	32,214
Total GST liability	64,428

Normal provision		
Particulars	**Value in (₹)**	
Cost of inputs		7,80,000
Add: GST 18% on inputs		Not cost
Total cost		7,80,000
Add: Profit margin 40%		3,12,000
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
Net Liability	28,080	28,080
Total Tax is ₹56,160		

Advise:

Normal scheme is economical.

Illustration 54

Arjya 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 Arjya eligible for composition scheme under CGST Act?

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

(iii) If Arjya 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 Arjya 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, Arjya 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.

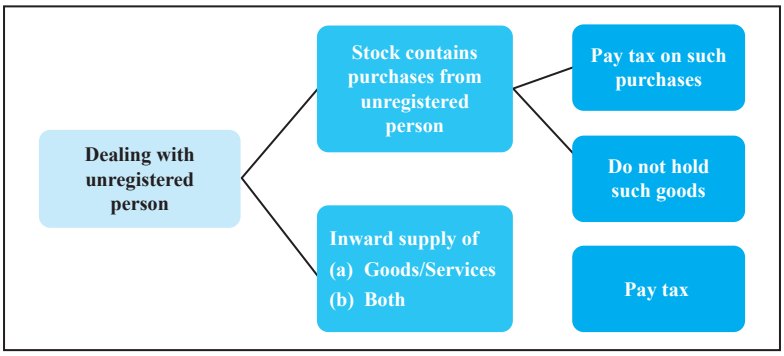
(b) The goods held in stock by him on the appointed day have not been—

- 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:

S. 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
5	6815	w.e.f. 1-4-2022 NT No. 14/2019 dated 7.3.2019 Fly ash bricks or fly ash aggregate with 90% or fly ash content; Fly ash blocks
6	6901 00 10	w.e.f. 1-4-2022 NT No. 14/2019 dated 7.3.2019 Bricks of fossil meals or similar siliceous earths
7	6904 10 00	w.e.f. 1-4-2022 NT No. 14/2019 dated 7.3.2019 Building Bricks
8	6905 10 00	w.e.f. 1-4-2022 NT No. 14/2019 dated 7.3.2019 Earthen or roofing tiles

a registered person making supplies of the above goods is also not eligible to pay concessional tax under the said notification (i.e. in the case of Gulab Singh Chauhan (GST AAR Madhya Pradesh) held that preparation of Gutka in the Pan Shop is akin to manufacture on account of the process of preparation being that of mixing of different bought out ingredients and the resultant product having a distinct name and use. Thus the preparation of Gutka at the Pan Shop for sale is covered in the Second Proviso of Notification No. 14/2019 CT In the Table given in Notification No. 14/2019 CT both Pan Masala and goods covered under Chapter 24 are listed as goods for which composition cannot be obtained).

(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. 2023 and he has applied for registration on 17th Oct. 2023, the date of registration will be 1st Oct 2023. As a result, effective date of registration for composition levy is 1st Oct 2023. 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. 2023 and he has applied for registration on 17th Nov. 2023. Registration granted on 20th Nov. 2023. The effective date of registration will be the date of grant of registration (i.e. 20th Nov. 2023). As a result, effective date of registration will be effective date for opting for composition scheme (i.e. 20th Nov 2023).

Summary:

Effective date for Composition Levy

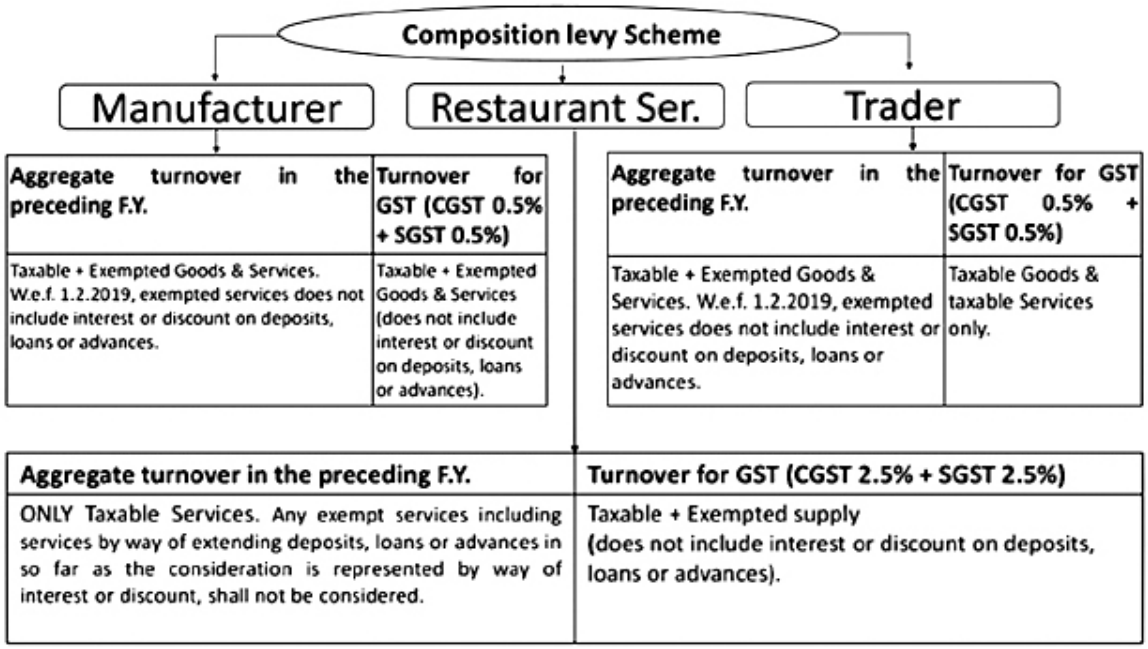
For persons already registered under pre-GST regime Effective Date: **Appointed Date**	**Registered Person** Beginning of the financial year, where the intimation is filed prior to the commencement of the financial year. If switch over during financial year then effective date is the date of filling 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		
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



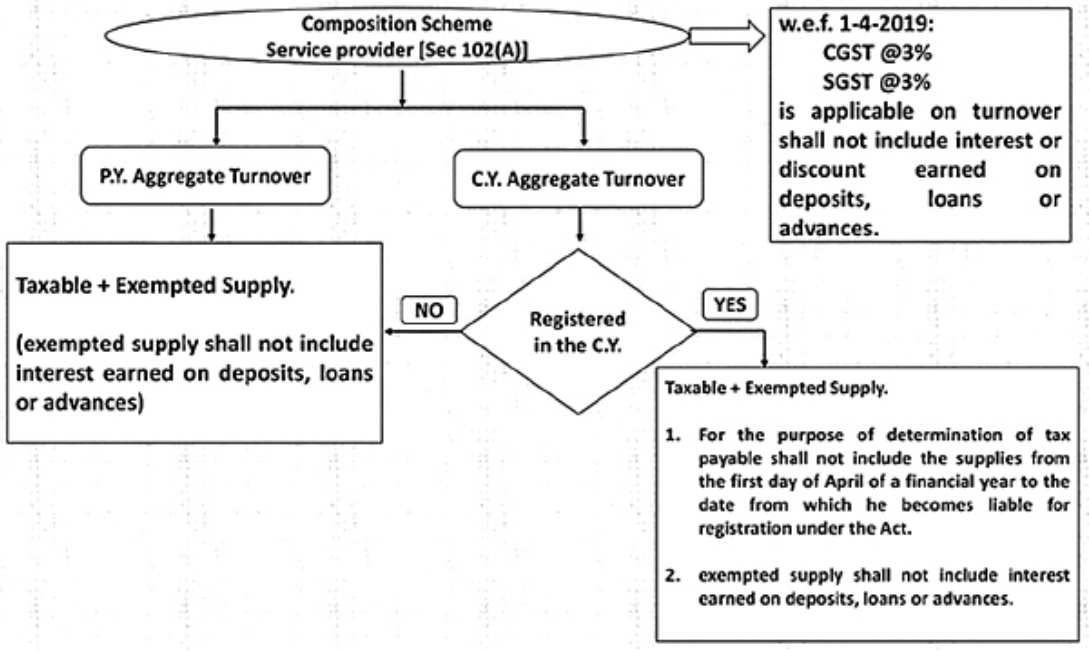


Illustration 56

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

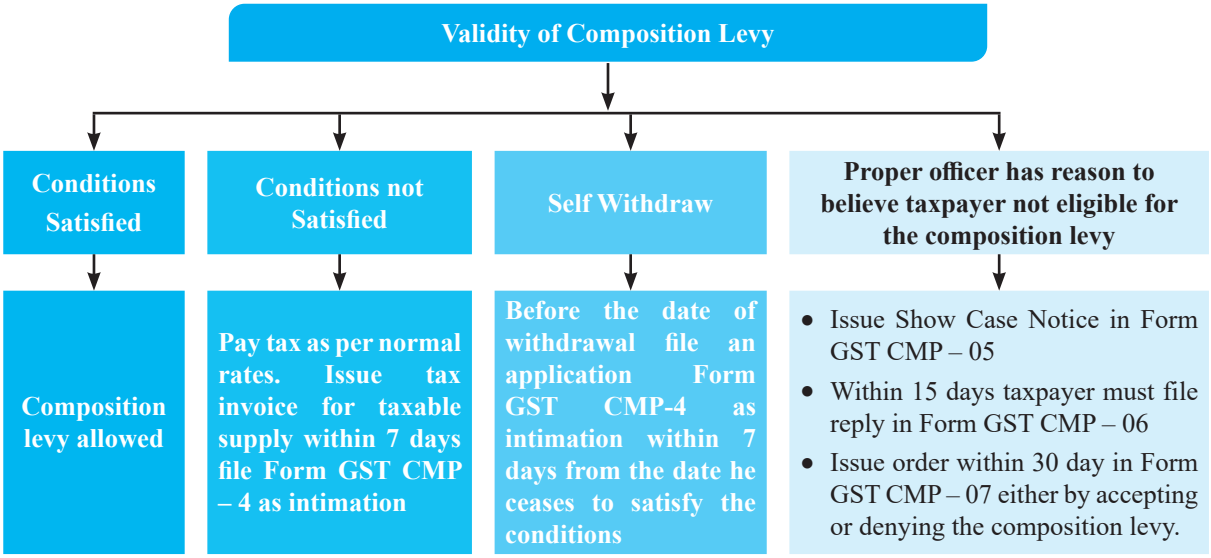
(a) Since, aggregate turnover in the preceding financial year did not exceed ₹50 lakh, X & Co. may opt to pay tax under composition scheme in the current financial year.

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

Particulars	Value (₹ in lakh)
Intra-State supply of taxable output 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 succeeding 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. For Financial Year (FY) 2024-25 onwards, the due date for composition taxpayers to file FORM GSTR-4 is extended to June 30 following the end of the 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. For Financial Year (FY) 2024-25 onwards, the due date for composition taxpayers to file FORM GSTR-4 is extended to June 30 following the end of the financial year.

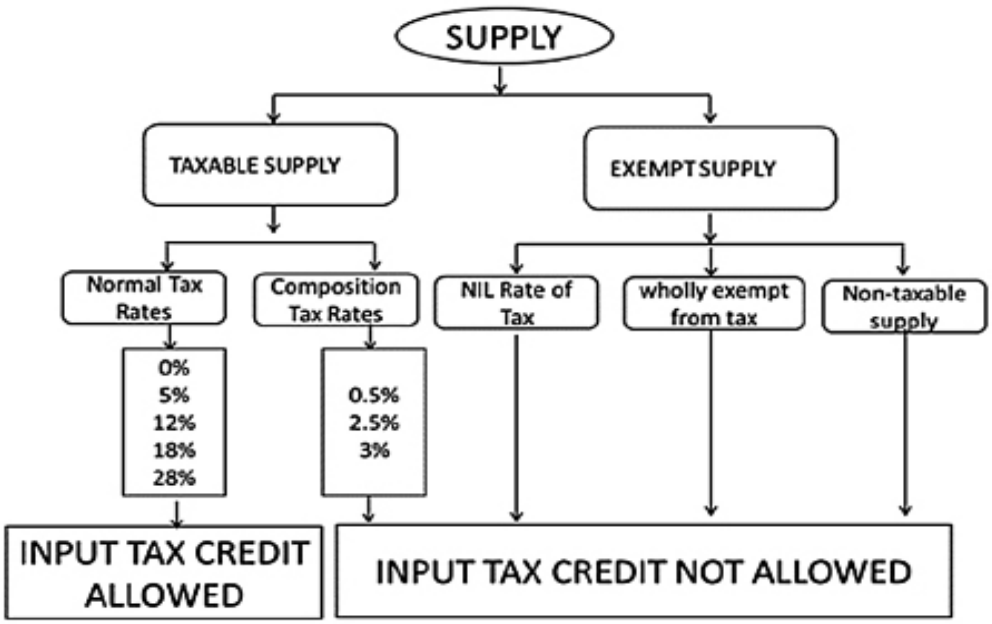
(vi) A registered person who ceases to avail the benefit of Notification No. 02/2019-CT(R), dated 7.03.2019, shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax by availing the benefit under the said notification till the 18th day of the month succeeding 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. For Financial Year (FY) 2024-25 onwards, the due date for composition taxpayers to file FORM GSTR-4 is extended to June 30 following the end of the financial year.

w.e.f. 1-11-2024, (F.A 2024 dt, 16-8-2024) Amendment in Section 10(5) of CGST Act, 2017:

If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 [or section 74A, newly inserted w.e.f. 1-11-2024] shall, mutatis mutandis, apply for determination of tax and penalty.

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 [vide Notification 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 2023 may specify that it will be effective from 1st July 2023. In such case an explanation is inserted (i.e. subsequently) within one year reckoned from 1st July 2023 but not from 28th June 2023. If so such an explanation is effective from 1st July 2023.

Sec. 11(3) of CGST Act, 2017

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

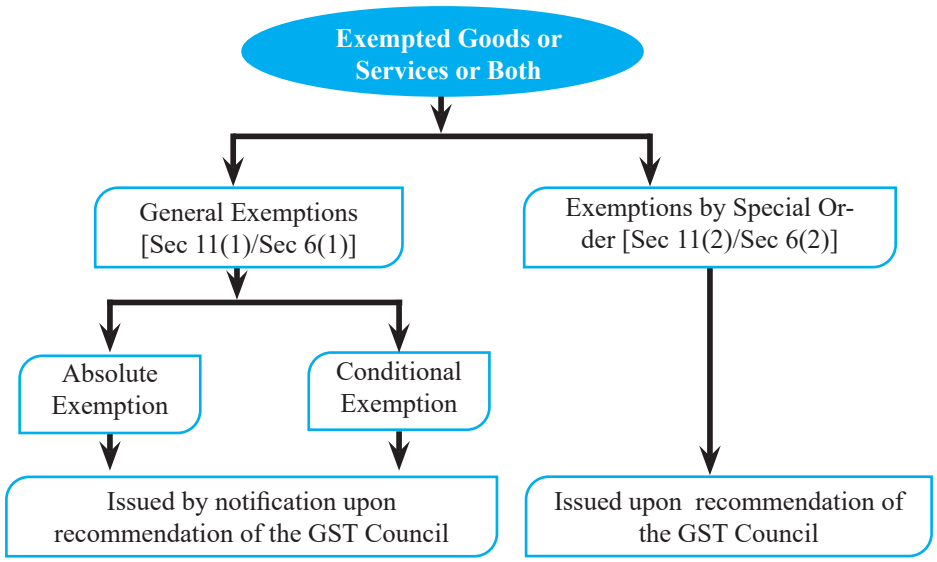
Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued under section 11, for the purpose of clarifying its scope or applicability, at any time within 1year of issue of the notification and every such explanation shall have effect as if it had always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



w.e.f. 1-11-2024, vide F.A. 2024 dt16-8-2024: power not to recover GST not levied or short-levied as a result of general practice Section 11A:

After section 11 of the Central Goods and Services Tax Act, the following section shall be inserted, namely:—
"11A. Power not to recover Goods and Services Tax not levied or short-levied as a result of general practice. - Notwithstanding anything contained in this Act, if the Government is satisfied that —

(a) a practice was, or is, generally prevalent regarding levy of central tax (including non-levy thereof) on any supply of goods or services or both; and

(b) such supplies were, or are, liable to, –

(i) central tax, in cases where according to the said practice, central tax was not, or is not being, levied, or

(ii) a higher amount of central tax than what was, or is being, levied, in accordance with the said practice,

the Government may, on the recommendation of the Council, by notification in the Official Gazette, direct that the whole of the central tax payable on such supplies, or, as the case may be, the central tax in excess of that payable on such supplies, but for the said practice, shall not be required to be paid in respect of the supplies on which the central tax was not, or is not being levied, or was, or is being, short-levied, in accordance with the said practice.".

Example: Retailers in sectors like FMCG and apparel frequently offer promotional schemes such as "Buy 1 Get 1 Free." GST is often levied only on the price of the paid item, assuming the "free" item does not constitute a supply.

- This practice is based on a prevalent interpretation in the retail industry that "free" items are not separately taxable.
- **Issue:**
- According to GST law, the value of the "free" item should be included in the taxable value. This leads to short-levy of GST.
- **Application of Section 11A:**
- The government, recognizing this industry-wide practice, may issue a notification stating that GST short-levied on "free" items will not be recovered for the past period. This protects retailers from retrospective demands and avoids disruption in their promotional practices.

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.

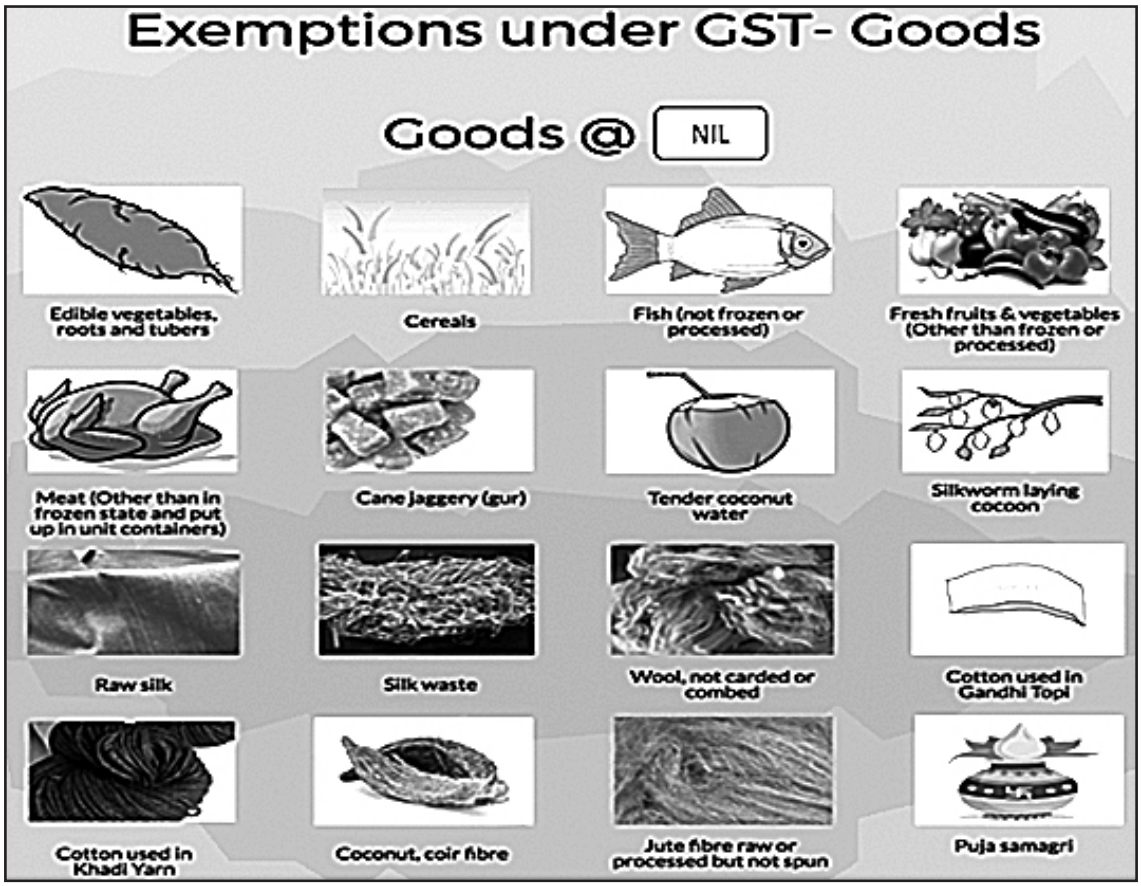
However, under GST regime also, the assessees are required to be more careful while claiming the benefit of the exemption notification.

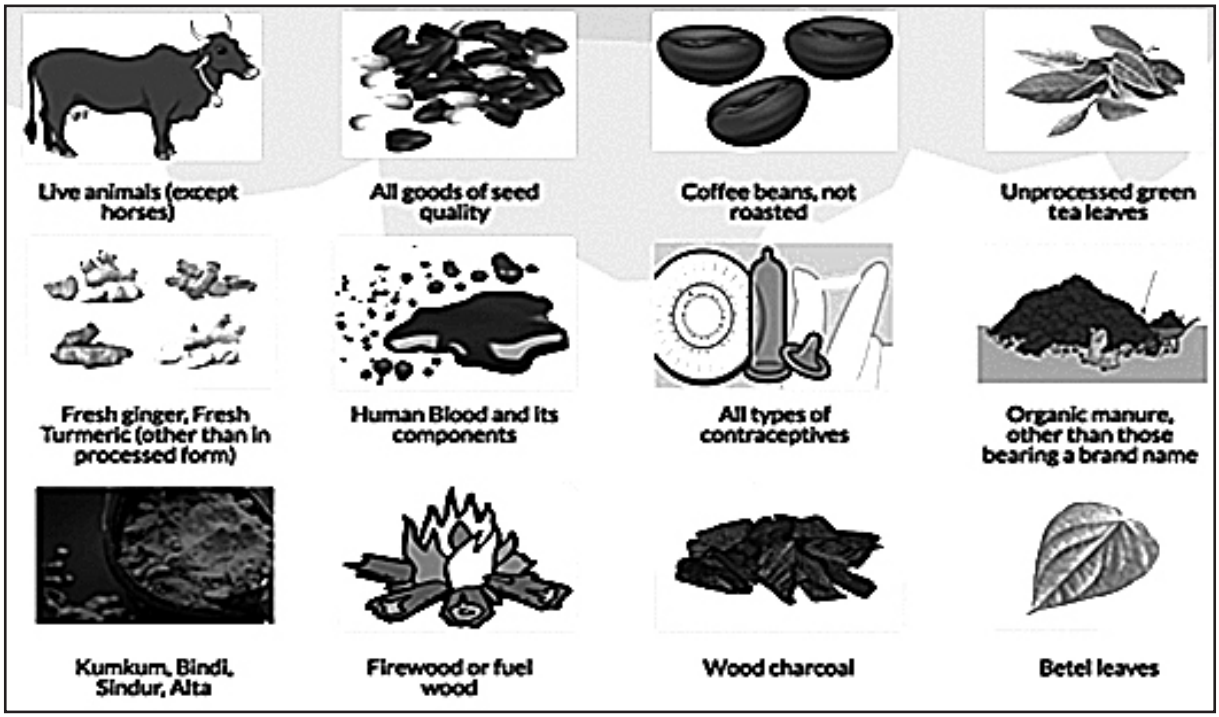
Notifications on Exempted Supplies

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

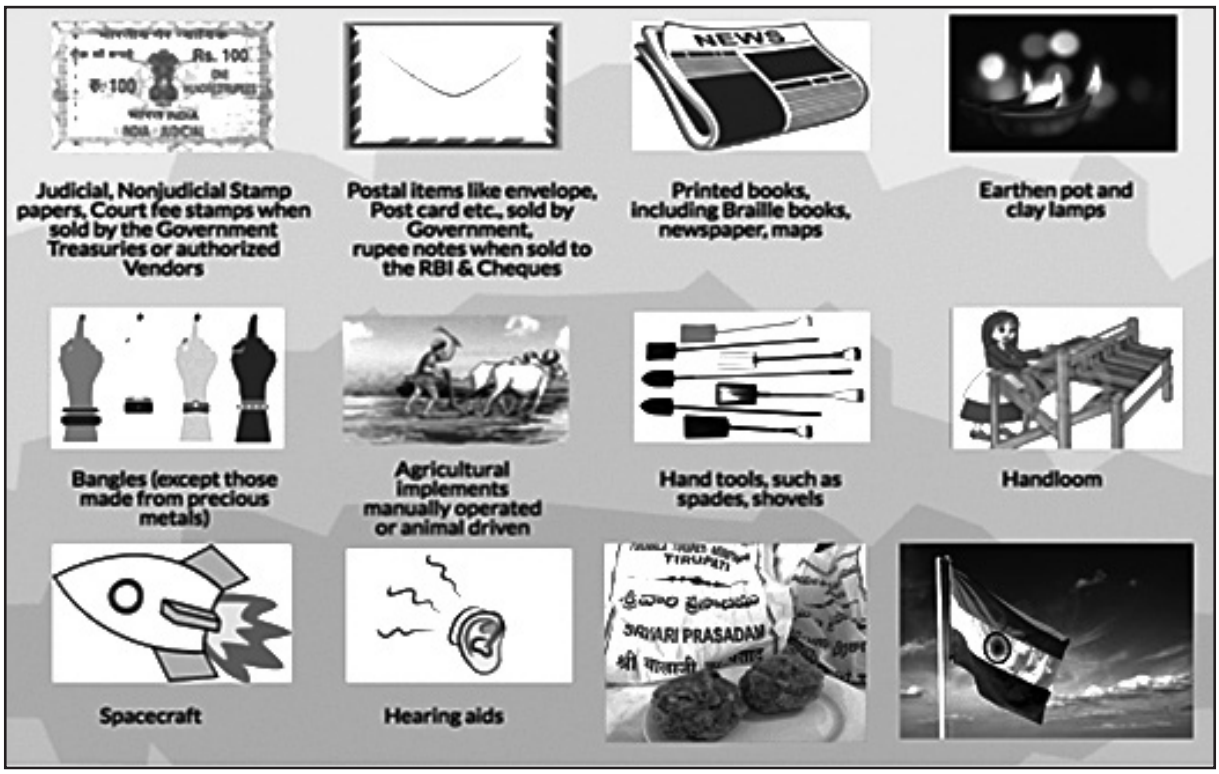

Judicial, Nonjudicial Stamp papers, Court fee stamps when sold by the Government Treasuries or authorized Vendors
Postal items like envelope, Post card etc., sold by Government, rupee notes when sold to the RBI & Cheques
Printed books, including Braille books, newspaper, maps
Earthen pot and clay lamps
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 April 2024. 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 (Omitted w.e.f 1-1-2022 or a Governmental authority or Govt. Entity) 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. **"Government Entity"** means an authority or a board or any other body including a society, trust, corporation,—

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	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 (omitted w.e.f 1-1-2022 or a Governmental authority or a Government Entity) 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
3B	w.e.f. 20th October 2023: New entry 3B inserted [to exempt the supply of the following service]: Services provided to a Governmental Authority by way of - a) water supply, b) public health, c) sanitation conservancy, d) solid waste management and e) slum improvement and up gradation [Notification No 13/2023-CGST(R) dt 19.10.2023 & 16/2023-IGST(R) dt 19.10.2023]
4	Services by (omitted vide notification No. 14/2018-Central Tax (Rate), dated 26.07.2018 Central Government, State Government, Union territory, local authority) 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 (omitted vide notification No. 14/2018-Central Tax (Rate), dated 26.07.2018 Central Government, State Government, Union territory, local authority) 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, "Governmental Authority" means an authority or a board or any other body,— set up by an Act of Parliament or a State Legislature; or 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.
6	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts (w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted), (omitted w.e.f. 18-07-2022 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

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
7	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of upto ₹40 lakh or ₹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 (w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted) (omitted w.e.f. 18-07-2022 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. **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 (w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted) (omitted w.e.f. 18-07-2022 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 (w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted) (omitted w.e.f. 18-07-2022 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.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
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.”;
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 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**.
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. Circular No. 177/09/2022 TRU dt 03.08.2022, It has been clarified that exemption under Sl. No. 9B of the exemption notification shall cover services associated with transit cargo both to and from Nepal and Bhutan.
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)]

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
9E	w.e.f. 15-7-2024, Services provided by Ministry of Railways (Indian Railways) to individuals by way of – (a) sale of platform tickets; (b) facility of retiring rooms/waiting rooms; (c) cloak room services; (d) battery operated car services. [Notification No. 04/2024-CT dated 12th July, 2024]
9F	w.e.f. 15-7-2024, Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways). [Notification No. 04/2024-CT dated 12th July, 2024]
9G	w.e.f. 15-7-2024, Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways (Indian Railways) by way of allowing Ministry of Railways (Indian Railways) to use the infrastructure built and owned by them during the concession period against consideration and services of maintenance supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built and owned by the SPVs during the concession period against consideration. [Notification No. 04/2024-CT dated 12th July, 2024]
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.
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)]

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
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 (w.e.f. 18-07-2022, "except where the residential dwelling is rented to a registered person" shall be inserted); w.e.f. 01-01-2023 Explanation:- for the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, - (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and (ii) such renting is on his own account and not that of the proprietorship concern.
12A	w.e.f. 15-7-2024, Exempted service:- Supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days. [Notification No. 04/2024-CT dated 12th July, 2024]
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	This exemption has been omitted w.e.f. 18-7-2022. 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, (inserted w.e.f 18-07-2022 in economic class) 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, Notification 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— (i) first class; or (ii) an air-conditioned coach;

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	(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, Notification 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**. w.e.f. 01-10-2022 taxable supply.
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**. w.e.f. 01-10-2022 taxable supply.
19C	GST exemption on Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited is extended to such services supplied by organisations in private sectors w.e.f. 27-07-2023.
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; (Omitted w.e.f. 18-07-2022); (e) agricultural produce; (f) milk, salt and food grain including flours, pulses and rice; and (g) organic manure.

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
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 (Omitted w.e.f. 18-07-2022); (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed `750 (Omitted w.e.f. 18-07-2022); (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. **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;

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
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) w.e.f 01-01-2023 exemption from GST available to entry 23A has been withdrawn.
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	services provided by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, (omitted w.e.f. 18-07-2022 spices, copra, sugarcane, jaggery, raw vegetable fibres, jute etc. indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea) exempted from GST.
24C	w.e.f 18-07-2022, Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams) exempted from GST.
25	Transmission or distribution of electricity by an electricity transmission or distribution utility.
25A	w.e.f. 10-10-2024, Supply of services by way of providing metering equipment on rent, testing for meters/ transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers are exempt under GST [Notification No. 08/2024 C.T. dated 8th October 2024].
26	Services by the Reserve Bank of India. (Omitted w.e.f. 18-07-2022).
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	(Omitted w.e.f. 18-07-2022) 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	(Omitted w.e.f. 18-07-2022) 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);

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	(c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) 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." 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:

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	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.
44A	w.e.f. 10-10-2024, Research and development services against consideration received in the form of grants supplied by – (a) a Government Entity; or (b) a research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961. Provided that the research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961 is so notified at the time of supply of the research and development service," exempt from GST [vide Notification No. 08/2024 C.T. dated 8th October 2024].

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
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; 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	**(Omitted w.e.f. 18-07-2022)** 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)].

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
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.
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	**(Omitted w.e.f. 18-07-2022)** 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
52A	w.e.f. 18-07-2022, Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India: Provided that value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less: Provided further that in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.
	Explanation.—"foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes. **Illustrations:** A tour operator provides a tour operator service to a foreign tourist as follows:— (a) 3 days in India, 2 days in Nepal; Consideration Charged for the entire tour: ₹1,00,000/- Exemption: ₹40,000/- (=₹1,00,000/- × $^{2}/_{5}$) or, ₹50,000/- (= 50% of ₹1,00,000/-) whichever is less, i.e., ₹40,000/- (i.e., Taxable value: ₹60,000/-); (b) 2 days in India, 3 nights in Nepal; Consideration Charged for the entire tour: ₹1,00,000/- Exemption: ₹60,000 (= ₹1,00,000/- × $^{3}/_{5}$) or, ₹50,000/- (= 50% of ₹1,00,000/-) whichever is less, i.e., ₹50,000/- (i.e., Taxable value: ₹50,000/-); (c) 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: ₹1,00,000/- Exemption: ₹54,545 (=₹1,00,000/- × $^{3}/_{5.5}$) or, ₹50,000/- (= 50% of ₹1,00,000/-) whichever is less, i.e., ₹50,000/- (i.e., Taxable value: ₹50,000/-).

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
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	**Omitted w.e.f. 18-07-2022.** 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) **Omitted w.e.f. 18-07-2022**, 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
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	Omitted w.e.f. 18-07-2022, 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

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
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
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

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
	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. (iva) w.e.f. 01-03-2023 "For removal of doubts, it is clarified that any authority, board or body set up by the Central Government or State Government including National Testing Agencyfor conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions." 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 (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;

<table>
<tr><th>Sl. No.</th><th>Exempted services
Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)</th></tr>
<tr><td>66A</td><td>w.e.f. 10-10-2024, Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity, exempt under GST [Notification No. 08/2024 C.T. dated 8th October 2024].</td></tr>
<tr><td>67</td><td>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.
Entry No. 67 Omitted w.e.f. 1-1-2019 (vide CBIC Circular No. 82/01/2019-GST, dated 1-1-2019):
<table>
<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>
<tr><td colspan="3">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.</td></tr>
</table></td></tr>
<tr><td>68</td><td>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.</td></tr>
</table>

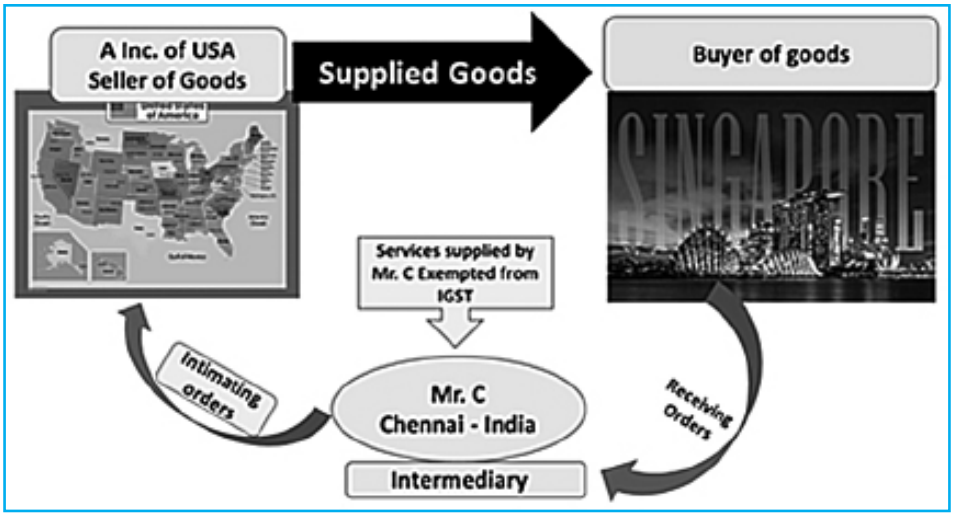
Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
69	w.e.f. 10-10-2024, Notification No. 08/2024 dated 08-10-2024 the following shall be substituted, namely:- Any services provided by – (a) the National Skill Development Corporation set up by the Government of India; (b) the National Council for Vocational Education and Training; (c) an Awarding Body recognized by the National Council for Vocational Education and Training; (d) an Assessment Agency recognized by the National Council for Vocational Education and Training; (e) a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training, in relation to- (i) the National Skill Development Programme or any other scheme 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 National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package
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	Omitted w.e.f. 18-07-2022, 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; w.e.f. 18-07-2022, "Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding `5000 per day to a person receiving health care services." (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	**Omitted w.e.f. 18-07-2022,** 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.
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]**

Sl. No.	Exempted services Notification No. 12/2017-Central Tax (Rate), dated 28-06-2017)
80	Services by way of training or coaching in (a) recreational activities relating to— arts or culture, (by an individual - inserted w.e.f. 18-07-2022), 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 (whenever rescheduled inserted w.e.f. 18-07-2022) 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. **(omittd w.e.f. 1st October 2023, vide Notification No. 12/2023- IT(R) dt. 26.09.2023).** it means Item No. (i) taxable.
84	**Omitted w.e.f. 18-07-2022, (vide Notification No. 04/2022 IT (Rate), dated 13-07-2022),** Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves.
85	w.e.f. 18-07-2022, Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India is exempted from GST.
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:

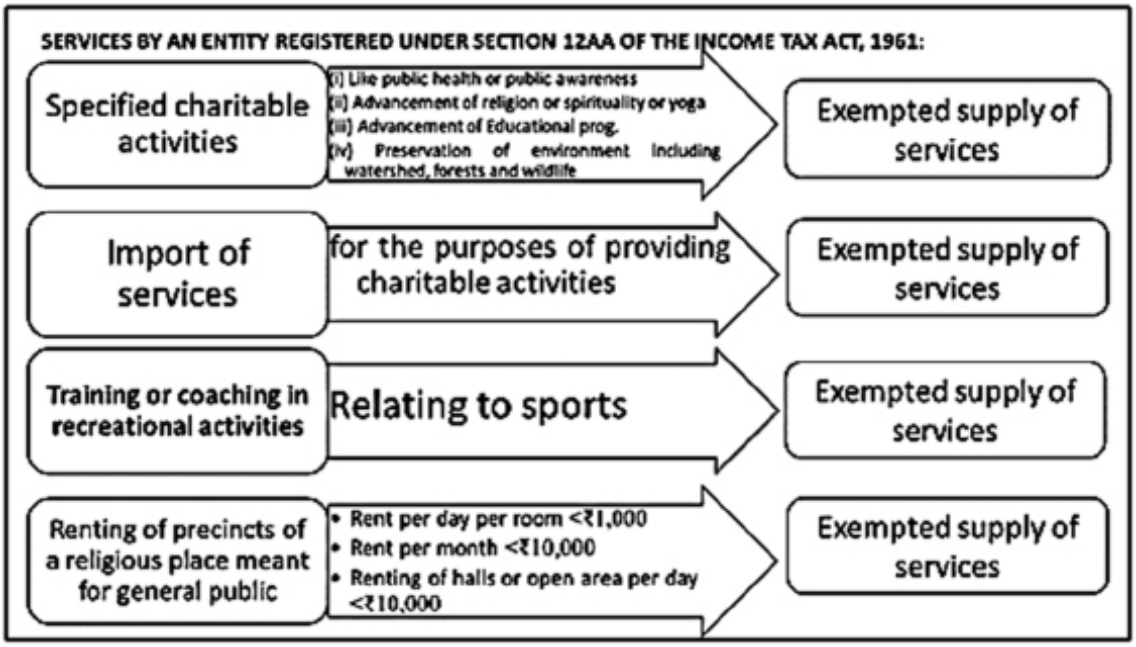
As per entry 74A of NT No. 12/2017-C.T.

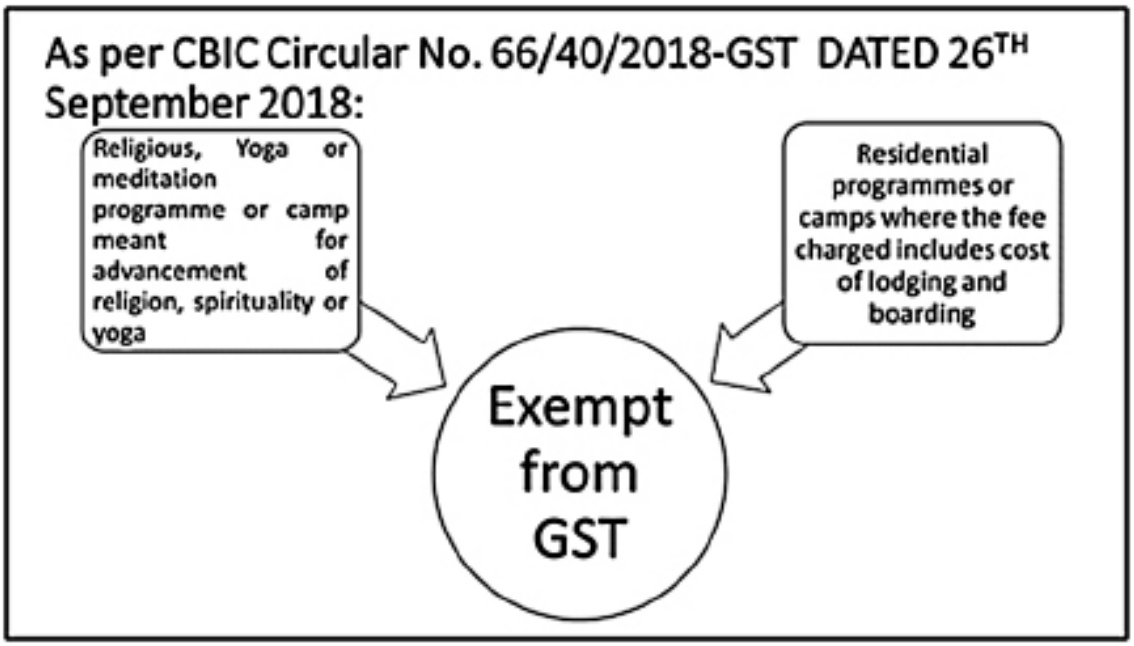
Notification No. 28/2018-CT(R), dated 31st December 2018:

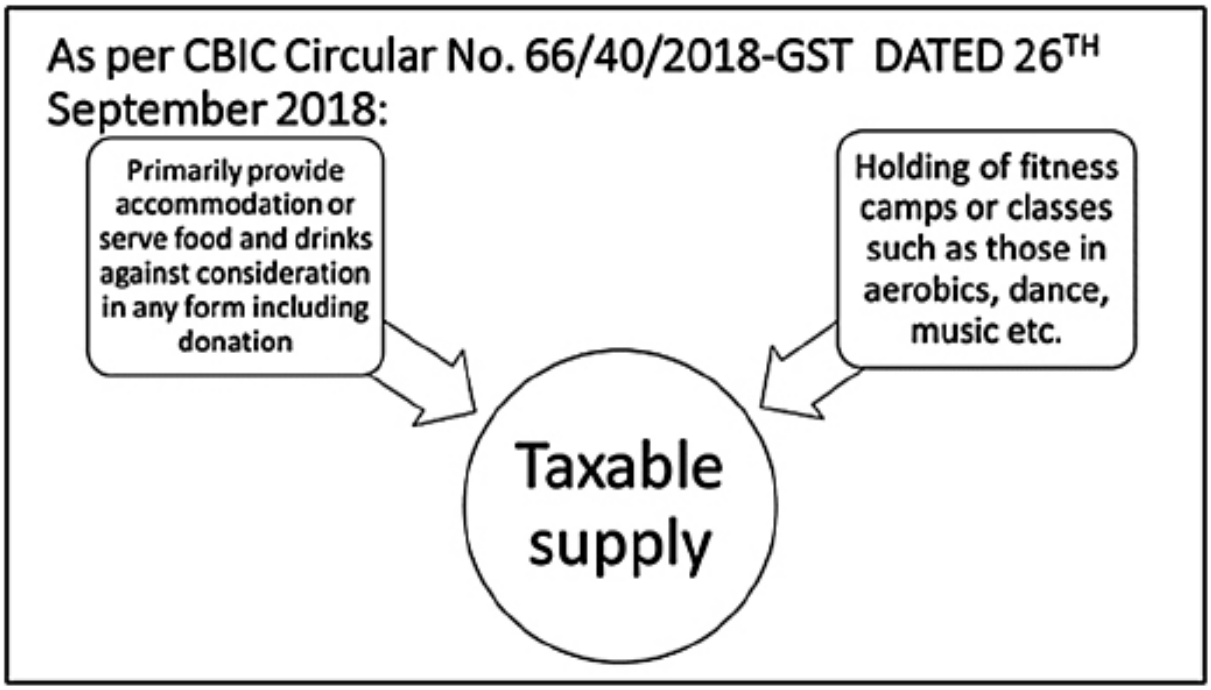
Services provided by rehabilitation professionals recognized under the Rehabilitation Council of India Act, 1992 (34 of 1992) by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers 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 Tamil Nadu Slum Clearance Board (TNSCB), Governmental Authority for slum improvement and up gradation of a particular apartment to M/s B Ltd. of Chennai 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 IGST 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:

(b) 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 (New entry 3B of Notification No. 12/2027-CT).

(c) 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.

for intra State Supply

CGST 9%= ₹1,08,000

SGST 9%= ₹1,08,000

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:

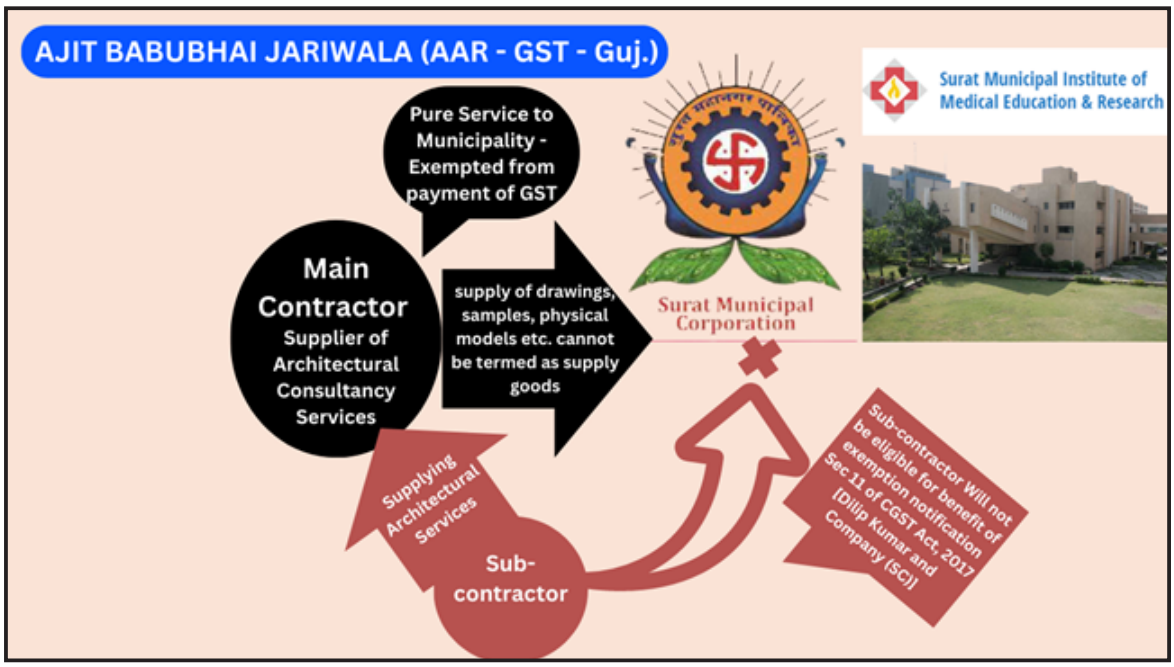
(i) w.e.f. 25.1.2018, Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply is exempt from GST under entry no. 3A of the NT No. 12/2017 as amended from time to time.

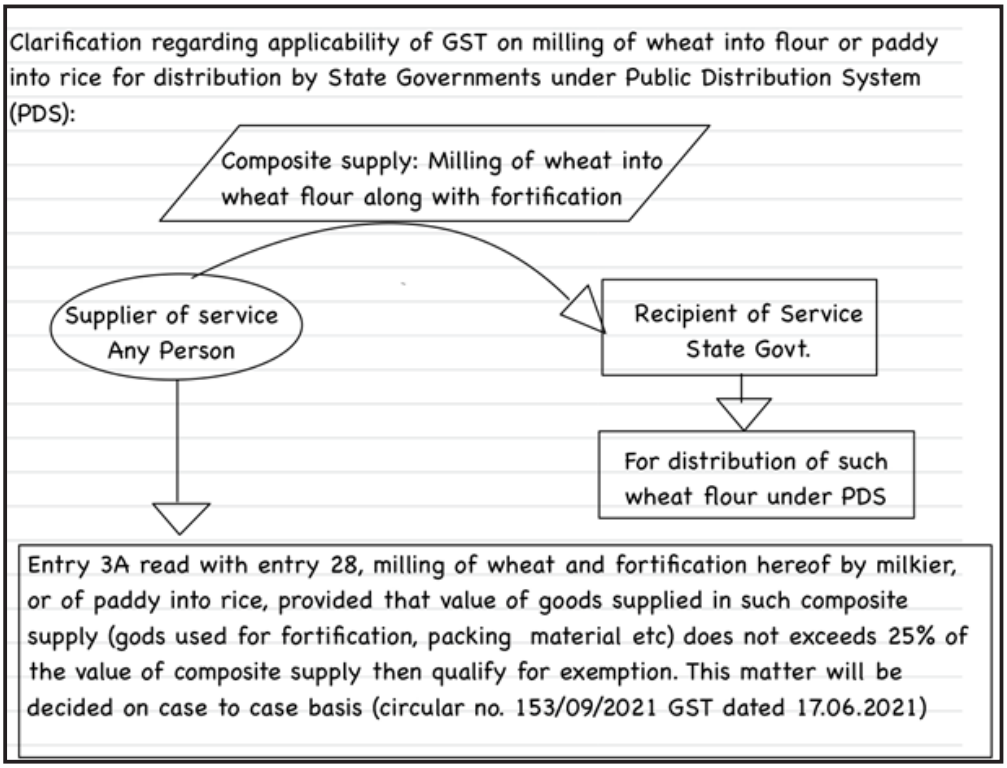
(ii) In the given case value of material @33% as a result does not qualify for exemption.

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)

Case law:

AJIT BABUBHAI JARIWALA (AAR – GST- Guj.), Architectural Consultancy Services to Municipality for construction of hospital and college campus exempted from payment of GST for main contractor. However, it is taxable in case of sub-contractor (vide 2023 (73) GSTL 550/(2023 6 CT 110(AAR – GST _Guj):





4. Services by a 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.**

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

   (a) services by the Department of Posts (w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted) by way of—

   [omitted w.e.f. 18-07-2022

   (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:—

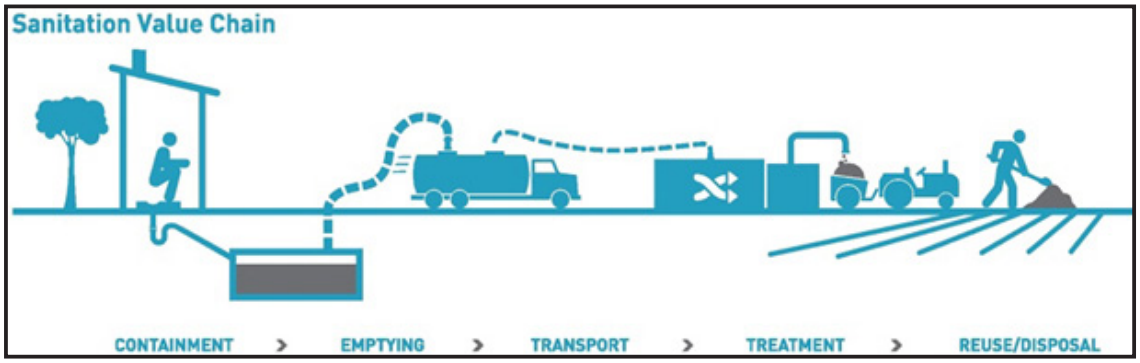
Speed post services by Department of Post to Union Territory of Lakshadweep.

Solution:

GST is payable in case of speed post services by Department of Post to Union territory of Lakshadweep. The said service taxable under GST (not covered under Entry No. 8, w.e.f. 18-07-2022). .

Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government department:

Circular No. 177/09/2022-TRU, dated 03.08.2022, It has been clarified that if such services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule of the Constitution, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification No. 12/2017-CT(R), dated 28.06.2017.



Applicability of GST on accommodation services supplied by Air Force Mess to its personnel (Circular No. 190/02/2023 GST dt. 13.01.2023):

Reference has been received requesting for clarification on whether GST is payable on accommodation services supplied by Air Force Mess to its personnel.

All services supplied by Central Government, State Government, Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST vide Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Therefore, as recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

Question:

Whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority?

Answer:

As per CBIC Circular No. 206/18/2023-GST dated 31st October 2023, DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

These activities are similar to activities that are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

Question:

Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to Central Public Works Department (CPWD) are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017

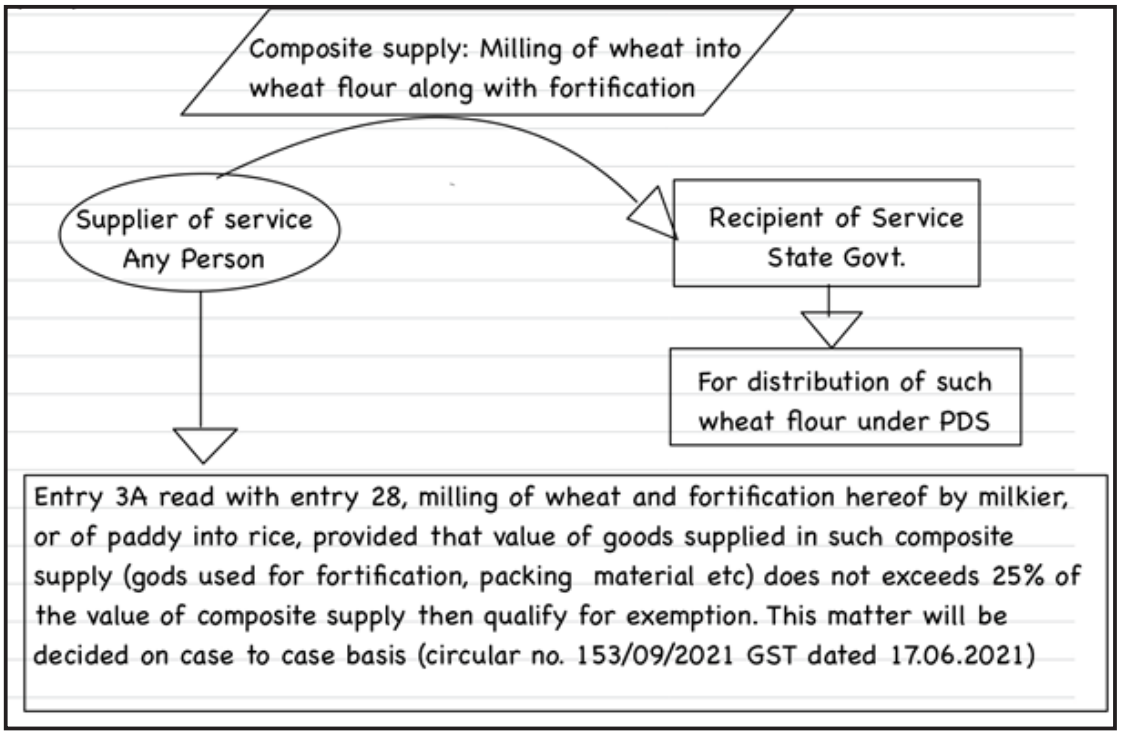
Answer:

As per CBIC Circular No. 206/18/2023-GST dated 31st October 2023, Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.

Sr. No.3 and 3A of notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017

Clarification regarding applicability of GST on milling of wheat into flour or paddy into rice for distribution by State Governments under Public Distribution System (PDS):



List of services are specifically exempted:

1. **Entry No. 4:** Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.
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 ₹40 lakh or ₹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 (w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted) (omitted w.e.f. 18-07-2022 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 (w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted) (omitted w.e.f. 18-07-2022 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 (w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted) (omitted w.e.f. 18-07-2022 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. 24C:** w.e.f 18-07-2022, Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams) exempted from GST.

7. **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.

8. **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

9. **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.

10. **Entry No. 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)

11. **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.

12. **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.

13. **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.

14. **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:

Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
Services supplied by the Central Government, State Government, Union territory, the Parliament and State Legislatures (w.e.f. 01.03.2023 shall also apply to the Courts and Tribunal) or local authority to a business entity excluding: — (1) 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 (2) Services specified below: — (i) Services by the Department of Posts (w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted) (omitted w.e.f. 18-07-2022 by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Govern-ment 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, Parliament and State Legislatures, (w.e.f. 01.03.2023 Courts and Tribunal) or local authority	Any business entity located in the taxable territory.	Recipient

Definitions:

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

Example 71

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	taxable supply	supplier	w.e.f. 18.7.2022, not covered 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)

S. No.	Nature of service	Taxability	Who is liable to pay	Remarks
(iv)	Transport of goods or passengers by the Ministry of Railways (Indian Railways)	Taxable supply	Supplier of service	w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted under forward charge.
(v)	Renting of immovable property for commercial nature to Business Entity unregistered person) by Indian Railways.	Taxable supply	**w.e.f. 20th October 2023 Renting of immovable property by Indian Railways to any person is 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 2025-26 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:

(a) Irrespective of aggregate turnover of the previous year in the current year supplier of service namely Indian Railways is liable to pay GST under forward charge (w.e.f. 20th October 2023 all taxable supplies of Indian Railways under forward charge).

(b) GST 18% on ₹75,000 = ₹13,500

Re-work

(c) GST liability is ₹13,500, irrespective of aggregate turnover of the previous year, in the current year supplier of service namely Indian Railways is liable to pay GST under forward charge (w.e.f. 20th October 2023 all taxable supplies of Indian Railways under forward charge.

Illustration 67

State Police provided protection services to the Judges of High Court in the month of January 2024. 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(a) 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 2025 – Part payment ₹ 500
   (b) Feb 2025 – Part payment ₹ 2,000
   (c) Mar 2025 – Part payment ₹ 2,000
   (d) April 2025 – 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. 2024-25 ₹4,500 F.Y. 2025-26 ₹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 April 2024. 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., 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) Is it taxable supply?

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

(c) total tax liability if any?

Solution:

(a) It is not taxable supply of service.

(b) M/s B Ltd. being recipient of service is liable to pay GST if it is taxable supply. In this case it is exempted supply. Since, main service is exempt and hence ancillary service is also exempt (vide CBIC Circular No. 178/10/2022 GST, dated 03.08.2022). Since, the contractor has performed the contract, but there is a delay of 10 days.

(c) tax liability is nil.

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 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?

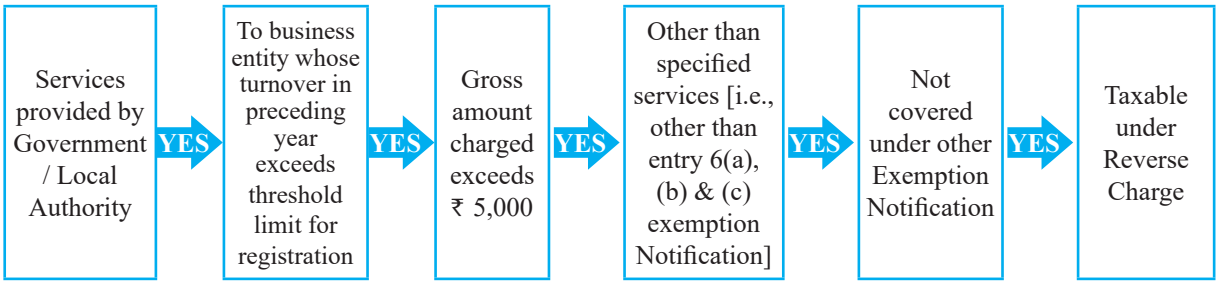
Whether your answer is different if periodic payment required to be made by the assignee.

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:



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

CBIC Circular No. 228/22/2024-GST Dated 15-7-2024: GST Applicability on Statutory Collections by RERA:

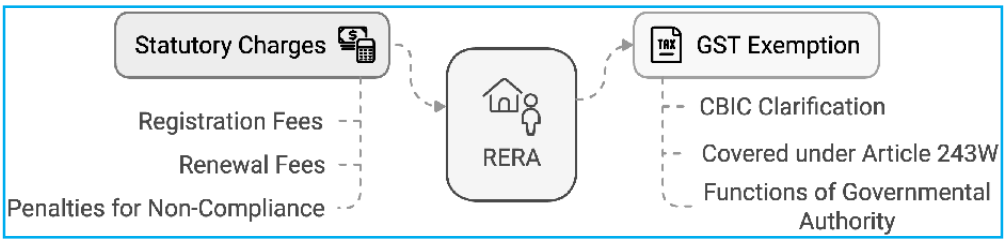
Scenario:

The Real Estate Regulatory Authority (RERA), constituted under the **Real Estate (Regulation and Development) Act, 2016,** collects statutory charges such as registration fees from real estate developers and agents, as well as penalties for non-compliance. There has been confusion about whether these collections attract GST.

Clarification Based on Notification and GST Council's Recommendation:

1. **Definition of RERA:**
   - RERA is established as a statutory body to regulate the real estate sector and ensure compliance with the **Real Estate (Regulation and Development) Act, 2016**.
   - Its functions fall under **Entry 1 (Regulation of land use) and Entry 2 (Planning of land and construction) of the Twelfth Schedule** of the Indian Constitution.
2. **RERA as a Governmental Authority:**
   - As per **Notification No. 12/2017-CT(R), dated 28.06.2017**, a "governmental authority" includes:
   - An authority established by the government to carry out functions related to municipal administration or functions assigned under the Twelfth Schedule of the Constitution.
   - RERA qualifies as a "governmental authority."

3. **Exemption under Notification No. 12/2017-CT(R):**
   - **Sl. No. 4** of the notification exempts services provided by a governmental authority relating to:
   - Functions entrusted under Article 243W of the Constitution (e.g., regulation of land use and construction of buildings).
   - As clarified by the **GST Council in its 53rd meeting**, statutory collections made by RERA are exempt from GST under **Sl. No. 4 of Notification No. 12/2017-CT(R)**.



Practical Example: RERA Statutory Collections

Case 1: Registration Fees for Real Estate Projects

1. **Scenario:**
   - M/s ABC Developers submits an application to RERA for registration of their new housing project.
   - RERA charges a statutory registration fee of ₹50,000 for processing the application.
2. GST Applicability:
   - Since the registration fee is a statutory collection made by RERA in performance of its regulatory functions under the Real Estate (Regulation and Development) Act, 2016, this fee is exempt from GST.
3. Outcome:
   - M/s ABC Developers pays only the ₹50,000 registration fee, without any additional GST.

Case 2: Penalty for Non-Compliance

1. Scenario:
   - M/s XYZ Builders fails to adhere to RERA's timeline for project completion and is charged a penalty of ₹1,00,000 by RERA under its statutory authority.
2. GST Applicability:
   - The penalty is a statutory collection by RERA and is exempt from GST under Sl. No. 4 of Notification No. 12/2017-CT(R).
3. Outcome:
   - M/s XYZ Builders pays only the ₹1,00,000 penalty amount, with no GST liability.

Case 3: Renewal of Real Estate Agent Registration

1. **Scenario:**
   - A real estate agent applies for the renewal of their RERA registration.
   - RERA charges a renewal fee of ₹20,000 for the process.

2. **GST Applicability:**
   - As the renewal fee is a statutory collection by RERA in accordance with its regulatory functions, it is **exempt from GST**.
3. **Outcome:**
   - The agent pays ₹20,000 for renewal, with no additional GST.

Summary Table of RERA Statutory Collections and GST Applicability

Nature of Collection	Purpose	GST Applicability	Reason
Registration Fees	For registering real estate projects	Exempt	Statutory collection by a governmental authority for regulatory functions.
Penalties for Non-Compliance	Penalizing violations of RERA regulations	Exempt	Statutory penalty imposed by RERA under its authority.
Renewal Fees for Agent Registration	For renewing registration of real estate agents	Exempt	Statutory fee for performing regulatory functions.

Clarification on GST Regularization for Supplies of Pulses and Cereals Made to or by Agencies Engaged by Government (vide CBIC Circular No. 229/23 /2024-GST dated 15th July 2024**):**

Key Highlights of Regularization

1. Scope of Applicability (Pre-17th July 2022):
   - Goods Covered:

   Pulses and cereals that were:
   - Packaged in unit containers.
   - Bearing a registered brand name or any brand name on which an actionable claim or enforceable right exists in a court of law.
   - These supplies attracted 5% GST before 17th July 2022.
2. Period Regularized:
   - The regularization applies for the period from 01.07.2017 to 17.07.2022 for supplies made:
   - To or by any agency engaged by the Union Government, State Government, or Union Territory.
   - Under government-approved programs or schemes intended to distribute such goods either free of cost or at subsidized rates to eligible beneficiaries, such as economically weaker sections of society.
3. Conditions for Regularization:
   - Certification Requirement:

   To avail the benefits of regularization, the supplier must:
   - Furnish a certificate from an officer of Deputy Secretary rank or higher (of the Central Government, State Government, or Union Territory).
   - The certificate should confirm that:
     1. Supplies were made under a government-approved program/scheme.
     2. The goods were distributed to eligible beneficiaries (economically weaker sections).

- This certificate must be submitted to the jurisdictional GST officer (Central Tax, State Tax, or Union Territory Tax) within 180 days from the date of this circular.
- Reversal of Input Tax Credit (ITC):
- ITC is not allowed on inputs used for such supplies.
- If ITC was already availed, it must be reversed within 180 days from the date of this circular if the supplier intends to take the benefit of regularization.

4. 'As Is Where Is' Basis Regularization:
   - All disputes or issues regarding GST liability for the specified period (01.07.2017 to 17.07.2022) will be regularized 'as is where is':
   - If GST was paid during this period, no refunds will be provided.
   - If GST was not charged, no further demands will be raised.
5. Objective:

   This regularization aims to resolve interpretational issues and provide compliance relief for suppliers and agencies involved in government-approved schemes for the economically weaker sections.

Illustrative Example

- Scenario:

  A government-approved scheme for distributing cereals to economically weaker sections, like the Public Distribution System (PDS), involves the procurement and sale of cereals by an agency engaged by the State Government.
  - Supplier: A private company supplies packaged cereals to the government agency.
  - Issue: For the period 01.07.2017 to 17.07.2022, there were inconsistencies:
  - Some suppliers charged 5% GST.
  - Others claimed exemption due to the scheme's nature.
- **Regularization Impact:**
  - Suppliers who charged 5% GST can continue without claiming refunds.
  - Suppliers who did not charge GST during this period will not face additional tax demands, provided they comply with the conditions (e.g., certification and ITC reversal).

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 (whenever rescheduled inserted w.e.f. 18-07-2022) 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'.

Circular No. 177/09/2022 TRU dt 03.08.202, It has been clarified that exemption under Sl. No. 9B of the exemption notification shall cover services associated with transit cargo both to and from Nepal and Bhutan

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:

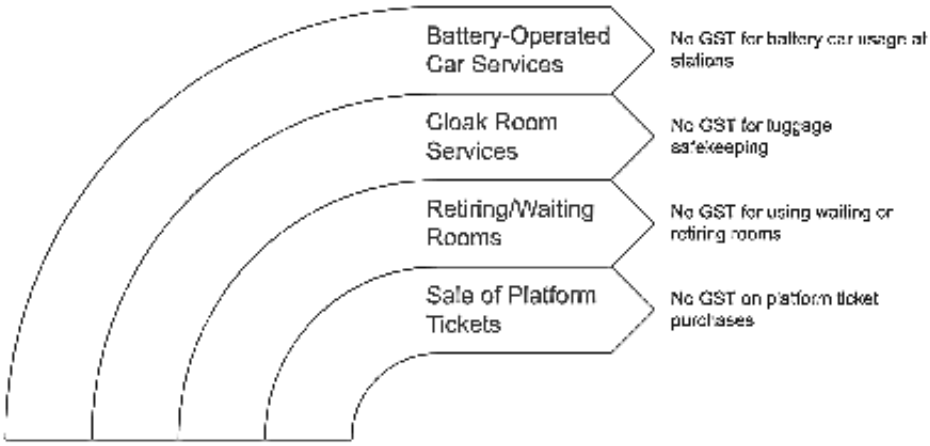
Services by an old age homes run by Central Government, State Government or entity under section 12AA or **12AB (inserted w.e.f. 1-10-2021)** of the Income Tax Act, 1961, to residents for consideration upto ₹25,000 per month per member is exempted from GST [vide Notification No. 14/2018-Central Tax (Rate)].

w.e.f. 15th July 2024 the following are exempted (vide Notification No. 04/2024-CT dated 12th July, 2024)

Entry 9E: The following services provided by the Ministry of Railways (Indian Railways) to individuals are exempted from GST:

1. Sale of Platform Tickets:
    - Example: An individual purchasing a platform ticket worth ₹10 is not required to pay GST on it.
2. Facility of Retiring Rooms/Waiting Rooms:
    - Example: A passenger using a waiting room or retiring room facility provided by Indian Railways will not pay GST for such services.
3. Cloak Room Services:
    - Example: GST will not apply to cloakroom services where passengers deposit their luggage for safekeeping at railway stations.
4. Battery-Operated Car Services:
    - Example: Senior citizens or passengers using battery-operated cars for mobility at railway stations will avail this service without GST.

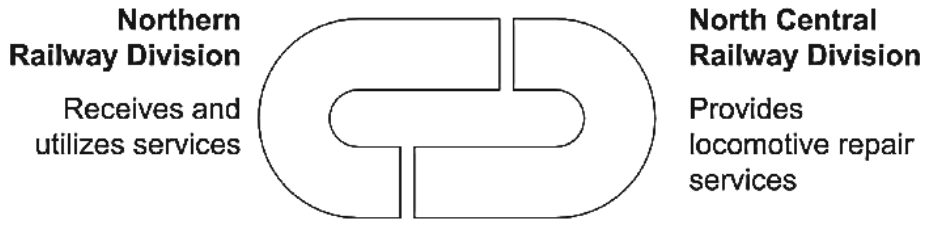
GST Exemptions for Indian Railways Services



Entry 9F: Services provided by one zone/division of Indian Railways to another zone/division of Indian Railways are exempted from GST.

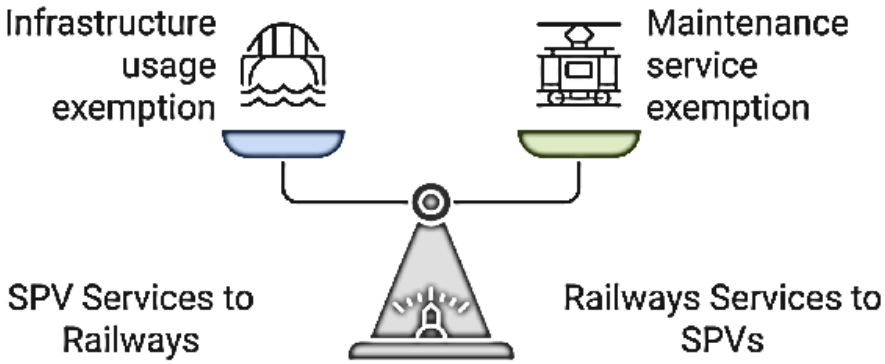
- **Example:**
    - The North Central Railway Division provides repair and maintenance services for locomotives to the Northern Railway Division. No GST is applicable on these inter-divisional services within Indian Railways.

Understanding GST Exemption in Indian Railways



Entry 9G: The following services are **exempted from GST:**

1. **Services by Special Purpose Vehicles (SPVs) to Indian Railways:**
   - Allowing Indian Railways to use infrastructure built and owned by SPVs during the concession period.
   - Example: An SPV constructs a new railway bridge and allows Indian Railways to use it during the concession period. No GST is applicable for this service.
2. **Maintenance Services by Indian Railways to SPVs:**
   - Indian Railways provides maintenance services for the infrastructure built and owned by the SPV during the concession period.
   - Example: Indian Railways maintains a railway station or tracks constructed by an SPV during the concession period. No GST is applicable for these maintenance services.



GST Exemptions for Railways and SPVs

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 Notification 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

w.e.f. 18-07-2022, residential dwelling is rented to a registered person is taxable:

Nature of supply	Supplier	Recipient	GST w.e.f.18-07-2022
Renting of residential dwelling for use as residence	Registered Person or Un-registered person	Registered Person	RCM applicable (i.e. recipient is liable to pay GST)
		Un-registered person	Exempted from GST

No GST on residential property rented in personal capacity for use as a residence (Notification No. 15/2022-CT(R) dt. 30.12.2022):

- In the 48th GST Council meeting, the Council clarified that no GST is payable where a residential dwelling is rented to a registered person if the same is rented it in their personal capacity and for use as their own residence.
- This means that where a registered person is a proprietor of a proprietorship firm and they have rented out a residential property in their personal/own capacity (and not that of the proprietorship) and the property is for use as their own residence, then no GST will be applicable.

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. 12A: w.e.f. 15-7-2024, Exempted service:- Supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days.

[Notification No. 04/2024-CT dated 12th July, 2024]

Explanation of Entry 12A: Exemption for Accommodation Services

Effective Date: 15th July 2024

Description:

Supply of accommodation services is exempt from GST if the following conditions are satisfied:

1. Value of Supply: The value of supply is less than or equal to ₹20,000 per person per month.
2. Duration: The accommodation is provided for a minimum continuous period of 90 days.

Examples:

Example 1: Accommodation Below ₹20,000 Per Month for More Than 90 Days

- **Scenario:**

A company rents a serviced apartment from M/s XYZ Hospitality for its employee at ₹18,000 per month for a continuous period of 3 months (90 days).

- **Analysis:**
  - The value of supply is ₹18,000 per person per month, which is less than ₹20,000.
  - The duration of accommodation is 90 days, satisfying the minimum period requirement.
- **Outcome:**

This supply is exempt from GST under Entry 12A.

Example 2: Accommodation Above ₹20,000 Per Month

- **Scenario:**

  M/s ABC Resorts provides long-term accommodation to a corporate client for ₹25,000 per month per person for a continuous period of 3 months (90 days).
- **Analysis:**
  - The value of supply is ₹25,000 per person per month, which exceeds ₹20,000.
  - Even though the duration exceeds 90 days, the exemption does not apply due to the higher monthly value.
- **Outcome:**

This supply is taxable under GST at the applicable rate.

Example 3: Accommodation for Less than 90 Days

- **Scenario:**

M/s PQR Hotels rents out rooms for ₹15,000 per person per month to a client for a continuous period of 60 days.

- **Analysis:**
  - The value of supply is ₹15,000 per month, which satisfies the monetary limit.
  - However, the duration is only 60 days, which is less than the required 90 days.

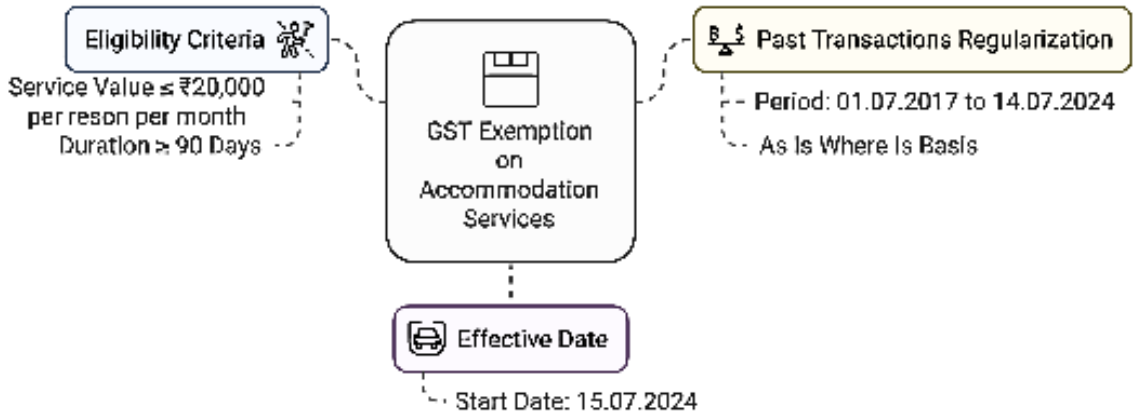
- **Outcome:**

This supply is taxable under GST at the applicable rate.

Summary of Conditions and GST Applicability:

Condition	Requirement	Example 1	Example 2	Example 3
Value of Supply	≤ ₹20,000 per person/month	Yes	No	Yes
Duration	≥ 90 continuous days	Yes	Yes	No
GST Applicability	Exempt	Exempt	Taxable	Taxable

GST on Certain Accommodation Services: Accommodation services valued at or below ₹20,000 per person per month for a continuous period of at least 90 days are exempt from GST, effective from 15.07.2024. Past transactions meeting these criteria from 01.07.2017 to 14.07.2024 are also regularized on an 'as is where is' basis [CBIC Clarification circular no: 228/22/2024 GST dated 15/07/2024].



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;

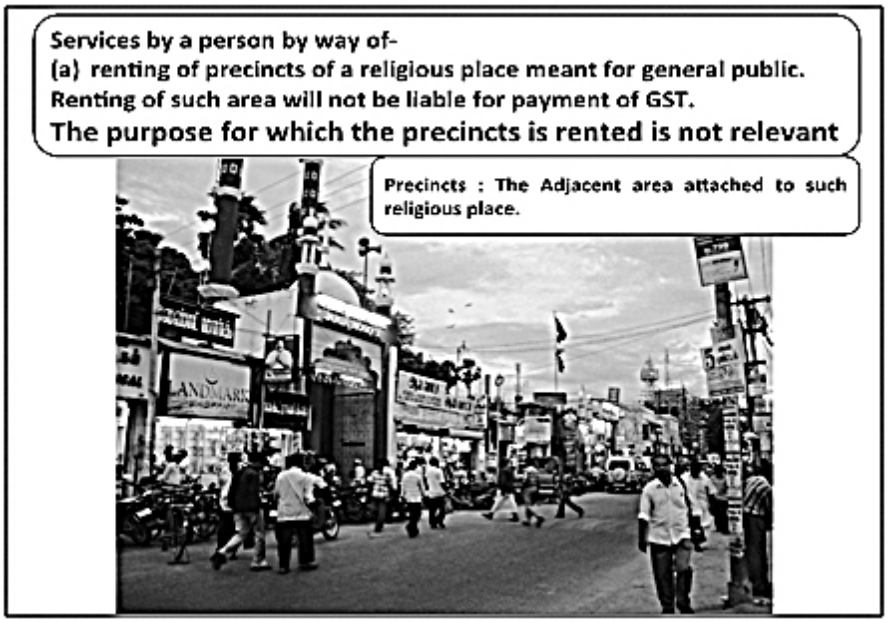
(iii) renting of shops or other spaces for business or commerce where charges are ₹10,000 or more per month.

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-

Services by way of training or coaching in—

(a) recreational activities relating to— arts or culture, (by an individual (inserted w.e.f. 18-07-2022), 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 from GST 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, sculpture making, 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.

Particulars	Value in (₹)	Remarks
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.

Omitted w.e.f. 18-7-2022, 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.

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).

Thus, accommodation service in hostels including by Trusts taxable service w.e.f. 18-07-2022 (vide Notification No. 04/2022 -Central Tax (Rate) dated 13th July, 2022.

Entry No. 15: Transportation of passengers by any mode of conveyance

Transport of passengers, with or without accompanied belongings, by—

(a) air, (inserted w.e.f 18-07-2022 in economic class) 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.

Question:

Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-CT(R) transport of passengers by non-air conditioned contract carriage?

Answer:

Sr. No. 15(b) of Notification No. 12/2017-CT(R), dated 28.06.2017 exempts "transport of passengers, with or without accompanied belongings, by non-air conditioned contract carriage, other than radio taxi, excluding tourism, conducted tour, charter or hire.

It is clarified that 'charter or hire' excluded from the above exemption entry is charter or hire of a motor vehicle for a period of time, where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

Thus, the said exemption would apply to passenger transportation services by non-air conditioned contract carriage falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider (vide Circular No. 177/09/2022-TRU, dated 03.08.2022).

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

} 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 (Single 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 January 2024.

(a) Passenger travelling in economic class 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 in business class 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:

Statement showing GST Liability of Air Bus Ltd. for January 2024.

(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 (w.e.f. 18-7-2022 taxable)	=	50,00,000
Passenger tax 40%	=	20,00,000

Value of taxable supply of services	=	₹ 3,85,00,000
CGST 6%	=	₹ 23,10,000
SGST 6%	=	₹ 23,10,000
Total Tax	=	₹ 46,20,000

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 in economic class: ₹5 lakhs;

(2) Passengers where journey terminated at Assam (economical class): ₹4 lakhs;

(3) Amount charged from passenger for flights starting from Assam to Chennai in economic class: ₹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:

Statement showing GST Liability of Air Speed Airlines:

(a) embarking at Arunachal Pradesh	=	exempted supply

(b) where journey terminated at Assam	=	exempted supply
(c) from Assam 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:

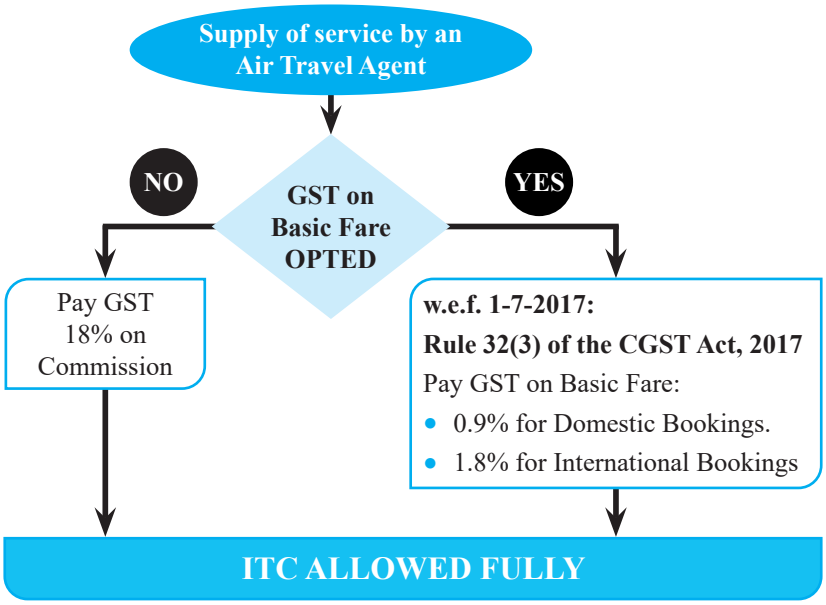


Illustration 93

Compute the GST liability of Mr. A, an air travel agent, for the quarter ended March 31, 2024 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 March 2024:

		(₹)
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 March 2024

		(₹)
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%.

As per Notification No 12/2023-CGST(R) dt 19.10.2023 & 15/2023-IGST(R) dt 19.10.2023:

w.e.f. 20th October 2023, A new condition is added that if tax is charged by the supplier of input service in the same line of business at a rate higher than 5%, ITC in respect of such input service in the same line of business shall not be taken in excess 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.

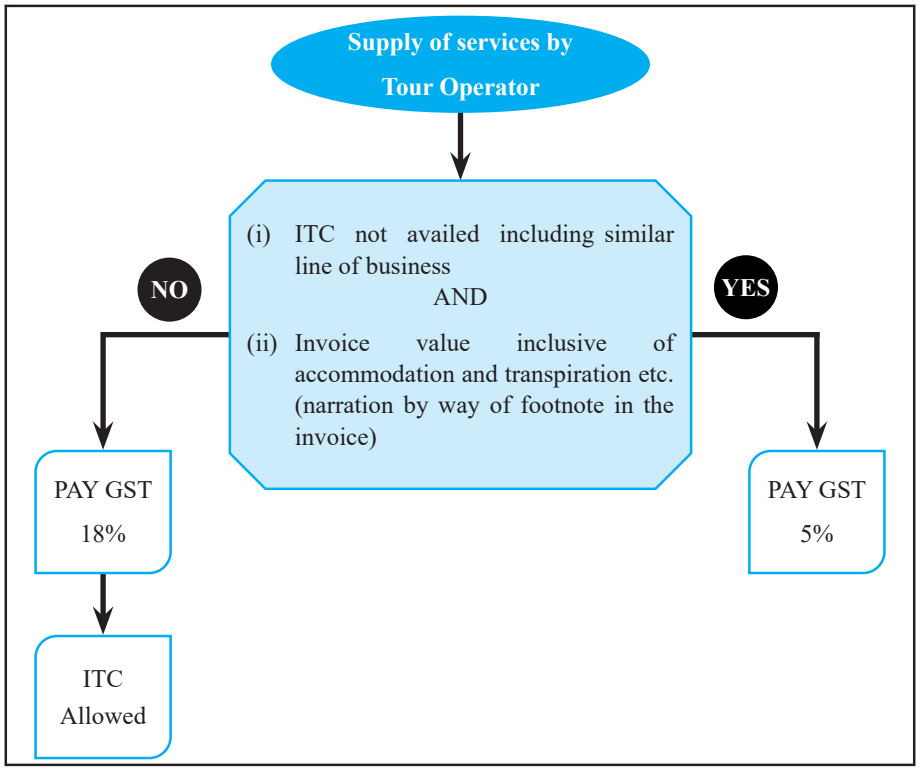
In case any of the above conditions are not met, the benefit of concessional rate of 5% would not apply and in that event the Department may demand full 18% GST from the tour operator.

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 April 2024. 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 April 2024

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
GST Rate	5%	18%
IGST	7.50	7.20
Less: ITC	Not allowed	Allowed
Net GST liability	7.50	7.20

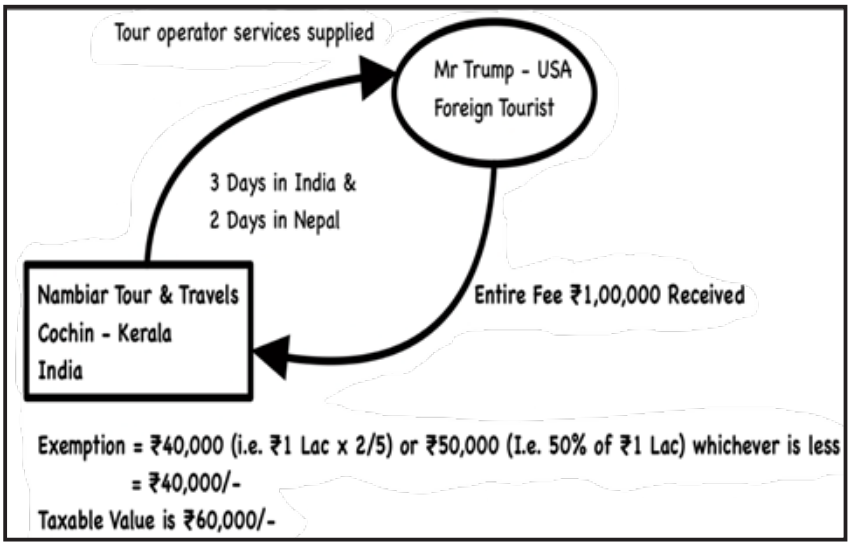
Entry 52A: w.e.f. 18-07-2022, Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India is exempted from GST:

Provided that value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less:

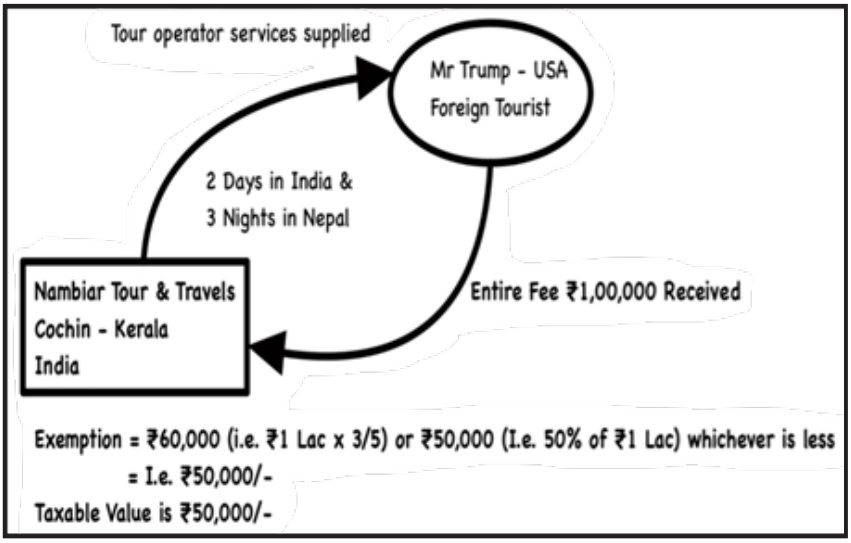
Provided further that in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

Explanation.—"foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non- immigrant purposes.

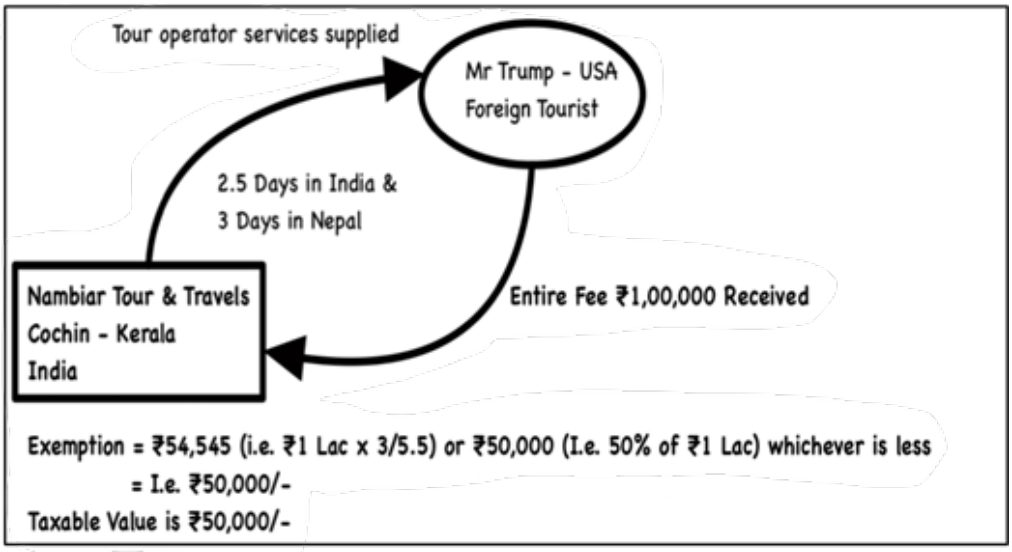
Example 1:



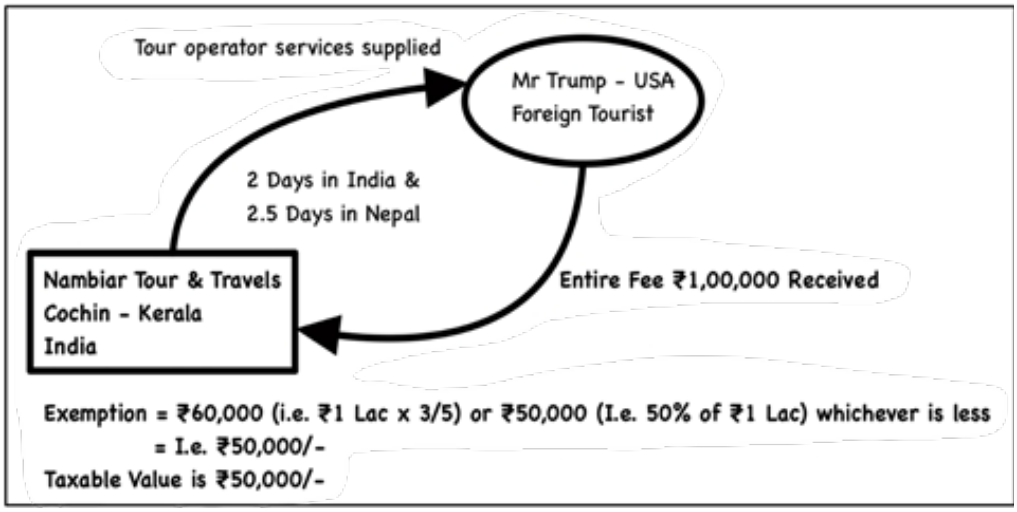
Example 2:



Example 3:



Example 4:



Note:

1. The days of 2.5 had been rounded off to 3 since any duration of time equal to or exceeding 12 hours shall be considered as one full day.
2. The above amendment in exemption is a encouraging move from the Government to reduce the undue burden of tax on the industry.

(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.

As per Notification No 12/2023-CGST(R) dt 19.10.2023 & 15/2023-IGST(R) dt 19.10.2023:

w.e.f. 20th October 2023, A new condition is added that if tax is charged by the supplier of input service in the same line of

business at a rate higher than 5%, ITC in respect of such input service in the same line of business shall not be taken in excess of 5%.

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 January 2024 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 January 2024.

Solution:

Statement showing Net GST liability of XY Travels Pvt. Ltd., for the month of January 2024:

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 w.e.f. 20.10.2023 ITC in respect of such input service in the same line of business shall not be taken in excess of 5%.	(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 February 2024. 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 was ₹22 lakh.

Solution:

Statement showing GST liability M/s. R Ltd. for February 2024

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

GST on tickets of private ferry used for passenger transportation:

It has been clarified that this exemption would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government. It has been further clarified that the expression 'public transport' used in the exemption notification only means that the transport should be open to public; it can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc. (vide Circular No. 177/09/2022-TRU, dated 03.08.2022).

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

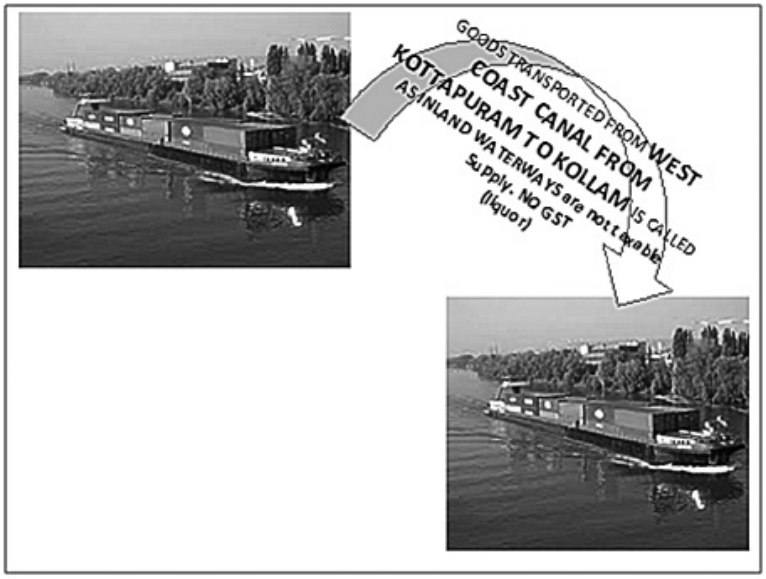
(a) by road except the services of—

(i) a goods transportation agency;

(ii) a courier agency;

(b) by inland waterways,

are exempted from GST.

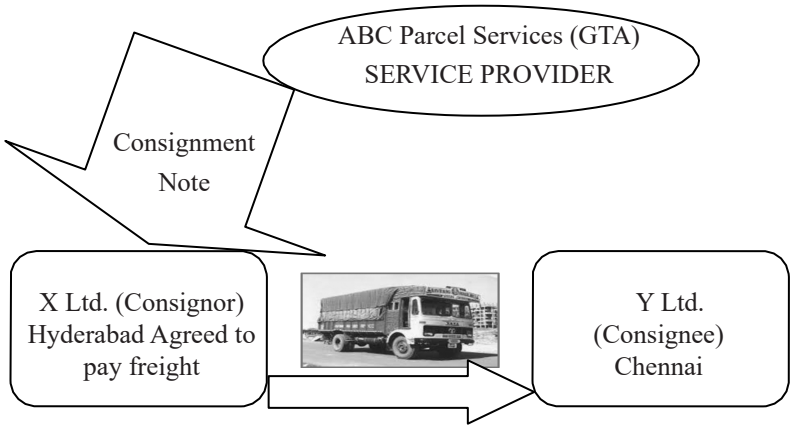


Goods Transport Agency – GST will be levied:

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.

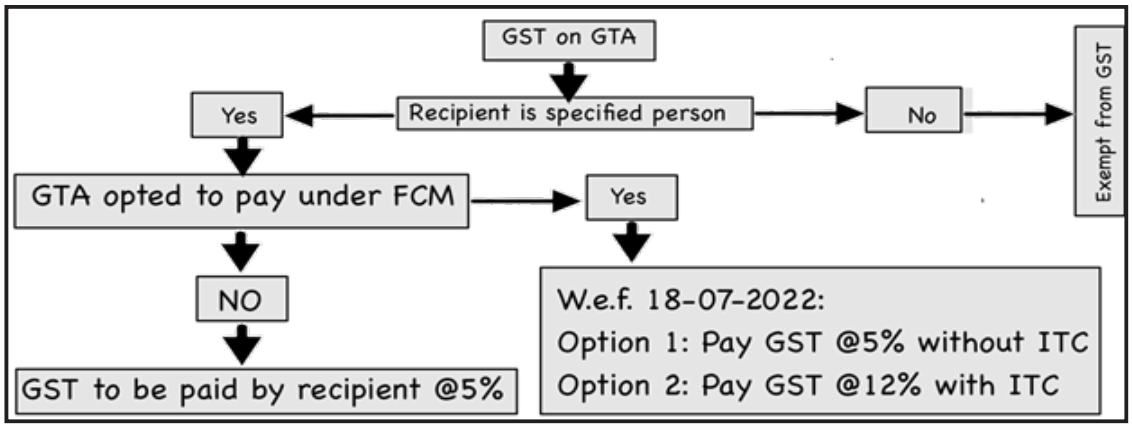
Thus, it is to be seen that mere transportation of goods by road, unless it is a service rendered by a goods transportation agency, is exempt from GST.

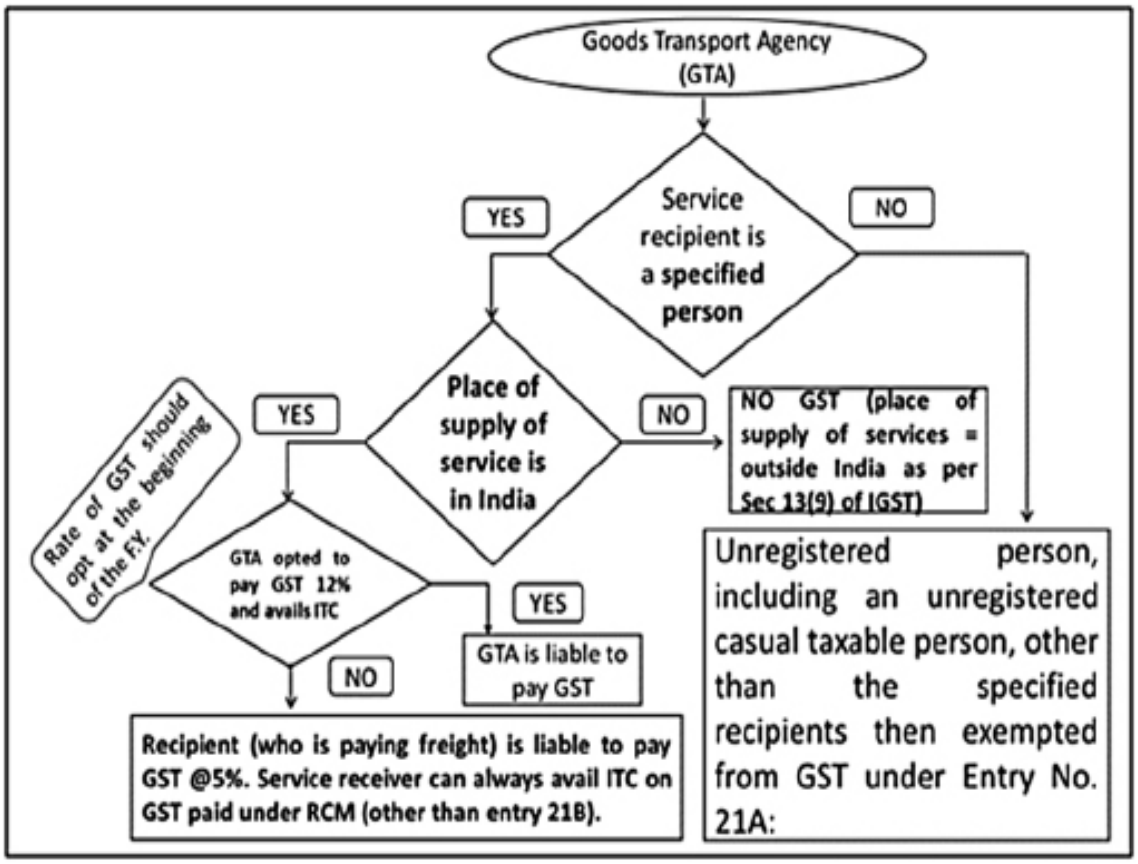
GTA - Reverse charge:

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:





The option by GTA to pay GST under Forward Charge Mechanism (FCM) on the services supplied by it during a Financial Year shall be exercised by making a declaration in Annexure V should be filed with the Jurisdictional Authority before the commencement of the financial year. However, GTA commencing new business or crossing registration threshold during any financial year will be allowed to exercise the option to pay GST under forward charge mechanism during the year in which it commences new business or crosses registration threshold within - 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration whichever is later [Notification No 05/2023-CC (R) dt 09-05-2023].

Note: Payment of tax under reverse charge is the default mode of payment of tax for a GTA. Annexure V is required to be filed only when GTA wishes to pay tax under forward charge.

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 (Omitted w.e.f. 18-07-2022);

(iii) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹750 (Omitted w.e.f. 18-07-2022);

(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)

GST on Ancillary Services by Goods Transport Agencies (GTAs) [As per The CBIC issued Circular No. 234/28/2024-GST dated October 11, 2024]:

Incidental services such as loading, unloading, packing, and temporary warehousing provided by GTAs during the transportation of goods have been a matter of dispute.

Clarification: Incidental services provided by GTAs as part of goods transportation are to be treated as a composite supply. These services will not attract a separate GST rate unless they are invoiced separately and not provided as part of transportation.

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.

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
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).

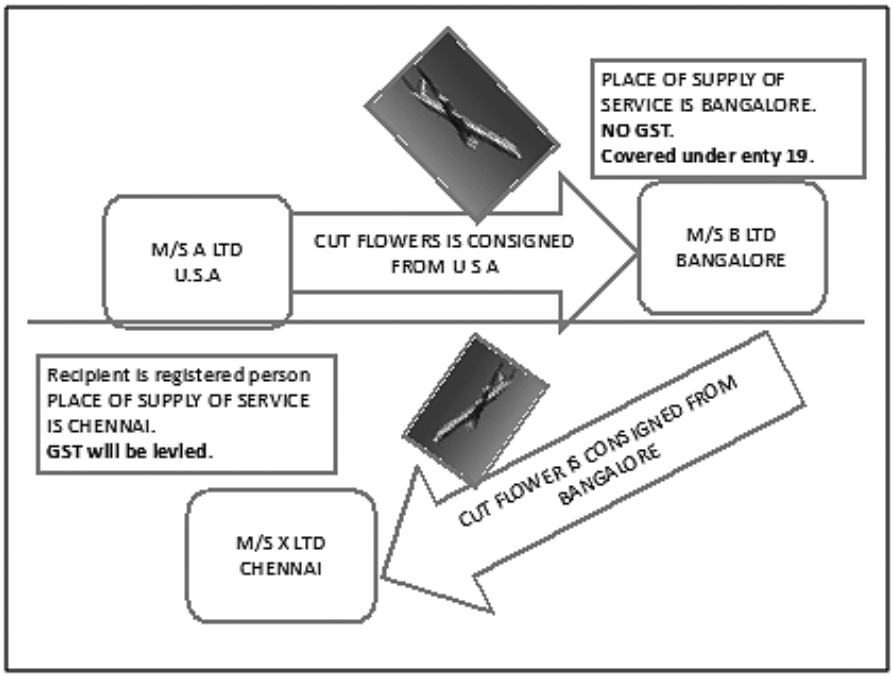
GST liability is as follows:

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
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

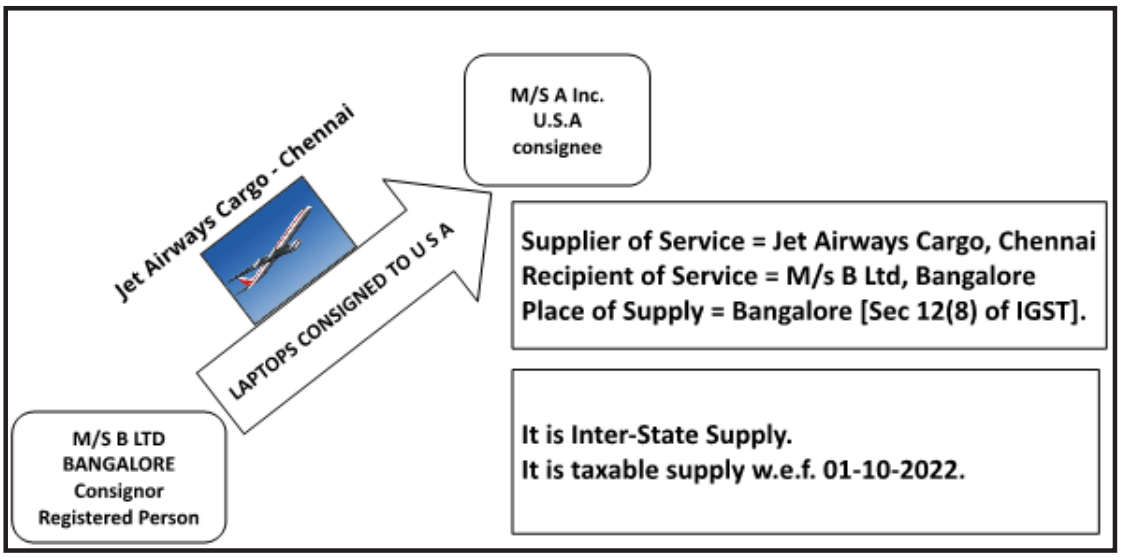


19A. Transportation of goods by an aircraft from customs station of clearance in India to a place outside India:

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

w.e.f. 01-10-2022 taxable supply. w.e.f. 1-10-2022 this exemption has been withdrawn.



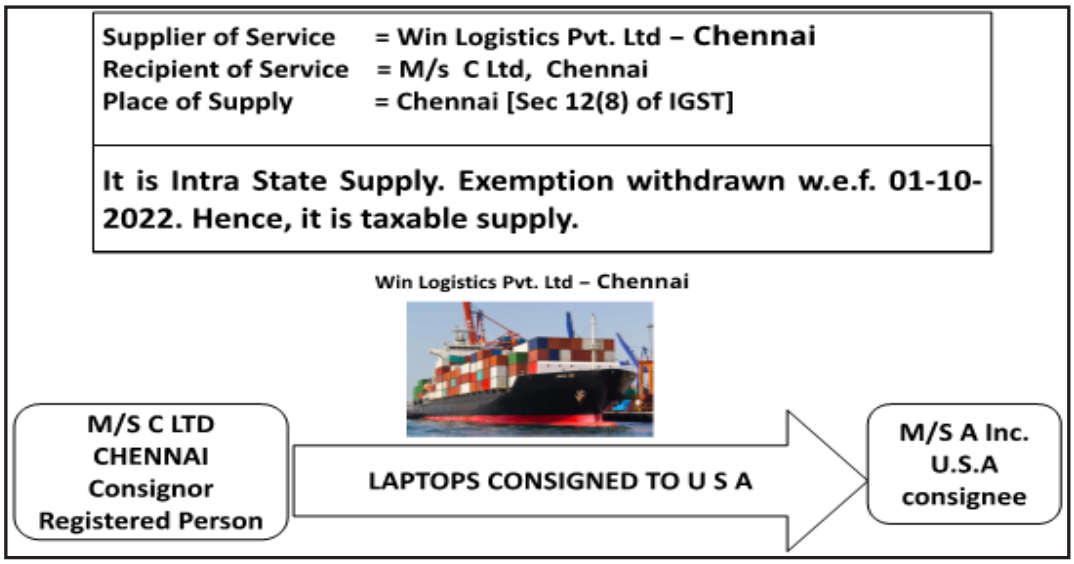
19B. Transportation of goods by a vessel from customs station of clearance in India to a place outside India:

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.

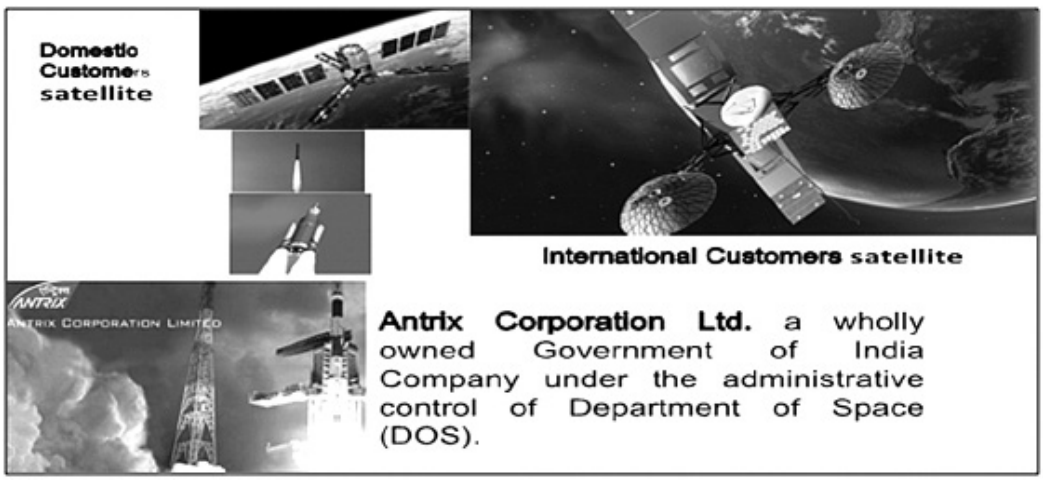
This exemption extended upto 30th September 2022

w.e.f. 01-10-2022 taxable supply.

w.e.f. 1-10-2022 this exemption has been withdrawn.



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):



GST exemption on Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited is extended to such services supplied by organisations in private sectors w.e.f. 27-07-2023.

It means satellite launch services supplied by any person is exempted under GST.

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) (Omitted w.e.f. 18-07-2022) railway equipment's 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
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

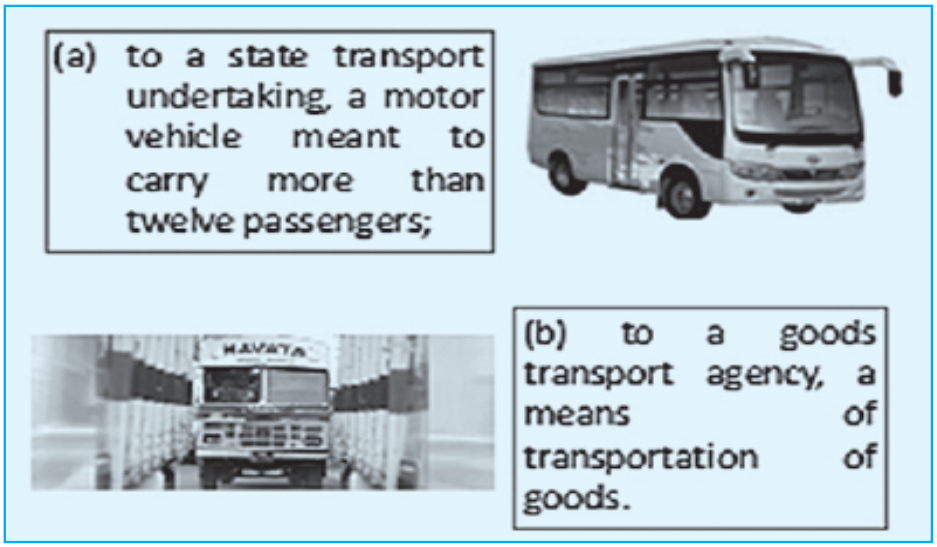
(b) to a goods transport agency, a means of transportation of goods.

w.e.f. 25.1.2018,

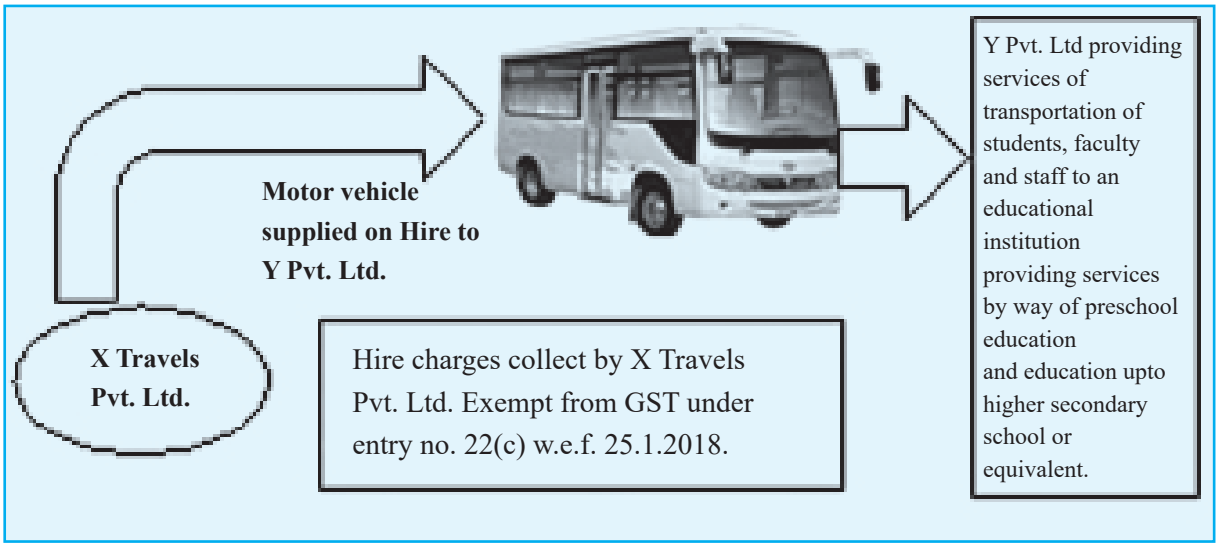
(c) motor vehicle for transport of students, faculty, and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

(d) Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers.

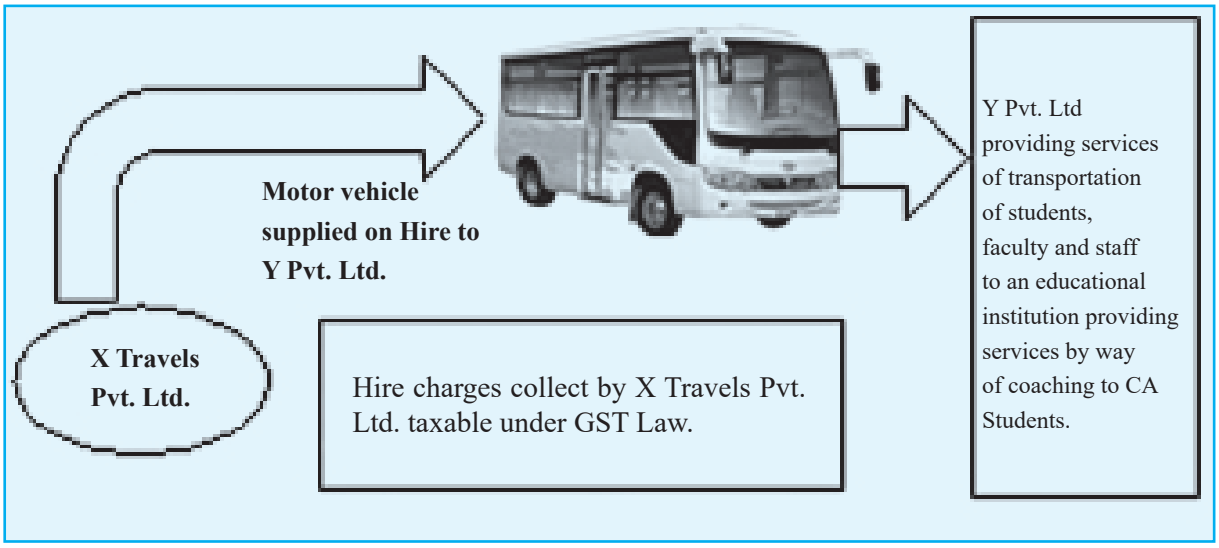
Example 179



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.

In case of (a) and (d) above, it is clarified that the expression 'giving on hire' here includes renting of vehicles. Accordingly, where the said vehicles are rented or giving on hire to State Transport Undertaking or Local Authorities, Said services are eligible for above exemption (Circular No. 164/29/2021 GST dt. 06-10-2021).

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)

w.e.f . 01-01-2023 exemption from GST available to entry 23A has been withdrawn.

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 2017April 2024 ₹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.

As per CBIC Circular No. 177/09/2022-TRU, dated 03.08.2022: additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST. Overloading charges collected at toll plazas in the form of higher toll also exempt from GST.

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	

Now exemption available to services provided by way of storage or warehousing of cereals, pulses, fruits, and vegetables only. the following are omitted from exemption w.e.f. 18-07-2022 spices, copra, sugarcane, jaggery, raw vegetable fibers, jute etc. indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea).

W.e.f. 18-7-2022, storage or warehousing of cotton in ginned and or baled form exemption withdrawn.

Entry 24C: w.e.f. 18-07-2022, Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams) exempted from GST.

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 March 2024.

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:

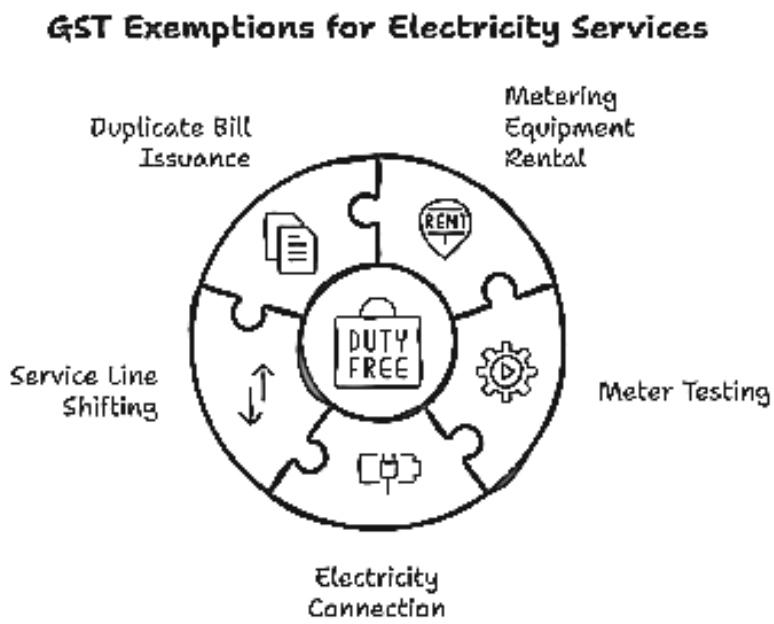
(i) the Gross receipts of RWA was ₹24,50,000 and

(ii) Electricity charges are charged separately, not forming part of monthly maintenance.

Solution: Statement showing GST liability for the month of March 2024

Particular	(₹)
Electricity charges levied by State Electricity Board on the members of RWA (i.e. Pure agent reimbursement expenses).	Nil
RWA collected Electricity charges by apportioning them equally among 100 families and then, remitted the same to the Board.)	4,00,000
Value of taxable supply of service	4,00,000
CGST 9%	36,000
SGST 9%	36,000

Entry No. 25A: w.e.f. 10-10-2024, Supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers are exempt under GST [Notification No. 08/2024 C.T. dated 8th October 2024].



Circular No. 234/28/2024-GST dt. 11/10/2024 regularizes the payment of GST on services provided by an electricity transmission or distribution utility which are incidental or ancillary to the supply of transmission and distribution of electricity by such utility, such as those listed above on 'as is where is' basis from 01.07.2017 to 09.10.2024.

Entry No. 26: Services by the Reserve Bank of India exempt from GST.

This exemption has been withdrawn w.e.f. 18-7-2022.

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 not exempt from GST:

Example 72

- External asset management,
- custodial services,
- securities lending services etc.

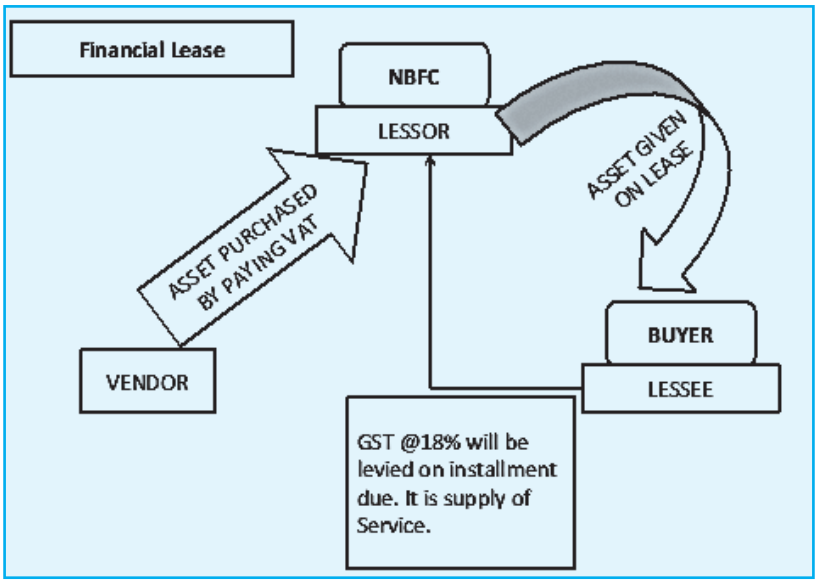
Entry No. 27: Banking and NBFC's Services are exempted from GST:

Services by way of—

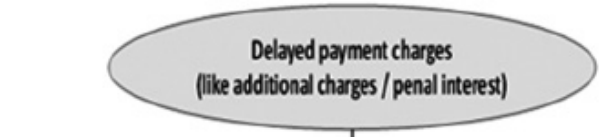
(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);

(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	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]:

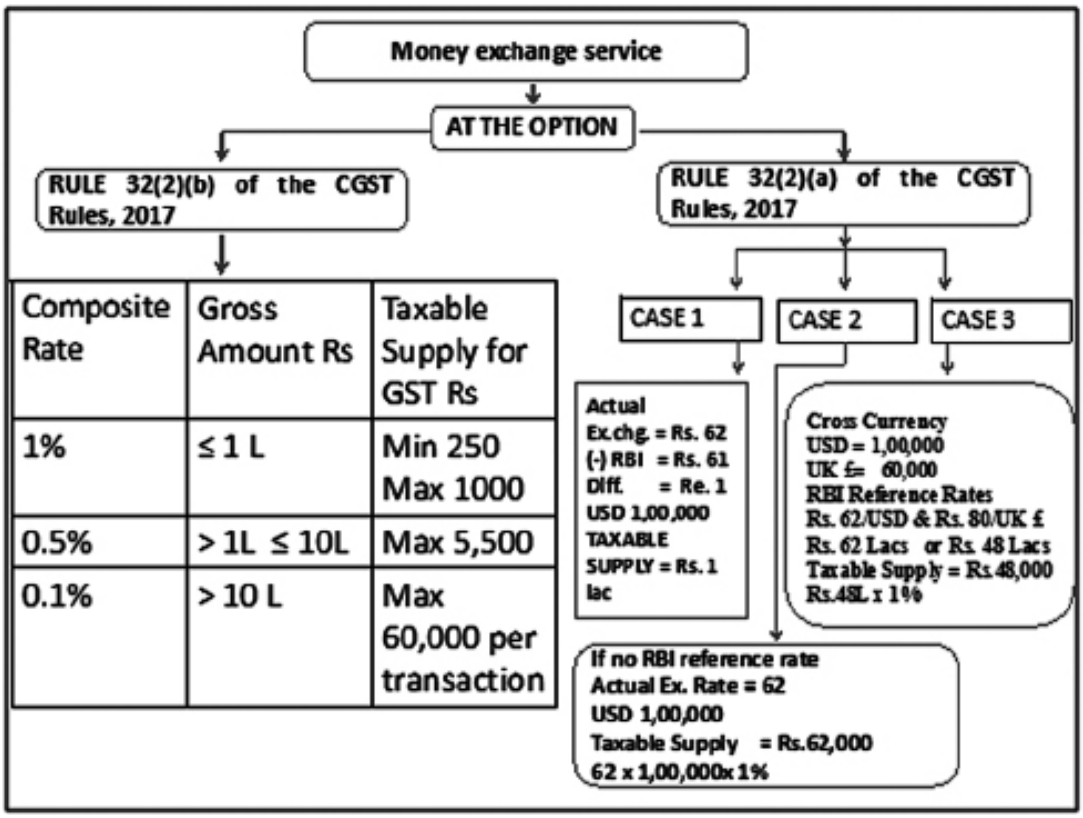
S. No.	Nature of service	Place of supply of service
1	Banking and NBFC service including Stock broking services	• Location of recipient of Service on the records of the supplier of service. Otherwise: • Location of supplier of service.

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 January 2024, Mr. X located in Chennai converted USD 100 into INR, actual exchange rate INR 72 per USD through Akbar Travel a money exchanger. RBI's reference rate for buying and selling was ₹71/71.5 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 = (72-71) × 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 = ₹72 (i.e. 1% of INR 7,200)

GST = ₹12.96

9% CGST = ₹6.48

9% SGST = ₹6.48

Illustration 108

Royal Financial Corporation located in Mumbai being a money exchanger provided the following service in the month of February 2024 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 ₹71 and for 1UK POUND = ₹95

Find the GST liability as per Rule 32(2)(a) of the CGST Rules, 2017.

Applicable rate of GST 18%.

Solution:

Taxable supply	= ₹543/- (₹54,286 × 1%)
IGST	= ₹98 (i.e. @18% on ₹543)
USD 1000 × ₹71	= ₹71,000
UKP 571.4286 × ₹95	= ₹54,286

whichever is less is ₹54,286

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 @ ₹71 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 ₹72 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 ₹73 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:—

= ₹(72-71) × 9,000 USD = ₹9,000

(b) In the given case, value of taxable service would be as follows:—

1% of ₹(71 × 9,000 USD) = ₹6,390

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 × ₹73 = ₹6,57,000 (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:

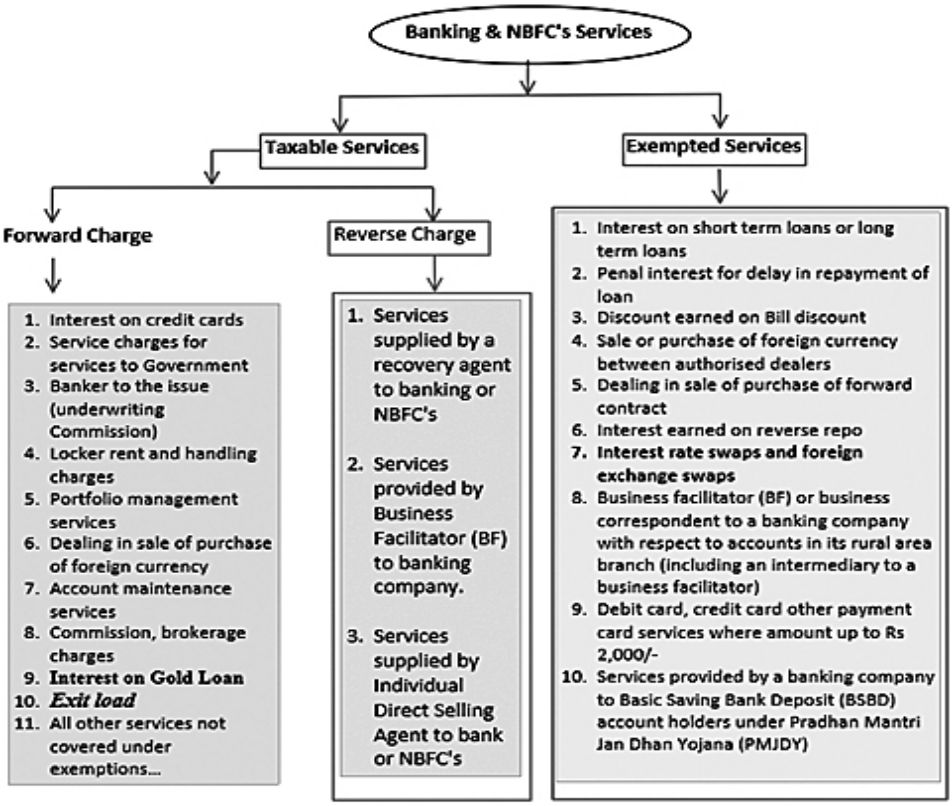
Transactions in instruments like interest rate swaps, and foreign exchange swaps would be excluded from the definition of 'supply' since such instruments are derivatives, being securities, based on contracts of difference.

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. This exemption has been omitted w.e.f. 18-07-2022.

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. This exemption has been omitted w.e.f. 18-07-2022.

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-
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 April 2024:

(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

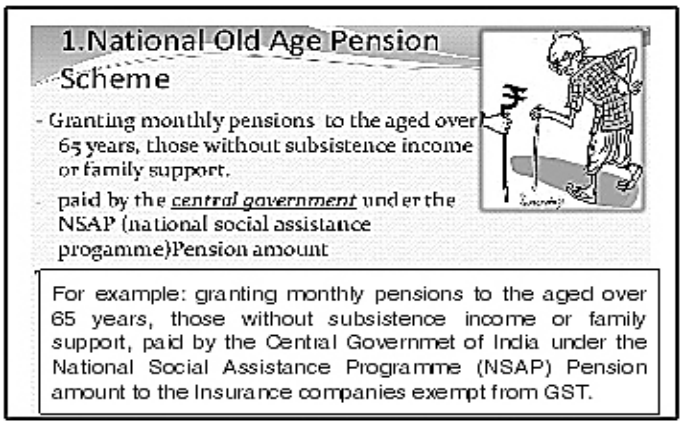
Entry No. 39A: w.e.f. 25.1.2018, Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

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.



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:

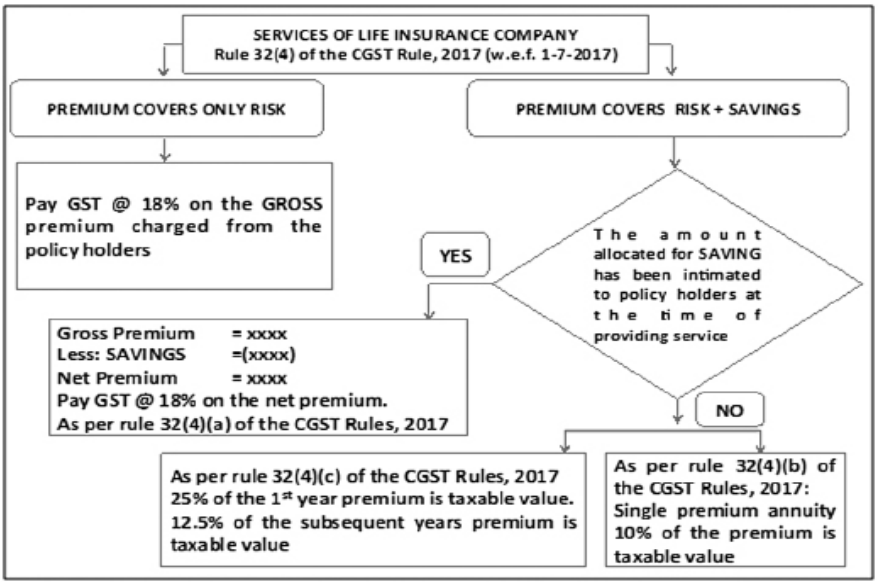


Illustration 113

Arihant Life Insurance Company Ltd. (ALICL) has started its operations in the year 2025-26 (w.e.f. 1-7-2023). During the year 2025-26, 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 2025-26 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 2025-26 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 2025-26, 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 2025-26 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 April 2024. 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.

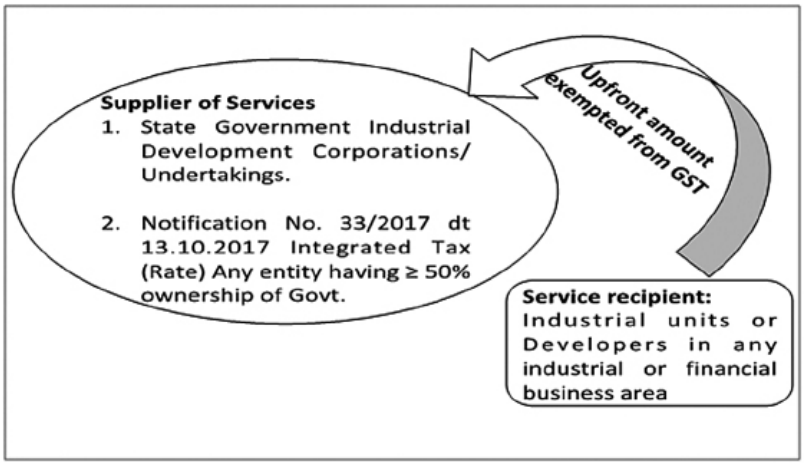
Solution:

Statement showing GST liability of LIC of India for the month of April 2024 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.

As per CBIC Circular No. 177/09/2022 TRU Dt 3.8.2022, It has been clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land eligible for exemption.

Construction Service:

GST on Preferential Location Charges (PLC) [CBIC issued Circular No. 234/28/2024-GST dated October 11, 2024]:

PLC is often collected as part of the consideration for residential or commercial properties, leading to questions about its tax treatment.

Clarification: PLC forms part of the composite supply of construction services and attracts the same GST rate as the construction service itself.

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 2025 - 26:

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 2024-25.

Find GST liability of Cloud M Power Technologies Pvt. Ltd. for the financial year 2025-26. Assume applicable rate of GST 18%.

Solution:

Statement showing service tax liability of Cloud M Power Technologies Pvt. Ltd for the year 2025-26:

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 2025-26
Taxable services	5,00,000	
CGST 9%	45,000	(5,00,000 × 9%)
SGST 9%	45,000	(5,00,000 × 9%)

Entry No. 44A: w.e.f. 10-10-2024, **Research and development services** against consideration received in the form of grants supplied by – (a) a Government Entity; or (b) a research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961.

Provided that the research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961 is so notified at the time of supply of the research and development service," exempt from GST [vide Notification No. 08/2024 C.T. dated 8th October 2024].

Example 1: R&D Services Supplied by a Government Entity

- **Supplier of Service:**

  The Department of Biotechnology (DBT), a Government Entity, provides research and development services for vaccine development.

- **Recipient of Service:**

  A private pharmaceutical company contracts DBT to conduct research for the development of a new vaccine. The pharmaceutical company provides a grant of ₹10 crore to fund the research.

Analysis:

- The supplier of service is a Government Entity (DBT).
- The recipient of service is the private pharmaceutical company.
- The consideration is in the form of a grant.

GST Outcome:

This transaction is exempt from GST under Entry No. 44A because:

- The supplier is a Government Entity.
- The payment is in the form of a grant.

Example 2: R&D Services Supplied by a Notified University

- **Supplier of Service:**

  The Indian Institute of Science (IISc), a university notified under Section 35(1)(ii) of the Income Tax Act, 1961, conducts research on renewable energy technology.

- **Recipient of Service:**

A renewable energy corporation provides a grant of ₹5 crore to IISc to carry out the research.

Analysis:

- The supplier of service is a notified university (IISc).
- The recipient of service is the renewable energy corporation.
- The consideration is in the form of a grant.

GST Outcome:

This transaction is exempt from GST under Entry No. 44A because:

- The supplier is a notified university.
- The payment is in the form of a grant.

Comparison of Supplier and Recipient Roles:

Supplier of Service	Recipient of Service	Consideration	GST Applicability
Government Entity (e.g., DBT)	Private company (e.g., Pharmaceutical firm)	₹10 crore (grant)	Exempt under Entry No. 44A
Notified University (e.g., IISc)	Renewable energy corporation	₹5 crore (grant)	Exempt under Entry No. 44A

Key Takeaway:

The supplier of service under Entry No. 44A is indeed a Government Entity or a notified institution (university, research association, etc.), while the recipient is the entity funding the research through grants.

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
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	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.
Advocates			
Senior Advocates			

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

This exemption has been omitted w.e.f. 18-07-2022

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 2025-26:

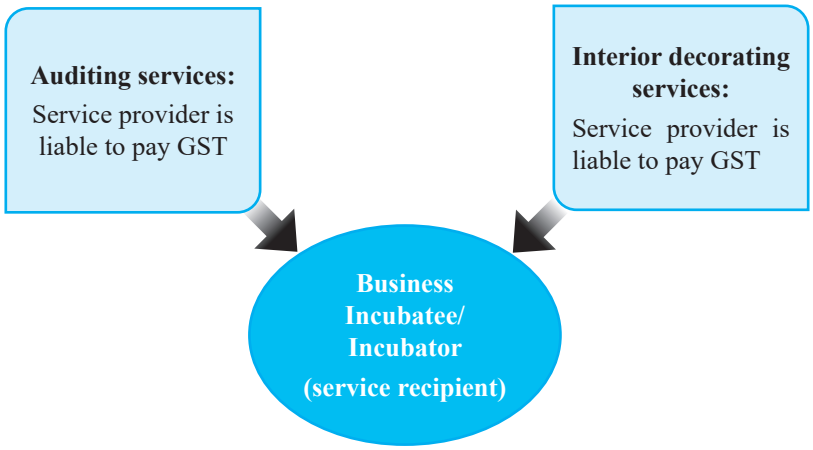
1. Entrepreneurship Awareness Camps to a Business incubatee for ₹20 lakh.
2. Commercial space provided to Infosys Ltd. a non-incubatee for ₹2 lakh.

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. This exemption has been omitted w.e.f. 18-07-2022.

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]:

S. No.	Nature of service Section 12(7) of IGST Act, 2017		Place of supply of service
1	Cultural	Services ancillary thereto or assigning of sponsorship to such events.	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.
2	Artistic		
3	Sporting		
4	Scientific		
5	Educational		
6	Entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events		

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 from GST. This exemption has been omitted w.e.f. 18-07-2022

Entry No. 54: Agriculture activities exempted from GST

The following are exempted:

- Cultivation, harvesting,
- Commission 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. However, w.e.f 18-7-2022 exemption is also not available to their storage & warehousing except cereals & pulses, fruits & vegetables).

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 May 2024:

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 May 2024. 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 March 2024:

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 March 2024:

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.
This exemption has been withdrawn w.e.f. 18-7-2022.

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.

(3) Slaughter house supplied slaughtering of goat's services to a hotel for ₹5,500.

It is exempted supply of service and GST will not 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.

(c) The given statement is invalid:

It is taxable supply of service w.e.f. 18-7-2022, and hence, GST will 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.

(iva) w.e.f. 01-03-2023 "For removal of doubts, it is clarified that any authority, board or body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions."

(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.

w.e.f. 01-03-2023 exemption available to educational institutions and central and state educational boards for conduct of entrance examination extended to any authority/board/body set up by the Central / State Government including National Testing Agency for conduct of entrance examination for admission to educational in educational institutions.

As per CBIC vide the Circular No. 177/09/2022-TRU dt. 03.08.2022:

The amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/ admission to the educational institution is exempt under entry no 66 of Notification No. 12/2017-CT(R) dt. 28.06.2017. Further, services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also exempt under Sl. No. 66 of Notification No. 12/2017-CT(R) dated 28.06.2017.

An Anganwadi, inter alia, provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution (as per-school) Serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or trough donation from corporates. (CBIC Circular No. 149/05/2021 GST dated 17-06-2021)

Clarification regarding taxability of various services by Central and State Boards such as National Board of Examination (NBE). Central and State Educational Boards are treated as educational institution for the limited purpose of providing services by way of conduct of examination, including entrance examination, to the students.

Supplier	Recipient	Nature of supply	Clarification
Central or State Boards (including the boards such as NBE)	Students	Examination including entrance examination	Exempt from GST

Supplier	Recipient	Clarification
Any person	Central or State Boards (including the boards such as NBE)	Admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and question papers etc when provided to such board exempt from GST.

Note: GST is applicable to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for Foreign Medical Graduate Examination screening test).

Free coaching services provided by coaching institutions under NGOs under the central scheme of "Scholarships for students with Disabilities" where total expenditure (now it is read as 75% or more of the total expenditure) is borne by the Government to coaching institutions by way of grant in aid is covered under 72 and hence is exempt from GST. (Circular No. 164/20/2021 GST dt. 06.10.2021)

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 × 9 months) × 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.

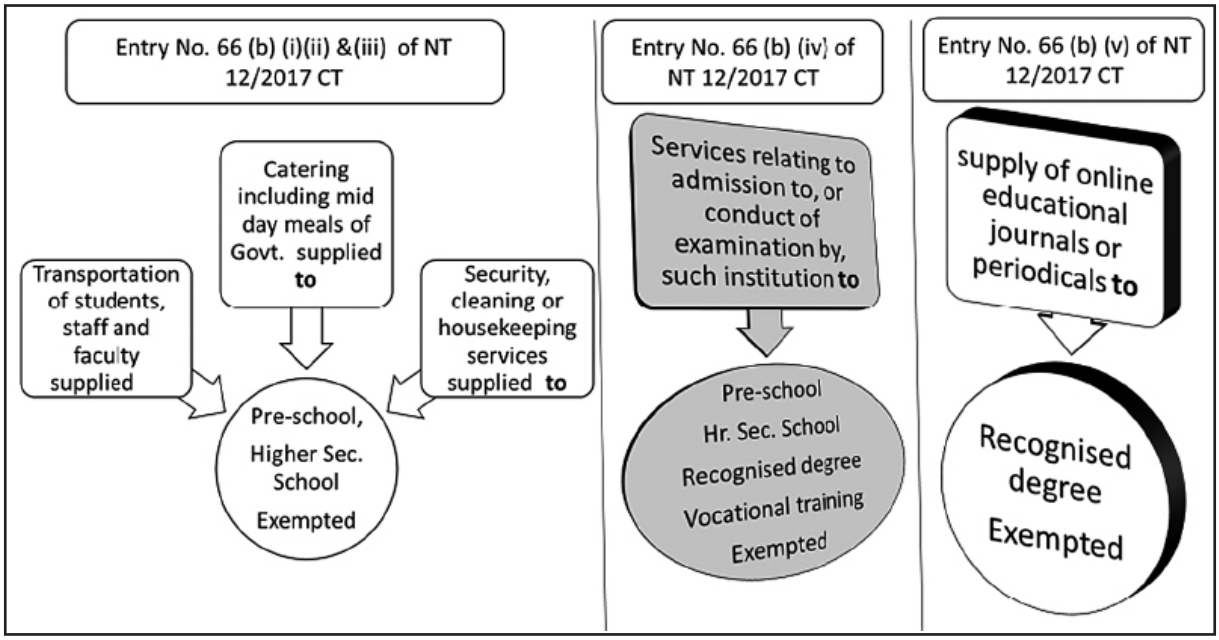
It is further clarified that in case of other than designated trades in private ITI's GST shall be payable on the service of conduct of examination against consideration by such institutions.

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.

Case Law:

SARASWATY PRESS LIMITED (20/WBAAR/2023-24 dated 13.09.2023):

Facts of the Case: The applicant is an entity engaged in the business of printing including question papers of educational institutions, which requires maintenance of secrecy, accuracy and timely delivery of the material. The applicant has been undertaking the job of printing of question papers for different Universities of various states and

charging GST on invoices raised for such services. All its clients are primarily Government Based- both Central and State Governments.

Whether the supply of service of printing question papers for the conduct of examinations to educational institutions, supplied by the applicant will be covered by Sr. No 66 of the N.No. 12/2017-CT (R) as amended, and Notificatin No. 12/2017-ST (R) as amended, and whether such supply of services shall be treated as exempt supply.

Decision: The supply of services of printing question papers for conduct of examinations to educational institutions, supplied by the applicant will be covered by Sl. No 66 of the Notification No. 12/2017-CT (R) as amended, and therefore shall be treated as exempt supply.

Entry No. 66A: w.e.f. 10-10-2024, Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity, exempt under GST [Notification No. 08/2024 C.T. dated 8th October 2024].

Affiliation services - The following services have been exempted from tax:

Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity.

Circular No. 234/28/2024-GST dt. 11/10/2024 clarifies that the affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions and GST at the rate of 18% is applicable on the affiliation services provided by the universities. Further, it clarifies that services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable. Further, as recommended by the Council, the payment of GST on the services of affiliation provided by Central and State educational boards or Councils, or other similar bodies, to all schools is regularized on an 'as is where is' basis for the period from 01.07.2017 to 17.06.2021.

Below is a detailed breakdown of the clarifications provided in the circular:

1. **GST on Affiliation Services by Universities to Colleges**

   Universities provide affiliation services to colleges to ensure they meet the necessary infrastructure, faculty strength, financial liquidity, and other criteria required for conducting courses. These services are not related to student admission or examination services.

   - **Clarification:** Affiliation services provided by universities to colleges are not exempt under Notification No. 12/2017-CT(R) dated June 28, 2017, and will attract an 18% GST rate.

2. **GST on Affiliation Services by Educational Boards to Schools**

   Educational boards and councils provide affiliation services to schools, ensuring that schools meet required standards.

   - **Clarification:** Affiliation services provided to schools by educational boards or councils are taxable. However, affiliation services provided to government schools (i.e., those controlled by the Central Government, State Government, or a local authority) are exempt from GST from October 10, 2024, as per Notification No. 08/2024-Central Tax (Rate).
   - **Past Regularization:** GST paid on affiliation services from July 1, 2017, to June 17, 2021, has been regularized on an "as is where is" basis. This period covers the time before Circular No. 151/07/2021 clarified the taxability of these services.

GST on DGCA-Approved Flying Training Courses (The CBIC issued Circular No. 234/28/2024-GST dated October 11, 2024)

Flying Training Organizations (FTOs) approved by the Directorate General of Civil Aviation (DGCA) conduct training courses for pilot licenses. The question arose regarding the GST applicability on such training courses.

- **Clarification:** DGCA-approved flying training courses conducted by FTOs fall under the exemption provided to educational institutions under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate), and are thus exempt from GST.

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:

w.e.f. 10-10-2024, Notification No. 08/2024 dated 08-10-2024 the following shall be substituted, namely:-

Any services provided by –

(a) the National Skill Development Corporation set up by the Government of India;

(b) the National Council for Vocational Education and Training;

(c) an Awarding Body recognized by the National Council for Vocational Education and Training;

(d) an Assessment Agency recognized by the National Council for Vocational Education and Training;

(e) a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training,

in relation to-

(i) the National Skill Development Programme or any other scheme 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 National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package

are exempt under GST.

Entry No. 70: Services of assessing bodies empaneled 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 empaneled 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 January 2024:

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 2025-26 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. This exemption has been Omitted w.e.f. 18-07-2022.

"Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation"

Entry No. 74: Health care services exempted from GST

Health Care Services

Services by way of—

(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;

w.e.f. 18-07-2022, "Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/ Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹5,000 per day to a person receiving health care services.";

(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

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.

W.e.f 18-07-2022, Services by way of—

(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST;

Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹5,000 per day to a person receiving health care services.;

Room rent (excluding ICU) exceeding ₹5,000 per day per patient charged by a hospital shall be taxed to the extent of amount charged for the room at 5% GST without ITC.

This means:

- No GST will be applicable if the room rent is <= ₹5,000
- Intensive Care Unit (ICU) rooms will be exempt from 5% GST

Circular No. 177/09/2022-TRU, dated 03.08.2022: Services in form of Assisted Reproductive Technology (ART)/In vitro fertilization (IVF) exempt from GST.Health care services provided by a clinical establishment, an authorized medical practitioner or paramedics are exempt under Sl. No. 74 of notification No. 12/2017-Central Tax (Rate), dated 28.06. 2017. It has been clarified that abnormality/disease/ailment of infertility is treated using ART procedure such as IVF and accordingly services by way of IVF are also covered under the definition of health care services for the purpose of exemption notification

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	24

(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	244
(xi)	CGST 9%	21.96
(xii)	SGST 9%	21.96

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. This exemption has been omitted w.e.f. 18-07-2022.

Illustration 142

Synergy Waste Management (P) Ltd. provided following services to Apollo Hospitals Chennai during the month of February 2024:

(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 to Arvind Pharma Company during February 2024 for ₹2,00,000.

Find the GST liability for the month of February 2024?

Solution:

Statement showing Service Tax liability of Synergy Waste Management (P) Ltd.

Particulars	Value in (₹)	Remarks
Collection, transportation, Treatment & Disposal of Bio-Medical Waste	5,25,000	Taxable supply of service w.e.f. 18-07-2022
Training on Segregation of Bio-Medical Waste	1,25,000	Taxable supply of service w.e.f. 18-07-2022
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	9,00,000	
GST 18%	1,62,000	

Illustration 143

Validate the following statement:

Hospital charging room rent per day per room is ₹5,200 on rooms provided to in-patients. It is exempted supply of service.

Solution:

The given statement is invalid. It is taxable supply of service".

w.e.f. 18-07-2022, services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹5,000 per day to a person receiving health care services are taxable under GST.

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.

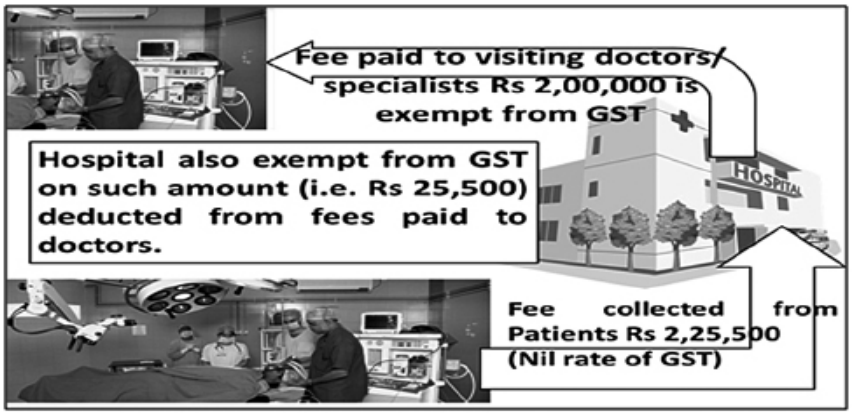
Find the following:

(a) Exempted supply if any.

(b) GST liability if any.

Applicable rate of GST 18%.

Solution:



w.e.f. 18-07-2022, services provided by a clinical establishment by way of providing room in Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] is exempt from GST irrespective of room rent per day.

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 Society for 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 (₹1,000/-) 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)

GST on Film Distribution Services [CBIC issued Circular No. 234/28/2024-GST dated October 11, 2024]:

Transactions between distributors and exhibitors involving the grant of theatrical rights have caused confusion over the applicable GST rate.

- **Clarification:** GST at 18% applies to transactions involving theatrical rights between distributors and exhibitors. GST paid between July 1, 2017, and September 30, 2021, is regularized on an "as is where is" basis.

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	

CBIC Circular No. 177/09/2022 TRU dt. 03.08.2022:

It has been clarified that services provided by the guest anchors invited by the TV channels for participating in their shows in lieu of honorarium, attracts GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed ₹20 lakhs (₹10 lakhs in case of special category states) shall not be liable to take registration and pay GST.

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).

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 (omitted w.e.f. 1st October 2023, vide Notification No. 12/2023- IT(R) dt. 26.09.2023).

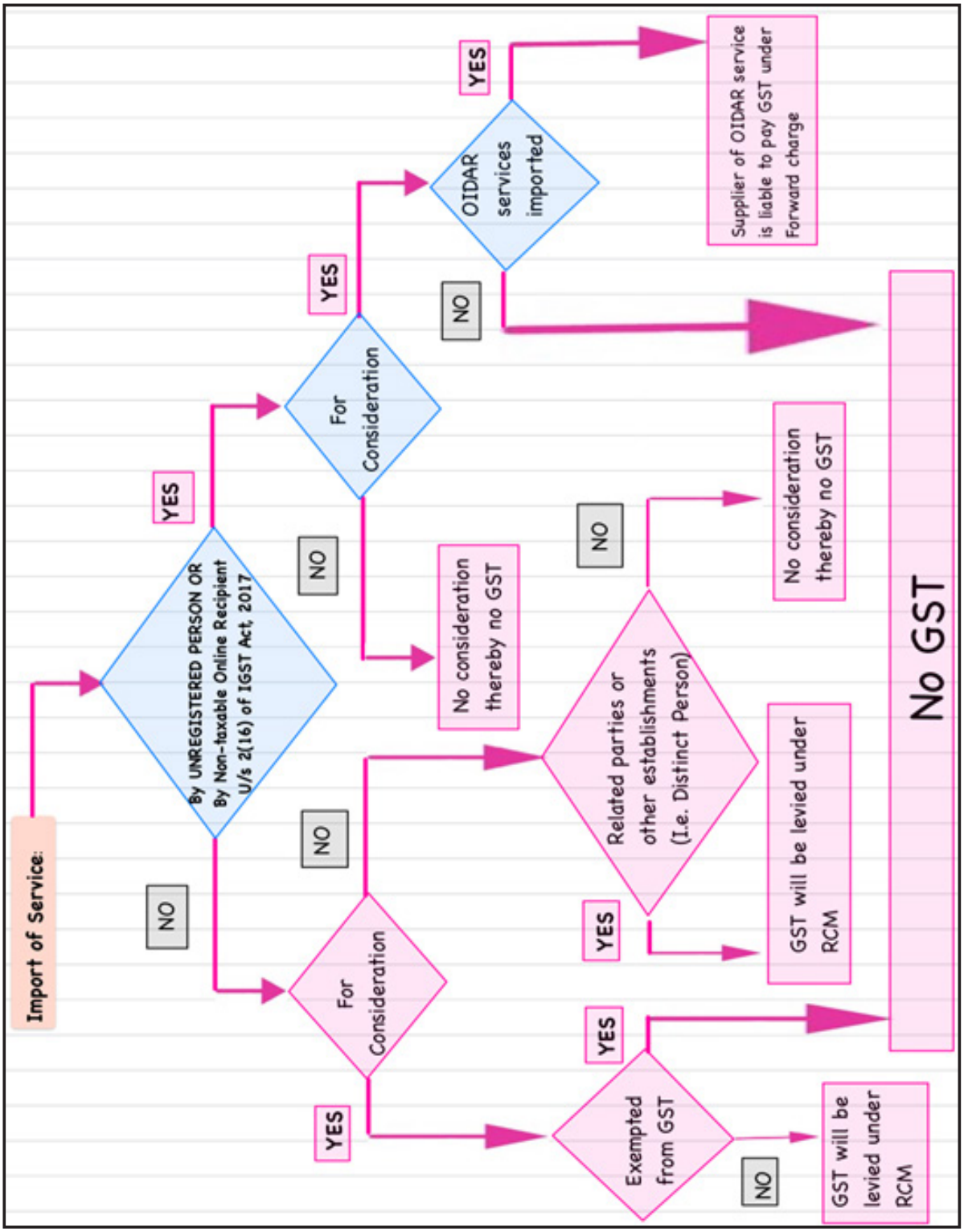
it means item no. (i) only taxable.

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:


Import of Service:
By UNREGISTERED PERSON OR By Non-taxable Online Recipient U/s 2(16) of IGST Act, 2017
YES
NO
For Consideration
YES
NO
OIDAR services imported
YES
NO
Supplier of OIDAR service is liable to pay GST under Forward charge
No consideration thereby no GST
For Consideration
YES
NO
Related parties or other establishments (I.e. Distinct Person)
YES
NO
GST will be levied under RCM
No consideration thereby no GST
Exempted from GST
YES
NO
GST will be levied under RCM
No GST

Or

No IGST on ocean freight in case of import of goods on CIF basis [vide Notification Nos. 11 & 13/2023- IT(R) dt. 26.09.2023]:

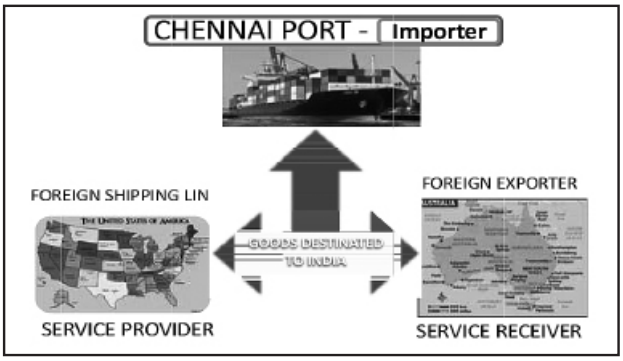
w.e.f. 1st October 2023, the exemption shall apply to—

(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.

The government has exempted payments made for goods imported through ocean freight from 5 per cent integrated GST with effect from October 1, 2023.

Case Law:

Hon'ble Gujarat High Court in case of Mohit Minerals (P.) Ltd. [2020 (33) GSTL 321 (Guj.)] held that no IGST under RCM is payable on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the Customs station of clearance in India and the levy and collection of tax of such ocean freight under GST is not permissible in law. Levy of IGST on such ocean freight declared to be un-constitutional.



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):

w.e.f. 18-07-2022, Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India is exempted from GST

Illustration 151

Service provided by Indian tour operator to a Sri Lankan for a tour conducted in Bhutan. Is it taxable supply?

Solution:

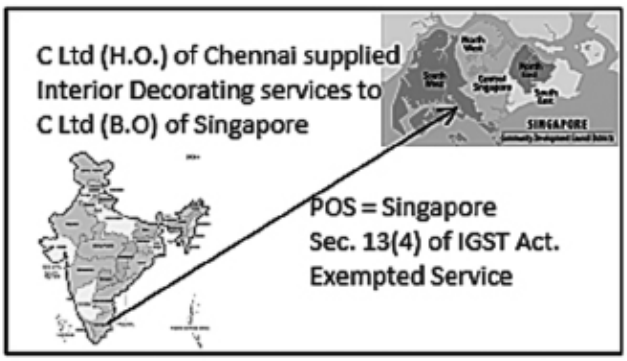
It is exempted supply of service and hence GST will not be levied.

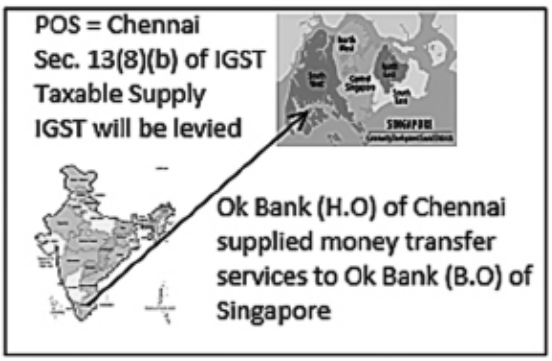
Place of supply = location of supplier of service (Sec. 13(8) of the IGST).

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.

Question:

As per the Customs Act, 1962, royalty and license fees are includible in the assessable value of goods. Whether GST is also payable on such royalty and license fees which is already included in the value of goods and IGST is already paid at the time of import?

Answer:

No. As per the notification no. 06/2018-Integrated tax dated 25th January, 2018, supply of services, imported into the territory of India covered by such temporary transfer or permitting the use or enjoyment of any intellectual property right are exempted from payment of integrated tax to the extent that royalties and license fees have been included in the transaction value as specified under rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on which the appropriate duties of Customs have been paid.

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%.

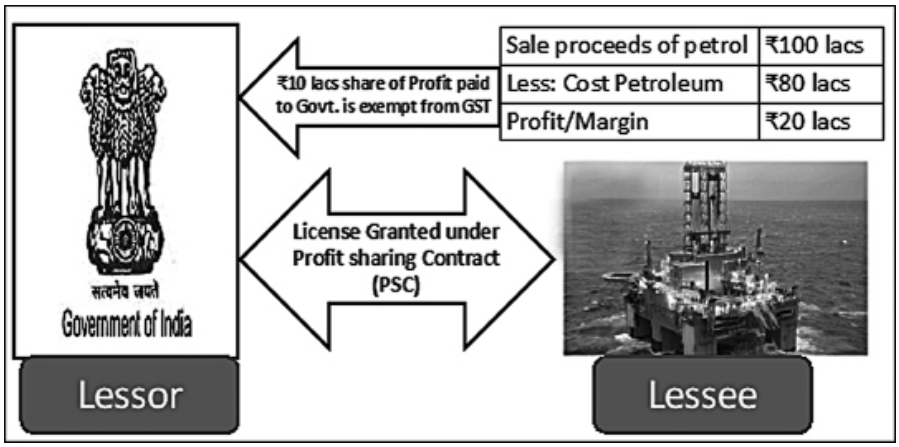
Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest Rupee.

Solution:

IGST payable as per IGST Act, 2017 is nil.

(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.

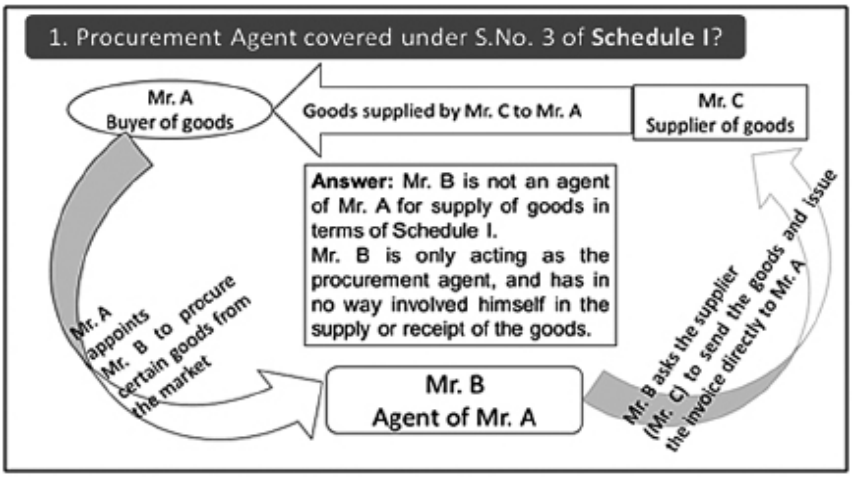
CBIC Circular No. 48/22/2018-GST, dated 14-6-2018:

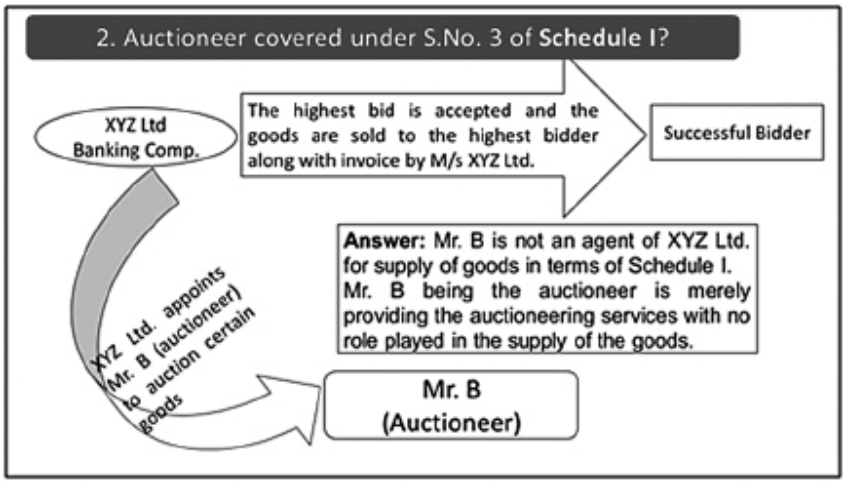
1. Services of short-term accommodation, conferencing, banqueting, etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.
2. If event management services, hotel, accommodation services, consumables, etc. are received by a SEZ developer or a SEZ unit for authorised 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)].

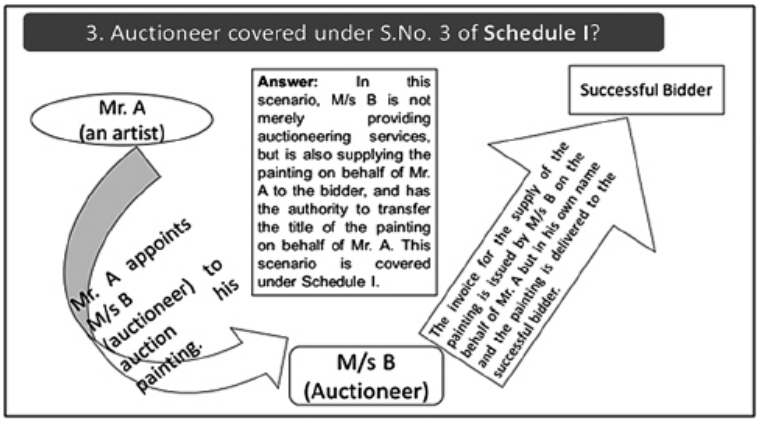
Important Circulars Covering Clarifications on Supply

1.4

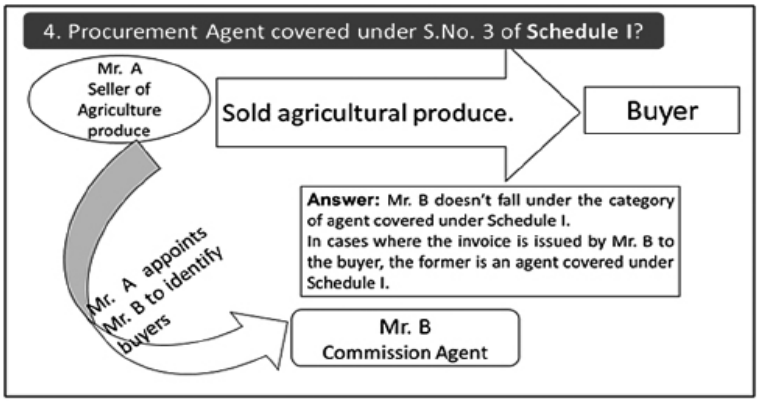
Circular No. 57/31/2018-GST, dated 4th September, 2018:
Scope of Principal-agent relationship in the context of Schedule I of the CGST Act, 2017
Simplified approach:





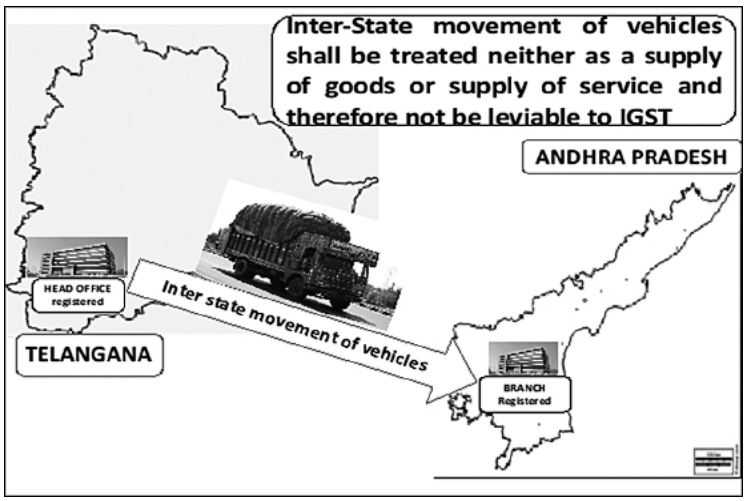


Note: A similar situation can exist in case of supply of goods as well where the C&F agent.



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):

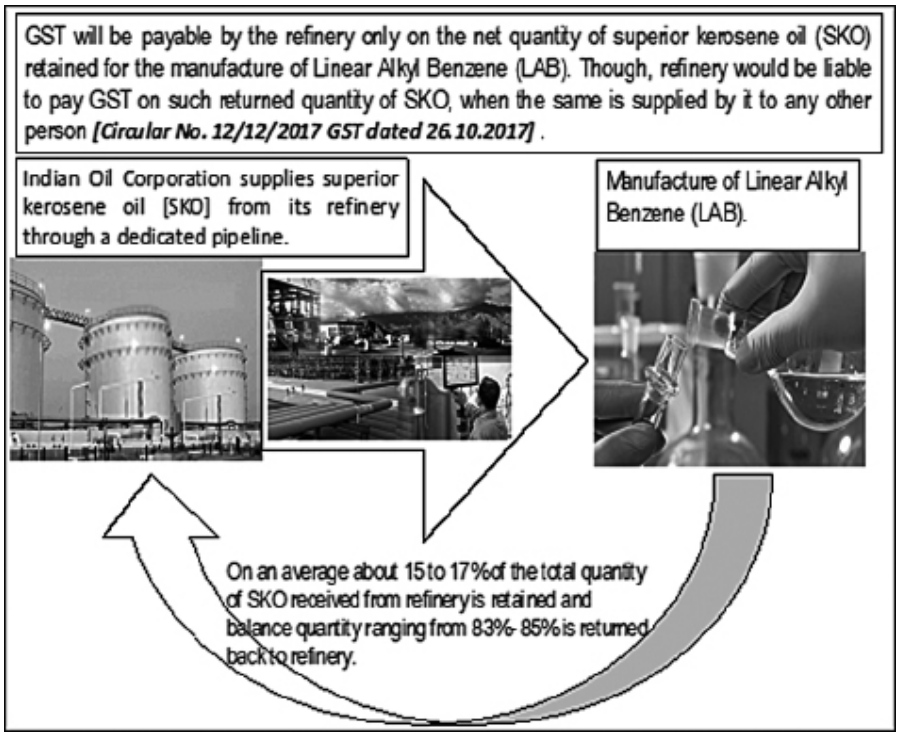


Note:

(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.

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.

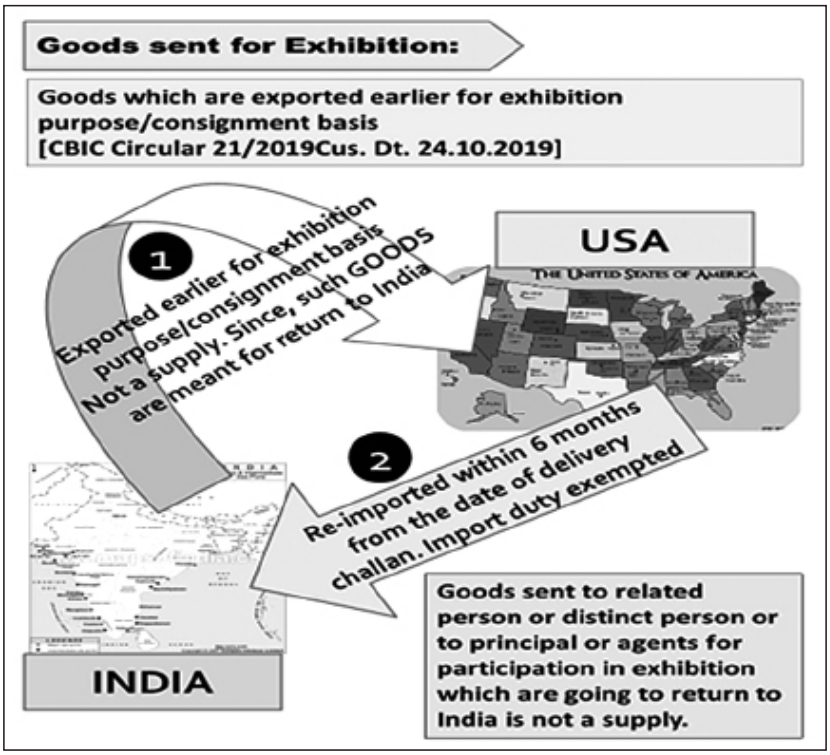
Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries

[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:

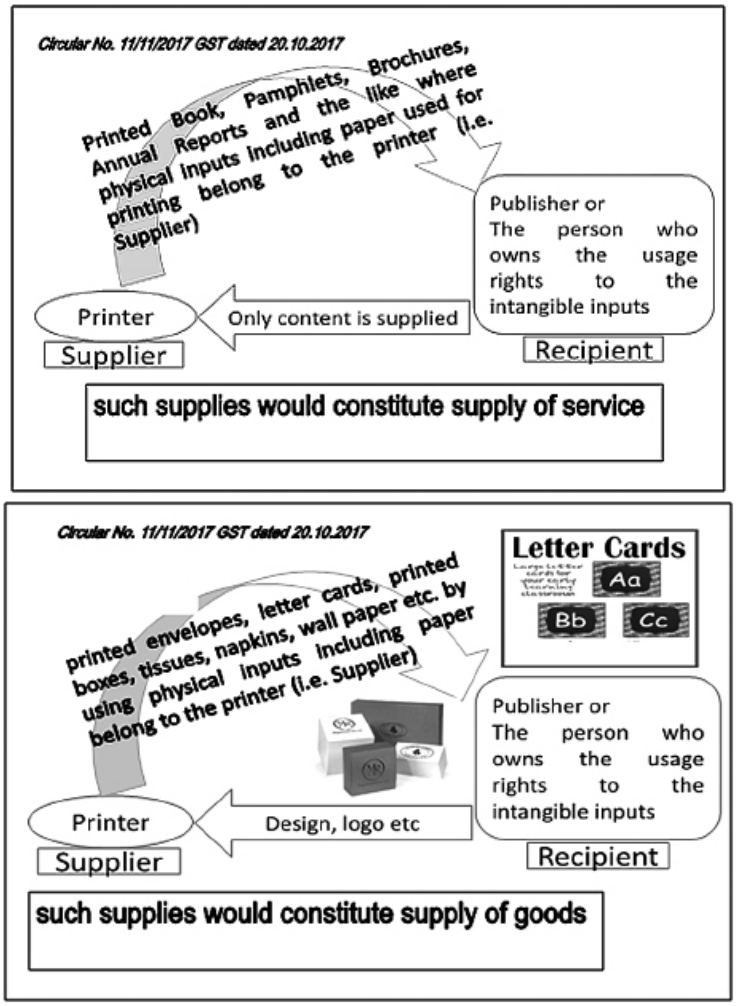


Illustration 153

"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.

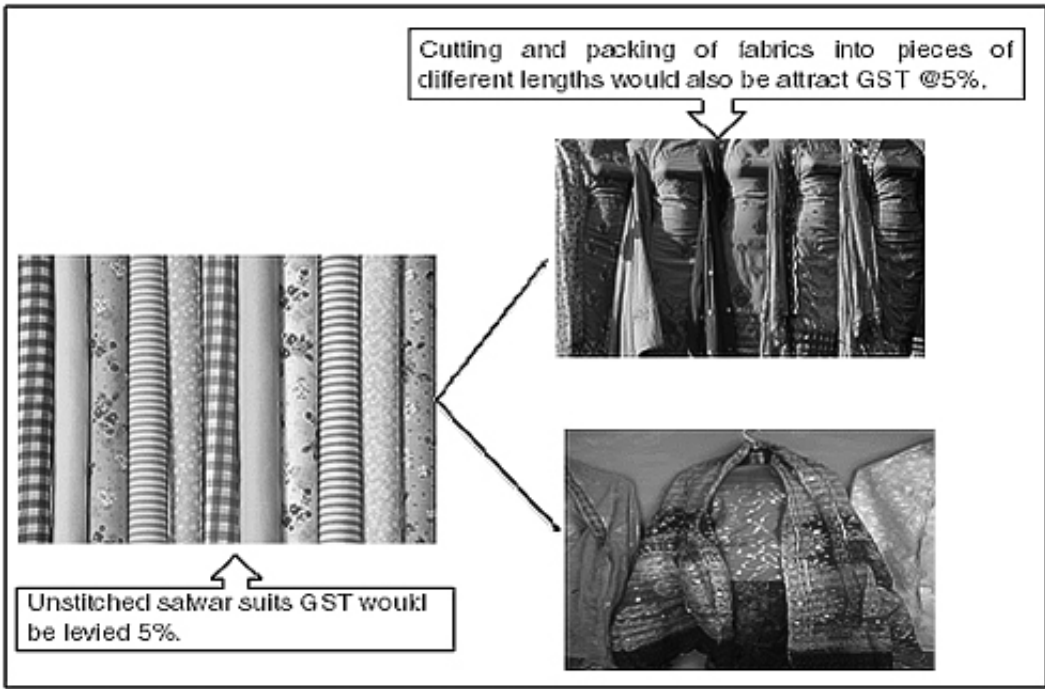
Ascertain whether supply of training material by the Devi Printing House constitutes supply of goods or supply of services.

Solution:

Devi Printing House made supply of service.

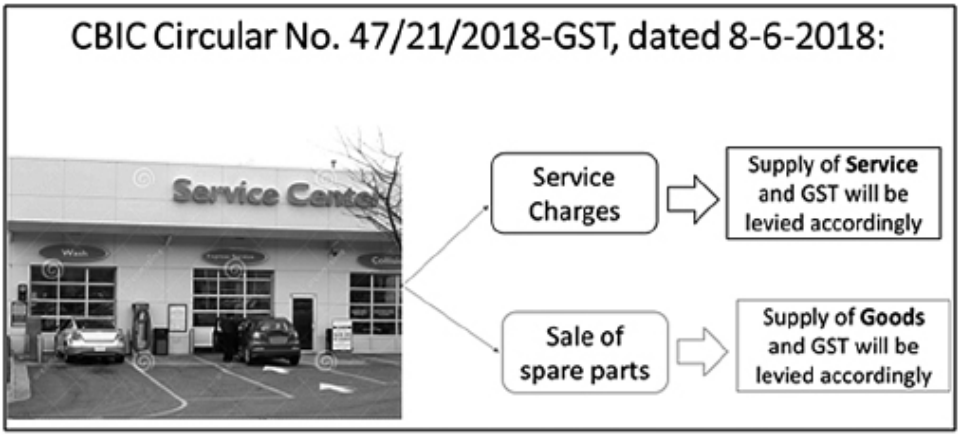
2. Clarification on Unstitched Salwar Suits:

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.

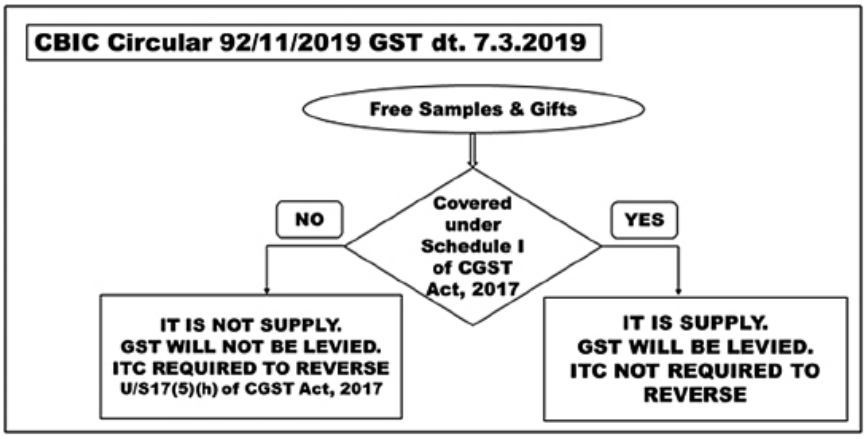


CBIC Circular No. 47/21/2018-GST, dated 8-6-2018:

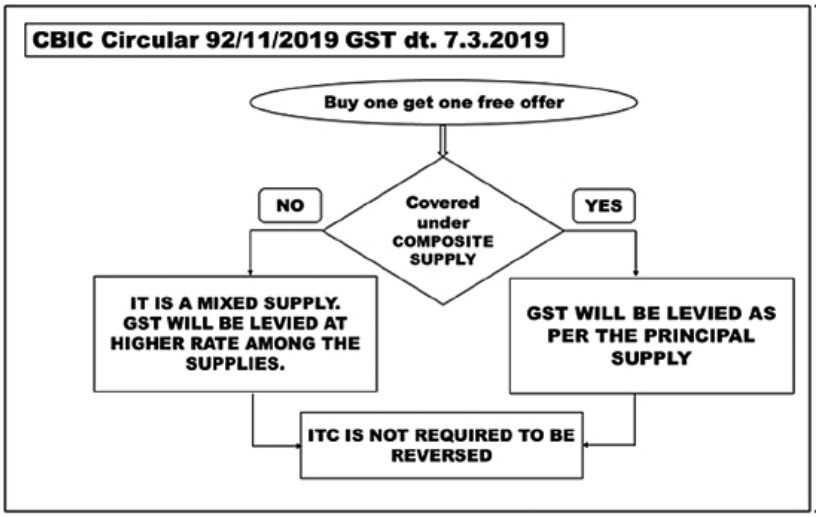
In case of servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.



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,

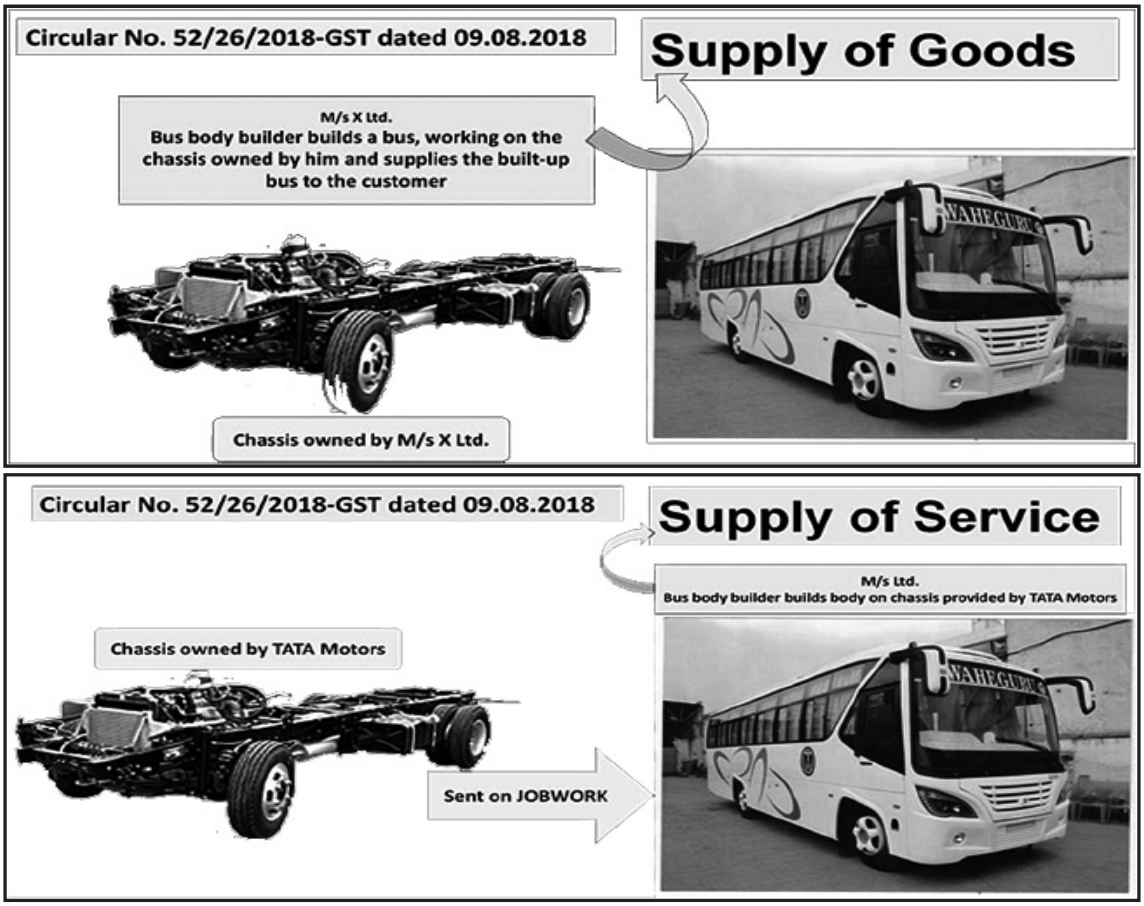
Thus, fabrication of buses may involve the following two situations:

(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.



Circular No. 177/09/2022-TRU, dated 3.7.2022, It has been clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes a composite supply of works contract. GST prior to 18.7.2022 is 12%. GST w.e.f. 18.7.2022 is 18%

Supply under GST-A Refresh

GST on 'pre-packaged and labelled' goods w.e.f. 18-07-2022:

For the purposes of GST, the expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in Clause (l) of section 2 of the Legal Metrology Act reads as below:

"pre-packaged commodity" means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity.

Thus, supply of such specified commodity having the following two attributes would attract GST:

(i) It is pre-packaged; and

(ii) It is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.

However, if such specified commodities are supplied in a package that do not require declaration(s)/compliance(s) under the Legal Metrology Act, 2009 (1 of 2010), and the rules made thereunder, the same would not be treated as pre-packaged and labelled for the purposes of GST levy.

For example, items like pulses, cereals like rice, wheat, and flour (aata), etc., earlier attracted GST at the rate of 5% when branded and packed in unit container. With effect from 18.7.2022, these items would attract GST when "pre-packaged and labelled". Additionally, certain other items such as Curd, Lassi, puffed rice etc. when "prepackaged and labelled" would attract GST at the rate of 5% with effect from the 18th July, 2022.

In the context of food items (such as pulses, cereals like rice, wheat, flour etc), the supply of specified pre-packaged food articles would fall within the purview of the definition of 'pre-packaged commodity' under the Legal Metrology Act, 2009, and the rules made thereunder, if such pre-packaged and labelled packages contained a quantity upto 25 kilogram [or 25 litre] in terms of rule 3(a) of Legal Metrology (Packaged Commodities) Rules, 2011, subject to other exclusions provided in the Act and the Rules made thereunder.

For such commodities (food items- pulses, cereals, flour, etc.), rule 3 (a) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011, prescribes that package of commodities containing quantity of more than 25 kg or 25 litre do not require a declaration to be made under rule 6 thereof. Accordingly, GST would apply on such specified goods where the pre-packaged commodity is supplied in packages containing quantity of less than or equal to 25 kilograms.

Example: Supply of pre-packed atta meant for retail sale to ultimate consumer of 25 Kg shall be liable to GST. However, supply of such a 30 Kg pack thereof shall be exempt from levy of GST. Thus, it is clarified that a single package of these items [cereals, pulses, flour etc.] containing a quantity of more than 25 Kg/25 litres would not fall in the category of pre- packaged and labelled commodity for the purposes of GST and would therefore not attract GST.

Question:

Whether GST would apply to a package that contains multiple retail packages. For example, a package containing 10 retail packs of flour of 10 Kg each?

Answer:

Yes, if several packages intended for retail sale to ultimate consumer, say 10 packages of 10 Kg each, are sold in a larger pack, then GST would apply to such supply. Such package may be sold by a manufacturer through

distributor. These individual packs of 10 Kg each are meant for eventual sale to retail consumer. However, a package of say rice containing 50 Kg (in one individual package) would not be considered a pre-packaged and labelled commodity for the purposes of GST levy, even if rule 24 of Legal Metrology (Packaged Commodities) Rules, 2011, mandates certain declarations to be made on such wholesale package.

Question:

Whether tax is payable if such goods are purchased in packages of up to 25 kg/25liters by a retailer, but the retailer sells it in loose quantities in his shop for any reason?

Answer:

GST applies when such goods are sold in pre-packaged and labelled packs. Therefore, GST would apply when prepackaged and labelled package is sold by a distributor/ manufacturer to such retailer. However, if for any reason, retailer supplies the item in loose quantity from such package, such supply by retailer is not a supply of packaged commodity for the purpose of GST levy.

Question:

Whether tax is payable if such packaged commodities are supplied for consumption by industrial consumers or institutional consumers?

Answer:

Supply of packaged commodity for consumption by industrial consumer or institutional consumer is excluded from the purview of the Legal Metrology Act by virtue of rule 3 (c) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, if supplied in such manner as to attract exclusion provided under the said rule 3(c), it will not be considered as pre-packaged and labelled for the purposes of GST levy.

Example:

Pluses/rice is supplied to an industrial consumers or institutional consumers, tax at the rate of 5% will not be charged on same.

As per Legal Metrology Act: "industrial consumer" means the consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer for use by that industry and the package shall have declaration 'not for retail sale';

"institutional consumer" means the institution which buys packaged commodities bearing a declaration 'not for retail sale', directly from the manufacturer or from an importer or from wholesale dealer for use by that institution and not for commercial or trade purposes;'

Hence, exemption w.r.t sale made to industrial consumer shall be available only if: It is a prepackaged commodity Bought directly from manufacturer or from an importer or from wholesale dealer Package shall have a declaration – not for retail sale Vic-a-vic exemption w.r.t sale made to institutional consumer shall be available only if: It is a packaged commodity Package shall have a declaration – not for retail sale Bought directly from manufacturer or from an importer or from wholesale dealer used by that institution and not for commercial or trade purposes;

Question:

'X' is a rice miller who sells packages containing 20 kg rice but not making the required declaration under legal metrology Act and the Rules made thereunder (although the said Act and the rules requires him/her to make a declaration), would it still be considered as pre-packaged and labelled and therefore be liable to GST?

Answer:

Yes, such packages would be considered as pre-packaged and labelled commodity for the purposes of GST as it requires making a declaration under the Legal Metrology (Packaged Commodities) Rules, 2011 (rule 6 thereof). Hence, miller 'X' would be required to pay GST on supply of such package(s).

CBIC Circular No.206/18/2023-GST dt. 31st October 2023:

Question:

Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants?

Answer:

As per CBIC Circular No.206/18/2023-GST dt. 31st October 2023, It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premises, as the case may be, and the supply of electricity is an ancillary supply as the case may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

Whether supply of food or beverages in cinema hall is taxable as restaurant service:-

As per CBIC Circular No. 201/13/2023-GST dt. 1st August 2023,

- Supply of food or beverages in a cinema hall is taxable as „restaurant service" as long as:
  - the food or beverages are supplied by way of or as part of a service, and
  - supplied independent of the cinema exhibition service.
- It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

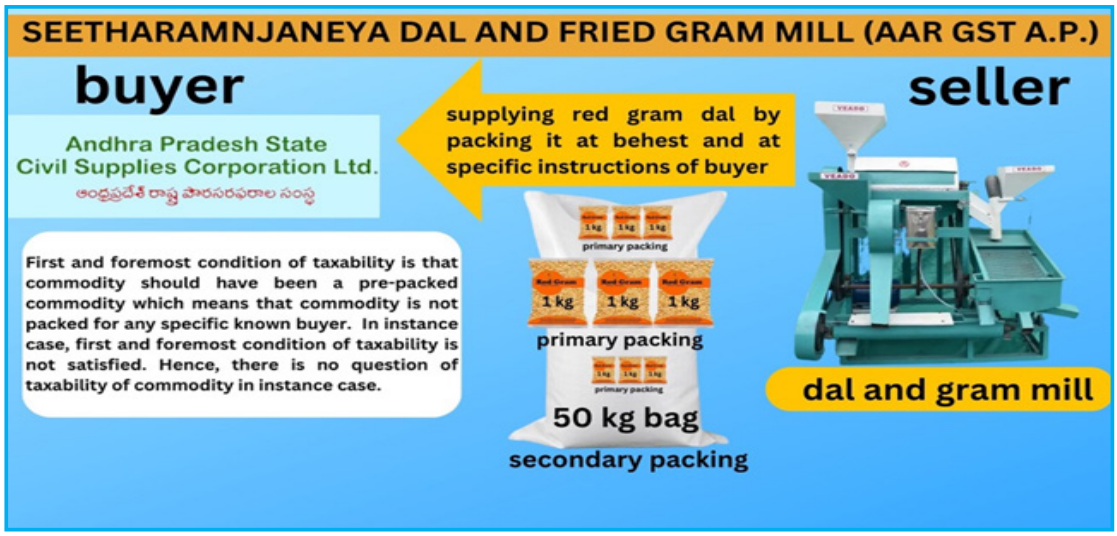
Case Law: TAMAL KUNDU (21/WBAAR/2023-24 dated 13.09.2023)

Facts of the Case: the applicant is engaged in the manufacturer of rice. It is submitted by the applicant that fragments of the whole round rice grain are generated in the rice milling process which is commonly known as broken rice.

Whether sale of unbranded /non packaged Broken Rice generated from manufacturing process will be charged to Tax @5%".

Decision: Tax is not payable by the applicant on supply of "broken rice" if the same is supplied as "other than pre-packaged and labeled" as specified in Notification No. 07/2022-Central Tax (Rate) dated 13.07.2022.

Case Law:



Circular No. 164/20/2021-GST, dated 06.10.2021 has clarified that ice-cream parlours do not have the character of restaurants as they sell already manufactured ice-creams. Hence ice cream sold by such parlours or outlets attracts GST @ 18% with ITC (and not 5% without ITC).

A per CBIC Circular No. 177/09/2022-TRU, dated 03.08.2022, the activity of selling of space for advertisement in souvenirs published in the form of books by different institutions/organizations like educational institutions, social, cultural and religious organizations including clubs etc., is eligible for concessional rate of 5%.

Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service.

It has been clarified that renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption under Sl. No. 18 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 (i.e. transport of goods by road). On such rental services of goods carriages where the cost of fuel is in included in the consideration charged from the recipient of service, GST rate has been reduced from 18% to 12% with effect from 18.07.2022. Prior to 18.07.2022, it attracted GST at the rate of 18%.

Circular No. 177/09/2022-TRU, dated 3.7.2022, It has been clarified that a contract of the nature described here for construction, installation and commissioning of a dairy plant constitutes a composite supply of works contract. GST prior to 18.7.2022 is 12%. GST w.e.f. 18.7.2022 is 18%

Packages exceeding 25 kg or 25 litre:

Notification No.03/2024-Integrated Tax (Rate), Dated 12th July, 2024, has clarifies that supply of agricultural farm produce in package(s) of commodities containing quantity of more than 25 kilogram or 25 litre shall not be considered as a supply made within the scope of expression 'pre-packaged and labelled'. This Notification Effective from 15th July 2024.

Example: Supply of Agricultural Farm Produce Exceeding 25 kg or 25 Litre

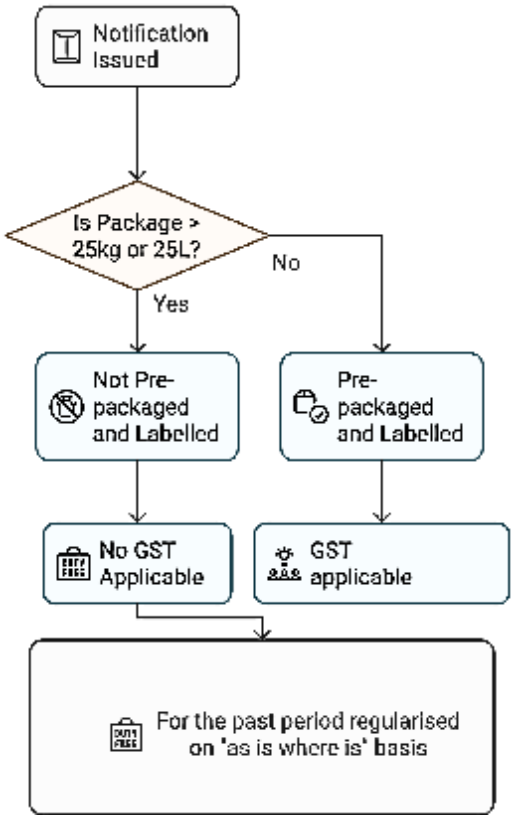
Scenario:

M/s Fresh Harvest Supplies, a supplier of agricultural farm produce, deals in wheat and mustard oil. The company wants to determine whether GST applies to certain supplies of their products after the notification.

Case 1: Wheat in 50 kg Bags

1. **Details:**
   - Product: Wheat
   - Packaging: 50 kg bags
   - Nature: Pre-packaged and labelled bags.
2. **Analysis:**
   - As per Notification No. 03/2024, agricultural produce supplied in packages containing more than 25 kg does not fall under the category of 'pre-packaged and labelled' for GST applicability.
3. **GST Impact:**
   - Since the bag contains 50 kg, which is more than 25 kg, the supply is not treated as pre-packaged and labelled.
   - Result: No GST is applicable on this supply.

Further, on the basis of the recommendation of the GST Council, in view of the prevailing genuine doubts, the issues for the past period are hereby regularized on "as is where is" basis (CBIC Circular No. 229/23 /2024-GST Dt. 15th July 2024).



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 ("and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption" shall be inserted **w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024),** on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendation of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.	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 ("and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption" shall be inserted **w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024),** on the value determined under section 15 of the CGST Act, and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendation of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. 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

CGST Act, 2017		IGST Act, 2017
Sl. No.	**Category of supply of goods and services**	**Recipient of goods and services**
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
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.

Sl. No.	Description of supply of goods	Supplier of goods	Recipient of Goods
3A	Following essential oils other than those of citrus fruit namely: a) Of peppermint (Mentha piperita); b) Of other mints: Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha ylvestries), Bergament oil (ex-mentha citrate).	Any un-registered person	Any registered person, recipient 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.
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 W.e.f. 20th October 2023, GST on supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Ministry of Railways (Indian Railways) is made payable under forward charge mechanism. [Notification No 19/2023-CGST(R) dt 19.10.2023 & 22/2023-IGST(R) dt 19.10.2023]	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

Sl. No.	Description of supply of goods	Supplier of goods	Recipient of Goods
9.	w.e.f. 10-10-2024, (vide Notification No. 06/2024 C.T. dated 8th October 2024) Supply of metal scrap	Un-registered person	Registered person

w.e.f. 10-10-2024. reverse charge mechanism will be applied to the supply of metal scrap from unregistered to registered persons. Suppliers must register once they surpass the threshold limit, while recipients will be responsible for paying tax under RCM.

Note: Additionally, a TDS of 2% will be imposed on the supply of metal scrap in B2B transactions.

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
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

Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
5	Services supplied by the Central Government, State Government, Union territory, the Parliament and State Legislatures (w.e.f. 01.03.2023 shall also apply to the Courts and Tribunal) or local authority to a business entity excluding:— (1) 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 (2) Services specified below: — (i) Services by the Department of Posts (w.e.f. 20th October 2023, "and the Ministry of Railways (Indian Railways)" inserted) (omitted w.e.f. 18-07-2022 by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Govern-ment 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, Parliament and State Legislatures, (w.e.f. 01.03. 2023 Courts and Tribunal) or local authority	Any business entity located in the taxable territory.	Recipient
5A	Services supplied by the Central Government [w.e.f. 20th October 2023, excluding the Ministry of Railways (Indian Railways)]", 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, Parliament and State Legislatures, (w.e.f. 01.03.2023 Courts and Tribunal) or local authority	Any person registered under the Central Goods and Services Tax Act, 2017."	Recipient.
5AA	Service by way of renting of residential dwelling to a registered person	Any person	Any registered person	recipient

Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
5AB	W.e.f 10th October' 2024, GST under RCM shall be payable if the supplies of renting of any immovable property other than residential dwelling is received from an un-registered person (Supplier) by any registered person (Recipient).	Un-registered person	Any registered person	recipient
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 relating to musical or artistic works to a publisher, music company, producer or the like	music composer, photographer, artist, or the like	music company, producer or the like, located in the taxable territory	Recipient

Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
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 S G S T commissioner, 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 accordance 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 II on the invoice issued by him in the Form GST Inv-I to the publisher.	Recipient
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:				

Sl. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
10	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient. w.e.f. 1st October 2023, Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017 Non-taxable online recipient: means any unregistered person receiving online information and database access or retrieval services located in taxable territory. Explanation: for the purposes of this clause, the expression "unregistered person" includes a person registered soley in terms of clause (vi) of section 24 of CGST Act, 2017. (Section 24(vi) of CGST Act, 2017 Persons who are required to deduct tax under section 51 (TDS), whether or not separately registered under this Act).	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.	Recipient
11	**omitted w.e.f. 1st October 2023:** 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. The government has exempted payments made for goods imported through ocean freight from 5 per cent integrated GST with effect from October 1, 2023.	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.	Importer
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]:				

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.	

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service	Comment
(1)	(2)	(3)	(4)	(5)
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
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

In the 49th GST Council Meeting it has been decided to extend the dispensation available to Central Government, State Governments, Parliament and State Legislatures with regard to payment of GST under reverse charge mechanism (RCM) to the Courts and Tribunals also in respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers etc (Notification No. 02/2023 CT(R) dt. 28.02.2023).

Section 9(1) of CGST Act, 2017, Supplier of goods or services or both is liable to pay GST in case of forward charge.

Section 2(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

New proviso added to Section 2(105) w.e.f. 1st October 2023:

Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.

Summary:

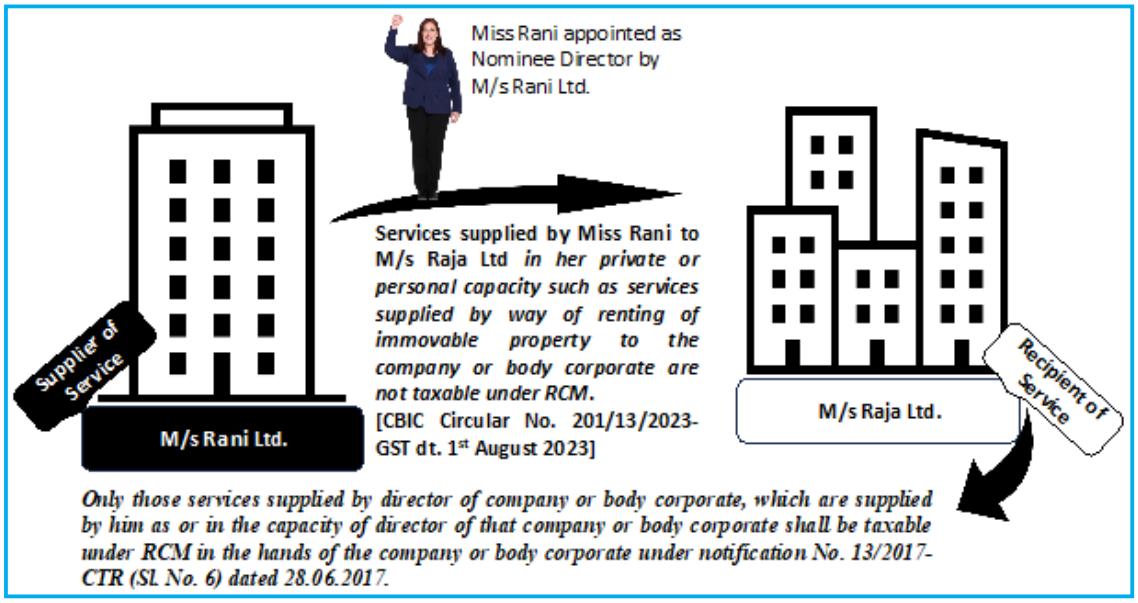
To provide that a person who organizes or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims.

W.e.f. 1st October 2023, Section 2(117A)"virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.

Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism (RCM):

As per CBIC Circular No. 201/13/2023-GST dt. 1st August 2023,

- Entry No. 6 of notification No. 13/2017 CT(R) dt 28.06.2017 provides that tax on services supplied by director of a company or a body corporate to the said company or the body corporate shall be paid by the company or the body corporate under RCM.
- In this regard it is clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM.
- Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.



Online information and database access retrieval service (OIDAR)

On September 26, 2023, the Indian government released a circular to end GST exemption enjoyed by overseas online information and database access retrieval service (OIDAR) providers. This change, which comes into effect from October 1, 2023, means that companies such as Facebook, Google, and various edtech platforms will face an integrated GST (IGST) of up to 18 percent on their services provided to both individuals and the government.

Until this recent change, OIDAR services provided by overseas companies to the Indian central government, state governments, government authorities, or individuals for non-business purposes were exempt from taxation.

w.e.f. 1st October 2023, Section 2(17) of IGST Act, 2017 "online information and database access or retrieval 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 impossible to ensure in the absence of information technology and includes electronic services such as,—

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii)w.e.f. 1st October 2023, online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017.);

w.e.f. 1st October 2023, Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017 Non-taxable online recipient: means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation: for the purposes of this clause, the expression "unregistered person" includes a person registered soley in terms of clause (vi) of section 24 of CGST Act, 2017.

Transportation of goods by a vessel from a place outside India up to the customs station of clearance in India:

The government has exempted payments made for goods imported through ocean freight from 5 per cent integrated GST with effect from October 1, 2023.

The Supreme Court in the case of Union of India & Anr. v. M/s Mohit Minerals Pvt. Ltd. Civil Appeal No. 1390 of 2022 dated May 19, 2022 has held that levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under section 2(30) read with section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of section 8 of the CGST Act.

In line with the said judgment, w.e.f 1st October, 2023, following amendments have been made in the IGST notifications to provide that IGST will not be leviable on ocean freight under reverse charge on CIF contracts of import of goods by the Indian importers.

Refund: Taxpayers who have paid GST on 'Ocean Freight' on imported goods will be entitled to claim refunds, following the Supreme Court verdict, provided they have not claimed input tax credit. It means "Indian importers (who had paid GST under RCM on Ocean Freight) should evaluate the possibility of filing refund claims for claiming the said amounts (to the extent not utilized as input credit).

"Further, importers who had not paid the tax on import of such Ocean Freight services would no longer be required to pay GST on such services in view of the said judgement.

Time period to claim refund: The Hon'ble High Court, Gujarat in M/S Comsol Energy Private Limited v. State of Gujarat [R/Special Civil Application No. 11905 of 2020 decided on December 21, 2020] allowed the refund claim of Integrated Goods and Service Tax ("IGST") paid on ocean freight under the reverse charge mechanism ("RCM") beyond the statutory time limit prescribed under Section 54 of the Central Good and Service Tax Act, 2017 ("the CGST Act"). Held that, the amount collected without authority of law cannot be considered as tax collected and therefore, Section 54 of the CGST Act shall not be applicable. Further, noted that the refund claim was within the time limit prescribed under the Limitation Act, 1963 ("the Limitation Act").

The Hon'ble High Court, Gujarat has decided as under:

1. Observed that, Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. Since the amount of IGST collected by the Central Government is without authority of law, the Respondent is obliged to refund the amount erroneously collected.
2. Further observed that, Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act. The amount collected by the Respondent without authority of law is not considered as tax collected by them and therefore, Section 54 of the CGST Act is not applicable.
3. Noted that, Section 17(1) of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Respondent under the mistake of law.
4. Set aside Impugned Deficiency Memo and directed the Respondent to process the refund claim along with simple interest at the rate of 6% per annum at the earliest.

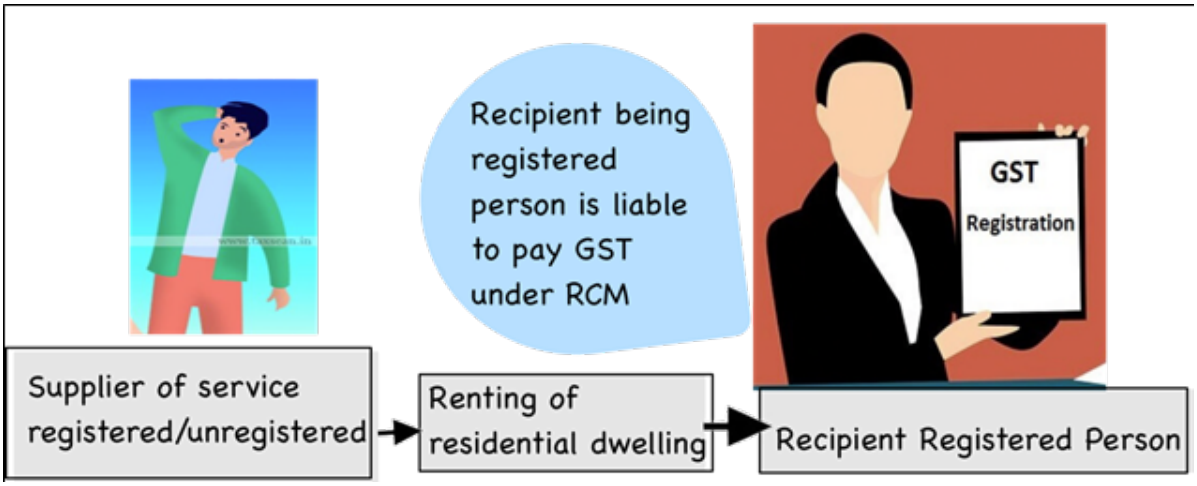
Renting of Motor Vehicle designed to carry passengers:

Question: When services are provided by a non-body corporate to a body corporate by way of renting of any motor vehicle for transport of passengers, whether RCM is applicable on service of transportation of passengers (Heading 9964) or on renting of motor vehicle designed to carry passengers (Heading 9966)?

Answer: As per CBIC Circular No. 177/09/2022 TRU dt 03.08.2022, It has been clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply on act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

W.e.f. 18-07-2022, Service by way of renting of residential dwelling to a registered person:



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 shall be paid by e-commerce operator even though e-commerce operator is not the actual supplier of service. E-commerce is liable to comply with GST provisions as if he is a 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 otherwise.

List of services notified under section 9(5):

1. **Passenger Transport Service:** Services by way of transportation of passengers by a radio-taxi, motorcab, maxi cab 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).

   W.e.f. 20th October 2023, Notification No. 17/2017-CT(R) dt. 28.06.2017 has been amended to provide that GST in case of services by way of transportation of passengers provided through Omnibus shall be paid by the ECO except where the supplier supplying such service through the ECO is a Company.

   Further, 'Company' shall have the same meaning as assigned to it in section 2(20) of the Companies Act, 2013 (vide Notification No. 16/2023-CT(R) dt. 19.10.2023)

   It means, w.e.f. 20th October 2023, in case of Services by way of transportation of passenger by Omnibus, the tax on such supplies of which shall be paid by the E-commerce operator, only where the person supplying such service through E-Commerce Operator is not a Company.

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 collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present
2	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.

Sl. No.	Issue	Clarification
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 continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.
9	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
11	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc. in the GST return.	A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B. The ECO may, on services notified under section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being. Besides, ECO may also, for the time being, furnish the details of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

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.

CBIC issued **Circular No. 213/07/2024-GST**, dated 26th June 2024 providing critical clarifications regarding the taxability of Employee Stock Option Plans (ESOP), Employee Stock Purchase Plans (ESPP), and Restricted Stock Units (RSU) provided by companies to their employees through their overseas holding companies.

Nature of ESOP/ESPP/RSU Transactions

1. **Purpose:**
   - ESOPs, ESPPs, or RSUs are issued to incentivize employees as part of their compensation package.
2. **Mechanics of Transactions:**
   - The domestic subsidiary provides employees the option/facility of ESOP/ESPP/RSU as compensation.
   - Employees can:
     - Purchase shares at the grant price, or
     - Hold the options until they vest.
   - The foreign holding company:
     - Issues the ESOP/ESPP/RSU to employees of the domestic subsidiary.
     - Transfers the shares directly to the employees.
   - The domestic subsidiary reimburses the cost of shares to the foreign holding company on a cost-to-cost basis, through:
     - Actual remittance, or
     - Equity transfer.

GST Applicability

1. Securities Are Neither Goods Nor Services:
   - Under GST law, securities (shares) are not considered goods or services.
   - Transactions involving the purchase or sale of shares do not attract GST.
2. Employee Compensation:
   - ESOP/ESPP/RSU are part of the remuneration paid to employees.
   - As per Entry 1 of Schedule III of the CGST Act, services by employees to employers in the course of employment are not subject to GST.
3. Reimbursement of Costs:
   - When the domestic subsidiary reimburses the foreign holding company on a cost-to-cost basis (no markup, fee, or commission):
     - This reimbursement is not considered an import of services.
     - GST is not applicable.
4. Additional Fees, Markups, or Commissions:
   - If the foreign holding company charges any additional fee, markup, or commission:
     - This is treated as consideration for the supply of services.
     - The domestic subsidiary must pay GST on these amounts on a reverse charge basis.

Conclusion

- **Non-Taxable:**
  - The mere transfer of securities/shares from a foreign holding company to employees of the domestic subsidiary, with reimbursement on a cost-to-cost basis, is not subject to GST.
- **Taxable:**
  - Any additional charges (markup, fees, commission) attract GST, payable by the domestic subsidiary under the reverse charge mechanism.

Example: ESOP/ESPP/RSU Transactions and GST Applicability

Scenario

1. **Entities Involved:**
   - Foreign Holding Company: XYZ Inc., located in the USA.
   - Domestic Subsidiary: XYZ India Pvt. Ltd., registered in India under GST.
   - Employee: Mr. A, working for XYZ India Pvt. Ltd.
2. **ESOP/RSU Issuance:**
   - XYZ Inc. grants Mr. A 1,000 shares under an ESOP plan as part of his compensation package.
   - Mr. A exercises his option after two years by purchasing the shares at a grant price of ₹100/share.
3. **Cost Reimbursement:**
   - The market value of the shares at the time of exercise is ₹200/share.
   - XYZ India Pvt. Ltd. reimburses XYZ Inc. ₹1,00,000 (1,000 shares × ₹100 grant price) on a cost-to-cost basis.

GST Applicability Analysis

1. **Transfer of Shares:**
   - XYZ Inc. transfers the shares directly to Mr. A.
   - GST Treatment: As per GST law, securities are neither goods nor services, so no GST is applicable on the transfer of shares.
2. **Reimbursement Without Markup:**
   - XYZ India Pvt. Ltd. reimburses ₹1,00,000 to XYZ Inc. on a cost-to-cost basis without any markup, fee, or commission.
   - GST Treatment: This reimbursement is not considered an import of services, so no GST is applicable.
3. **Additional Charges (Hypothetical):**
   - If XYZ Inc. charged an administrative fee of ₹10,000 along with the ₹1,00,000 reimbursement:
   - The ₹10,000 fee would be treated as consideration for a supply of services.
   - XYZ India Pvt. Ltd. would need to pay GST on ₹10,000 under the reverse charge mechanism.

Conclusion

- For the cost-to-cost reimbursement of ₹1,00,000, no GST is applicable.
- For the additional fee of ₹10,000 (if charged), GST would be payable by XYZ India Pvt. Ltd. under the reverse charge mechanism.

Circular No. 236/30/2024-GST dated 11th October, 2024:

Key Points: Clarification on "As Is / As Is, Where Is Basis" in GST Circulars

1. **Context:** Confusion among trade and field officers regarding the scope of "as is" or "as is, where is basis" in GST Circulars addressing rates and classifications of goods/services based on GST Council recommendations.
2. **GST Council Recommendation:** In its 54th Meeting (9th September 2024), the GST Council advised issuing clarifications on regularization intent. Circular issued under Section 168 of CGST Act, 2017.
3. **Regularization Basis:**
    - Applies to cases of genuine doubts or diverse interpretations, e.g., two competing rates in notifications.
    - Payments made at lower or nil rates are accepted as full compliance.
    - No refunds for GST paid at higher rates.
4. **Definition:**
    - In GST, "as is, where is" means tax paid at a lower or nil rate is treated as full discharge of liability based on taxpayer returns.
5. **Policy:** Past payments at lower rates are regularized without penalty, promoting fairness in cases of genuine misinterpretation of GST laws.

This ensures uniformity and clarity for taxpayers and field officers.

Illustration 1:

In a situation where certain taxpayers have paid 5% GST on supply of "X", while some have paid 12% and the GST Council recommends reducing the rate to 5% prospectively and regularizing the past on "as is where is basis" which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, the 5% GST paid by the taxpayer will be treated as tax fully paid and they would not be required to pay duty differential of 7% between 5% and 12%. For those taxpayers who have paid 12% GST, no refund would be allowed.

Illustration 2:

In a situation where certain taxpayers have paid 5% GST on the supply of "X" while some have paid nil duty due to the genuine doubt that there was an exemption entry for "X", the GST Council recommends clarifying that the applicable rate is 5% and to regularize the past on "as is where is basis", in view of prevailing genuine doubts, which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, non payment of GST and declaring such transactions as exempted supply in their return by the taxpayer will be treated as a full discharge of tax liability and they would not be required to pay duty differential of 5 % between Nil and 5%. For those taxpayers who have paid 5%, no refund would be made.

Illustration 3:

In a situation where the interpretational issue is between 5% and 12% rates and some taxpayers have paid 5 % , others have paid 12% while certain taxpayers have not paid GST on supply of "X", and the GST Council

recommends clarifying that the applicable rate is 12% and regularize the past on "as is where is basis" which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, the 5% GST paid by the taxpayer will be treated as tax fully paid and they would not be required to pay duty differential between 5% and 12% . For those taxpayers who have paid 12%, no refund would be made. However, the regularization would not apply to situations where no tax has been paid. In such cases, the applicable tax i.e. 12% shall be recovered.

Illustrative Scenarios for Regularization:

Scenario	GST rates applied by taxpayers	Confusion between the rates	Rate regularised by GST Council	Action required
1	a) Taxpayer "X" paid 5% b) Taxpayer "Y" paid 12%	5% and 12%	5%	a) No action required by X b) Y will not get refund of differential 7% (12%-5%)
2	a) Taxpayer "X" paid 5% b) Taxpayer "Y" paid Nil	5% or exempted	5%	a) No action required by X b) Y does not have to pay differential 5% (5%- nil)
3	a) Taxpayer "X" paid 5% b) Taxpayer "Y" paid 12% c) Taxpayer "Z" paid nil	5% or 12%	12%	a) X does not have to pay differential 7% (12%-5%) b) No action required by Y c) Z has to pay differential 12% (12%-nil)

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 IGST Act, 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.

Question:

Whether job work for processing of "Barley" into "Malted Barley" attracts GST@5% as applicable to "job work in relation to food and food products" or 18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption"?

Answer:

As per CBIC Circular No.206/18/2023-GST dt. 31st October 2023, Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products and also used for manufacture of beer and alcoholic liquor for human consumption. However, irrespective of end-use, conversion of barley into malt amounts to job work in relation to food products.

It is hereby clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers "job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST.

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 cord blood bank of ₹8,00,000 and 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 applicable on services 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 is neither 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 Receiver are to be considered as services provided by any Court. Accordingly, the fees or charges paid to the Court Receiver are 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,

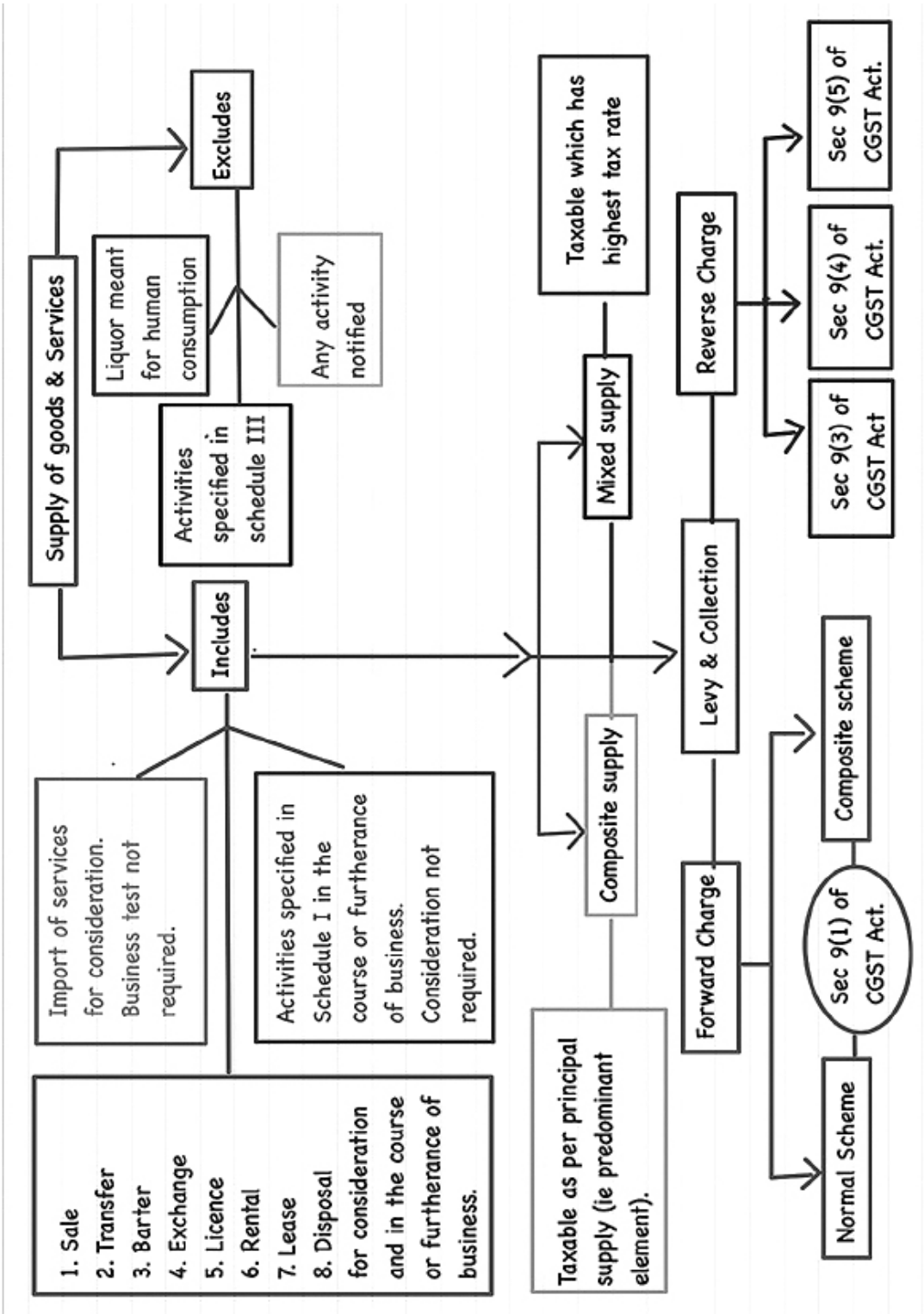
(d) transferred,

(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
Liquor meant for human consumption
Any activity notified
Activities specified in schedule III
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.
Taxable as per principal supply (ie predominant element).
Composite supply
Mixed supply
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 other than specified actionable claims
   (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 specified actionable claims.

    (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 composition 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 2025-26 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 2025-26

(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 January 2024:

(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 2025-26, 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 not exempted for residential/lodging purposes—

(a) If the actual tariff for a unit of accommodation is below ₹10,000

(b) irrespective of tariff value for a unit of accommodation

(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) Warehousing of fruits

62. Services by a Residential Welfare Association (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				
c	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 2025-26 :

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 recipient. 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 recipient. 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

2.1 Introduction

2.2 Domestic Transactions including Reverse Charge

2.3 International Transactions including Reverse Charge

2.4 Case Studies / Analysis of Advance Rulings

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.

w.e.f. 1-10-2023 Notification No. 50/2023: Amends Notification No. 66/2017 – CT Dated 15.11.2017 (which provides for an exemption on advance received in case of supply of goods) to state that registered persons making a supply of actionable claims as defined under Section 2(102A) will be liable to pay tax on advance received by them.

The time of supply in case of supply of specified actionable claim shall be determined in accordance with section 12(2) [i.e. date of issue of invoice/ last date for issue of invoice OR, receipt of payment, whichever is earlier].

Example: M/s Pocker Pokiri Pvt. Ltd. Supplier of online money gaming registered person under GST located in New Delhi. Supplied online money gaming (i.e. goods) on 1st January 2024 to Mr. Appavi of Chennai.

Case 1: Invoice issued on 1st February 2024 and payment received on 26th December 2023.

Case 2: Invoice issued on 1st February 2024 and payment received on 26th March 2024.

Find the time of supply in the above two cases?

Answer: Case 1: time of supply is 26th December 2023

Case 2: time of supply is 1st January 2024

***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
Date of issue of invoice	15th November
Last date on which invoice should have been issued	20th November
Date 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).

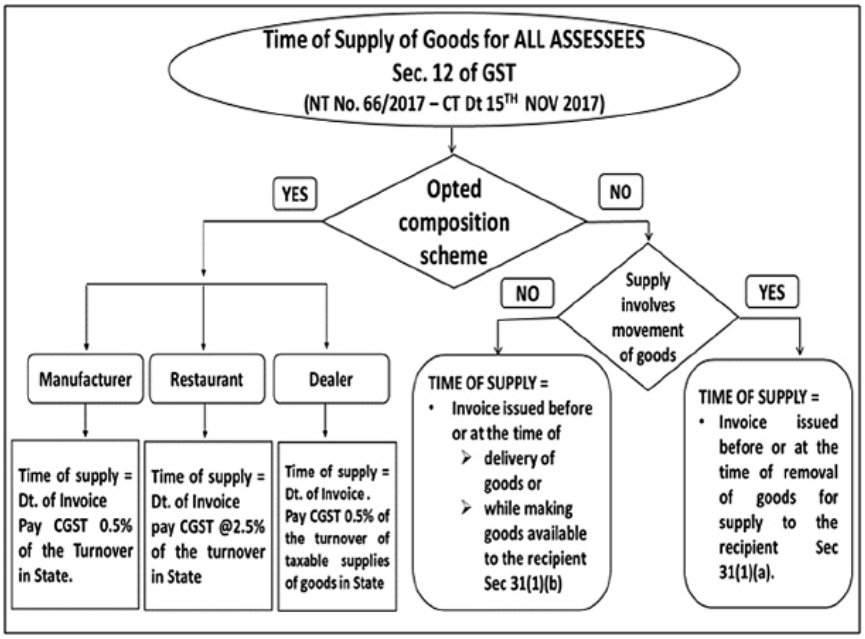
(a) Manufacturer is liable to pay CGST 0.5% of the Turnover in State or

(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 2024. 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 29.11.2024 for goods worth ₹ 10,000/- to be supplied in the month of January 2025.

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 2025

(b) Due date of tax liability 18th April 2025 (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 29.07.2024 for goods worth ₹ 10,000/- to be supplied in the month of September 2024.

Find the following:

(a) Value of supply of goods in the month of July 2024

(b) Due date of tax liability for the month of July 2024.

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 2024.

(b) No due date for the month of July 2024 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 25.7.2024 and the date of invoice of next supply to the said recipient is 14.8.2024.

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 25.07.24 or 14.8.2024.

(b) Due date of payment of tax

- If Time of Supply = 25.7.2024, then due date is 20.8.2024
- If Time of Supply = 14.8.2024, then due date is 20.9.2024

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.

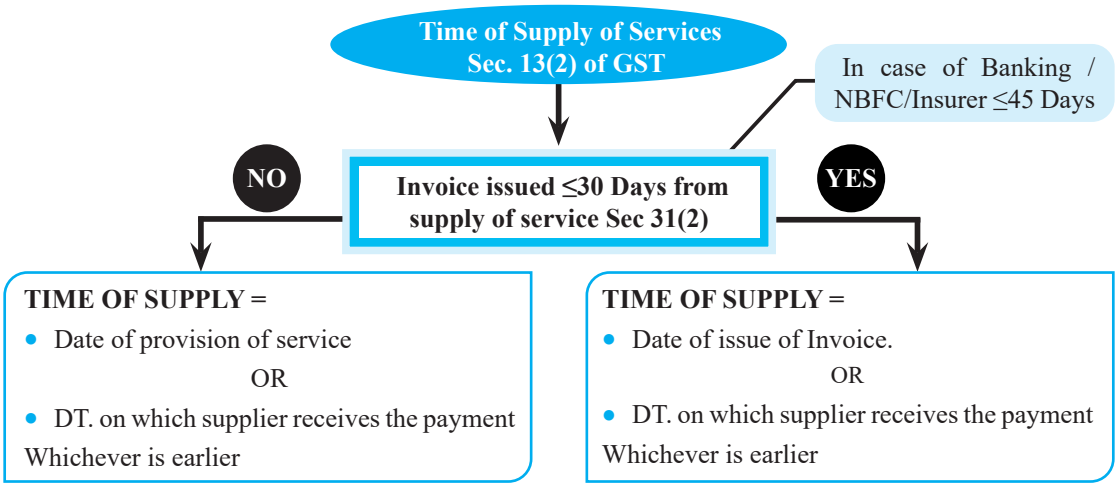
(ii) 5th September 20XX will be the time of supply.

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 2024. Determine the time of supply in following independent cases:

(i) The provisions of services were completed on 1st July 2024.

(ii) The provisions of services were completed on 15th July 2024.

(iii) Mr. Ram made the payment on 3rd July 2024, where provisions of services were remaining to be completed.

(iv) Mr. Ram made the payment on 15th August 2024, where provisions of services were remaining to be completed.

Solution:

(i) 1st July 2024 will be the time of supply of services as invoice is not issued within the time frame of 30 days.

(ii) 5th August 2024 will be the time of supply of services as invoice is issued within the time frame.

(iii) 3rd July 2024 will be the time of supply of services as payment received before invoice date.

(iv) 5th August 2024 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.

Circular No. 221/15/2024-GST dated 26 June 2024 -

Clarification on the time of supply regarding the supply of services of construction of road and maintenance thereof under the National Highway Projects of National Highways Authority of India (NHAI) in the Hybrid Annuity Mode (HAM) model:

The circular has clarified the issue of the Time of Supply for the purpose of payment of tax on the deferred annuity payments received by the concessionaire from NHAI for the construction of road and operation and maintenance (O&M) thereof under the HAM model.

In HAM contracts, a certain portion of payment linked to construction is payable during the construction and the remaining payment is received in instalments over the concession period as per the payment schedule. However, the revenue authorities have been advancing the view that GST is payable on the percentage of construction completion method. The circular has clarified the time of supply provisions mainly considering that the HAM contract should be considered holistically as a single contract for both construction and O&M services. It cannot be artificially split based on payment terms.

The following clarifications have been provided.

a. The tax liability on the concessionaire under the HAM contract, including on the balance portion linked to the construction portion will arise at the time of issuance of invoice or receipt of payment, whichever is earlier [if the invoice is issued on or before the specified date or date of completion of the event specified in the contract].

b. If the invoices are not issued on or before the specified date or date of completion of the event as specified in the contract, the tax liability will arise on the date of provision of the said service or date of receipt of payment whichever is earlier.

c. Instalments or annuity payable by NHAI to the concessionaire includes the interest component. The interest amount should also be includible in the taxable value for the purpose of payment of tax on the annuity or instalment in terms of section 15(2)(d) of the CGST Act.

Comprehensive Example: Time of Supply for Deferred Annuity Payments under HAM Model:

Project Details

1. Concessionaire: XYZ Infra Ltd. (Supplier of service)
2. Authority: National Highways Authority of India (NHAI) (Recipient of the service)
3. Project Value: ₹1,000 crores
4. HAM Model Payment Terms:
   - Construction Phase (2 years):

     40% of the project cost (₹400 crores) to be paid in milestone-based instalments, meaning the due date of payment is linked to the completion of specific events.
   - Deferred Annuity Phase (15 years):

     Remaining 60% (₹600 crores) to be paid as annual instalments, including interest. The due date of payment, as mentioned in the contract, is 1st April every year.
   - Annual Instalment: ₹50 crores (₹40 crores principal + ₹10 crores interest).

Application of Time of Supply Rules

As per Section 13(2) of the CGST Act for continuous supply of services:

1. If the invoice is issued within the specified time (on or before the due date of payment linked to the completion of an event):
   - The time of supply is the earlier of the date of issue of the invoice or the date of receipt of payment.
2. If the invoice is not issued within the specified time:
   - The time of supply arises on the date of provision of service or the date of receipt of payment, whichever is earlier.

Phase 1: Construction Phase

Scenario 1: First Milestone Payment

- **Milestone Completed:** 25% of construction completed on 31st December 2024.
- Invoice Raised: 5th January 2025 for ₹100 crores (25% of ₹400 crores).
- Payment Received: 15th January 2025.

Time of Supply Determination:

- Since the invoice was not issued within the specified time (on or before 31st December 2024), the time of supply is 31st December 2024 (date of milestone completion).

Scenario 2: Second Milestone Payment

- Milestone Completed: 75% of construction completed on 1st April 2025.
- Invoice Raised: 31st March 2025 for ₹300 crores (75% of ₹400 crores).
- Payment Received: 15th May 2025.

Time of Supply Determination:

- Since the invoice was issued on or before the due date of payment (1st April 2025), the time of supply is 31st March 2025 (date of invoice).

Phase 2: Deferred Annuity Payments

Scenario: First Annuity Payment

- **Annuity Payment Due:** ₹50 crores (₹40 crores principal + ₹10 crores interest).
- Service Period Covered: 1st April 2025 to 31st March 2026.
- Invoice Raised: 1st April 2026.
- Payment Received: 10th April 2026.

Time of Supply Determination:

- Since the invoice was issued on or before the due date of payment (1st April 2026), the time of supply is 1st April 2026 (date of invoice).

Taxable Value: ₹50 crores (including ₹10 crores interest).

GST Computation (Assuming 18%):

- GST = ₹50 crores × 18% = ₹9 crores.
- Due date for tax payment: 20th May 2026.

Phase 3: O&M Services

Scenario: Quarterly O&M Payment

- **Service Provided:** January to March 2026.
- Due Date of Payment: 10th April 2026 (as per the contract).
- Invoice Raised: 31st March 2026 for ₹5 crores.
- Payment Received: 10th April 2026.

Time of Supply Determination:

- Since the invoice was issued on or before the due date of payment (10th April 2026), the time of supply is 31st March 2026 (date of invoice).

Taxable Value: ₹5 crores.

GST Computation (Assuming 18%):

- GST = ₹5 crores × 18% = ₹0.9 crores.
- Due date for tax payment: 20th April 2026.

Summary of GST Liability

Phase	Event	Taxable Value (₹ Crores)	GST (₹ Crores)	Time of Supply	Due Date for Tax Payment
Construction (Milestone 1)	25% Milestone Completion	100	18	31st December 2024	20th January 2025
Construction (Milestone 2)	75% Milestone Completion	300	54	31st March 2025	20th April 2025
Deferred Annuity Payment	First Annual Instalment	50	9	1st April 2026	20th May 2026
O&M Services	Quarterly Maintenance (Jan-Mar)	5	0.9	31st March 2026	20th April 2026

Key Points:

1. **Deferred Annuities:** Time of supply is aligned with invoice issuance or payment, ensuring clarity for GST compliance.
2. **Interest Component:** Interest is includible in the taxable value.
3. **Unified Contract:** Construction and O&M services are treated as a single supply, avoiding artificial splitting of GST liability.
4. **Continuous Supply of Services:** Provisions ensure GST compliance without ambiguity regarding phased payments.

Circular No. 222/16/2024GST dated 26 June 2024 -

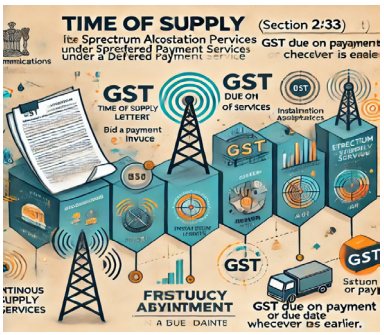
Clarification on the time of supply of services of spectrum usage and other similar services under GST

The circular clarifies the time of supply for the GST payment on spectrum allocation services when the telecom operator opts for deferred payment in instalments. The spectrum allocation service provided by the Department of Telecommunications (DoT) is treated as a continuous supply of services under section 2(33) of the CGST Act.

The circular clarifies that the Frequency Assignment Letter issued by the DoT which details the auction results and payment options, is not considered as an invoice but it is only a bid acceptance document.

Hence, the GST liability arises at the time the instalment payments are due or made, whichever is earlier.

GST is payable on these spectrum allocation services under reverse charge mechanism as per Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017.



Time of Supply under different Payment Options:

- **Upfront Payments:** GST is payable when the upfront payment is made or due, whichever is earlier.
- **Deferred Payments:** GST is payable on deferred payments as and when they are due or made, whichever is earlier.

Example: Time of Supply for Spectrum Allocation Services

Scenario Overview

1. **Service Provided:** Spectrum allocation services by the Department of Telecommunications (DoT) to a telecom operator.
2. **Payment Mechanism:** Reverse charge mechanism (RCM) as per Notification No. 13/2017-Central Tax (Rate) dated 28th June 2017.
3. **Payment Options:** The telecom operator can choose between upfront payment or deferred payment in instalments.

Case 1: Upfront Payment

- **Details:**
  - Spectrum Allocation Value: ₹500 crores.
  - Payment Due Date: 1st July 2024.
  - Payment Made: 25th June 2024.

Time of Supply Determination:

- Under Section 13(2) of the CGST Act, the time of supply is earlier of:
  - Due Date of Payment: 1st July 2024.
  - Actual Payment Date: 25th June 2024.

Time of Supply: 25th June 2024.

GST Payable Date: 20th July 2024 (due by the 20th of the following month under RCM).

Case 2: Deferred Payment

Scenario: First Instalment

- **Details:**
  - Spectrum Allocation Value: ₹500 crores, divided into 5 annual instalments of ₹100 crores each.

- First Instalment Due Date: 1st July 2024.
- Payment Made: 15th July 2024.

Time of Supply Determination:

- Under Section 13(2) of the CGST Act, the time of supply is earlier of:
  - Due Date of Payment: 1st July 2024.
  - Actual Payment Date: 15th July 2024.

Time of Supply: 1st July 2024.

GST Payable Date: 20th August 2024 (due by the 20th of the following month under RCM).

Scenario: Subsequent Instalments

- Second Instalment Details:
  - Due Date: 1st July 2025.
  - Payment Made: 1st June 2025.

Time of Supply Determination:

- Time of supply is earlier of:
  - Due Date of Payment: 1st July 2025.
  - Actual Payment Date: 1st June 2025.

Time of Supply: 1st June 2025.

GST Payable Date: 20th July 2025.

Key Notes

1. Reverse Charge Mechanism (RCM): The telecom operator is liable to pay GST on the spectrum allocation services under RCM.
2. GST Rate: Applicable GST rate for spectrum services is assumed to be 18%.

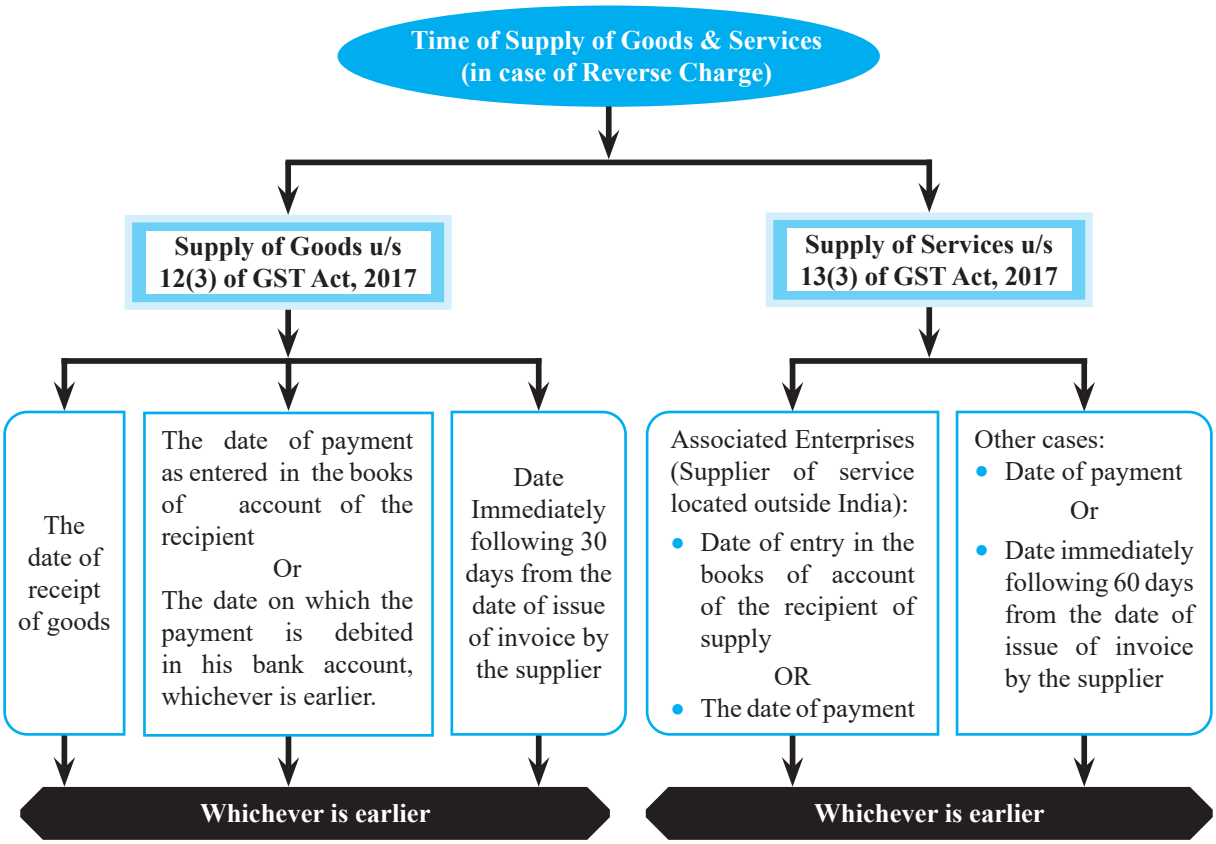
Summary of GST Liability

Case	Payment Type	Payment Amount (₹ Crores)	Time of Supply	GST Payable (₹ Crores)	GST Due Date
Upfront Payment	Full Payment	500	25th June 2024	90	20th July 2024
Deferred Payment (Year 1)	First Instalment	100	1st July 2024	18	20th August 2024
Deferred Payment (Year 2)	Second Instalment	100	1st June 2025	18	20th July 2025

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.

w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024, Amendment of section 13. - In section 13 of the Central Goods and Services Tax Act, in sub-section (3):

(i) in clause (b), for the words "by the supplier:", the words "by the supplier, in cases where invoice is required to be issued by the supplier; or" shall be substituted;

(ii) after clause (b), the following clause shall be inserted, namely:— "(c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient:";

(iii) in the first proviso, after the words, brackets and letter "or clause (b)", the words, brackets and letter "or clause (c)" shall be inserted.

Section 13(3) after amendment is as follows:

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely :—

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

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier, in cases where invoice is required to be issued by the supplier; or:

"(c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient:"

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

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

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 2024.

Find the time of supply of goods in following independent cases:

(i) Mr. A received goods on 15th July 2024, payment of which is not made yet.

(ii) Mr. A received goods on 3rd August 2024 & made payment for the same on 4th August 2024.

(iii) Mr. A made payment on 8th July and received goods on the same date.

(iv) Mr. A received goods on 10th July 2024 & made payment for the same on 9th July 2024.

Solution:

(i) Time of supply of goods = 15-07-2024

Earliest of the following:

Receipt of Goods	= 15-07-2024
Date of Payment	= not paid
Date immediately following 30 days from the date of invoice	= 01-08-2024

(ii) Time of supply of goods = 01-08-2024

Earliest of the following:

Receipt of Goods	= 03-08-2024
Date of Payment	= 04-08-2024
Date immediately following 30 days from the date of invoice	= 01-08-2024

(iii) Time of supply of goods = 08-07-2024

Earliest of the following:

Receipt of Goods	= 08-07-2024
Date of Payment	= 08-07-2024
Date immediately following 30 days from the date of invoice	= 01-08-2024

(iv) Time of supply of goods = 09-07-2024

Earliest of the following:

Receipt of Goods	= 10-07-2024
Date of Payment	= 09-07-2024
Date immediately following 30 days from the date of invoice	= 01-08-2024

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 2024. Determine the time of supply of services in the following independent cases:

(i) C Ltd. made the payments to the firm on 15th August 2024.

(ii) C Ltd. made the payments to the firm on 11th September 2024.

Note: C Ltd turnover in the preceding financial year was ₹2 crore

Solution:

(i) Time of supply of service = 15-08-2024

Note: as payment made earlier than the date immediately following 60 days from date of issue of invoice.

(ii) Time of supply of service = 31-08-2024

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 January 2025 and payment will be made in the next month.

(ii) X Ltd. made advance payment to Y Ltd. on January 2025 and recorded liability in the books on 15th May 2025.

Solution:

(i) Time of supply =15-01-2025

Note: as the date of entry in the books is prior to the date of payment.

(ii) Time of supply = 10-01-2025

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 2025.

Find the time of supply in the following independent cases:

(a) If Mr. B. accept the goods on 10th February 2025.

(b) If Mr. B accepts the goods on 1st September 2025.

(c) If Mr. B returns the goods on 10th February 2025.

(d) If Mr. B return the goods on 1st September 2025.

Solution:

Sl. No.	Particulars	Time of supply		Remarks
(a)	Mr. B. accept the goods on 10th February 2025.	10th February 2025		Time when it becomes known that supply is taken place (i.e. 10th Feb 2025) OR Six months from the date of removal (i.e. 20th July 2025) Whichever is earlier
(b)	Mr. B accepts the goods on 1st September 2025.	21st July 2025		1st day after expiry of 6 months from the date of removal.
(c)	Mr. B returns the goods on 10th February 2025.	Not applicable		No tax will be payable. Since, goods returned within six months from the date of dispatch.
(d)	Mr. B return the goods on 1st September 2025.	**Mr. A**	**Mr. B**	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.
		21st July 2025	1st September 2025	

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 10-07-2024 to their prospective customer for enabling them to buy readymade garments manufactured by them from their shop. Customer purchased readymade garments on 20th Aug 2024.

Find the time of supply of goods?

Solution:

Time of supply of goods = 10-07-2024

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 10-07-2024 to their prospective customer for enabling them to buy any product from their shop. Customer purchased readymade garments on 20th August, 2024.

Find the time of supply of goods?

Solution:

Time of supply of goods = 20-08-2024

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 2024, instead of due date of July 2024, and for such delay he is eligible to receive an interest amount of ₹1,000/- and the said amount is received on 15.12.2024.

Find the time of supply for the interest portion and due date of payment.

Solution:

The time of supply = 15.12.2024

i.e. the date on which it is received by the supplier and

Due date of tax liability = 20.01.2025

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 2024.

Before – Event occurred before November 15, 2024

After – Event occurred on or after November 15, 2024

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:

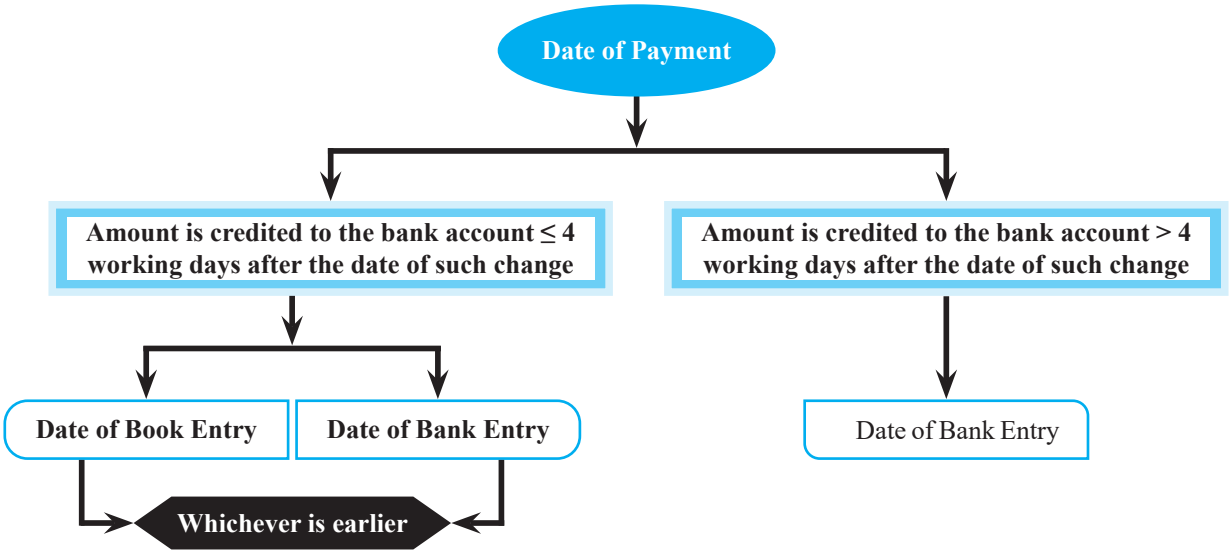


Illustration 19

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, 2024:

Date of issuance invoice	Date on which payment received	Amount in (₹)
16.09.2024	03.10.2024	2,50,000
20.10.2024	06.10.2024	25,000
02.10.2024	30.09.2024	1,25,000

The date of change in effective rate of tax in this case is 01-10-2024 from 12% to 18%. These services are rendered in August 2024. 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 2024	16.09.2024	03.10.2024	2,50,000	16.09.2024	12%	20.10.2024
Aug 2024	20.10.2024	06.10.2024	25,000	06.10.2024	18%	20.11.2024
Aug 2024	02.10.2024	30.09.2024	1,25,000	30.09.2024	12%	20.10.2024

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.

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 2025-26 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 (2024-25) 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 = 15th September

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)
(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, 2024:

Assume the rates of taxes to be as under:—

Sl. No.	Date of payment	Particulars	Date of invoice	Amount (₹)
(i)	11.11.2024	Payment made to an advocate in Delhi	07.07.2024	1,25,000
(ii)	20.11.2024	Paid sitting fee to Director from Haryana for meeting held in Delhi on 15.10.2024 [Inter-State supply]	15.10.2024	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 2024 for the above (i) and (ii) above.

Solution:

Computation of GST payable for the month of November, 2024

Sl. No.	Particulars	Time of supply of services	CGST (₹)	SGST (₹)	IGST (₹)	Interest (₹)
(i)	Services from an advocate in Delhi	6th Sep 2024	11,250	11,250	Nil	677
(ii)	Director's Sitting fee	20th Nov 2024	Nil	Nil	13,500	Nil

Interest = 22,500 × 18% × 61/365 = ₹ 677/-

Due date of payment tax is 20th Oct 20XX.

No. of days delay

Oct 2024	11 Days
Nov 2024	30 Days
Dec 2024	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 1-1-2025. George Ltd. raised on SIL an invoice of £45,000 on 27-1-2025. SIL debited its books of accounts on 7-2-2025 and made the payment on 25-3-2025.

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 = 07-02-2025

(b) Time of supply = 25-03-2025

(c) Time of supply = 27-01-2025

Illustration 31

Mr. M a registered person, provides the following information in respect of his regular customer, Mr. S.

Date	Particulars	Amount (₹)
01.10.2024	Supply of goods	35,700
01.10.2024	Date of invoice	35,700
18.10.2024	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 = 01.11.2024 (i.e. Date of next invoice)

Option 2: Time of supply = 18.10.2024 (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 (₹)
01.10.2024	Supply of service for the month of September 2024	845
01.10.2024	Date of invoice	845
18.10.2024	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 01.11.2024 (i.e. the date of the next monthly invoice) or

Option 2: Time of supply = 18.10.2024 (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 Services 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. Therefore, 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. Therefore, 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.

Therefore, 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. Theoretical 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 25.09.20XX for ₹24,300. and Mr. B pays ₹25,000 on 1.10.20XX 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 5.01.20XX. Identify the time of supply and value of supply:
   (a) For ₹25,000 – 1.10.20XX
   (b) For ₹24,300 – 25.09.20XX and for ₹700 – 1.10.20XX
   (c) For ₹24,300 – 25.09.20XX and for ₹700 – 5.10.20XX.
   (d) (b) or (c) at the option of supplier, who has opted for composition levy

5. Value of services rendered is ₹1,00,000/ on 1st October 2024. Date of issue of invoice is 5th October 2024. Advance Received is ₹25,000/- on 20th September 2024. Balance amount received on 7th October 2024. What is the time of supply for ₹1,00,000/-
   (a) 5th October 2024 for ₹1,00,000/-

(b) 20th September 2024 for ₹ 1,00,000/-

(c) 20th September 2024- ₹ 25,000/- and 5th October 2024 for ₹ 75,000/-

(d) 20th September 2024- ₹ 25,000/- and 7th October 2024 for ₹ 75,000/-

6. There was increase in tax rate from 12% to 18% w.e.f.1.09.2024. Which of the following rate is applicable when services are provided after change in rate of tax in September 2024, but invoice issued and payment received, both in August 2024:

(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 20XX

(b) October 20XX

(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. 1.09.2024. 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 31.08.2024; delivered at buyer place on 2.02.2024; invoice is issued on 31.08.2024 and payment is received on 4.09.2024.

(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 Motors Ltd. for a consideration of ₹ 90.00 lakh on 1st Jan 2024. 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 2024. 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 2024. M/s Wanderlust Travels (P) Ltd. visited the work shop of M/s Bhagwant Fabtricators on 8th Nov 2024 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 2024

(b) 8th Nov 2024

(c) 8th Dec 2024

(d) 5th Dec 2024

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

3.1 Supplies in Territorial Waters

3.2 Detailed discussion on Place of Supply Provisions

3.3 Place of Supply- OIDAR Services

3.4 Case Studies and Illustrations on Place of Supply.

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	w.e.f. 1st October 2023, Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017 Non-taxable online recipient: means any unregistered person receiving online information and database access or retrieval services located in taxable territory. Explanation: for the purposes of this clause, the expression "unregistered person" includes a person registered soley in terms of clause (vi) of section 24 of CGST Act, 2017. (Section 24(vi) of CGST Act, 2017, Persons who are required to deduct tax under section 51 (TDS), whether or not separately registered under this Act).

CBIC Circular No. 202/14/2023-GST dated 27-10-2023, Clarification relating to export of services as provided in sub-clause (iv) of the Section 2(6) of the IGST Act 2017:

- RBI has put in place an additional arrangement for invoicing, payment, and settlement of exports / imports in INR through Special Rupee Vostro Accounts opened by Authorised Dealer Banks of correspondent bank(s) of the partner trading country [subject to conditions stipulated under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016 for opening of such accounts].
- The relevant provisions of the Foreign Trade Policy (FTP), 2023 also reiterate that export of services can take place through the mechanism put in place regarding Special Rupee Vostro Account [subject to compliances mandated under RBI's Circular No.10 dated 11th July, 2022].
- When the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by AD banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017, subject to the conditions/ restrictions mentioned in FTP 2023 & extant RBI Circulars and without prejudice to the permissions / approvals, if any, required under any other law.

Section 2(17) of IGST Act, 2017: Online information and database access or retrieval services:

w.e.f. 1st October 2023, "online information and database access or retrieval 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 impossible to ensure in the absence of information technology and includes electronic services such as,—

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017.);

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.

Supply of goods	Supply of service
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.

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?

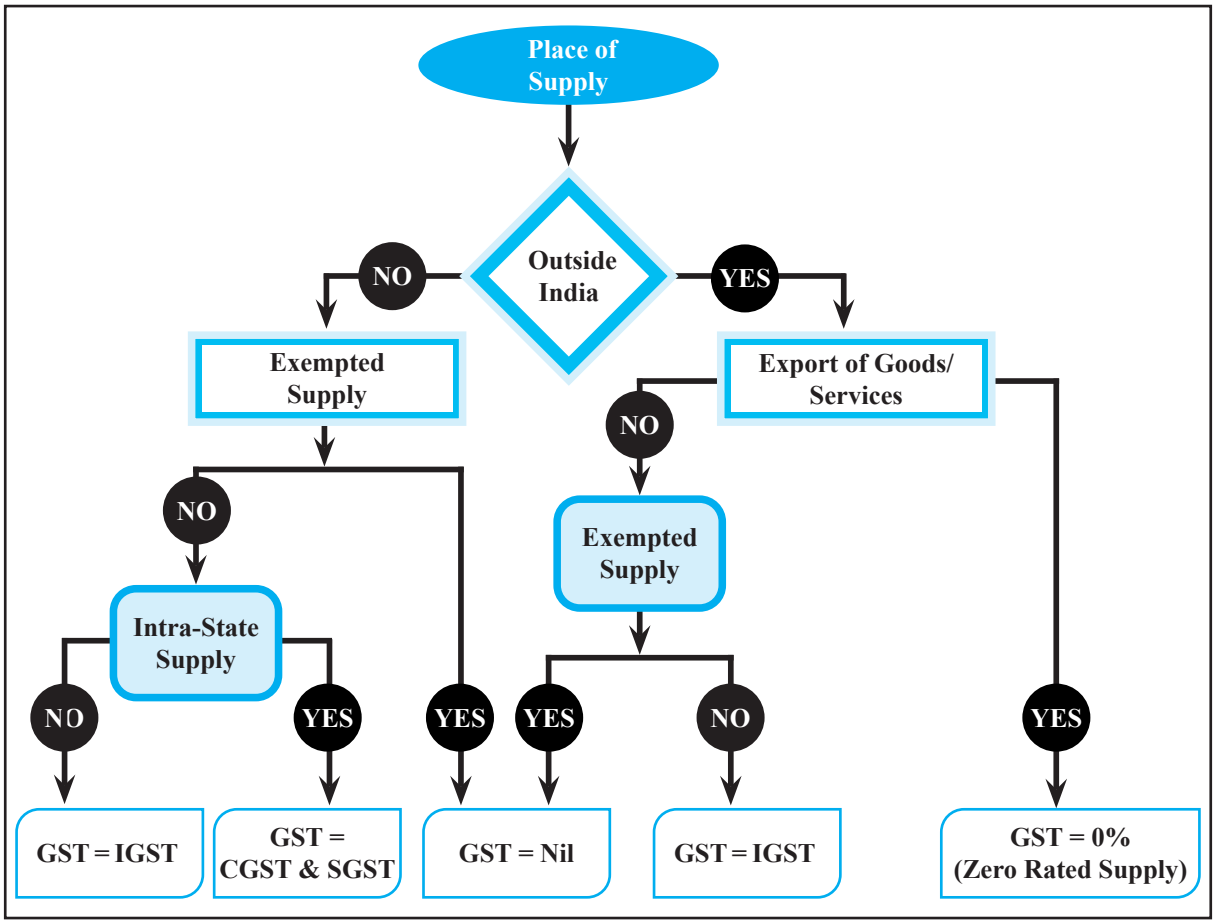
Solution:

1. **Location of Supplier:** Mumbai (Maharashtra).
2. **Place of Supply:** Ahmedabad (Gujarat)

Since the movement of goods terminate at Ahmedabad.

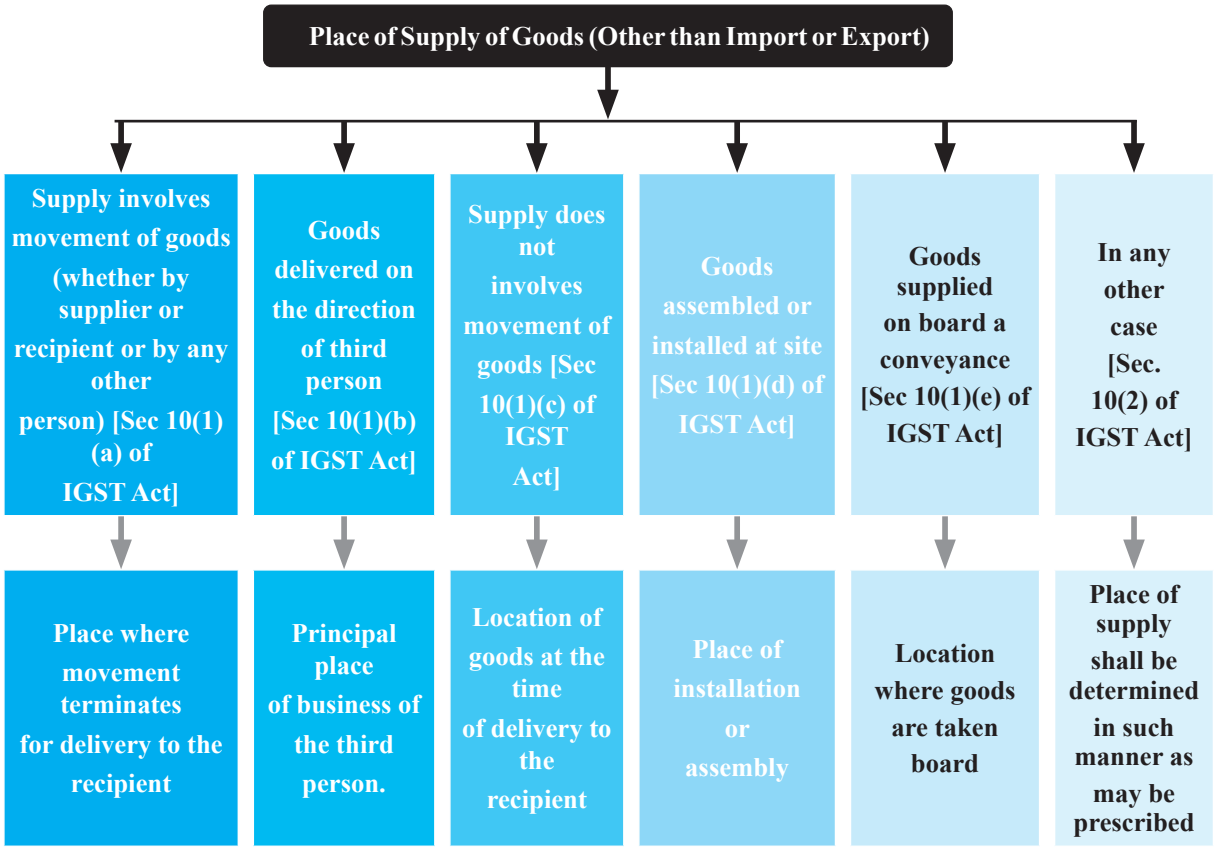
Applicable GST = IGST

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:

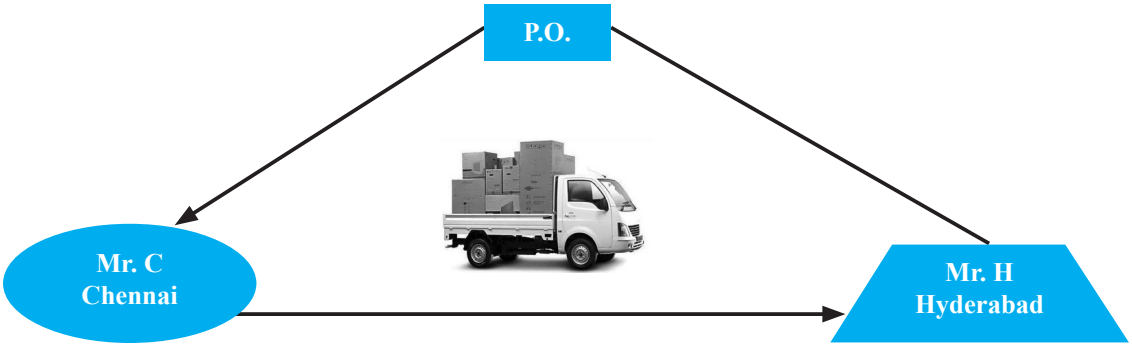


Supply involves movement of goods [Section 10(1)(a) of the IGST Act, 2017]

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 supply where location of supplier and recipient 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.

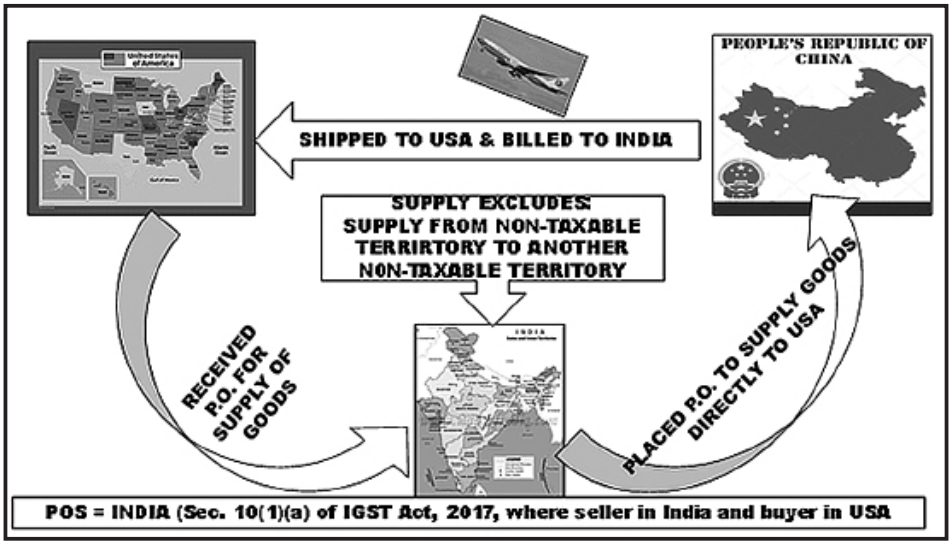
Find the place of supply and levy of GST?

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:



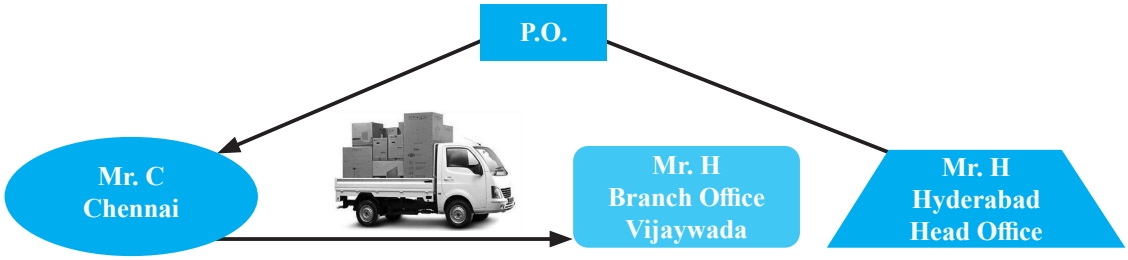
The supplier delivers goods to a recipient or any other person on the direction of a third person by way of transfer of documents of title to the goods or otherwise Section 10(1)(b) of the IGST Act, 2017:

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).

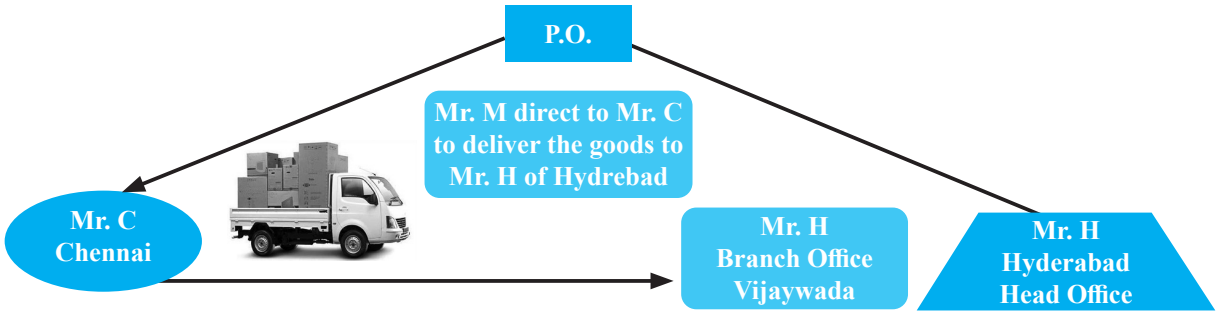


Place of supply of goods = Hyderabad. IGST will be levied

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 Ship to Model:

Example 7

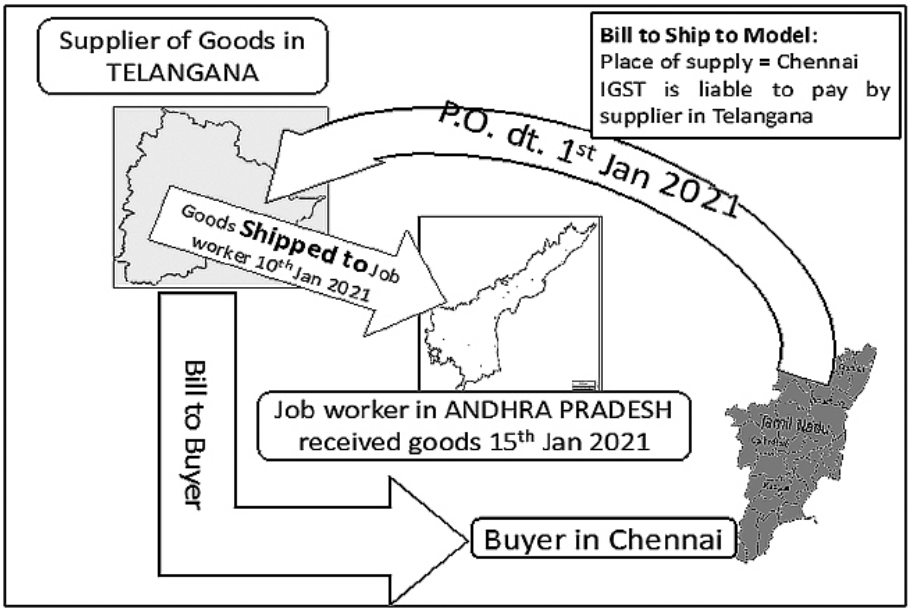


Illustration 4

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.

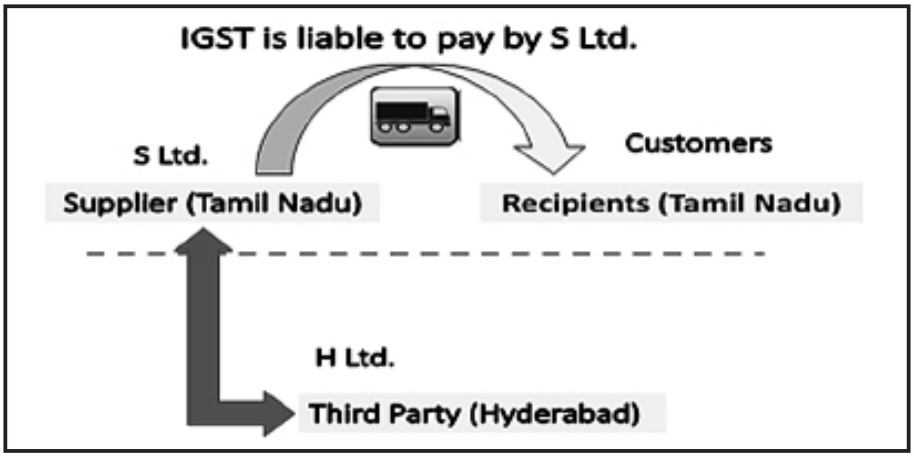
M/s S Ltd., and M/s H Ltd., are registered in different States, then IGST will be payable by M/s S Ltd., while directly supplying the goods to ultimate customer who may be located within the same State as that of M/s S Ltd.

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

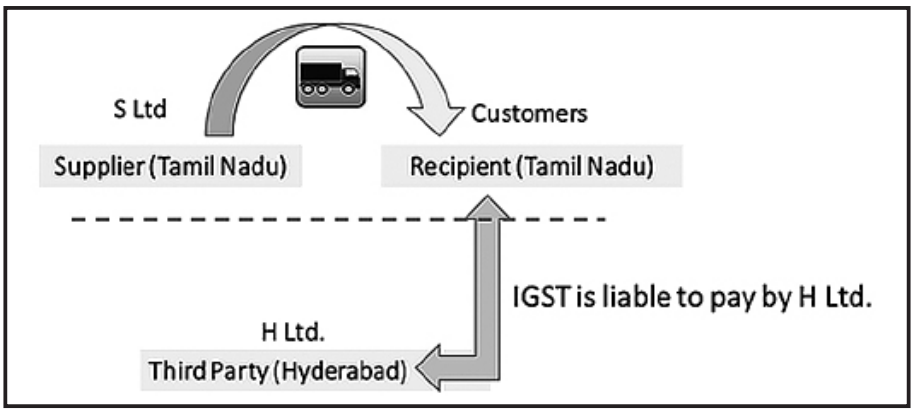


Illustration 8

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.

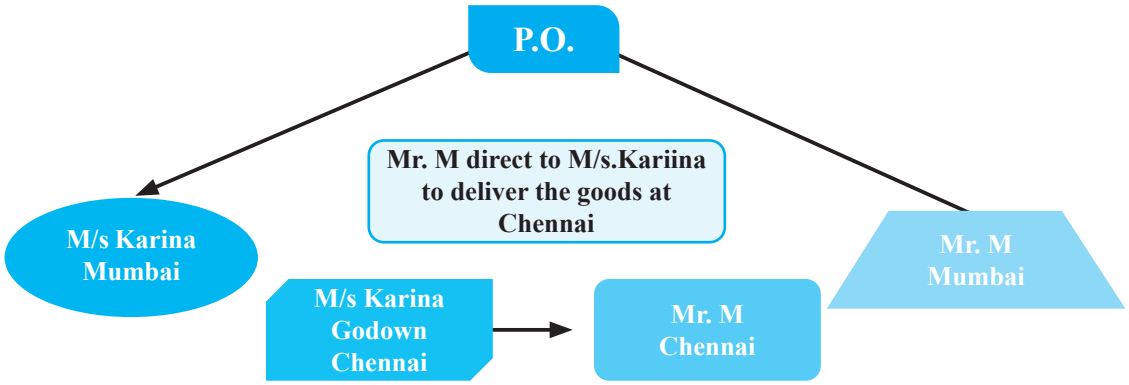
This is irrespective of the location of the buyer and seller.

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

W.e.f. 1st October 2023, Insertion of new clause (ca) to Section 10(1) of the IGST Act, 2017 [Place of supply of goods made to a person other than a registered person]:

The place of supply of goods made to an unregistered person, [notwithstanding anything contrary contained in the provisions of clause (a) and (c) of section 10(1)] shall be,-

- √ the location as per the address of the said person recorded in the invoice issued in respect of the said supply and,
- √ the location of the supplier where the address of the said person is not recorded in the invoice.

[Explanation:.—For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person.]

CBIC Circular No.209/3/2024-GST dated 26th June 2024 [sec 10(1)(ca)]:

Vide this Circular, clarification has been issued to address and resolve the ambiguity regarding the place of supply in cases where the billing and delivery addresses of goods supplied to unregistered persons differ, particularly in e-commerce transactions.

Clarification:- When goods are supplied to an unregistered person and the billing address differs from the delivery address, the place of supply is the location as per the delivery address recorded in the invoice. Also, Suppliers should record the delivery address as the recipient's address on the invoice when the billing and delivery addresses differ.

Example 1: This implies that when an unregistered person from State 'X' places an order for supply of goods and directs delivery to a different address in State 'Y', the place of supply will be State 'Y', i.e. the place of delivery.

Example 2: Place of Supply for Goods Delivered to an Unregistered Person

Scenario

1. Buyer (Unregistered Person): Ms. Priya from Mumbai, Maharashtra (Billing Address).
2. Delivery Address: Her friend's address in Bengaluru, Karnataka (Delivery Address).
3. Seller: XYZ E-commerce Pvt. Ltd., registered in Chennai, Tamil Nadu.
4. Transaction:
   - Ms. Priya places an online order for a smartphone with XYZ E-commerce Pvt. Ltd.
   - She requests delivery to her friend's address in Bengaluru, Karnataka.

Clarification on Place of Supply

1. Place of Supply:
   - The billing address is in Maharashtra, but the delivery address is in Karnataka.
   - As per the GST law, when the billing and delivery addresses differ, the place of supply is determined by the delivery address.
   - Place of Supply = Karnataka (Delivery Address).
2. GST Implications:
   - The supplier (XYZ E-commerce) is registered in Tamil Nadu.
   - Since the supplier's location (Tamil Nadu) and the place of supply (Karnataka) are in different states, the supply is treated as an inter-state supply.
   - XYZ E-commerce must charge Integrated GST (IGST) on this transaction.
3. Invoice Details:
   - Billing Address: Mumbai, Maharashtra (Ms. Priya).
   - Delivery Address: Bengaluru, Karnataka (Ms. Priya's friend's address).

   where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.

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 the 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

It is notified that, with effect from 1st October 2023, the supply of online money gaming as the supply of goods on import of which, integrated tax shall be levied and collected under sub-section (1) of section 5 of the IGST Act,2017 and not under the provisions of section 3 of the Customs Tariff Act, 1975 [Notification No 3/2023-IT dt 29-09-2023 w.e.f 01.10.2023].

This implies that import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

As per section 24 (xia) w.e.f. 1st October 2023, Every person supplying online money gaming from a place outside India to a person in India is required to register compulsorily irrespective of aggregate turnover.

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 goods:

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

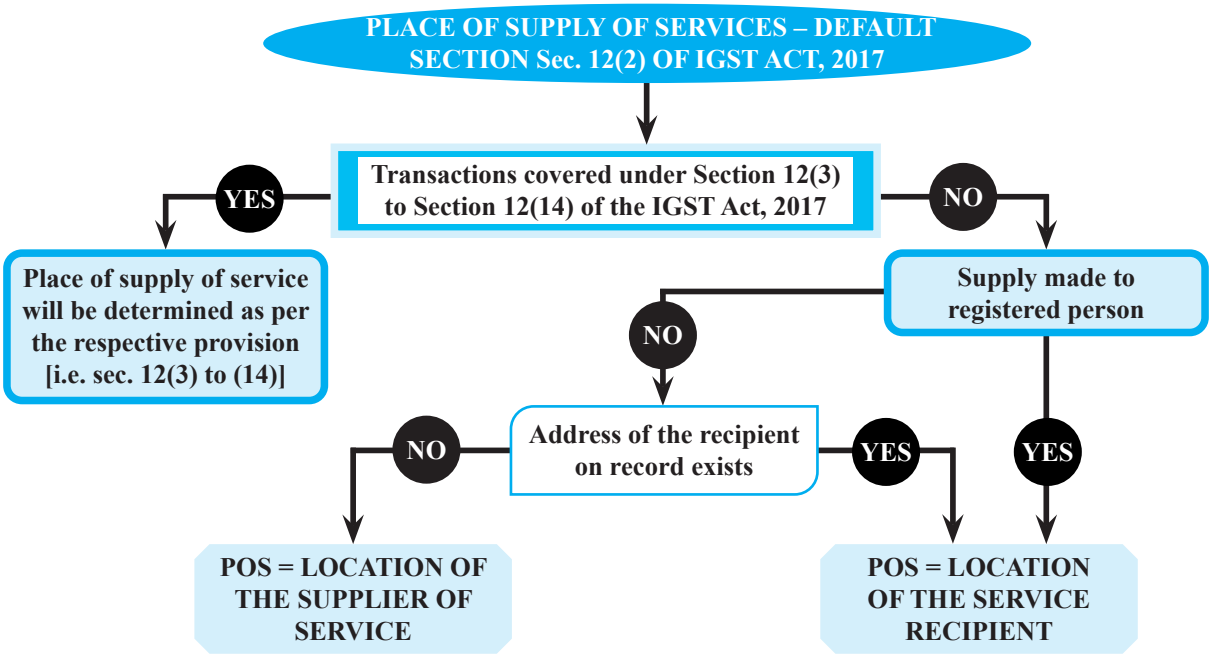
M/s X Ltd. has entered into agreement with M/s Y Ltd to maintain air conditioners. M/s. X Ltd has air conditioners located in Telangana, Andhra Pradesh and Tamil Nadu. M/s Y Ltd. has appointed sub-contractors for the purpose of providing the services of maintenance of air conditioners installed in Telangana, 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:

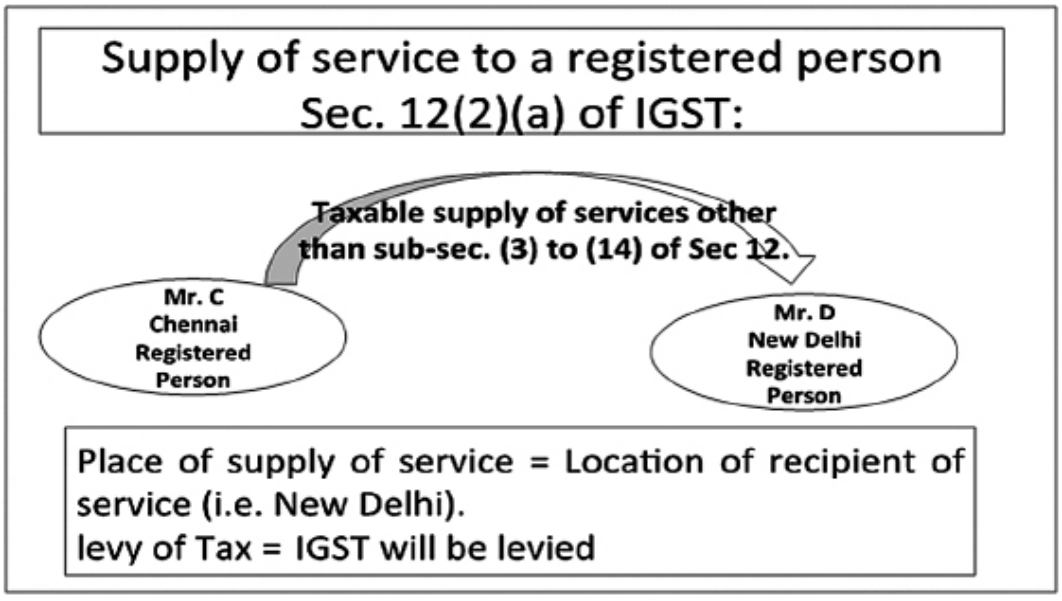
Supplier of service is M/s Y Ltd., even though the services are actually provided by the sub-contractors on behalf of M/s Y Ltd.

Place of supply of services — Default Section

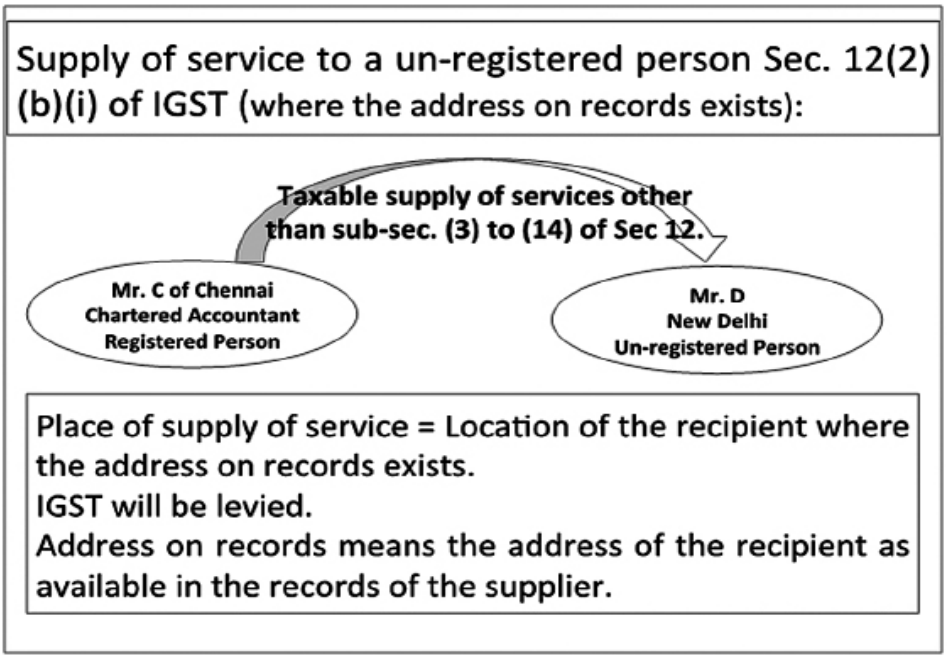
It means, Section 12(2) is applicable only when Section 12(3) to Section 12(14) is not applicable.



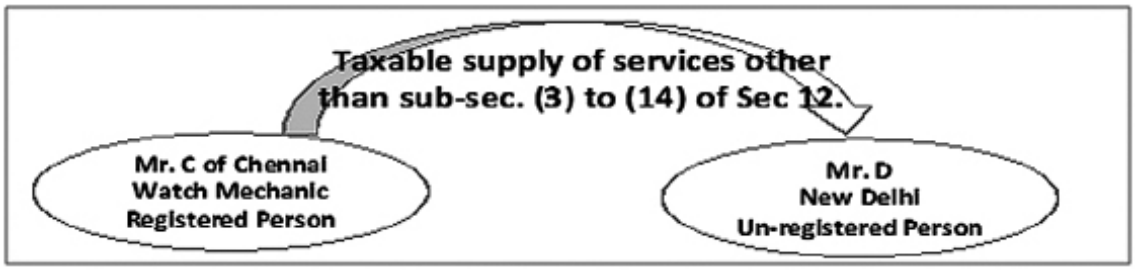
Supply of service to a registered person [Section 12(2)(a) of IGST]



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]

Sl. No.	Nature of service		Place of supply of service
1	Cultural	Services ancillary thereto	Where the event is actually held or where the park or such other place is located.
2	Artistic		
3	Sporting		
4	Scientific		
5	Educational		
6	Entertainment event or Amusement park or any other place.		

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]

Sl. No.	Nature of service		Place of supply of service
1	Cultural	Services ancillary thereto or assigning of sponsorship to such events.	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.
2	Artistic		
3	Sporting		
4	Scientific		
5	Educational		
6	Entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events		

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 CGST & 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
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. (omitted w.e.f. 1st October 2023 - 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).

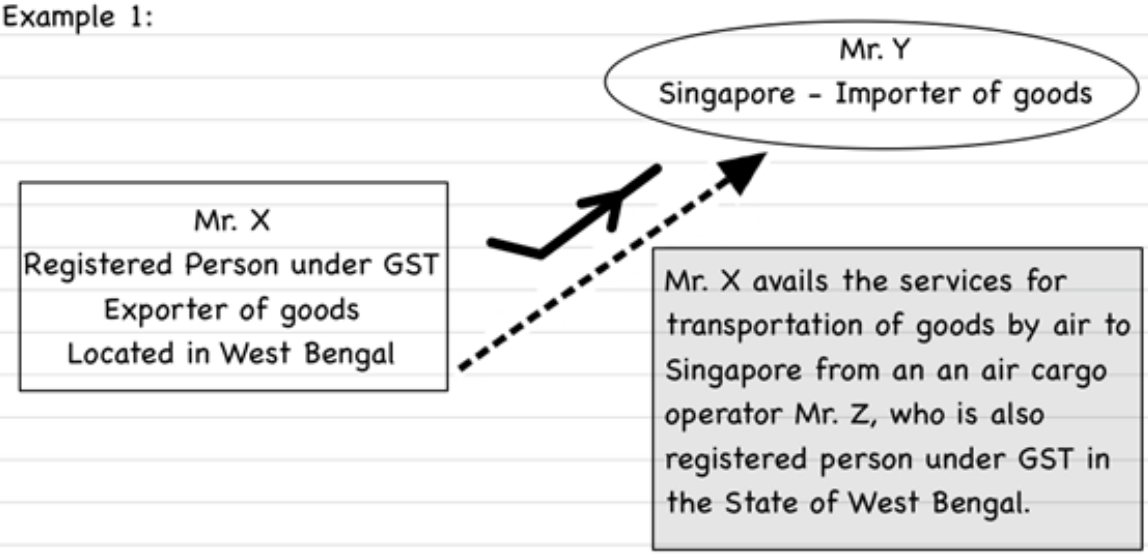
M/s Navatha of Vijayawada is liable to pay IGST.

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.

Example 1:



Supplier of goods transport service = Mr. Z of West Bengal.

Recipient of goods transport service = Mr. X of West Bengal.

Place of supply u/s 12(8) = West Bengal

In the given case Mr. Z would charge CGST & SGST from Mr X in terms of sub-section (2) of section 8 of the IGST Act, for supply of services by way of transportation of goods.

Mr. X would be eligible to take input tax credit of CGST & SGST in respect of supply of services received by him from Mr. Z, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.

Example 2: consider Example 1 above, what state code must be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in FORM GSTR-1?

Answer: The supplier of service shall report place of supply of such service by selecting State code as '96-Foreign Country' from the list of codes in the dropdown menu available on the portal in FORM GSTR-1.

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.

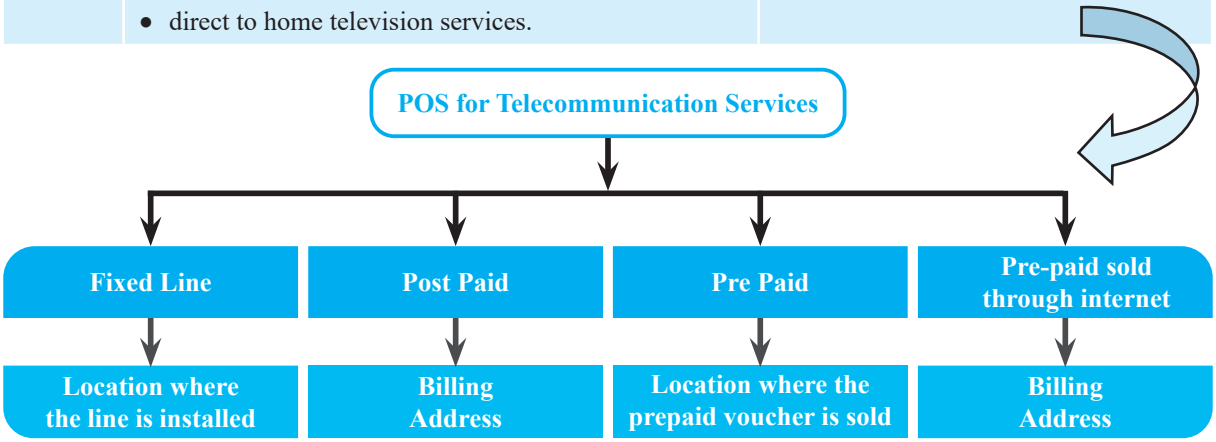
Find the place of supply of service?

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:—

As per CBIC Circular No. 203/15/2023-GST dt. 27th October 2023: Place of supply in case of supply of services in respect of advertising sector clarification is as follows:

Sl. No.	Issue	Clarification
1	Advertising companies are often involved in procuring space on hoardings/ bill boards erected and mounted on buildings/ land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below: (i) There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case? (ii) There may be another case where the advertising company wants to display its advertisement on hoardings/bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?	1.1 It is clarified that the place of supply in the case supply of services in respect of advertising sector, in the cases referred in (i) and (ii), shall be determined as below: 1.2 Place of supply in Case (i): The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located. 1.3 Place of supply in Case (ii): In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property.

Sl. No.	Issue	Clarification
		Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising companyare purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.

Place of supply in case of supply of the "co-location services" clarification as per CBIC Circular No. 203/15/2023-GST dt. 27th October 2023 is as follows:

Issue: Co-location is a data center facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure. A business/company who avails the co-location services primarily seek security and upkeep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers. In this respect, various doubts have been raised as to

i.whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping/storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or

ii.whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc.

Clarifications of the CBIC:

It is clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services". Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.

In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of

recipient of co-location service.

However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.

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
6	Advertisements on railway tickets	Ratio of the number of Railway Stations in each State or Union territory

Sl. No.	Advertisement services	Basis of apportion
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 2024. 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 2024 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) ₹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.

Sl. No.	Advertisement services	Basis of apportion
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 2024. 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 2024 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 2024.

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
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

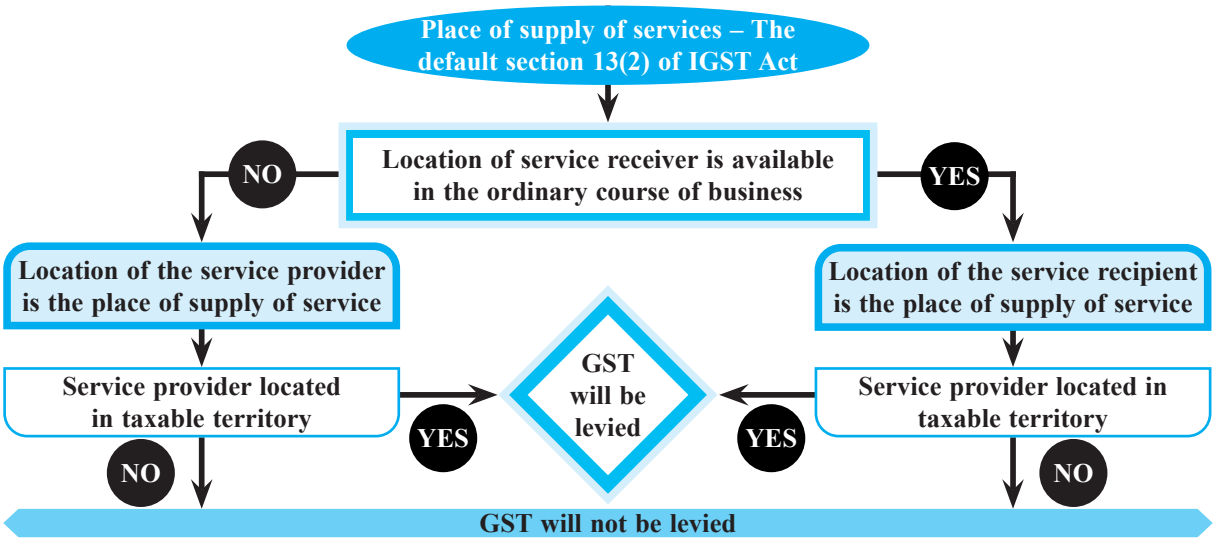
In case of supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, where the location of 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)]

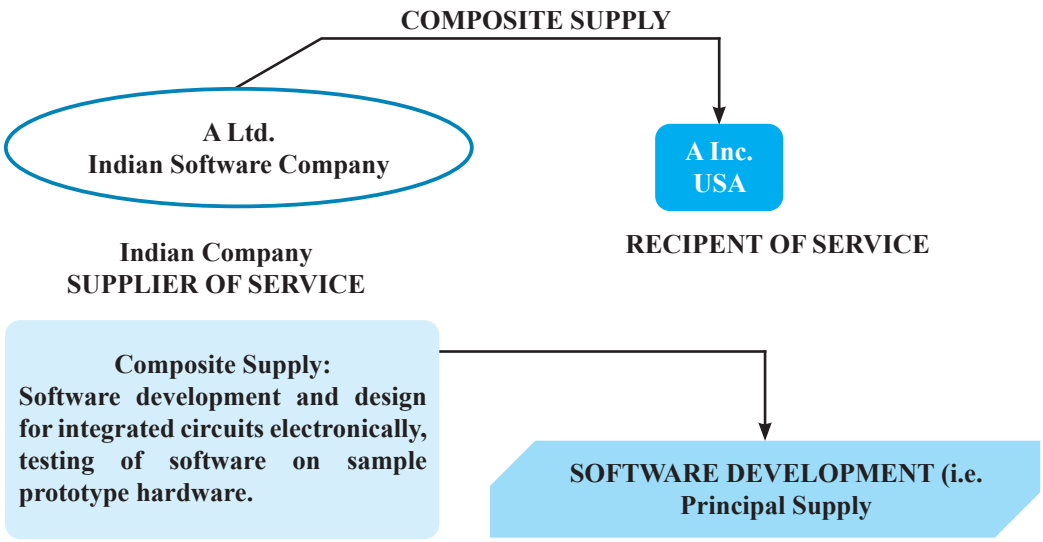


Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry (CBIC Circular No. 118/37/2019-GST, dated 11th October, 2019.)

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

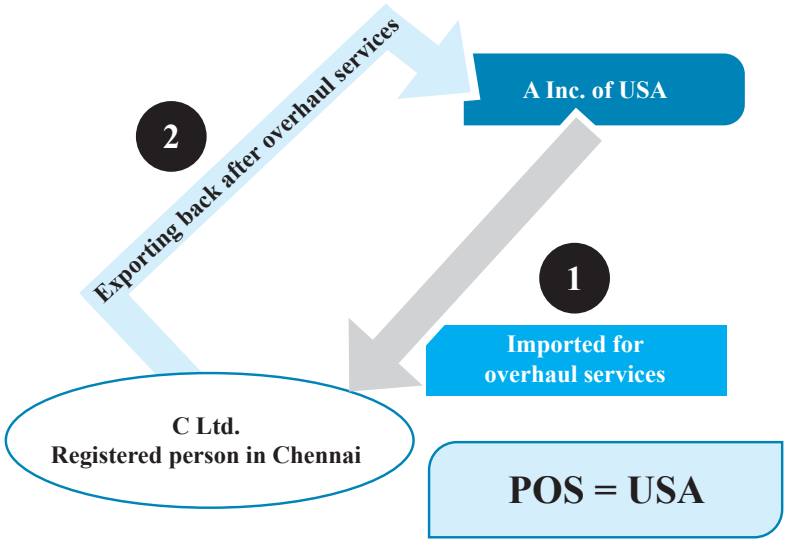
Various services are being provided by the port authorities to its clients in relation to cargo handling:

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 Indian 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]

Sl. 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

POS = CHENNAI

LOCATED AT CHENNAI

NON-TAXABLE TERRITORY

TAXABLE TERRITORY w.e.f 8-7-2017

POS = J&K

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 engineers 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).

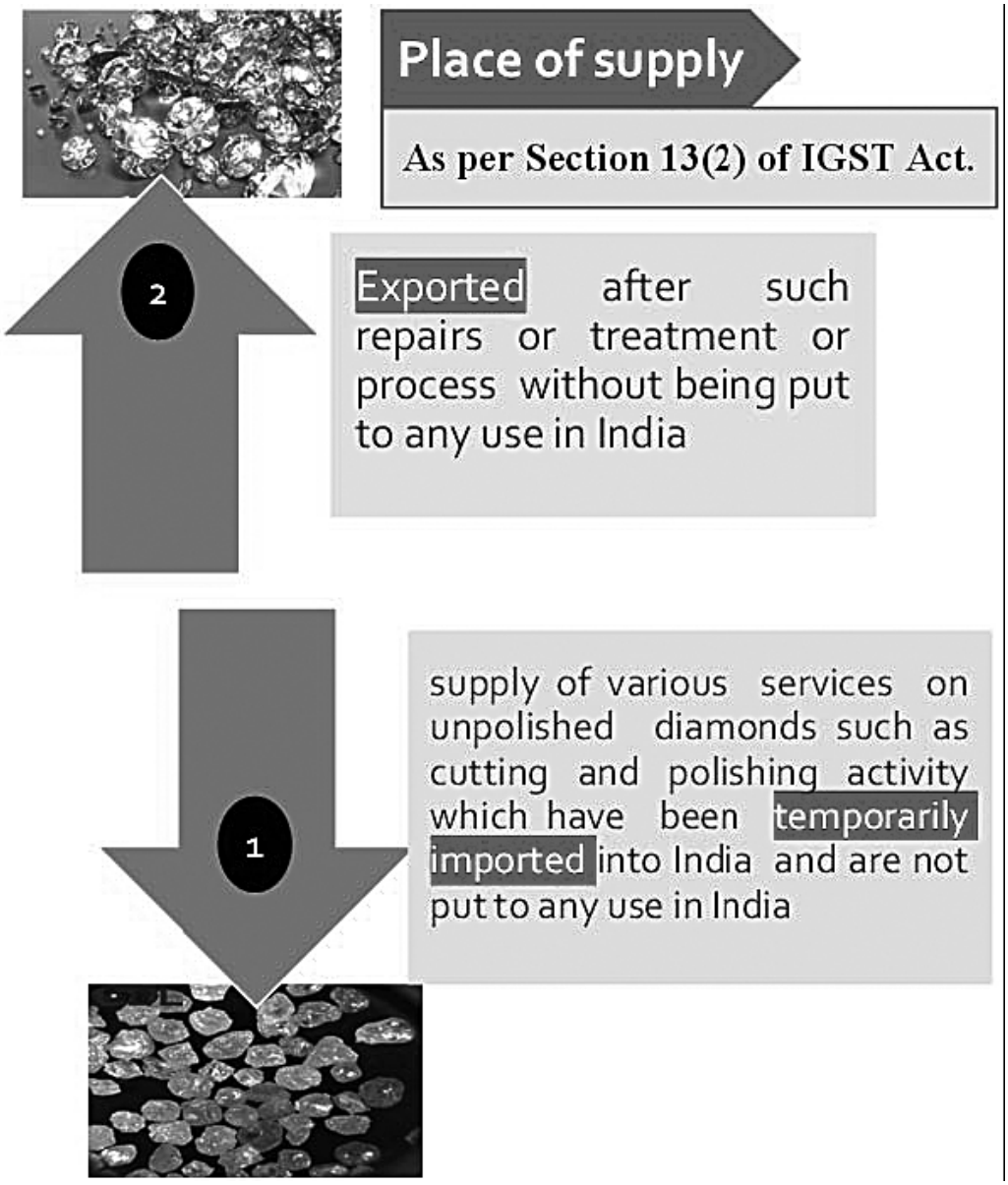
However, if repaired goods are re-exported after being put to use, the place of provision of service will be determined according to section 13(3)(a) of IGST Act, 2017, if the use to which such goods are put to is not required for such repair.

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

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).

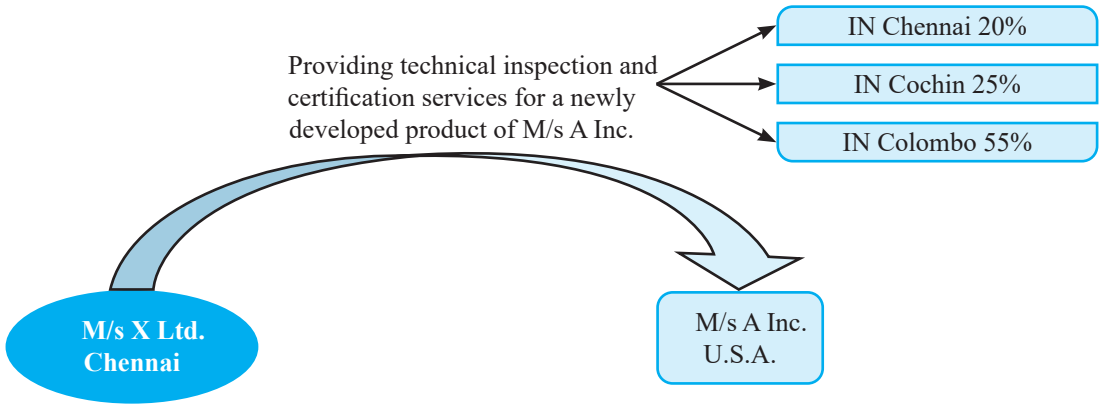
Solution:

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, 2021, 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, 2021 and has been residing there since then. Mr. S contends that since he is a non-resident during the year 2025-26 in terms of the Income-tax Act, GST cannot be levied on the locker fee charged by State Bank of India for the year 2025-26.

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.

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.,

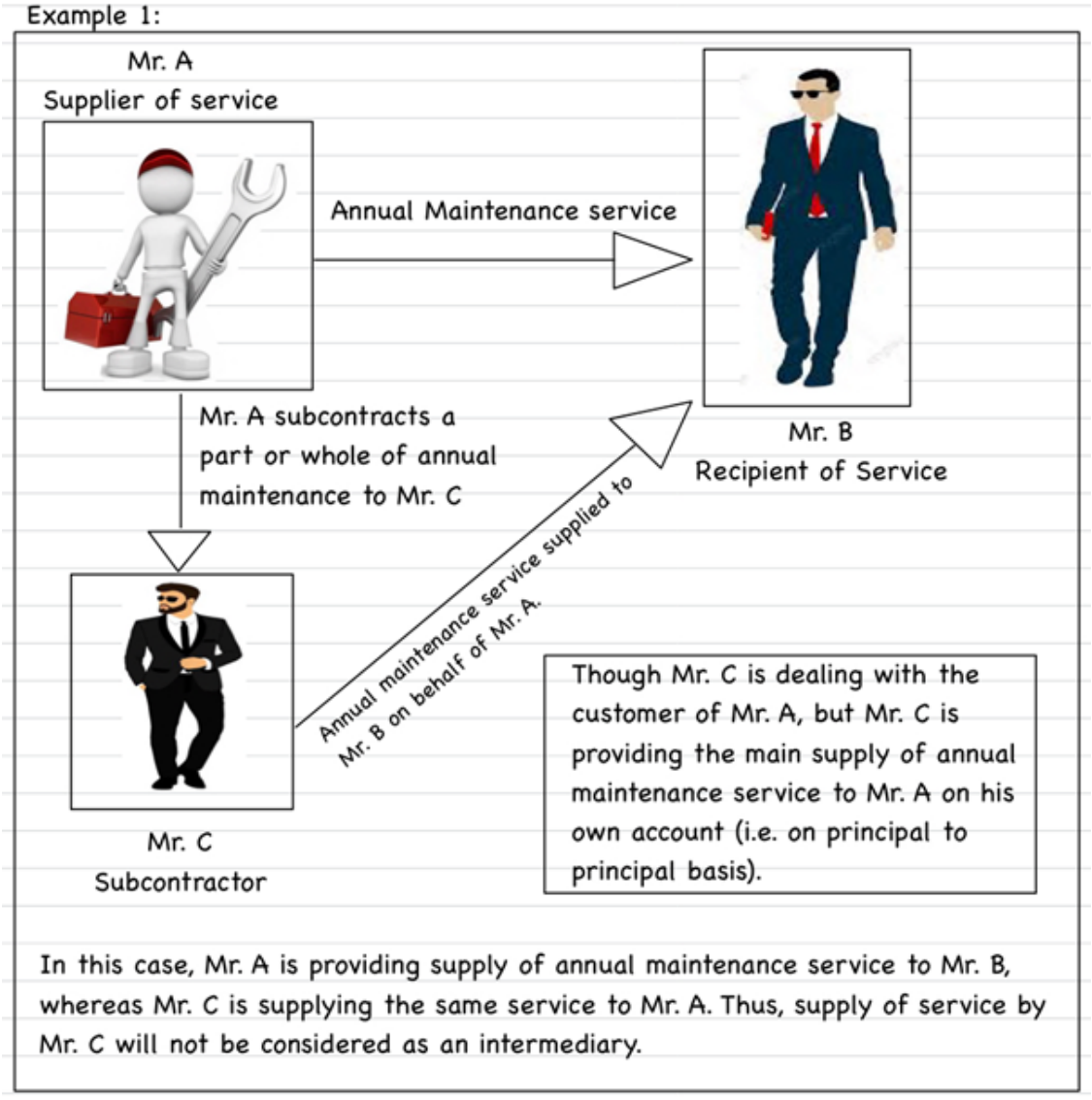
Remittances from abroad, GST will be levied.

Intermediary:

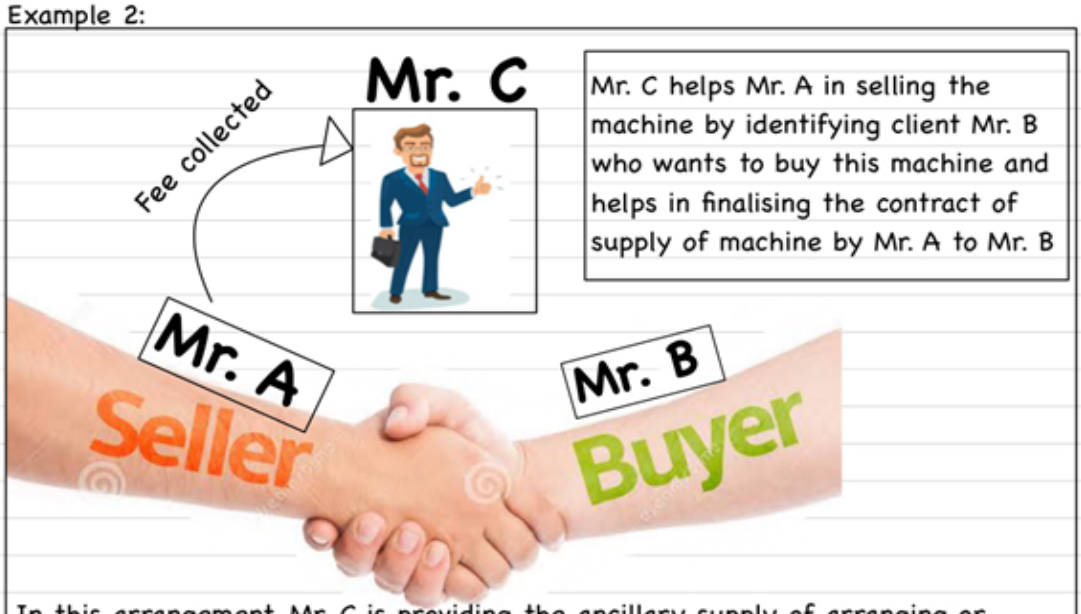
As per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both securities on his own account.

As per CBIC Circular No. 159/15/2021 GST dated 02.06.2021, Scope of Intermediary is as follows:

Intermediary has been defined under section 2(13) of IGST Act, 2017, as "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 or securities on his own account".



Example 2:



In this arrangement, Mr. C is providing the ancillary supply of arranging or facilitating the main supply of machinery between Mr. A and Mr. B and therefore, Mr. C is an intermediary and is providing intermediary service to Mr. A.

Example 3:

M/s A Ltd. Supplier of Service

M/s B Ltd. recipient of Service

M/s A Ltd outsources the task of design and development of a particular module of the software to M/s C Ltd. for which M/s C Ltd. may have to interact with M/s B Ltd. to know their specific requirements.

M/s C Ltd.

In this case, M/s C Ltd. is providing main supply of service of design and development of software to M/s A Ltd. and thus, M/s C Ltd is not an intermediary in this case.

Example 4:

M/s P Inc. (Insurance Company outside India)

Approaches for arranging insurance claims processing service from other service providers in India.

Miss. Queen
(Located in India)

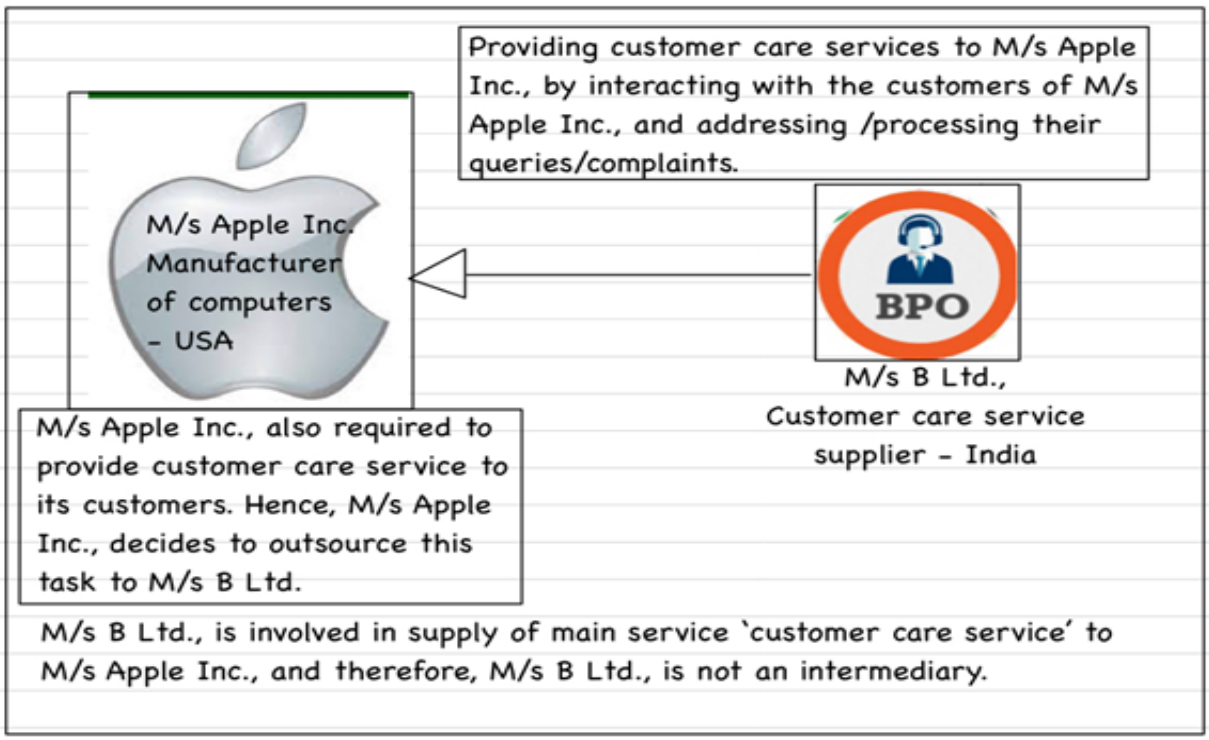
Miss. Queen charges M/s P Inc., a commission or service charges of 1% of the contract value of insurance claims processing service provided by Mr. King to M/s P Inc.

Miss Queen contracts Mr. King and arranges supply of insurance claims processing services by Mr. King to M/s P Inc.

Mr. King
(Supplier of insurance claims processing service)

In such case, main supply of insurance claims processing service is between M/s P Inc., and Mr. King, while Miss Queen is merely arranging or facilitating the supply of services between M/s P Inc., and Mr. King, and not herself providing the main supply of service. Accordingly, in this case, Miss. Queen acts as an intermediary as per definition of section 2(13) of the IGST Act, 2017.

Example 5:



Export of Service (Circular No. 161/17/2021 GST dt. 20.09.2021):

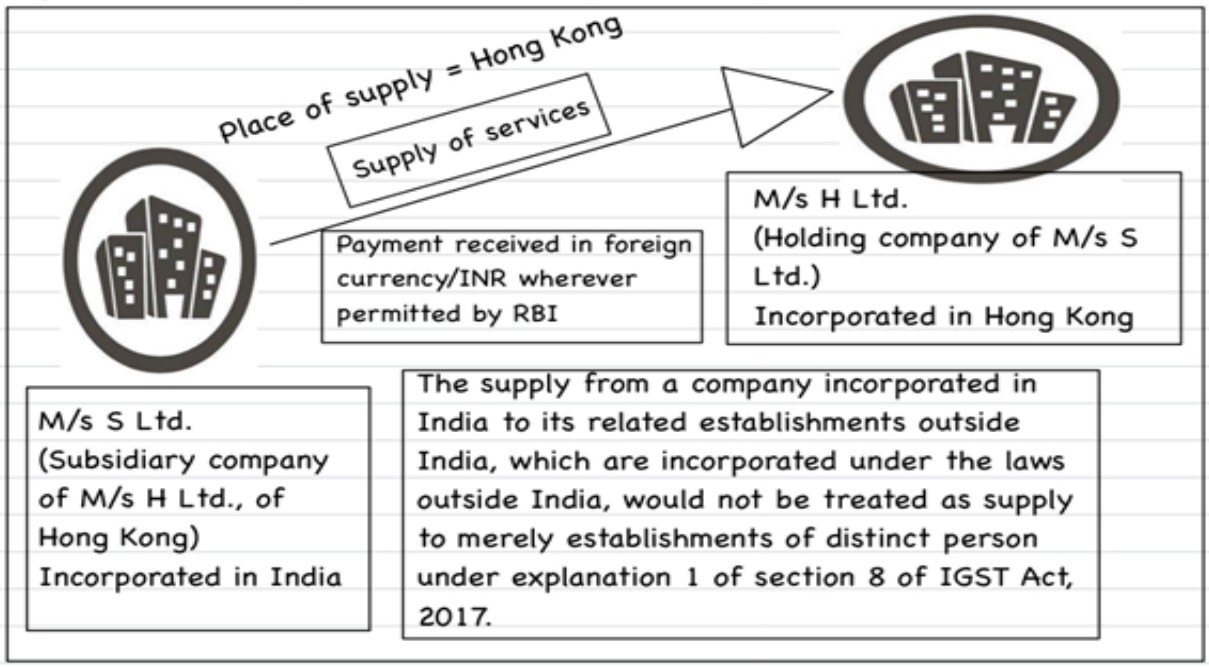


Illustration 57

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 w.e.f. 1st October 2023 place of supply as per Section 13(2) of the IGST Act, 2017.	

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:

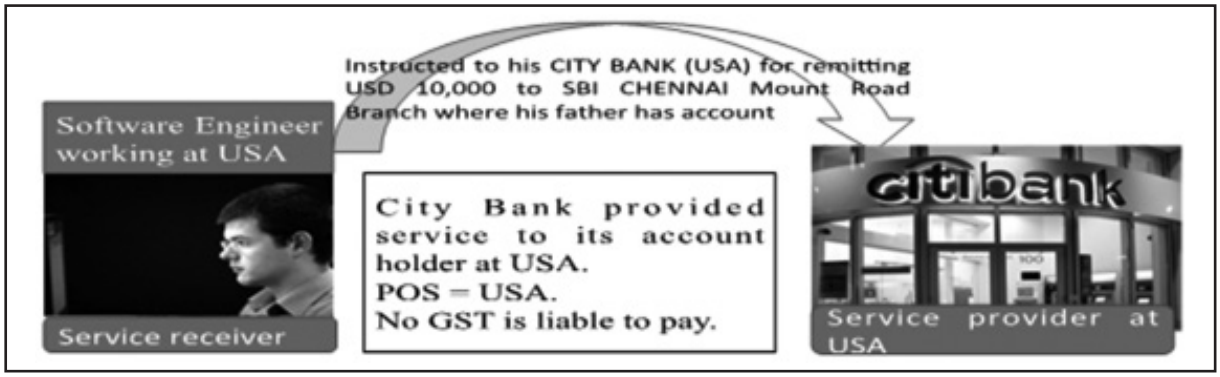


Illustration 58(b)

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:

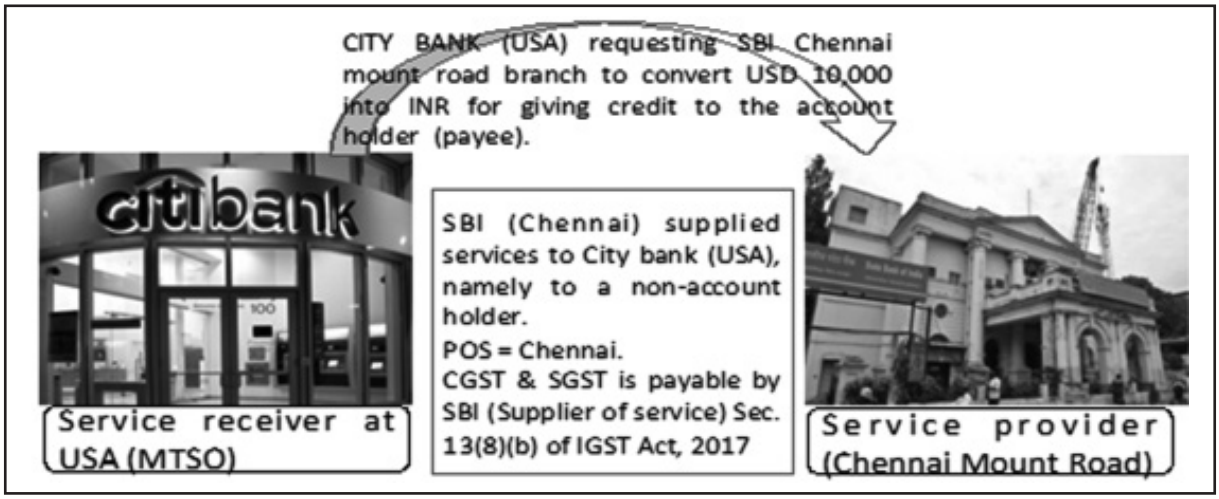


Illustration 59

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 20XX? 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.

CBIC Circular No. 230/24/2024-GST dt. 10th September, 2024 - Clarification in respect of advertising services provided to foreign clients.

This clarification from the Board addresses concerns raised by Indian advertising companies regarding the classification of services provided to foreign clients. Field formations have been treating these services as supplied within India, thereby denying export benefits. The Board, invoking Section 168(1) of the Central Goods and Services Tax (CGST) Act, provides clarity on this matter to ensure consistent application across field formations.

In this circular – following issues has addressed.

Here's a structured and summarized explanation of the issues, clarifications, and examples based on the scenarios mentioned:

Case 1: Comprehensive Advertising Agreement

Scenario:

A foreign client hires an Indian advertising company for a comprehensive advertising agreement. The advertising company provides end-to-end services, including media planning, content creation, media space procurement, and campaign monitoring. The foreign client pays the advertising company in foreign exchange.

Issues and Clarifications:

1. Is the advertising company an intermediary?
    - Clarification: The advertising company is not an intermediary because:
        - It provides the entire scope of services on its own account.
        - Agreements are executed on a principal-to-principal basis.
        - The media owners do not have a direct agreement with the foreign client.
        - Place of Supply: Determined under Section 13(2) of the IGST Act as the location of the recipient, which is outside India. Therefore, the service qualifies as an export of service if conditions under Section 2(6) of the IGST Act are met.
2. Who is the recipient of services?
    - Clarification: The foreign client is the recipient because:
        - The foreign client is liable to pay for the services.
        - Representatives in India or the target audience cannot be considered recipients under Section 2(93) of the CGST Act.
3. Can these services be considered performance-based under Section 13(3)?
    - Clarification: The services are not performance-based because:
        - There is no physical presence of goods or individuals required.
        - The services involve coordination and planning, which do not fall under the purview of Section 13(3).
        - Place of Supply: Determined under Section 13(2) as the location of the recipient (foreign client), i.e., outside India.

Case 2: Facilitation Services (Acting as an Agent)

Scenario:

An Indian advertising company acts as an agent for the foreign client, arranging media space directly with the media owner. The media owner invoices the foreign client, and the client pays the media owner directly. The advertising company charges the foreign client only for its facilitation services.

Issues and Clarifications:

1. Is the advertising company an intermediary?
    - Clarification: The advertising company is an intermediary because:
        - It facilitates the service of procuring media space and broadcasting advertisements.
        - It does not supply the media services on its own account.
        - Place of Supply: Determined under Section 13(8)(b) of the IGST Act as the location of the supplier, i.e., India. Consequently, these services do not qualify as exports.
2. Who is the recipient of services?
    - Clarification: The foreign client remains the recipient, as they pay for the facilitation services.

3. Can these services be considered performance-based?

- **Clarification:** No, these services involve facilitation and coordination rather than physical performance or presence.
- Place of Supply: Determined under Section 13(8)(b) as the location of the supplier, i.e., India.

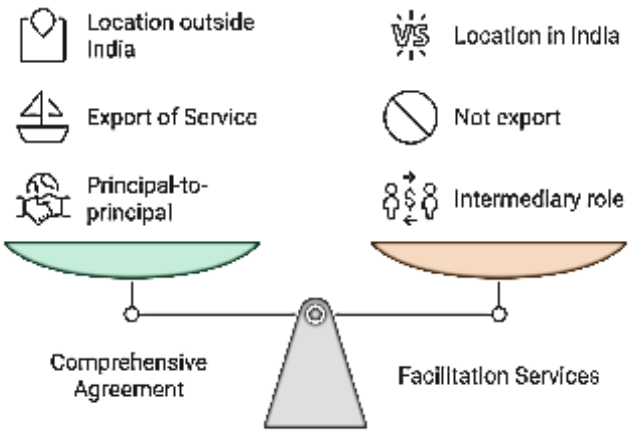
Examples to Illustrate the Clarifications:

Example 1: Comprehensive Agreement (Not an Intermediary)

- **Facts:** ABC Ltd. (India) enters into a comprehensive agreement with XYZ Inc. (USA) for planning, creating, and displaying advertisements. ABC Ltd. procures media space and pays media owners on its own account. ABC Ltd. invoices XYZ Inc. for the entire service and receives payment in foreign exchange.
- **Outcome:**
  - ABC Ltd. is not an intermediary.
  - Place of Supply: Outside India (location of XYZ Inc.).
  - The service qualifies as an export of service under Section 2(6) of the IGST Act.

Example 2: Facilitation Services (Acting as an Intermediary)

- **Facts:** ABC Ltd. (India) facilitates the procurement of media space for XYZ Inc. (USA). The media owner directly invoices XYZ Inc., and payment is made by XYZ Inc. to the media owner. ABC Ltd. charges XYZ Inc. only for facilitation.
- **Outcome:**
  - ABC Ltd. is an intermediary.
  - Place of Supply: India (location of ABC Ltd.).
  - The service does not qualify as an export.



Understanding Advertising Service Agreements

Circular No. 220/1/2024-GST dated 26 June 2024

Clarification on the place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors (FPI):

The circular clarifies the place of supply for custodial services provided by banks to FPIs. It states that these services should not be considered as services provided to 'account holders' under section 13(8)(a) of the IGST Act. The place of supply for such services should be determined under the default provision, which is sub-section (2) of section 13 of the IGST Act. The circular provides details on the definition of custodial services, the types of securities FPIs can invest in, and the main activity of banks in providing custodial services. The circular also specifies that similar provisions were there under the service tax regime.

Custodial Services Definition and Scope: Include safekeeping of securities of clients and incidental services.

Account Holder Clarification: "Account" has been defined in the rules to mean an account which bears an interest to the depositor. Custodial services are not considered services provided to account holders as per Section 13(8)(a) of the IGST Act.

The place of supply for services supplied by a banking company or financial institution to account holders is the location of the supplier.

Place of Supply Determination: Custodial services are not covered under Section 13(8)(a) of the IGST Act as they do not qualify as services provided to 'account holders'.

Place of supply for custodial services is determined under the default provision, Section 13(2), implying the location of the recipient of services.

Here's an example illustrating the application of Circular No. 220/1/2024-GST dated 26 June 2024 regarding custodial services provided by banks to Foreign Portfolio Investors (FPIs):

Scenario:

ABC Bank Ltd., located in Mumbai, India, provides custodial services to XYZ Capital, an FPI based in Singapore.

Details of Services Provided by ABC Bank:

1. Custodial Services: Safekeeping of XYZ Capital's securities in India (e.g., shares, debentures, and government bonds).
2. Incidental Services: Record-keeping, settlement of securities transactions, collection of dividends/interest, and reporting of holdings.
3. Fee Structure: ABC Bank charges a custodial fee based on the volume of securities under management.

Step-by-Step Analysis of the Place of Supply:

1. Understanding Section 13(8)(a) of the IGST Act:

Section 13(8)(a) states that for services provided by a banking company, financial institution, or NBFC to an "account holder," the place of supply is the location of the supplier of services (in this case, India).

- Key Point of the Circular: Custodial services are not considered services provided to an "account holder."
- Reason: An "account" under this section is defined as an account bearing interest, such as a savings or fixed deposit account. Custodial accounts do not bear interest.

2. Applicability of Section 13(2) – Default Rule:

Since custodial services do not qualify under Section 13(8)(a), the place of supply is determined under Section 13(2), which specifies:

- Place of supply = Location of the recipient of services, if the recipient's location is available.

In this case:

- The location of the recipient, XYZ Capital, is Singapore.

3. **Tax Implications:**
   - The place of supply for custodial services is outside India (Singapore).
   - As the place of supply is outside India and the supplier is in India, this transaction qualifies as an export of services under GST.
   - Therefore, ABC Bank can provide these services under a zero-rated supply and may claim refunds for input tax credits, if any.

Numerical Illustration:

- Custodial Fee Charged by ABC Bank: ₹10,00,000
- GST Implication:
- Since this is an export of services, no GST is charged to XYZ Capital.
- ABC Bank must comply with the export documentation requirements to treat this as zero-rated.

Key Takeaways from Circular:

1. Custodial services are excluded from the ambit of Section 13(8)(a).
2. The place of supply is determined as per Section 13(2) and is based on the recipient's location.
3. Similar treatment was provided under the service tax regime for custodial services to foreign clients.

Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India (vide CBIC Circular No. 232/26/2024-GST Dt. 10th September 2024):

Here's a practical example illustrating the clarified position regarding data hosting services:

Issue 1: Data Hosting Service Provider and Cloud Computing Service Provider

1. Parties Involved:
   - Data Hosting Service Provider (Provider): Located in India, operating a data center.
   - Cloud Computing Service Provider (Recipient): Located in the USA, offering cloud-based services to its global customers.
   - End Users (Consumers): Located in various countries, accessing cloud computing services from the Recipient.
2. Nature of Contract:
   - The Recipient contracts with the Provider to host their data on the Provider's servers.
   - The Provider operates data centers equipped with computing and networking infrastructure to manage data storage, processing, and distribution.
   - The Provider does not interact with or have any knowledge about the End Users.

3. Billing and Payments:
   - The Provider charges the Recipient for data hosting services based on the usage of infrastructure (e.g., server space, processing power).
   - Payment is made by the Recipient (located outside India) in foreign exchange.
4. Service Flow:
   - The Provider provides services like server hosting, IT management, monitoring, and data security directly to the Recipient.
   - The Recipient uses these services to deliver cloud computing solutions (e.g., software, storage, analytics) to its End Users.

Practical Example Analysis

1. Whether the Data Hosting Provider is an "Intermediary"?

- The Provider supplies hosting services directly to the Recipient on a principal-to-principal basis.
- The Provider is not facilitating the supply of cloud computing services between the Recipient and the End Users.
- Conclusion: The Provider is not an intermediary under Section 2(13) of the IGST Act.

2. Place of Supply:

- Since the Provider is not an intermediary, the place of supply cannot be determined under Section 13(8)(b) (location of the supplier).
- Instead:
  - No goods are "made available" by the Recipient to the Provider; hence, Section 13(3)(a) does not apply.
  - The services are not directly related to immovable property, so Section 13(4) does not apply.
  - The place of supply defaults to Section 13(2), which specifies the location of the recipient as the place of supply.
  - Conclusion: The place of supply is the location of the Recipient (USA).

3. Export of Services:

To qualify as an export of services under Section 2(6) of the IGST Act:

1. The Supplier of service is located in India.
2. The Recipient of service is located outside India.
3. The place of supply is outside India.
4. Payment is received in convertible foreign exchange.
5. The supplier and recipient are not merely establishments of the same entity.

Outcome:

All conditions are satisfied, and the services qualify as export of services. The Provider is eligible for GST benefits, such as:

- Zero-rated supply under Section 16 of the IGST Act.
- Refund of input tax credit, if any, on inputs/services used for providing the exported services.

Numerical Illustration

1. **Contract Value:**
   - The Provider charges $50,000 (approximately ₹40,00,000) per month for hosting services.
   - Payment is received in USD.
2. **GST Implications:**
   - The service qualifies as an export of service and is zero-rated under GST.
   - The Provider does not charge GST on the invoice raised to the Recipient.
3. **Input Tax Credit Refund:**
   - The Provider incurs GST on purchases such as servers, electricity, and IT equipment.
   - Total Input GST for the month: ₹2,00,000.
   - Since the service is zero-rated, the Provider can claim a refund of the ₹2,00,000 input GST.

Key Takeaways

1. Place of Supply: The location of the cloud computing service provider (USA).
2. Export of Service: Hosting services qualify as export and are zero-rated.
3. Input Tax Credit: The Provider can claim a refund for input taxes incurred in providing the exported service.

Issue 2: Whether data hosting services are provided in relation to goods "made available" by the recipient (cloud computing provider) and whether the place of supply can be determined under Section 13(3)(a) of the IGST Act.

Key Points:

1. **Section 13(3)(a):**
   - Applies when goods are physically made available by the recipient to the provider, and the place of supply is the location of the service provider.
2. **Scenario:**
   - Data hosting providers operate independently, using their own premises, infrastructure (hardware, cooling, power, software, etc.), and personnel.
   - Cloud computing providers (recipients) do not own or "make available" the infrastructure used by the data hosting provider.
3. **Clarification:**
   - Data hosting services are not related to goods "made available" by the cloud computing providers.
   - Even if some hardware is provided by the recipient, the hosting provider manages all aspects of the service independently.
   - Therefore, Section 13(3)(a) does not apply, and the place of supply cannot be determined based on this section.
4. **Outcome:**
   - Place of supply is determined under Section 13(2) (default rule), which is the location of the recipient (overseas cloud computing provider).

Issue 3: Are data hosting services directly related to immovable property, and is the place of supply determined under Section 13(4) of the IGST Act?

Key Points:

1. **Section 13(4):**
   - Applies when services are directly related to immovable property, and the place of supply is the location of the property.
2. **Scenario:**
   - Data hosting providers use premises, IT infrastructure, and additional resources to deliver hosting services.
   - The services involve operating data centers, managing power supplies, ensuring network connectivity, and maintaining servers, not just managing or maintaining immovable property.
3. **Clarification:**
   - Data hosting services are not directly related to immovable property but are comprehensive IT services.
   - Section 13(4) does not apply.
4. **Place of Supply:**
   - Determined under Section 13(2) (default rule), which is the location of the recipient.
   - If the recipient (cloud computing provider) is outside India, the place of supply is outside India, and the service qualifies as export of services, subject to conditions in Section 2(6).

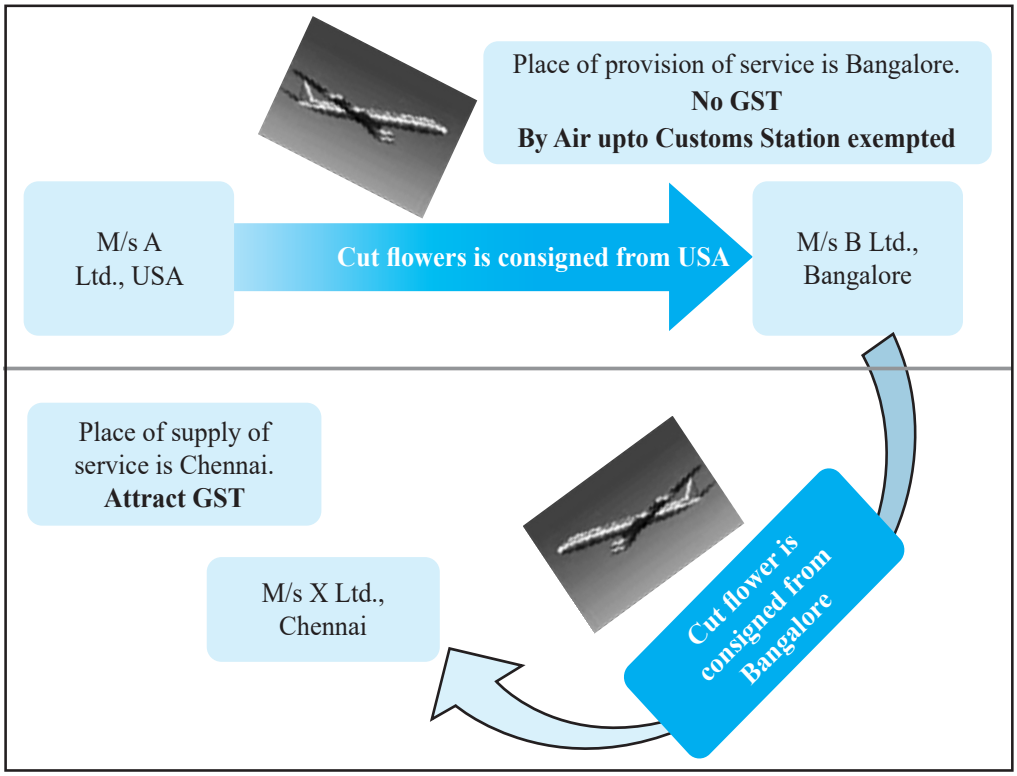
Place of provision of a service of transportation of goods other than by way of mail or courier [Section 13(9) of IGST]

Place of supply of Service = Destination of such Goods

Section 13(9) of IGST Act, 2017 omitted vide Finance Act, 2023, w.e.f. 1st October 2023. W.e.f. 1-10-2023 place of supply will be under section 13(2) of IGST Act.

As per CBIC Circular No. 203/15/2023 dt 27-10-2023, It is clarified that after the said amendment comes into effect, the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of the IGST Act and not as performance based services u/s 13(3) of the IGST Act.

Place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of the IGST Act, 2017.



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 IGST on sea freight. Import of goods on CIF basis.

Solution:

Place of supply = Chennai (i.e. product 'A' ultimate destination in India) under section 13(2) of IGST Act,2017.

It is exempted supply of service.

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.

Passengers Embarks from New Delhi.
Place of supply is New Delhi. Hence, Taxable

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:

w.e.f. 1st October 2023, Section 2(17) of IGST Act, 2017 "online information and database access or retrieval 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 impossible to ensure in the absence of information technology and includes electronic services such as,-

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) w.e.f. 1st October 2023 online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017.);	(vii) Advertising services in newspapers, on posters and on television
	(viii) online money gaming

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** **R**ecorded 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 based on section 14 of IGST Act, 2017:

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

On September 26, 2023, the Indian government released a circular to end GST exemption enjoyed by overseas online information and database access retrieval service (OIDAR) providers. This change, which comes into effect from October 1, 2023, means that companies such as Facebook, Google, and various edtech platforms will face an integrated GST (IGST) of up to 18 percent on their services provided to both individuals and the government.

Until this recent change, OIDAR services provided by overseas companies to the Indian central government, state governments, government authorities, or individuals for non-business purposes were exempt from taxation.

Example : Online information and data base access or retrieval services, where imported from Google and Facebook by Mr. Rahim (unregistered person) located in taxable territory, for ₹20,000 on 1st January 2024. Is it subject to GST?

Answer: Yes. It is taxable supply of service.

IGST is liable to pay by supplier of OIDAR namely, Google and Facebook in the given case.

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.

w.e.f. 01-10-2023, Insertion of new Section 14A in the IGST Act, 2017 [Special provision for specified actionable claims supplied by a person located outside taxable territory] to provide that,-

- A supplier of online money gaming [as defined in 2(80B) of CGST Act, 2017] not located in the taxable territory, shall be liable to pay integrated tax in respect of said supply by him to a person in the taxable territory.
- the said supplier shall obtain a single registration under the Simplified Registration Scheme[referred to in sub-section (2) of section 14 of the IGST Act, 2017] for payment of integrated tax
- Any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the said supplier.
- If such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.
- In case of failure to comply with any of the aforesaid provisions by the said supplier or a person appointed by him or both (notwithstanding anything contained in section 69A of the IT Act, 2000), any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.

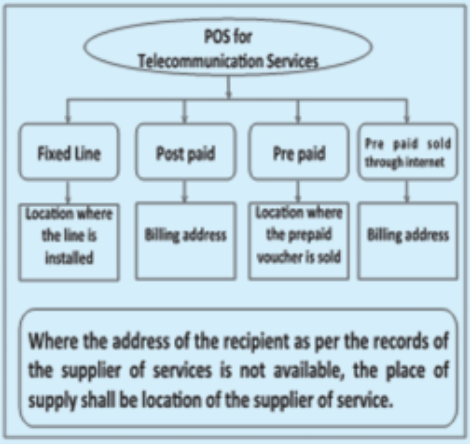
Section 12 and 13 of IGST Act, 2017 summary:

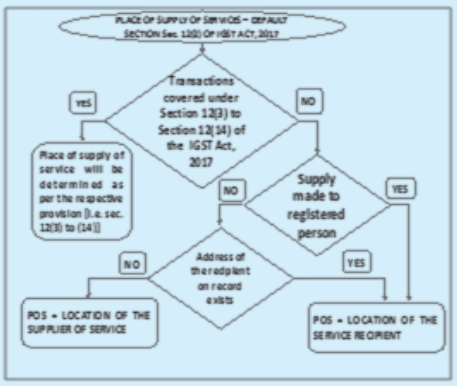
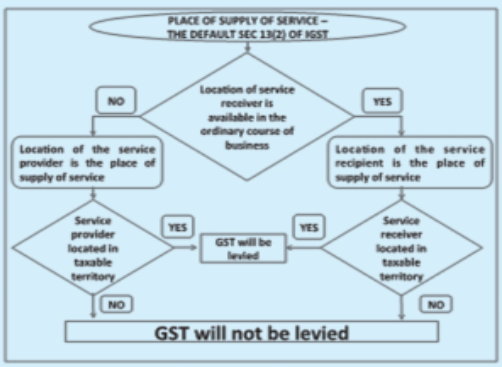
Sl. No.	The Place of Supply of Services where location of supplier and recipient is in India [Section 12 of IGST Act, 2017]		Place of supply of service where location of Supplier of Service or Location of Recipient of Service is outside India [Section 13(1) of the IGST Act, 2017]	
	Nature of supply	Place 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
	(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

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
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
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	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

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
		• if the event is held outside India, the place of supply shall be the location of the recipient.		
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. **omitted w.e.f.1st October 2023:** 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
		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)	

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
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.	**Omitted w.e.f. 1-10-2023** **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.
		• Location of supplier in other cases		

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
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
			use and enjoyment of a service. Section 13(13) of IGST Act, 2017	enjoyment of a service i.e. location of the service recipient.

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
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.		
13		

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: **S**aid 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
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

4.1 Introduction

4.2 Related Party Transactions

4.3 Distinct Person Transactions

4.4 Specific Valuation Rules

4.5 Case Studies and Illustrations on Valuation

4.6 Key Advance Rulings

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.

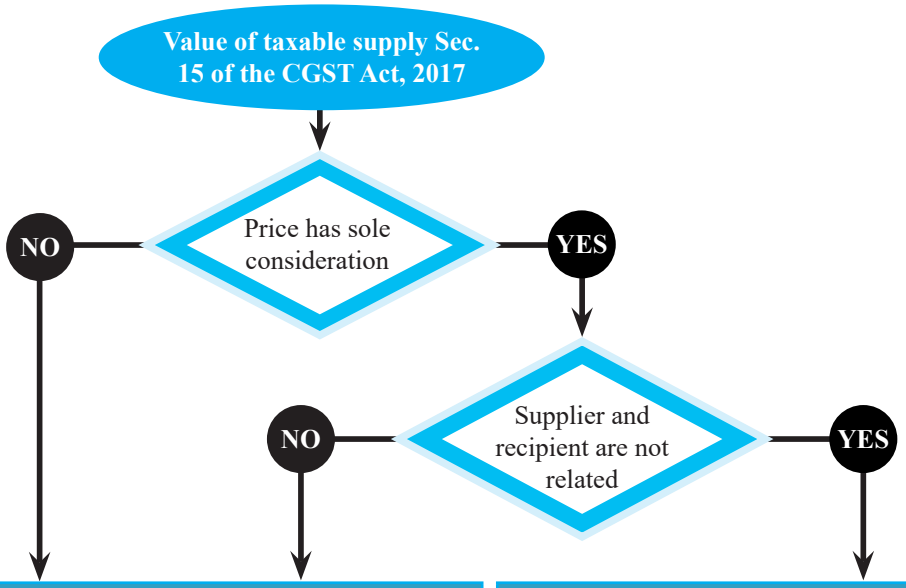
Example 1

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)		Value of Supply Sec. 15(1)	xxx
Rule 27: Value of supply of goods or services where the consideration is not wholly in money		Add: If not included in the above	
(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.		Sec. 15(2)(a): • Any taxes (other than GST), • Duties, • Cesses, • Fees and charges	 xx xx xx 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
Rule 28: Value of supply of goods or services or both between distinct or related persons, other than through an agent		Sec. 15(2)(d): Interest or late fee or penalty for delayed payment	xx
Rule 29: Value of supply of goods made or received through an agent		Sec. 15(2)(e): Subsidy directly linked to the price (other than Govt. subsidy)	xx
Rule 30: Value of supply of goods or services or both based on Cost.		Less: If included in the above	
Rule 31: Residual method for determination of value of supply of goods or services or both		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.

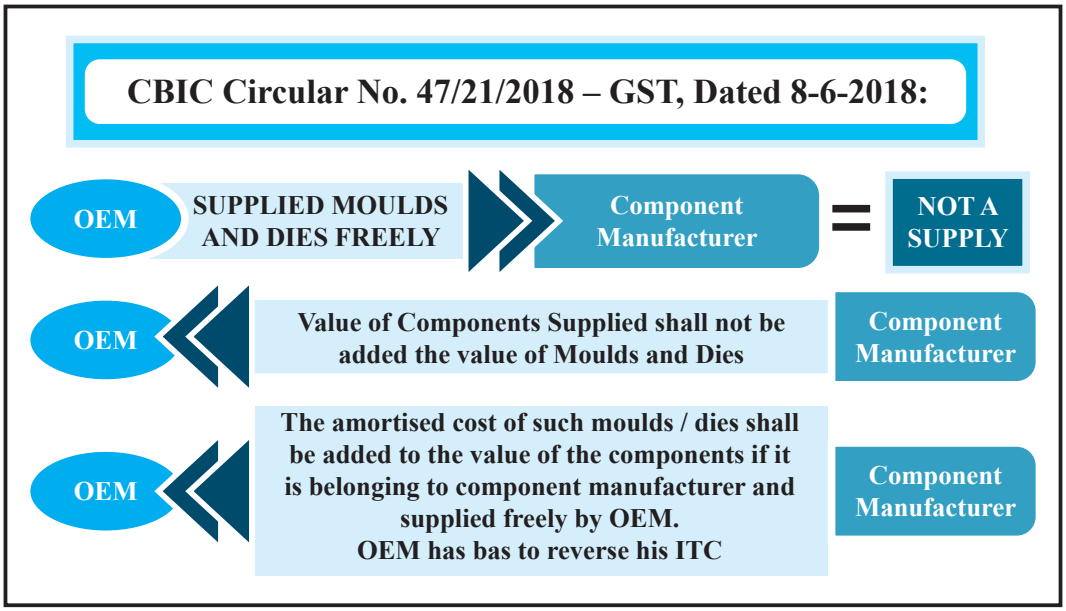
(e) Invoice price

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.

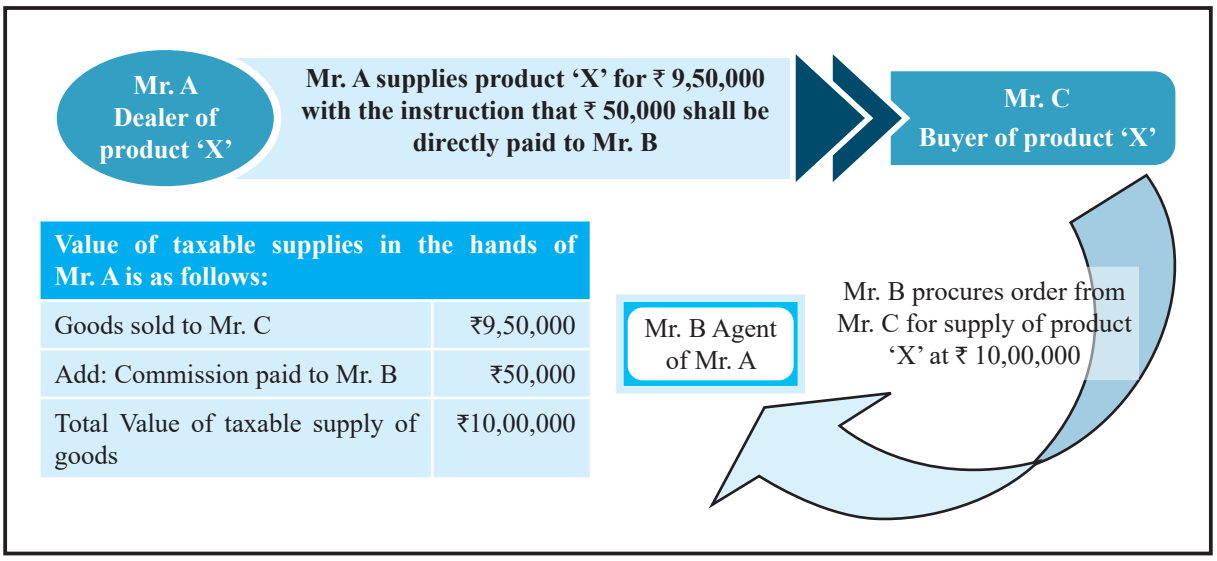
SUMMARY:



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

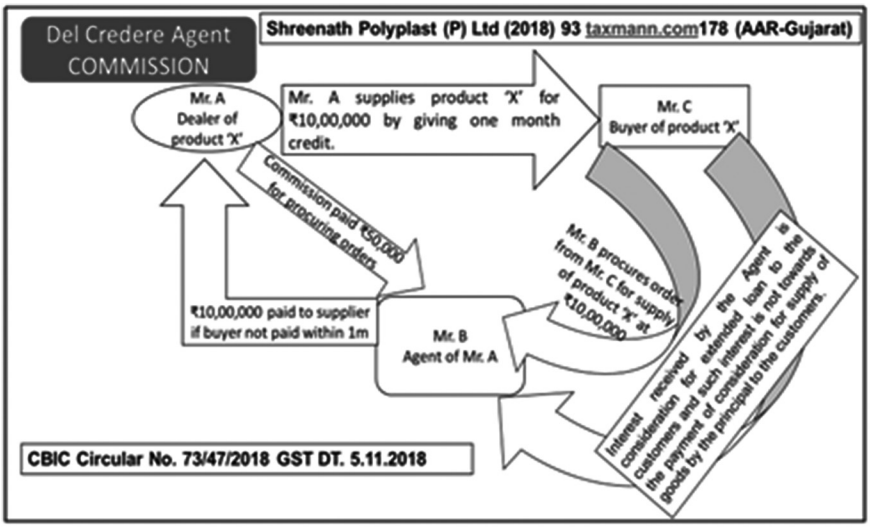
The Government provides subsidy, for the benefit of farmers but it is given to the manufacturer of fertilizers. Such subsidy will form part of value of supply.

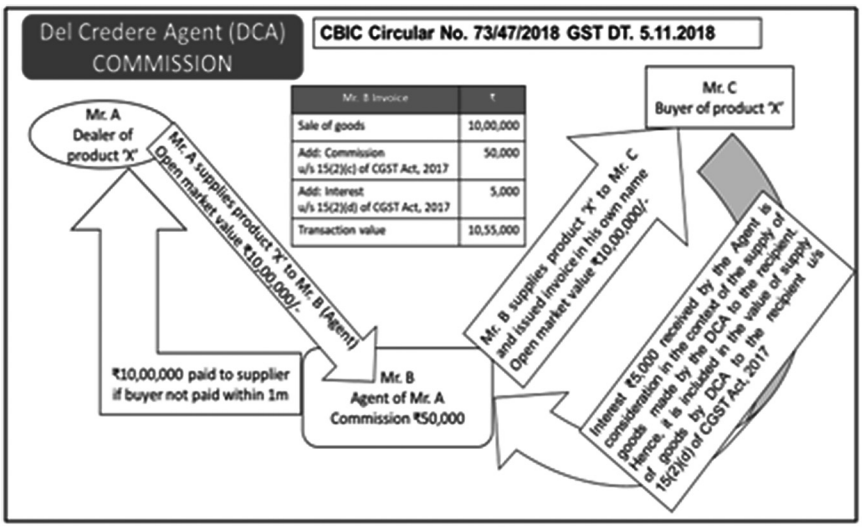
Solution:

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





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.

No GST on incentive paid by Ministry of Electronics and information Technology (MeitY) to acquiring banks (vide Circular No. 190/02/2023 GST dt. 13.01.2023):

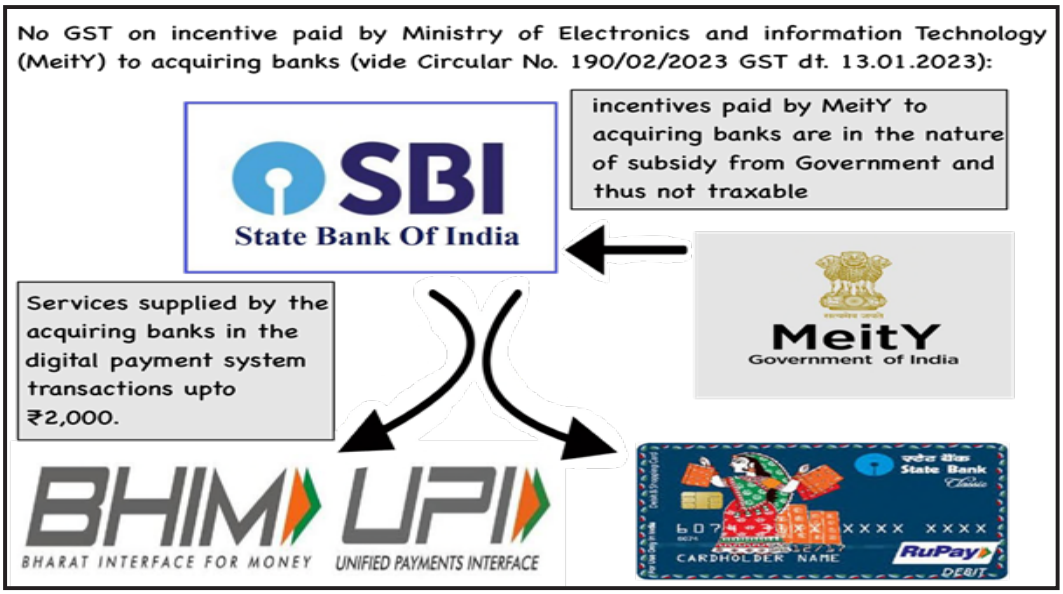
Under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, the Government pays the acquiring banks an incentive as a percentage of value of RuPay Debit card transactions and low value BHIM-UPI transactions up to Rs.2000/-.

The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay Debit cards or BHIM-UPI.

The service supplied by the acquiring banks in the digital payment system in case of transactions through RuPay/ BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration for such services, instead of being paid by the merchant or the user of the card, is paid by the central government in the form of incentive.

However, it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. The incentive is in the nature of a subsidy directly linked to the price of the service and the same does not form part of the taxable value of the transaction in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017. As recommended by the Council, it is hereby clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

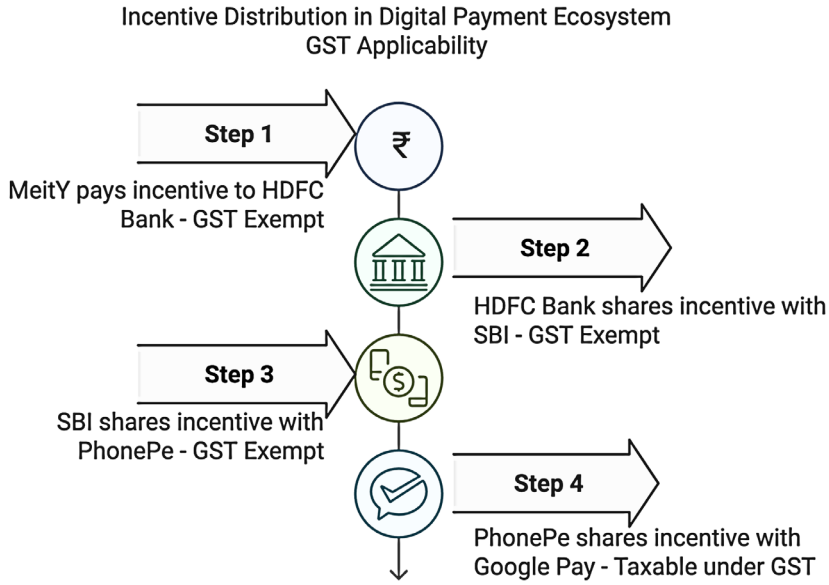
Simplified Approach:



CBIC Circular No. 228/22/2024-GST dated 15thJuly 2024: Applicability of GST on the incentive amount shared by acquiring banks with other stakeholders in the digital payment ecosystem under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions:

The Ministry of Electronics and Information Technology (MeitY) pays incentives to acquiring banks under the Incentive Scheme for the promotion of RuPay Debit Cards and low-value BHIM-UPI transactions. These incentives are shared with various stakeholders in the digital payment ecosystem (e.g., issuer banks, payment service providers, and UPI apps) as per the proportion and manner decided by the National Payments Corporation of India (NPCI). The GST Council clarified that these incentives are not taxable as they are in the nature of a subsidy.

Here is a practical, detailed example involving specific names for each stakeholder and a step-by-step flow explaining the GST applicability in the digital payment ecosystem.



Practical Example

Transaction Details:

1. Transaction Type: BHIM-UPI payment.
2. Transaction Value: ₹1,000.
3. Incentive Amount: 1% of the transaction value = ₹10.
4. Stakeholders Involved:
   - MeitY (Ministry of Electronics and IT): Pays the incentive to the acquiring bank.
   - Acquiring Bank (HDFC Bank): Processes the payment for the merchant.
   - Issuer Bank (SBI): The bank that issued the UPI access/debit card to the customer.
   - PSP (PhonePe): Facilitates the UPI transaction via its app.
   - TPAP (Third-Party App Provider): Google Pay, which is used by the customer to make the payment.

Step-by-Step Flow of the Incentive Distribution:

Step 1: MeitY Pays Incentive to Acquiring Bank (HDFC Bank)

- **Details:**
  - MeitY pays an incentive of ₹10 (1% of ₹1,000) to HDFC Bank, the acquiring bank, for promoting RuPay Debit Card and UPI transactions.
- **GST Applicability:**
  - Not Taxable.
  - Reason: This payment is a subsidy from MeitY to promote digital payments, as clarified by Circular No. 190/02/2023-GST.

Step 2: Acquiring Bank (HDFC Bank) Shares Incentive with Issuer Bank (SBI)

- Details:
  - NPCI directs HDFC Bank to share 70% of the incentive (₹7) with SBI, the bank that issued the customer's debit card or enabled their UPI account.
- GST Applicability:
  - Not Taxable.
  - Reason: This sharing is part of the subsidy-sharing mechanism mandated by NPCI, as clarified in the 53rd GST Council meeting.

Step 3: Issuer Bank (SBI) Shares Incentive with PSP (PhonePe)

- Details:
  - NPCI instructs SBI to share 50% of the ₹7 it received with PhonePe, the Payment Service Provider that facilitated the transaction.
  - Amount shared: ₹3.50.
- GST Applicability:
  - Not Taxable.
  - Reason: This sharing is also part of the NPCI-regulated mechanism and remains a subsidy.

Step 4: PSP (PhonePe) Shares Incentive with TPAP (Google Pay)

- Details:
  - As per a private business agreement, PhonePe shares ₹1 (out of the ₹3.50 it received) with Google Pay, the Third-Party App Provider (TPAP) used by the customer for the transaction.
- GST Applicability:
  - Taxable.
  - Reason: This sharing is based on a private contract between PhonePe and Google Pay and is not part of the subsidy-sharing mechanism mandated by NPCI.

Detailed Flow of Incentive:

Step	From	To	Amount Shared	Mechanism	GST Applicability	Reason
Step 1	MeitY	HDFC Bank	₹10	Subsidy from MeitY	Not Taxable	Incentive from MeitY is a subsidy.
Step 2	HDFC Bank	SBI	₹7	NPCI-regulated mechanism	Not Taxable	Shared as part of the subsidy.
Step 3	SBI	PhonePe	₹3.50	NPCI-regulated mechanism	Not Taxable	Shared as part of the subsidy.
Step 4	PhonePe	Google Pay	₹1	Private business agreement	Taxable	Not part of the NPCI-regulated mechanism.

Why GST is Taxable at Step 4 (PhonePe → Google Pay)?

1. Nature of Sharing:
   - At this stage, the sharing of the incentive is no longer part of the subsidy-sharing mechanism mandated by NPCI.
   - It is based on a private business agreement between PhonePe and Google Pay.
2. Classification Under GST:
   - This ₹1 payment is treated as a service provided by Google Pay to PhonePe, and thus, GST is applicable.

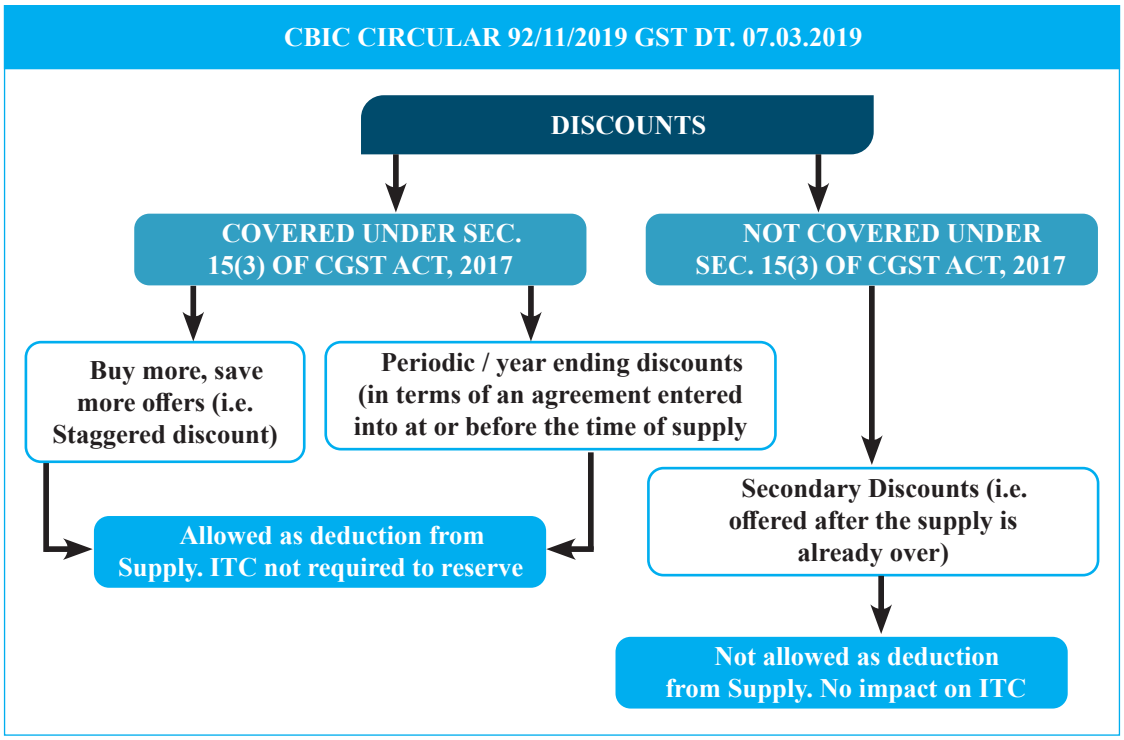
Outcome:

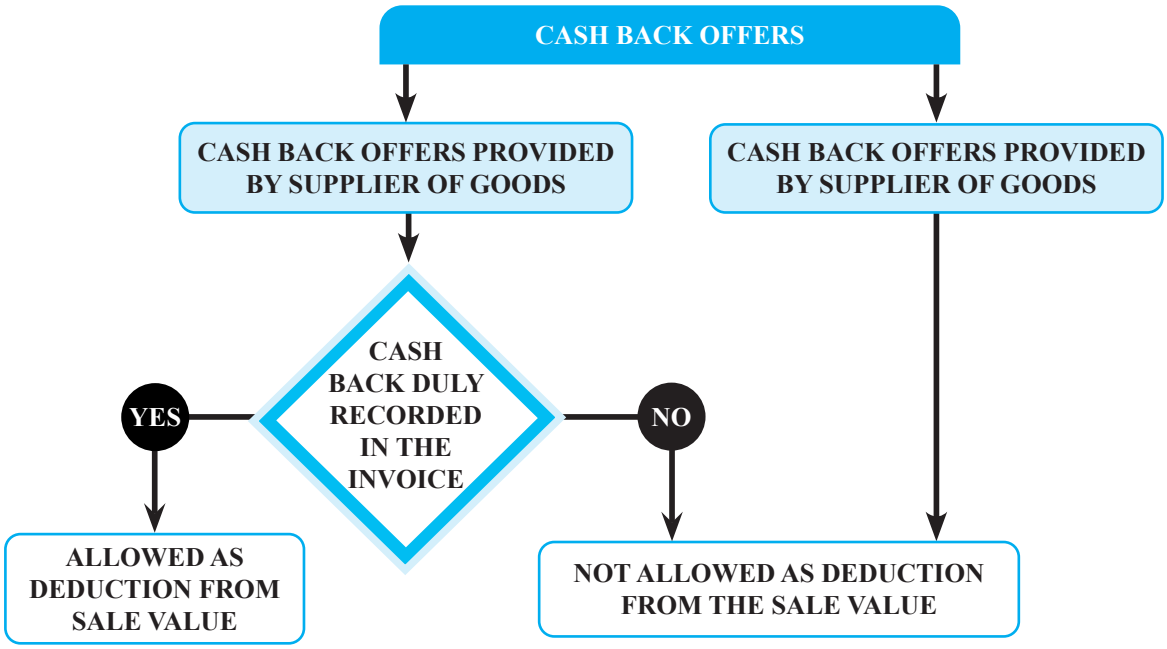
1. MeitY, HDFC Bank, SBI, and PhonePe are not liable to pay GST for the incentives received or shared under the NPCI-regulated mechanism.
2. Google Pay is liable to pay GST on the ₹1 it receives from PhonePe as this is based on a commercial agreement.

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:

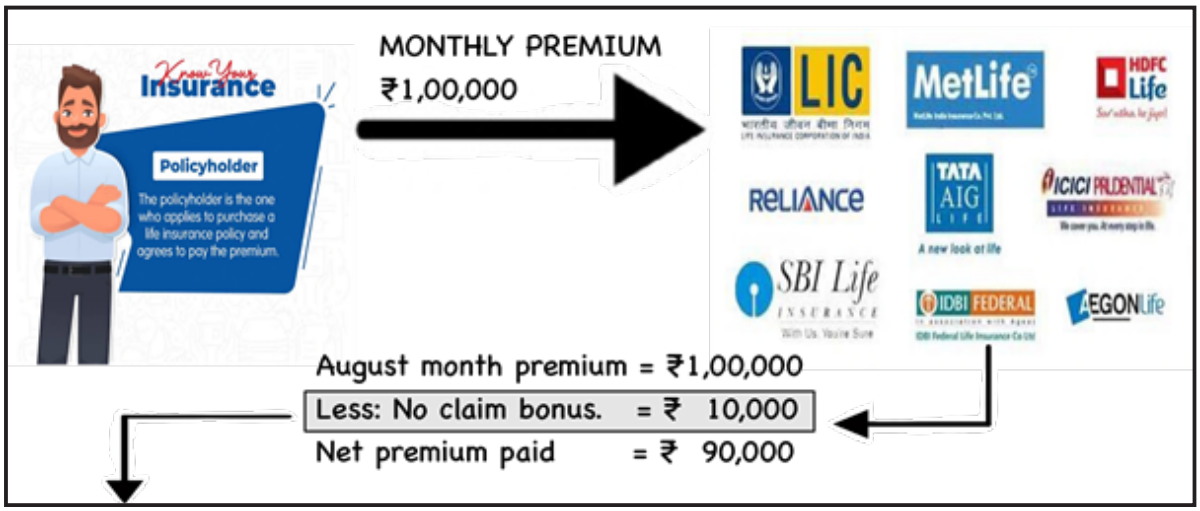




No Claim Bonus (NCB) is allowed as discount u/s 15(3) of CGST Act, 2017 (vide Circular No. 186/18/2022-GST-dt. 27.12.2022):

Issue	Clarification
Whether No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the unsured?	The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus (NCB), subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of section 15. It is, therefore, clarified that NCB is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No claim bonus mentioned on the invoice.

Simplified Approach:



It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (a) of sub-section (3) of section 15 of the CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No claim bonus mentioned on the invoice.

Circular No. 212/6/2024-GST dated 26 June 2024:

Mechanism for providing evidence of compliance with section 15(3)(b)(ii) of the CGST Act for excluding post- sale discounts from the taxable value:

Clarification verifying the reversal of Input Tax Credit (ITC) by recipients when discounts are offered by suppliers through credit notes after the supply has been effected.

Currently, there is no facility on the common portal to verify whether the ITC attributable to the discount has been reversed by the recipient.

In view of the above, till the time a functionality/ facility is made available on the common portal to enable the suppliers as well as the tax officers to verify whether the input tax credit attributable to such discounts offered through tax credit notes has been reversed by the recipient or not, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), [containing a Unique Document Identification Number (UDIN)] certifying that the recipient has made the required proportionate reversal of input tax credit at his end in respect of such credit note issued by the supplier.

In cases, where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding ₹5,00,000 (rupees five lakhs only), then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said input tax credit attributable to such discount has been reversed by him.

CA/CMA Certificate must include details of credit notes, relevant invoice numbers, amount of ITC reversal, and the relevant document through which the ITC reversal has been made.

Such certificates or undertakings are considered suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act.

Suppliers should produce these certificates/undertakings during proceedings such as scrutiny, audit, investigations, etc.

Even for past periods, these certificates can be produced as evidence of ITC reversal.

Example: Mechanism for Post-Sale Discounts and ITC Reversal Compliance

Scenario:

1. Supplier: XYZ Pvt. Ltd. issues tax credit notes for post-sale discounts to its recipient, ABC Pvt. Ltd.
2. Discount Details: A discount of ₹60,00,000 (tax amount of ₹9,15,254 included) is given via credit notes in FY 2024-25.

Mechanism for Compliance

- ITC Reversal Verification:
  - Since the recipient (ABC Pvt. Ltd.) must reverse the proportionate ITC related to the discount, the supplier (XYZ Pvt. Ltd.) needs evidence of this reversal.
- Compliance Evidence Based on Amount:
- If the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the Discount ≤ ₹5,00,000:
  - The supplier may procure an undertaking or certificate directly from the recipient.
- If the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the Discount > ₹5,00,000:
  - A certificate issued by a CA/CMA with a UDIN is required, confirming ITC reversal.
  - The certificate must include credit note details, invoice numbers, and reversal records.

Outcome

- XYZ Pvt. Ltd. obtains a CA or CMA certificate certifying that ABC Pvt. Ltd. has reversed the proportionate ITC of ₹9,15,254 in compliance with Section 15(3)(b)(ii) of the CGST Act.
- Relevance in Proceedings:
  - The certificate serves as valid evidence during scrutiny, audits, or investigations.
- Applicability to Past Periods:
  - Certificates for earlier financial years can also be used to demonstrate compliance.

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 April 2024, 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
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)

Sl. No.	Issue	Clarification
1	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?	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]
2	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 ₹ 7500 per month per member?	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>Sl. No.</th><th>Issue</th><th>Clarification</th></tr>
<tr><td></td><td></td><td>
<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>
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<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>
<tr><td>4</td><td>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?</td><td>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.</td></tr>
<tr><td>5</td><td>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?</td><td>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 .</td></tr>
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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
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 20

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	
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

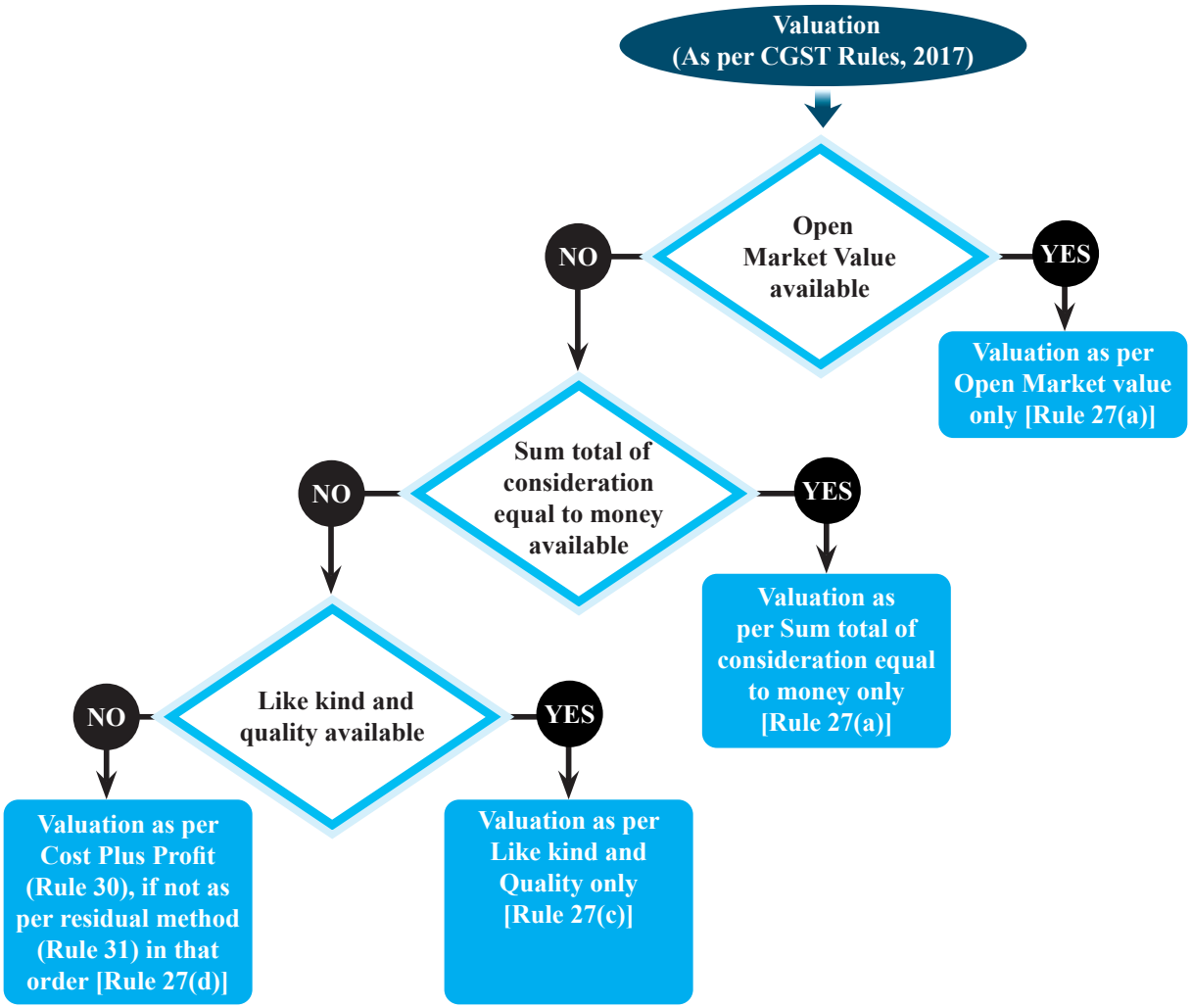
It is provided that where the value of supply of goods or services or both cannot be determined under rule 27 to rule 30 of the CGST Rules, 2017, value shall be determined by using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter 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

Rule 28(1) 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.

Rule 28(2) of CGST Rules, 2017:

w.e.f. 26th October 2023, Insertion of sub-rule (2) to rule 28: [Notification No 52/2023-CT dt 26-10-2023] Value of supply of services by a supplier to a recipient who is a related person (vide NT 12/2024 dated 10-7-2024, w.e.f. 26-10-2023 the term "located in India" inserted), by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be

1% of the amount of such guarantee offered (vide NT 12/2024 dated 10-7-2024, w.e.f. 26-10-2023 the term "per annum" inserted),

or

the actual consideration,

whichever is higher.

Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of service (vide Notification No. 12/2024 CT dt. 10-07-2024, w.e.f. 26-10-2023).

Second proviso to Rule 28(1) of CGST Rules, 2017 - Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit (vide CBIC Circular No.210/4/2024-GST dt. 26th June, 2024):

In case of import of services by a registered person in India from a related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism. In such cases, the registered person in India is required to issue self-invoice under Section 31(3)(f) of CGST Act and pay tax on reverse charge basis.

It is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules

Example: Import of Services from a Related Person under Reverse Charge Mechanism

Scenario

- Indian Entity (Recipient): ABC Pvt. Ltd., a registered person under GST in India.
- Foreign Affiliate (Supplier): XYZ Inc., located in the USA, related to ABC Pvt. Ltd.
- Nature of Service: Consulting services provided by XYZ Inc. to ABC Pvt. Ltd.
- Service Value: $10,000 (₹8,00,000 equivalent).
- Input Tax Credit (ITC): Fully available to ABC Pvt. Ltd.

Steps Involved in Compliance

1. Reverse Charge Mechanism (RCM):
   - Since the service provider (XYZ Inc.) is located outside India and is a related person, GST is payable by ABC Pvt. Ltd. in India under the reverse charge mechanism.
2. Issuance of Self-Invoice:
   - As per Section 31(3)(f) of the CGST Act, ABC Pvt. Ltd. must issue a self-invoice for the import of services.
   - The self-invoice should include details such as the value of the services (₹8,00,000) and the applicable GST.
3. Open Market Value:
   - Since ABC Pvt. Ltd. is eligible for full ITC, the value declared in the self-invoice (₹8,00,000) is deemed the open market value of the service as per Rule 28(1) of the CGST Rules.
4. GST Payment:
   - ABC Pvt. Ltd. calculates GST on the value of ₹8,00,000 and pays it under the reverse charge mechanism.
   - For example, if the applicable GST rate is 18%:
   - GST Payable = ₹8,00,000 × 18% = ₹1,44,000.
   - The same amount of ₹1,44,000 can be claimed as ITC by ABC Pvt. Ltd. in its GST return.
5. Case of Non-Issuance of Invoice:
   - If ABC Pvt. Ltd. does not issue a self-invoice for the services provided by XYZ Inc., the value of services may be deemed as Nil, and this Nil value is treated as the open market value under the second proviso to Rule 28(1).

CBIC issued Circular No. 225/19/2024-GST dt. 11th July, 2024 regarding Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons are as under:

Issue 1:

a. Whether Rule 28(2) of CGST Rules applies to corporate guarantees issued before its introduction on 26th October 2023.

b. Whether intra-group corporate guarantees issued prior to this date, still in force, would require GST payment based on "1% of the amount of such guarantee offered".

Clarification:

Example 1: Corporate Guarantee Issued Before 26th October 2023

Scenario:

- ABC Ltd. (Holding Company) provided a corporate guarantee to PQR Bank on behalf of its subsidiary, XYZ Ltd., on 1st January 2023, for a loan of ₹10 crore.
- No consideration was charged by ABC Ltd. for this guarantee.

GST Implications:

1. Taxability:
    - The corporate guarantee qualifies as a taxable supply of service between related parties under Schedule I of CGST Act.
2. Valuation:
    - Since the guarantee was issued before 26th October 2023, its value must be determined as per the earlier Rule 28, considering:
    - Open market value, or
    - Value of similar services, or
    - Residual valuation as prescribed under Rule 30 or Rule 31.

Calculation:

- If the open market value of a similar corporate guarantee is determined to be ₹1 lakh, GST will be calculated on ₹1 lakh.

Example 2: Corporate Guarantee Issued On or After 26th October 2023

Scenario (no consideration):

- On 1st November 2023, ABC Ltd. renewed its earlier guarantee for the same loan of ₹10 crore on behalf of XYZ Ltd..

GST Implications:

1. Taxability:

- The renewed guarantee is a taxable supply under Schedule I.

2. Valuation:

- Since the guarantee is renewed after 26th October 2023, valuation will be done as per Rule 28(2).
- Taxable Value = 1% of the guarantee amount.

Example Calculation:

- Taxable Value = 1% of ₹10 crore = ₹10 lakh.
- GST at 18% = ₹10 lakh × 18% = ₹1.8 lakh.

Key Differences:

1. Before 26th October 2023: Valuation relied on open market value or other earlier rules.
2. On or After 26th October 2023: Valuation is explicitly 1% of the corporate guarantee amount as per Rule 28(2).

Issue 2:

a. When a corporate guarantee is issued for a specific amount, but the loan is only partly availed or not availed at all, how is the value of the corporate guarantee determined?

b. Is the recipient eligible to claim full Input Tax Credit (ITC) for the GST charged, even before the full loan amount is disbursed?

Clarification:

Part 1: Valuation of Corporate Guarantee

1. Facts:

- ABC Ltd. (Guarantor) provides a corporate guarantee to XYZ Ltd. (Recipient) for a loan of ₹10 crore from PQR Bank. ABC Ltd., and XYZ Ltd., are related persons.
- PQR Bank approves the loan, but only ₹6 crore is disbursed to XYZ Ltd. initially, and the remaining ₹4 crore is not availed.

2. Valuation of Service:

- The taxable value for the corporate guarantee service is calculated on the guaranteed amount, i.e., ₹10 crore.
- As per Rule 28(2) of CGST Rules, the taxable value is 1% of the guaranteed amount.

3. Calculation:

- Taxable Value = 1% of ₹10 crore = ₹10 lakh.
- GST at 18% = ₹10 lakh × 18% = ₹1.8 lakh.

4. Outcome:

- GST payable by ABC Ltd. = ₹1.8 lakh, irrespective of the actual loan disbursed (₹6 crore).

Part 2: ITC Eligibility for XYZ Ltd.

1. Facts:

- XYZ Ltd. receives an invoice from ABC Ltd. for the corporate guarantee service with a taxable value of ₹10 lakh and GST of ₹1.8 lakh.
- XYZ Ltd. has availed only ₹6 crore of the ₹10 crore loan.

2. Eligibility for ITC:

- XYZ Ltd. is eligible to claim the full ITC of ₹1.8 lakh for the GST paid on the corporate guarantee service.
- The claim is valid irrespective of:
- The amount of loan disbursed.
- The timing of loan disbursement.

Issue 3: GST Implications on Takeover of Existing Loans with Corporate Guarantees:

Case 1: Assignment of Existing Corporate Guarantee

- ABC Ltd. provides a corporate guarantee for a loan of ₹20 crore taken by its related entity, XYZ Ltd., from Bank A.

- Later, Bank B takes over the loan from Bank A.
- No new corporate guarantee is issued, and the existing guarantee is merely assigned to Bank B.
- The takeover of the loan by Bank B does not involve a fresh supply of service.
- The corporate guarantee issued by ABC Ltd. remains the same and is assigned to Bank B.
- As clarified, this activity does not attract GST since no new corporate guarantee is issued or renewed.

Case 2: Issuance of a Fresh Corporate Guarantee

- Following the loan takeover by Bank B, a new corporate guarantee is issued by ABC Ltd. to replace the existing one.
- If ABC Ltd. issues a fresh corporate guarantee to Bank B for the same loan amount of ₹20 crore, it constitutes a new taxable supply of service.
- Taxable Value of Service: Calculated as per Rule 28(2) of CGST Rules.
- Taxable Value = 1% of ₹20 crore = ₹20 lakh.
- GST @18% = ₹20 lakh × 18% = ₹3.6 lakh.
- ABC Ltd. must charge GST on the fresh corporate guarantee provided.

Issue 4: GST on Corporate Guarantee Provided by Multiple Co-Guarantors

Scenario 1: Equal Sharing of Guarantee

1. **Facts:**
    - Two co-guarantors, Company A and Company B, jointly provide a corporate guarantee for ₹1 crore on behalf of a related recipient, Company C.
    - Both A and B share the guarantee equally, i.e., ₹50 lakh each.
    - No specific consideration is paid to either co-guarantor.
2. **GST Calculation:**
    - Since the guarantee amount is shared equally, GST liability is calculated based on 1% of the total guarantee amount.
    - Each co-guarantor will pay GST on their proportion of the guarantee.

Taxable Value:

- Company A: 1% of ₹50 lakh = ₹50,000
- Company B: 1% of ₹50 lakh = ₹50,000

GST @18%:

- Company A: ₹50,000 × 18% = ₹9,000
- Company B: ₹50,000 × 18% = ₹9,000

Conclusion: Both co-guarantors are liable to pay GST on their respective taxable values.

Scenario 2: Unequal Sharing of Guarantee

1. **Facts:**

- Two co-guarantors, Company A and Company B, jointly provide a corporate guarantee for ₹1 crore on behalf of Company C.
- A provides 60% of the guarantee, i.e., ₹60 lakh.
- B provides the remaining 40%, i.e., ₹40 lakh.
- No specific consideration is paid to either co-guarantor.

2. GST Calculation:

- GST liability is calculated based on 1% of the guarantee provided by each co-guarantor.

Taxable Value:

- Company A: 1% of ₹60 lakh = ₹60,000
- Company B: 1% of ₹40 lakh = ₹40,000

GST @18%:

- Company A: ₹60,000 × 18% = ₹10,800
- Company B: ₹40,000 × 18% = ₹7,200

Conclusion: Each co-guarantor is liable to pay GST on their respective taxable values based on the proportion of the guarantee provided.

Scenario 3: Higher Actual Consideration Paid

1. Facts:

- Two co-guarantors, Company A and Company B, jointly provide a corporate guarantee for ₹1 crore on behalf of Company C.
- A and B share the guarantee equally, i.e., ₹50 lakh each.
- The actual consideration paid to A is ₹80,000, and to B is ₹70,000.

2. GST Calculation:

- Since the total consideration (₹1,50,000) exceeds 1% of the guarantee amount (₹1,00,000), GST is payable on the actual consideration received.

Taxable Value:

- Company A: ₹80,000
- Company B: ₹70,000

GST @18%:

- Company A: ₹80,000 × 18% = ₹14,400
- Company B: ₹70,000 × 18% = ₹12,600

Conclusion: In cases where the total consideration exceeds 1% of the guarantee amount, GST is payable on the actual consideration received by each co-guarantor.

Issue 5: GST Payment on Intra-Group Corporate Guarantees

Scenario 1: Domestic Corporate Guarantee

1. **Facts:**
   - Company A (parent company in India) issues a corporate guarantee to a bank on behalf of its subsidiary, Company B (also in India).
   - The guarantee amount is ₹1 crore.
   - Since both entities are domestic and related, GST is applicable under the forward charge mechanism.
2. **GST Process:**
   - Company A (guarantor) must issue an invoice to Company B (recipient) for providing the corporate guarantee.
   - GST is calculated as 1% of the guarantee amount, i.e., ₹1,00,000.
   - Company A will charge and pay GST to the government.
3. **Taxable Value and GST Calculation:**
   - Taxable Value: ₹1,00,000 (1% of ₹1 crore)
   - GST @18%: ₹1,00,000 × 18% = ₹18,000
4. **Input Tax Credit (ITC):**
   - Company B can claim ITC of ₹18,000 based on the invoice issued by Company A under Section 31 of the CGST Act, 2017.

Scenario 2: Foreign Intra-Group Corporate Guarantee

1. **Facts:**
   - Parent Company X (located overseas) issues a corporate guarantee to a bank on behalf of its wholly-owned subsidiary, Subsidiary Company Y (located in India).
   - The guarantee amount is ₹20 crore.
   - Since the guarantor is a foreign entity and the recipient is in India, GST is payable under the reverse charge mechanism by Subsidiary Company Y.
2. **GST Process:**
   - Subsidiary Company Y must self-account for GST and pay it to the government under the reverse charge mechanism.
3. **Taxable Value and GST Calculation:**
   - Taxable Value: ₹20,00,000 (1% of ₹20 crore)
   - GST @18%: ₹20,00,000 × 18% = ₹3,60,000
4. **Input Tax Credit (ITC):**
   - Subsidiary Company Y can claim ITC of ₹3,60,000 for the GST paid under the reverse charge mechanism, provided all conditions for claiming ITC are satisfied.

Key Distinctions

Aspect	Domestic Intra-Group Guarantee	Foreign Intra-Group Guarantee
Guarantor	Indian Parent Company (e.g., A)	Overseas Parent Company (e.g., X)
Recipient	Indian Subsidiary (e.g., B)	Indian Subsidiary (e.g., Y)
Relationship	Related Persons (intra-group)	Related Persons (intra-group)
GST Mechanism	Forward Charge	Reverse Charge
Taxpayer	Guarantor pays GST	Recipient pays GST
Invoice Requirement	Invoice issued by Parent Company A	No invoice; self-accounting by Subsidiary Y. Hence, invoice issued by recipient.
ITC Eligibility	Subsidiary B claims ITC based on invoice	Subsidiary Y claims ITC for GST paid under RCM

Issue 6: Discharge of Tax Liability on Corporate Guarantee

Scenario 1: Corporate Guarantee Issued for a Fixed Term of 5 Years

1. **Facts:**
   - A holding company (A) provides a corporate guarantee to a bank for securing a loan of ₹10 crore on behalf of its subsidiary (B) for a tenure of 5 years.
   - The actual consideration for the corporate guarantee is ₹3 lakh per year.
2. **Valuation of Supply:**
   - One per cent per annum of the guarantee amount: ₹10 crore × 1% = ₹10 lakh per year.
   - Total for 5 years: ₹10 lakh × 5 = ₹50 lakh.
   - Actual consideration: ₹3 lakh × 5 = ₹15 lakh.
   - As per Rule 28(2), the higher of the two is the taxable value.
3. **Taxable Value and GST Calculation:**
   - Taxable Value: ₹50 lakh (higher of ₹50 lakh and ₹15 lakh).
   - GST @18%: ₹50 lakh × 18% = ₹9 lakh.
4. **Tax Payment Timeline:**
   - Time of supply - GST is payable at the time of issuance of the corporate guarantee for the full tenure (5 years).

Scenario 2: Corporate Guarantee Issued for 1 Year and Renewed Annually for 5 Years

1. **Facts:**
   - A holding company (A) provides a corporate guarantee to a bank for ₹10 crore on behalf of its subsidiary (B) for 1 year, renewable annually for 5 years.
   - The actual consideration is ₹3 lakh per year.
2. **Valuation of Supply for Each Year:**
   - One per cent per annum of the guarantee amount: ₹10 crore × 1% = ₹10 lakh per year.
   - Actual consideration: ₹3 lakh per year.
   - As per Rule 28(2), the higher of the two is the taxable value.

3. **Taxable Value and GST Calculation (Per Year):**
   - Taxable Value: ₹10 lakh (higher of ₹10 lakh and ₹3 lakh).
   - GST @18%: ₹10 lakh × 18% = ₹1.8 lakh per year.
4. **Tax Payment Timeline:**
   - Time of supply - GST is payable each time the corporate guarantee is renewed for that year.

Scenario 3: Corporate Guarantee Issued for Less Than 1 Year (6 Months)

1. **Facts:**
   - A holding company (A) provides a corporate guarantee to a bank for ₹10 crore on behalf of its subsidiary (B) for 6 months.
   - The actual consideration is ₹1.5 lakh.
2. **Valuation of Supply for 6 Months:**
   - Proportionate value for 6 months: ₹10 crore × (6/12) × 1% = ₹5 lakh.
   - Actual consideration: ₹1.5 lakh.
   - As per Rule 28(2), the higher of the two is the taxable value.
3. **Taxable Value and GST Calculation:**
   - Taxable Value: ₹5 lakh (higher of ₹5 lakh and ₹1.5 lakh).
   - GST @18%: ₹5 lakh × 18% = ₹90,000.
4. **Tax Payment Timeline:**
   - Time of supply - GST is payable at the time of issuance of the corporate guarantee for 6 months.

Issue 7: Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full input tax credit is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?

Clarification: Proviso has been inserted in sub-rule (2) of Rule 28 of CGST Rules, retrospectively with effect from 26th October 2023 vide notification No. 12/2024 - CT dated 10.07.2024, similar to that provided in the second proviso to sub-rule (1) of Rule 28 of CGST Rules, to provide the benefit in cases involving supply of service of corporate guarantees provided between related persons.

Accordingly, it is clarified that in cases involving the supply of service of corporate guarantees provided between related persons, where full input tax credit is available to the recipient of services, the value declared in the invoice shall be deemed to be the value of supply of the said service

Scenario:

1. **Facts:**
   - **A holding company (A)** provides a corporate guarantee to a bank for securing a loan of ₹10 crore on behalf of its subsidiary (B).
   - Subsidiary B is eligible to claim full Input Tax Credit (ITC) on the services of the corporate guarantee.
   - Value Declared in the Invoice: ₹1.5 lakh per year as the consideration for the corporate guarantee.

2. Valuation of Supply:

- As per sub-rule (2) of Rule 28, the taxable value should generally be the higher of:
  - 1% of the guarantee amount per annum: ₹10 crore × 1% = ₹10 lakh.
  - Actual consideration declared in the invoice: ₹1.5 lakh.
  - However, since full ITC is available to the recipient (B), the proviso to sub-rule (2) of Rule 28 applies.
  - Result: The value declared in the invoice (₹1.5 lakh) is deemed to be the taxable value.

3. GST Calculation:

- Taxable Value: ₹1.5 lakh (as declared in the invoice).
- GST @18%: ₹1.5 lakh × 18% = ₹27,000.

4. Key Clarification:

- The benefit of the proviso ensures that the declared invoice value is accepted as the taxable value if full ITC is available to the recipient.
- The higher valuation (e.g., 1% of the guarantee amount) is not applied in such cases.

Comparison Without ITC Benefit:

If Subsidiary B was not eligible for full ITC, the taxable value would be determined as the higher of:

- 1% of ₹10 crore = ₹10 lakh
- Declared Invoice Value = ₹1.5 lakh

In such a case, the taxable value would be ₹10 lakh, and GST payable would be ₹10 lakh × 18% = ₹1.8 lakh.

Issue 8: Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the export of the service of providing corporate guarantee between related persons?

Clarification:

As per the amendment done in sub-rule (2) of rule 28 of CGST Rules retrospectively w.e.f. 26th October 2023 vide notification No. 12/2024 -CT dated 10.07.2024, the provisions of the said sub-rule will not apply in cases where the recipient of the services of providing corporate guarantee between related persons is located outside India. Accordingly, the provisions of the said sub-rule shall not apply to the export of the services of providing corporate guarantee between related persons.

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:

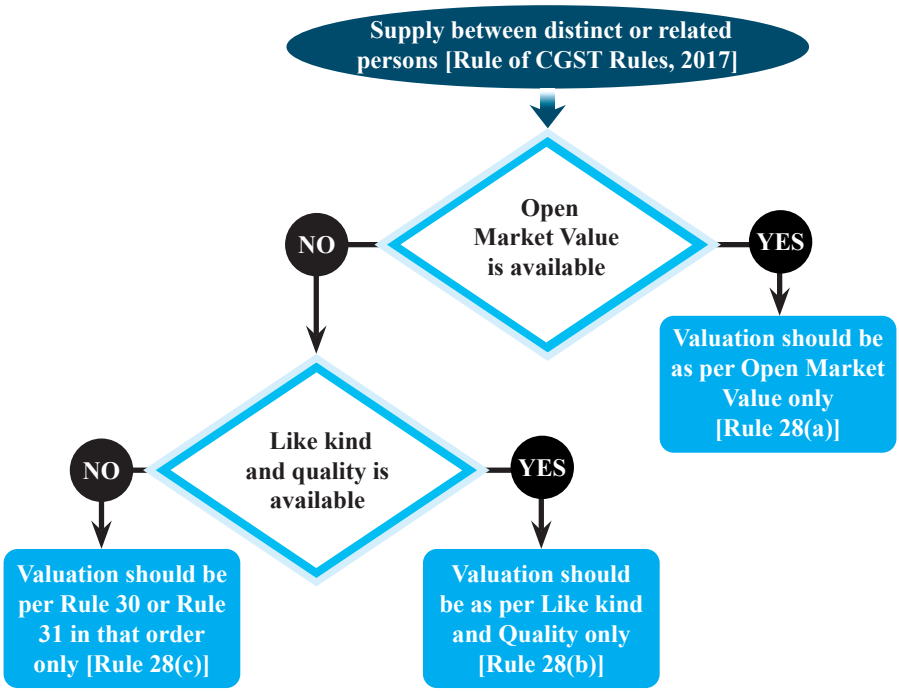
Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services.

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

Corporate Guarantee:

The CBIC has also issued Circular No. 204/16/2023-GST, dated 27-10-2023 to clarify the taxability and valuation of corporate guarantee under GST. It is clarified that the activity of providing corporate guarantee to the bank/financial institutions for providing credit facility to the other company, where both the companies are related, is to be treated as supply of service. In case where no consideration is involved then also it is to be treated as a taxable supply of service as per provisions of Schedule I of CGST Act.

Circular No. 204/16/2023-GST, dated 27-10-2023:

S.No.	Issue	clarification
1.	Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.	CBIC clarified about the taxability and valuation of 'personal guarantees' provided by a director on behalf of the company. The CBIC has taken reference from RBI Circular which clearly states that no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits. Therefore, it is clarified that the open market value of the said transaction may be taken as zero and thus, the taxable value would be zero. In such a scenario, no tax is payable, except in exceptional cases where consideration is charged for undertaking the guarantee. There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.
2.	Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/	Where the corporate guarantee is provided by a company to the bank/ financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration. Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'.

	financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.	Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act. In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value will be determined as per rule 28 of CGST Rules. Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in rule 28 of CGST Rules vide Notification No. 52/2023 dated 26.10.2023, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, consequent to insertion of the said sub-rule in rule 28 of CGST Rules, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not. It is clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.

CBIC issued Circular No. 225/19/2024-GST dt. 11th July, 2024 regarding Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons are as under:

Issue 1:

a. Whether Rule 28(2) of CGST Rules applies to corporate guarantees issued before its introduction on 26th October 2023.

b. Whether intra-group corporate guarantees issued prior to this date, still in force, would require GST payment based on "1% of the amount of such guarantee offered".

Clarification:

Example 1: Corporate Guarantee Issued Before 26th October 2023

Scenario:

- ABC Ltd. (Holding Company) provided a corporate guarantee to PQR Bank on behalf of its subsidiary, XYZ Ltd., on 1st January 2023, for a loan of ₹10 crore.
- No consideration was charged by ABC Ltd. for this guarantee.

GST Implications:

1. Taxability:
    - The corporate guarantee qualifies as a taxable supply of service between related parties under Schedule I of CGST Act.
2. Valuation:
    - Since the guarantee was issued before 26th October 2023, its value must be determined as per the earlier Rule 28, considering:
        - Open market value, or
        - Value of similar services, or
        - Residual valuation as prescribed under Rule 30 or Rule 31.

Calculation:

- If the open market value of a similar corporate guarantee is determined to be ₹1 lakh, GST will be calculated on ₹1 lakh.

Example 2: Corporate Guarantee Issued On or After 26th October 2023

Scenario (no consideration):

- On 1st November 2023, ABC Ltd. renewed its earlier guarantee for the same loan of ₹10 crore on behalf of XYZ Ltd..

GST Implications:

1. **Taxability:**
    - The renewed guarantee is a taxable supply under Schedule I.
2. **Valuation:**
    - Since the guarantee is renewed after 26th October 2023, valuation will be done as per Rule 28(2).
    - Taxable Value = 1% of the guarantee amount.

Example Calculation:

- Taxable Value = 1% of ₹10 crore = ₹10 lakh.
- GST at 18% = ₹10 lakh × 18% = ₹1.8 lakh.

Key Differences:

1. Before 26th October 2023: Valuation relied on open market value or other earlier rules.
2. On or After 26th October 2023: Valuation is explicitly 1% of the corporate guarantee amount as per Rule 28(2).

Issue 2:

a. When a corporate guarantee is issued for a specific amount, but the loan is only partly availed or not availed at all, how is the value of the corporate guarantee determined?

b. Is the recipient eligible to claim full Input Tax Credit (ITC) for the GST charged, even before the full loan amount is disbursed?

Clarification:

Part 1: Valuation of Corporate Guarantee

1. **Facts:**
   - ABC Ltd. (Guarantor) provides a corporate guarantee to XYZ Ltd. (Recipient) for a loan of ₹10 crore from PQR Bank. ABC Ltd., and XYZ Ltd., are related persons.
   - PQR Bank approves the loan, but only ₹6 crore is disbursed to XYZ Ltd. initially, and the remaining ₹4 crore is not availed.
2. Valuation of Service:
   - The taxable value for the corporate guarantee service is calculated on the guaranteed amount, i.e., ₹10 crore.
   - As per Rule 28(2) of CGST Rules, the taxable value is 1% of the guaranteed amount.
3. Calculation:
   - Taxable Value = 1% of ₹10 crore = ₹10 lakh.
   - GST at 18% = ₹10 lakh × 18% = ₹1.8 lakh.
4. Outcome:
   - GST payable by ABC Ltd. = ₹1.8 lakh, irrespective of the actual loan disbursed (₹6 crore).

Part 2: ITC Eligibility for XYZ Ltd.

1. **Facts:**
   - XYZ Ltd. receives an invoice from ABC Ltd. for the corporate guarantee service with a taxable value of ₹10 lakh and GST of ₹1.8 lakh.
   - XYZ Ltd. has availed only ₹6 crore of the ₹10 crore loan.
2. Eligibility for ITC:
   - XYZ Ltd. is eligible to claim the full ITC of ₹1.8 lakh for the GST paid on the corporate guarantee service.
   - The claim is valid irrespective of:
   - The amount of loan disbursed.
   - The timing of loan disbursement.

Issue 3: GST Implications on Takeover of Existing Loans with Corporate Guarantees:

Case 1: Assignment of Existing Corporate Guarantee

- ABC Ltd. provides a corporate guarantee for a loan of ₹20 crore taken by its related entity, XYZ Ltd., from Bank A.
- Later, Bank B takes over the loan from Bank A.
- No new corporate guarantee is issued, and the existing guarantee is merely assigned to Bank B.
- The takeover of the loan by Bank B does not involve a fresh supply of service.
- The corporate guarantee issued by ABC Ltd. remains the same and is assigned to Bank B.
- As clarified, this activity does not attract GST since no new corporate guarantee is issued or renewed.

Case 2: Issuance of a Fresh Corporate Guarantee

- Following the loan takeover by Bank B, a new corporate guarantee is issued by ABC Ltd. to replace the existing one.
- If ABC Ltd. issues a fresh corporate guarantee to Bank B for the same loan amount of ₹20 crore, it constitutes a new taxable supply of service.
- Taxable Value of Service: Calculated as per Rule 28(2) of CGST Rules.
- Taxable Value = 1% of ₹20 crore = ₹20 lakh.
- GST @18% = ₹20 lakh × 18% = ₹3.6 lakh.
- ABC Ltd. must charge GST on the fresh corporate guarantee provided.

Issue 4: GST on Corporate Guarantee Provided by Multiple Co-Guarantors

Scenario 1: Equal Sharing of Guarantee

1. **Facts:**
    - Two co-guarantors, Company A and Company B, jointly provide a corporate guarantee for ₹1 crore on behalf of a related recipient, Company C.
    - Both A and B share the guarantee equally, i.e., ₹50 lakh each.
    - No specific consideration is paid to either co-guarantor.
2. GST Calculation:
    - Since the guarantee amount is shared equally, GST liability is calculated based on 1% of the total guarantee amount.
    - Each co-guarantor will pay GST on their proportion of the guarantee.

Taxable Value:

- Company A: 1% of ₹50 lakh = ₹50,000
- Company B: 1% of ₹50 lakh = ₹50,000

GST @18%:

- Company A: ₹50,000 × 18% = ₹9,000
- Company B: ₹50,000 × 18% = ₹9,000

Conclusion: Both co-guarantors are liable to pay GST on their respective taxable values.

Scenario 2: Unequal Sharing of Guarantee

1. **Facts:**
    - Two co-guarantors, Company A and Company B, jointly provide a corporate guarantee for ₹1 crore on behalf of Company C.
    - A provides 60% of the guarantee, i.e., ₹60 lakh.
    - B provides the remaining 40%, i.e., ₹40 lakh.
    - No specific consideration is paid to either co-guarantor.

2. GST Calculation:
    - GST liability is calculated based on 1% of the guarantee provided by each co-guarantor.

Taxable Value:

- Company A: 1% of ₹60 lakh = ₹60,000
- Company B: 1% of ₹40 lakh = ₹40,000

GST @18%:

- Company A: ₹60,000 × 18% = ₹10,800
- Company B: ₹40,000 × 18% = ₹7,200

Conclusion: Each co-guarantor is liable to pay GST on their respective taxable values based on the proportion of the guarantee provided.

Scenario 3: Higher Actual Consideration Paid

1. **Facts:**
    - Two co-guarantors, Company A and Company B, jointly provide a corporate guarantee for ₹1 crore on behalf of Company C.
    - A and B share the guarantee equally, i.e., ₹50 lakh each.
    - The actual consideration paid to A is ₹80,000, and to B is ₹70,000.
2. GST Calculation:
    - Since the total consideration (₹1,50,000) exceeds 1% of the guarantee amount (₹1,00,000), GST is payable on the actual consideration received.

Taxable Value:

- Company A: ₹80,000
- Company B: ₹70,000

GST @18%:

- Company A: ₹80,000 × 18% = ₹14,400
- Company B: ₹70,000 × 18% = ₹12,600

Conclusion: In cases where the total consideration exceeds 1% of the guarantee amount, GST is payable on the actual consideration received by each co-guarantor.

Issue 5: GST Payment on Intra-Group Corporate Guarantees

Scenario 1: Domestic Corporate Guarantee

1. **Facts:**
    - Company A (parent company in India) issues a corporate guarantee to a bank on behalf of its subsidiary, Company B (also in India).
    - The guarantee amount is ₹1 crore.
    - Since both entities are domestic and related, GST is applicable under the forward charge mechanism.

2. **GST Process:**
   - Company A (guarantor) must issue an invoice to Company B (recipient) for providing the corporate guarantee.
   - GST is calculated as 1% of the guarantee amount, i.e., ₹1,00,000.
   - Company A will charge and pay GST to the government.
3. **Taxable Value and GST Calculation:**
   - Taxable Value: ₹1,00,000 (1% of ₹1 crore)
   - GST @18%: ₹1,00,000 × 18% = ₹18,000
4. **Input Tax Credit (ITC):**
   - Company B can claim ITC of ₹18,000 based on the invoice issued by Company A under Section 31 of the CGST Act, 2017.

Scenario 2: Foreign Intra-Group Corporate Guarantee

1. **Facts:**
   - Parent Company X (located overseas) issues a corporate guarantee to a bank on behalf of its wholly-owned subsidiary, Subsidiary Company Y (located in India).
   - The guarantee amount is ₹20 crore.
   - Since the guarantor is a foreign entity and the recipient is in India, GST is payable under the reverse charge mechanism by Subsidiary Company Y.
2. **GST Process:**
   - Subsidiary Company Y must self-account for GST and pay it to the government under the reverse charge mechanism.
3. **Taxable Value and GST Calculation:**
   - Taxable Value: ₹20,00,000 (1% of ₹20 crore)
   - GST @18%: ₹20,00,000 × 18% = ₹3,60,000
4. **Input Tax Credit (ITC):**
   - Subsidiary Company Y can claim ITC of ₹3,60,000 for the GST paid under the reverse charge mechanism, provided all conditions for claiming ITC are satisfied.

Key Distinctions

Aspect	Domestic Intra-Group Guarantee	Foreign Intra-Group Guarantee
Guarantor	Indian Parent Company (e.g., A)	Overseas Parent Company (e.g., X)
Recipient	Indian Subsidiary (e.g., B)	Indian Subsidiary (e.g., Y)
Relationship	Related Persons (intra-group)	Related Persons (intra-group)
GST Mechanism	Forward Charge	Reverse Charge
Taxpayer	Guarantor pays GST	Recipient pays GST
Invoice Requirement	Invoice issued by Parent Company A	No invoice; self-accounting by Subsidiary Y. Hence, invoice issued by recipient.
ITC Eligibility	Subsidiary B claims ITC based on invoice	Subsidiary Y claims ITC for GST paid under RCM

Issue 6: Discharge of Tax Liability on Corporate Guarantee

Scenario 1: Corporate Guarantee Issued for a Fixed Term of 5 Years

1. **Facts:**
   - **A holding company (A)** provides a corporate guarantee to a bank for securing a loan of ₹10 crore on behalf of its subsidiary (B) for a tenure of 5 years.
   - The actual consideration for the corporate guarantee is ₹3 lakh per year.
2. **Valuation of Supply:**
   - One per cent per annum of the guarantee amount: ₹10 crore × 1% = ₹10 lakh per year.
   - Total for 5 years: ₹10 lakh × 5 = ₹50 lakh.
   - Actual consideration: ₹3 lakh × 5 = ₹15 lakh.
   - As per Rule 28(2), the higher of the two is the taxable value.
3. **Taxable Value and GST Calculation:**
   - Taxable Value: ₹50 lakh (higher of ₹50 lakh and ₹15 lakh).
   - GST @18%: ₹50 lakh × 18% = ₹9 lakh.
4. **Tax Payment Timeline:**
   - Time of supply - GST is payable at the time of issuance of the corporate guarantee for the full tenure (5 years).

Scenario 2: Corporate Guarantee Issued for 1 Year and Renewed Annually for 5 Years

1. **Facts:**
   - **A holding company (A)** provides a corporate guarantee to a bank for ₹10 crore on behalf of its subsidiary (B) for 1 year, renewable annually for 5 years.
   - The actual consideration is ₹3 lakh per year.
2. **Valuation of Supply for Each Year:**
   - One per cent per annum of the guarantee amount: ₹10 crore × 1% = ₹10 lakh per year.
   - Actual consideration: ₹3 lakh per year.
   - As per Rule 28(2), the higher of the two is the taxable value.
3. **Taxable Value and GST Calculation (Per Year):**
   - Taxable Value: ₹10 lakh (higher of ₹10 lakh and ₹3 lakh).
   - GST @18%: ₹10 lakh × 18% = ₹1.8 lakh per year.
4. **Tax Payment Timeline:**
   - Time of supply - GST is payable each time the corporate guarantee is renewed for that year.

Scenario 3: Corporate Guarantee Issued for Less Than 1 Year (6 Months)

1. **Facts:**
   - A holding company (A) provides a corporate guarantee to a bank for ₹10 crore on behalf of its subsidiary (B) for 6 months.
   - The actual consideration is ₹1.5 lakh.

2. **Valuation of Supply for 6 Months:**
   - Proportionate value for 6 months: ₹10 crore × (6/12) × 1% = ₹5 lakh.
   - Actual consideration: ₹1.5 lakh.
   - As per Rule 28(2), the higher of the two is the taxable value.
3. **Taxable Value and GST Calculation:**
   - Taxable Value: ₹5 lakh (higher of ₹5 lakh and ₹1.5 lakh).
   - GST @18%: ₹5 lakh × 18% = ₹90,000.
4. **Tax Payment Timeline:**
   - Time of supply - GST is payable at the time of issuance of the corporate guarantee for 6 months.

Issue 7: Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full input tax credit is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?

Clarification: Proviso has been inserted in sub-rule (2) of Rule 28 of CGST Rules, retrospectively with effect from 26th October 2023 vide notification No. 12/2024 - CT dated 10.07.2024, similar to that provided in the second proviso to sub-rule (1) of Rule 28 of CGST Rules, to provide the benefit in cases involving supply of service of corporate guarantees provided between related persons.

Accordingly, it is clarified that in cases involving the supply of service of corporate guarantees provided between related persons, where full input tax credit is available to the recipient of services, the value declared in the invoice shall be deemed to be the value of supply of the said service

Scenario:

1. **Facts:**
   - **A holding company (A)** provides a corporate guarantee to a bank for securing a loan of ₹10 crore on behalf of its subsidiary (B).
   - Subsidiary B is eligible to claim full Input Tax Credit (ITC) on the services of the corporate guarantee.
   - Value Declared in the Invoice: ₹1.5 lakh per year as the consideration for the corporate guarantee.
2. **Valuation of Supply:**
   - As per sub-rule (2) of Rule 28, the taxable value should generally be the higher of:
     - 1% of the guarantee amount per annum: ₹10 crore × 1% = ₹10 lakh.
     - Actual consideration declared in the invoice: ₹1.5 lakh.
     - However, since full ITC is available to the recipient (B), the proviso to sub-rule (2) of Rule 28 applies.
     - Result: The value declared in the invoice (₹1.5 lakh) is deemed to be the taxable value.
3. **GST Calculation:**
   - Taxable Value: ₹1.5 lakh (as declared in the invoice).
   - GST @18%: ₹1.5 lakh × 18% = ₹27,000.

4. Key Clarification:

- The benefit of the proviso ensures that the declared invoice value is accepted as the taxable value if full ITC is available to the recipient.
- The higher valuation (e.g., 1% of the guarantee amount) is not applied in such cases.

Comparison Without ITC Benefit:

If Subsidiary B was not eligible for full ITC, the taxable value would be determined as the higher of:

- 1% of ₹10 crore = ₹10 lakh
- Declared Invoice Value = ₹1.5 lakh

In such a case, the taxable value would be ₹10 lakh, and GST payable would be ₹10 lakh × 18% = ₹1.8 lakh.

Issue 8: Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the export of the service of providing corporate guarantee between related persons?

Clarification:

As per the amendment done in sub-rule (2) of rule 28 of CGST Rules retrospectively w.e.f. 26th October 2023 vide notification No. 12/2024 -CT dated 10.07.2024, the provisions of the said sub-rule will not apply in cases where the recipient of the services of providing corporate guarantee between related persons is located outside India. Accordingly, the provisions of the said sub-rule shall not apply to the export of the services of providing corporate guarantee between related persons.

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:

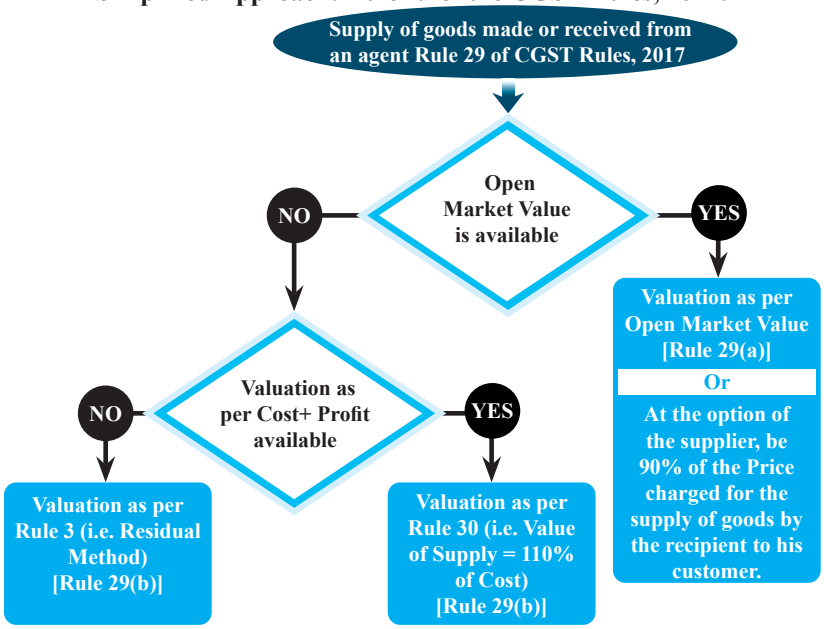
CGST 9% on ₹198 lakh = ₹17,82,000

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;

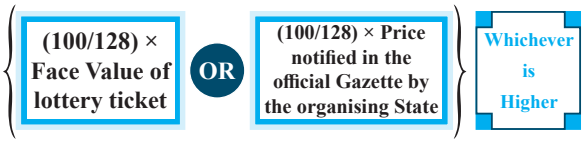
(b) "lottery authorised by State Governments" means a lottery which is authorised to be sold in State(s) other than the organising State also; and

(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



Value of Supply in case of betting, gambling and horse racing (Rule 31A of CGST Rules):

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.

W.e.f. 1st October 2023, under Section 15(5) of the CGST Act, the government on the recommendation of the Council has notified the value of supply for the following Rule 31B and 31C –

Rule 31B of CGST Rules, 2017, Value of supply in case of online gaming including online money gaming.–

Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:

Provided that any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

Rule 31C of the CGST Rules, 2017: Value of supply of actionable claims in case of casino.– Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

(i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or

(ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:

Provided that any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

Explanation.- For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player."

Example 1:

Let us assume each player placed bets worth Rs 100. As such, total bets would be Rs 400. Now, the company concerned gets a platform fee, at the rate of 10 per cent of the bet. This meant Rs 10 from each player and Rs 40 in total is what the company earns. Players winning the games can redeploy their prize into the game.

The industry wants to pay GST on ₹ 40 only. However, the Council decided to impose 28 per cent GST on Rs 400 and exempted the prize money redeployed in the games from GST.

Example 2:

Gaming Platform Type	Game Type	User Purchase (In-Game Currency)	Platform Fee (10% of Purchase)	New GST (28% on Full Purchase)
Oversease Gaming Platform	Game of Skill	₹ 100	₹ 10	₹ 28
Oversease Gaming Platform	Game of Skill			

For both games of skill (lime online chess) and games of chance (like Online Slot Machine) on an oversease platform, if a player spends Rs. 100, the platform's 10% fee equals Rs. 10. Out of this, the platform needs to apy 28% as GST, which amounts to Rs. 28 on the Rs. 100 spent.

Example 3: Let's assume that if one has placed a bet of Rs. 10,000 for online gaming or horse racing or bought a chip of Rs. 10,000 in casinos, he will need to pay IGST at the rate of 28%. If he wins, say Rs. 3,000 and the total amount in the next bet or chip becomes Rs. 13,000, he will not be required to pay GST on the redeployed winnings amount of Rs. 3,000. However, if he loses Rs. 10,000 and places another Rs. 10,000 that will be considered a fresh bet or chip and will attract 28% IGST.

Important points:

1. Winnings used further in the game are exempt, but taxes won't be returned in case of cash refunds.
2. overseas platforms offering services to Indian players must mandatorily register for GST in India.
3. the new rule imposes a 28% GST on both games of skill and chance, eliminating previous distinctions.

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:

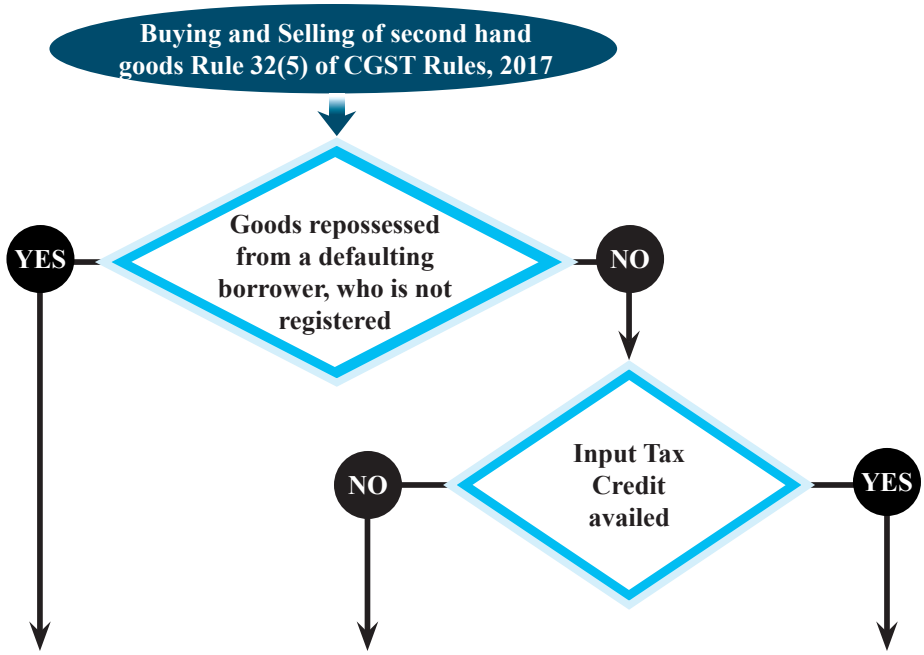
Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e. used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall 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	10,000	
CGST 14%		(1,400)
SGST 14%		(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 2023 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 2024. The banker sells the said goods on 26th April 2024.

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 2024 to 26th April 2024 = 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 November. 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.

(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 gifts × 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.

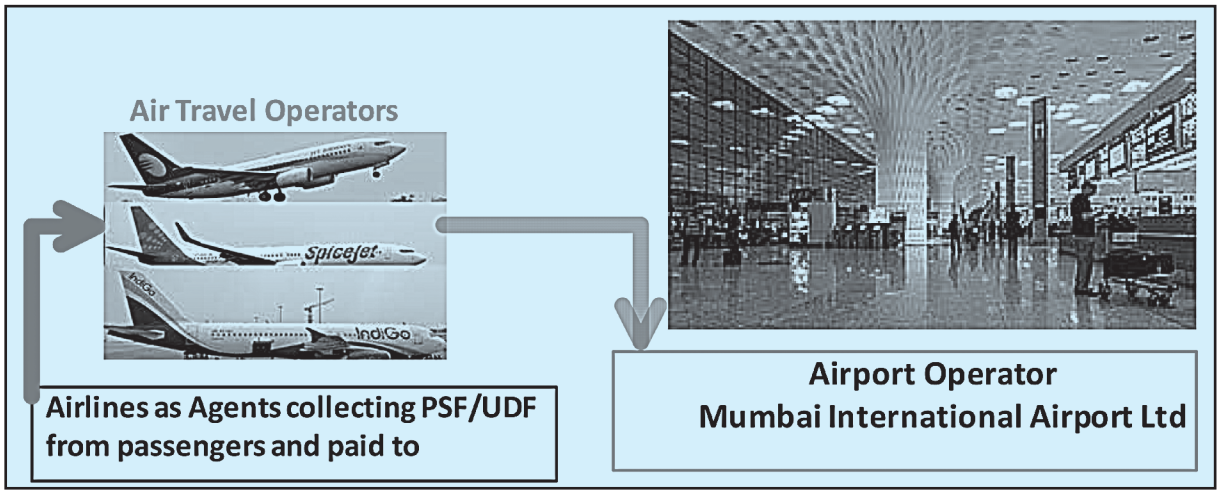
Airport levies under GST (CBIC Circular No. 115/34/2019-GST, dated 11-10-2019):

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

Sl. No.	Component charges in invoice	Amount in ₹
2	Travelling expenses	5,500
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	2,11,500
SGST 9% on ₹23,50,000	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 expenditure
(iii)	Charges for transport of machine from Kandla port, Gujarat to Dada Logistics' godown in Ahmedabad, Gujarat	Pure agent expenditure
(iv)	Charges for transport of machine from Dada Logistics' Ahmedabad godown to the warehouse of Puplly Export Import House in Mumbai, Maharashtra	Pure agent expenditure
(v)	Customs duty on machine	Pure agent expenditure
(vi)	Dock dues	Pure agent expenditure
(vii)	Port charges	Pure agent expenditure
(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 Logistics 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 25.10.2024 exchange rate notified by the Central Board of Excise and Customs US $ 1 = ₹65.

(iii) Date of Entry inwards 01.11.2024 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: —

$$\text{Tax Amount} = \frac{\text{Value Inclusive of Tax}}{100 + \text{GST}} \times \text{Rate of GST}$$

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 × 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:

Sl. No.	Description of Services	GST Rate
1.	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.	12% with full ITC but no refund of overflow of ITC.
2	Composite supply of works contract as defined under section 2(119) of CGST Act, 2017 read with clause 5(b) of Schedule II	18% with full ITC

Sl. No.	Description of Services	GST Rate
3	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 (MlG-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.**	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:** Normal rate of GST 12% Less: 1/3rd of 12% - 4% Effective rate of GST 8%

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 2025-26 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.

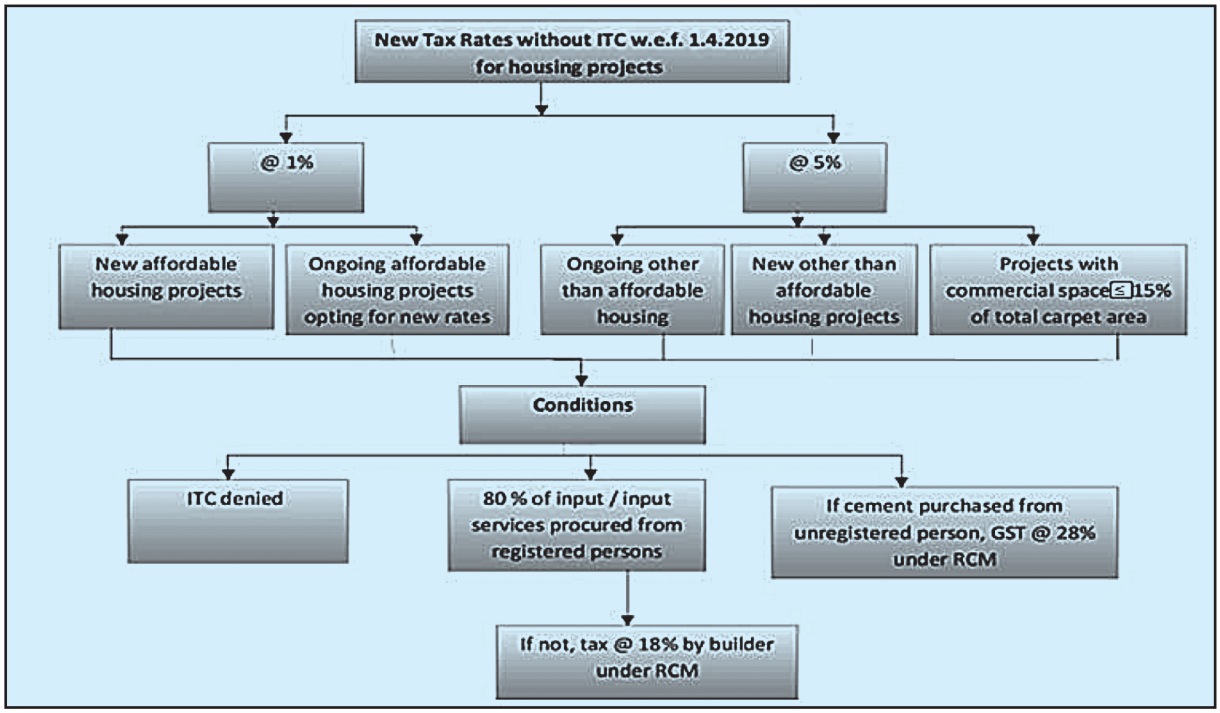
Solution:

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.

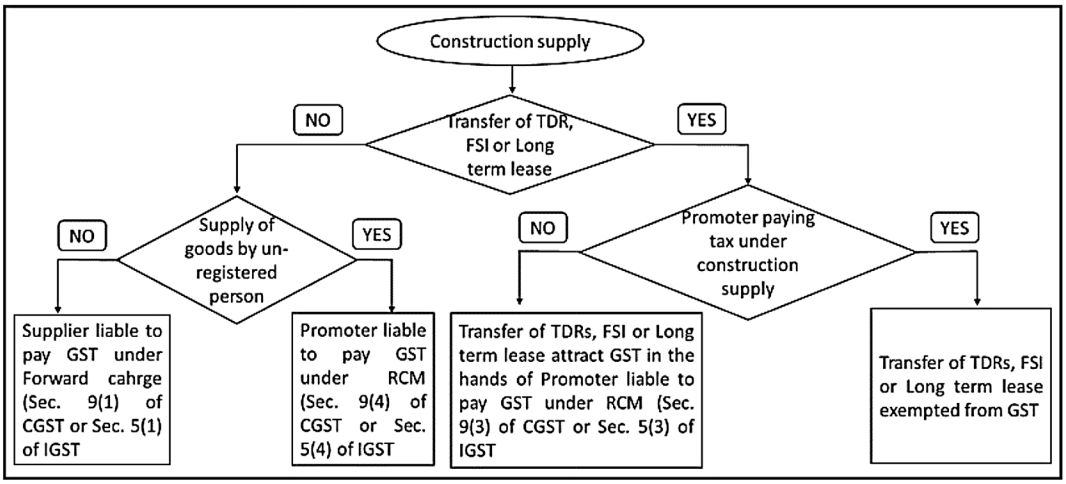
The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from landowner to builder under the Reverse Charge Mechanism (RCM).

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:



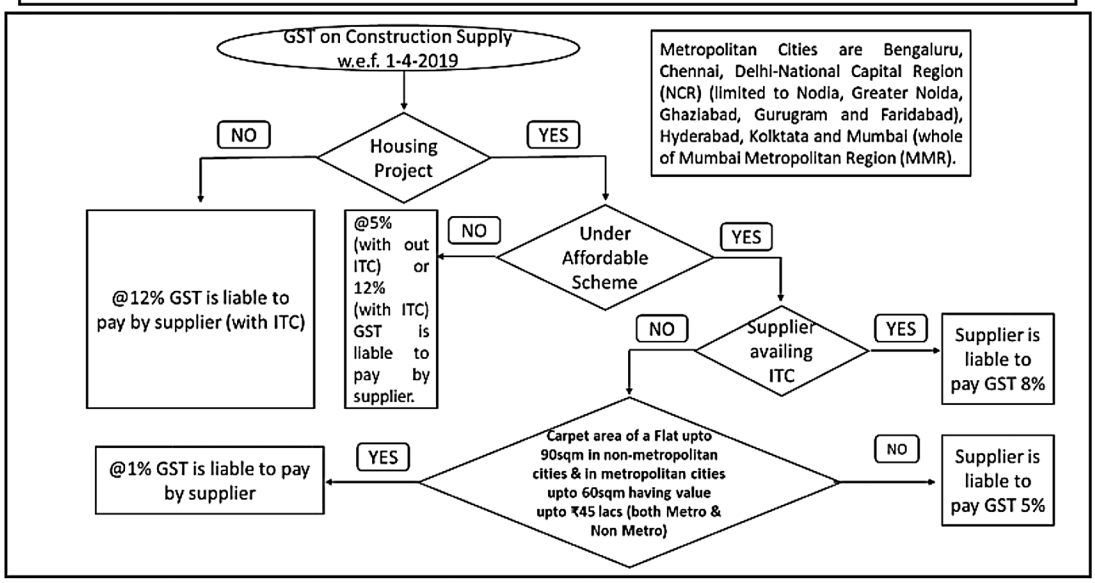


Illustration 43

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 obtaining 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?

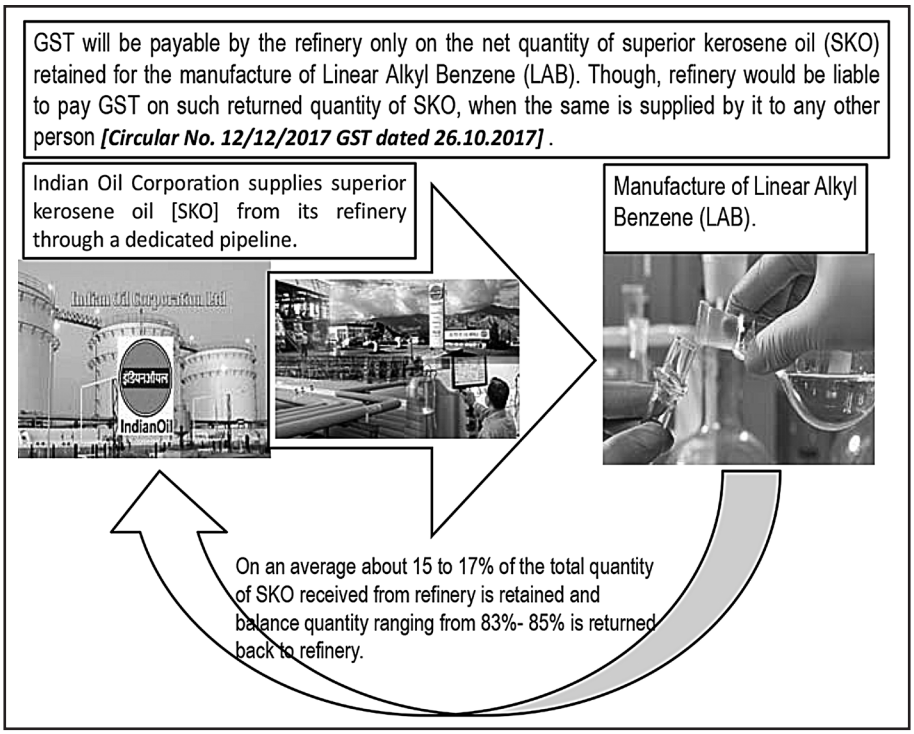
Solution:

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]?**

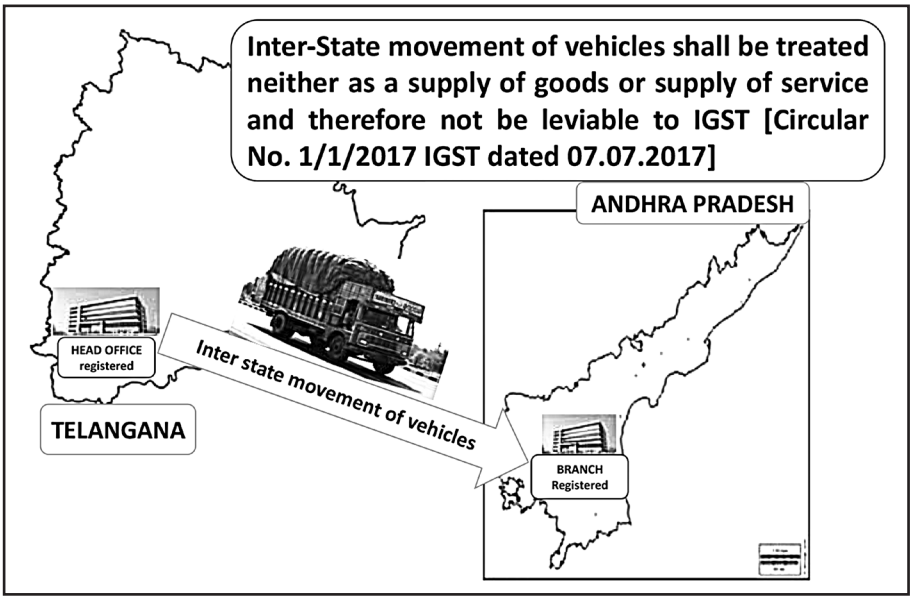
   Facts of the case: Linear Alkyl Benzene (LAB) manufacturers have stated that they receive superior Kerosene oil (SKO) from, a refinery, say, Indian Oil Corporation (IOC). They extract n- Paraffin from SKO and return back the remaining of SKO to the refinery. In this context, the issue has arisen as to 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, 2024:

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, 2024 and invoice is issued on 28.02.2024]	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, 2024]	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 2024.

Solution:

Statement showing GST liability of Mahendra & Mahendra Ltd for the month of Jan 2024

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
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 Motors Ltd. (₹)
(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.	-
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
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
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
(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 2024:

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 2024.

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
(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 2025-26, 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 recipient 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-Governments 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
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

5.1 Introduction

5.2 Specific Provisions on Input Tax Credit

5.3 Case Studies and Illustrations on Input Tax Credit including Job Work, Input Service Distributor

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;

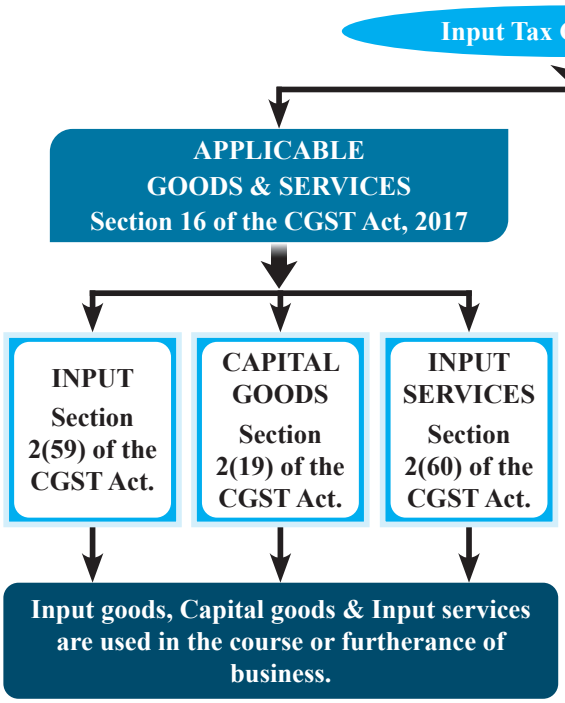
(ii) the recipient of service is located outside India;

(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:



(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;

(fa) w.e.f. 1st October 2023, goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

(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 2B.
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.

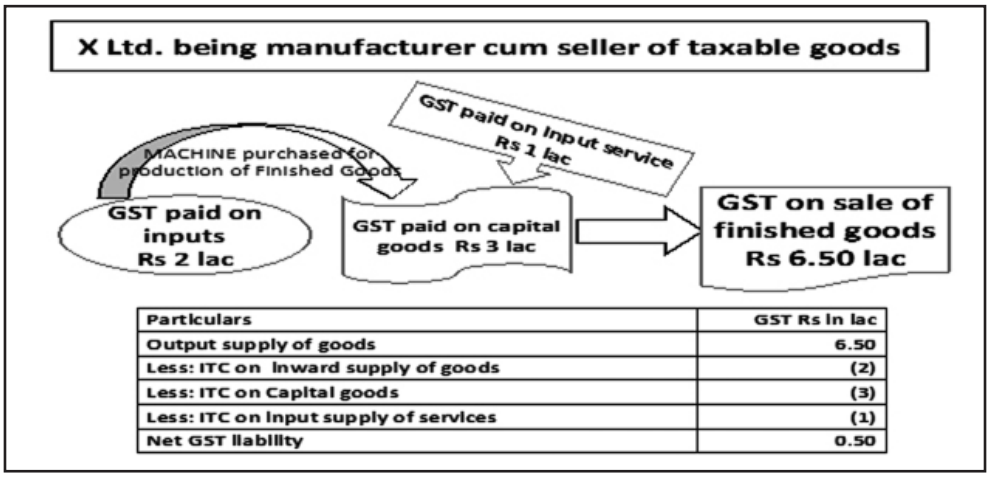
Sub-sections (1) and (2) of section 17 provides for apportionment of IGST between the Central Government and State Governments/Union Territories in respect of those supplies where the input tax credit cannot be availed and thus, the tax revenue finally accrues to the exchequer.

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(1) of the CGST Act, 2017 Conditions for taking ITC:

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.

Notification No 11/2017-CT(R) dt 28.06.2017 is amended w.e.f. 20-10-2023:

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 is taxable @ 5% [Sl no 8(vi), Heading 9964] on the condition that ITC other than the ITC of input services in the same line of business has not been taken. [The said supply of service is taxable @ 12% with availability of full ITC].

Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in consideration charged from the service recipient is taxable @ 5% on the condition that ITC other than the ITC of input services in the same line of business has not been taken. [The said supply of service is taxable @ 12% with availability of full ITC].

w.e.f. 20th October 2023, in the above two services a new condition is added that if tax is charged by the supplier of input service in the same line of business at a rate higher than 5%, ITC in respect of such input service in the same line of business shall not be taken in excess of 5% [vide Notification No 12/2023-CGST(R) dt 19.10.2023 & 15/2023-IGST(R) dt 19.10.2023].

lustration: 'A' engages 'B' for transport from New Delhi to Jaipur in a motor cab for ₹1000. 'B', for supplying the said service, hires a motor cab with operator from 'C' for ₹800. 'C' charges 'B' CGST & SGST at the rate of

12% (₹ 96). If 'B' charges 'A' CGST & SGST at the rate of 5%, he shall be entitled to take input tax credit on the input service in the same line of business supplied by 'C' only to the extent of ₹ 40 (5% of Rs. 800) and not ₹ 96.

Question: Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators.

Answer: As per CBIC Circular No. 206/18/2023-GST dated 31st October 2023, Services of transport of passengers by any motor vehicle (SAC 9964) and renting of motor vehicle designed to carry passengers with operator (SAC 9966), where the cost of fuel is included in the consideration charged from the service recipient attract GST at the rate of 5% with input tax credit of services in the same line of business.

Same line of business as stated in the notification No. 11/2017-Central Tax (Rate) means "service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle".

It is hereby clarified that input services in the same line of business include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (SAC 9973) which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

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:

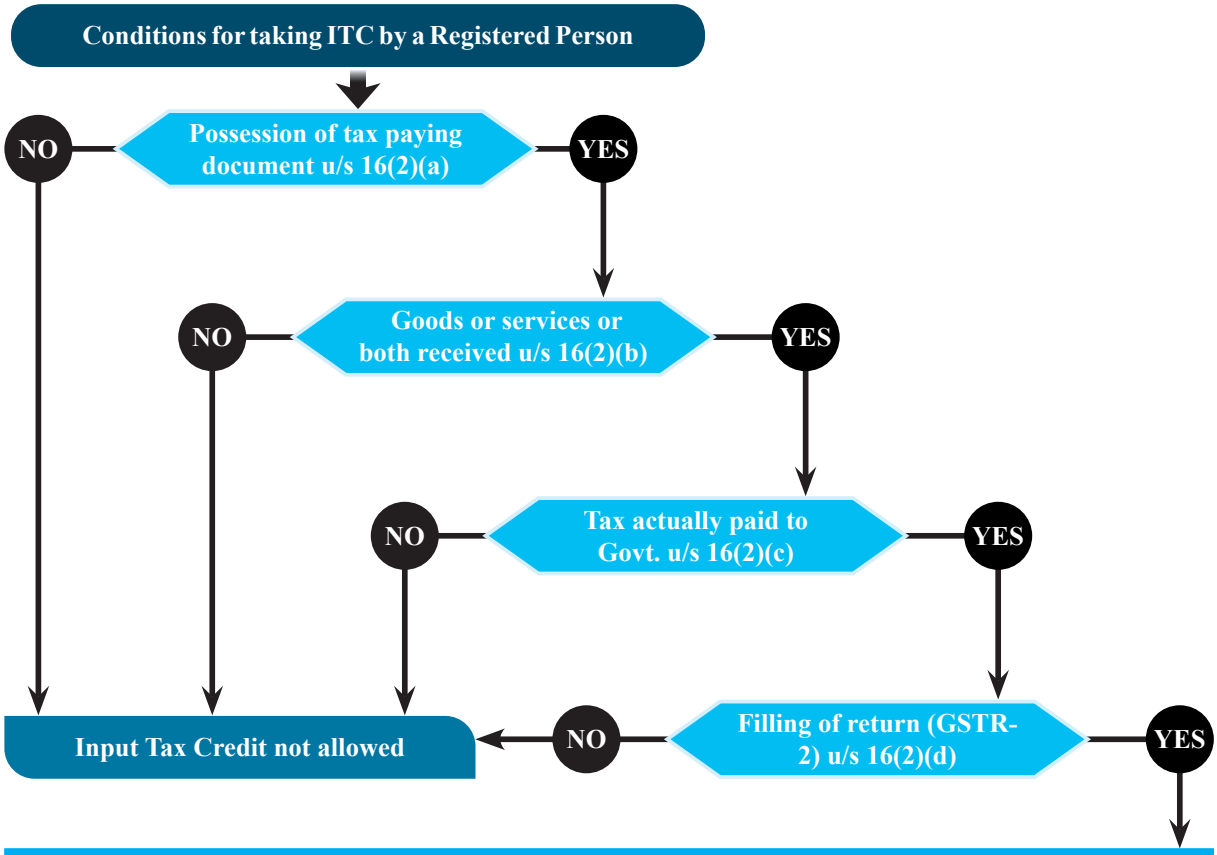
Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of **one hundred and eighty days** from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be (w.e.f. 1st October 2023) paid by hm along with interest payable under section 50), 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 (w.e.f. 1st October 2023) to the supplier 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:



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

Accordingly, Rule 36(4) has been substituted to provide that with effect from 01.01.2022, a registered person shall be able to avail ITC in respect of only those invoices or debit notes which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility and the details of such invoices or debit notes have been communicated to him in FORM GSTR-2B under sub-rule (7) of rule 60 (Notification No. 40/2021 – Central Tax dt. 29th December, 2021)

W.e.f. 1-10-2022, new clause (ba) inserted in Section 16(2) of CGST Act, 2017:

"The details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted".

As per this amended provision, the registered person would be eligible to claim the ITC only when the details of invoices/debit notes made available to him electronically on the GSTN Portal are not restricted in the auto-generated statement referred to as GSTR-2B.

This means that details of invoices/debit note communicated to the taxpayer in GSTR-2B as per section 38, should not be restricted from claiming ITC.

'Communication of details of inward supplies and Input Tax Credit':

As per provisions of section 38(2) notified vide notification 18/2022-Central Tax, dated 28-09-2022 effected from 01-10-2022, the details furnished by the supplier in GSTR 1 shall be communicated to the taxpayer in an auto-generated statement GSTR 2B. This statement shall consist of 2 parts.

One Part shall state eligible Input Tax Credit which the Recipient can avail and utilize.

The Second Part shall provide details of such supplies in respect of which Input Tax Credit cannot be availed by the Recipient wholly or partly as may be prescribed.

The above section introduces a completely new mechanism under which the auto-generated GSTR 2B shall itself decide and provide the list of Invoices or Debit notes on which ITC can be claimed by the taxpayer.

As a result recipient shall have not to do any work on to locate the supplier whose supply shall not be eligible for the purpose of input tax credit as per section 38.

Question:

Whether it is mandatory to claim ITC as per GSTR-2B generated under Section 38?

Answer:

Yes. As per the newly inserted clause (ba) in section 16(2), it provides mandatory condition that ITC claimed by recipient should not be restricted under section 38. Hence ITC restricted or in-eligible as per GSTR 2B cannot be claimed as per clause (ba) of section 16(2).

New clause (ba) inserted in section 16(2) – Additional condition for claiming ITC by buyer that ITC can be claimed only if that ITC has not been restricted in auto generated statement -GSTR-2B u/s 38 of CGST Act, 2017.

The Second Part shall provide details of such supplies in respect of which Input Tax Credit cannot be availed by the Recipient wholly or partly as may be prescribed.

Restrictions imposed under section 38 of CGST Act, 2017 for which ITC can't be availed are as follows:

1. Related to suppliers who have taken new registration for such period as may be prescribed.
2. Related to suppliers who have defaulted in payment of tax and default continues for such period as may be prescribed.

3. Related to suppliers who have declared output tax liability more in GSTR-1 but paid tax less in GSTR-3B.
4. ITC claimed more than ITC auto-populated in GSTR-2B
5. ITC claimed in violation of conditions prescribed in Section 49(12)- Maximum proportion of output tax liability which may discharged through electronic credit ledger.

W.e.f. 01-10-2022, amendment in rule 36 (Documentary requirements and conditions for claiming input tax credit) –

Pursuant to the amendment made in section 38 w.e.f. 01-10-2022, with regard to removal of Form GSTR-2 and doing away with two-way communication process, rule 36 has been amended to remove the reference to Form GSTR-2 therefrom - Rule 36(2).

Rule 36(4)(b), Further, it has been provided that the details of input tax credit in respect of invoices or debit notes shall be communicated in Form GSTR-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, willful misstatement or suppression of facts.

Illustration 1

M/s. X Ltd. supplied taxable goods from the factory after manufacture in the month of May 2024 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 10-1-2025 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, willful-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, willful-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.

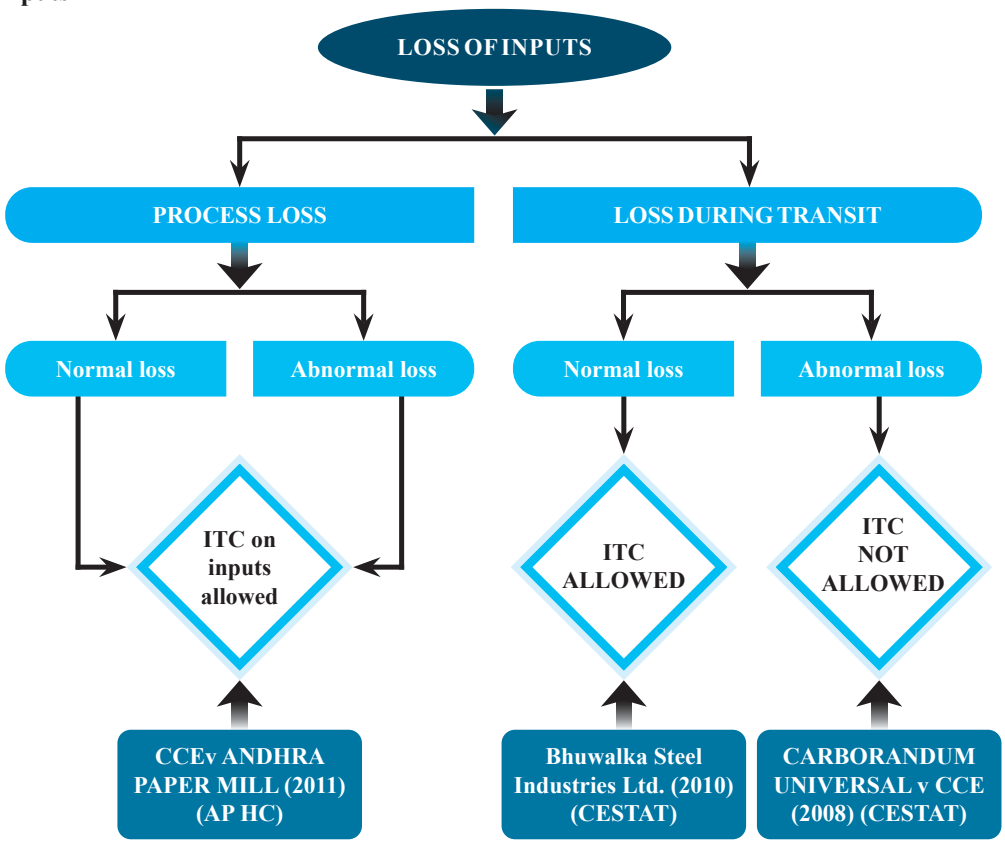
(c) Input tax credit allowed = ₹1,79,640/-
(10,000 Kgs × ₹100) × 18% × 9980 kgs/10,000 kgs.

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

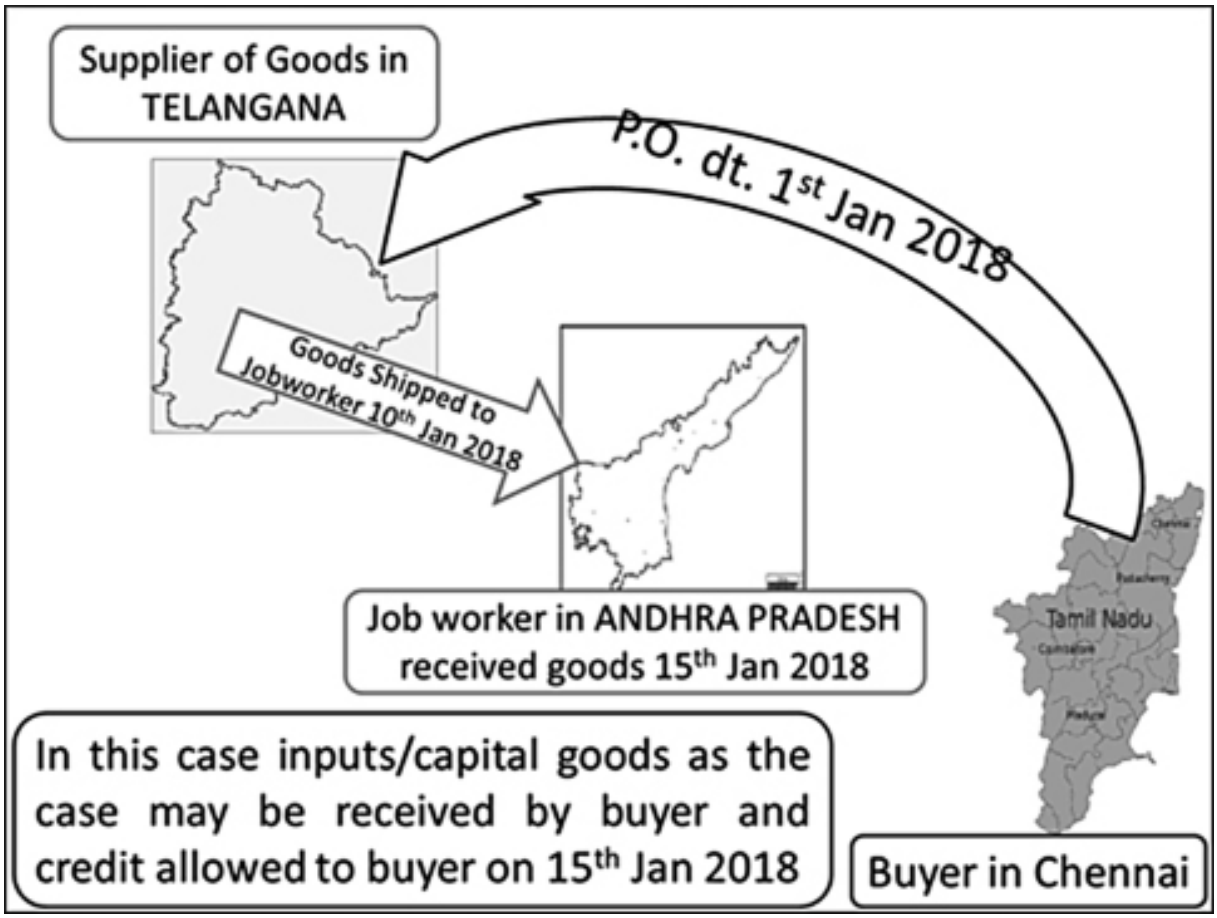


Deemed receipt of goods [Explanation to Section 16(2)(b) of the CGST Act, 2017]

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

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

Rule 37(1) has been amended retrospectively w.e.f. 01-10-2022 to provide for reversal of an amount of ITC proportionate to the amount not paid by the recipient to the supplier vis-à-vis the invoice value.

Only proportionate reversal of ITC required in case of part payment of the value of supply plus tax in respect of an inward supply within 180 days (vide Notification No, 26/2022 dt. 26.12.2022):

As per Rule 37(1) of CGST Rules, 2017, A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply [whether wholly or partly,] along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay [or reverse] an amount equal to the input tax credit availed in respect of such supply proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Rule 37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof.-

Newly inserted rule 37A, Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year:

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.

Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter (Notification No, 26/2022 CT dt 26.12.2022).

For example, M/s X Ltd supplied goods in the month of December 2023; the same shown in GSTR-1 return submitted by supplier on 11th January 2024. The recipient of these gods availed Input Tax Credit in the return in Form GSTR-3B submitted by him on 20th January 2024. But the return in Form GSTR-3B for the tax period namely for December 2023 has not been furnished by M/s X Ltd (namely supplier) till the 30th day of September 2024, the said amount of input tax credit shall be reversed by the said recipient, while furnishing a return in Form GSTR-3B on or before the 30th day of November following the end of such financial year (Rule 37A). Recipient who fail to comply with rule 37A will be issued a GST demand notice demanding tax payment and interest to the extent of excess ITC claimed. The interest is charged as per section 50 of the CGST Act, at 24% p.a. for excess ITC claimed and utilized from the date of such utilisation until the date of payment.

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.

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, 2023 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 14th June 2024.

Working note:

From	To	No. of days
18th Dec 2023	14th June 2024	180

In case M/s A Ltd does not pay by 14th June 2024, the credit availed by it will be added to his output liability. The amount will be added to their output tax liability with interest.

Note: February 2024 will consist of 29 days instead of the usual 28 days.

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.

W.e.f 01-10-2022, Amendment in rule 37, Reversal of input tax credit in case of non-payment of consideration within 180 days: vide Notification No. 19/2022-CT, dated 28.09.2022) whereby sub-rule (1) and (2) have been

substituted [and sub-rule (3) has been omitted] as below—

Rule 37 (1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of 180 (one hundred and eighty) days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16;

Rule 37(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).

Rule 37(3) OMITTED. Sub-rule (3) providing for payment of interest has been omitted since the same as now been incorporated in sub-rule (1).

Rule 37(4) 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.

Example: if 180 days expires on 06.10.2023, the tax period following the said period is November 2023 and hence the reversal should be made in the GSTR-3B return for the month of November 2023, which would be filed on 20th December 2023. But nothing prevents the taxpayer to reverse the same in the GSTR-3B return for the month of October 2023 itself, which would be filed on 20th November 2023, so that the interest liability could be reduced further.

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

W.e.f. 01-10-2022, 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 30th November following the end of financial year to

which such invoice or debit note pertains (prior to 01-10-2022 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.

The words were "invoice relating to such" has been omitted w.e.f. 1-1-2021) It means the recipient can avail ITC of GST paid through debit note, even if the supply pertains to previous financial years.

The limit to avail the input tax credit:

(a) 30th November of the following financial year

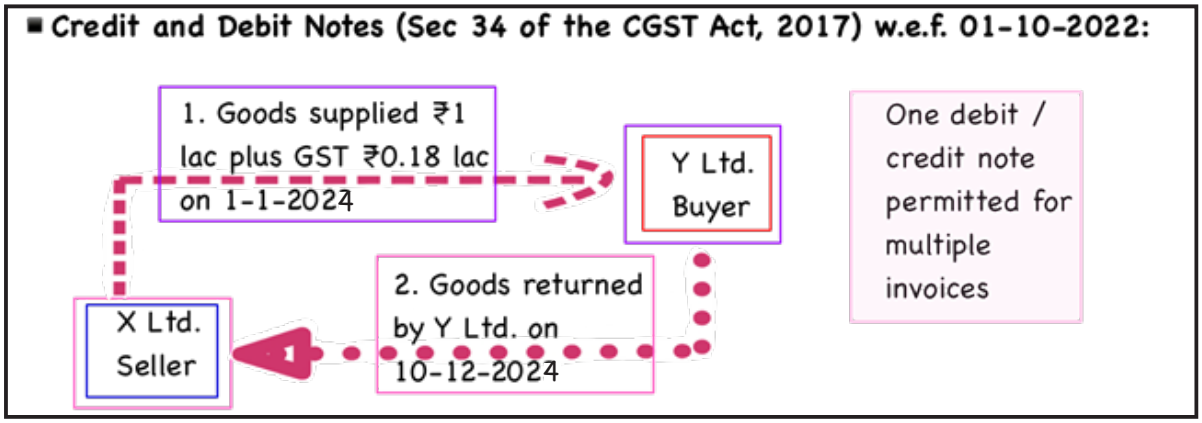
OR

(b) Filling of annual return

whichever is earlier

Similarly. W.e.f 01-10-2022, the time limit of 20th October prescribed in section 34 for declaring detail of a Credit Note pertaining to any supply made in preceding FY is also revised and allowed upto 30th November or furnishing of Annual Return, whichever is earlier.

The time limit under section 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.



As per the amended provision, 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 November following end of financial year to which the invoice pertains.

Circular No. 211/5/2024-GST dated 26 June 2024

Clarification regarding the time limit under section 16(4) of the CGST Act for RCM supplies received from unregistered persons:

Section 16(4) of the CGST Act links the time limit for ITC availability with the financial year (FY) to which the invoice or debit note pertains.

This circular clarifies that in case the supplies on which tax is paid by a recipient under RCM are received from unregistered suppliers and the invoice is issued by recipient as per section 31(3)(f) of the CGST Act, the relevant FY for the calculation of time limit for availing ITC will be the FY in which self-invoice has been issued by the recipient, as per section 16(4) of the CGST Act. This is subject to the fulfilment of other conditions and restrictions of sections 16 and 17 of the CGST Act.

Additionally, when the recipient issues invoice after the time of supply and pays tax thereon, it will be required to pay interest and may also be liable to pay a penalty according to section 122 of the CGST Act.

Example: Time of Supply and ITC for RCM on GTA Services

Scenario

- Supplier: M/s Hanu & Co (unregistered person, GTA service provider).
- Recipient: M/s Bhola Ltd. (registered person under GST).
- Date of Service Provided: April 1, 2019.
- Freight Amount: ₹2,00,000.
- Applicable GST: 5% (under reverse charge mechanism).

Step 1: Time of Supply Under Section 13(3)

As per Section 13(3) of the CGST Act, the time of supply for services under RCM is determined as the earlier of:

1. Date of payment: April 10, 2019.
2. 60 days from the date of invoice: If no payment date is provided, the time of supply would be June 1, 2019.

Here, the time of supply is April 10, 2019, based on the date of payment. Due date to pay is 20th May 2019.

Step 2: Tax Payment and Self-Invoice Issuance by M/s Bhola Ltd.

- Delay in Compliance:
- M/s Bhola Ltd. issued the self-invoice only on July 12, 2024, after a significant delay.
- GST under RCM was paid on August 20, 2024.
- Interest and Penalty:
- As per Section 50(1) of the CGST Act:
- Interest @18% p.a. is payable on the delayed tax payment from 21st May, 2019, until the payment date (August 20, 2024).
- Penalty of ₹25,000 under Section 122(3)(e) may also be levied for the delayed payment of tax. An equal amount of penalty under SGST Act will be levied.

Step 3: Relevant Financial Year for ITC

As per Section 16(4) and the circular:

- The relevant FY for ITC purposes is the year in which the self-invoice was issued (July 12, 2024).
- Therefore, the relevant FY is 2024-25.

Step 4: ITC Time Limit

Under Section 16(4), ITC can be availed until:

1. 30th November of the next FY (FY 2025-26), or
2. The date of filing the annual return for FY 2024-25 (i.e. last date is 31st December 2025), whichever is earlier.

Thus, M/s Bhola Ltd. can claim ITC until:

- 30th November 2025, or
- Annual return filing date for FY 2024-25, whichever is earlier.

Outcome

1. GST Payable:
   - GST on ₹2,00,000 at 5% = ₹10,000.
   - This was paid on August 20, 2024 under RCM.
2. Interest:
   - Interest is payable on ₹10,000 from 21st May, 2019, to August 20, 2024.
3. Penalty:
   - A penalty under Section 122(3)(e) may be applicable due to the delay in issuing the self-invoice and paying GST.
4. ITC Claim:
   - M/s Bhola Ltd. can claim ITC for the ₹10,000 GST paid under RCM in the 2024-25 FY, as the self-invoice was issued in July 2024.

Amendments relating to Tax Invoice:

Invoice by a person liable to pay tax under reverse charge [Section 31(3)(f) of the CGST Act, 2017]

a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall [w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024, "within the period as may be prescribed" shall be inserted] issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

Invoice by a person liable to pay tax under reverse charge [Section 31(3)(g) of the CGST Act, 2017]

a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024 the following Explanation shall be inserted, namely:–

[Explanation – For the purposes of clause (f), the expression "supplier who is not registered" shall include the supplier who is registered solely for the purpose of deduction of tax under section 51.]

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 [under section 74, inserted w.e.f. 8-10-2024, Notification No. 20/2024 CG dt. 8-10-2024].

Time limit for issuance of self-invoice notified to be 30 days from date of receipt of supply – Insertion of Rule 47A (w.e.f. 1-11-2024).:

Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under clause (f) of sub-section (3) of section 31 by a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, he shall issue the said invoice within a period of thirty days from the date of receipt of the said supply of goods or services, or both, as the case may be.".

Also, there cannot be any consolidation of invoices from multiple suppliers. For each relevant supply, a separate self-invoice is to be issued.

Time of supply: In respect of GST payable under Reverse Charge Mechanism(RCM), separate time of supply (ToS) was introduced for supplies received from Registered and Un-registered suppliers through Finance Act (no. 2) of 2024.

For supplies received from unregistered suppliers, the time of supply was prescribed to be earlier of:

a) The date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

b) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient.

Illustration 6:

M/s X Ltd. purchased input for ₹2,00,000 vide Tax Invoice No. 12, dated 1st December 2024. M/s X Ltd. has submitted annual return for the financial year 2024-25 on 15th September 2025. 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, 2024, advise.

Solution:

Time limit to avail the credit is earlier of the following:

(a) 30th November 2025

Or

(b) 15th September 2025

Therefore, M/s X Ltd can't avail the input tax credit on 30th September, 2025.

Illustration 7

M/s X Ltd. delivered a machine to M/s Y Ltd. in January 2025 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 2025 for ₹1,25,000 plus GST. M/s Y Ltd filed its annual return 31st December 2025 for the financial year 2024-25 and 31st December 2026 for the financial year 2025-26.

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 21.01.2025) is 30th November 2025.

Time limit to avail the ITC on debit note is 30th November 2026.

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.

Date of issuance of debit note to determine the relevant financial year for the purpose of section 16(4) of the CGST Act, 2017:

(Circular No. 160/16/2021 GST dt. 20.09.2021)

For example, a debit note dated 17th July 2024 is issued in respect of the original invoice dated 16th March 2025. As the invoice pertains to Financial Year 2024-25, the relevant financial year for a availment of ITC in respect of the said invoice in terms of section 16(4) shall be Financial Year 2024-25.

However, as the debit note has been issued in Financial Year 2025-26, the relevant financial year for availment of ITC in respect of the said debit note shall be Financial Year 2025-26 in terms of amended provision of section 16(4) of the CGST Act, 2017.

Section 16(5) of CGST Act, 2017 [inserted by F.A. 2024, dated 16-8-2024, w.e.f 27-9-2024, vide SO 4253€, dt. W.r.e.f 01-07-2017]:

Amendment of section 16. - In section 16 of the Central Goods and Services Tax Act, with effect from the 1st day of July, 2017, after subsection (4), the following section 16(5) shall be inserted, namely:— "Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017- 18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021.

Example: A registered taxpayer, ABC Ltd, received a service invoice dated 15th March 2021 for FY 2020–21 but failed to claim ITC in the returns filed within the original deadlines under Section 16(4).

- The taxpayer later claimed this ITC in the September 2021 return, filed on 20th October 2021.

Issue Before Amendment:

- Tax authorities could disallow the ITC claim, citing the time limit under Section 16(4).

Impact of Section 16(5):

- The ITC claim by ABC Ltd is now valid because it was claimed before 30th November 2021, even if it exceeded the original time limit under Section 16(4).

Section 16(6) of CGST Act, 2017 [inserted by F.A. 2024, dated 16-8-2024, w.e.f 27-9-2024, vide SO 4253€, dt. W.r.e.f 01-07-2017]:

Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—

(i) filed upto thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration,

whichever is later.".

Example 1: Revocation by the Tax Authorities

- Scenario:
  - A taxpayer, XYZ Ltd., had its GST registration cancelled on 15th March 2024 for non-filing of returns.
  - The registration was reinstated on 1st August 2024 upon filing an application for revocation under Section 30.
  - XYZ Ltd. has invoices from February 2024 to July 2024 for which ITC was not claimed.
- Entitlement Under Section 16(6):
  - XYZ Ltd. can claim ITC for:
    1. Invoices dated before the cancellation (February 2024):

       These invoices belong to FY 2023–24, so ITC can be claimed in the return filed up to 30th November 2024 or with the relevant annual return for FY 2023–24, whichever is earlier.
    2. Invoices during the cancellation period (March 2024 to July 2024):

       ITC for these invoices can be claimed if XYZ Ltd. files the return for this period within 30 days of the revocation order, i.e., by 31st August 2024.
    3. Whichever Is Later Rule:

       The later date between 30th November 2024 and 31st August 2024 applies. Therefore, ITC for all invoices (pre-cancellation and cancellation period) can be claimed up to 30th November 2024.

Example 2: Revocation by Court Order

- Scenario:
  - A taxpayer, ABC Pvt. Ltd., had its GST registration cancelled effective 1st July 2023 due to tax arrears.
  - On 15th April 2025, the Appellate Tribunal revoked the cancellation and reinstated the registration retroactively.
  - ABC Pvt. Ltd. has invoices from June 2023 to March 2024 for which ITC was not availed.
- Entitlement Under Section 16(6):
  - ABC Pvt. Ltd. can claim ITC for:
    1. Invoices dated before the cancellation (June 2023):

       These invoices belong to FY 2023–24, so ITC can be claimed in the return filed up to 30th November 2024 or with the relevant annual return for FY 2023–24, whichever is earlier.
    2. Invoices during the cancellation period (July 2023 to March 2024):

ITC for these invoices can be claimed if ABC Pvt. Ltd. files the return for this period within 30 days of the Tribunal's order, i.e., by 15th May 2025.

3. Whichever Is Later Rule:

   The later date between 30th November 2024 (pre-cancellation timeline) and 15th May 2025 (30 days from the revocation order) applies. Therefore, ITC for all invoices (pre-cancellation and cancellation period) can be claimed up to 15th May 2025.

Notification No. 22/2024-Central Tax dated 8th October 2024: Special procedure for rectification of certain specified orders issued under sections 73, 74, 107 or 108 of CGST Act:

This notification provides a streamlined rectification process for addressing cases where the ITC, initially disallowed, is now permissible under the law, allowing taxpayers to avoid unnecessary litigation.

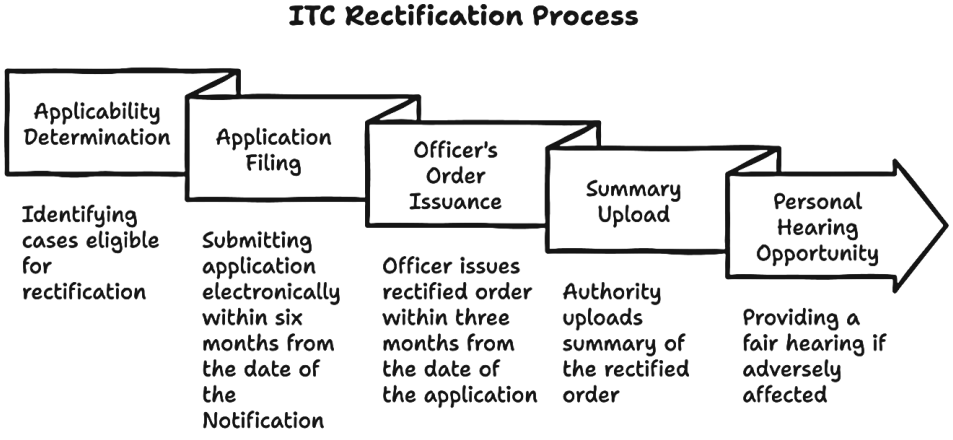
Process Summary:

Applicability: The procedure applies to registered persons against whom an order has been issued confirming a demand for wrongful availment of input tax credit (ITC) in violation of Section 16(4). In other words, case where ITC initially disallowed, is now available under Section 16(5) or Section 16(6), and the person has not filed an appeal against the original order.

Filing of Application: The registered person must file an application for rectification of the order electronically on the common portal. Such application for rectification is to be filed within six months from the date of the notification, and the officer must issue a rectified order within three months from the date of the application. Along with the application, the person must upload information in the prescribed Annexure A format.

Summary of Rectified Order: Once the rectification is made, the authority must upload a summary of the rectified order electronically in the relevant forms based on the section under which the original order was issued.

Opportunity for personal hearing: If the rectification process adversely affects the registered person, the principles of natural justice must be followed, ensuring that the person is provided a fair opportunity to be heard before any adverse decision is made.



Extension of ITC Claim Deadlines under Sections 16(5) and 16(6) of the CGST Act: Clarification of GST Circular No. 237/31/2024, dated 15th October 2024:

Sections 16(5) and 16(6) of the CGST Act extend the time limits for claiming ITC retrospectively from July 1, 2017. This amendment offers relief to taxpayers who were unable to claim ITC within the prescribed period under

Section 16(4). The retrospective application, however, has raised concerns about how past cases—where ITC claims were disallowed—should be handled.

To address these concerns, the GST Circular No. 237/31/2024 lays out specific instructions for various scenarios, ensuring that taxpayers can claim ITC for earlier periods without facing penalties for having missed the original deadlines.

Key Clarifications for Handling Past ITC Cases

The GST Circular No. 237/31/2024 provides clarity on how authorities and taxpayers should approach cases involving incorrect ITC availment due to non-compliance with Section 16(4). The guidance applies to different stages of tax proceedings, such as investigations, demand notices, and appeals.

Cases Without Demand Notices

In situations where proceedings for wrong ITC claims were initiated but no formal demand notice was issued under Sections 73 or 74 of the CGST Act, tax authorities must now consider the amended Sections 16(5) and 16(6). This allows taxpayers to benefit from the extended period for claiming ITC. Proper officers are required to take appropriate action under these provisions, even if informal documents like FORM DRC-01A were previously issued.

Cases with Demand Notices Issued but No Final Order

For cases where demand notices were issued but no final order was passed by the adjudicating authority, retrospective amendments to Sections 16(5) and 16(6) should be taken into account when issuing the final order. This will allow taxpayers to claim ITC, provided their case qualifies under the new provisions.

Appeals in Progress

In cases where orders have already been passed under Sections 73 or 74 and an appeal has been filed under Section 107, but no appellate order has been issued, the appellate authority must now consider the retrospective extension of ITC claims. This ensures that taxpayers who filed appeals due to denied ITC claims are treated fairly under the new legal framework.

Revisional Proceedings Pending

If revisional proceedings were initiated under Section 108 but no final order has been issued, the Revisional Authority is required to factor in the amendments. The revised provisions should guide the decision, ensuring that taxpayers are allowed to rectify their claims where applicable.

Final Orders with No Appeal Filed

Where final orders have already been passed, and either no GST appeal was filed, or no appeal is pending with the Appellate Tribunal, taxpayers can still apply for rectification under the special procedure laid out in Notification No. 22/2024 within 6 months. This must be done within six months of the notification date to rectify any past discrepancies involving ITC claims.

Special Procedure for Rectification of ITC Claims

For taxpayers whose ITC claims were denied due to violations of Section 16(4), but are now eligible under the retrospective amendments, the CBIC has provided a specific rectification process. Here are the key steps:

- **Filing Period:** Taxpayers must file for rectification within six months from the date of the notification issued on October 8, 2024.
- **Application Submission:** Applications can be filed electronically through the GST portal. Taxpayers need to submit relevant details, including Annexure A, to rectify past ITC claims.

- **Order Processing:** The proper officer who issued the original order will handle the rectification and is required to issue a new order within three months of the application.
- **Rectified Orders:** Summaries for rectified orders will be uploaded through the appropriate forms—FORM DRC-08 for cases under Sections 73 or 74, and FORM GST APL-04 for cases under Sections 107 or 108.
- **Adverse Effect of Rectification:** If rectification adversely affects the applicant, the principle of natural justice will apply. This means before passing the adverse order the proper office will give the opportunity to be heard to taxpayer.
- **Appeal Rights:** If the rectified order results in adverse outcomes for the taxpayer, they have the right to appeal under Sections 107 or 112 of the CGST Act.
- **No refund:** No refund will be granted for taxes already paid of ITC reversed, even if the ITC is now eligible due to the retrospective amendments in Section 16(5) and 16(6).

Limitations of the Rectification Process

It's important to note that the special rectification process only applies to cases where ITC was denied due to violations of Section 16(4). Taxpayers whose cases don't involve such contraventions cannot benefit from the special procedure.

Additionally, no refunds will be provided for taxes already paid or ITC that was reversed, even if the ITC is now eligible under the retrospective amendments.

Common inputs and input services for taxable and exempted supplies [Section 17 of the CGST Act, 2017]

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.

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.

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

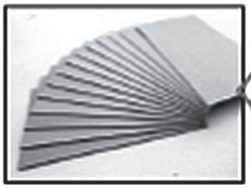
Explanation: For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except (w.e.f. 1st October 2023),

(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.

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 and partly for effecting exempt supplies 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.

Paperboard GST 12%
Common Inputs



Finished goods GST 18%

Text Books GST Nil

Exempted supply for the purpose of Rule 42 and Rule 43

Includes

i. Outward supplies on which recipient is liable to pay tax under RCM.
ii. Transactions in securities (value of supply shall be taken as 1% of the sale value of such securities).
iii. Sale of land (value shall be taken as the same as adopted for the purpose of paying Stamp Duty).
iv. Sale of building value shall be taken as the same as adopted for the purpose of paying Stamp Duty (except construction of complex where supply is made before obtaining completion certificate).
v. Nil rate of supply.
vi. Non-taxable supply.

Excludes

i. Activities specified in Schedule III (except sale of land & building and w.e.f. 1st October 2023 Supply of warehoused goods to any person before clearance for home consumption).
ii. Interest earned on deposits, loans and advances (except Banks/NBFC's).
iii. 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.
iv. Excise duty, Sales Tax.
v. The value of supply of duty credit scrips like MEIS, RoDTEP's, SEIS & EPCG (NT No.14/2022 CT Dt 5th July 2022).

Insertion of new Explanation 3 to Rule 42 and 43 (w.e.f. 01-10-2023):

The value of activities or transactions mentioned in entry 8(a) of Schedule III of the GST Act which is required to be

included in the value of exempt supplies in terms of clause (b) of the Explanation to section 17(3) of the Act shall be the value of supply of goods from the Duty Free Shops located at the arrival terminal in international airports to the incoming passengers.

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;

The ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017 (vide CBIC Circular No. 172/04/2022-GST, dated 6th July, 2022).

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**	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.

Rule	Revised Provision	Comment
	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: 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.**
	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.

Rule	Revised Provision	Comment
	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 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. **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: 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. 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	Comment: A proviso has been inserted to provide that in case of service of Construction of complex, building, civil structure

Rule	Revised Provision	Comment
	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	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.
	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] × 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.

Circular No. 214/8/2024-GST dated 26 June 2024, Clarification on the requirement of ITC reversal regarding the portion of premium for life insurance policies which is not included in the taxable value:

Life insurance policies which include a component of investment along with the component of risk cover for life insurance, are covered under the life insurance business.

The provisions regarding the value of supply of the services in relation to life insurance business are contained in rule 32(4) of the CGST Rules. It provides that the value of supply of services in respect of life insurance business is primarily to be determined by deducting the amount of premium allocated for investment or savings on the policy holder's behalf from the gross premium charged from them. It also provides for the determination of value of supply of such services based on a certain percentage of gross premium in other situations.

Section 17(2) of the CGST Rules read with rules 42 or 43 of the CGST Rules require ITC reversal where ITC is used partly for effecting taxable supplies and partly for exempt supplies.

The circular clarifies that just because some amount of consideration is not included in the value of taxable supply as per valuation provisions, the said portion of consideration cannot be said to be attributable to a non-taxable or exempt supply. Hence, there is no requirement of ITC reversal regarding the said amount.

Example: Life Insurance Policies with Investment and Risk Cover Components

Scenario

- Insurance Company: ABC Life Insurance Ltd., registered under GST.
- Policy Details: A life insurance policy includes:
  - Premium: ₹1,00,000 annually.
  - Risk Cover Component: ₹30,000.
  - Investment Component: ₹70,000 (allocated to a savings/investment account).

Value of Supply Under Rule 32(4)

1. Gross Premium: ₹1,00,000.
2. Investment Component: ₹70,000 (not part of the value of supply as it is allocated for investment/savings).
3. Value of Taxable Supply:
   - As per Rule 32(4), the value of taxable supply = Gross Premium - Investment Component.
   - Taxable Value = ₹1,00,000 - ₹70,000 = ₹30,000.

GST Implications

1. **Output Tax on Taxable Supply:**
   - Assume the GST rate for life insurance services is 18%.
   - GST Payable = ₹30,000 × 18% = ₹5,400.
2. **Input Tax Credit (ITC):**
   - ABC Life Insurance Ltd. uses inputs (goods/services) for taxable and exempt components.
   - Normally, ITC reversal is required for the exempt portion of supplies (as per Section 17(2) and Rule 42/43).
3. **Clarification on ITC Reversal:**
   - The ₹70,000 investment component is not exempt or non-taxable; it is merely excluded from the value of taxable supply due to valuation provisions.
   - Hence, there is no ITC reversal required for the investment component.

Conclusion

- Taxable Value of Supply: ₹30,000.
- GST Payable: ₹5,400.
- ITC Reversal: No ITC reversal is required for the ₹70,000 investment component, as clarified in the circular.

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 2025 to produce all final products. GST paid on inputs 12%. Input services commonly used for all goods and services in the month of January 2025. 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 2025 (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 2025.

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

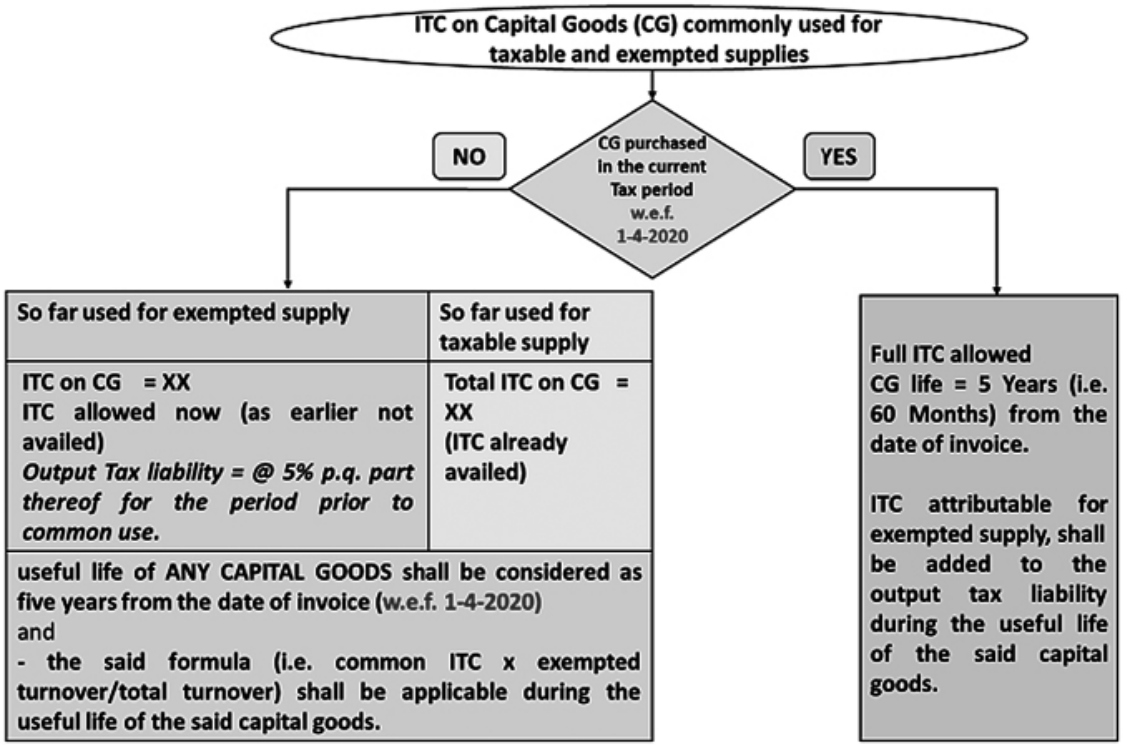
W.e.f. 25.1.2018, interest on deposits should not include in exempted supply. However, it is included in total turnover.

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
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 May 2024. 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.

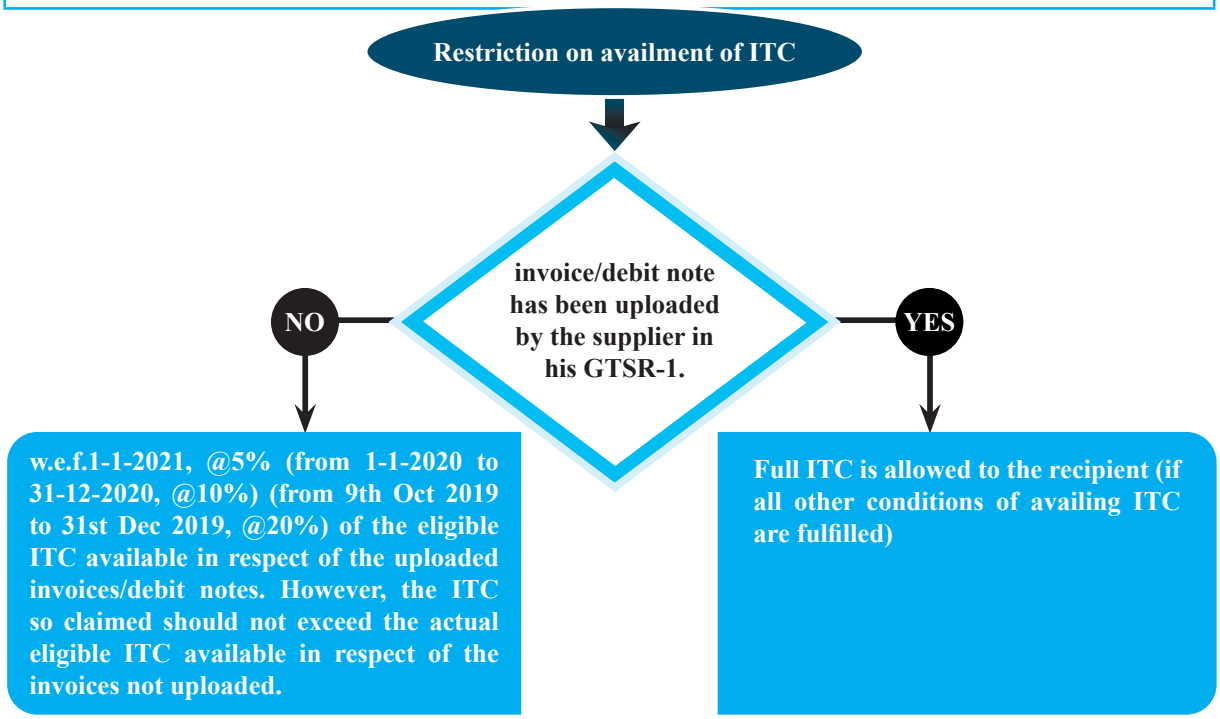
Solution:

Statement showing eligible ITC to OK Bank for the month of May 2024:

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-2B	13,50,000	

W.e.f. 01-10-2022, Rule 38 providing for claim of credit by a banking company or a financial institution has been amended to remove the reference to Form GSTR-2 therefrom

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**:

The CBIC has issued Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017. The salient points of the Guidelines are elaborated below:

1. Grounds for disallowing debit of amount from electronic credit ledger

i. The Commissioner or an officer authorised by him, not below the rank of Assistant Commissioner, must "form an opinion" for disallowing debit of an amount from electronic credit ledger after proper application of mind considering all the facts of the case including the nature of prima facie fraudulently availed or ineligible input tax credit and whether the same is covered under the grounds mentioned in rule 86A(1), the amount of input tax credit involved, and whether such disallowance is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.

ii. The power of disallowing debit of amount from electronic credit ledger must not be exercised in a mechanical manner and "careful examination of all the facts of the case" is important to determine case(s) fit for exercising power under rule 86A. The remedy of disallowing debit of amount from electronic credit ledger being, by its very nature. extraordinary' has to be resorted to with utmost circumspection and with maximum care and caution. It contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration of suspicion. The reasons are to be on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or ineligible input tax credit availed as per the conditions/grounds under sub-rule (l) of rule 86A.

1. Proper authority for the purpose of rule 86A

i. The Commissioner/ Principal Commissioner may authorize exercise of powers under rule 86A based on the following monetary limits:

Total amount of ineligible fraudulently availed input tax credit	Officer authorized to disallow debit of amount from electronic credit ledger under rule 86A
Upto ₹ 1 crore	Deputy/ Assistant Commissioner
Above ₹1 crore but upto Rs. 5crore	Additional/ Joint Commissioner
Above ₹5 crore	Principal Commissioner/ Commissioner

ii. The Additional Director General /Principal Additional Director General of DGGI can also exercise the powers assigned to the Commissioner under rule 86A. The monetary limits for authorization for exercise of powers under rule 86A, to the officers of the rank of Assistant Director and above of DGGI by the Additional Director General /Principal Additional Director General may be same as mentioned above for equivalent rank of officers.

iii. Where during the course of Audit under section 65 or 66 of CGST Act, 2017, it is noticed that any input tax credit has been fraudulently availed or is ineligible as per the grounds mentioned in rule 86A(1), the concerned Commissioner/ Principal Commissioner of CGST Audit Commissionerate may refer the same to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under rule 86A.

1. Procedure for disallowance

i. The amount of fraudulently availed or ineligible input tax credit availed by the registered person, as per the grounds mentioned in rule 86(1) shall be prima facie ascertained based on material evidence available or gathered on record. The "reasons to believe" to disallow debit from electronic credit ledger as formed by the Commissioner or any other officer authorized by him shall be duly recorded by the concerned officer in writing on file, before he proceeds to disallow debit of amount from electronic credit ledger of the said person.

ii. The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible, as per the conditions/ grounds mentioned in rule 86A(1).

iii. The action to disallow such debit from electronic credit ledger shall be informed on the portal to the concerned registered person, along with the details of the officer who has disallowed such debit.

1. Allowing debit of disallowed/restricted credit under rule 86A(2)

i. The Commissioner or the authorized officer, either on his own or based on the submissions made by the taxpayer with material evidence, may examine the matter afresh and on being satisfied that the input tax credit, initially considered to be fraudulently availed or ineligible, is no more ineligible or wrongly availed, either partially or fully, may allow the use of the credit so disallowed/restricted, up to the extent of eligibility, as per powers granted under rule 86A(2).

ii. Reasons for allowing the debit of electronic credit ledger, which had been earlier disallowed, shall be duly recorded on file in writing, before allowing such debit of electronic credit ledger.

iii. Upon expiry of one year from the date of restriction, the registered person shall be able to debit input tax credit so disallowed, subject to any other action that may be taken against such person.

iv. As the restriction on debit of electronic credit ledger under rule 86A(1) is resorted to protect the interests of the revenue and the said action also has bearing on the working capital of the registered person, it should be endeavoured that in all such cases' the investigation and adjudication are completed at the earliest, well within the period of restriction, so that the due liability arising out of the same can be recovered from the said taxable person and the purpose of disallowing debit from electronic credit ledger is achieved.

Source: Guidelines for disallowing debit of electronic credit ledger under rule 86A of the CGST Rules, 2017

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 2024 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).

W.e.f. 01-10-2022, section 49(12) of CGST Act, 2017 has been inserted concerning the above rule. This insertion gives rule 86B legal backing.

Input Tax Credit (ITC) not applicable goods and services Section 17(5) of the CGST 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

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;

Input

Section 2(59) of the CGST Act, 2017

(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;

fa) w.e.f. 1st October 2023, goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

(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.

Input Service

Section 2(60) of the CGST Act, 2017

Amendment of section 17 (w.e.f. 1-11-2024, F.Y. 2024 dated 16-8-2024):

In section 17 of the Central Goods and Services Tax Act, in sub-section (5), in clause (i), for the words and figures "sections 74, 129 and 130", the words and figures "section 74 in respect of any period upto Financial Year 2023-24" shall be substituted.

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.

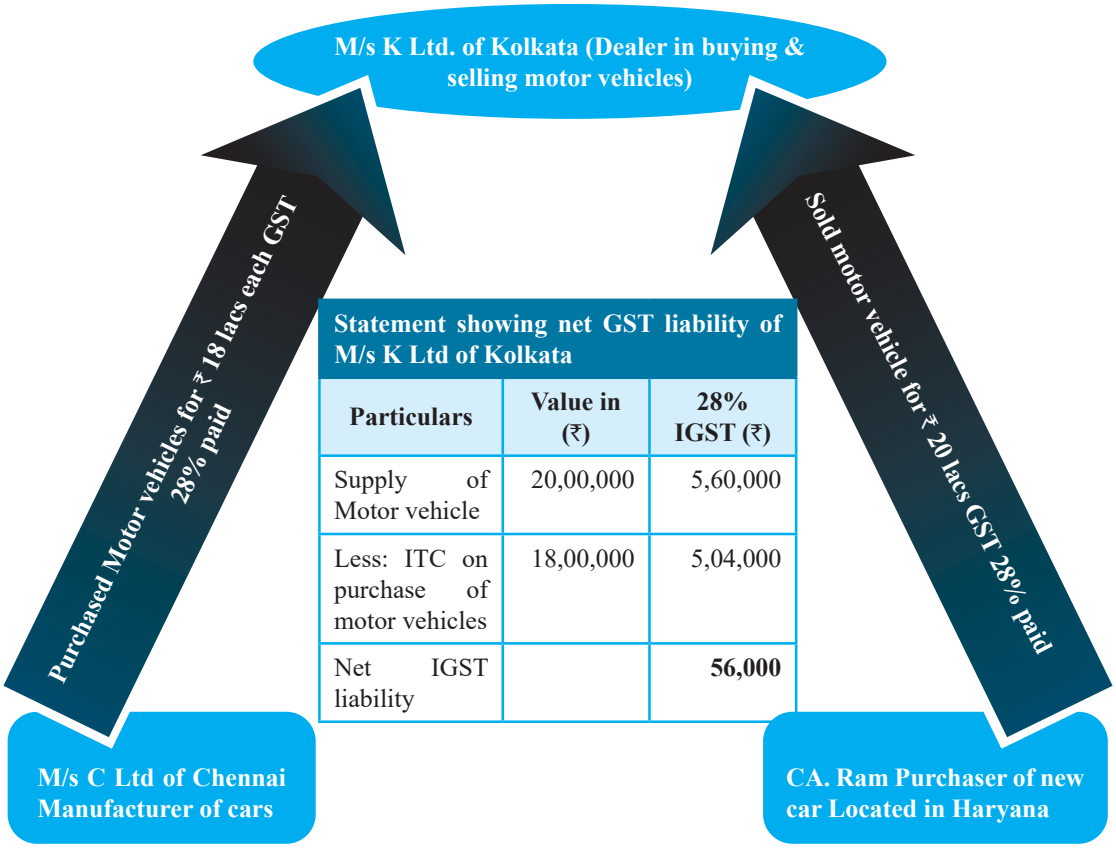
Section 17(5)(a) motor vehicles and other conveyances except when they are used—

(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).

Clarification on availability of input tax credit in respect of demo vehicles (CBIC Circular No. 231/25/2024-GST dt. 10th September 2024):

Here are numerical examples based on the legal framework provided for the availability of input tax credit (ITC) on demo vehicles used by authorized dealers:

Scenario 1: Demo Vehicles Not Capitalized

Facts:

- Dealer A purchases a demo vehicle for ₹10,00,000 (excluding GST) to showcase features and provide test drives to potential customers.
- GST charged by the supplier is ₹1,80,000 (18%).
- Dealer A uses the demo vehicle to promote the sale of similar vehicles.

Legal Framework:

- As per Section 17(5)(a) of the CGST Act, ITC is blocked on motor vehicles for transportation of persons (capacity ≤ 13 persons) unless used for:
  - Further supply of such motor vehicles.
  - Transportation of passengers.
  - Training on driving such motor vehicles.
- **Clarification:** Since demo vehicles are used to promote the sale of similar vehicles, they are considered as being used for "further supply of such motor vehicles."

Outcome:

- ITC Eligibility: ITC of ₹1,80,000 is allowed because the demo vehicle is used for making taxable supplies (sale of similar vehicles).
- Compliance Notes: The dealer must ensure the demo vehicle is used exclusively for business purposes and not for personal use.

Scenario 2: Demo Vehicles Capitalized

Facts:

- Dealer B purchases a demo vehicle for ₹12,00,000 (excluding GST) and capitalizes it in the books of accounts.
- GST charged by the supplier is ₹2,16,000 (18%).
- Dealer B uses the demo vehicle for test drives and later sells it after 2 years for ₹8,00,000.

Legal Framework:

1. Capital Goods Definition (Section 2(19)): If a vehicle is capitalized and used in the course or furtherance of business, it qualifies as capital goods.
2. Section 16(3): ITC is not allowed on the tax component of the cost of capital goods if depreciation is claimed on the tax component under the Income Tax Act.

3. Section 18(6): On the sale of capital goods, tax liability is calculated as the higher of:
    - GST on the transaction value (sale price).
    - ITC attributable to the remaining life of the capital good (reduced by 5% per quarter).

Calculations:

1. ITC on Demo Vehicle:

    •Dealer B capitalized the vehicle but did not claim depreciation on the GST component. Hence, full ITC of ₹2,16,000 is available.

2. GST Payable on Sale of Demo Vehicle:
    - Transaction Value on Sale: ₹8,00,000.
    - GST on Sale (18%): ₹1,44,000.
    - ITC Reversal Calculation:

    ITC is reduced by 5% per quarter. Total ITC = ₹2,16,000. Vehicle used for 8 quarters.
    - ITC attributable to remaining life:
    - Tax Payable: Higher of:
        - GST on transaction value = ₹1,44,000.
        - ITC reversal = ₹1,29,600.

        Tax Payable = ₹1,44,000.

Scenario 3: Demo Vehicle with Depreciation on Tax Component

Facts:

- Dealer C purchases a demo vehicle for ₹15,00,000 (excluding GST) and claims depreciation on the tax component under the Income Tax Act.
- GST charged is ₹2,70,000 (18%).

Legal Framework:

- Section 16(3) of the CGST Act prohibits ITC on the tax component of capital goods if depreciation is claimed on the same under the Income Tax Act.

Outcome:

- ITC Eligibility: ITC of ₹2,70,000 is not allowed as depreciation on the tax component was claimed.

Scenario 4: Sale of Demo Vehicle Without Capitalization

Facts:

- Dealer D purchases a demo vehicle for ₹9,00,000 (excluding GST) and does not capitalize it. GST charged is ₹1,62,000 (18%).
- After 1 year, the demo vehicle is sold for ₹7,00,000 (excluding GST).

Legal Framework:

1. ITC on demo vehicles is allowed as they are used for further supply of similar vehicles.
2. On sale of demo vehicles, GST is payable on the transaction value.

Calculations:

1. ITC Availed: ₹1,62,000.
2. GST Payable on Sale (18% of ₹7,00,000): ₹1,26,000.

Scenario 4: Dealer Acting as an Agent for the Manufacturer

Facts:

- Dealer A purchases a demo vehicle for ₹12,00,000 (excluding GST) from a vehicle manufacturer to provide test drive facilities for potential customers on behalf of the manufacturer.
- GST charged on the demo vehicle is ₹2,16,000 (18%).
- The dealer is not directly involved in the purchase or sale of vehicles; instead, the sale invoice for the vehicle is issued by the manufacturer directly to the customer.
- After one year or a certain number of kilometers, Dealer A sells the demo vehicle to a customer for ₹8,00,000 (excluding GST), charging applicable GST on the sale.

Legal Framework:

1. **Section 17(5)(a) of the CGST Act:**
    - ITC is not available for motor vehicles used for transporting passengers with a seating capacity ≤13 unless used for:
        - Further supply of such motor vehicles.
        - Transportation of passengers.
        - Training on driving such motor vehicles.
2. **Clarification:**
    - In this scenario, Dealer A is acting as an agent or service provider to the manufacturer.
    - For providing facility of vehicle test drive to the potential customers of the vehicle, the dealer purchases demo vehicle from the vehicle manufacturer.
    - Therefore, the demo vehicle is not used for making "further supply of such motor vehicles", and ITC is blocked under Section 17(5)(a).
3. **Implications of Sale:**
    - When the demo vehicle is sold after use, GST must still be charged on the sale value (transaction value). However, ITC remains unavailable to the dealer due to the blockage under Section 17(5)(a).

Calculations:

1. Input Tax Credit on Demo Vehicle:
    - GST paid on purchase of the demo vehicle: ₹2,16,000.
    - ITC Eligibility: Not allowed as per Section 17(5)(a).
2. Sale of Demo Vehicle:
    - Sale Price: ₹8,00,000.
    - GST on Sale (18%): ₹1,44,000.
    - The dealer collects and remits ₹1,44,000 GST to the government.

Outcome:

- ITC on Demo Vehicle: Not Available.
- GST on Sale of Demo Vehicle: Dealer must charge and pay GST of ₹1,44,000 on the sale of the demo vehicle.

Key Points:

1. Since the dealer acts as an agent/service provider to the manufacturer and does not engage in further supply of motor vehicles on their own account, ITC is blocked under Section 17(5)(a).
2. The sale of the demo vehicle is still subject to GST, but ITC on the purchase remains unavailable.

Summary of Scenarios

Scenario	ITC Eligibility
Demo vehicle not capitalized	ITC allowed
Demo vehicle capitalized, no depreciation	ITC allowed
Demo vehicle capitalized, with depreciation	ITC not allowed
Demo vehicle not capitalized, later sold	ITC allowed
Dealer purchases a demo vehicle from a vehicle manufacturer to provide test drive facilities for potential customers on behalf of the manufacturer.	ITC not allowed

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 April 2024 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 20XX 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.

As per CBIC Circular No. 172/04/2022-GST, dated 6th July, 2022, it is clarified that that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.

It is clarified that "leasing" referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts (CBIC Circular No. 172/04/2022-GST, dated 6th July, 2022).

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:

M/s Raj Ltd. being registered person under GST availed works contract service for repair of office building. Amount of repair was debited in the profit and loss account. Comment?

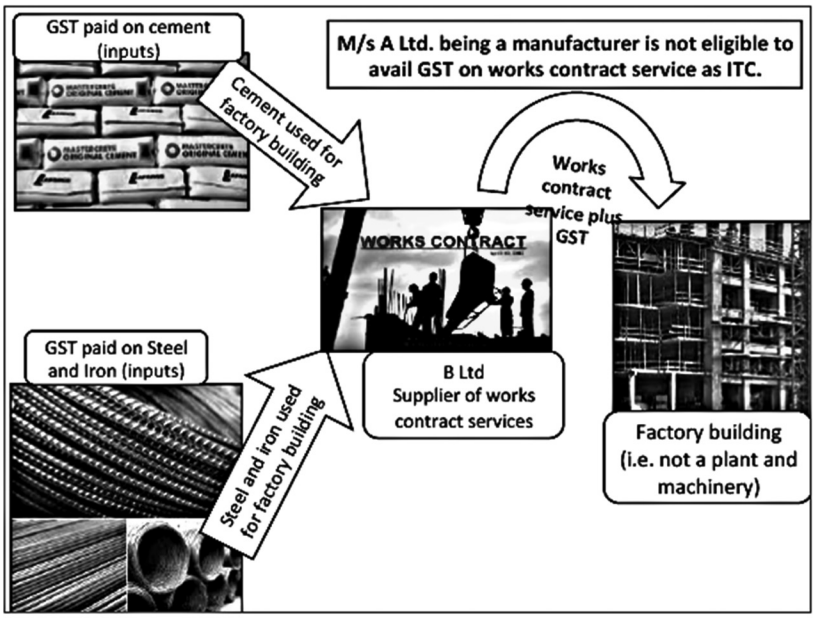
Answer:

The GST paid on works contract for carrying out repair of factory building / office building shall be available for ITC to the extent to which the said expense is not capitalized to the said immovable property as per section 16(1) but subject to the provision under Section 17(5) [J.K.Fenner (India) Limited (GST AAR Tamilnadu)].

In the given case M/s Raj Ltd. is eligible to avail ITC.

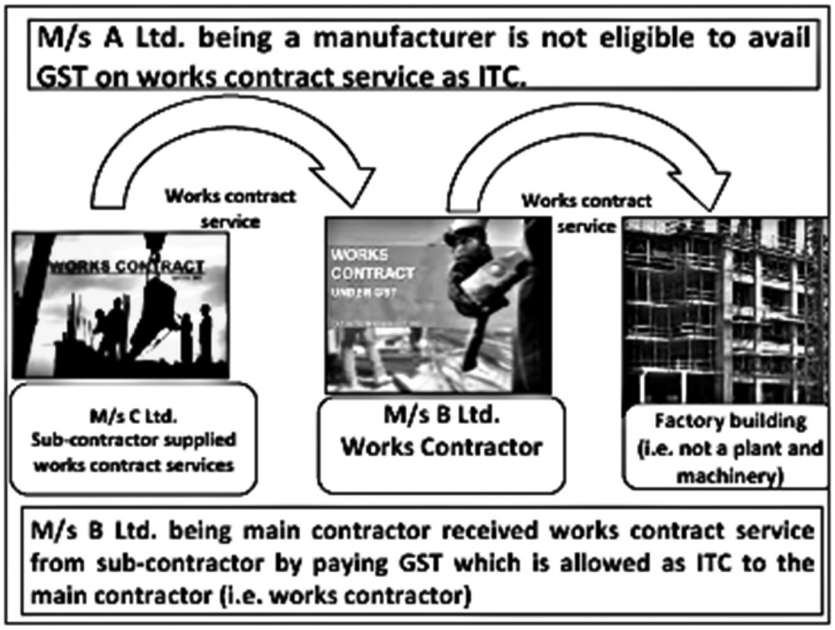
Example 7

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.



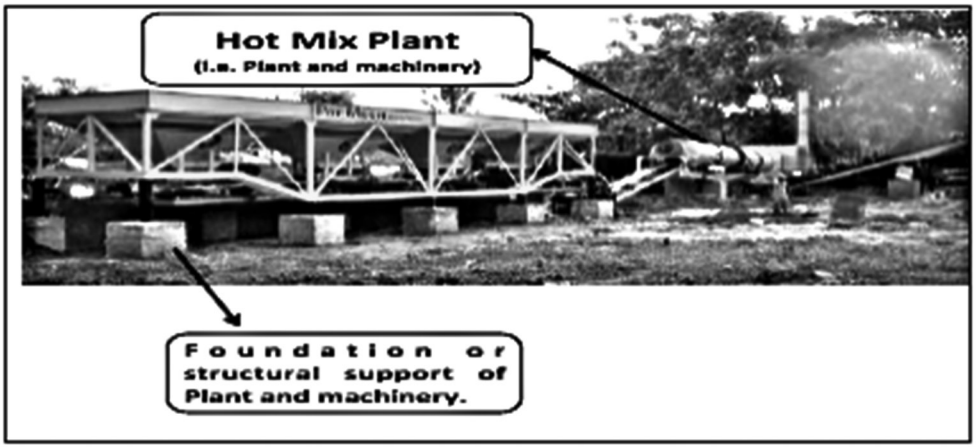
Example 8

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.

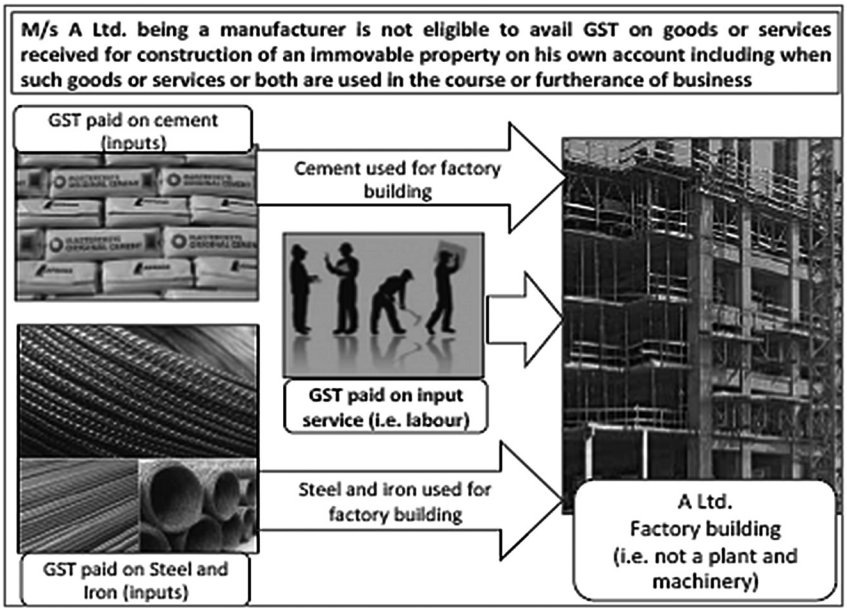
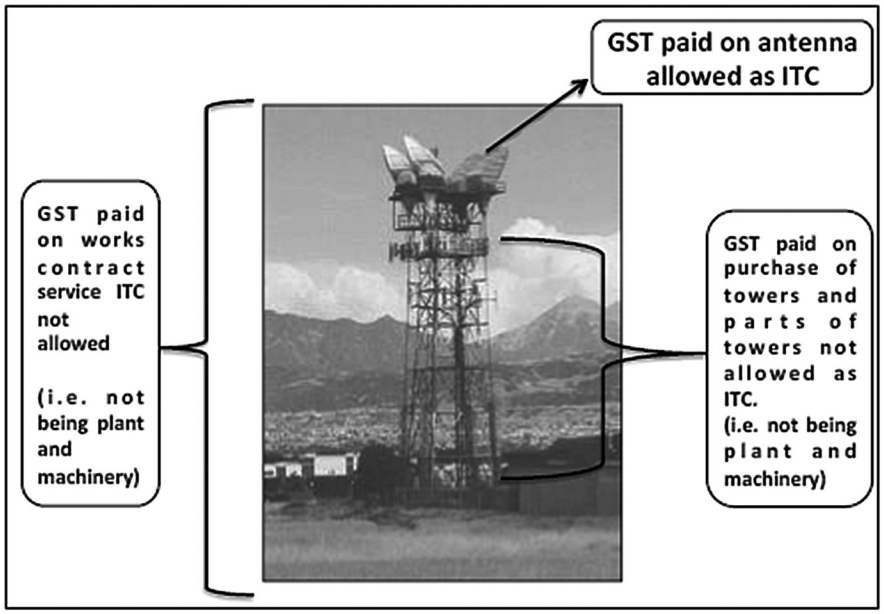


Illustration 36

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?

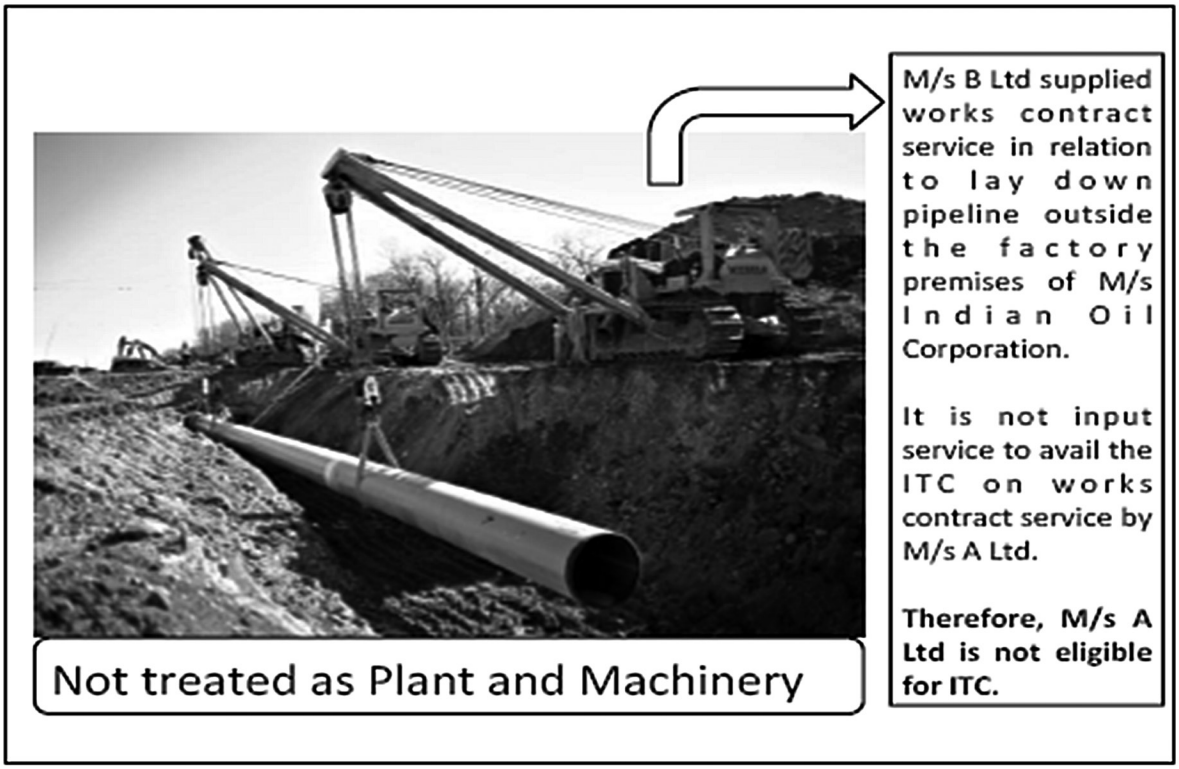


Illustration 37

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 2025, 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 2025.

M/s X Ltd further provides the following information to find net GST liability of M/s X Ltd. for the month of January 2025:

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 2025 of M/s X Ltd.

Particulars	GST (₹)	Remarks
Output tax	4,20,000	15,00,000 × 28%
Less: ITC on Input	(36,000)	2,00,000 × 18%
ITC on Capital goods	(1,68,000)	6,00,000 × 28%
ITC on Input service	(90,000)	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 April 2024.
b. Assume Time of supply in the month of April 2024.
c. Applicable rate of GST 18%.
d. Fully payment made in the month of April 2024.

Output supplies of M/s MR Ltd during the month of April 2024 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 April 2024.

Rework, if M/s MR limited is provider of works contract service.

Solution:

Net GST liability in the month of April 2024 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 April 2024 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 2025:

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, 2024:—

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.

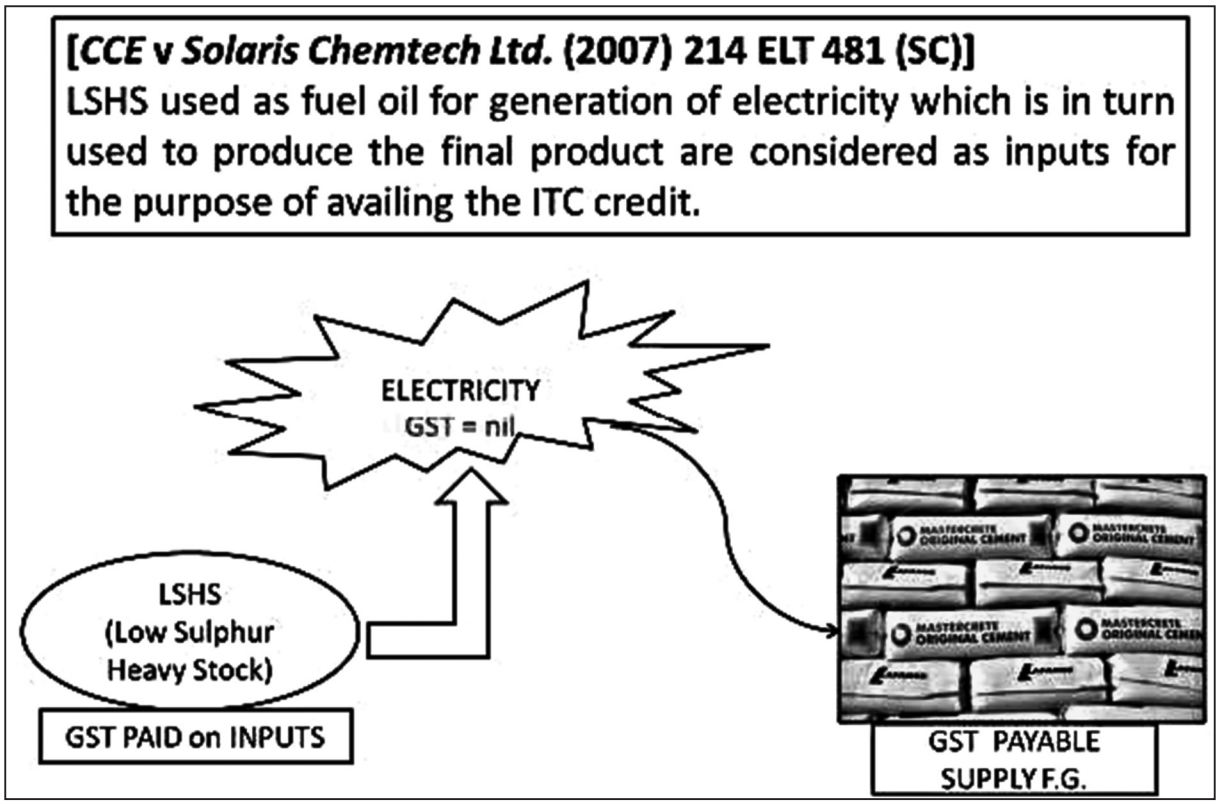
Compute the amount of input tax credit available to ABC India Ltd.

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:



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)(fa) w.e.f. 1st October 2023, goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

Facts of the case: Assessee had availed credit of GST paid on house-keeping and gardening services. In the given case assessee incurred expenditure of housekeeping and gardening in his business premises, out of CSR fund. However, Revenue disallowed the credit and also imposed penalty on the ground that the assessee was not eligible to avail credit of GST paid on these services.

Assesse claim: 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. Under the CSR policy, the company has contributed 2% of its net profit earned during the last three financial years. The majority of the CSR fund is utilized on Contribution towards the environment protection. 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.

However, w.e.f. 1-10-2023, goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013 is blocked credit under section 17(5)(fa) of CGST Act, 2017. Therefore, ITC is not allowed.

From the above, it is evident that Revenue action is correct.

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.

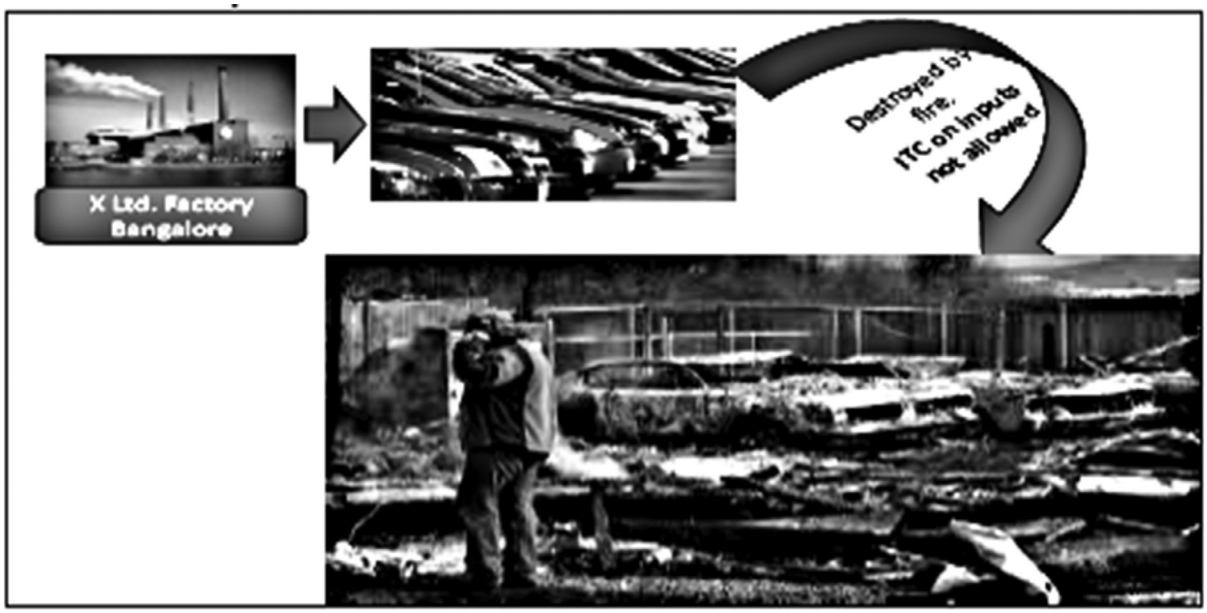
Section 17(5)(h) of the CGST Act, 2017 goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

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.

Circular No. 219/13/2024-GST dated 26 June 2024 -

Clarification regarding availability of ITC on ducts and manholes used in the network of Optical Fibre Cables (OFCs) according to section 17(5) of the CGST Act, 2017:

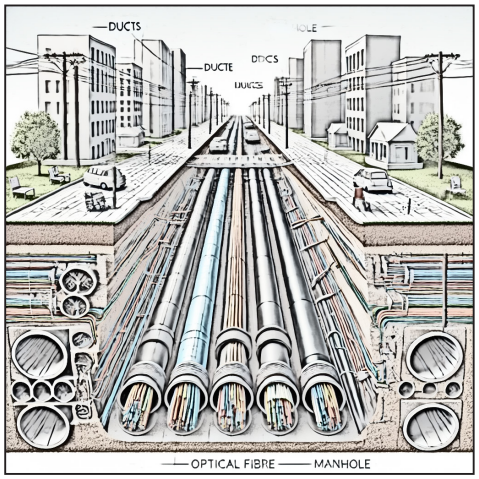
The circular has clarified the issue of availing ITC on ducts and manholes used in the network of OFC's which was denied as the same was said to be restricted in terms of sections 17(5)(c) and

17(5)(d) of the CGST Act. Now, it has been clarified that availing ITC on ducts and manholes used in the network of OFC's is not restricted in terms of the said section because of the following –

a. Ducts and manholes are basic components for the optical fibre network used in providing Telecommunication services.

b. Regarding the explanation to section 17 of the CGST Act, 2017, ducts and manholes are not specifically excluded from the definition of plant and machinery as they are neither in the nature of land, building or civil structures nor are they in the nature of telecommunication towers or pipelines laid outside factory.

c. Ducts and Manholes are in the nature of plant and machinery as they are used as part of the OFC network for making outward supply of the transmission of telecommunication signals.



Example: Availability of ITC on Ducts and Manholes in OFC Networks

Scenario:

1. Company: XYZ Telecom Ltd.
2. Infrastructure:
   - Ducts: Used to house and protect optical fibre cables (OFCs) underground.
   - Manholes: Provide access points for maintaining and connecting OFCs.

Key Clarifications for ITC:

1. Ducts and Manholes Are Essential:
   - They are basic components for setting up and operating the OFC network.
   - Used directly in providing telecommunication services.
2. Not Excluded from Plant and Machinery:
   - As per Section 17 of the CGST Act, ducts and manholes:
   - Are not categorized as land, building, or civil structures.
   - Are not telecommunication towers or pipelines outside a factory.
3. Eligible for ITC:
   - Since ducts and manholes are part of the telecommunication network (plant and machinery), ITC is available for their purchase and installation.

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 2024	30th November 2025	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 2024	20th December 2025	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.

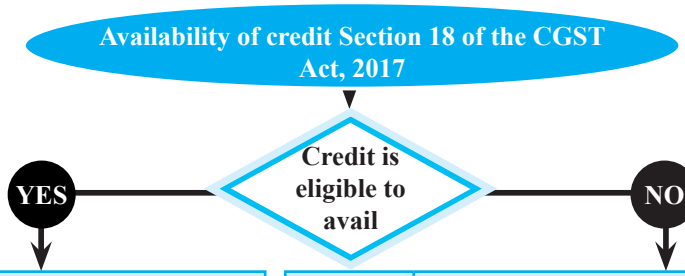
(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

(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 ≤ 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) or Tax 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.

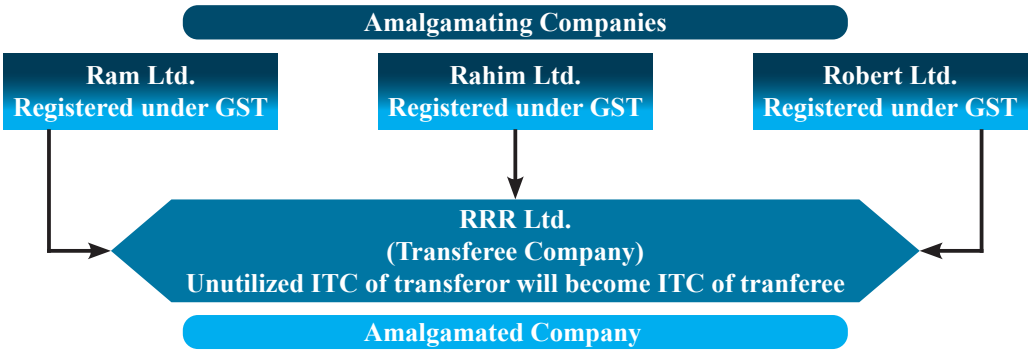
Therefore, input tax credit attributable to remaining useful life shall be reversed or pay as an amount.

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;

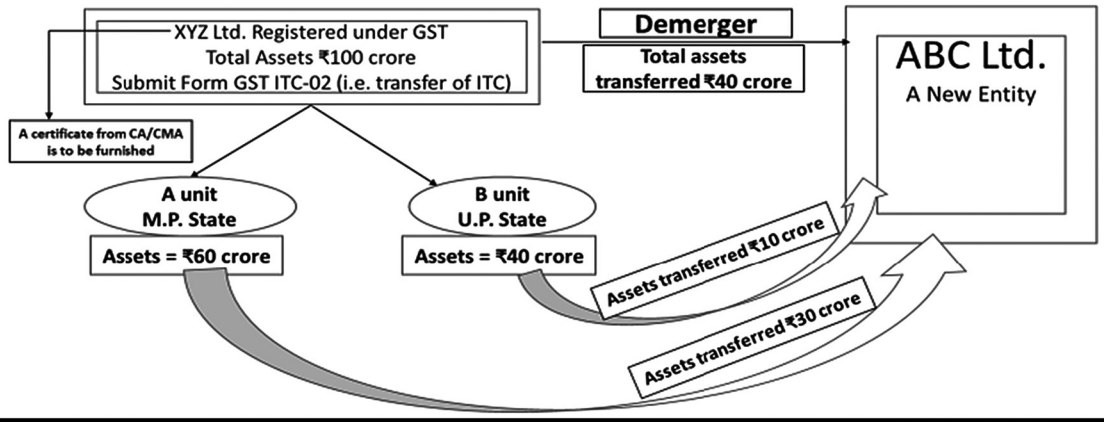
An item of capital goods declared as above on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.

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~~	



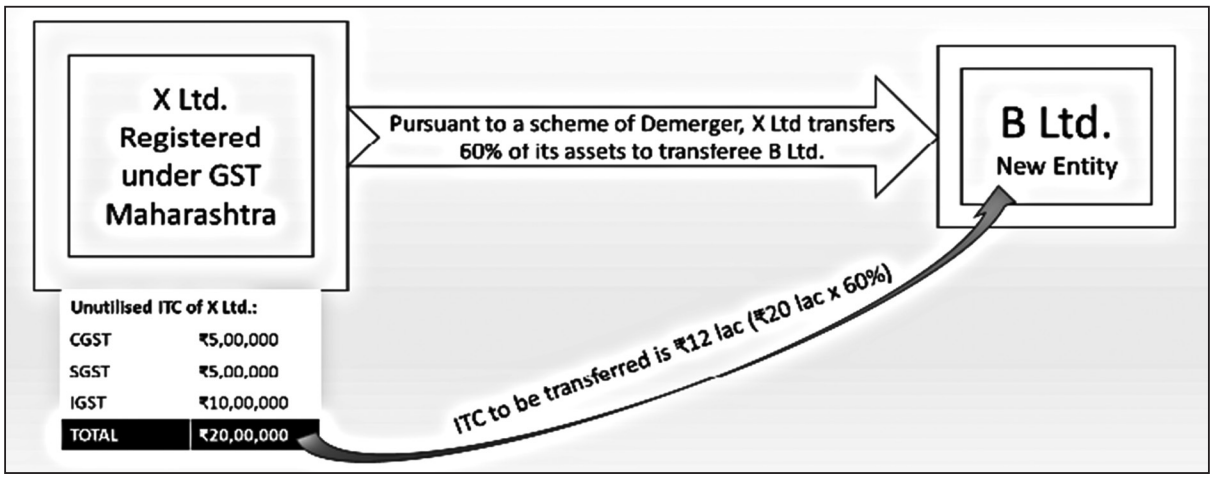
Question:

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 2023. Earlier these goods were liable to tax @18%. Its inputs were liable to GST @ 12%. Following information is supplied on 15th November 2023:

(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 2023)

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 2023 were ₹29,104?

Solution:

Statement showing amount to be paid by Royal Ltd. as on 15th November 2023

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 2023.

If the balance in electronic credit ledger as on 15th November 2023 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 2024. GST is payable on transaction value of plant and machinery 18%. M/s A Ltd. was purchased this machine vide invoice dated 22nd November 2023 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:

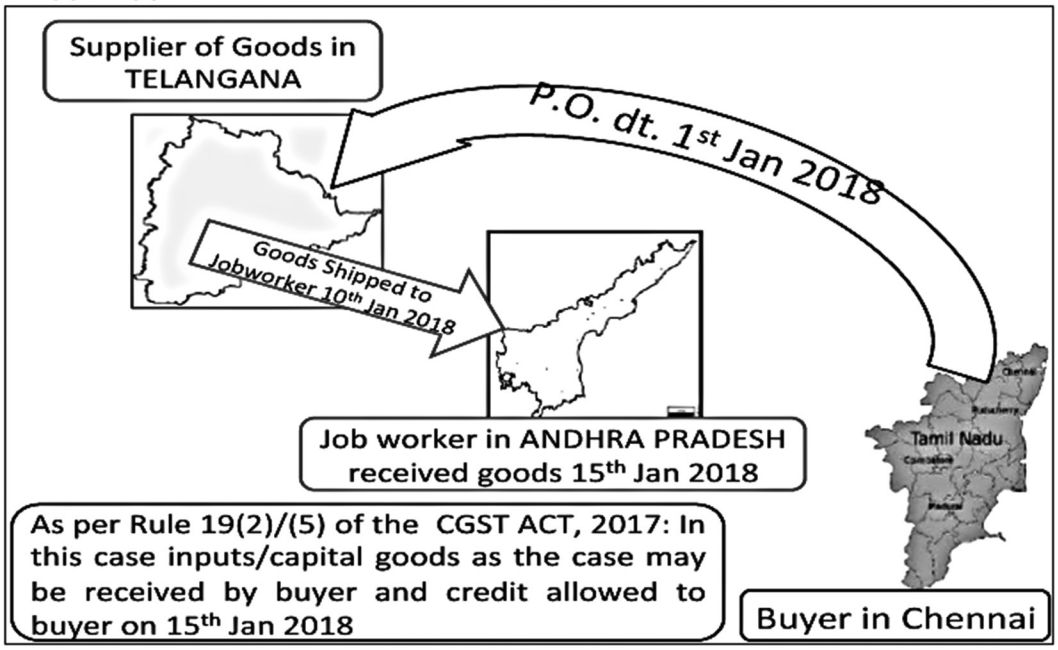
Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

(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.

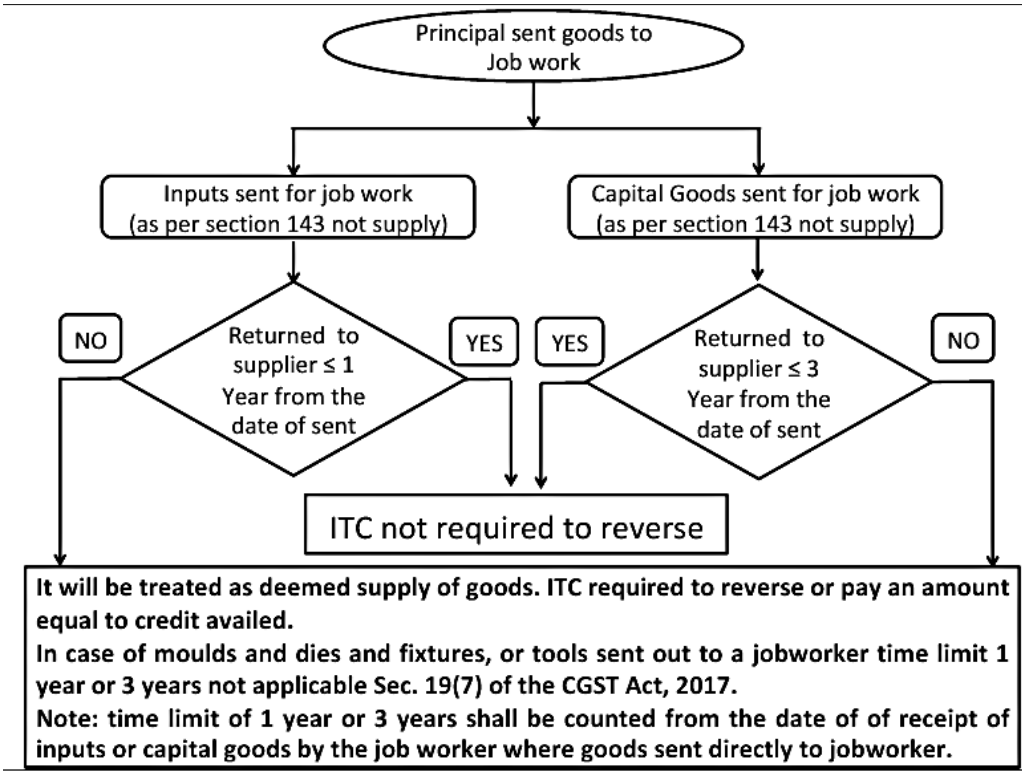
Explanation: For the purpose of this section, "principal" means the person referred to in section 143.

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 2023. These inputs not received back till 24th August 2024 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 2023. If the principal decided to pay tax on 25th August 2024 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 May 2024 directly to job worker M/s Y Ltd and the same received on 25th May 2024 by the job worker, based on the directions of M/s Z (i.e. Buyer-Principal).

These capital goods not received back till 24th May 2027 by M/s Z Ltd. after processing.

Find the consequences in this regard?

Solution:

These capital goods not received back on 24th May 2027 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 May 2024. If the principal decided to pay tax on 25th May 2027 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).

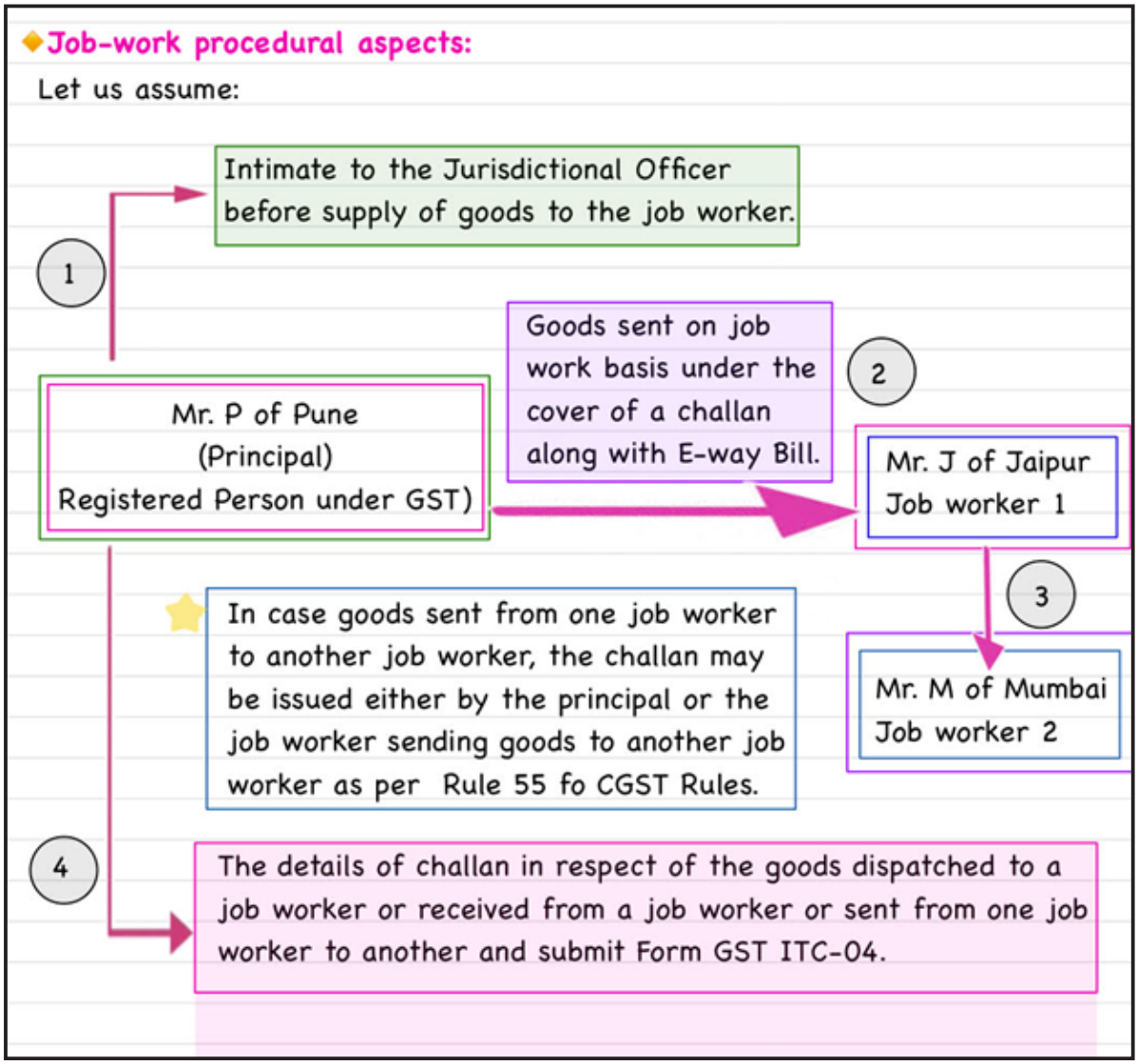
CBIC has notified that the due dates to furnish ITC-04 for the January-March 2020 and April-June 2020 quarters (falling due between 20th March, 2020 to 30th August, 2020) stands extended till 31st August, 2020.

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.

Amendment of section 21. (w.e.f 1-11-2024, F.A. 2024, dated 16-8-2024):

In section 21 of the Central Goods and Services Tax Act, after the words and figures "section 73 or section 74", the words, figures and letter "or section 74A" shall be inserted.

w.e.f 1-4-2025 (vide Notification No. 16/2024–CT Dated: 6th August, 2024):

Section 2(61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20;

w.e.f 1-4-2025 (vide Notification No. 16/2024–CT Dated: 6th August, 2024):

Substitution of section 20. For section 20 of the Central Goods and Services Tax Act, the following section shall be substituted, namely:–

"Section 20. Manner of distribution of credit by Input Service Distributor.

(1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.

(2) The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.

(3) The credit of central tax shall be distributed 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, in such manner as may be prescribed.".

Rule 39 - Procedure for distribution of input tax credit by Input Service Distributor (vide Notification No. 12/2024 CT dt. 10-7-2024, w.e.f. the date yet to be notified):

Numerical Example: Distribution of Input Tax Credit by an Input Service Distributor (as per revised Rule 39)

Scenario Setup:

1. Input Service Distributor (ISD): XYZ Pvt. Ltd. (Located in Delhi).
2. Input Tax Credit (ITC) Available:
   - Integrated Tax (IGST): ₹1,20,000.
   - Central Tax (CGST): ₹60,000.
   - State Tax (SGST): ₹60,000.
3. Recipients of Services:
   - R1: Recipient in Delhi (same state as ISD), turnover: ₹50 lakhs.
   - R2: Recipient in Maharashtra (different state), turnover: ₹30 lakhs.
   - R3: Recipient in Karnataka (different state), turnover: ₹20 lakhs.
4. Aggregate Turnover of Recipients (T): ₹1 crore (₹50 lakhs + ₹30 lakhs + ₹20 lakhs).

Step 1: Distribution Formula for Each Recipient

The ITC to be distributed is determined using the formula:

Where:

- = Total ITC to be distributed.
- = Turnover of the recipient.
- = Aggregate turnover of all recipients.

Step 2: ITC Distribution for Integrated Tax (IGST)

Total IGST: ₹1,20,000.

- For R1 (Delhi):
- For R2 (Maharashtra):
- For R3 (Karnataka):

Step 3: ITC Distribution for Central Tax (CGST) and State Tax (SGST)

Total CGST and SGST: ₹60,000 each.

For R1 (Delhi):

Since R1 is in the same state as the ISD, the ITC is distributed as CGST and SGST directly:

- CGST: ₹30,000 (50% of ₹60,000).
- SGST: ₹30,000 (50% of ₹60,000).

For R2 (Maharashtra) and R3 (Karnataka):

Since R2 and R3 are in different states, the ITC for CGST and SGST is combined and distributed as IGST:

- For R2: (converted to IGST).
- For R3: (converted to IGST).

Step 4: Summary of ITC Distribution

Recipient	CGST (₹)	SGST (₹)	IGST (₹)	Total ITC (₹)
R1 (Delhi)	30,000	30,000	60,000	1,20,000
R2 (Maharashtra)	-	-	54,000	54,000
R3 (Karnataka)	-	-	36,000	36,000

Step 5: Issuance of ISD Invoice

- ISD issues separate invoices to each recipient, specifying the type and amount of ITC distributed.
- These invoices are included in the monthly FORM GSTR-6 return.

Adjustments for Debit/Credit Notes

- If a debit note is issued to the ISD, the additional ITC is distributed as per the above method in the same month.
- If a credit note reduces the ITC, the reduction is apportioned among the recipients based on the original distribution ratio.

This example demonstrates how ITC is calculated and distributed according to Rule 39, ensuring accurate allocation across multiple recipients.

Rule 39(1A) For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under sub-section (3) or (4) of section 9, a registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note as per the provisions of sub-rule(1A) of rule 54 to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in sub-rule (1);

Explanation. — For the purpose of this rule, – (i) the term ―relevant period‖ shall be—

(a) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit isto be distributed, the said financial year; or

(b) 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;

(ii) 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;

(iii) 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 entries 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.

Claim of input tax credit and provisional acceptance thereof [Section 41 of the CGST Act, 2017]

Availment of ITC [Section 41 of the CGST Act, 2017] w.e.f. 01-10-2022:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.".

The new section 41 provides that the taxpayer shall self-assess and claim ITC in GSTR 3B. It further provides that in case the taxpayer has claimed ITC of GST which is not paid/ deposited by the corresponding supplier, than the taxpayer/recipient shall reverse the ITC along with interest. The recipient shall be eligible to re-claim the ITC reversed, on payment of GST by the supplier.

Note: Provisional ITC and Matching Concept under Section 41 of CGST Act, 2017 is now overruled w.e.f. 01.10.2022.

W.e.f. 01-10-2022, sections 42 (OMITTED): Matching, Reversal and Reclaim of ITC.

W.e.f. 01-10-2022, Section 43 of CGST Act 2017 (OMITTED): Matching, Reversal and Reclaim of Reduction in Output Tax Liability.

W.e.f. 01-10-2022, section 43A (OMITTED): Procedure for furnishing return and availing input tax credit.

The registered person who receives the information in Form GSTR-2B shall accept, reject or keep it pending.

CBIC Circular No. 195/07/2023-GST dated 17th July 2023, Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.

S.No.	Issue	Clarification
1.	There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services. Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?	The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods. As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.

2.	Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?	In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.
3.	Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?	There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer. In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer. However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
4.	the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts?	(a) There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same. (b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.

		(c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.
5.	Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?	In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017. Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.
6.	Some times companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	(a) If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. (b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)

Circular No. 216/10/2024-GST dated 26 June 2024 - Under warranty replacements and extended warranties:

Circular 195/07/2023-GST dated 17 July 20234 had clarified that if the manufacturer replaces any parts free of cost during the warranty period, they are neither liable to pay any GST thereon, nor any ITC availed on such parts needs to be reversed.

The present circular is further clarifying the following –

- The clarification via the previous circular will be equally applicable, even when the entire goods are supplied or replaced completely (instead of only parts) during warranty.
- If the distributor replaces the parts or goods during warranty, from his own stock on the behalf of the manufacturer and gets replenishment of the same from the manufacturer, the same treatment will apply, i.e. the manufacturer is neither liable to charge any GST nor liable to reverse any ITC.
- If extended warranty against payment is provided by the supplier of the goods itself at the time of original supply, it will be a composite supply, but if the supplier of goods (dealer or distributor) and the supplier of extended warranty (manufacturer) are different, the supply of extended warranty would be a distinct supply of service and the supplier of extended warranty will be liable to discharge

Examples for Warranty Replacements and Extended Warranties

Example 1: Manufacturer Replaces Goods Entirely During Warranty

- Scenario:
  - Manufacturer: ABC Electronics Ltd.
  - Product: Refrigerator under a 1-year standard warranty.
  - Issue: The refrigerator malfunctions during the warranty period, and ABC Electronics replaces the entire refrigerator free of cost.
- GST Treatment:
- Since the replacement occurs during the warranty period:
  - No GST is applicable on the replacement.
  - No ITC reversal is required for the replacement goods provided by the manufacturer.

Example 2: Distributor Replaces Goods During Warranty

- Scenario:
  - Manufacturer: XYZ Appliances Pvt. Ltd.
  - Distributor: Retail World (sells products on behalf of the manufacturer).
  - Product: Washing machine under warranty.
  - Issue: The distributor replaces a faulty washing machine from its own stock during the warranty period.
  - Replenishment: XYZ Appliances Pvt. Ltd. replenishes the replaced washing machine to Retail World free of cost.
- GST Treatment:
- Replacement during warranty:
  - The manufacturer (XYZ Appliances) does not charge GST on the replenished goods sent to Retail World.
  - No ITC reversal is required for the replacement washing machine provided by the manufacturer.

Example 3: Extended Warranty Provided by the Manufacturer

- Scenario:
  - Supplier: DEF Motors Ltd.
  - Product: Car with an extended warranty of 2 years offered at the time of purchase for an additional ₹10,000.
- GST Treatment:
  - The extended warranty is treated as part of the composite supply of the car.
  - GST is charged on the entire value (car price + extended warranty price) at the applicable rate for the car.

Example 4: Extended Warranty Provided by a Third Party

- Scenario:
  - Dealer: Auto World Ltd. (sells cars).

- Warranty Provider: GHI Warranties Pvt. Ltd. (offers extended warranties).
- Product: Car sold by Auto World with an optional extended warranty for 2 years offered by GHI Warranties at ₹15,000.

- GST Treatment:
- The supply of the car and the supply of extended warranty are distinct supplies:
  - Auto World Ltd. charges GST on the car at the applicable rate.
  - GHI Warranties Pvt. Ltd. charges GST on the extended warranty as a supply of service at the applicable rate for warranties.

Circular No. 217/11/2024-GST dated 26 June 2024 - Entitlement of ITC by insurance companies on expenses incurred for the repair of motor vehicles in the case of reimbursement mode of an insurance claim settlement:

ITC is available to insurance companies for the motor vehicle repair expenses incurred by them in the case of the reimbursement mode of claim settlement. This is because the insurance company qualifies as a recipient and the consideration includes payment made by third person.

Some scenarios may exist where the amount of repair services is more than the approved claim cost and the insurance company only reimburses the approved claim cost to the garage after considering the standard deductions. The remaining amount is to be paid by the insured to the garage. Here, the circular clarified on following two scenarios

- The garage issues 2 separate invoices to the – (1) insurance company regarding the approved claim cost; and (2) customer for the amount of repair service in excess of the approved claim cost: ITC is available to the insurance company on the said invoice subject to the reimbursement of the said amount by the insurance company to the customer.
- The garage issues an invoice for the full amount for repair services to the insurance company while the latter makes a reimbursement to the insured only for the approved claim cost: ITC is available to the insurance company only to the extent of the reimbursement of approved claim cost to the insured, and not on full invoice value.

ITC is available to the insurer only when the invoice for the repair of the vehicle is in the name of the insurance company to satisfy the conditions laid down in section 16(2)(a) and (aa) of the CGST Act.

Examples for ITC on Motor Vehicle Repairs in Insurance Claim Settlements

Example 1: Separate Invoices Issued by the Garage

1. **Scenario:**
   - Insured Person: Mr. Sharma.
   - Insurance Company: ABC Insurance Ltd.
   - Garage: XYZ Auto Repairs.
   - Repair Cost: ₹50,000.
   - Approved Claim by Insurance Company: ₹40,000.
   - Balance Amount Paid by Mr. Sharma: ₹10,000 (due to standard deductions).

2. Invoicing:
    - XYZ Auto Repairs issues:
        1. Invoice 1: ₹40,000 to ABC Insurance Ltd. for the approved claim cost.
        2. Invoice 2: ₹10,000 to Mr. Sharma for the excess amount.
3. GST Implications and ITC for ABC Insurance Ltd.:
    - ITC Eligibility:
        - ABC Insurance Ltd. is entitled to claim ITC on the ₹40,000 invoice if it reimburses the same amount to XYZ Auto Repairs.
    - Conditions Fulfilled:
        - The invoice for ₹40,000 is in the name of ABC Insurance Ltd., satisfying Section 16(2)(a) and (aa) of the CGST Act.

Example 2: Single Invoice Issued for Full Repair Cost

1. Scenario:
    - Insured Person: Ms. Priya.
    - Insurance Company: XYZ Insurance Pvt. Ltd.
    - Garage: ABC Auto Services.
    - Repair Cost: ₹60,000.
    - Approved Claim by Insurance Company: ₹45,000.
    - Balance Paid by Ms. Priya: ₹15,000.
2. Invoicing:
    - ABC Auto Services issues a single invoice for ₹60,000 in the name of XYZ Insurance Pvt. Ltd.
3. Payment:
    - XYZ Insurance Pvt. Ltd. reimburses ₹45,000 (approved claim cost) to ABC Auto Services.
    - Ms. Priya pays the remaining ₹15,000 to ABC Auto Services.
4. GST Implications and ITC for XYZ Insurance Pvt. Ltd.:
    - ITC Eligibility:
        - XYZ Insurance Pvt. Ltd. can claim ITC only on ₹45,000, the amount reimbursed for the approved claim.
        - ITC cannot be claimed on the ₹15,000 balance paid by Ms. Priya since it was not reimbursed by the insurance company.
    - Conditions Fulfilled:
        - The invoice is in the name of XYZ Insurance Pvt. Ltd., satisfying Section 16(2)(a) and (aa) of the CGST Act.

Key Points to Remember

1. Separate Invoices:
   - If the garage issues separate invoices for the insurance company and the insured person, ITC is available only on the amount reimbursed by the insurance company.
2. Single Invoice:
   - If the garage issues a single invoice for the full repair cost, ITC is limited to the approved claim cost reimbursed by the insurance company.
3. Invoice in the Name of the Insurance Company:
   - ITC eligibility requires the invoice to be issued in the name of the insurance company as per Section 16(2)(a) and (aa) of the CGST Act.

Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons (vide CBIC Circular No. 199/11/2023-GST dated 17th July 2023):

S.No.	Issues	Clarification
1.	Whether HO can avail the input tax credit (hereinafter referred to as 'ITC') in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices under section 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (hereinafter referred to as 'ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?	It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act. In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act. Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.

2.	In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full input tax credit is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full input tax credit is available to the concerned Bos.	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. The second proviso to rule 28of CGST Rules provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.
3.	In respect of internally generated services provided by the HO to BOs, in cases where full input tax credit is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.	In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.

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,
		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.

S. No.	Ledger name	Amount to be credited	Amount Utilization
(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
(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
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
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

Ledger	Particulars	CGST	SGST	IGST	Interest payable	Total
	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 ("or section 74A" shall be inserted w.e.f. 1-11-2024 F.A. 2024 dated 16-8-2024).

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 2024	1,00,000
2.	Interest & Penalty on delayed payment and filing of returns belonging to August 2024	20,000
3.	Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2024	1,20,000
4.	Interest & Penalty on delayed payment and filing of returns belonging to September 2024	20,000
5.	Demand raised as per section 73 or section 74 under CGST Act, 2017 belonging to July 2024	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 2024	(1,00,000)
Interest & Penalty on delayed payment and filing of returns belonging to August 2024	(20,000)
Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2024	(1,20,000)
Interest & Penalty on delayed payment and filing of returns belonging to September 2024	(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)."

W.e.f. 5th July 2022, Section 49(10) of the CGST Act, 2017 w.e.f. Notification No. 9/2022-CT, dated 5th July, 2022:

"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,—

(a) integrated tax, central tax, State tax, Union territory tax or cess; or

(b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25,

in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register."

w.e.f. 1st October 2023 Substitution of second proviso to rule 87(3): Consequential amendment made to provide that a person supplying online money gaming from a place outside India to a person in India may generate challan in Form GST PMT-06 through International Money Transfer through SWIFT (Society for Worldwide Interbank Financial Telecommunication) payment network. This type of payment process is already in place where a person supplying OIDAR services from a place outside India to a non-taxable online recipient located in in India.

Electronic Cash Ledger to be updated on the basis of e-Scroll of the RBI in case of failure of bank to communicate details of Challan Identification Number to the common portal (Rule 87(8) amended vide Notification No. 26/2022 CT dated 26.12.2022):

A new proviso has been inserted in sub-rule (8) which lays down that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.

"Rule 87(14) of CGST Rules, 2017 Electronic Cash Ledger (Vide Notification No. 14/2022-CT, dated 5th July, 2022):

A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in FORM GST PMT-09:

Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register."

Further Form GST PMT-09 (i.e. Transfer of amount from one account head to another in electronic cash ledger) has been amended.

Thus, now the refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 shall be filed electronically in Form RFD-01 instead of the respective return forms as provided earlier (rule 89(1)).

W.e.f. 01-10-2022, Restriction for utilizing the amount available in electronic credit ledger:

As per Section 49(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [section 41 (OMITTED w.e.f. 01-10-2022 "or section 43A"], to be maintained in such manner as may be prescribed.

Section 49(4), 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 (inserted w.e.f. 01-10-2022, "and restrictions") and within such time as may be prescribed.

Section 49(4) is being amended so as to provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger. Under the said provisions, Rule 86A of the CGST Rules 2017 can directly fall. This may also be the enabling provisions for providing further restrictions in the utilization of balance in the electronic credit ledger

W.e.f. 01-10-2022 Section 49(12), Maximum payment of output taxes allowed from electronic credit ledger:

The Government may specify the maximum proportion of output tax liability which may be discharged through the electronic credit ledger for specified class of persons. The balance has to be paid through the electronic cash ledger. Currently, Rule 86B provides for such restriction of utilization from electronic credit ledger only upto 99% of output taxes for certain taxpayers. This may also be the enabling provisions for providing further restrictions in the utilization of balance in the electronic credit ledger.

Amendments in rule 87 (Electronic Cash ledger):

Clause (ia) inserted in rule 87(3): The amount of tax, interest, penalty, fee or any other amount may also be deposited through Unified payment interface (UPI) or Immediate Payment Services (IMPS) from any bank, on the GST portal. Sub-rule (3) has been added for this purpose and consequential amendment has been made in sub-rule (5).

Insertion of sub-rule (4B) in rule 86 (Electronic Credit Ledger):

(vide NT 14/2022-CT, dated 5th July, 2022)

If the registered person deposits the amount of erroneous refund sanctioned to him u/s 54(3) or under rule 96(3) [in contravention to rule 96(10), omitted w.e.f. 1-11-2024, Notification No. 20/2024 CT dt. 8-10-2024], along with interest and penalty, if any, through Form GST DRC-03 by debiting the electronic cash ledger either on his own or being pointed out by the officer, then the same shall be re- credited to the electronic credit ledger by an order passed by the proper officer in a newly introduced Form GST PMT-03A.

Categories of refunds where re-credit can be done using FORM GST PMT-03A:

(a) Refund of IGST obtained in contravention of sub-rule (10) of rule 96.

(b) Refund of unutilised ITC on account of export of goods/services without payment of tax.

(c) Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.

(d) Refund of unutilised ITC due to inverted tax structure.

Procedure for re-credit of amount in electronic credit ledger:

(Circular No. 174/06/2022-GST, dated 6th July, 2022)

Step 1: deposit of erroneous refund of ITC or IGST along with a written request in format enclosed as Annexure-A to the Circular, through Form GST DRC-03 by debiting of amount from electronic cash ledger.

Step 2: Thereafter, the proper officer, on being satisfied, he shall re-credit an amount in electronic credit ledger equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in FORM GST PMT-03A.

Step 3: re-credit in electronic credit ledger shall be granted preferably within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

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 2024:

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 2024:

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 2024:

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 2024.

Make suitable assumptions wherever required.

Solution:

Statement showing Net GST liability of Mr. NY for the month of April 2024:

Particulars	CGST	SGST	IGST
Output Tax liability	66,000	66,000	63,000
Less: ITC of IGST	Nil	Nil	(77,000)
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 2024:

Particulars	CGST	SGST	IGST
Output Tax liability	66,000	66,000	63,000
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]

CBIC Circular No. 172/04/2022-GST, 6th July, 2022:

Question 1:

Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?

Answer:

CBIC clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax without hich is payable under reverse charge mechanism.

Question 2:

Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?

Answer:

As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

Question 3:

Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?

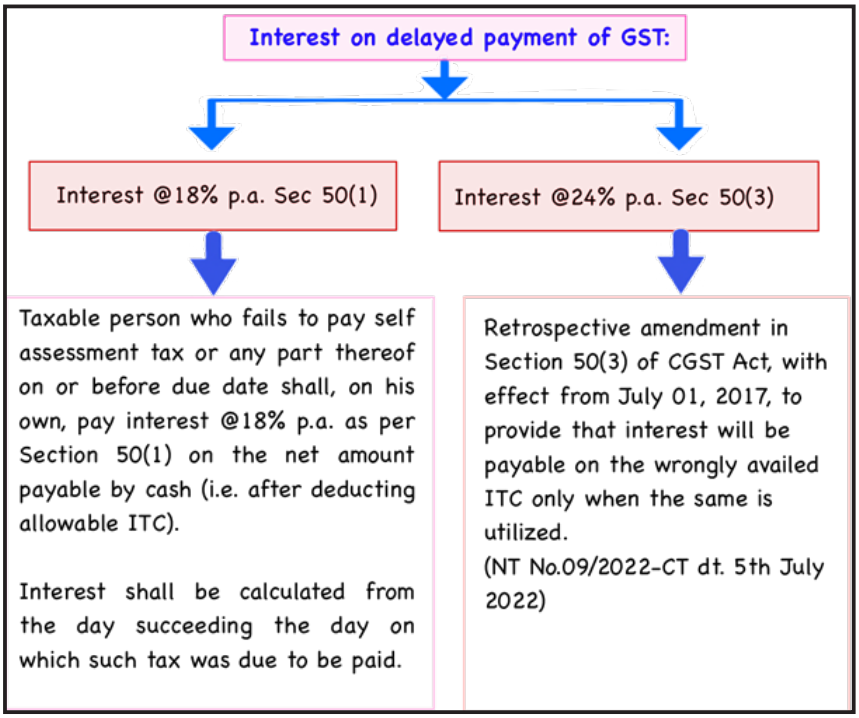
Answer:

As per sub-section (3) of section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

Interest on late payment of tax by taxpayer [Section 50 of the CGST Act, 2017]

The two scenarios where a taxpayer will be liable to pay interest are:

1. Delayed payment of tax
2. credit has been claimed in excess or where it was not eligible to be claimed/ Tax liability has been shown to be less than the actual



As per Section 50(2) of the CGST Act, 2017 the interest under sub-section 50(1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid. Payments even made after 8 pm will be credited on the same day to the taxpayer's account. While there will be no physical challan accepted for the GST payment while the challans will be generated from the gst.gov.in only for all the payments of taxes, fees, penalty, interest.

For the payment of challan under the 10000 rupees limit, it can be done over the counter with cash, cheques, demand draft through authorised banks while for the payments exceeding the amount of `10000 will be collected through digital mode only.

Example:

M/s Rajendra Dyeing Pvt Ltd. supplied goods worth ₹10,00,000 to M/s Y Ltd in the month of September 2024 plus GST 12%. M/s Rajendra Dyeing Pvt Ltd. paid the GST on 5th December 2024. The amount of input tax credit is 70,000 is available in the books. Find the interest payment if any under section 50 of the CGST Act, 2017.

Answer:

Tax = ₹1,20,000

Less: ITC = ₹(70,000)

Tax payable = ₹ 50,000

Interest shall be calculated from the next day of the due date of payment from 21st October 2024 to the actual date of payment i.e. 5th December 2024.

Interest is ₹50,000*18%*46/365= ₹1,134/-

Section 50(2) of the CGST Act, 2017 "the interest payable shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid".

Section 2(87) of the CGST Act defines the term 'prescribed' to mean prescribed by the Rules made under the Act on the recommendation of the Council.

Now, the Central Government on the recommendation of the GST Council has introduced Rule 88B vide Notification No. 14/2022-Central Tax, dated 5 July 2022 with retrospective effect from 1st July 2017. The said Rule prescribes the manner of computing interest on delayed payment of tax.

Rule 88B can be classified into the following 3 categories:-

Rule	Scenario	Period for which interest is payable	Amount on which interest liability has to be calculated
88B(1)	If tax has been belatedly paid through credit balance on account of delayed filing of return, before commencement of proceedings under Section 73 or 74 [or section 74A, inserted w.e.f. 1-11-2024] of the CGST Act [proviso to Section 50(1)] In the said rules, in rule 88B, after sub-rule (1), the following proviso shall be inserted (w.e.f. 10-7-2024], namely: – —Provided that where any amount has been credited in the Electronic Cash Ledger as per provisions of sub-section (1) of section 49 on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date, the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return [vide Notification No. 12/2024 dated 10-7-2024].	Interest to be paid for the period of delay in filing the said return beyond the due date upto date of filing GSTR-3B	Tax paid by debiting the electronic cash ledger
88B(2)	In all other cases where interest is payable on delay in payment of tax covered by Section 50(1)	Period starting from the date on which such tax was due to be paid till the date such tax is paid.	Amount of tax which remains unpaid (i.e. Gross liability without deducting ITC)
88B(3)	Where interest is payable on the amounts of ITC wrongly availed and utilised covered by Section 50(3)	Period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount	Amount of input tax credit wrongly availed and utilised

Date of the utilization of input tax credit means as under –

Cases, wherein, return in Form GSTR-3B is to be furnished	Date of the utilization of input tax credit = Earlier of the ▪ due date of the return or ▪ actual date of filing return.
In any other case	Date of debit in the electronic credit ledger

w.e.f. 10-7-2024, The proviso to Section 50(1) of the CGST Act, effective from July 10, 2024, provides relief to taxpayers regarding interest on delayed tax payments. If a taxpayer deposits the tax amount into their Electronic Cash Ledger (ECL) on or before the due date but files the GSTR-3B return after the due date, interest will not be charged on the amount that was timely deposited in the ECL. Interest will apply only to any tax amount that was not deposited by the due date.

Illustrative Example:

- Tax Liability for July 2024: ₹100,000
- Due Date for GSTR-3B Filing: August 20, 2024
- Date of Tax Deposit into ECL: August 20, 2024
- Date of GSTR-3B Filing: August 25, 2024
- Days of Delay in Filing: 5 days
- Interest Rate: 18% per annum

Scenario Analysis:

1. Full Tax Amount Deposited on Due Date:
    - Since the entire tax liability of ₹100,000 was deposited into the ECL on or before the due date (August 20, 2024), and remained there until it was debited at the time of filing the return on August 25, 2024, no interest is payable on this amount.
2. Partial Tax Amount Deposited on Due Date:
    - Amount Deposited on Due Date: ₹70,000
    - Remaining Amount Deposited on: August 22, 2024
    - Interest Calculation:
    - Interest applies only to the delayed amount of ₹30,000 for 2 days (from August 21 to August 22).
    - Interest Amount: ₹30,000 × (18% ÷ 365) × 2 = ₹29.59
    - Therefore, an interest of ₹30 (rounded off) is payable due to the delay in depositing ₹30,000.

Key Takeaways:

- Timely depositing the tax amount into the ECL by the due date ensures that no interest is charged, even if the GSTR-3B filing is delayed.
- Interest is levied only on the portion of tax not deposited into the ECL by the due date.

Amendment of Section 50(1) of the CGST Act, 2017, Interest on delayed payment of tax.-

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for

which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 [or section 74A inserted w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024] in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

As per CBIC Circular No. 192/04/2023-GST dated 17th July 2023, Clarification on charging of interest under section 50(3), in cases of wrong availment of IGST credit and reversal thereof:

- Where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any

  interest liability under section 50(3) if, during the time period starting from such availment and up to such reversal, the balance of ITC in the electronic credit ledger (ECL), under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit.
- Credit of Compensation Cess available in ECL cannot be taken into account while considering the balance of ECL for the purpose of calculation of interest u/r 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Rule 88B(1) of CGST Rules, 2017:

Example 1:

Tax liability	Input Tax Credit	Net GST liability paid after due date	Liability on which interest is applicable
10,00,000	6,00,000	4,00,000	4,00,000
10,00,000	2,00,000	8,00,000	8,00,000
10,00,000	12,00,000	Nil	Nil

Rule 88B(2) of CGST Rules, 2017:

Example 2:

M/s Raj & Co., has made a supply of goods/service in the month of Feb for ₹1,00,000 and GST collected on such supply is 5% which is ₹ (1,00,000*5%)= ₹5,000. Assuming E-Credit Ledger balance is ₹2,000.

let's suppose the due date for the GSTR-3B for Feb Month is 20-March M/s Raj & Co., filed his GSTR-3B against show cause notice issued by Proper Officer under section 73 of CGST Act, 2017 on 20th April. Calculate Interest amount.

Solution:

Due date for payment of tax collected by M/s Raj & Co., in the month of Feb is 20-Mar. Interest @ 18% p.a is payable for the period for which the tax remains unpaid in terms of Sec-50(1) of CGST Act, 2017. Calculation of interest amount is as follows:

= ₹(5,000*18%*31/365) = ₹76/- (Calculated on Gross GST Liability).

Rule 88B(3) of CGST Rules 2017:

Input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

Interest will be applicable on the amount, by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed. Let's consider a situation:

Example 3:

Month	Opening Balance in e-credit ledger (A)	Eligible ITC(B)	ITC wrongly availed (C)	Total ITC (D) = A + B + C	Output tax liability ₹ (E)	Closing Balance in e-credit ledger (F) = D–E	Amount on which interest is payable	Due Date (G)	Filing Date (H)	Date of Utilization of ITC wrongly (G) or (H) whichever is earlier
April	Nil	3,50,000	25,000	3,75,000	3,50,000	25,000	Nil	20th May	20th May	NA
May	25,000	2,50,000	Nil	2,75,000	2,50,000	25,000	Nil	20th June	18th June	NA
June	25,000	1,50,000	Nil	1,75,000	1,65,000	10,000	15,000	20th July	19th July	19 July
July	10,000	3,00,000	Nil	3,10,000	3,10,000	Nil	10,000	20th Aug.	28th Aug.	20th Aug.

Section 75(9) of CGST Act, 2017: Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

Case laws:

(1) Jeevan Diesels & Electricals Ltd. v Commissioner of Central Excise, Pondicherry (2016) 68 taxmann.com 325 (Chennai-CESTAT):

Hon'ble Tribunal held that interest under Section 50 of the CGST Act, 2017 should be computed in accordance with interest rate in force during the period of delay.

(2) Interest payable for actual period of delay, not for whole month (BPL Mobile CCE (2005) 1 STT 140 (CESTAT).

(3) Interest is payable even if duty is paid before issue of show cause notice [(CCE v Toyota Kirloskar Motors (2015) 52 GST 1208 (SC)]

Interest is not applicable in the following cases

(1) No interest is payable if excise duty is paid voluntarily by assessee before show cause notice, even when demand was time barred [CCE v Gujarat Narmada Fertilizers Co. Ltd. (2012) 285 ELT 336 (Guj HC DB)]

(2) No interest is payable if there was delay in payment of duty by one department of Government to other, because it is only adjustment from one account to other [CCE v General Manager, Telecom (2012) 37 STT 433 (CESTAT)]

Interest to be paid by the department.

The three scenarios where the Department is liable to pay interest on delayed payment to a taxpayer are—

1. Section 54(12) of the CGST Act, 2017: Refund of tax has been withheld from a person on account of an appeal or proceeding but which is later found to be eligible to be paid.
2. Section 56 of the CGST Act, 2017: Refund of tax has not been given to a person within 60 days from the date of receipt of application for refund

3. Provision to section 56 of the CGST Act, 2017: Refund ordered by an adjudicating authority or Appellate Authority or Appellate Tribunal or court has not been paid to a person within 60 days from the date of receipt of application for refund.

Interest rates

Section	Scenario	Interest rate per annum
Section 54(12) of the CGST Act, 2017	Refund of tax has been withheld from a person on account of an appeal or proceeding but which is later found to be eligible to be paid.	6%
Section 56(1) of the CGST Act, 2017	Refund of tax has not been given to a person within 60 days from the date of receipt of application for refund. (w.e.f. 1st October 2023, the words "for the period of delay beyond 60 days from the date of recipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed (i.e. refer Rule 94)" shall be substituted).	6%
Proviso to section 56 of the CGST Act, 2017	Refund ordered by an adjudicating authority or Appellate Authority or Appellate Tribunal or court has not been paid to a person within 60 days from the date of receipt of application for refund till the date of refund.	9%

Note: As per Section 54(14) of the CGST Act, 2017 no refund shall be granted if refund amount is less than ₹1,000/-. Since, no refund is granted under section 54(14) of the CGST Act, 2017, no interest is payable by the Department.

Interest on refund

Example 1:

X Ltd. manufactured and cleared taxable goods on 1st August 2023 for ₹20,00,000 plus GST 12%. After payment of GST on or before the due date, it is noticed that these goods are exempted from GST and applied for want refund of GST on 15th November 2023. Department acknowledged the receipt on 15th November 2023. Department granted the refund on 23rd January 2024.

Find the interest if any on delay refund.

Note: X Ltd. not passed ITC to recipient of supply.

Answer:

From 15th November 2023 to 22nd January 2024 = 69 days

Less: from 15th November 2017 to 13th Jan 2018 = (60) days

No. of days delay = 9 days

Interest = ₹355/- (i.e. 2,40,000 x 6% x 9/365)

Case laws:

Kanyaka Parameshwari Engineering Ltd. v Comm. of Cus. & Cx 2012 (26) STR 380 (AP)

Facts of the case:

Whether the interest on delayed refund under section 56 of the CGST Act, 2017 would be payable from the date of deposit of duty or after expiry of 60 days from the date of receipt of application for refund?

Decision:

The interest shall be paid on such tax from the date immediately after expiry of 60 days from the date of receipt of such application till the date of the refund of such tax.

Case law:

Ranbaxy Laboratories Ltd. v UOI 2011 (273) ELT 3 (SC)

Facts of the case:

Whether the interest on delayed refund under section 56 of the CGST Act, 2017 would be payable from the date on which order of refund is made by the judiciary or after expiry of 60 days from the date of receipt of application for refund?

Decision:

Section 54of the CGST Act, 2017 (i.e. refund of tax) comes into play only after an order for refund has been made under section 54(12) of the CGST Act, 2017. However, the liability to pay interest under proviso to Section 56 commences from the date of expiry of 60 days from the date of receipt of application for refund and not on the expiry of the said period from the date on which order of refund is made.

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
(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 May 2025 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 May 2025.
(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 20.01.2023 on which GST payable was ₹50,000 has been received in May 2025.

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 2025-26 was filed on 15th September 2026.

Solution:

Computation of ITC available with XYZ Ltd. for the month of May, 2025

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	₹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) 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.

(4) 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.

(5) 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 half year shall be included in FORM_____?

    (a) Form GST ITC-03

    (b) Form GST ITC-04

    (c) Form GSTR-2B

    (d) Form GST REG-01

18. Maximum time limit for availing ITC is

    (a) The date of filing of annual return

    (b) 30th November of the following financial year

    (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 2023 for ₹10 lacs on which IGST was paid @ 18%. He availed the ITC & utilized the capital goods. On 16th October 2024 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) Lower of (a) or (b)

    (d) Higher of (a) or (b)

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:

    (Amount i

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
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	d	a	c	b	d	a	c

Zero Rated Supplies and Deemed Exports

6

This Module Includes

6.1 Introduction

6.2 Zero Rated Supplies

6.3 Deemed exports

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.

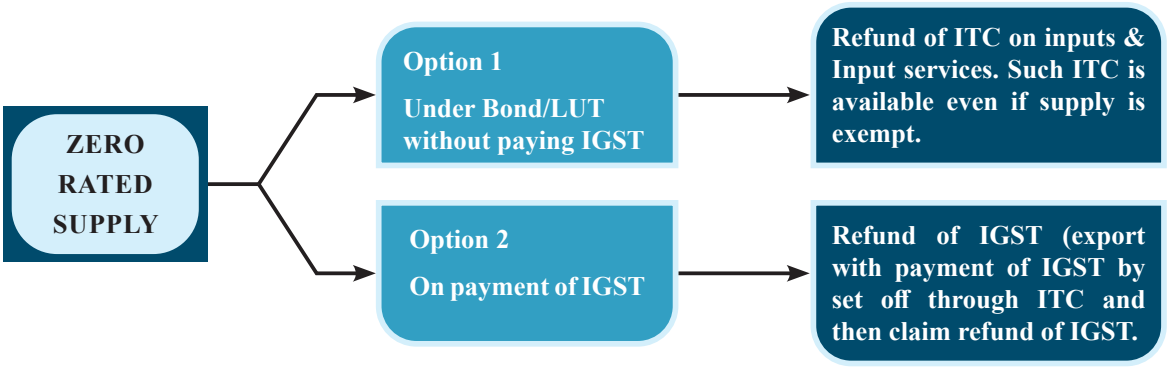
Zero Rated Supplies

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.

W.e.f. 1st October 2023, u/s 54(6), the reference of "provisionally accepted input tax credit" is removed so as to align the same with the present scheme of availment of self-assessed ITC as per section 41(1).

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.

Clarification on certain refund related issues Circular No. 166/22/2021-GST dt. 17.11.2021

Following clarifications have been issued in regard to refund:

i. The time period within which an application for refund can be made shall not be applicable in cases of refund of excess balance in e-cash ledger.

ii. Furnishing of certification/ declaration under rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in e-cash ledger as unjust enrichment clause is not applicable in such case.

iii. The amount deducted/collected as TDS/TCS under the provisions of section 51/ 52 of the CGST Act, as the case may be, and credited to e-cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilize such TDS/TCS amount only for the purpose of discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act, 2017 and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act, 2017.

iv. Clause (b) of Explanation (2) under section 54 of the CGST Act, 2017 is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports irrespective of the fact whether the refund claim is filed by the supplier or by the recipient. Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

Refund of GST can be claimed on submitting the attested copy of tax invoice by the Unique Identification Number (UIN) holder, if UIN is not mentioned therein: -

Rule 95 of the CGST Rules, 2017 relating to refund of taxes paid on the Notification inward supplies to notified specialized agency of UNO or Multilateral Financial Institution and Organization notified under the United

Nations (Privileges and Immunities) Act, 1947 or Consulate or Embassy of foreign countries or any other notified person/class of persons.

One of the conditions prescribed therein for sanction of refund is that name and GSTIN/UIN of the applicant is mentioned in the tax invoice. A proviso has been inserted retrospectively, w.e.f. 1-4-2021, to sub-rule (3) of Rule 95 to provide that where UIN of the applicant is not mentioned in tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorised representative of the applicant, is submitted along with the refund application in prescribed form (Notification No. 40/2021 CT dated 29.12.2021).

Refund to international tourist:

An enabling mechanism has been introduced in Section 15 of the IGST Act, 2017 whereby an international tourist procuring goods in India, may while leaving the country seek refund of integrated tax paid by them.

W.e.f. 01-10-2022, Withholding and deduction of amounts extended to all kinds of refunds section 54(10) of CGST Act, 2017:

Where any refund is due to a registered person who has defaulted in furnishing of any return or has not paid the GST liability, the refund due is liable to be withheld or deductible from the refund due. This clause is applicable only for refund of unutilized input tax credit i.e. for exports, supplies to SEZ and inverted duty structure. The withholding and deduction of refund is now being extended to all kinds of refunds if there is any pending liability of the applicant.

The extent of withholding the refund of tax has been extended by removing the reference to refund in case of unutilised input tax credit in sub-section (3) of section 54.

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.

Allowing supplies to SEZ units/ developer for authorised operations for IGST refund route by amendment in Notification 01/2023-Integrated Tax dated 31.07.2023

The Council has recommended to amend Notification No. 1/2023-Integrated Tax dated 31.07.2023 w.e.f. 01.10.2023 so as to allow the suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations to make supply of goods or services (except the commodities like pan masala, tobacco, gutkha, etc. mentioned in the Notification No. 1/2023-Integrated Tax dated 31.07.2023) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and claim the refund of tax so paid [vide Notification No 05/2023-IT dt 26-10-2023].

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

7.1 TDS under GST

7.2 TCS under GST

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

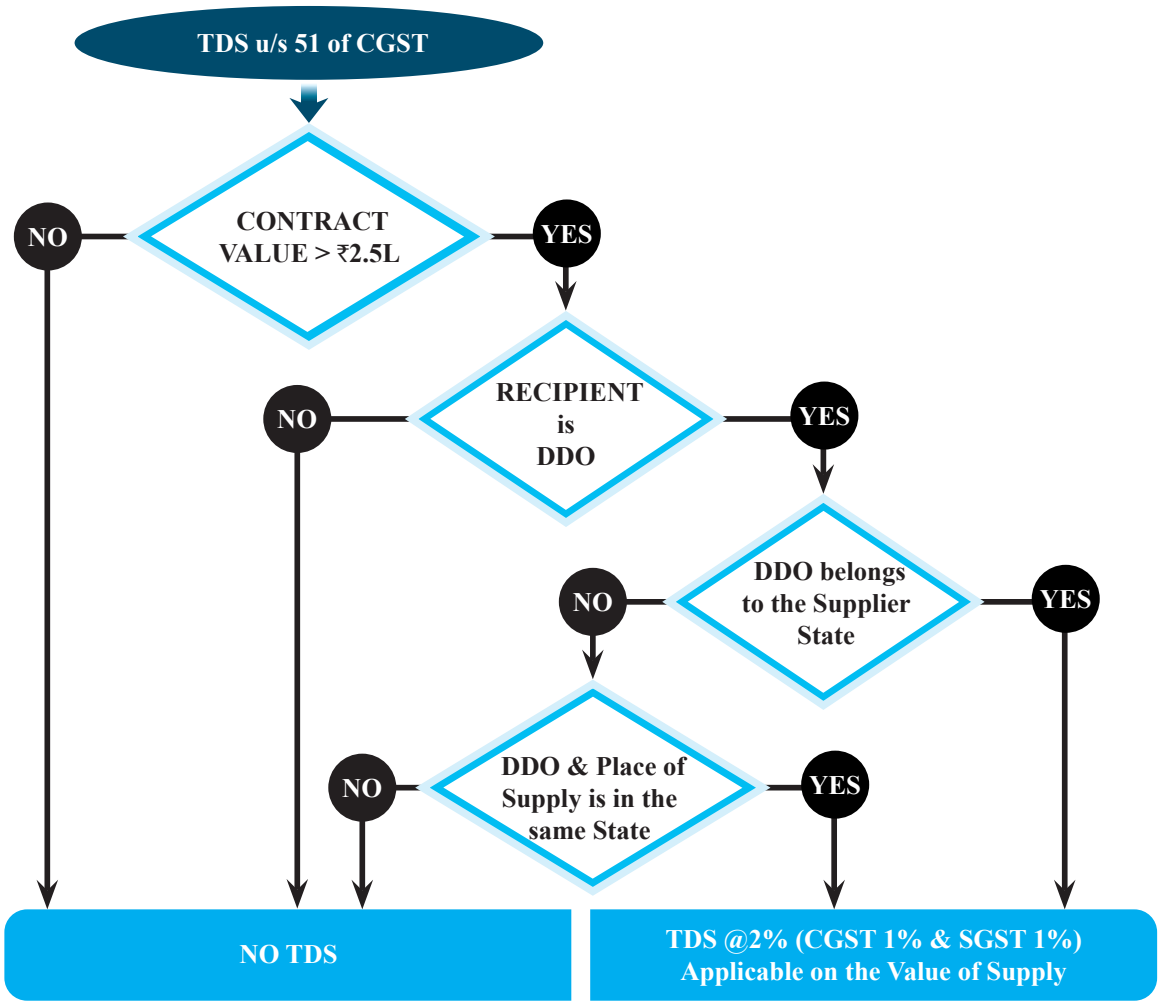
After studying this module, the students will be able to:

- 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

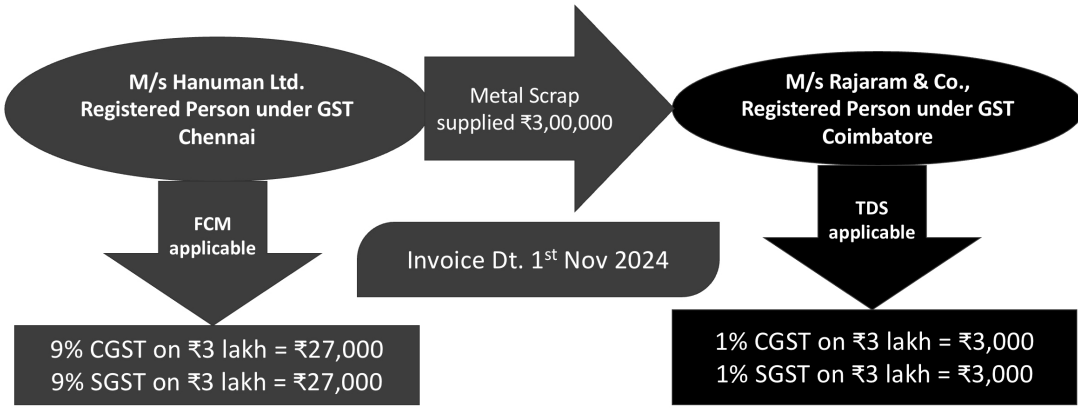
TDS on Metal Scrap (w.e.f. 10-10-2024):

Reverse charge mechanism will be applied to the supply of metal scrap from unregistered to registered persons. Suppliers must register once they surpass the threshold limit, while recipients will be responsible for paying tax under RCM [Notification No. 06/2024 – CT (rate) dated 8 October 2024, Notification No. 24/2024 – Central Tax dated 9 October 2024].

TDS @2% applicable on business-to-business (B2B) supply of metal scrap [Notification No. 25/2024 – Central Tax dated 9 October 2024]

This change expands the scope of TDS under Section 51 of the CGST Act, which previously applied mainly to government bodies and public sector.

Example:



Summary:

Supplier	Recipient	GST @18%	GST TDS
Un-registered Person	Un-registered Person	Exempt	Not applicable
Un-registered Person	Registered Person	W.e.f. 10th October 2024, RCM applicable [NT. 6/2024 dt. 8.10.2024]	Not applicable
Registered Person	Un-registered Person	FCM applicable	Not applicable
Registered Person	Any Registered Person (Even though not DDO)	FCM applicable	TDS applicable

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.

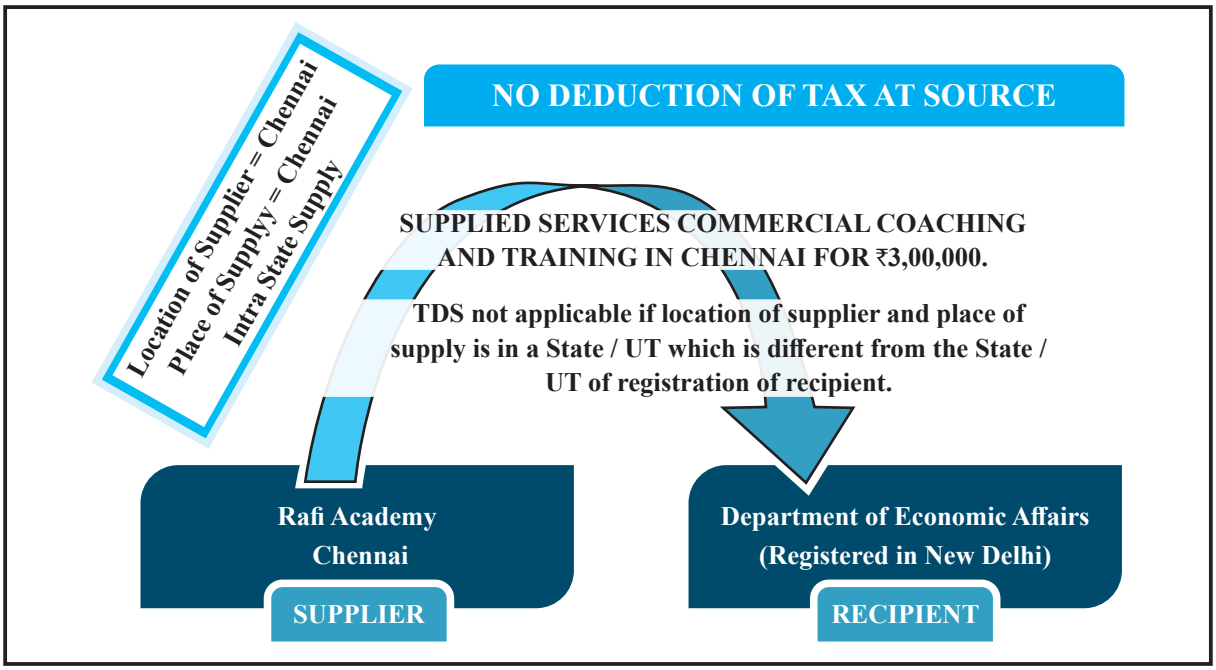
(c) Receipt of services which are exempted. For example, services exempted under notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended from time to time.

(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:

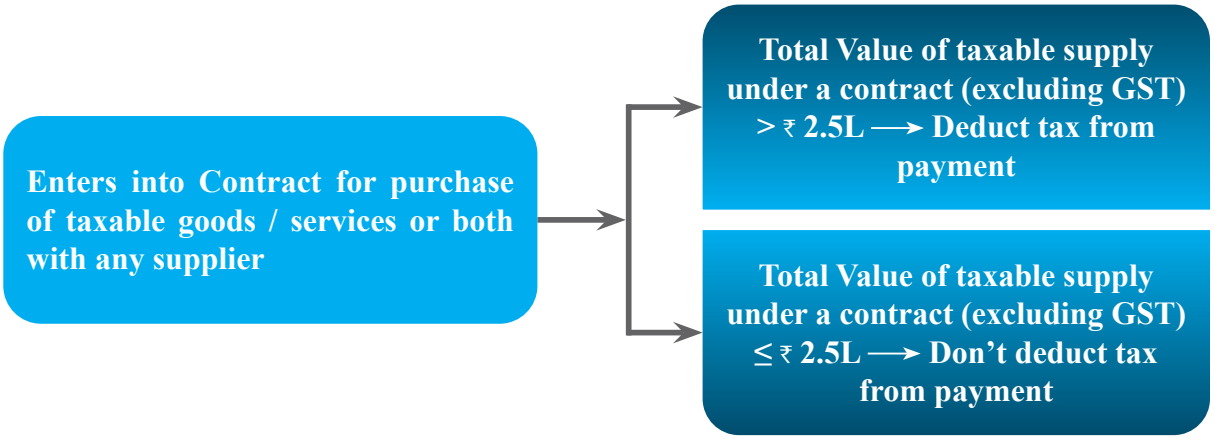
CGST = 1% on ₹10,000 = ₹100

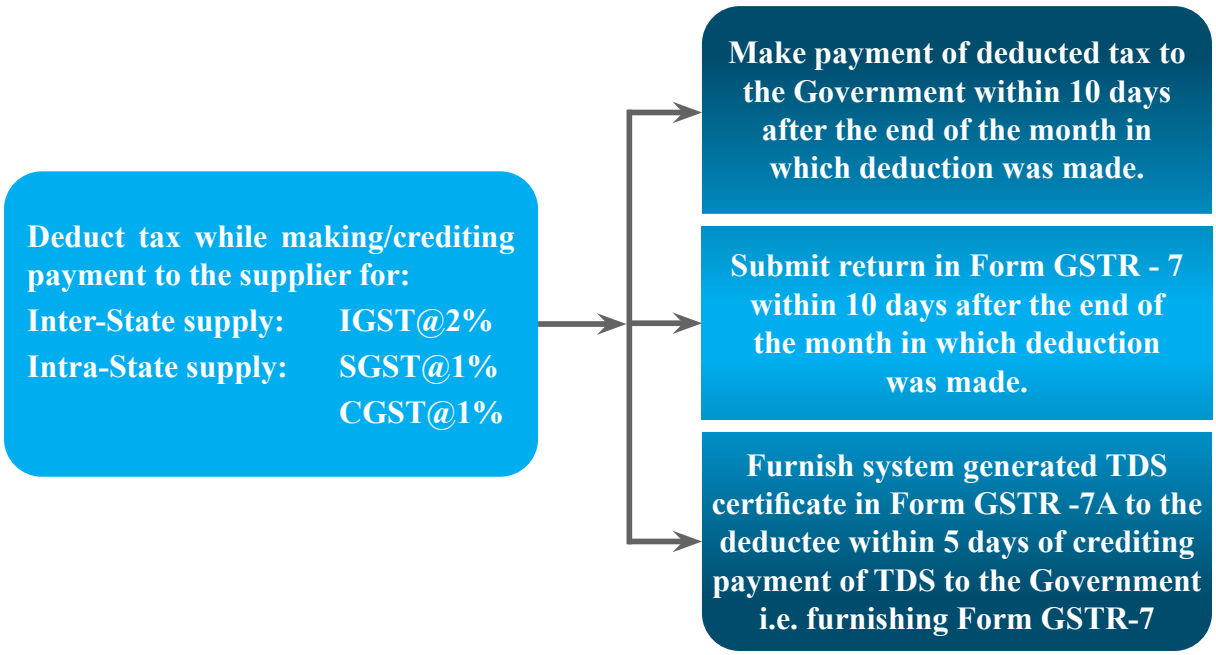
SGST = 1% on ₹10,000 = ₹100

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.





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.

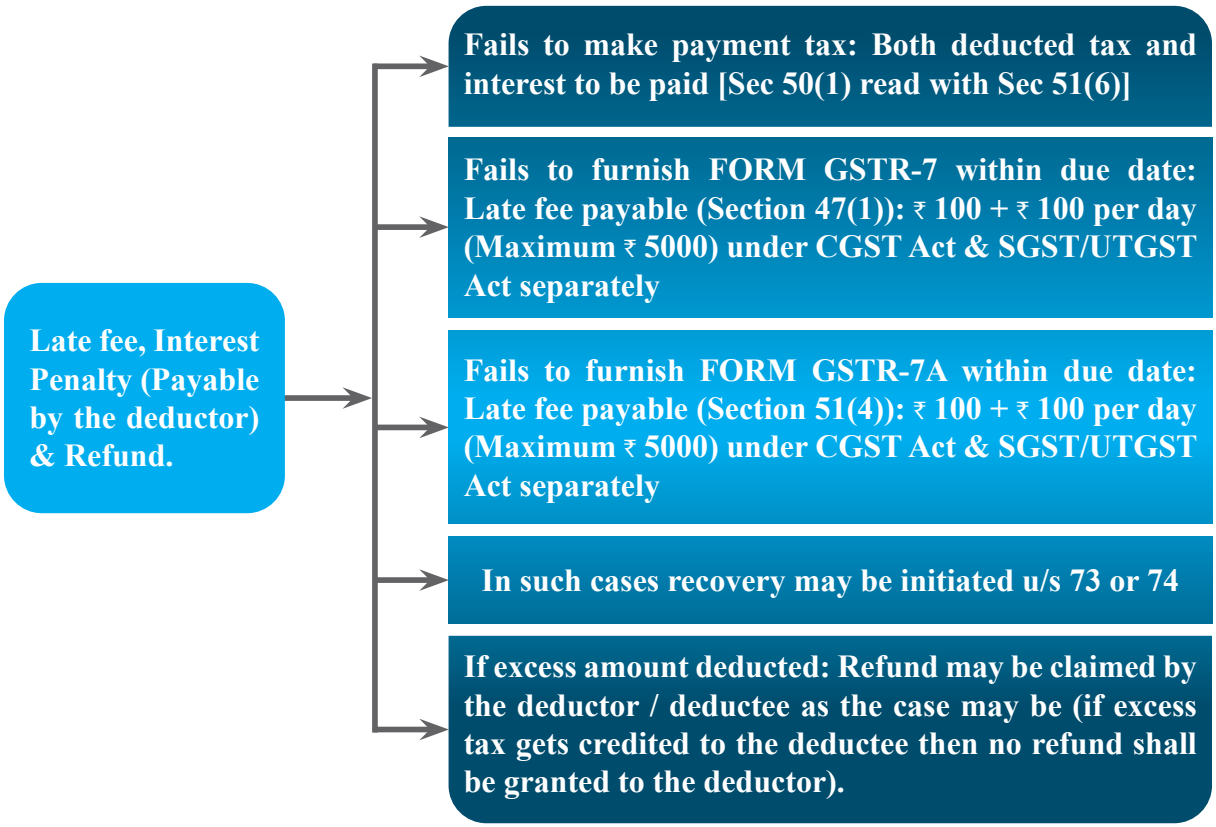
Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2B on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

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-2B of deductee. Hence, any further certificate is not required.



Fails to furnish Form GSTR-7, recovery may be initiated under section 73 or 74 or 74A:

Amendment of section 51(7) of the Central Goods and Services Tax Act, in sub-section (7), after the words and figures "section 73 or section 74", (the words, figures and letter "or section 74A" shall be inserted w.e.f. 1-11-2024, F.A. 2024 Dt. 16-8-2024).

Notification No. 23/2024 – Central Tax dated 8th October 2024: This notification waives the late fee for delays in filing FORM GSTR-7, applicable from June 2021 onwards.

Late Fee Waiver:

Scenario	Late Fee Structure
Late filing of FORM GSTR-7 with TDS	The late fee is capped at ₹25 per day (CGST), with a maximum of ₹1,000 (CGST) per return.
Nil TDS Return (no tax deducted)	Complete waiver of late fee if no tax was deducted at source in the month.

The total late fee payable under Section 47 for failure to file FORM GSTR-7 by the due date is capped at one thousand rupees.

Invoice-wise Details in GSTR-7

In addition to the waiver, the GST Council has recommended that registered persons must provide invoice-wise details of the tax deducted at source (TDS) in FORM GSTR-7. This ensures that there is greater transparency and traceability of TDS amounts deducted by registered persons.

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	--		
(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

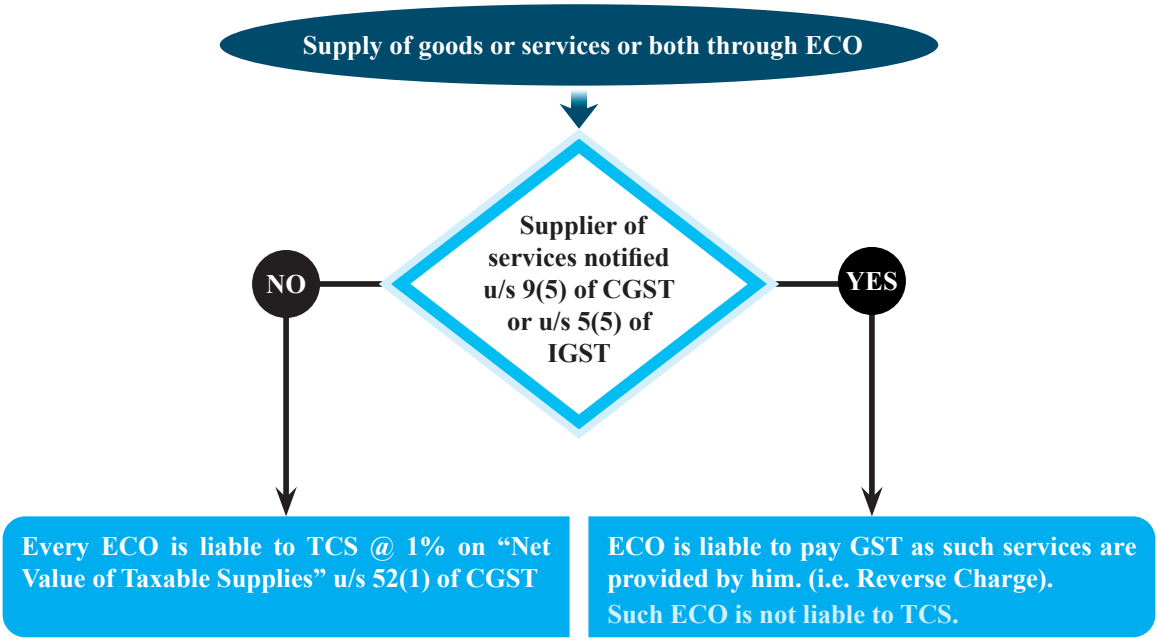
The obligation to collect tax at source has been placed upon Electronic Commerce Operators and no other class of suppliers. When an 'Electronic Commerce Operator' receives payment (which is consideration by another person for a supply made by someone else), he must collect TCS at the rate to be notified (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.

Effective from: 10 July 2024 [Notification No. 15/2024-Central Tax, No. 01/2024- Integrated Tax, No. 01/2024-Union Territory Tax all dated 10 July 2024]

Operator shall collect tax TCS 0.25% of CGST + 0.25% of SGST or 0.50% of IGST of the net value of taxable supplies made through it by other suppliers.

Tax Collected at Source (TCS) under Section 52 of CGST Act, 2017

Particulars	Old Rate (%)	New Rate (%) (Effective 10-07-2024)
TCS under CGST	0.50%	0.25%
TCS under SGST/UTGST	0.50%	0.25%
TCS under IGST	1.00%	0.50%

Services Not Notified for E-commerce TCS:

- Services notified under Section 9(5) of the CGST Act, such as passenger transport services, housekeeping, accommodation services or restaurant services, including those provided by cloud kitchens are excluded from TCS when the operator is already liable to pay tax.

Illustrative Example

Scenario:

1. E-Commerce Operator (ECO): Flipkart Ltd.
2. Supplier: XYZ Pvt. Ltd. (Regular GST registered supplier)
3. Buyer: Mr. A
4. Nature of Supply: Sale of goods (taxable supply)
5. Location of Supplier: Karnataka
6. Location of Buyer: Karnataka (Intra-state supply)
7. Sale Value: ₹1,00,000
8. Applicable TCS Rate (Post 10th July 2024): 0.5% (0.25% CGST + 0.25% SGST)

Calculation:

- Taxable Value: ₹1,00,000
- TCS Amount: ₹1,00,000 × 0.5% = ₹500
- CGST Component: ₹500 × 0.25% = ₹250
- SGST Component: ₹500 × 0.25% = ₹250

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.

- W.e.f. 01-10-2022, Due date of rectification of any omission or incorrect particulars furnished in GSTR-8 to 30th November following the end of financial year or the actual date of furnishing of annual statement, whichever is earlier.

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-2B 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. 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.
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.

Sl. No.	Question	Answer
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.
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, 2024 but the consideration for the same has been collected in the month of November, 2024, then TCS for such supply has to be collected and reported in the statement for the month of October, 2024.

Sl. No.	Question	Answer
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
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.

Sl. No.	Question	Answer
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.
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

Sl. No.	Question	Answer
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 circumstances, which e-commerce operator should be liable to collect TCS?	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.
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

Details of TCS furnished by ECO to be made available electronically to only registered suppliers [Rule 67(2) amended]

Unregistered suppliers of services and now unregistered suppliers of goods also are allowed to make supplies through ECOs till the time their turnover does not exceed the prescribed threshold limit. Rule 67 has been amended to clearly bring out that the details of TCS furnished by ECOs in Form GSTR-8 shall be made available only to the registered suppliers, as the supplies by unregistered persons do not attract TCS.

Amended rule 67(2) provides as follows:

The details of tax collected at source under section 52(1) furnished by the ECO shall be made available electronically to each of the registered suppliers on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

As per CBIC Circular No. 194/06/2023-GST dt. 17th July 2023, Clarification on TCS liability under Sec 52 in case of multiple E-commerce Operators in one Transaction:

Issue 1:

In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including the collection of TCS?

Clarification:

In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO plat form and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

Example:

Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Issue 2:

In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?

Clarification:

In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

Example:

Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

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 April 2024, 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 April 2024.

Solution:

Amazon would therefore need to deduct 1% tax (0.5% CGST and 0.5% SGST towards 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 2024. Further there are sales returns of product 'A' sold in the month of May, June and July 2024 amounting to ₹20 lakhs during the month of July 2024.

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 2024

w.e.f. 1st October 2023, In respect of supply of goods made through ECOs by the persons exempted from obtaining registration in terms of notification issued u/s 23(2):

1. The ECOs shall allow the supply of goods through it, only if enrolment number has been allotted on the common portal to the said person;
2. He shall not allow any inter-State supply of goods through it;
3. No tax to be collected at source by the ECOs in respect of the said supply of goods made through it;
4. The ECOs shall furnish the details of supplies of goods made through it in the statement in FORM GSTR-8 electronically on the common portal;

[In case of involvement of multiple ECOs in a single supply of goods through ECO platform, "the electronic commerce operator" shall mean the ECO who finally releases the payment to the said person for the said supply made by the said person through him.]

[Notification No 37/2023-CT dt 04-08-2023]

Unregistered persons with aggregate turnover up to threshold limit permitted to supply goods through an ECO. If so, exemption provided to such persons not liable to be registered from the provision of mandatory registration even if they supply through ECO under the following conditions:

- He shall not make any inter-State supply of goods
- He shall not make supply of goods through ECO in more than one State/UT
- He shall declare his PAN, address of his place of business and the State/UT in which he seeks to make such supply on the common portal before making any supply of goods through ECO and the same shall be subjected to validation on the common portal;
- On successful validation of his PAN he shall be granted an enrolment number in a State/UT
- No supply shall be made by such persons through ECOs unless is granted an enrolment number on the common portal
- Once he is granted registration under GST Acts, the enrolment number shall become invalid from the effective date of registration.

[Notification No 34/2023-CT dt 31-07-2023 w.e.f. 31-07-2023]

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

8.1 Introduction

8.2 Consolidated E-Way Bill

8.3 Cancellation of E-Way Bill

8.4 Validity Period

8.5 Miscellaneous Provisions

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 on 01.01.2024, it will be valid for 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, 2024 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, 2024);

Example 3

E-Way bill generated on April 1, 2024 at 5pm for transport of cargo which will cover a distance of 190 kms. This E-Way bill will be valid for one day.

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, 2024. Part A of the E-Way bill was submitted by the supplier on April 1, 2024 after updating the GSTIN of the transporter. Transporter loaded the goods on the truck on April 3, 2024 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, 2024.

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]

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 respect 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.

(Notification No. 15/2021 CT dated 18.05.2021)

8.5.4 E-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)

Amendment in rule 138(14) (Information to be furnished prior to commencement of movement of goods and generation of e-way bill) vide Notification No. 26/2022-CT dt. 26.12.2022:

Rule 138(14) illustrates the cases where e-way bill is not required to be generated.

One such case is where jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) are being transported. Thus, jewellery, goldsmiths' and silversmiths' wares and other articles (chapter 71) can be transported without generating e-way bill.

This provision has been amended to provide that henceforth, e-way bill needs to be generated for transporting imitation jewellery (7117).

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

Information to be furnished prior to commencement of movement of goods and generation of e-way bill (Notification No. 12/2024 C.T. dated 10-7-2024):

with effect from a date to be notified, in rule 138, in sub-rule (3), after the third proviso, the following proviso shall be inserted, namely:- —

Provided also that an unregistered person required to generate e-way bill in FORM GST EWB-01 in terms of the fourth proviso to sub-rule (1) of Rule 138 (i.e. where handicraft goods are transported from one State or UT to another State or UT by a person who has been exempt from the requirement of obtaining registration under clause (i) or (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment) or an unregistered person opting to generate e-way bill in Form GST EWB-01, on the common portal, shall submit the details electronically on the common portal in FORM GST ENR- 03 either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details so furnished, a unique enrolment number shall be generated and communicated to the said person.

Examples for Generating E-Way Bill by Unregistered Persons

Example 1: Transport of Handicraft Goods Across States

- Scenario: Mr. Ramesh, a handicraft artisan based in Rajasthan, transports handmade wooden toys worth ₹8,000 to Gujarat for an exhibition.
- Applicability:
    - Mr. Ramesh is exempted from GST registration under Section 24 due to the nature of his handicraft goods.
    - As per the fourth proviso of Rule 138(1), Mr. Ramesh must generate an e-way bill regardless of the consignment value.
- Process:
    1. Mr. Ramesh submits his details electronically in FORM GST ENR-03 on the GST portal.
    2. After validation, he receives a unique enrolment number.
    3. Using this enrolment number, Mr. Ramesh generates an e-way bill in FORM GST EWB-01.
    4. The e-way bill accompanies the transport of goods from Rajasthan to Gujarat.

Example 2: Unregistered Individual Opting to Generate E-Way Bill

- Scenario: Ms. Sneha, a freelance interior designer, sells antique furniture worth ₹45,000 to a client in Karnataka. Sneha is unregistered under GST but wishes to generate an e-way bill voluntarily.
- Applicability:
    - Although Ms. Sneha is unregistered, Rule 138 allows her to opt for generating an e-way bill.
- Process:
    1. Ms. Sneha submits her personal and consignment details in FORM GST ENR-03 on the GST portal.
    2. Once the details are validated, she receives a unique enrolment number.

3. Using this number, she generates an e-way bill in FORM GST EWB-01.
4. The e-way bill ensures the smooth movement of goods across state boundaries without compliance issues.

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

9.1 Introduction

9.2 Inverted Duty Structure

9.3 Zero-Rated Supplies

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:

[Omitted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024 - 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:

CBIC vide Notification No. 14/2022-Central Tax, dated 05-07-2022 has made an amendment in the formula under Rule 89(5) of CGST Rules, 2017 which now reads as under

$$\text{Maximum Refund Amount} = \left[\left(\text{Turnover of inverted rated supply of goods and services} \times \frac{\text{Net ITC}}{\text{Adjusted Total Turnover}}\right)\right] - \left[\text{Tax payable on such inverted rated supply of goods and services} \times \left(\frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}}\right)\right]$$

"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 shall have the same meaning as assigned to it in sub-rule (4)."

- Refund of ITC under section 54(3)(ii) restricted to the extent of credit reflected in Form GSTR-2B.

- ITC on capital goods not qualify for refund u/s 54(3)(ii) of CGST Act, 2017.
- ITC on input services also not qualify for refund u/s 54(3)(ii) of CGST Act, 2017.
- Refund of accumulated ITC on account of reduction in GST rate on goods, not available.

Vide Notification No. 14/2022-Central Tax dated 05.07.2022, amendment has been made in sub-rule (5) of rule 89 of CGST Rules, 2017, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from 05.07.2022 (vide CBIC Circular No. 181/13/2022 GST dt. 10th November 2022).

ITC of Input goods only allowed as refund prospectively based on new formulae

Example: M/s X Ltd., Turnover and ITC during January 2023 are as follows:

Turnover of Inverted rated supply of goods and services (GST @5%)	₹5,50,000
Other turnover (GST 18%)	₹ 50,000
Total turnover.	₹6,00,000

ITC on input goods (GST @18%)	₹50,000
ITC on input services (GST @18%)	₹15,000
ITC on capital goods (GST @28%)	₹25,000
Total ITC	₹90,000

Advise to M/s X Ltd., with regard to maximum amount of refund under Rule 89(5) of CGST Rules, 2017.

Answer: Maximum amount of refund under rule 89(5) of CGST Rules, 2017 is ₹24,680/-

$$\left[5{,}50{,}000 \times \frac{50{,}000}{6{,}00{,}000}\right] - \left[27{,}500 \times \frac{50{,}000}{65{,}000}\right]$$

₹45,833 — ₹21,153 = ₹24,680

Input service should be not included for the purpose of refund as in respect of input goods are eligible for refund but input services are not bought under this bracket.

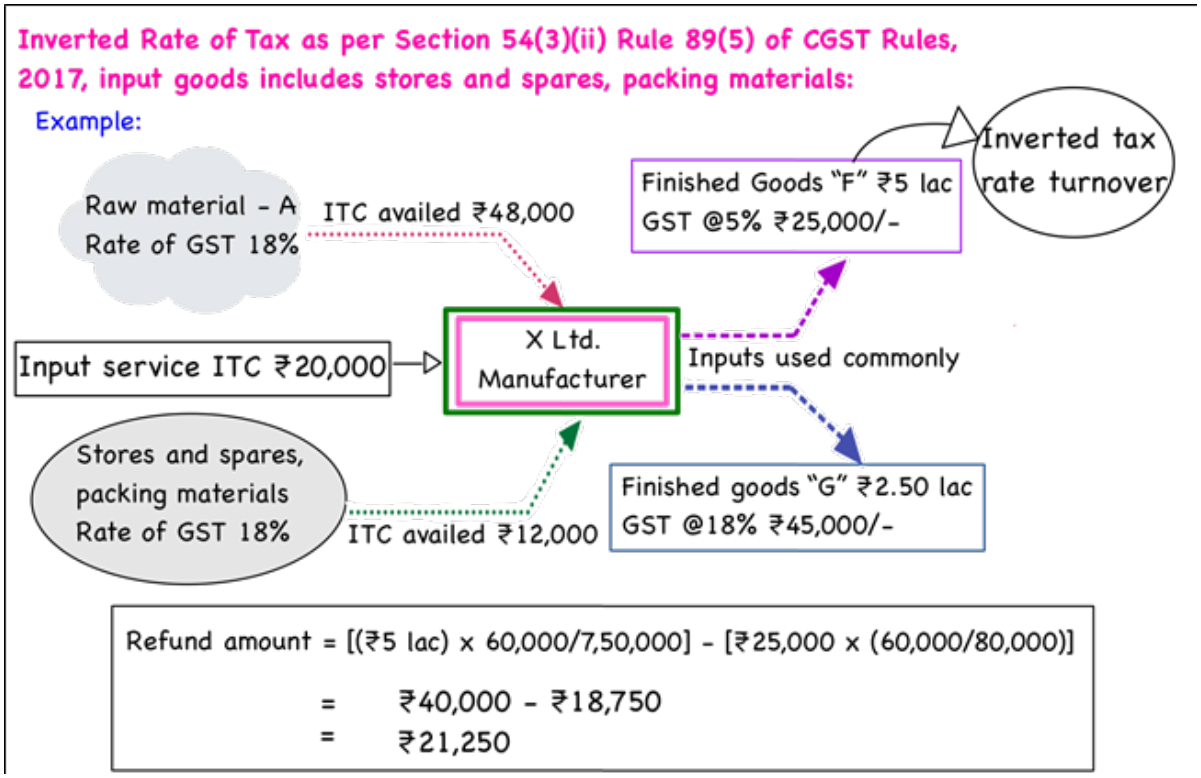
Conditions for being eligible for a refund in terms of the above provisions are that:

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-2B
7. Registered person claiming refund basically a manufacturer.

Example 2: 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%.

Now, it has been clarified that refund of accumulated input tax credit on account of inverted structure section 54(3)(ii) of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods) at the same point of time, as per some concessional notification issued by the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions. [Circular No. 173/05/2022-GST, dated 6th July, 2022]



Refund of ITC under section 54(3) restricted to the extent of credit reflected in Form GSTR-2B

[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-2B of the applicant.

w.e.f. 20th October 2023, Amendment in Notification No. 5/2017- CT(R) dt. 28.06.2017 - Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed where rate of tax on input is higher than rate of tax on output supplies of such goods

A new entry has been inserted in Notification No. 5/2017- CT(R) dt. 28.06.2017 to provide that no refund of unutilised input tax credit under inverted duty structure shall be allowed in case of supply of imitation zari thread or yarn made out of Metallised polyester film /plastic film. An explanation has also been inserted providing that this shall apply for refund of input tax credit only on polyester film /plastic film (vide Notification No. 20/2023-CT ® dt. 19.10.2023)

w.e.f. 20th October 2023, No refund of unutilised ITC on account of inverted duty structure in terms of section 54(3) shall be allowed in case of supply of services of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, 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 (vide Notification No 15/2023-CGST(R) dt 19.10.2023 & 18/2023-IGST(R) dt 19.10.2023).

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(4) 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, omitted vide Notification No. 20/2024 CT dated 8-10-2024, w.e.f. 8-10-2024];

(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, omitted vide Notification No. 20/2024 CT dated 8-10-2024, w.e.f. 8-10-2024];

(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 sum total of the value of –

(a) the 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 above and non-zero rated supply of services, [w.e.f. 8-10-2024, excluding the value of exempt supplies other than zero-rated supplies during the relevant period, vide Notification No. 20/2024 CT dt. 8-10-2024].

[(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, omitted vide Notification No. 20/2024 CT dated 8-10-2024, w.e.f. 8-10-2024];

(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]

Sub-rules (4A) and (4B) of rule 89 shall be omitted w.e.f. 8-10-2024 (vide Notification No. 20/2024 CT dated 8-10-2024); 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:

$$\text{Refund Amount} = \frac{\text{(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services)}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

W.e.f. 5th July, 2022, an explanation has been inserted in sub-rule (4), to clarify that while calculating refund of unutilised ITC in case of zero-rated supply without payment of tax, value of goods exported out of India shall be taken as:

(Vide Notification No. 14/2022-CT, dated 5th July, 2022)

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declare in tax invoice or bill of supply;

whichever is less

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.

CBIC Circular No. 172/04/2022-GST, dated 6th July, 2022, The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

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

Actual export turnover = ₹ 1,750 Or ₹200 × 5 units × 1.5 times = ₹ 1,500	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.

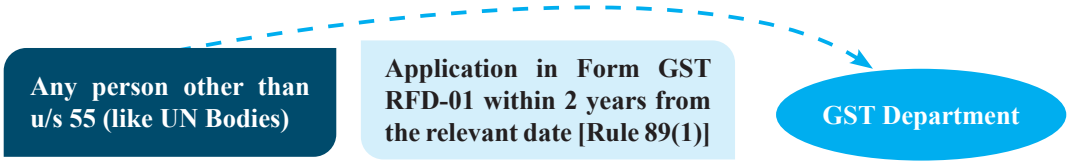
After calculating the least of the above 3 amounts, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

(a) Integrated tax, to the extent of balance available;

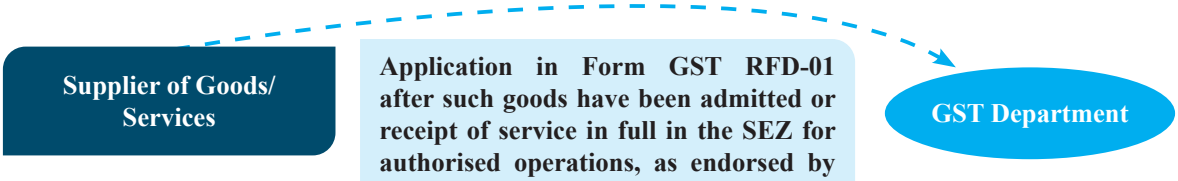
(b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/ Union Territory tax, in this case).

Export Procedure under Goods and Services Tax (GST):

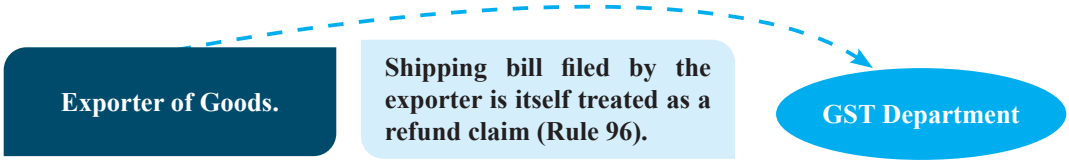
Case A: In general cases:



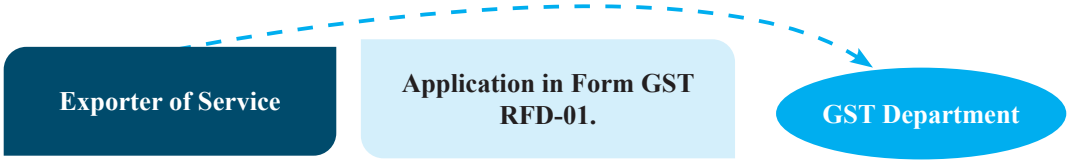
Case B: Refund in case of supplies to SEZ unit/developer:



Case C: Refund of IGST paid on goods exported out of India:



Case D: Refund of IGST paid on services exported:



Rule 89(2)(k) (w.e.f. 04-08-2023): a statement showing the details of the amount of claim on account of excess payment of tax [inserted w.e.f. 4th August 2023, and interest, if any, or any other amount paid.]

This amendment is made to align the existing provision of the rule with the existing provision of refund in section 54.

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

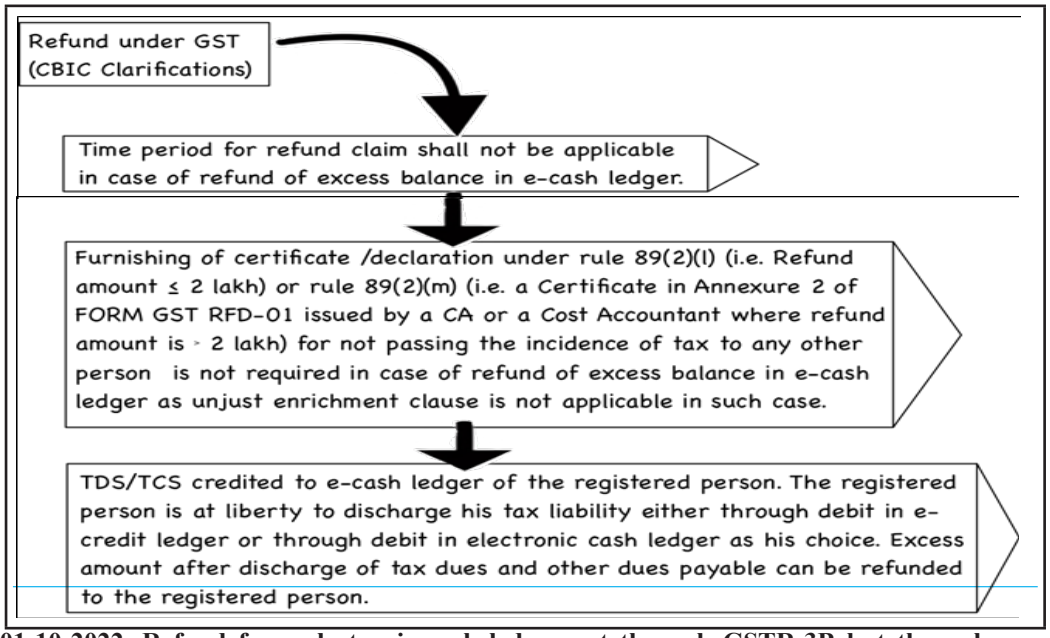
(h) in any other case, the date of payment of tax.

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)

W.e.f. 01-10-2022, Relevant date prescribed for refund of supplies to SEZ without payment of tax:

Refund is allowed to be claimed only within 2 years from the relevant date. In case of refund of any unutilized ITC on account of supplies to SEZ unit/developer without payment of tax, no relevant date had been prescribed by the GST law. The said loophole is now plugged by providing relevant date for such supplies as the due date of furnishing GSTR-3B of the applicable month for which refund is claimed.

Clarification on certain refund related issues Circular No. 166/22/2021-GST, dated 17.11.2021



W.e.f 01-10-2022, Refund from electronic cash ledger not through GSTR-3B but through prescribed manner (Vide NT no. 18/2022-CT Dt28.09.2022 GST:

Proviso to section 54(1): Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in "such form and" manner as may be prescribed.

Refund of any balance in electronic cash ledger cannot be claimed in GSTR-3B. The said refund shall be claimed in such form and manner as would be prescribed. It should be noted that currently there is no mechanism to claim refund of electronic cash ledger via GSTR-3B, hence making it a redundant provision in the Act.

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.

Amendments in rule 96 - Refund of integrated tax paid on goods or services exported out of India w.e.f. 01.07.2017 (vide NT No. 14/2022-CT, dated 5th July, 2022):

(a) Reference of Form GSTR-3B has been removed from clause (b) of sub-rule (1). A proviso has been added in sub-rule (1) specifying that if there is any mismatch between the data furnished by the exporter of goods in shipping bill and those furnished in statement of outward supplies in FORM GSTR-1, such application for refund of integrated tax shall be deemed to have been filed on such date when the mismatch in respect of the said shipping bill is rectified by the exporter.

(b) A new clause (c) has been inserted in sub-rule (4) to provide that the claim for refund shall be withheld where the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

(c) New sub-rules (5A) and (5B) have been inserted specifying that where refund is withheld in accordance with the provisions of clause (a) or newly inserted clause (c) or clause (b) of sub-rule (4) proper officer passes an order for withholding of refund due to violation of Customs Act, 1962 under clause (b) of sub-rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

Another sub-rule (5C) has been inserted to provide that the application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89.

(d) Sub-rules (5), (6) and (7) have been omitted.

Rule 96 (w.e.f. 04-08-2023): The provisos to sub-rule (2) that provided for furnishing of details of export in Table 6A of Form GSTR-1 after the furnishing of the returns in Form GSTR 3B are omitted for being redundant after introduction of the system of sequential filing of Form GSTR 3B & Form GSTR 1.

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.

Section 16. Zero rated supply.-

(1) "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 [for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.

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

[(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non- realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999.) for receipt of foreign exchange remittances, in such manner as may be prescribed.

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

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid [in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, (inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024)];

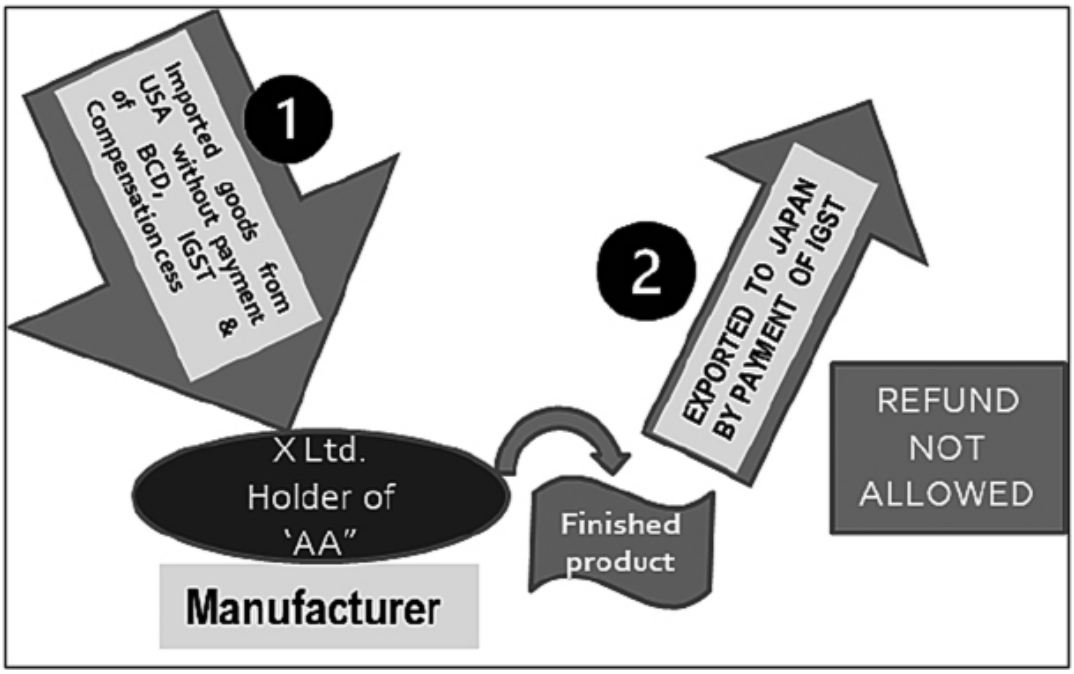
(ii) a class of goods or services [or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder (inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024).]

[(5) Notwithstanding anything contained in sub-sections (3) and (4), no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty (inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024).]

w.e.f. 8-10-2024, rule 96, sub-rule (10) shall be omitted (vide NT No. 20/2024, dt. 8-10-2024)
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.



Refund of IGST on exports when inputs were imported without payment of IGST/cess but paid later (vide CBIC Circular No. 233/27/2024-GST dated 10th September, 2024]:

1. Background:
   - Rule 96(10) of CGST Rules: Refund of IGST on exports is restricted if the exporter avails concessional/ exemption benefits (e.g., Notifications 78/2017-Customs or 79/2017-Customs) on inputs without paying IGST and compensation cess.
   - Clarification was sought on whether refund of IGST on exports can be regularized if IGST and cess on such inputs are paid later, with interest.
2. Clarification:
   - As per Notification No. 16/2020-CT (with retrospective effect from 23.10.2017):
   - If IGST and compensation cess on imported inputs are subsequently paid with interest and the Bill of Entry is reassessed by Customs, it will be considered that the exporter has not availed exemption under Rule 96(10).
   - Refund of IGST on exports in such cases is not considered a contravention of Rule 96(10).
3. Conclusion:
   - Exporters who initially imported inputs without paying IGST/cess but later paid IGST/cess with interest can claim IGST refund on exports, provided the Bill of Entry is reassessed by Customs.

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.

As per CBIC Circular No. 197/09/2023-GST, dated 17th July, 2023:

1. Refund of accumulated ITC on the basis of that available as per FORM GSTR 2B:

– With effect from 01.01.2022, the restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per FORM GSTR-2B for the said tax period or for any of the previous tax periods, shall be applicable for the refund claims for the tax period of January 2022 onwards.

– In cases where refund claims for a tax period from January 2022 onwards have already been disposed of, in accordance with the extant guidelines in force, the same may not be reopened.

2. Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. 125/44/2019-GST, dated 18.11.2019:

Para 7 of Circular No. 125/44/2019-GST, dated 18.11.2019 provides for an undertaking to be provided by the applicant electronically along with the refund claim in FORM RFD-01in accordance with the Rule 89(1) of CGST Rules. Para 7 of Circular No. 125/44/2019-GST, dated 18.11.2019 is reproduced below:

"7. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."

3. Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A:

- Context of the circular simplified:
- Exporters may voluntarily pay Integrated Tax (IGST) and applicable interest when:

- Goods are not exported within the time prescribed in Rule 96A(1)(a).
- Payment for export of services is not received within the time prescribed in Rule 96A(1)(b).
- Key Provisions under Rule 96A(1):
- For export of goods: Tax must be paid within 15 days after 3 months (or an extended period) from the date of invoice, if goods are not exported.
- For export of services: Tax must be paid within 15 days after 1 year (or an extended period) from the date of invoice, if payment is not received.

Notification No. 12/2024, w.e.f. 10-7-2024, for export of services: tax must be paid within 15 days after the expiry of one year, or the period as allowed under the Foreign Exchange Management Act, 1999 (42 of 1999) including any extension of such period as permitted by the Reserve Bank of India, whichever is later, from the date of issue of the invoice for export, or such further period as may be allowed by the Commissioner, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.

this timeline applies only for export of services:

- Amendment to rule 96A(1)(b) of the CGST Rules to include the period as allowed under the Foreign Exchange Management Act, 1999 (FEMA) including any extension of such period as permitted by the Reserve Bank of India (RBI) for the determination of receipt of consideration in case of exports made under a bond or letter of undertaking (LUT).
- **Clarifications:**

1. Zero-Rated Supplies:

- Exports are zero-rated under the IGST Act.
- Benefit of zero-rating cannot be denied if:
- Goods are exported after the prescribed time.
- Payment for export of services is realized beyond the prescribed time.

2. Refunds:

- Exporters are eligible for:
- Refund of unutilized Input Tax Credit (ITC) under Section 54(3) of the CGST Act.
- Refund of IGST paid earlier due to non-export or non-realization of payment, once:
- Goods are actually exported.
- Payment for export services is realized.
- Interest paid under Rule 96A(1) is not refundable.

3. Filing Refund Applications:

- Refunds can be filed under the category “Excess payment of tax”.
- If this category is unavailable on the portal:
- Use the category “Any Other” to file for refund of IGST paid.

Key Reference:

- Circular No. 125/44/2019-GST (dated 18.11.2019):
- Time extensions may be granted by the jurisdictional Commissioner.

- Substantive benefits of zero-rating cannot be denied if exports/payments are completed as per provisions.

Here's an example to explain the provisions and amendments under Rule 96A(1) concerning the refund of tax for exporters:

Scenario: Exporter Defaults but Later Complies

Context:

ABC Exports, an exporter of services, applies for a refund of unutilized Input Tax Credit (ITC) after initially failing to meet the timeline under Rule 96A(1)(b).

1. **Export Details:**
   - Date of Invoice: 1 April 2023.
   - Export under LUT/Bond: Services exported without payment of IGST.
   - Consideration Received: Payment for the exported services in convertible foreign exchange.
2. **Rule 96A(1)(b) Timeline for Receipt of Payment:**
   - Original Deadline: 31 March 2024 (one year from invoice date).
   - Extension Granted by RBI under FEMA: Additional 6 months, making the deadline 30 September 2024.

Non-Compliance:

- By 15 October 2024 (15 days after the extended timeline expired), ABC Exports has not received payment.
- To comply with Rule 96A(1)(b), ABC Exports:
- Voluntarily Pays IGST on the export value along with applicable interest for the delay.

Subsequent Compliance:

- On 15 November 2024, payment is received in convertible foreign exchange within the further time allowed under FEMA and RBI guidelines.
- ABC Exports applies for a refund of IGST and interest paid under the updated provisions.

Steps for Refund Claim

1. **Filing Refund Application:**
   - Application filed in FORM GST RFD-01 under the appropriate category.
   - ABC Exports includes:
   - Proof of payment of IGST and interest (challans).
   - Proof of receipt of export proceeds (bank realization certificate).
   - Copy of the LUT/Bond under which export was made.
2. **Amendment Impact:**
   - The refund is admissible because the payment was received within the RBI-allowed extended period under FEMA, even though it was beyond the original one-year limit.
   - Amendment to Rule 96A(1)(b) ensures compliance with FEMA/RBI timelines overrides the strict one-year timeline.

3. **Processing by Proper Officer:**
   - Officer validates:
   - Export details in GSTR-1.
   - Receipt of convertible foreign exchange within the extended time frame.
   - IGST and interest payment records.
   - Refund is sanctioned in FORM GST RFD-06 after verification.

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,

while 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 withold 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.

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, omitted w.e.f 8-10-2024, NT 20/2024, dt. 8-10-2024].

    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.

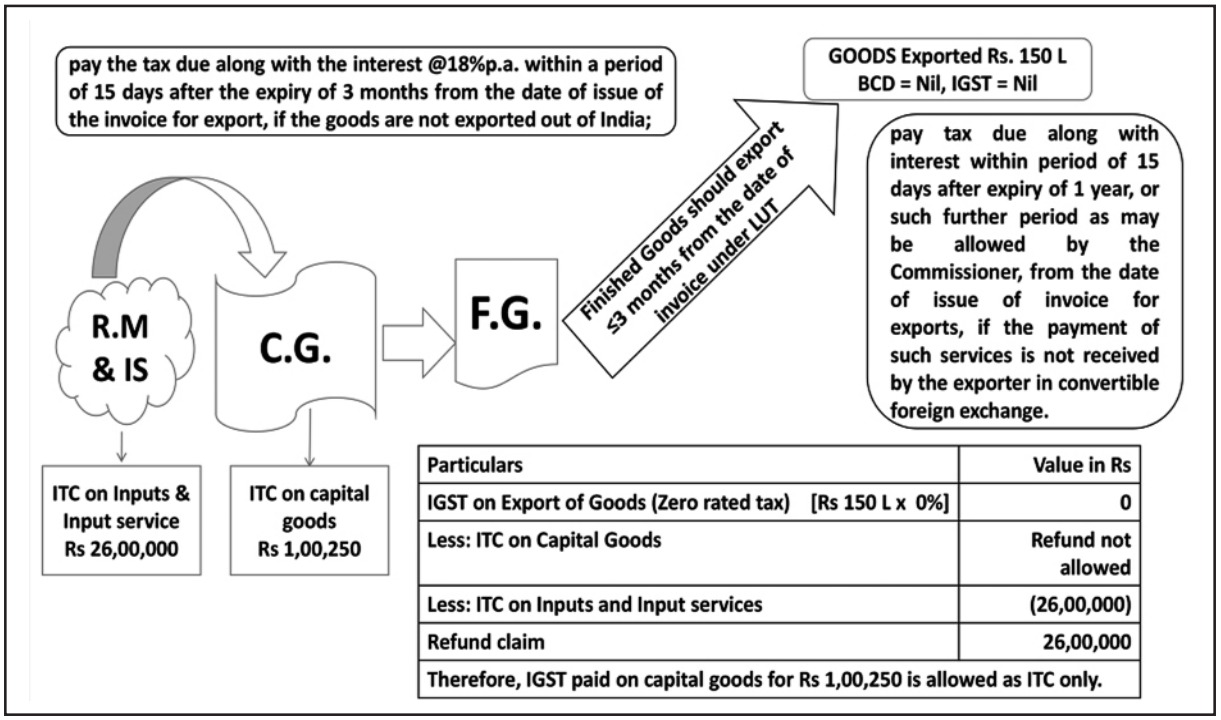
Illustration 5

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.

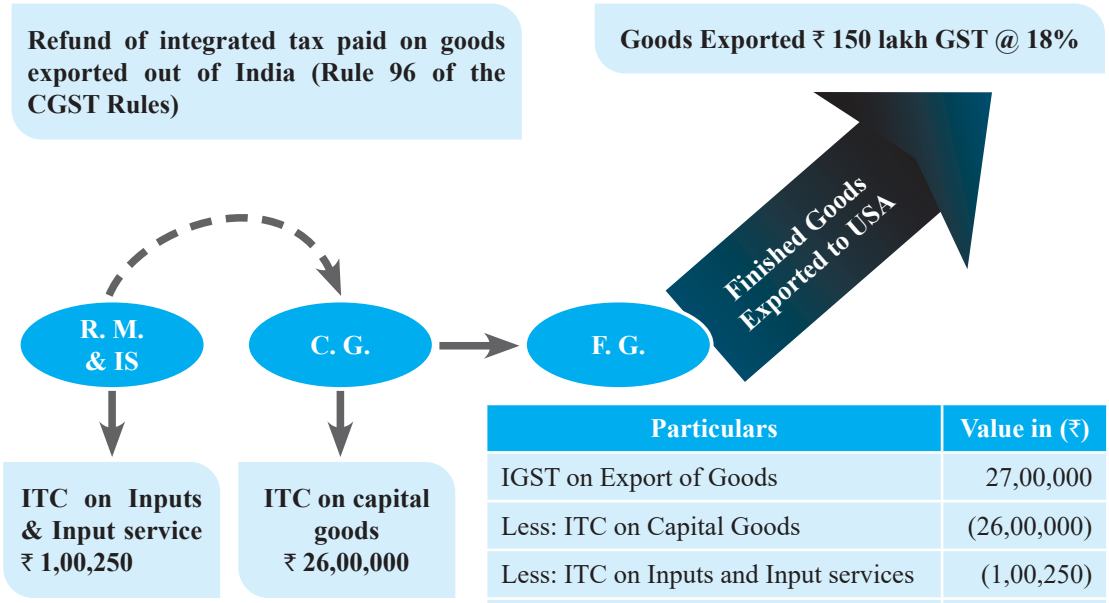
Illustration 6

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.



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	

Changes to rules 89 and 96 of the CGST Rules regarding refund of additional IGST paid on account of upward price revision of the goods subsequent to export along with clarification on mechanism to apply for refund Effective from 10 July 2024 [Notification No. 12/2024 – Central Tax (clauses 17 and 19), Circular No. 226/20/2024-GST dated 11 July 2024]:

Amendment

- Amendment to rules 89 and 96 of CGST Rules introduce an explicit provision allowing the refund of additional Integrated Goods and Service Tax (IGST) paid on account of the upward revision in the price of goods subsequent to exports, and on which the refund of IGST paid at the time of their export has already been sanctioned as per rule 96 of the CGST Rules. An application should be filed via Form GST RFD-01 before the expiry of two years from relevant date as per Explanation (2)(a) of section 54 of the CGST Act.
- Where such time limit has already lapsed, the refund application is to be filed before the expiry of two years from 10 July 2024.

- Insertion of a provision to produce additional documentary evidence to claim refund.

CBIC Circular No. 226/20/2024-GST dated 11 July 2024 - clarifications

This circular addresses clarifications sought by trade and industry regarding mechanism to claim refund of additional IGST paid on account of upward price revision of the goods subsequent to export.

- The circular clarifies that the GST Network is developing a new category in Form GST RFD-01 for refund applications related to additional IGST paid. Until this feature is available, exporters can claim refunds by filing Form GST RFD-01 under the category 'Any other' with the remark 'Refund of additional IGST paid on account of increase in price subsequent to export of goods'.
- The circular also clarifies that the proper officer will verify adequate disclosures in Forms GSTR-1 and GSTR-3B while processing the refund. The proper officer will scrutinise the application with respect to its completeness and eligibility and proceed to issue a refund sanction order in Form GST RFD 06 and payment order in Form GST RFD-05. The proper officer will also upload a detailed speaking order along with a refund sanction order in Form GST RFD-06.
- With respect to cases of downward revision in the price of goods subsequent to exports when the export has been made with the payment of IGST, the circular notes that the exporter is required to deposit the IGST refund received in proportion to the reduction in the price of the exported goods, along with the applicable interest. Importantly, while granting refund of additional IGST paid on account of upward revision of price of goods subsequent to exports, the proper officer will also verify whether the exporter has deposited the excess refund amount in case of downward revision in price of goods subsequent to exports, during the relevant tax period.

Example to illustrate the recent changes and mechanism for claiming refunds of additional IGST under rules 89 and 96 of the CGST Rules:

Scenario: Upward Price Revision of Exported Goods

1. Facts:
    - Exporter: XYZ Pvt. Ltd.
    - Export Details (Original):
    - Goods exported on 1 April 2023.
    - Invoice value: ₹10,00,000.
    - IGST paid at the time of export: ₹1,80,000 (at 18%).
    - Upward Revision:
    - On 15 October 2023, the buyer agrees to revise the price to ₹12,00,000.
    - Additional IGST due: ₹36,000 (on increased value of ₹2,00,000).
    - Refund of IGST:
    - Original IGST refund of ₹1,80,000 was already sanctioned under Rule 96.
2. Amendments Introduced:
    - Refund of the additional IGST (₹36,000) paid on account of the upward price revision is now allowed under Rule 89 and Rule 96, provided:
    - An application is filed in Form GST RFD-01.

- The application must be submitted within two years from the relevant date (date of payment of additional IGST or realization of increased price).
- For cases where the time limit has lapsed, the deadline is 10 July 2026 (two years from 10 July 2024).

3. Steps for Claiming Refund (As Per Circular No. 226/20/2024-GST):
   - Until GST Network updates the system:
     1. File Form GST RFD-01 under the category "Any other."
     2. Add the remark: "Refund of additional IGST paid on account of increase in price subsequent to export of goods."
   - Attach supporting documents:
     - Revised commercial invoice or price amendment agreement.
     - Proof of payment of additional IGST (e.g., challan or GSTR-3B).
     - Shipping Bill and other export documentation.
     - a reconciliation statement, reconciling the value of supplies declared in supplementary invoices, debit notes or credit notes issued along with relevant details of Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Bank, in a case where the refund is on account of upward revision in price of such goods subsequent to exports;
   - The proper officer will:
     1. Verify disclosures in GSTR-1/1A and GSTR-3B.
     2. Process the refund and issue:
        - Refund sanction order in Form GST RFD-06.
        - Payment order in Form GST RFD-05.

Scenario: Downward Price Revision of Exported Goods

1. Facts:
   - On 1 January 2024, the buyer revises the price downward to ₹8,00,000.
   - Refund of IGST originally received: ₹1,80,000.
   - Refund to be deposited back: IGST on the reduced value of ₹2,00,000 (₹36,000), with interest.
2. Requirement:
   - The exporter must deposit ₹36,000 plus applicable interest before claiming any future refunds.
   - The proper officer will verify this compliance before processing the refund of additional IGST for any subsequent upward price revisions.

Introduction of rule 95B of the CGST Rules for the refund of goods received by canteen stores department Effective from 10 July 2024 [Notification No.12/2024 – Central Tax dated 10 July 2024 clause 18] and CBIC issued Circular for processing of refund applications filed by canteen Stores Department [Circular No. 227/21/2024 dated 11 July 2024]:

Amendment

In furtherance to the Circular No. 60/34/2018 – GST dated 4 September 2018 of the CGST Act

- This notification enables the Canteen Stores Department (CSD) to claim a refund of 50% of the applicable central tax paid on all inward supplies of goods.
- A new form, GST RFD-10A, is introduced for this purpose. The form will be processed in a manner similar to Form GST RFD-01.
- The rule also adds the following conditions to enable the refund –
  - Both the inward and the outward supplies details should be furnished in the respective forms.
  - The name and GSTIN should be mentioned on the tax invoice.
  - Goods must be received by the CSD for the purpose of subsequent supply to the Unit Run Canteens or authorised customers of the CSD.

To enable CSD to file the refund application electronically, a new functionality has been made available on the common portal allowing the CSD to file an application electronically on the common portal.

As per rule 95B of the CGST Rules, the CSD is required to apply for a refund once every quarter. The CSD can also opt to file a refund application for multiple quarters, clubbing multiple financial years, as per their preference.

Here's an example illustrating the refund process under Circular No. 227/21/2024-GST for the Canteen Stores Department (CSD):

Scenario: Refund of Tax Paid on Inward Supplies

1. Facts:
   - CSD Location: XYZ CSD Depot (Kolkata).
   - Period: Q1 of FY 2024-25 (April to June 2024).
   - Details of Inward Supplies:
     - Goods purchased from registered suppliers for subsequent supply to Unit Run Canteens or authorized customers.
     - Total purchase value: ₹10,00,000.
   - GST paid (18%):
     - Central Tax: ₹90,000.
     - State Tax: ₹90,000.
     - Integrated Tax: ₹1,80,000.
     - Refund eligibility: 50% of GST paid = ₹1,80,000 (50% of ₹3,60,000).

Steps for Claiming Refund

Filing the Refund Application (FORM GST RFD-10A)

1. CSD logs into the common GST portal.
2. Files FORM GST RFD-10A for Q1 of FY 2024-25.
3. Uploads necessary documents:

- Tax invoices for inward supplies from registered suppliers.
- Undertaking that goods were received for supply to Unit Run Canteens or authorized customers.
- Declaration confirming no prior refund claim for the same invoices.

4. The system auto-populates:
   - Table in Sl. No. 7 of FORM GST RFD-10A based on 50% of taxes in Sl. No. 6.
   - CSD can edit the refund amount downward but cannot increase it.

Processing of Refund Application

1. Validation of GSTIN and Returns:
   - Proper officer ensures all GSTR-1 and GSTR-3B returns due before the application date are filed.
2. Verification of Invoices:
   - Cross-verifies invoices uploaded by CSD with:
     - Supplier's GSTR-1/1A (outward supply).
     - Supplier's GSTR-3B (tax payment).
     - FORM GSTR-2B (auto-populated purchase register for CSD).
     - Ensures no duplicate refund claims for the same invoices.
3. Reversal of ITC:
   - Confirms that CSD reversed any input tax credit (ITC) on inward supplies as per Circular No. 170/02/2022-GST.

Issuance of Refund Order

1. Upon successful verification, the proper officer:
   - Sanctions the refund of ₹1,80,000.
   - Issues Refund Order (FORM GST RFD-06).
   - Uploads a detailed speaking order explaining the decision.
2. Refund is credited electronically to the CSD's bank account.

Special Scenarios

1. Filing Refund for Multiple Quarters:
   - CSD chooses to file one refund application for Q1 and Q2 of FY 2024-25.
   - Total purchase value across quarters: ₹20,00,000.
   - Total GST paid: ₹7,20,000.
   - Eligible refund: ₹3,60,000 (50%).
2. Time Limit for Filing:
   - Goods received in Q1 (April to June 2024).
   - Last date to file: 30 June 2026 (two years from the last day of the quarter).

Prescribing manner of filing an application for refund by unregistered persons Rule 89(2) amended (Notification No, 26/2022 CT dated 26.12.2022 read with Circular No. 188/20/2022 GST dated 27.12.2022):

Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act') may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of section 34 of the CGST Act may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.

Hitherto, there was no facility available to such unregistered buyers/recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flats/ building or on termination of long-term insurance policy.

It would be pertinent to mention that sub-section (1) of section 54 of the CGST Act already provides that any person can claim refund of any tax and interest, if any, paid on such tax or any other amount paid by him, by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Further, in terms of clause (e) of sub-section (8) of section 54 of the CGST Act, in cases where the unregistered person has borne the incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

In order to enable such unregistered person to file application for refund under subsection (1) of section 54, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person'. Further, sub-rule (2) of rule 89 of Central Goods and Service Tax Rules, 2017 (hereinafter referred to as 'CGST Rules') has been amended and statement 8 has been inserted in FORM GST RFD-01 vide Notification No. 26/2022-Central Tax dated 26.12.2022 to provide for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application.

In such cases, the following documentary evidences are required:

i. As per a new clause (ka) has been inserted in sub-rule (2) of rule 89 to prescribe that the refund application shall be accompanied by a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated.

ii. Further, a new clause (kb) inserted in rule 89(2) thereafter prescribes that refund application shall be

accompanied by a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated.

iii. A proviso has been inserted in clause (m) to clarify that a certificate from Chartered Accountant or Cost Accountant shall not be required in cases where refund is being claimed by an unregistered person who has borne incidence of tax (even if the amount of refund claimed exceeds ₹2 lakh).

Filing of refund application:

Step 1: The unregistered person, who wants to file an application for refund under sub-section (1) of section 54 of CGST Act, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN). While doing so, the unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered. Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of provisions of rule 10B of the CGST Rules. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

Step 2: The application for refund shall be filed in FORM GST RFD-01 on the common portal under the category 'Refund for unregistered person'. The applicant shall upload statement 8 (in pdf format) and all the requisite documents as per the provisions of sub-rule (2) of rule 89 of the CGST Rules. The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed. Further, the applicant shall also upload the certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of rule 89 of the CGST Rules along with the refund application. The applicant shall also upload any other document(s) to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

Step 3: Separate applications for refund have to be filed in respect of invoices issued by different suppliers. Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain temporary registration in the each of the concerned States/UTs where the said supplier are registered.

Step 4: Where the time period for issuance of credit note under section 34 of the CGST Act has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.

Step 5: Relevant date for filing of refund: As per sub-section (1) of section 54 of the CGST Act, time period of two years from the relevant date has been specified for filing an application of refund. Further, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person in terms of provisions of clause (g) in Explanation (2) under section 54 of the CGST Act. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in instalments, for example construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type

of cases, it has been decided that for the purpose of determining relevant date in terms of clause (g) of Explanation (2) under section 54 of the CGST Act, date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

Step 6; Minimum refund amount: Sub-section (14) of section 54 of the CGST Act provides that no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, no refund shall be claimed if the amount is less than one thousand rupees.

Step 7: The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other RFD-01 claims. The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 accordingly. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.

Step 8: In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

Rule 89(2)(k) (w.e.f. 04-08-2023): a statement showing the details of the amount of claim on account of excess payment of tax [inserted w.e.f. 4th August 2023, and interest, if any, or any other amount paid.]

This amendment is made to align the existing provision of the rule with the existing provision of refund in section 54.

Rule 94 – Order sanctioning interest on delayed refunds (w.e.f. 1st October 2023) vide Central Tax Notification No. 38/2023 (dated 04th August2023):

[(1) Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a1payment order in FORM GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.]

[(2) The following periods shall not be included in the period of delay under sub-rule (1), namely:-

(a) any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of rule 92, that the applicant takes to-

(i) furnish a reply in FORM GST RFD-09, or

(ii) submit additional documents or reply;

and

(b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant."]

Following instructions have been released by CBIC with respect to manner of processing and sanction of IGST refunds withheld in terms of rule 96(4)(c), transmitted to the jurisdictional GST authorities under rule 96(5A) of the CGST Rules, 2017 (vide CBIC Instruction NO. 04/2022 GST dated 28.09.2022):

1. Standard Operating Procedures (SOPs) for verification of risky exporters and their suppliers dated 23.01.2020 were issued to CGST and Customs formations as well as Directorate General of Analytics and Risk Management (DGARM) and SOP dated 20.05.2020 were issued to CGST formations and DGARM providing for the procedure to be followed for verification of the risky exporters and their suppliers.

2. The said SOPs provided that DGARM would identify the exporters and their suppliers on the basis of risk parameters, approved by the Competent Authority and would forward the list of such exporters to the Risk Management Centre for Customs (RMCC) for putting alert in the system. In such cases, the Customs authorities were required to conduct the detailed examination of the export goods of such identified exporters.

3. Further, the jurisdictional CGST authorities were required to conduct detailed verification of such identified exporters and their suppliers and forward the verification report to DGARM. On receipt of verification report from CGST officers, DGARM was required to take a decision for issuance of NOC or otherwise.

4. In cases, where NOC has been issued by DGARM, the same was communicated to the Customs authorities at the port of export for release of withheld IGST refunds of such exporter. Further, DGARM was also required to review whether the exporters can be removed from the list of identified exporters. However, with retrospective amendment of rule 96 of the CGST Rules w.e.f. 01.07.2017 providing for withholding of IGST refund in cases where the verification of credentials of the exporter, identified on the basis of data analytic including the availment of ITC by the exporter is considered essential before grant of refund.

5. Further, sub-rule (5A) has been inserted in rule 96 to provide for transmission of IGST refunds, withheld in terms of provisions of rule 96(4)(c) of the CGST Rules, as system generated refund in Form GST RFD-01 and to provide that the said system generated form shall be deemed to be the application for refund in such cases and such application for refund shall be deemed to have been filed on the date of such transmission on the portal. In addition, sub-rule (5C) has also been inserted in rule 96 to provide that such system generated refund in FORM GST RFD-01 have to be dealt with in accordance with rule 89 i.e., in a manner similar to other GST RFD-01 refund claims.

6. In view of the aforesaid amendments, certain changes have been made in the alert module on ICES for which an Advisory has been issued by DG Systems to all the system managers. In the said advisory, it has been inter-alia informed that a new role for putting an all-India suspension, either on IEC or GSTIN of the exporter as the case may be, to withhold IGST refunds has been developed for officers of DGARM. An option to revoke the said alert has also been made available to DGARM officers.

7. DGARM on the basis of data analysis and risk parameters, would identify the exporters where verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund. DGARM would then place an all- India alert on such exporter on Indian Customs EDI system along with the reasons for putting the said alert. Once an alert is placed on an exporter, the IGST refunds of such exporters would be withheld and the data in respect of Shipping Bills filed by such exporter, for which IGST Scroll could not be generated due to DGARM alert, along with the reasons thereof would be transmitted to GSTN through ICEGATE for generation of refund claims in FORM GST RFD-0l in terms of provisions of sub-rule (5A) of rule 96.

8. Such refund claims will be made available to the jurisdictional proper officer on back- office system under the category “Any other (GST paid on export of goods)” with the remarks “Refund of IGST paid on export of goods (Refund not processed by ICEGATE)”.

9. Further, the risk parameters, on basis of which the exporter has been identified as risky by DGARM, would be shared with the jurisdictional tax officers along with the system generated refund claim in FORM GST RFD-01.

10. In cases, where the verification report in respect of the exporter has already been submitted to DGARM by the jurisdictional CGST authorities, the details of the same would also be shared with the jurisdictional proper officer, along with the said system generated refund claim in FORM GST RFD-01. On receipt of such refunds, the jurisdictional proper officer shall immediately process such refund claims in a manner similar to other RFD-01 refunds filed under the provisions of rule 89 of the CGST Rules, 2017.

11. However, it may be noted that as these refund claims have been generated by the system on the basis of Shipping Bills/ Bills of Export filed by the exporter, these claims would be auto-acknowledged by the system and no Deficiency Memo in Form GST RFD-03 can be issued against such system generated Form GST RFD-01 refund claims.

12. The proper officer shall ascertain the genuineness of the exporter & verify the correctness of availment and utilisation of ITC by the exporter and exercise due diligence in processing the said refund claims to safeguard the interest of revenue. The proper officer may conduct the physical verification of places of business of the exporter, if required, to ensure that the exporter is existing at his declared place of business and is functional/ active.

13. The proper officer shall pass a detailed speaking order in respect of the refund claim and shall duly upload the same along with the refund sanction order in Form GST RFD-06 on the portal in terms of Instruction No. 03/2022-GST dated 14.06.2022. The officer will also follow the timelines for processing of the refund claim in terms of provisions of sub- section (7) of section 54 of the CGST Act. It is needless to mention that the procedure of review and post-audit as prescribed in para 2.2 of above-mentioned notification will also be applicable to such refund claims.

14. In cases where the detailed investigation of the exporter or his suppliers is required to be conducted to verify the genuineness and correctness of ITC availed by the exporter, the matter may be examined, if required, for resorting to provisions of sub-section (11) of section 54 of the Act for withholding of the refund.

15. Further, the proper officer would also be required to provide feedback on the common portal while issuing refund sanction order in FORM GST RFD-06 as with recommendation as to whether the alert against the said taxpayer need to be continued or whether the same can be removed. The functionality for the same would be available on the system in due course.

16. GSTN shall transmit the data regarding the outcome of processing of refund by the proper officer, along with the feedback received from the proper officer on the requirement of removal or continuation of alert, to DGARM for necessary action for removal or continuation of alert.

In view of the above, the SOP's dated 20.01.2020 and 20.05.2020 prescribing the procedure to be followed for verification of the risky exporters and their suppliers, are hereby superseded.

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 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 2024. The following details are furnished for the month July, 2024:

(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 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 2024 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).

As per CBIC Circular No. 197/09/2023-GST dt 17th July2023:

1. Refund of accumulated ITC on the basis of that available as per FORM GSTR 2B:
   - With effect from 01.01.2022, the restriction on availability of refund of accumulated input tax credit for a tax period on the basis of the credit available as per FORM GSTR-2B for the said tax period or for any of the previous tax periods, shall be applicable for the refund claims for the tax period of January 2022 onwards.
   - In cases where refund claims for a tax period from January 2022 onwards have already been disposed of, in accordance with the extant guidelines in force, the same may not be reopened.

2. Requirement of the undertaking in FORM RFD 01 inserted vide Circular No. 125/44/2019-GST dt 18.11.2019:

   para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 provides for an undertaking to be provided by the applicant electronically along with the refund claim in FORM RFD-01in accordance with the Rule 89(1) of CGST Rules. Para 7 of Circular No. 125/44/2019-GST dated 18.11.2019 is reproduced below:

   "7. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim."

3. Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A:

   References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frame as prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A of CGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or as the case may be, realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of sub-rule (1) of rule 96A. of CGST Rules.

   It is mentioned that in terms of sub-rule (1) of rule 96A of the CGST Rules, a registered person availing of the option to export without payment of integrated tax is required to furnish a bond or a Letter of Undertaking (LUT), prior to export, binding himself to pay the tax due along with applicable interest within a period of –

   (a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

   (b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.

In this context, it has been clarified inter alia in para 45 of Circular No. 125/44/2019 - GST dated 18.11.2019 that:

".....exports have been zero rated under the IGST Act and as long as goods have actually been exported even after a period of three months, payment of Integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services"

Further, in Para 44 of the aforesaid Circular, it has been emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made.

The above clarifications imply that as long as goods are actually exported or as the case may be, payment is realized in case of export of services, even if it is beyond the time frames as prescribed in sub-rule (1) of rule 96A, the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible.

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, as the case may be, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or as the case be, the payment not being realized for export of services, within the time frame prescribed in clause (a) or (b), as the case may be, of sub-rule (1) of rule 96A. It is further being clarified that no refund of the interest paid in compliance of sub-rule (1) of rule 96A shall be admissible.

It may further be noted that the refund application in the said scenario may be made under the category "Excess payment of tax". However, till the time the refund application cannot be filed under the category "Excess payment of tax" due to non-availability of the facility on the portal to file refund of IGST paid in compliance with the provisions of sub-rule (1) of rule 96A of CGST Rules as "Excess payment of tax", the applicant may file the refund application under the category "Any Other" on the portal.

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

10.1 Introduction

10.2 Specific Provisions – Monthly Returns, Reversal and Reclaim of Input Tax Credit

10.3 Annual Return, Final Return

10.4 Penal provisions for Return Filing

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, 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-3B	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	20th of the next month
GSTR-5	Return for Non-Resident foreign taxable person (Section 39(5) of the CGST Act, 2017)	Monthly	W.e.f. 01-10-2022, 13th day of the following month (prior to 1-10-22, 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-5A	w.e.f. 1st October 2023: Form and manner of submission of return by persons providing OIDAR services and by persons supplying online money gaming from a place outside India to a person in India	Monthly	on or before the twentieth day of the month succeeding the calendar month or part thereof.
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

Return Form	Particulars	Frequency	Due Date
GSTR-8	Details of supplies effected through e-commerce operator and the amount of tax collected	Monthly	10th of next month. W.e.f. 26th October 2023 Amendment in FORM GSTR-8 [Statement for Tax Collection at Source] : Format of FORM GSTR-8 amended to provide for payment of late fee on delayed furnishing of the same by the e-commerce operators as required u/s 52.
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)	Annually	31st December of next financial year
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

The GSTR-2 form is suspended since September 2017 through amendment to the CGST Rules.

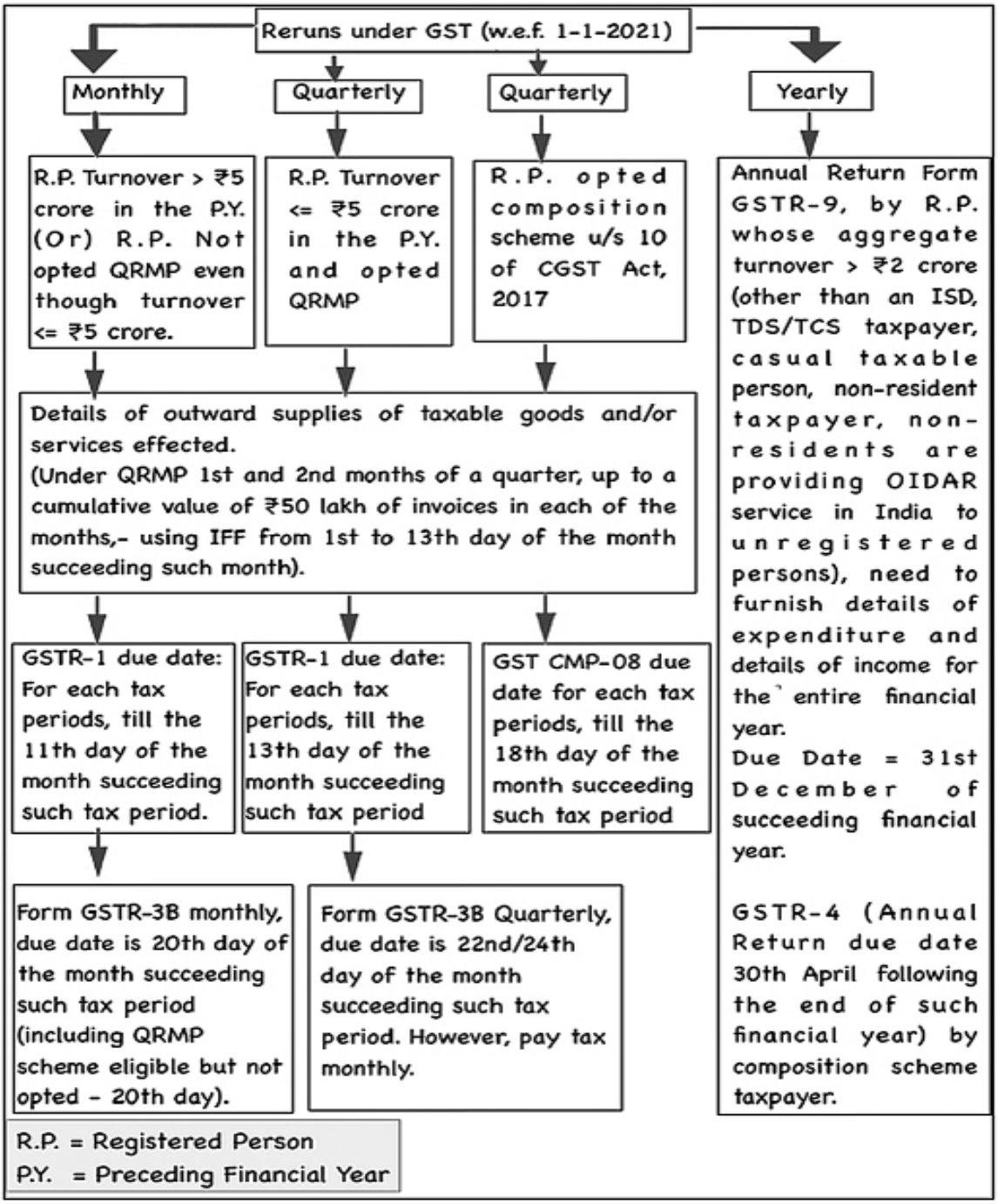
In its place, GSTR-3B which is a return in a combined version of GSTR-2 and GSTR-3, is in use.

Section 42 of CGST Act has been omitted w.e.f. 1st October, 2022 vide Notification No. 18/2022-CT dated 28.09.2022. Further, an amendment has also been made in Section 41 of the CGST Act, wherein the concept of provisionally accepted input tax credit has been done away with. Besides, FORM GSTR-2 and FORM GSTR-3 have also been omitted from CGST Rules.

GSTR-2A has been removed from the GST Portal for the month of January 2022 and onwards, only GSTR-2B shall be available.

Amendments made in the third proviso to Rule 89 (w.e.f. 04-08-2023):

A Casual Taxable persons (CTP) or a Non-resident Taxable person (NRTP) can claim refund of the tax paid in advance in terms of section 27 only after furnishing of the last return required to be furnished by him.



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

   Invoice wise details in Forms GSTR-1:

   Amendment to rule 59(4)(a)(ii) of the CGST Rules to reduce the threshold for reporting invoice wise details in Form GSTR-1 for business to consumer (B2C) interstate supplies has been reduced from ₹2,50,000 to ₹1,00,000.
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

GSTR-1Avide CBIC Notification 12/2024 dated 10th July 2024.

Return Form	Particulars	Frequency	Due Date
GSTR-1A vide CBIC Notification 12/2024 dated 10th July 2024.	A taxpayer who needs to amend any supply record furnished in GSTR 1 or need to add any supply record of same tax period, the same can be done through GSTR 1A in the same month after filing of GSTR-1 and before filing of GSTR-3B.	Monthly (whenever is required)	After GSTR-1 but before GSTR-3B of the relevant month.

Key Points on GSTR-1A (Amendments to GSTR-1)

General Overview

- What is Form GSTR-1A?
- A form used by taxpayers to amend or add supply records from the same tax period after filing GSTR-1 and before filing GSTR-3B.
- Example: GSTR 1 for the month of August 2024 has been furnished by the taxpayer on 10th of September 2024. Taxpayer committed a mistake in 2 records and missed to report one record in its GSTR 1. Now GSTR 1A shall be opened for him/her on 10th of September or due date of GSTR 1 (i.e. 11th of September) whichever is later. The Taxpayer will be able to amend the incorrect record and shall also be able to add the missed record in Form GSTR 1A. The correct value shall be auto populated in its GSTR 3B.

Availability of GSTR-1A

- For Monthly Filers:
- Open from the later of:
    1. Due date of GSTR-1 (11th of the following month).
    2. Actual date of GSTR-1 filing.
- For Quarterly Filers:
- Open from the later of:
    1. Due date of GSTR-1 (13th of the month following the end of the quarter).
    2. Actual date of GSTR-1 filing.

Filing Guidelines

- Due Date:
    - No specific due date; GSTR-1A can be filed until GSTR-3B for the same tax period is filed.
- Mandatory Filing:
- Filing is optional and applicable when:
    - Adding missed records.
    - Amending incorrect records reported in GSTR-1.
- Modes of Filing:
    - Can be filed online or through GSP.
    - Filing of Nil GSTR-1A is not available.

Limitations

- Cannot amend records from previous tax periods; such changes must be made in subsequent GSTR-1 filings.
- Cannot amend recipient GSTIN through GSTR-1A; it must be done in GSTR-1.

Impact on GSTR-3B

- If GSTR-1A is saved but not filed before filing GSTR-3B:
  - System will block GSTR-3B filing.
  - Taxpayer must either delete, reset, or file the saved GSTR-1A to proceed.

Special Cases

- Debit/Credit Notes:
  - Can be added in GSTR-1A.
- Records from IFF (Invoice Furnishing Facility):
  - Can be amended in GSTR-1A for the same tax period.

Important Notes

- GSTR-1A can only be filed once for a particular tax period, even if GSTR-3B is not filed.
- Amendments to filed GSTR-1A are not allowed.

Invoice wise details in Forms GSTR-1A:

after rule 59(4), the following sub-rule shall be inserted, namely: – —

(4A) The additional details or the amendments of the details of outward supplies of goods or services or both furnished in FORM GSTR-1A may, as per the requirement of the registered person, include the –

(a) invoice wise details of –

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than one lakh rupees made to the unregistered persons;

(b) consolidated details of –

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto one lakh rupees made to unregistered persons for each rate of tax;

(a) debit and credit notes, if any, issued during the month for invoices issued previously.

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 2023-24, the annual return is required to be filed by 31st December, 2024.

New rule 88C (Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return) and amendment in rule 59 (Form and manner of furnishing details of outward supplies)

Taxpayer to be intimated the difference in liability in Form GSTR-1 and Form GSTR-3B and be required to pay the differential liability or explain the difference:

Rule 88C(1) of the CGST Rules, 2017, lays down that where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

(a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or

(b) explain the aforesaid difference in tax payable on the common portal, within a period of 7 days.

Sub rule (2) provides that the registered person referred to in sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either-

(a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B, within the period specified in the said sub-rule.

Sub-rule (3) provides that where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

Further, a new clause (d) has been inserted in rule 59(6) to provide that a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C [Notification No. 26/2022 CT dated 26.12.2022].

Insertion of new Rule 88D (w.e.f. 04-08-2023): New provision to intimate the difference (by such amount and such percentage, as may be recommended by the Council), of ITC as availed in FORM GSTR 3B vis-à-vis Form GSTR-2B in Part A of FORM GST DRC-01C (New form inserted in the rules) to a registered person and directing him to-

(a) pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, OR

(b) explain the reasons for the aforesaid difference in input tax credit on the common portal,

Within a period of 7 days.

The differential amount shall be liable to be demanded in terms of section 73/74, [or section 74A, inserted w.e.f. 1-11-2024] —-

▪in case of failure to pay such amount within the specified period or,

▪non-submission of reply in Part B of FORM GST DRC-01C or,

▪submission of reply which is not found to be acceptable by the Proper Officer.

[Notification No 38/2023-CT dt 04-08-2023]

Insertion of new Rule 59(6)(e) (w.e.f. 04-08-2023): A registered person shall not be allowed to submit the details of his outward supplies in FORM GSTR 1/ IFF for a subsequent tax period:

• If he has been issued with an intimation u/r 88D for a tax period(s)

- unless he makes payment of the amount of ITC availed in excess or,
- furnishes a reply in respect of the unpaid amount of ITC that has been intimated to have been availed in excess.

• If he has not furnished the details of the bank account as per the provisions of rule 10A.

[Notification No 38/2023-CT dt 04-08-2023]

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.

Annual Return for Composition Tax Payer – Form GSTR-4:

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.

Extension of GSTR-4 Filing Deadline (vide Notification No. 12/2024 Dt. 10-7-2024)

For Financial Year (FY) 2024-25 onwards, the due date for composition taxpayers to file FORM GSTR-4 is extended to June 30 following the end of the financial year.

Example:

Sharma, a composition taxpayer for FY 2024-25, now has until June 30, 2025, to file his GSTR-4.

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.

Amendment of section 39(3), w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024:

- In section 39 of the Central Goods and Services Tax Act, for sub-section (3), the following sub-section shall be substituted, namely: —

"Every registered person required to deduct tax at source under section 51 shall electronically furnish a return for every calendar month of the deductions made during the month in such form and

manner and within such time as may be prescribed:

Provided that the said registered person shall furnish a return for every calendar month whether or not any deductions have been made during the said month.".

Amendment in due date of filling GSTR-7:

Return Form	Particulars	Frequency	Due Date
GSTR-7	Return for authorities deducting tax at source (Section 39(3) of the CGST Act, 2017)	Monthly	w.e.f. 1-11-2024, on or before the 10th day of the month succeeding the calendar month (Notification No. 20/2024 CT dt. 8-10-2024)

Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2B on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

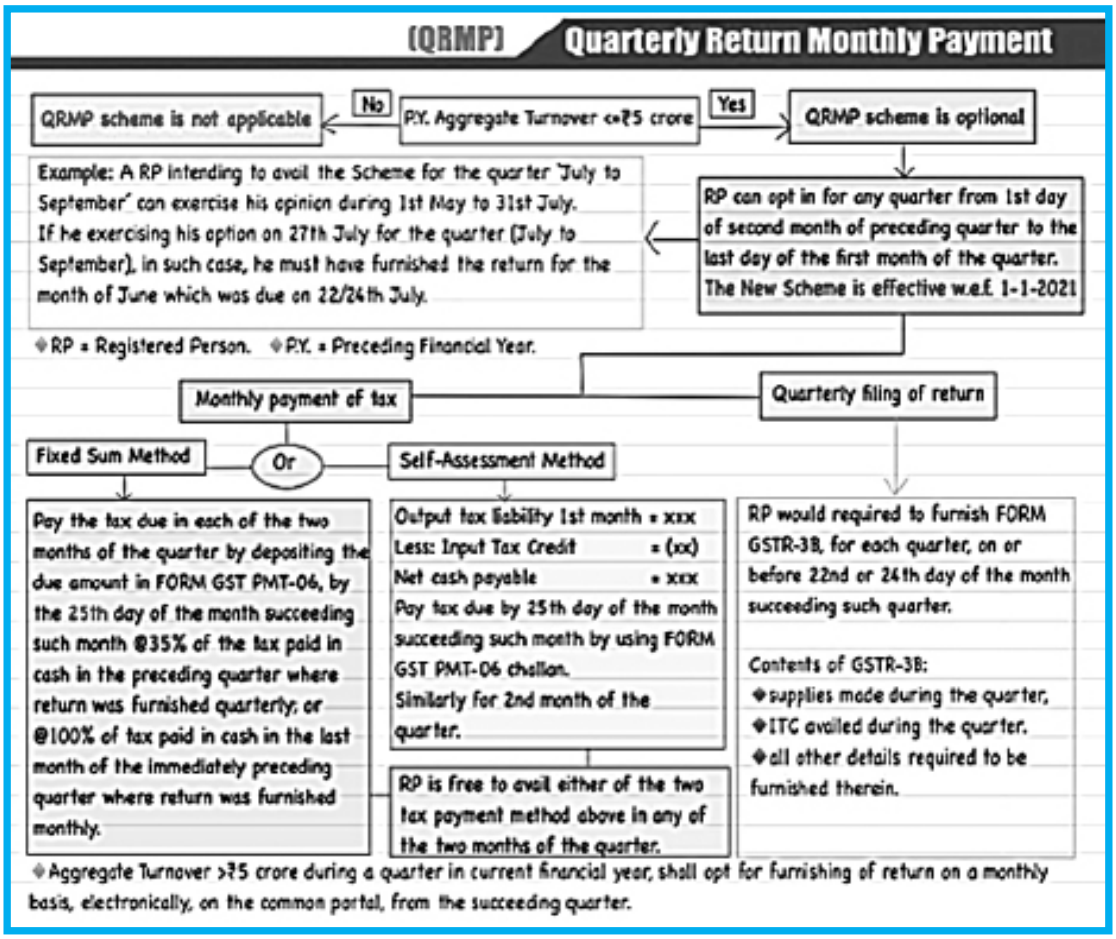
Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

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.



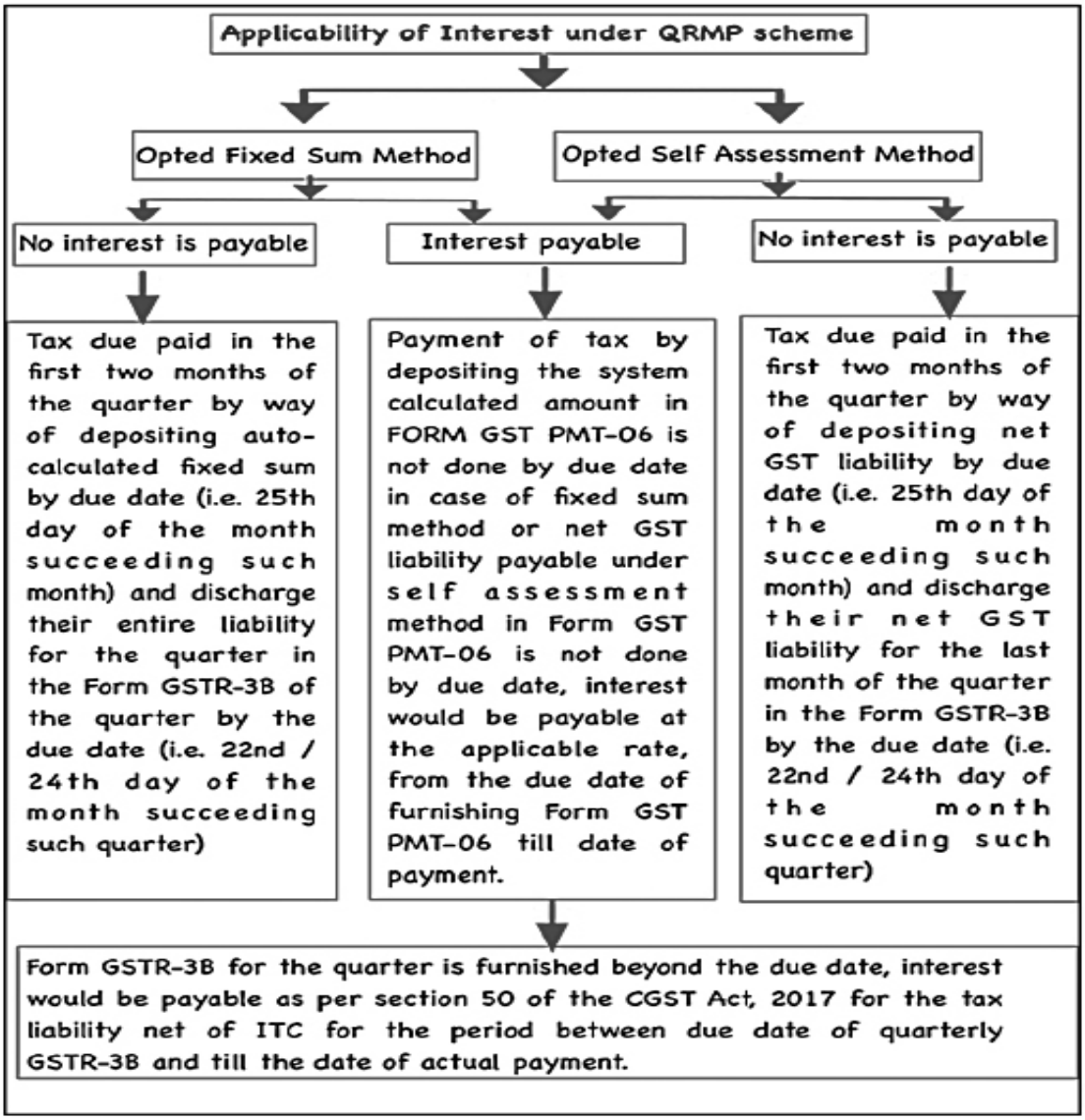
Example 1

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.



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."

W.e.f. 01-10-2022, Amendment in section 37 of the CGST Act, 2017 (Furnishing of details of outward supplies):

1. Sub-section (1) of section 37 has been amended to provide for prescribing conditions and restrictions for furnishing the details of outward supply and for communication of such details to the concerned recipients.

2.The restriction earlier applicable for not being allowed to furnish the details of outward supplies from 11th day to 15th day of the month succeeding the tax period has been removed.

3.The two-way communication process which provided for acceptance or rejection of the details communicated has been done away with.

4.Provide for an extended time upto 30th November of the following financial year for rectification of errors in respect of details of outward supplies furnished under sub-section (1).

W.e.f. 01-10-2022, Substitution of section 38 of the CGST Act, 2017 (Communication of details of inward supplies and input tax credit):

Section 38 has been substituted with a new section prescribing the manner as well as conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of an auto-generated statement and to do away with two-way communication process in return filing.

Amendment w.e.f 01-10-2022, in section 39 of the CGST Act, 2017 (Furnishing of returns):

▪It has been provided that the non-resident taxable person shall furnish the return for a month by 13th day of the following month instead of 20th day after the end of a calendar month.

▪Persons furnishing quarterly return have been provided an option to either pay self-assessed tax or an amount that may be prescribed.

▪The condition of complying with sections 37 and 38 before correcting any omission or incorrect particulars in the next return has been done away with.

▪An extended time of 30th November of following financial year has been provided for rectification of errors in the return furnished under section 39.

▪Furnishing of details of outward supplies of a tax period under section 37(1) has been provided as a condition for furnishing of return under section 39 for the said tax period in addition to the earlier condition of furnishing the returns for any of the previous tax periods. However, the Government may on the recommendations of the Council allow furnishing of return under section 39 even if the earlier conditions are not satisfied.

Sequential filing of GSTR-1 & filing of GSTR-1 before GSTR-3B on GST Portal:

Section 37(4): A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

The Central Government has amended Section 37 & Section 39 of Central Goods & Service Tax Act (CGST), 2017 vide Notification No. 18/2022-Central Tax, dated 28th September, 2022, with effect from 01 October, 2022. According to section 37(4) of CGST, Act, a taxpayers shall not be allowed to file GSTR-1 if previous GSTR-1 is not filed and as per section 39(10) a taxpayer shall not be allowed to file GSTR-3B if GSTR-1 for the same tax period is not filed.

Section 37(4) & 39(10) of Central Goods & Service Tax Act, 2017 are reproduced below:

Section 39(10): A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

These changes are being implemented prospectively and will be operational on GST Portal from 01st November, 2022. Accordingly, from October-2022 tax period onwards, the filing of previous period GSTR-1 will be mandatory before filing current period GSTR-1.

Illustration 1: Filing of October, 2022 period GSTR-1 will be mandatory before filing GSTR-1 of November, 2022 period.Further, from October, 2022 tax period onwards, filing of GSTR-1 will also be mandatory before filing GSTR-3B.

Illustration 2: Taxpayer will not be allowed to file GSTR-3B for October, 2022 period if GSTR-1 of October, 2022 period is not filed.

Proviso to section 37(4), Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods.

W.e.f. 1st October 2023, New insertion of sub-section 5 to section 37: A time limit of 3 years is provided for furnishing of the details of outward supplies in Form GSTR 1 from the due date of furnishing of the same for a tax period.

Government is empowered to relax the said time period for a registered person or class of registered persons.

W.e.f. 1st October 2023, New insertion of sub-section 11 to section 39: A time limit of 3 years is provided for furnishing of the return (i.e. Form GSTR 3B) from the due date of furnishing of the same for a tax period.

Government is empowered to relax the said time period for a registered person or class of registered persons.

W.e.f. 1st October 2023, New insertion of sub-section 2 to section 44: A time limit of 3 years is provided for furnishing of the annual return in Form GSTR-9 for a F.Y. from the due date of furnishing of the same.

Exemption from filing of Annual Return for FY 2023-24 (vide Notification No. 14/2024 – Central Tax 10th July, 2024):

Exempts the registered person whose aggregate turnover in the financial year 2023-24 is up to two crore rupees, from filing annual return for the said financial year.

Government is empowered to relax the said time period for a registered person or class of registered persons.

W.e.f. 1st October 2023, New insertion of sub-section 14 to section 52: A time limit of 3 years is provided for

furnishing of the statement in Form GSTR 8 by an e-commerce operator from the due date of furnishing of the same.

Government is empowered to relax the said time period for an e-commerce operator or a class of e-commerce operators.

W.e.f. 01-10-2022, Extension of rectification of GSTR-08: Due date of rectification of any omission or incorrect particulars furnished in GSTR-8 to 30th November following the end of financial year or the actual date of furnishing of annual statement, whichever is earlier (NT No. 18/2022-Central Tax, dated 28.09.2022).

Amendment in FORM GSTR-8 [Statement for Tax Collection at Source] :

Format of FORM GSTR- 8 amended to provide for payment of late fee on delayed furnishing of the same by the e-commerce operators as required u/s 52.

W.e.f. 01-10-2022, Section 47 of CGST Act 2017: Levy of Late Fee (CHAPTER IX – RETURNS)

(1) Any registered person who fails to furnish the details of outward supplies required under section 37 (outward supplies) or returns required under section 39 (Return GSTR-3B) or section 45 (i.e Final Return) or (section 52 - TCS inserted w.e.f. 1-10-2022) by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

(2) Any registered person who fails to furnish the return required under section 44 (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.

A circular has been issued to make mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked input tax credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1.

(Circular No. 170/02/2022-GST, dated 6th July, 2022)

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-2B, 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 2025-26, the annual return is required to be filed by 31st December 2026.

Exemption from filing of Annual Return for FY 2023-24 (vide Notification No. 14/2024 – Central Tax 10th July, 2024):

Exempts the registered person whose aggregate turnover in the financial year 2023-24 is up to two crore rupees, from filing annual return for the said financial year.

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.

Exemption from filing of Annual Return for FY 2023-24 (vide Notification No. 14/2024 – Central Tax 10th July, 2024):

Exempts the registered person whose aggregate turnover in the financial year 2023-24 is up to two crore rupees, from filing annual return for the said financial year.

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 2024 whereas the cancellation order was received on 13th April 2024, then the GSTR 10 must be filed by 13th July 2024.

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)

Maximum late fee payable under section 47 for delayed filing of annual return:

The amount of late fee for delayed filing of Form GSTR-9 (Annual Return) for FY 2022-23 onwards has been restricted for specific class of registered persons, in the following manner:

Based on Notification No. 07/2023-CT dt. 31.03.2023:

Class of registered persons	Amount of late fee
Registered persons having an aggregate turnover up to ₹ 5 crore in the relevant financial year	₹ 50 [₹ 25 each for CGST & SGST] per day subject to a maximum of 0.04% [0.02% each for CGST & SGST] of turnover in the State or Union Territory
Registered persons having an aggregate turnover of more than ₹ 5 crore and up to ₹ 20 crore in the relevant financial year	₹ 100 [₹ 50 each for CGST & SGST] per day subject to a maximum of 0.04% [0.02% each for CGST & SGST] of turnover in the State or Union Territory

Note: For registered persons other than the above, late fee as provided under section 47 shall be leviable i.e., ₹200 [₹100 each for CGST & SGST] per day subject to a maximum of 0.5% [0.25 % each for CGST & SGST] of turnover in the State or Union Territory.

Provided that for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees.

Exercise

A. Theoritical Questions

⊙ Multiple Choice Questions

1. Late fee for annual return for a tax payer having an aggregate turnover up to ₹5 crore in the relevant financial year is:

   (a) ₹50 for everyday subject to a maximum of 0.04% 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. Due date of rectification of any omission or incorrect particulars furnished in GSTR-8 to 30th November following the end of financial year or the actual date of furnishing of annual statement, _____.

   (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.
a	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
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

11.1 Introduction

11.2 Accounts and Records

11.3 Compulsorily Audit

11.4 Period for Retention of Accounts

11.5 Unique Common Enrolment Number

11.6 Consequences of Not Maintaining Proper Records

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.

Amendment of section 35(6) of the CGST Act, 2017:

Section 35(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of subsection (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74 [or section 74A, inserted w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024], as the case may be, shall, mutatis mutandis, apply for determination of such tax.

Case Study: Risk-Based Biometric Aadhaar Authentication for High-Risk GST Registration Applicants

Background

The Central Board of Indirect Taxes and Customs (CBIC) introduced a pilot project in Gujarat for risk-based biometric Aadhaar authentication to prevent fraudulent GST registrations. The process identifies high-risk applicants

based on risk parameters and mandates biometric Aadhaar authentication along with document verification. This pilot project has now been extended to Puducherry and Andhra Pradesh.

Case Details

State: Andhra Pradesh

Applicant Type: Sole Proprietor

Business Type: Electronics Retailer

Application Date: December 1, 2023

Scenario

1. Applicant Details:

   Mr. Ramesh applies for GST registration in Andhra Pradesh as a sole proprietor using Form GST REG-01 and opts for Aadhaar authentication.

2. Risk-Based Identification:

   - The GST common portal identifies Mr. Ramesh as a high-risk applicant based on predefined risk parameters (e.g., frequent address changes and history of rejected applications).

3. Notification for Biometric Authentication:

   - Mr. Ramesh receives a notification instructing him to visit a notified Facilitation Centre for biometric Aadhaar authentication.

4. Process at the Facilitation Centre:

   - Biometric Authentication: Mr. Ramesh's Aadhaar number is authenticated using his fingerprint and iris scan.
   - Photo Capture: A live photograph of Mr. Ramesh is taken.
   - Document Verification: The original documents uploaded with the application (e.g., PAN, address proof) are verified.

5. Acknowledgment Issuance:

   - After successfully completing the authentication, Mr. Ramesh receives an acknowledgment for his GST registration application.

Outcome

- Mr. Ramesh's GST registration application is processed successfully after biometric authentication and document verification.
- The process ensures transparency and reduces the risk of fraudulent registrations.

Key Takeaways

1. Objective: The project strengthens the registration process by ensuring that high-risk applicants undergo additional scrutiny.
2. Applicability: Extended from Gujarat to Puducherry and Andhra Pradesh for high-risk applicants opting for Aadhaar authentication.
3. Process Completion: GST registration applications for high-risk applicants are deemed complete only after biometric authentication and document verification.
4. Impact: Enhances security in the GST registration process, minimizing fraud while maintaining ease of doing business.

This case study highlights the practical application and importance of biometric Aadhaar authentication in ensuring secure GST registrations.

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 2023-24, the due date of filing the annual return is 31.12.2024. The books & records of 2023-2024 must be maintained for 6 years, i.e., 31.12.2030.

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

12.1 Key points for GST Annual Return and GST Audit

12.2 Approach for GST Audit- Audit Plan, Checklists, Methodology, Management Representations, Reconciliations

12.3 Case Studies and Illustrations

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.

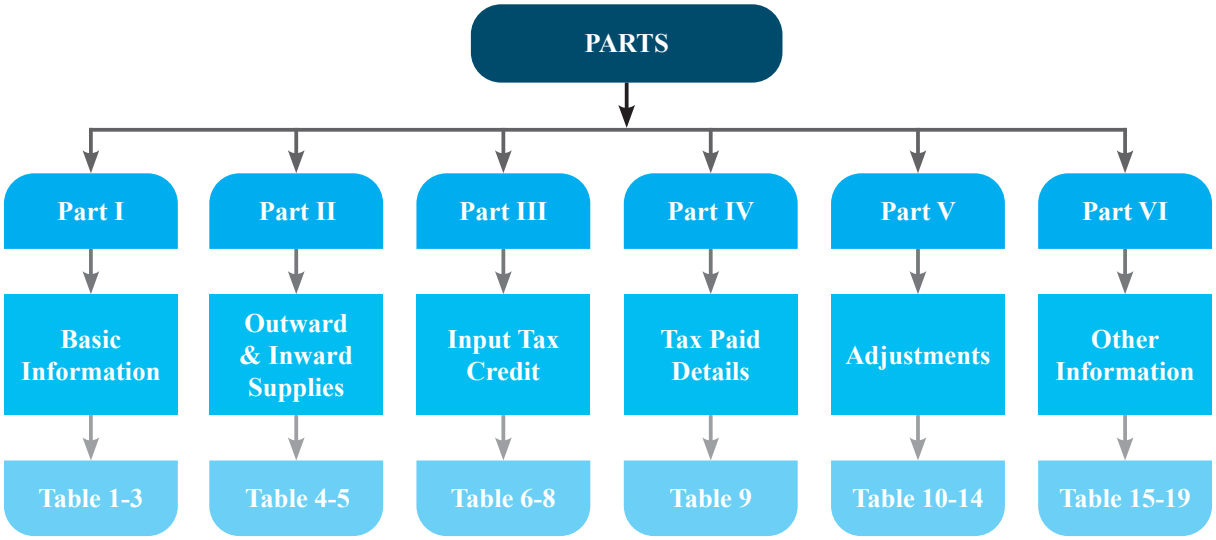
Form GSTR-9	Form GSTR-9C
GSTR-9 is an annual return under GST to be filed once every year only by registered taxpayers under GST under the Regular Scheme (Monthly/Quarterly).	GSTR-9C is a reconciliation statement between GSTR-9 and the audited books of accounts.

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 declared 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 through 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 supplies 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-2B (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 2024-25 but availed during April to 30th November 2025					
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 Amendents (-) (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 April 2024.

Date on which documents required	1st May 2024
Date on which documents made available to the Department	15th May 2024
Date of actual institution of audit at X Pvt Ltd., premises	5th June 2024

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 June 2024	Date on which documents made available to the Department (i.e. 15th June 2024) or Date on actual institution of audit at the place of business (i.e. 5th June 2024), whichever is later
(b) Date by which audit should be completed in normal course	4th September 2024	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 March 2025	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. ("or Section 74A" shall be inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024).

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

Departmental Audit:

Amendment of 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 ("or Section 74A" shall be inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024).

Special Audit by CA or CMA:

Amendment of Section 66(6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74 ("or Section 74A" shall be inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024).]

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

13.1 Introduction

13.2 Transition Provisions

13.2 Case Laws

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 services 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:

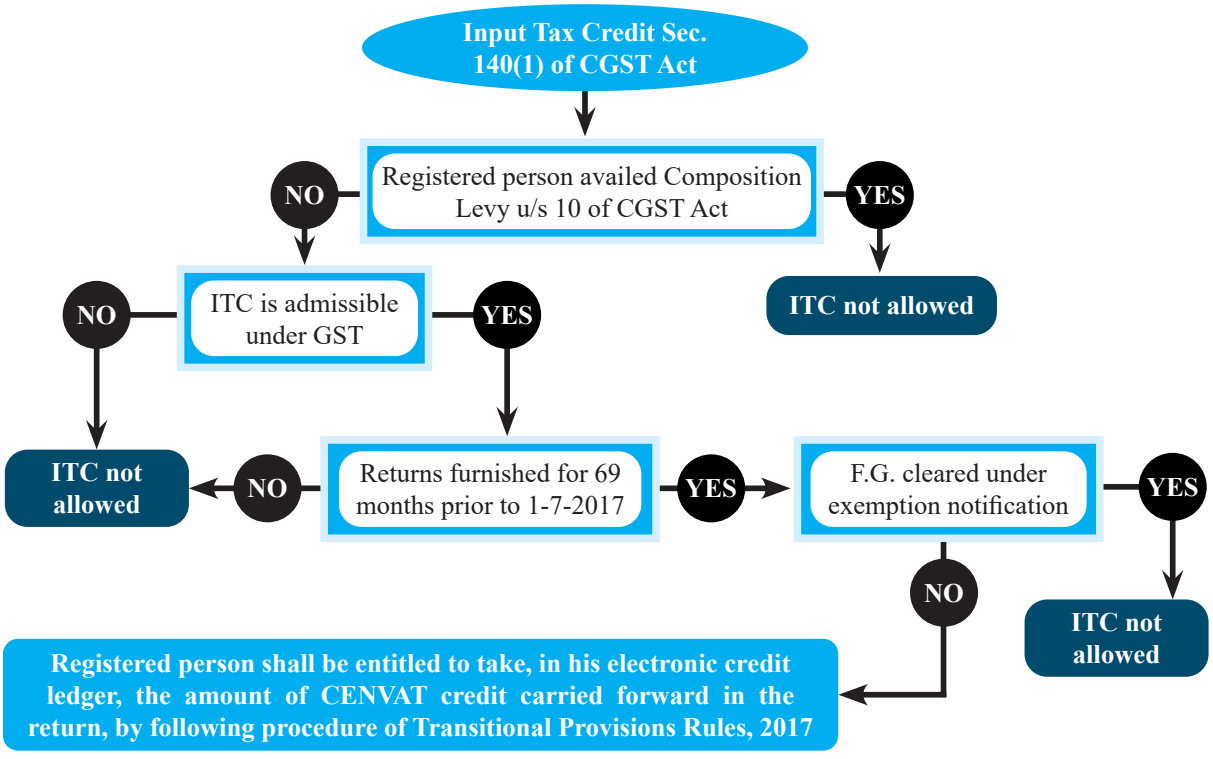
A. Relating to Input Tax Credit

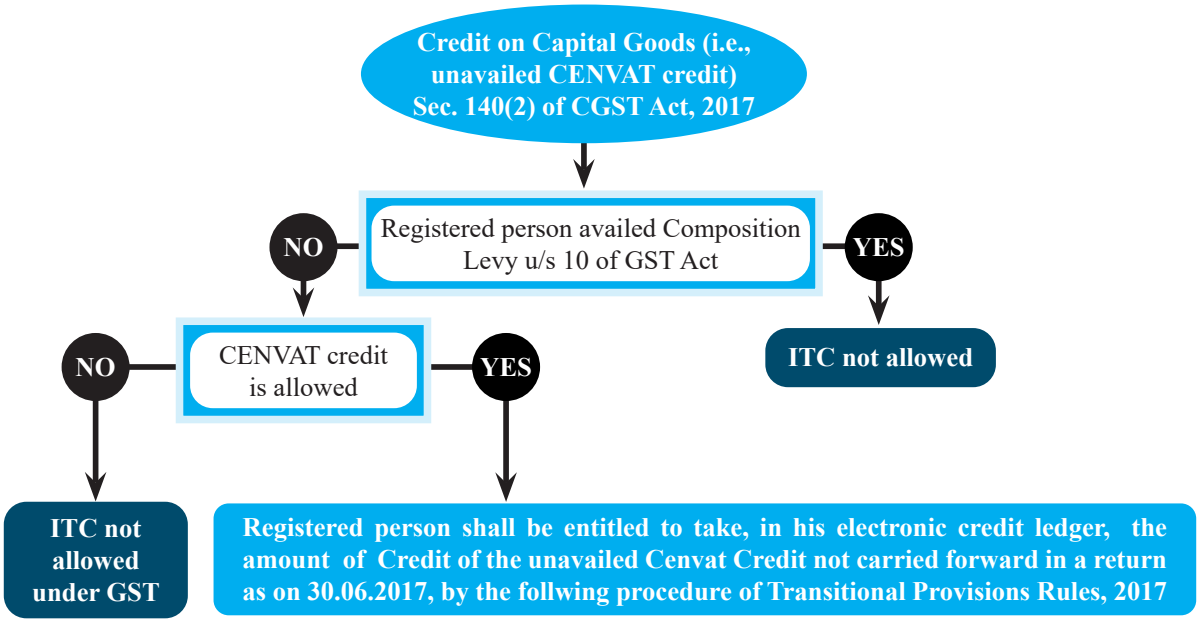
B. Continuance of existing procedures such as job work for a reasonable period without any adverse consequence under GST law

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:

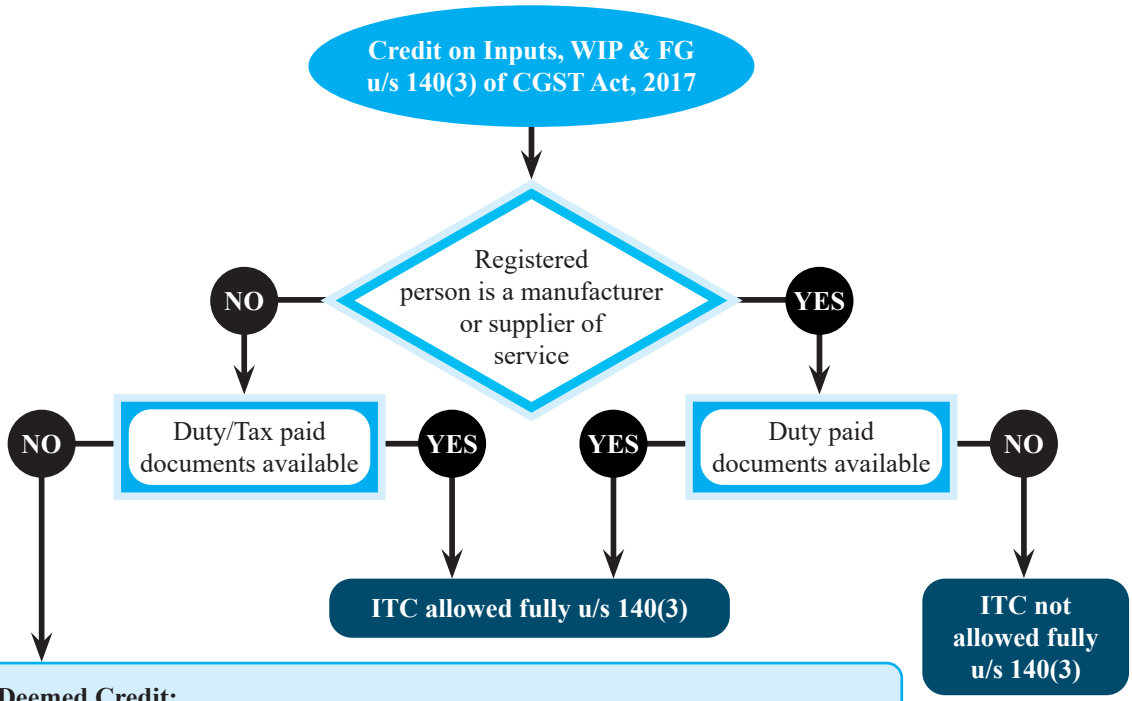
(i) The scheme is operative only for six months from the appointed day. It is not available to manufacturer or supplier of service. It is available to traders only.

(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.

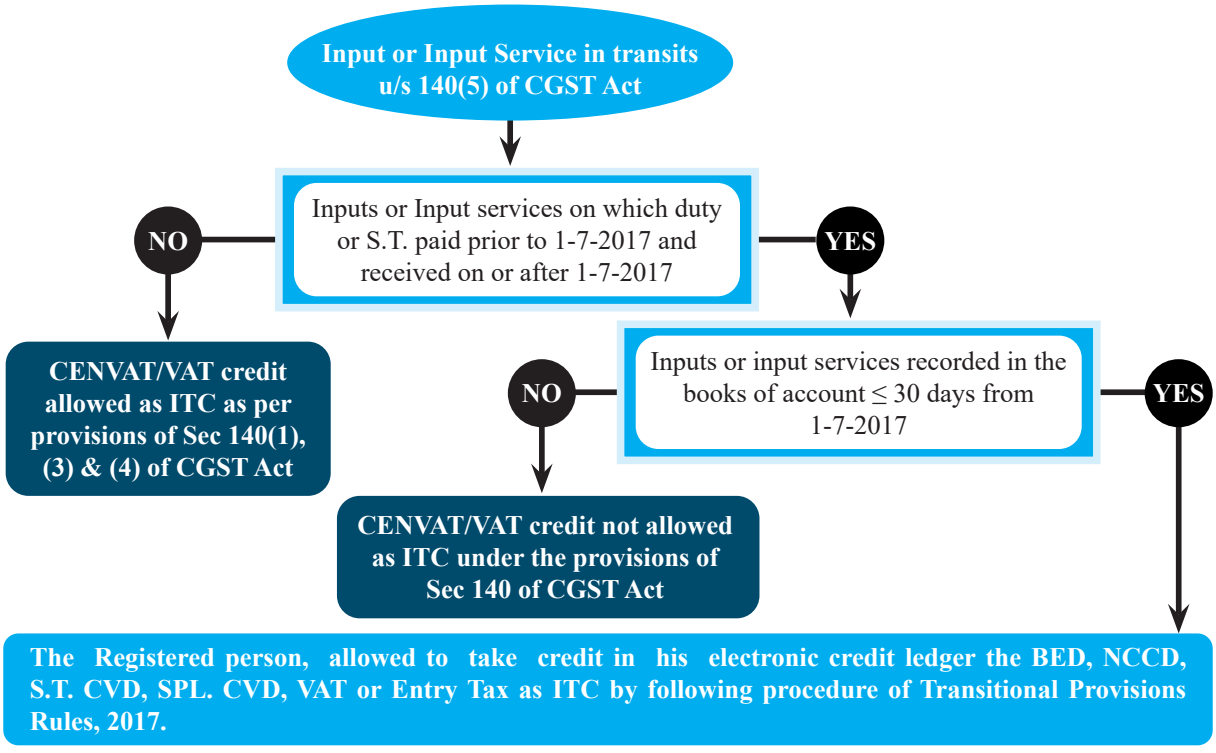


Illustration 3

Mr. X has cleared goods from his factory on 20th May 2017 for sale to Mr. Y for ₹ 5,00,000. Effective rate of Excise Duty (E.D) @12.5%. However, E.D ₹ 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 ₹ 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 ₹ 5,00,000. Customs duties like BCD ₹50,000, CVD ₹ 68,750, Cess ₹ 3,563 and Spl.CVD. of ₹ 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 ₹ 10,000, Swachh Bharat Cess (SBC) of ₹ 500 and Krishi Kalyan Cess (KKC) of ₹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 tax at fixed rate or fixed amount) like:

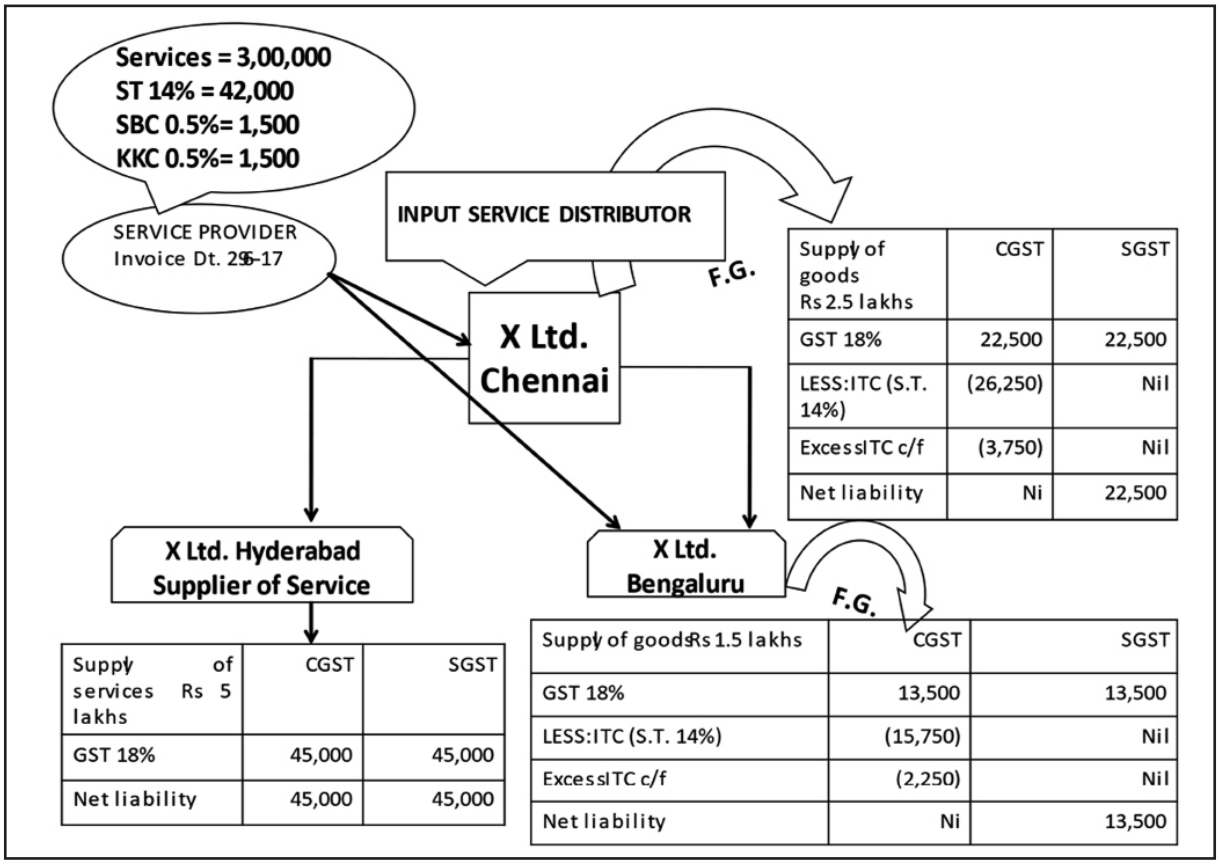
- Pan masala containing tobacco (i.e Gutkha) manufactured with the aid of packing machine and packed in pouches.
- Unmanufactured tobacco bearing a brand name
- Chewing tobacco
- Jarda scented tobacco
- Pan masala (except containing not more than 15% betel nut)

↓

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.



Supply of goods Rs 2.5 lakhs	CGST	SGST
GST 18%	22,500	22,500
LESS:ITC (S.T. 14%)	(26,250)	Nil
Excess ITC c/f	(3,750)	Nil
Net liability	Ni	22,500

Supply of services Rs 5 lakhs	CGST	SGST
GST 18%	45,000	45,000
Net liability	45,000	45,000

Supply of goods Rs 1.5 lakhs	CGST	SGST
GST 18%	13,500	13,500
LESS:ITC (S.T. 14%)	(15,750)	Nil
Excess ITC c/f	(2,250)	Nil
Net liability	Ni	13,500

(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 ₹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 period 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.

Rule 121: Recovery of credit wrongly availed:

The amount credited under sub-rule (3) of rule 117 [i.e. transitional provisions] may be verified and [proceedings under section 73 or section 74 or section 74A, as the case may be, inserted w.e.f. 1-11-2024, NT No. 20/2024, dated 8-10-2024] shall be initiated in respect of any credit wrogly availed, whether wholly or partly.

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

14.1 Demands

14.2 Assessment and Appeals

14.3 Advance Ruling

14.4 Offences and Penalties

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 credit has 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 credit has 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.

Amendment of section 73:

Determination of tax [w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024, pertaining to the period upto Financial Year 2023-24 shall be inserted], not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.

After sub-section (11) of section 73, the following sub-section shall be inserted (w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024), namely:—

"Section 73(12) The provisions of this section shall be applicable for determination of tax pertaining to the period upto Financial Year 2023-24.".

Amendment of section 74:

Section 74. Determination of tax [w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024, pertaining to the period upto Financial Year 2023-24] 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.-

(ii) after sub-section (11) and before Explanation 1, the following sub-section shall be inserted w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024,, namely:–

"section 74(12) The provisions of this section shall be applicable for determination of tax pertaining to the period upto Financial Year 2023-24.";

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.

For the purpose of section 73 or 74 the Explanation 2 shall be omitted [w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024]:-

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.

Amendment of section 74 as per Finance Act, 2021 (w.e.f. 1-1-2022): In section 74 of the Central Goods and Services Tax Act, in Explanation 1, in clause (ii), for the words and figures "sections 122, 125, 129 and 130", the words and figures "sections 122 and 125" shall be substituted.

"where the notice under the same proceedings is issued to the main person liable to pay tax and some other person, 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 section 122 and 125 are deemed to be concluded". As a result, only proceedings u/s 122 & 125 would be deemed to be concluded thus resulting in proceedings of the detention, seizure & confiscation of goods and conveyances in transit (Sec.129 & 130) separate from the demand and recovery proceedings u/s 73 & 74.

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.

Merging of 73 and 74 into 74A and consequential amendments (w.e.f. 1-11-2024, vide Notification No. 20/2024, dt. 8-10-2024):

a) A common section 74A has been inserted for all demand and recovery provisions in lieu of Section 73 and 74 from Financial Year 2024-25.

b) Common time limit for all evasion and non-evasion cases has been prescribed to be 42 months from the due date for furnishing of annual return for the relevant FY.

c) The time limit for passing of order would be 12 months from the date of issue of notice. Where the Commissioner or any officer not below the rank of JC records the reasons for delay in writing before the expiry, the said period can be extended by a further 6 months.

d) The time limit for reduced penalty for all cases has been increased from 30 days of notice /order to 60 days of notice / order

e) Consequential amendments for insertion of 74A in the Rules wherever required has been carried out. (in place of section 73 & 74).

Insertion of new section 74A (w.e.f. 1-11-2024, F.A. 2024, dated 16-8-2024.)

- After section 74 of the Central Goods and Services Tax Act, the following section shall be inserted, namely: —

"74A. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder:

Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is less than one thousand rupees.

(2) The proper officer shall issue the notice under subsection (1) within forty-two months 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 forty- two months from the date of erroneous refund.

(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 subsection (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,—

(i) for any reason, other than the reason of fraud or any wilful- misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax due from such person or ten thousand rupees, whichever is higher;

(ii) for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person.

(6) 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.

(7) The proper officer shall issue the order under subsection (6) within twelve months from the date of issuance of notice specified in sub-section (2):

Provided that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.

(8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, may, —

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 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, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful- misstatement or suppression of facts to evade tax, may,—

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and 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;

(ii) pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;

(iii) pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, and ondoing so, all proceedings in respect of

the said notice shall be deemed to be concluded.

(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in subsection (1) in respect of such amount which falls short of the amount actually payable.

(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of subsection (5) shall be payable where any amount of self assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024- 25 onwards.

Explanation 1: For the purposes of 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 this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 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.

1. Key Highlights of Section 74A and Section 50

Section 74A (Effective 1-11-2024)

This new section consolidates and simplifies the process of determining tax liabilities, including cases of:

- Tax not paid or short paid,
- Erroneous refund,
- Input Tax Credit (ITC) wrongly availed or utilized.

Key Features:

1. Uniform Time Limits:
    - Notice Issuance: Within 42 months from the due date of furnishing the annual return or from the date of erroneous refund.
    - Order Issuance: Within 12 months from the date of notice, extendable by 6 months.
2. Penalty Provisions:
    - Without Fraud: Higher of 10% of tax due or ₹10,000.
    - With Fraud: Penalty escalates based on the stage of payment:
    - 15% of tax (voluntary payment before notice).
    - 25% of tax (payment within 60 days of notice).
    - 50% of tax (payment within 60 days of order).

Section 50 (Interest on Delayed Payment)

1. Interest Rates:
   - Delayed Payment of Tax: 18% per annum.
   - Wrongful ITC Utilization: 24% per annum.
2. Clarification on Electronic Cash Ledger (ECL):
   - Interest is payable only on the portion of tax that is not available in the ECL on or before the due date.

2. Detailed Practical Examples

Example 1: Non-Fraudulent Case (Short Payment of Tax)

Scenario:

- Taxpayer: XYZ Pvt. Ltd.
- Tax Period: May 2025.
- Tax Liability: ₹5,00,000.
- Tax Paid: ₹4,50,000 (short payment of ₹50,000).
- Due Date for GSTR-3B: June 20, 2025.
- Actual Payment Date: August 10, 2025.
- Notice Issued: None (voluntary payment before detection).

Step-by-Step Process:

1. Interest Calculation:
   - Shortfall: ₹50,000.
   - Interest Rate: 18% per annum.
   - Delay: From June 21, 2025 to August 10, 2025 = 51 days.
   - Interest: ₹50,000 × 18% × (51 ÷ 365) = ₹1,258.90.
2. Penalty:
   - Since the taxpayer voluntarily paid the shortfall along with interest before any notice was issued, no penalty is applicable as per Section 74A(8)(i).

Final Payment Breakdown:

- Tax: ₹50,000.
- Interest: ₹1,258.90.
- Penalty: Nil.

If Notice Was Issued:

If the notice had been issued:

- Taxpayer must pay ₹50,000 (tax) + ₹1,258.90 (interest) within 60 days.
- No penalty would still apply if payment is made within this period under Section 74A(8)(ii) (i.e. within sixty days of issue of show cause notice).

Example 2: Fraudulent Case (Wrongful ITC Utilization)

Scenario:

- Taxpayer: ABC Ltd.
- Financial Year: 2024-25.
- Wrongful ITC Claimed: ₹3,00,000 using fake invoices.
- Detection Date: September 15, 2026.

Step-by-Step Process:

1. Interest Calculation:
    - Wrongful ITC: ₹3,00,000.
    - Interest Rate: 24% per annum.
    - Period: From April 1, 2024, to September 15, 2026 = 898 days.
    - Interest: ₹3,00,000 × 24% × (898 ÷ 365) = ₹1,77,480.
2. Penalty:
    - Since the case involves fraud, the penalty depends on the stage of payment:
    - Before Notice Issuance (Subsection 9(i)):
    - Penalty = 15% of ₹3,00,000 = ₹45,000.
    - Within 60 Days of Notice (Subsection 9(ii)):
    - Penalty = 25% of ₹3,00,000 = ₹75,000.
    - Post-Order (Subsection 9(iii)):
    - Penalty = 50% of ₹3,00,000 = ₹1,50,000.

Final Payment Scenarios:

1. **Voluntary Payment Before Notice:**
    - Tax: ₹3,00,000.
    - Interest: ₹1,77,480.
    - Penalty: ₹45,000.
    - Total: ₹5,22,480.
2. Payment Within 60 Days of Notice:
    - Tax: ₹3,00,000.
    - Interest: ₹1,77,480.
    - Penalty: ₹75,000.
    - Total: ₹5,52,480.

3. Post-Order Payment:

- Tax: ₹3,00,000.
- Interest: ₹1,77,480.
- Penalty: ₹1,50,000.
- Total: ₹6,27,480.

3. Summary of Compliance Scenarios

Type of Case	Interest Rate	Penalty Before Notice	Penalty Within 60 Days of Notice	Penalty After Order
Non-Fraudulent	18%	Nil	Nil	10% of Tax or ₹10,000 (whichever is higher)
Fraudulent	24%	15% of Tax	25% of Tax	50% of Tax

4. Key Learnings

1. Timely Compliance Reduces Costs:
   - Voluntary payment avoids penalties entirely in non-fraudulent cases and minimizes penalties in fraudulent cases.
2. Awareness of Time Limits:
   - Notice must be issued within 42 months, and orders must be issued within 12 months of the notice, extendable by 6 months.
3. Proper ITC Utilization:
   - Avoid wrongful ITC claims as they attract higher interest (24%) and steep penalties (up to 50% of tax due) in cases of fraud.
4. Electronic Cash Ledger (ECL):
   - Maintain sufficient balance in ECL to minimize interest liabilities on late tax payments.

Dispensation of SCN (i.e. SCN not required to issue)

(a) Once a SCN has been issued, where for normal period or extended period, for subsequent demand period, a statement showing details demand can be served if grounds of demand are same. It means for subsequent period no separate show cause notice is required 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 period demand 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]

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], dated 25.05.2022]

Case Law

Ansil Ibrahim v. Assistant Commissioner (WP(C) NO. 31165 OF 2023 SEPTEMBER 25, 2023) - HIGH COURT OF KERALA:

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person… If there is a difference between GSTR 2A and GSTR 3B, then it is for the assessee/ dealer to prove his claim of input tax credit by leading cogent and credible evidence for his claim regarding input tax credit.

In the present case, the petitioner, despite show cause notice, chose not to provide any evidence in respect of his claim for the input tax credit, nor did he appear for a hearing on the date fixed. When the petitioner himself has

given up his right to prove his claim for the input tax credit, this Court cannot help such an assessee by entertaining this writ petition.

Amendment to sub-rule (3) to rule 142 [Notice and order for demand of amounts payable under the Act]:

The mention of Form GST DRC-05* as an "order" in the sub-rule is changed to "intimation" to align the same with the content of the said Form.

[*Intimation of conclusion of proceedings in case a person chargeable with tax makes payment,-

(i)within 30 days of the service of show cause notice u/s 73/74 and Form GST DRC-01; or

(ii)within 7 days of notice issued u/s 129(3) but before issuance of order u/s 129(3) in Form GST DRC-03] (vide Notification No 52/2023-CT dt 26-10-2023).

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 specified in section 73(2) and section 73(10) or section 74(2) and section 74(10)(i.e. 3 years or 5 years) [or section 74A(2) and section 74A(7) inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024].

(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.

Amendment: after sub-section (2), the following sub-section shall be inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024, namely: —

"(2A) Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under clause (ii) of sub-section (5) of section 74A 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 penalty shall be payable by such person, under clause (i) of sub-section (5) of section 74A.";

(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 [or in sub-section (7) of section 74A inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024].

(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 [or in sub-section (7) of section 74A inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024] 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, [or in sub-section (7) of section 74A inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024] 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, [or in sub-section (7) of section 74A inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024] 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 furnished electronically in Form GST DRC-01 along with SCN simultaneously. 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 done 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.

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 mis-match 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 prescribed 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).

Serving of the summary of notice in FORM GST DRC-01 and uploading of summary of order in FORM GST DRC-07 electronically on the portal by the proper officer (vide CBIC Instruction No. 04/2023-GST dt. 23.11.2023):

Non-issuance of the summary of such notices/ orders electronically on the portal is in clear violation of the explicit provisions of CGST Rules. Further, to keep track of the proceedings and consequential action in respect of recovery, appeal etc, subsequent to issuance of notices/ orders, the proper officers have been directed:

- to serve summary of the notice required to be issued under sections 52, 73, 74, 122, 123, 124, 125, 127, 129 and 130 of the CGST Act, 2017 in Form DRC-01 as required under rule 142(1), electronically on the common portal, and
- to issue summary of the orders required to be issued in sections 52, 62, 63, 64, 73, 74, 75, 76, 122, 123, 124, 125, 127, 129 and 130 of the CGST Act, 2017 in Form DRC-07 as prescribed under rule 142(5), electronically on the common portal.

Dispute Resolution Mechanism under GST

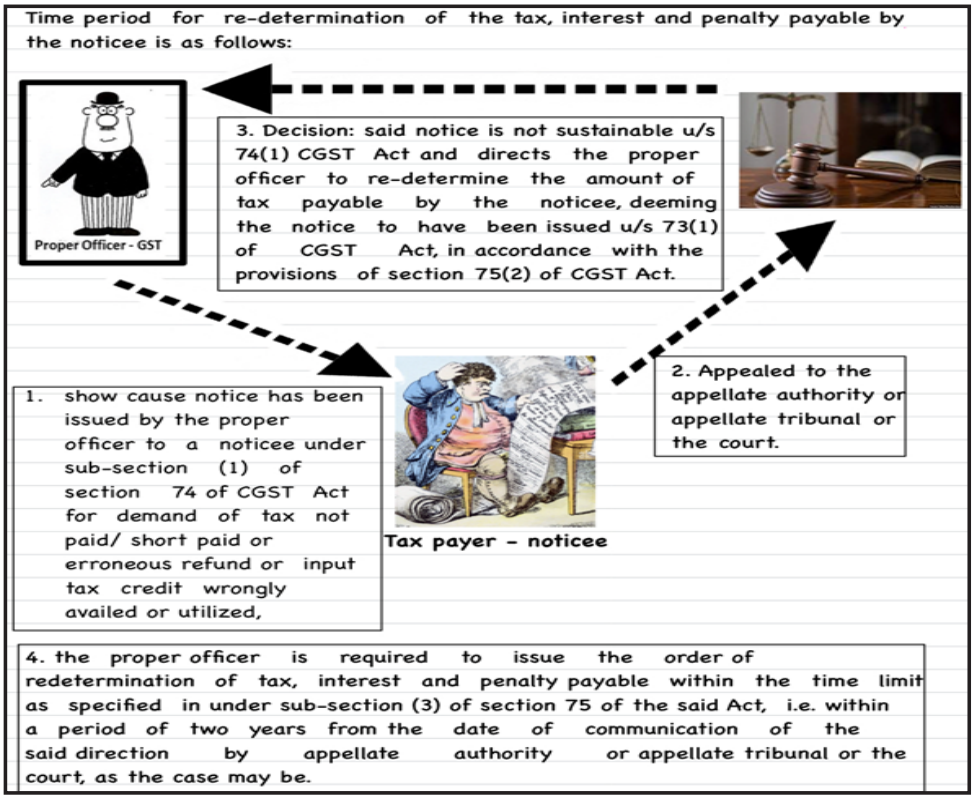
CBIC Clarification petatining to cases where it is concluded that the notice issued under section 74(1) not sustainable for reason that the charges of fraud etc. not been established against the ntoice and tax payable being determined deeming as if the notice was issued under section 73(1).

Circular No. 185/17/2022-GST dt. 27.12.2022 has been issued to clarify issues with regard to applicability of provisions of section 75(2) as under:

S.No.	Issue	Clarification
1.	In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	• Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction. • Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e. within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.
2.	How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?	• In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of section 75 of CGST Act, the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of section 73, read with sub-section (10) of section 73 of CGST Act. • Sub-section (1) of section 73 of CGST Act provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax. Sub-section (2) of section 73 of CGST Act provides that such show cause notice shall be issued at least 3 months prior to the time limit specified in sub-section 10 of section 73 for issuance of order. As per sub-section (9) of section 73 of CGST Act, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order. As per sub-section (10) of section 73 of CGST Act, an order under sub-section (9) of section 73 has to be issued by

		the proper officer within three years from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund. • It transpires from a combined reading of these provisions that in cases which do not involve fraud or wilful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of sub-section (1) of section 73 of CGST Act has to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months from the date of erroneous refund. • Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) of section 75 of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10) of section 73 of CGST Act. Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.

		• In case, where the show cause notice under sub-section (1) of section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. • Similarly, where show cause notice under sub-section (1) of section 74 of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped. • In cases, where the show cause in terms of sub-section (1) of section 74 of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount. • Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73.



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 certification 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 this 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.

Guidelines for initiation of recovery proceedings before three months from the date of service of demand order- vide CBIC Instruction Circular No. 01/2024-GST (Dated 30.05.2024)

The CGST Act mandates that after the issue of demand notice, recovery proceedings should be initiated by the proper officer if an assessee fails to pay the due amount within three months from the date of the order as it is so interpreted from the act. In exceptional cases, to protect revenue interests, the proper officer may recover the dues in less than three months, for reasons to be recorded in writing. If the assessee does not pay within this period or within three months, the proper officer may proceed with recovery under Section 79(1) of the CGST Act.

CBIC had observed instances where some field formations initiated recovery before the three-month period without the necessary written justification. To ensure uniform implementation of the law, the Board clarified that, according to Circular No. 3/3/2017-GST dated July 5, 2017, the jurisdictional Deputy or Assistant Commissioner of Central Tax is responsible for recovery under Section 79 of the Act. For early recovery, the Deputy or Assistant Commissioner must place the matter before the jurisdictional Principal Commissioner/Commissioner of Central Tax with reasons. The Principal Commissioner/Commissioner must then record written reasons for requiring early payment and issue directions accordingly, considering the taxable person's financial health and business status. These directions should not be issued mechanically but only when necessary to safeguard revenue interests due to specific circumstances based on credible evidence. This is in line with the board's intention to balance the interests of revenue with the ease of doing business

Therefore, this circular will be helpful for the cases where the department has arbitrarily initiated recovery proceedings in pursuance of the demand order before giving statutory period of three months.

Practical Example:

1. **Scenario:**
   - A taxpayer receives a demand order on March 1, 2024, confirming a GST liability of ₹5,00,000.
   - The three-month statutory appeal period ends on May 31, 2024.
2. Standard Case:
   - The taxpayer does not appeal and does not pay by May 31, 2024.
   - Recovery proceedings begin on June 1, 2024, as per the standard rule.

3. Exceptional Case:
    - The proper officer finds evidence that the taxpayer is liquidating assets to evade payment.
    - The Deputy Commissioner presents this case to the Principal Commissioner, who records written reasons for initiating early recovery (e.g., on April 15, 2024).
    - Recovery proceedings are approved and begin before May 31, 2024, to protect revenue.

This circular ensures that recovery proceedings are conducted lawfully, with proper justification and in a taxpayer-friendly manner.

CBIC Launches Second All-India Drive Against Fake GST Registrations;

CBIC's Instruction No. 02/2024-GST (dated 12.08.2024) initiates a Special All-India Drive (August 16 to October 15, 2024) to detect and act against fake GSTINs. Building on the 2023 drive, this initiative focuses on safeguarding GST integrity, verifying suspicious registrations, and preventing revenue loss by ensuring only legitimate entities remain registered.

Implementation of Special Drive Against Fake GST Registrations

CBIC Instruction No. 03/2024-GST Dated 14th August 2024:

Application of Para 2(g) of Instruction No. 01/2023-24-GST (Inv.) Dated 30-03-2024 in Audit Matters

Objective:

The CBIC has directed that Para 2(g) of Instruction No. 01/2023-24-GST (Inv.) (aimed at ensuring ease of doing business) be applied in audit matters by CGST Audit (Pr.) Commissioners.

Key Points of Para 2(g):

1. Scenarios Covered:

- When a CGST investigation or audit involves issues arising from:
- Interpretation of the CGST Act, Rules, notifications, or circulars.
- A prevalent trade practice in a sector/industry, leading to multiple interpretations and potential litigation or changes in practice.
- Typically pertains to disputes over non-payment or short payment of tax.

2. Procedure for Reference:

- The Zonal (Pr.) Chief Commissioner is required to:
- Make a self-contained reference to the Board's GST Policy Wing or Tax Research Unit (TRU) for clarification.
- Ensure this reference is made before concluding the investigation and, if feasible, well in advance of issuing a show cause notice (SCN).
- Such references may also help in ensuring uniformity and avoiding litigation if the matter is presented to the GST Council.

Directive for Audit Proceedings:

1. Audit Context:

- The above procedure applies when:
- An issue under audit involves interpretational disputes or trade practices similar to those described in Para 2(g).
- This includes ongoing audit proceedings where such scenarios arise.

2. Responsibilities of CGST Audit (Pr.) Commissioner:

- Identify issues described in Para 2(g) during the audit process.
- Notify the Zonal (Pr.) Chief Commissioner to initiate a reference to the GST Policy Wing or TRU.

3. Objective During Audit:

- Facilitate uniform interpretation of GST provisions.
- Reduce avoidable litigation and promote ease of doing business.

Amendment in rule 142 with effect from the 1st day of November, 2024, wherever section 73 or section 74 appears read as section 73 or section 74 or section 74A (vide Notification No. 20/2024 dated 8-10-2024).

Summary of the CBIC Instruction No. 04/2024-GST (CBIC) dated 04-10-2024, has announced systemic revisions to ease the mapping and de-mapping of officers on the GSTN portal.:

1. Purpose:

- Streamline mapping and de-mapping of GST officers on the GSTN portal to improve efficiency, reduce errors, and prevent delays in assessments, audits, and compliance tasks.

2. Key Issues:

- Delayed de-mapping of officers after transfers led to errors, including fraudulent GST refunds.
- Mismatches between officer postings on the portal and actual jurisdictions disrupted workflow and compliance processes.

3. Recommendations by Directorate General of Vigilance (DGoV):

- Officers must be promptly de-mapped from their positions on the GSTN portal after completing GFR-33.

  Note: The Directorate General of Vigilance (DGoV) reported cases where officers who were not promptly de-mapped from the GSTN portal after being relieved from their duties engaged in fraudulent activities, including the sanctioning of illegal GST refunds.

- Supervisory officers (Joint/Additional Commissioners) should monitor the process, ensuring compliance.
- Compliance reports should be submitted to jurisdictional Commissioners within a set timeframe.

4. Action Required:

- Principal Commissioners/Commissioners must ensure strict adherence to these instructions and assign clear accountability for mapping and de-mapping officers on the GSTN portal.

These measures aim to enhance transparency, prevent misuse, and improve GST administration efficiency.

Rule 142B of CGST Rules, 2017 w.e.f. 4th August 2023, Intimation of certain amounts liable to be recovered under section 79 of the Act.-

(1) Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D, directing the person in default to pay the said amount, along with applicable interest, or, as the case may the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01.

(2) The intimation referred to in sub-rule (1) shall be treated as the notice for recovery.

(3) Where any amount of tax or interest specified in the intimation referred to in sub-rule (1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.".

Rule 143 - Recovery by deduction from any money owed.

Rule 144 - Recovery by sale of goods under the control of proper officer

Rule 145 - Recovery from third person

Rule 146 - Recovery through execution of a decree, etc.

Rule 147 - Recovery by sale of movable or immovable property

Rule 155 - Recovery through land revenue authority

Rule 156 - Recovery through court

Rule 157 - Recovery from surety

Rule 160 - Recovery from company in liquidation.

Procedures regarding amounts payable in respect of notice or order under the CGST Act

Effective from: 10 July 2024 [Notification No. 12/2024 – Central Tax dated 10 July 2024]:

(i) In rule 142 (2), for the words, letters and figures "he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC– 04", the words, letters and figures "he shall inform the proper officer of such

payment in FORM GST DRC-03 and an acknowledgement, in FORM GST DRC– 04 shall be made available to the person through the common portal electronically." shall be substituted;

(ii) In rule 142(2A), where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of Form GST DRC-01A [w.e.f. 10-7-2024, ", and thereafter the proper officer may issue an intimation in Part-C of FORM GST DRC-01A, accepting the payment or the submissions or both, as the case may be, made by the said person" shall be inserted];

(iii) New sub-rule 2B inserted in Rule 142:

Where an amount of tax, interest, penalty or any other amount payable by a person under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, has been paid by the said person through an intimation in FORM GST DRC-03 under sub-rule (2), instead of crediting the said amount in the electronic liability register in FORM GST PMT –01 against the debit entry created for the said demand, the said person may file an application in FORM GST DRC-03A electronically on the common portal, and the amount so paid and intimated through FORM GST DRC-03 shall be credited in Electronic Liability Register in FORM GST PMT –01 against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC-03:

Provided that where an order in FORM GST DRC-05 has been issued in terms of sub-rule (3) concluding the proceedings, in respect of the payment of an amount in FORM GST DRC-03, an application in FORM GST DRC-03A cannot be filed by the said person in respect of the said payment.

Example: Application of Sub-Rule 2B of Rule 142 under CGST Rules

Scenario:

M/s ABC Pvt. Ltd., a taxpayer under GST, was issued a show cause notice under Section 73 of the CGST Act, 2017, for short payment of tax amounting to ₹5,00,000. To settle the demand and avoid further penalties, the company voluntarily deposited ₹5,00,000 through FORM GST DRC-03 on 15th December 2024, without waiting for an official order to be issued.

Later, the department issued a demand order on 20th December 2024, creating a debit entry in the Electronic Liability Register (FORM GST PMT-01). However, the tax amount already paid by M/s ABC Pvt. Ltd. was not automatically adjusted against this debit entry.

Steps Taken by M/s ABC Pvt. Ltd.:

1. To adjust the ₹5,00,000 already paid through FORM GST DRC-03 against the demand reflected in FORM GST PMT-01, M/s ABC Pvt. Ltd. filed an application electronically in FORM GST DRC-03A on the GST portal.
2. This application requested that the previously paid amount be credited in the Electronic Liability Register (PMT-01) against the debit created for the demand.

Outcome:

- Upon submission of FORM GST DRC-03A, the GST portal verified and credited the amount of ₹5,00,000 already paid in FORM GST DRC-03 to the Electronic Liability Register (PMT-01) as if the payment was made on the date of intimation (15th December 2024).
- M/s ABC Pvt. Ltd. avoided making duplicate payments and complied with the provisions.

Important Note (Proviso to Sub-Rule 2B):

If the tax officer had issued FORM GST DRC-05 (concluding the proceedings after payment via FORM GST DRC-03), M/s ABC Pvt. Ltd. could not file FORM GST DRC-03A for the said payment. Thus, FORM GST DRC-03A is only applicable when proceedings are still ongoing, and no conclusion order has been issued.

Rule 142(3) Revised w.e.f. 1-11-2024 (vide Notification No. 20/2024 C.T. Dated 8-10-2024]

"Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or under clause (ii) of sub-section (8) of section 74A, as the case may be, or tax, interest and penalty under sub-section (8) of section 74 or under clause (ii) of sub-section (9) of section 74A, as the case may be, within the period specified therein, or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under subsection (3) of that Section but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an intimation in FORM GST DRC-05 concluding the proceedings in respect of the said notice.";

Example: Detention and Payment of Penalty Under Section 129

Scenario:

M/s DEF Traders is transporting taxable goods worth ₹10,00,000 from Maharashtra to Gujarat. During transit, the vehicle is intercepted by GST officers, and the consignment is detained due to the absence of a valid e-way bill.

Details of the Case:

1. Goods Value: ₹10,00,000
2. Applicable GST Rate: 18%
   - Tax Payable on Goods = ₹10,00,000 × 18% = ₹1,80,000
3. Penalty (as per Section 129):
   - If owner comes forward: 200% of the tax payable
   - If owner does not come forward: Higher of 50% of the value of goods or 200% of the tax payable

Case 1: Owner Comes Forward

1. Penalty Calculation:
   - 200% of the tax payable = 200% × ₹1,80,000 = ₹3,60,000
2. Total Amount Payable:
   - Penalty: ₹3,60,000
3. Steps Taken by M/s DEF Traders:
   - M/s DEF Traders makes the payment of ₹3,60,000 through FORM GST DRC-03 within 7 days of the notice issued in FORM GST MOV-07.
   - They intimate the proper officer about the payment by filing FORM GST DRC-03.
   - Upon verification, the officer issues FORM GST MOV-05 (release of goods) and FORM GST DRC-05 (concluding proceedings).
4. Outcome:
   - Goods and vehicle are released promptly.
   - Proceedings are concluded without further action.

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 payment in installments in the preceding financial year under GST law; and
- The amount for which instalment facility is sought is less than ₹25,000/-.

1. Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016 (IBC):-

As per Circular No.134/04/2020-GST dated 23rd March, 2020, no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

Circular No. 187/19/2022-GST dt. 27.12.2022 has been issued to clarify on the modalities for implementation of the order of the adjudicating authority under IBC, with respect to demand for recovery against such corporate debtor under the CGST Act as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC, has been issued.

As per section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in section 84.

Rule 161 of CGST Rules, 2017 prescribes FORM GST DRC-25 for issuing intimation for such reduction of demand specified under section 84. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act

or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

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, belonging to the taxable person.

(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.

w.e.f. 26th October 2023: As per amended Rule 159(2) of the CGST Rules, 2017 The Commissioner shall send a copy of the order of attachment [in FORM GST DRC-22] to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only

- on the written instructions from the Commissioner to that effect
- (w.e.f. 26th October 2023, or on expiry of a period of one year from the date of issuance of order under sub-rule (1),

whichever is earlier),

and a copy of such order shall also be sent to the person whose property is being attached under section 83.

The Council has proposed an amendment to sub-rule (2) of Rule 159 within the CGST Rules of 2017, as well as to FORM GST DRC-22. This amendment stipulates that the provisional attachment order in FORM GST DRC-22 will no longer remain valid one year after its issuance. This modification aims to simplify the process of releasing provisionally attached properties without requiring an additional, specific written order from the Commissioner, once the one-year period has elapsed.

As per CBIC Letter F. No. CBEC-20/16/05/2021-GST/359, dated 23-2-2021 - Guidelines:

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 prohibiting 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 attachment.

Case Law:

Judgment of the Hon'ble Supreme Court in the case of Northern Operating Systems Private Limited (NOS) not to be made applicable to all cases universally (vide CBIC Instruction No. 05/2023-GST dt. 13.12.2023):

Parties Involved: Commissioner of Customs, Central Excise, and Service Tax, Bangalore (Adj.) vs. Northern Operating Systems Private Limited (NOS).

- **Background:**
  - NOS, an Indian company, received seconded employees from its overseas group company.
  - The employees continued to be on the payroll of the overseas company but worked under the control and supervision of NOS in India.

- The Hon'ble Supreme Court examined whether this arrangement constituted a taxable service.
- **Issue:** Whether the secondment of employees from an overseas group company to an Indian entity is a taxable service of "manpower supply" and liable to Service Tax?.

Decision by the Hon'ble Supreme Court

- The Court held that the secondment of employees from the overseas group company to NOS:
  - Constituted a 'manpower supply service', as the employees were made available to NOS in exchange for consideration.
  - Was therefore liable to Service Tax under the Finance Act, 1994.

CBIC Instruction No. 05/2023-GST (13.12.2023)

- **Post-Supreme Court Judgment:**
  - GST proceedings were initiated under Section 74(1) of the CGST Act, 2017 for alleged tax evasion due to non-payment of GST on similar secondment arrangements.
  - **Clarification by CBIC:**
  - Secondment arrangements vary based on contractual terms and conditions.
  - The NOS judgment should not be applied universally to all cases without analyzing the specifics of each arrangement.
  - GST liability depends on the precise nature of the transaction and whether it qualifies as "manpower supply."

Instruction Regarding Section 74(1)

- Section 74(1) cannot be invoked merely for non-payment of GST unless there is:
  - Fraud,
  - Willful misstatement, or
  - Suppression of facts to evade tax.
  - Investigating officers must ensure:
  - There is material evidence of fraud or suppression before invoking Section 74(1).
  - Such evidence should be explicitly included in the show cause notice.

Conclusion

- The NOS judgment is relevant for determining taxability in cases involving secondment of employees.
- However, it should not be applied mechanically to all secondment arrangements.
- Proper investigation and evidence are required before invoking penal provisions under Section 74(1).

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.

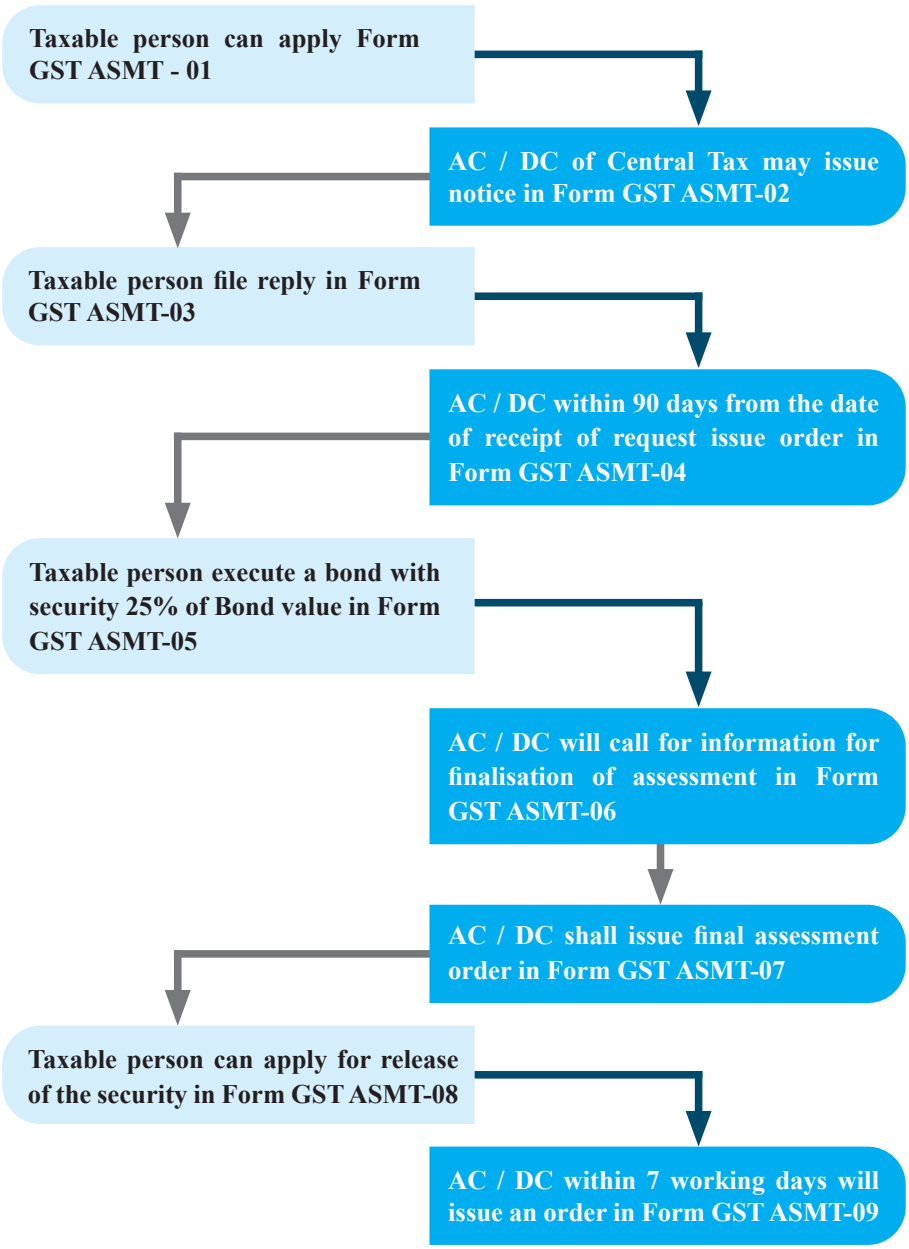
(8) The Asst. Commissioner/Dy. Commissioner of Central Tax will issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if 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:



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 (or section 74A shall be inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024).

Standard Operating Procedure (SOP) for scrutiny of returns for FY 2019-20 and onwards (vide Instruction No. 02/2023-GST dt. 26.05.2023)

Instruction No. 02/2022- GST dated 22nd March 2022 was issued to provide a SOP for scrutiny of returns under section 61 of the CGST Act as an interim measure till the time a Scrutiny Module for online scrutiny of returns is made available on the ACES-GST application. DG Systems has now developed functionality "Scrutiny of Returns", containing the online workflow for scrutiny of returns in the CBIC ACES-GST application. The GSTINs selected for scrutiny for the Financial Year 2019-20 have also been made available on the scrutiny dashboard of the proper officers on ACES-GST application. In view of this, the SOP for scrutiny of returns provided in the Instruction No. 02/2022-GST dated 22nd March 2022 stands modified to the following extent in respect of scrutiny of returns for financial years 2019-20 onwards:

1. Selection of returns for scrutiny

The Directorate General of Analytics and Risk Management (DGARM) will select the GSTINs registered with Central tax authorities, whose returns are to be scrutinized for a financial year, based on identified risk parameters. The details of GSTINs selected for scrutiny for a financial year will be made available by DGARM through DG Systems on the scrutiny dashboard of the concerned proper officer of Central Tax on ACES-GST application. The GSTIN in respect of which risk has been identified, the amount of tax/ discrepancy involved (i.e., likely revenue implication) will be shown on the scrutiny dashboard of the proper officer.

2. Scrutiny Schedule

The proper officer, with the approval of the divisional Assistant / Deputy Commissioner, shall finalize a month-wise scrutiny schedule in respect of GSTINs selected for scrutiny. The proper officer shall conduct scrutiny of returns pertaining to a minimum of 4 GSTINs per month. Scrutiny of returns of one GSTIN shall mean scrutiny of all returns pertaining to a financial year for which the said GSTIN has been identified for scrutiny.

3. Process of scrutiny by the proper officer

- The Proper Officer shall scrutinize the returns and related particulars furnished by the registered person to verify the correctness of returns with the help of various returns and statements furnished by the registered person and data/details made available through various sources like DGARM, ADVAIT, GSTN, E-Way Bill Portal, etc.
- At this stage, the proper officer is expected to rely upon the information available with him on records. As far as possible, scrutiny of returns should have minimal interface between the proper officer and the registered person and, there should normally not be any need for seeking documents/ records from the taxpayers before issuance of FORM GST ASMT-10.
- The proper officer shall issue a notice to the registered person in FORM GST ASMT-10 through the scrutiny functionality on ACES-GST application informing him of the discrepancies noticed and seeking

his explanation thereto. The notice in FORM ASMT-10 issued through scrutiny functionality on ACES-GST application shall be communicated by the system to the concerned registered person through common portal. As far as possible, the proper officer shall quantify the amount of tax, interest and any other amount payable in relation to such discrepancies after considering payment, if any, already made by the registered person through Form DRC-03. The proper officer shall mention the parameter-wise details of the discrepancies noticed and shall also upload the worksheets and annexures, if any. A single compiled notice in FORM GST ASMT-10 shall be issued to the taxpayer for all returns pertaining to the financial year under scrutiny.

- The registered person may accept the discrepancy communicated to him in ASMT-10 and pay the tax, interest and any other amount arising from such discrepancy and inform the same or may furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.
- If the explanation furnished by the registered person or the information submitted in respect of acceptance of discrepancy and payment of dues is found to be acceptable by the proper officer, he shall conclude the proceedings by informing the registered person in FORM GST ASMT-12.
- In case no satisfactory explanation is furnished by the registered person in FORM GST ASMT-11 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 pay the tax, interest and any other amount arising from such discrepancies, the proper officer, may proceed to determine the tax and other dues under section 73 or section 74.
- For proceeding under section 73 or section 74, monetary limits as specified in Circular No. 31/05/2018-GST dated 9th February 2018 shall be adhered to. However, if the proper officer is of the opinion that the matter needs to be pursued further through audit or investigation to determine the correct liability of the said registered person, then he may take the approval of the jurisdictional Principal Commissioner / Commissioner through the divisional Assistant / Deputy Commissioner, through e-file or other suitable mode, for referring the matter to the Audit Commissionerate or anti-evasion wing of the Commissionerate, as the case may be.

S.No.	Process	Timelines/ Frequency
1.	Communication of list of GSTINs selected for scrutiny on ACES GST Application for a financial year	From time to time
2.	Finalization of scrutiny schedule with the approval of the concerned Assistant/ Deputy Commissioner	Within seven working days of receipt of the details of the concerned GSTINs on ACESGST application
3.	Issuance of notice by the proper officer for intimating discrepancies in FORM GST ASMT-10, where required	Within the month, as mentioned in scrutiny schedule for scrutiny of the returns of the said GSTIN.
4.	Reply by the registered person in FORM GST ASMT-11	Within a period of thirty days of being informed by the proper officer in FORM GST ASMT-10 or such further period as may be permitted by the proper officer.
5.	Issuance of order in FORM GST ASMT-12 for acceptance of reply furnished by the registered person, where applicable	Within thirty days from receipt of reply from by the registered person in FORM GST ASMT-11.

6.	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where no reply is furnished by the registered person	Within a period of fifteen days after completion of the period of thirty days of issuance of notice in FORM GST ASMT-10 or such further period as permitted by the proper officer.
7.	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where reply is furnished by the registered person, but the same is not found acceptable by the proper officer	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11.
8.	Reference, if any, to the Audit Commissionerate or the anti-evasion wing of the Commissionerate for action, under section 65 or section 66 or section 67, as the case may be.	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 or within a period of forty-five days of issuance of FORM GST ASMT-10 in case no explanation is furnished by the registered person.

The scrutiny functionality has been provided on ACES-GST application only for the Financial Year 2019-20 onwards, therefore, the procedure specified in Instruction No. 02/2022 dated 22.03.2022 shall continue to be followed for the scrutiny of returns for the financial years 2017-18 and 2018-19.

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 [or section 74A inserted w.e.f. 1-11-2024, F.A. 2024 Dt. 16-8-2024.].

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.

Amendment of Section 62. Assessment of non-filers of returns.-

(1) Notwithstanding anything to the contrary contained in section 73 or section 74 [or section 74A inserted w.e.f. 1-11-2024, F.A. 2024 Dt. 16-8-2024], where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

Amendment of Section 63. Assessment of unregistered persons.-

Notwithstanding anything to the contrary contained in section 73 or section 74 [or section 74A inserted w.e.f. 1-11-2024, F.A. 2024 Dt. 16-8-2024] where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

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 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. 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.

Reduction of Government Litigation – fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court (vide CBIC Circular No. 207/1/2024-GST dated 26th June 2024):

The Board, on recommendations of the GST Council, fixes the following monetary limits below which appeal or application or Special Leave Petition, as the case may be, shall not be filed by the Central Tax Officers before GSTAT, High Court and Supreme Court under the provisions of CGST Act, subject to few exclusions.

Appellate Forum	Monetary Limit (amount involved in ₹)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

While determining whether a case falls within the above monetary limits or not, the following principles are to be considered:

i. Where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal.

ii. Where the dispute pertains to demand of interest only, the amount of interest shall be considered for applying the monetary limit for filing appeal.

iii. Where the dispute pertains to imposition of penalty only, the amount of penalty shall be considered for applying the monetary limit for filing appeal.

iv. Where the dispute pertains to imposition of late fee only, the amount of late fee shall be considered for applying the monetary limit for filing appeal.

v. Where the dispute pertains to demand of interest, penalty and/or late fee (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee shall be considered for applying the monetary limit for filing appeal.

vi. Where the dispute pertains to erroneous refund, the amount of refund in dispute (including CGST, SGST/ UTGST, IGST and Compensation Cess) shall be considered for deciding whether appeal needs to be filed or not.

vii. Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case.

viii. In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

However, these limits will not be applicable in the following cases:

1. Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or
2. Where any Rules or regulations made under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act; or
3. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Actor the Rules made thereunder; or
4. Where the matter is related to –
   a) Valuation of goods or services
   b) Classification of goods or services
   c) Refunds
   d) Place of Supply
   e) Any other issue
5. Which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/ circular/order/instruction etc; or
6. Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/ Department or their officers; or
7. Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

Examples Applying Monetary Limits for Appeals under GST Law

Example 1: Appeal to GSTAT

- Dispute: A taxpayer is assessed an additional GST liability of ₹18,00,000 (₹12,00,000 tax + ₹3,00,000 interest + ₹3,00,000 penalty).
- Monetary Limit for GSTAT: ₹20,00,000.
- Action:
- The total disputed amount is ₹18,00,000, which is below the monetary limit for GSTAT appeals.

- Decision: The Central Tax Officer cannot file an appeal before GSTAT.

Example 2: Composite Order

- Dispute: A composite order covers multiple demand notices:
  - Demand Notice 1: ₹10,00,000 (tax)
  - Demand Notice 2: ₹25,00,000 (tax)
  - Demand Notice 3: ₹5,00,000 (interest and penalty).
  - Total Disputed Amount: ₹40,00,000.
  - Monetary Limit for GSTAT: ₹20,00,000.
- Action:
  - Since the aggregate amount exceeds ₹20,00,000, an appeal can be filed before GSTAT.

Example 3: Appeal to High Court

- Dispute: A refund of ₹85,00,000 is claimed by a taxpayer but rejected by the Department.
- Monetary Limit for High Court: ₹1,00,00,000.
- Action:
- The disputed refund amount is ₹85,00,000, which is below the monetary threshold for High Court appeals.
- Decision: The Department cannot file an appeal before the High Court.

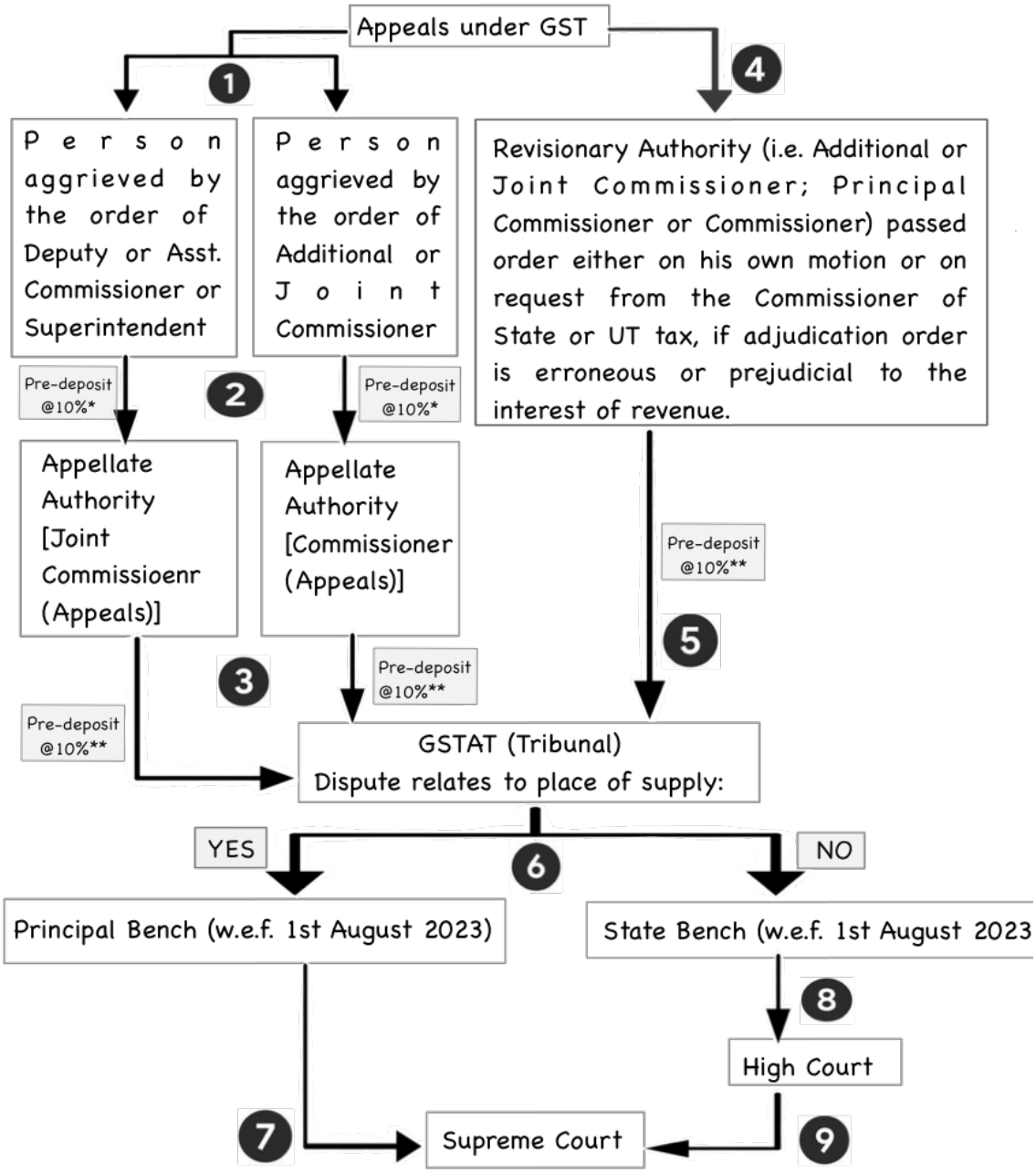
Example 4: Exclusions – Valuation of Goods

- Dispute: A taxpayer disputes the valuation of imported goods, which impacts GST liability of ₹15,00,000.
- Monetary Limit for GSTAT: ₹20,00,000.
- Exclusion: Valuation disputes are excluded from the monetary threshold.
- Action:
- Despite the amount being below ₹20,00,000, the Department may file an appeal to GSTAT due to the exclusion for valuation issues.

Example 5: Adverse Court Comments

- Dispute: A High Court order involving a GST liability of ₹75,00,000 includes adverse remarks against the Department.
- Monetary Limit for High Court: ₹1,00,00,000.
- Exclusion: Cases involving adverse comments against the Department are excluded from monetary limits.
- Action:
  - The Department may file an appeal to the Supreme Court to contest the adverse remarks, even though the disputed amount is below ₹2,00,00,000.

Hierarchy of appeals under GST



*w.e.f 1-11-2024 as per F.A. 2024, Maximum amount of pre deposit is ₹20 crore o CGST & ₹20 crore of SGST/UTGST u/s 107(6) of the CGST Act 2017.

**w.e.f 1-11-2024 as per F.A. 2024, Maximum amount of pre deposit is ₹20 crore of CGST & ₹20 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 (₹20 crore, w.e.f. 1-11-2024 as per F.A. 2024) 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% (10% w.e.f. 1-11-2024 as per Finance Act, 2024) 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 (w.e.f. 1-11-2024 as per F.A. 2024, ₹20 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 (w.e.f. 1-11-2024 as per F.A. 2024, maximum amount of ₹40 crore shall be payable for each appeal to be filed before the Appellate Authority or the Appellate Tribunal.) 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 1.11.2024 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 25.11.2024. This appeal has been taken up for hearing on 06-12-2024.

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 06-12-2024.

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 06-12-2024.

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 ₹50,000 (5,00,000 × 10% (w.e.f. 1-11-2024 as per Finance Act, 2024)) it is inaddition to pre-deposit of ₹50,000.

Case 2: Disputed amount ₹3,00,000:

Pre-deposit is ₹30,000 (`3,00,000 × 10% (w.e.f. 1-11-2024 as per Finance Act, 2024)), it is inaddition to pre-deposit of ₹2,30,000.

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 (i.e. IGST) 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 = ₹15,441/- (As per Section 115 of the CGST Act, 2017)

(₹50,50,000 × 10% (w.e.f. 1-11-2024 as per Finance Act, 2024))) × 6/100 × 86/365

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.

Appeals to Appellate Authority (i.e. Joint Commissioner (Appeals) / 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. 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.

   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.

As per Rule 108(3), in respect of an appeal filed by the aggrieved person (taxpayer), has been substituted (vide Notification No. 26/2022-CT dt. 26.12.2022) as under:

In GST regime, when an order which is appealed against is issued or uploaded by the adjudicating authority on the common portal, the same can be viewed by the Appellate Authority. Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal. As a result requirement of submission of certified copy of the said order dispensed with.

However, in cases where the decision or order has been passed manually and has not ben uploaded on the common portal, the same is not available to the Appellate Authority on the common portal. If so (i.e. decision or order appealed against is not uploaded on the common portal), the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal. However, if the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.

5. 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.

   Substitution of rule 109 (Application to the Appellate Authority), vide Notification No. 26/2022-CT dt. 26.12.2022 as under:

   Sub-rule (1) provides that an application to the Appellate Authority under sub-section (2) of section 107 shall be filed in FORM GST APL-03 (i.e. Departmental Appeal), along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgment shall be issued to the appellant immediately.

   Sub-rule (2) provides that where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal under sub-rule (1).

   Where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

   However, where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

6. 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.

7. 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.
8. The Appellate Authority can also allow to add/include grounds of appeal if satisfied that their omission was not wilfull or unreasonable.
9. 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.
10. 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.
11. **New rule 109C - Withdrawal of Appeal** (vide Notification No. 26/2022-CT dt. 26.12.2022):

    Earlier, there was no provision in the GST law for withdrawal of the appeal filed under section 107(1) (i.e. appeal filed by taxpayer) or section 107(2) (i.e. appeal filed by the department) before the first appellate authority against decision or orders of the adjudicating authority by aggrieved person or authorized officer respectively.

    The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W.

    Where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such application.

    Any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107, as the case may be.

Amendment of Section 107(11): The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 [**or section 74A** shall be inserted w.e.f. 1-11-2024, F.A 2024 dated 16-8-2024].

Revisionary proceedings by Commissioner against Adjudication orders:

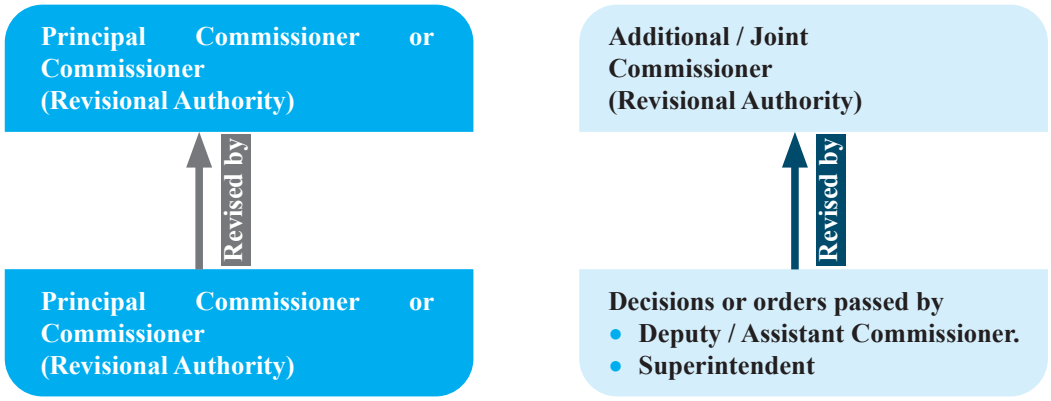
As per section 108 of the CGST Act, 2017 provides revisionary powers to the Commissioner. It provides that the Commissioner shall examine the records of any proceedings passed under the Act by officers' subordinate to him. If he considers that any decision or order passed under the Act is not proper 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 2024. The RA can revise the order during the period between 26th November 2024 (after expiry of 6 months) and 25th May 2027

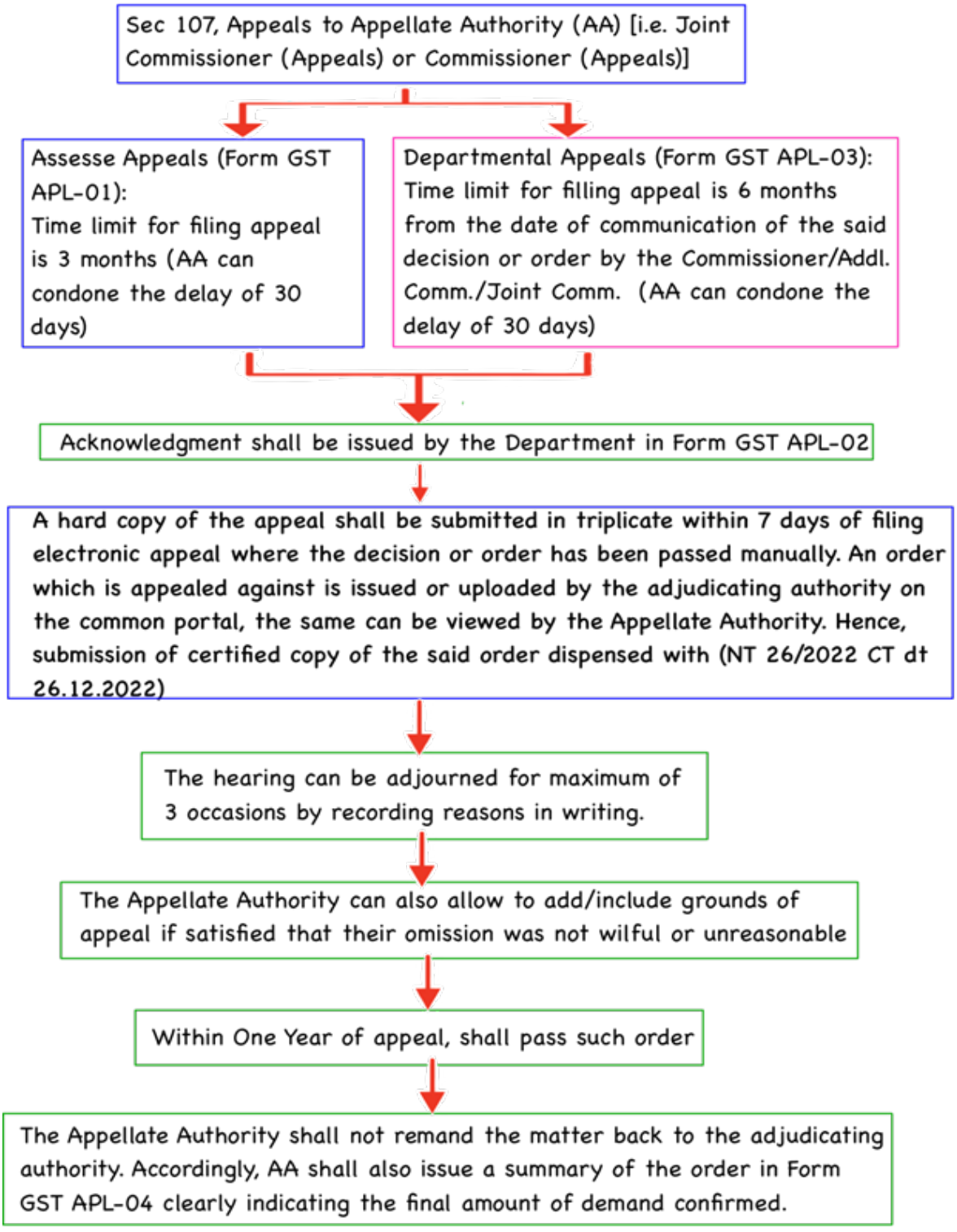
Example 4

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 2024.

The company filed an appeal against the order before the AA on 16th February 2024. The AA passed the order in favour of the company in respect of product 'P' on 31st October 2024.

The RA can pass the revised order in respect of tax rate on product 'Q' before 31st October 2025 (1 year from the date of order passed by the AA) or 15th January 2027 (3 years from the date of adjudication order), whichever is later. Thus, the RA can pass the revised order by 15th January 2027.


Sec 107, Appeals to Appellate Authority (AA) [i.e. Joint Commissioner (Appeals) or Commissioner (Appeals)]
Assesse 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/Addl. Comm./Joint Comm. (AA can condone the delay of 30 days)
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 where the decision or order has been passed manually. An order which is appealed against is issued or uploaded by the adjudicating authority on the common portal, the same can be viewed by the Appellate Authority. Hence, submission of certified copy of the said order dispensed with (NT 26/2022 CT dt 26.12.2022)
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.

Rule 108 & 109 (w.e.f. 04-08-2023):

Provision to file appeal electronically to the Appellate Authority.

Appeal can be filed manually only if,-

- it has been so notified by the Commissioner or,
- the same can not be filed electronically due to non-availability of the decision or order to be appealed against on the common portal.

Rule 108(1) Appeal by the taxpayer and Rule 109(1) Appeal by the Department.

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.

w.e.f. 1st August 2023, Section 109 – Constitution of Appellate Tribunal and Benches thereof

(1) The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority [the words, "or for conducting an examination or adjudicating the cases referred to in sub-section (2) of section 171, if so notified under the said section" shall be inserted w.e.f. 27-9-2024, F.A. 2024, dated 16-8-2024];

(2) The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches constituted under sub-section (3) and sub-section (4).

(3) The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi which shall consist of the President, a judicial Member, a Technical member (Centre) and a Technical Member (State).

(4) On the request of the State, the Government may, by notification, constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council, which shall consist of two Judicial Members, a Technical Member (Centre) and a Technical Member (State).

(5) The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:

Provided that the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.

Amendment in sub-section (5), after the proviso, the following provisos shall be inserted w.e.f. 27-9-2024, F.A. 2024, dated 16-8-2024], namely:—

"Provided further that the matters referred to in subsection (2) of section 171 shall be examined or adjudicated only by the Principal Bench:

Provided also that the Government may, on the recommendations of the Council, notify other cases or class of cases which shall be heard only by the Principal Bench.";

(6) The President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.

Amendment in sub-section (6), for the words "The President", the words, brackets and figure "Subject to

the provisions of subsection (5), the President" shall be substituted w.e.f. 27-9-2024, F.A. 2024, dated 16-8-2024.

(7) The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.

(8) Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed fifty lakh rupees and which does not involve any question of law may, with the approval of the President, and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member.

(9) If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,-

(a) where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;

(b) where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,

and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

(10) The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench:

Provided that a Technical Member (State) of a State Bench may be Transferred to a State Bench only of the same State in which he was originally appointed, in consultation with the State Government.

(11) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal."

Note: w.e.f. 1st August 2023, Presdient and Members of Appellate Tribunal, their qualification, appointment, conditions of service etc. incorporated (vide Notification No. 28/2023 CT dt. 31-7-2023)

w.e.f. 1st August 2023, The law envisages constitution of a two-tier Tribunal namely

(1) The Principal Bench and

(2) The State 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 Principal bench of the Tribunal will have jurisdiction.

Section 112. Appeals to Appellate Tribunal.-

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal [or the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act, whichever is later inserted w.e.f. 1-8-2024, F.A. 2024 dt. 16-8-2024.]

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed [or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later inserted w.e.f. 1-8-2024, F.A. 2024 dt. 16-8-2024], for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1) [or permit the filing of an application within three months after the expiry of the period referred to in sub-section (3) inserted w.e.f. 1-8-2024, F.A. 2024 dt. 16-8-2024], or permit the filing of a memorandum of cross- objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to [ten per cent inserted w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024]. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, [subject to a maximum of twenty crore rupees inserted w.e.f. 1-11-2024, F.A. 2024 dt. 16-8-2024], in relation to which the appeal has been filed.

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal,-

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by such fees as may be prescribed.

NOTIFICATION No. 18/2024 – Central Tax: The notification derives its authority from Section 171(2), Section 109(1), and the second proviso of Section 109(5) of the CGST Act, 2017. It empowers the Principal Bench of the Appellate Tribunal, which is constituted under Section 109(3) of the Act, to oversee compliance with anti-profiteering provisions. This notification will come into effect on October 1, 2024.

The Tribunal is tasked with examining whether:

- The input tax credits availed by registered persons (taxpayers) have been used to reduce the cost of goods or services provided.
- The benefits of any tax rate reduction have been passed on to consumers by lowering the prices of goods or services.

Step by step approach

⊙ **Rule 110:** Appeal to the Appellate Tribunal [w.e.f. 10 July 2024 [Notification No. 12/2024 – Central Tax dated 10 July 2024]:

- **Filing of Appeals:**
  - Appeals to the Appellate Tribunal under Section 112(1) must be filed electronically in FORM GST APL-05, with relevant documents.
  - Provisional acknowledgment is issued immediately upon filing.
  - Manual filing is allowed only if approved by the Registrar via a special or general order, with similar acknowledgment provisions.
- **Memorandum of Cross-Objections:**
  - Cross-objections under Section 112(5) must be filed electronically in FORM GST APL-06.
  - Manual filing of cross-objections is permitted if allowed by the Registrar, with applicable conditions.
- **Signing Requirements:**
  - Appeals (FORM GST APL-05) and memorandums of cross-objections (FORM GST APL-06) must be signed as per the procedure specified in Rule 26:
    1. Digital Signature Certificate (DSC): Mandatory for companies and LLPs.
    2. Electronic Verification Code (EVC): Permitted for individuals and proprietorships.

  If appeals or cross-objections are submitted without valid signatures (digital or electronic), they will be considered incomplete and not processed further until rectified.
- **Acknowledgment and Filing Date:**
  - If the order appealed against is uploaded on the portal, a final acknowledgment (FORM GST APL-02) is issued after verifying documents and removing defects.
  - The provisional acknowledgment date is considered the date of filing the appeal.
  - If the order is not uploaded, a self-certified copy must be submitted or uploaded within 7 days.
  - Submission beyond 7 days results in the date of submission being treated as the filing date.
- **Fee Structure:**
  - ₹1,000 for every ₹1 lakh of disputed tax or ITC, subject to:

  - Minimum Fee: ₹5,000.
  - Maximum Fee: ₹25,000.
  - Flat fee of ₹5,000 for appeals involving no tax, interest, fine, or penalty.
- **No Fee for Rectification Applications:**
  - No fee is required for applications seeking rectification of errors under Section 112(10).
- **Filing Completion:**
  - Appeals are considered officially filed only when the final acknowledgment (FORM GST APL-02) is issued.

Examples for Rule 110: Appeal to the Appellate Tribunal

Example 1: Filing an Appeal Electronically

- **Scenario:**
  - ABC Pvt. Ltd. disagrees with a GST demand order of ₹35,00,000 and decides to appeal to the Appellate Tribunal.
- **Steps Taken by ABC Pvt. Ltd.:**
  1. ABC logs into the GST portal and files FORM GST APL-05 electronically.
  2. The form is digitally signed using the company's DSC, ensuring compliance with Rule 26.
  3. A provisional acknowledgment is issued immediately upon submission.
  4. Since the appellate order is already uploaded on the GST portal, no additional documents are required.
  5. After verification, a final acknowledgment (FORM GST APL-02) is issued, confirming the appeal is officially filed.
  6. Fee Paid: ₹25,000 (₹1,000 for every ₹1,00,000 of disputed tax, capped at ₹25,000).

Example 2: Filing an Appeal Manually with Registrar Approval

- **Scenario:**
  - DEF Ltd. faces technical issues and cannot file an appeal electronically against a tax demand order of ₹8,00,000. The company requests permission from the Registrar for manual filing.
- **Steps Taken by DEF Ltd.:**
  1. DEF submits FORM GST APL-05 manually with the required documents, ensuring the form is physically signed by the authorized person.
  2. The Registrar approves manual filing and issues a provisional acknowledgment.
  3. After verifying the documents, a final acknowledgment (FORM GST APL-02) is issued, confirming the appeal is filed.
  4. Fee Paid: ₹8,000 (₹1,000 per ₹1,00,000 of disputed tax).

Example 3: Filing a Memorandum of Cross-Objections

- **Scenario:**

- XYZ Ltd. receives an appeal filed by the GST Department challenging the appellate authority's decision. XYZ wishes to file a cross-objection.

- **Steps Taken by XYZ Ltd.:**

1. XYZ files FORM GST APL-06 electronically on the GST portal, signing it with the company's DSC.
2. A provisional acknowledgment is issued immediately upon submission.
3. The Registrar verifies the documents and issues a final acknowledgment, confirming that the cross-objection is filed.
4. Fee Paid: ₹5,000 (minimum fee, Provided that the fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be five thousand rupees).

Example 4: Submission of Self-Certified Copy Due to Non-Uploaded Order

- **Scenario:**
  - PQR Traders files an appeal for ₹12,00,000 against an order that is not uploaded on the GST portal. The appeal is filed electronically on 10th August 2024.
- **Steps Taken by PQR Traders:**

1. On 10th August 2024, PQR submits FORM GST APL-05 electronically on the GST portal, signing it using the proprietor's EVC.
2. A provisional acknowledgment is issued immediately on 10th August 2024.
3. Since the order is not uploaded on the GST portal, PQR is required to submit a self-certified copy of the order within 7 days.
4. PQR submits the self-certified copy on 15th August 2024.
5. After verification, a final acknowledgment (FORM GST APL-02) is issued on 16th August 2024.
6. Date of Filing of Appeal: 10th August 2024 (as the self-certified copy was submitted within 7 days).
7. Fee Paid: ₹12,000 (₹1,000 per ₹1,00,000 of disputed tax).

Example 5: Delayed Submission of Self-Certified Copy

- **Scenario:**
  - MNO Pvt. Ltd. files an appeal for ₹5,00,000 against a GST demand order. The appellate order is not uploaded on the GST portal, and MNO delays submitting the self-certified copy by 10 days. The appeal is initially filed on 10th August 2024.
- **Steps Taken by MNO Pvt. Ltd.:**

1. On 10th August 2024, MNO files FORM GST APL-05 electronically on the GST portal, signing it with the company's DSC.
2. A provisional acknowledgment is issued immediately on 10th August 2024.
3. The self-certified copy of the order is submitted on 20th August 2024, which is beyond the 7-day deadline.
4. After verification, a final acknowledgment (FORM GST APL-02) is issued on 21st August 2024.
5. Date of Filing of Appeal: 20th August 2024 (as the self-certified copy was submitted after 7 days).
6. Fee Paid: ₹5,000 (minimum fee).

Example 6: Filing an Appeal with No Tax Dispute

- **Scenario:**
  - GHI Enterprises contests a late fee of ₹1,500 imposed by the appellate authority.
- **Steps Taken by GHI Enterprises:**
  1. GHI files FORM GST APL-05 electronically using the proprietor's EVC.
  2. A provisional acknowledgment is issued immediately.
  3. After verification, a final acknowledgment is issued.
  4. Since the dispute involves no tax, a flat fee of ₹5,000 is paid.

Example 7: Rectification Applications (No Fee Required)

- **Scenario:**
  - DEF Enterprises identifies a typographical error in the demand order issued by the Appellate Tribunal and applies for rectification.
- **Steps Taken by DEF Enterprises:**
  1. DEF files a rectification application electronically under Section 112(10).
  2. The application is signed using the company's DSC.
  3. No fee is charged for filing the rectification application.
  4. The tribunal corrects the error and issues a revised order.

Rule 111: Application to the Appellate Tribunal by the Department [w.e.f. 10 July 2024 [Notification No. 12/2024 – Central Tax dated 10 July 2024]:

1. Filing of Applications

- Applications to the Appellate Tribunal under Section 112(3) must be filed electronically using FORM GST APL-07, along with relevant documents.
- Provisional acknowledgment is issued immediately upon filing electronically.
- Manual filing of applications is permitted only if the Registrar allows it through a special or general order, subject to conditions and restrictions.

2. Filing of Memorandum of Cross-Objections

- Memorandums of cross-objections under Section 112(5) must be filed electronically in FORM GST APL-06.
- Manual filing of cross-objections is permitted if allowed by the Registrar under a special or general order.

3. Signing Requirements

- Applications and memorandums of cross-objections must be signed as per the procedure specified in Rule 26 of the CGST Rules:
  - Digital Signature Certificate (DSC): Required for companies and LLPs.
  - Electronic Verification Code (EVC): Allowed for individuals and proprietorships.

4. Acknowledgment and Filing Date

- If the order appealed against is uploaded on the GST portal:
  - A final acknowledgment (FORM GST APL-02) is issued after rectifying any defects.
  - The date of the provisional acknowledgment is considered the date of filing the application.
- If the order is not uploaded on the GST portal:
  - The appellant must submit or upload a self-certified copy of the order within 7 days of filing FORM GST APL-07.
  - Submission beyond 7 days will result in the date of submission being treated as the date of filing the application.

5. Explanation

- Explanation 1: The application is considered officially filed only after the issuance of the final acknowledgment (FORM GST APL-02).
- Explanation 2: For Rules 110 and 111:
  - The term Registrar includes:
    - Registrar.
    - Joint Registrar.
    - Deputy Registrar.
    - Assistant Registrar.
    - Appointed by the Government for these purposes.

Example 1: Filing an Application Electronically by GST Department

- **Scenario:**
  - The GST Department disagrees with an appellate authority's order favoring XYZ Pvt. Ltd., in a case involving a GST demand of ₹25,00,000. The department decides to file an application with the Appellate Tribunal.
- **Steps Taken by GST Department:**

1. The authorized officer of the GST Department logs into the GST portal and files FORM GST APL-07 electronically, attaching the appellate order and supporting documents.
2. The application is signed using the DSC of the authorized officer, as required by Rule 26.
3. A provisional acknowledgment is issued immediately on 1st September 2024.
4. Since the appellate order is already uploaded on the GST portal, no additional documents are required. A final acknowledgment (FORM GST APL-02) is issued on 3rd September 2024, confirming the application is officially filed.
5. Date of Filing: 1st September 2024 (provisional acknowledgment date).
6. Fee Paid: nil (no fee is required to pay for departmental appeal).

Example 2: Delayed Submission of Self-Certified Copy

- **Scenario:**
  - The GST Department files an application for ₹10,00,000 upon directions issued by the Revisionary Authority. The appellate order is not uploaded on the GST portal, and the department delays submitting the self-certified copy by 10 days.
- **Steps Taken by GST Department:**
  1. The authorized officer files FORM GST APL-07 electronically on 1st November 2024, receiving a provisional acknowledgment immediately.
  2. The department submits the self-certified copy of the order on 11th November 2024, which exceeds the 7-day deadline.
  3. The date of submission (11th November 2024) is treated as the date of filing the application.

     4.After verification, a final acknowledgment (FORM GST APL-02) is issued on 13th November 2024.
  5. Date of Filing: 11th November 2024.

Rule 113A Withdrawal of Appeal or Application filed before the Appellate Tribunal [w.e.f. 10 July 2024 [Notification No. 12/2024 – Central Tax dated 10 July 2024]:

The appellant may, at any time before the issuance of the order under sub-section (1) of section 113, in respect of any appeal filed in FORM GST APL-05 or any application filed in FORM GST APL-07, file an application for withdrawal of the said appeal or the application, as the case may be, by filing an application in FORM GST APL-05/07W:

Provided that where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal or the application, as the case may be, would be subject to the approval of the Appellate Tribunal and such application for withdrawal of the appeal or application, shall be decided by the Appellate Tribunal within fifteen days of filing of such application:

Provided further that any fresh appeal or application, as the case may be, filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or subsection (3) of section 112, as the case may be.

Here are **professional examples illustrating the provisions under Rule 113A: Withdrawal of Appeal or Application filed before the Appellate Tribunal:**

Example 1: Withdrawal of Appeal Before Issuance of Final Acknowledgment

- **Scenario:**
  - ABC Pvt. Ltd. files an appeal in FORM GST APL-05 against a GST demand of ₹10,00,000. Before the Appellate Tribunal issues its final acknowledgment (FORM GST APL-02), ABC decides to withdraw the appeal due to an amicable settlement with the tax authorities.
- **Steps Taken by ABC Pvt. Ltd.:**
  1. ABC files a withdrawal application in FORM GST APL-05W on 10th October 2024, stating the reasons for withdrawal.
  2. Since the final acknowledgment (FORM GST APL-02) has not been issued, the appeal is withdrawn automatically without requiring approval from the Appellate Tribunal.
  3. ABC is free to resolve the matter directly with the tax authorities or file a fresh appeal later, if needed.

Example 2: Withdrawal of Application After Issuance of Final Acknowledgment

- **Scenario:**
  - The GST Department files an application in FORM GST APL-07 against DEF Enterprises, disputing a GST refund order of ₹5,00,000. The final acknowledgment (FORM GST APL-02) is issued on 1st November 2024. Before the Appellate Tribunal issues its final order, the department decides to withdraw the application.
- **Steps Taken by GST Department:**
  1. The authorized officer files a withdrawal application in FORM GST APL-07W on 10th November 2024, explaining the decision to withdraw the application.
  2. Since the final acknowledgment has already been issued, the withdrawal request requires approval from the Appellate Tribunal.
  3. The Appellate Tribunal reviews the request and approves the withdrawal on 20th November 2024 (within the 15-day decision timeline).
  4. The application is officially withdrawn, and the department may file a fresh application within the prescribed timelines, if necessary.

Example 3: Filing a Fresh Appeal After Withdrawal

- **Scenario:**
  - GHI Ltd. files an appeal in FORM GST APL-05 against a penalty of ₹2,00,000. After filing, GHI realizes that critical documents were missing, making the case weak. GHI decides to withdraw the appeal and re-file it with the correct documentation.
- **Steps Taken by GHI Ltd.:**
  1. GHI files a withdrawal application in FORM GST APL-05W on 15th December 2024, citing missing documents as the reason.
  2. The withdrawal is approved by the Appellate Tribunal since the final acknowledgment (FORM GST APL-02) was issued earlier.
  3. GHI re-files the appeal in FORM GST APL-05 on 20th December 2024, ensuring all documents are attached.
  4. The fresh appeal is filed within the time limit specified in Section 112(1).

Example 4: Withdrawal Beyond the Time Limits for Fresh Filing

- **Scenario:**
  - JKL Enterprises files an appeal in FORM GST APL-05 on 1st October 2024. After the issuance of the final acknowledgment (FORM GST APL-02), JKL decides to withdraw the appeal on 15th October 2024 due to internal strategy changes. However, JKL misses the deadline to file a fresh appeal.
- **Steps Taken by JKL Enterprises:**
  1. JKL files a withdrawal application in FORM GST APL-05W, which is approved by the Appellate Tribunal on 20th October 2024.
  2. Due to internal delays, JKL fails to file a fresh appeal within the time limits prescribed under Section 112(1).
  3. As a result, the right to appeal is forfeited, and the original appellate authority's order remains binding.

Circular No. 224/18/2024-GST, issued by the Central Board of Indirect Taxes and Customs (CBIC) on July 11, 2024, provides guidelines for the recovery of outstanding dues in cases where the first appellate authority has confirmed a demand, but the GST Appellate Tribunal is not yet operational:

Key Provisions of the Circular:

1. **Inability to File Appeals:**
   - Taxpayers cannot currently file appeals against orders from the first appellate authority under Section 112 of the CGST Act due to the non-constitution of the GST Appellate Tribunal.
2. **Recovery Proceedings:**
   - Section 78 of the CGST Act mandates the initiation of recovery proceedings if the amount specified in an order is not paid within three months from the date of service of the order.
3. **Stay on Recovery:**
   - Filing an appeal with the requisite pre-deposit under Section 112(8) stays recovery proceedings for the remaining amount until the appeal is resolved, as per Section 112(9).
   - Due to the Tribunal's non-operation, taxpayers cannot file such appeals or make the associated pre-deposits, leading to uncertainty regarding the stay on recovery proceedings.
4. **Payment of Pre-Deposit Amount:**
   - Taxpayers intending to appeal can make a payment equivalent to the pre-deposit amount required under Section 112(8).
   - This payment can be made through the GST portal by navigating to Services >> Ledgers >> Payment towards demand.
   - The payment will be reflected in the Electronic Liability Register (ELL) Part-II, where the taxpayer can select the relevant outstanding demand order.
   - The deposited amount will be mapped against the selected order, reducing the outstanding demand accordingly.
5. **Effect of Pre-Deposit Payment:**
   - Once the pre-deposit amount is paid and mapped to the specific demand, recovery proceedings for the remaining balance should be deferred until the Appellate Tribunal becomes operational and the taxpayer can formally file an appeal.
6. **Adjustment of Inadvertent Payments:**
   - If a taxpayer has inadvertently paid an amount intended for the demand through FORM GST DRC-03 under the 'voluntary' or 'others' category, this amount can be adjusted against the pre-deposit required for filing an appeal before the appellate authority under Section 107 or the Appellate Tribunal under Section 112.

Practical Examples Illustrating the Circular:

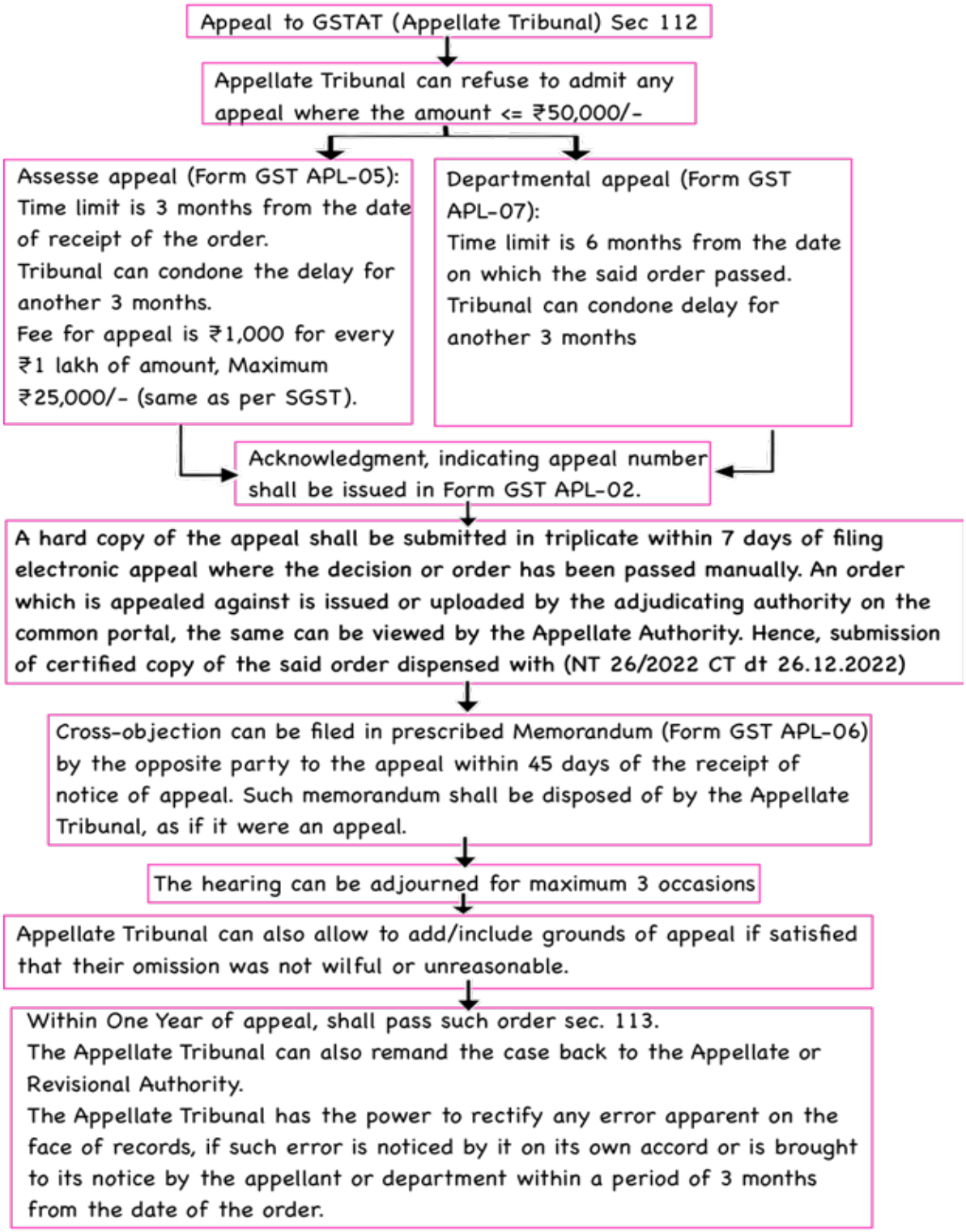
Example 1: Payment of Pre-Deposit to Defer Recovery Proceedings

- **Scenario:**
  - XYZ Pvt. Ltd. received an order from the first appellate authority confirming a GST demand of ₹10,00,000.
  - The company intends to appeal to the GST Appellate Tribunal, but it is currently non-operational.
  - To prevent recovery proceedings, XYZ decides to make a pre-deposit payment.

- **Steps Taken by XYZ Pvt. Ltd.:**
  1. **Access the GST Portal:**
     - Log in to the GST portal.
     - Navigate to Services >> Ledgers >> Payment towards demand.
  2. **Make the Pre-Deposit Payment:**
     - In the Electronic Liability Register (ELL) Part-II, select the relevant outstanding demand order.
     - Calculate the pre-deposit amount:
       - As per Section 112(8), the pre-deposit required is 10% (w.e.f. 1-11-2024 as per Finance Act, 2024) of the disputed tax amount.
       - For a demand of ₹10,00,000, the pre-deposit would be ₹1,00,000.
       - Make a payment of ₹1,00,000, which gets mapped against the selected order, reducing the outstanding demand accordingly.
  3. **Outcome:**
     - With the pre-deposit payment made and mapped, recovery proceedings for the remaining ₹9,00,000 are deferred until the Appellate Tribunal becomes operational and XYZ can formally file an appeal.

Example 2: Adjustment of Inadvertent Payment Made Through FORM GST DRC-03

- **Scenario:**
  - ABC Enterprises intended to pay a pre-deposit for an upcoming appeal but inadvertently made a payment of ₹1,50,000 through FORM GST DRC-03 under the 'voluntary' category.
  - ABC wishes to adjust this payment against the pre-deposit required for filing an appeal once the Appellate Tribunal is operational.
- **Steps Taken by ABC Enterprises:**
  1. Await FORM GST DRC-03A Availability:
     - Currently, the functionality for FORM GST DRC-03A is not available on the GST portal.
     - ABC should monitor updates for when this form becomes available.
  2. Intimate the Proper Officer:
     - In the interim, ABC should inform the jurisdictional proper officer about the inadvertent payment and express the intent to adjust it against the pre-deposit for the anticipated appeal.
  3. File FORM GST DRC-03A (Once Available):
     - Upon the availability of FORM GST DRC-03A on the portal, ABC should:
       - File the form electronically, indicating the details of the payment made through FORM GST DRC-03.
       - Request the adjustment of the ₹1,50,000 against the pre-deposit required for the appeal.
  4. Outcome:
     - The amount paid inadvertently will be treated as if it was paid towards the demand on the date of intimation through FORM GST DRC-03A.
     - This adjustment will be considered as the pre-deposit required under Section 112(8)


Appeal to GSTAT (Appellate Tribunal) Sec 112
Appellate Tribunal can refuse to admit any appeal where the amount <= ₹50,000/-
Assesse 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 where the decision or order has been passed manually. An order which is appealed against is issued or uploaded by the adjudicating authority on the common portal, the same can be viewed by the Appellate Authority. Hence, submission of certified copy of the said order dispensed with (NT 26/2022 CT dt 26.12.2022)
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 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."

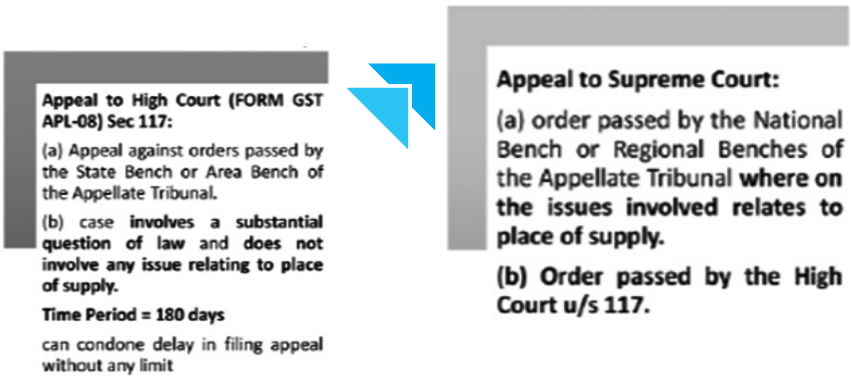
Circular No. 1006/13/2015-CX, dated 21.09.2015:

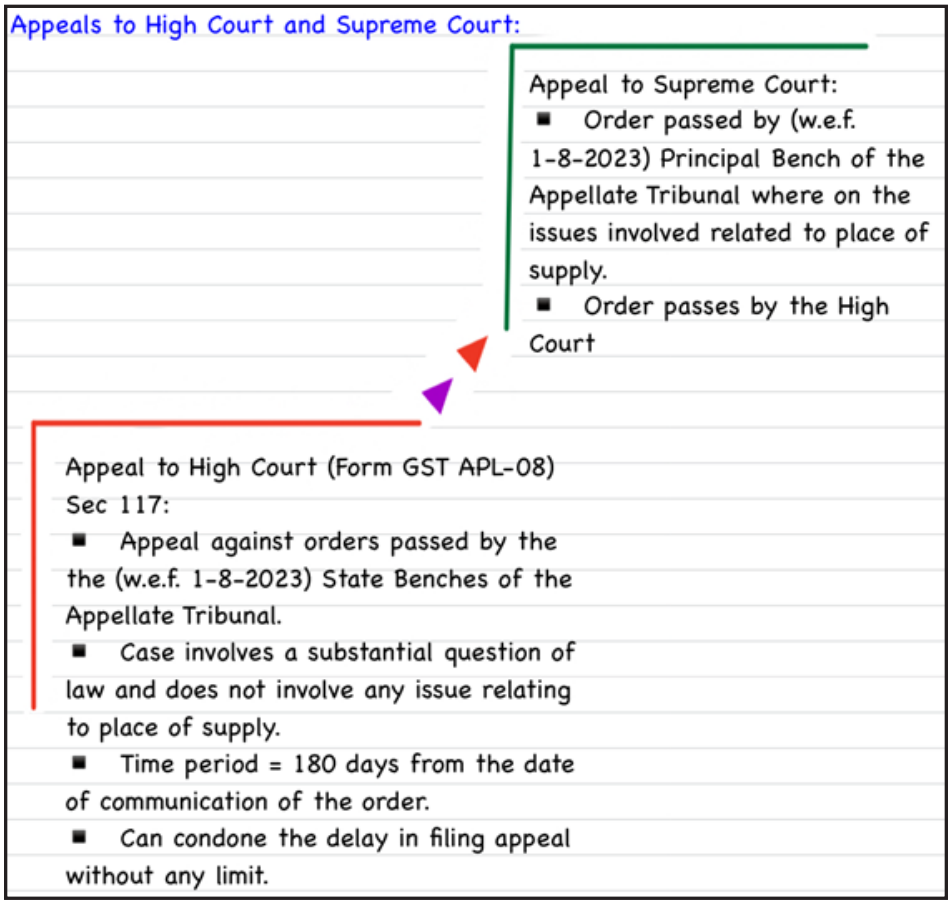
In the light of the aforesaid judgment, CBIC, has instructed its officers not to follow the Board Circulars contrary to the judgements of Hon'ble Supreme Court and High Court where Board has decided not to file an appeal on merit as such circulars become non-est in law.

Appeal to Supreme Court

An Appeal shall lie to the supreme court from any order passed by the Principal Bench 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.

Explanation.

-The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74 [or sub-sections (2) and (7) of section 74A shall be inserted w.e.f. 1-11-2024, F.A. 2024 dated 16-8-2024].

(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—

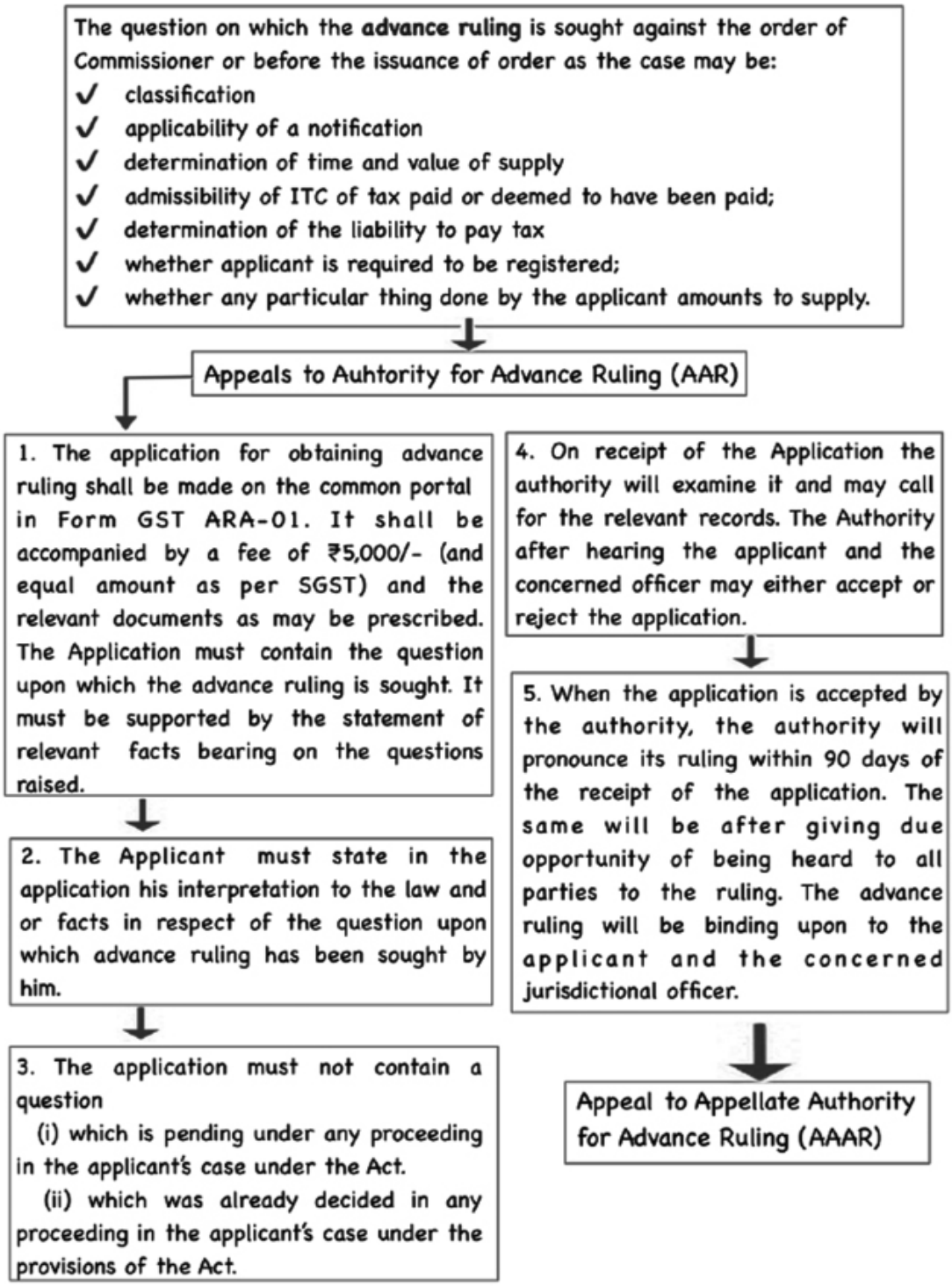
(a) the applicant and the appellant;

(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:



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.

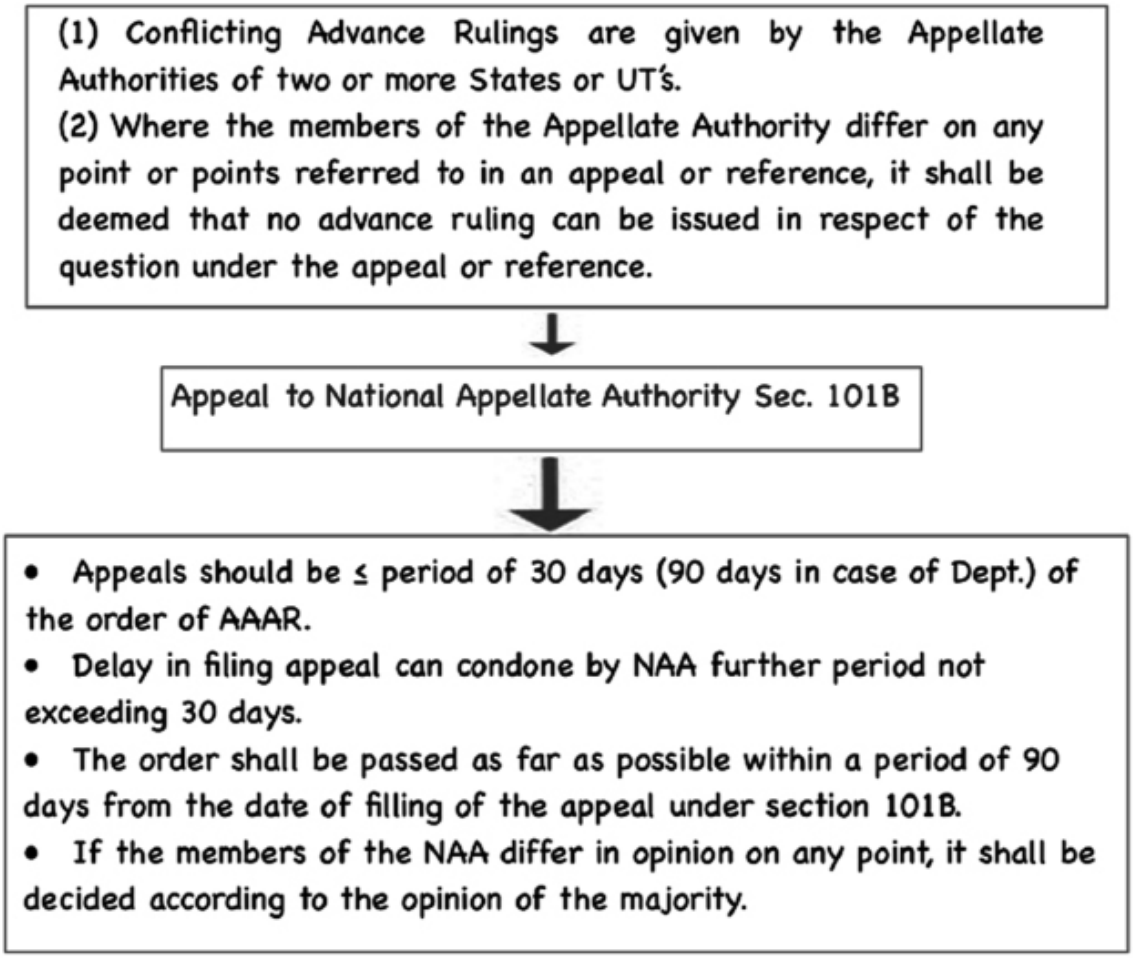


Illustration 14

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

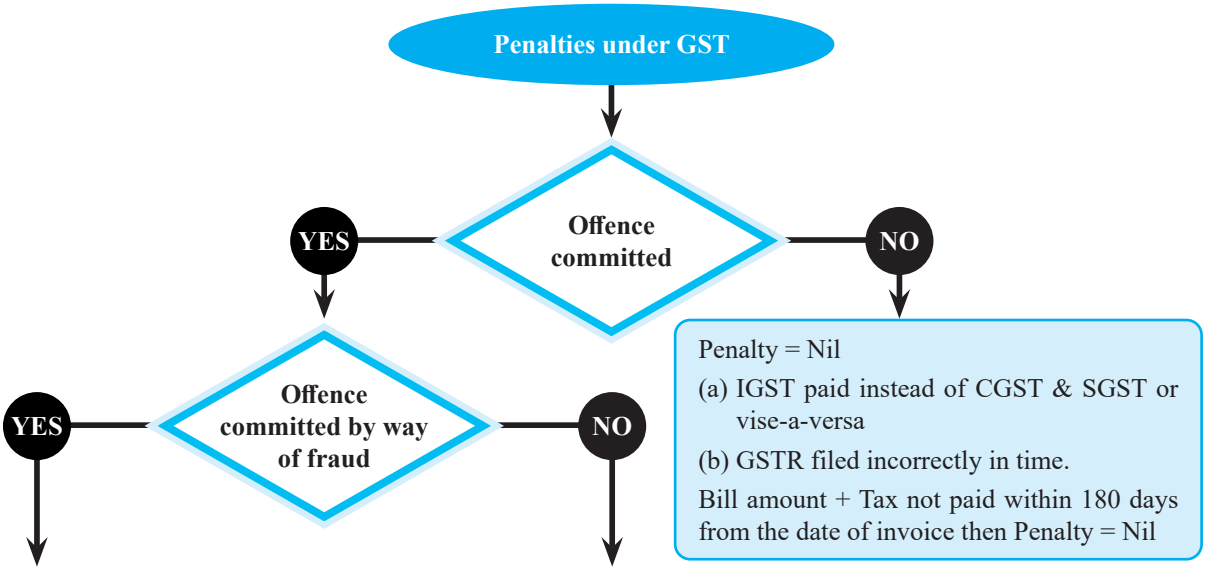
14.4

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	Nature of offence	Quantum of late fee Section 47 of CGST Act.
Penalty for wrongfully charging GST rate (charging higher rate)	• ₹10,000 whichever is higher	(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)
Penalty for not issuing invoice			
Penalty for not registering under GST			

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	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
Penalty for helping a person to commit fraud			

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.

Penalty for certain offences (Section 122(1), there are 21 offences, for which a taxable person may be held liable to penalty. The list of said offences is as under:

(i) Supplies any goods and/ or services-

- Without issue of any invoice, or
- Issues an incorrect/ false invoice in respect of such supply

(ii) Issues an invoice (or bill of supply) without supply of goods or services or both in violation of the provisions of the Act/ Rules. (Means Bogus bills)

(iii) Collects any amount as tax but fails to deposit the same with the Government beyond a period of 3 months from due date.

(iv) Collects any tax in contravention of law but fails to deposit the same with the Government beyond a period of 3 months from due date. Collection of taxes in contravention of law would also mean where a registered person collects 18% as taxes but the actual tax rate is 12%

(v) Fails to –

- Deduct tax/ deduct appropriate tax, as per section 51
- deposit the tax deducted with the appropriate Government

(vi) Fails to –

- collect tax/ collect appropriate tax as per provisions of section 52
- deposit the tax collected with the appropriate Government.

(vii)Takes or utilizes input tax credit without actual receipt of goods or services either fully or partially in contravention of provisions of Act/ Rules.

(viii) Fraudulently obtains refund of tax.

(ix) Takes or distributes input tax credit in contravention of section 20, or the rules made thereunder.

(x) With an intention to evade payment of tax-

- falsifies or substitutes financial records, or
- produces fake accounts or documents, or
- furnishes any false information or return.

(xi) Fails to obtain registration.

(xii)Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently.

(xiii) Obstructs or prevents any officer in discharge of his duties

(xiv) Transports any taxable goods without the cover of specified documents.

(xv) Suppresses his turnover leading to evasion of tax.

(xvi) Fails to keep, maintain or retain books of account and other documents as specified in law.

(xvii) Fails to furnish information or documents called for by an officer or furnishes false information or documents during any proceedings.

(xviii) Supplies, transports or stores any goods which he has reason to believe are liable to confiscation.

(xix) Issues any invoice or document by using the registration number of another taxable person.

(xx) Tampers with or destroys any material evidence or document

(xxi) Disposes off or tampers with any goods that have been detained, seized, or attached under this Act.

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.

w.e.f. 1st October 2023, Section 122(1B) is inserted to provide that any electronic commerce operator who is liable to collect tax at source under section 52 (w.r.e.f. 1-10-2023 as per F.A. 2024 dt. 16-08-2024):

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

Thus, the proposed amendment seeks to provide for penal provisions applicable to electronic commerce operators in case of contravention of provisions relating to supplies of goods or services made through them by unregistered persons or composition taxpayers.

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.

w.e.f. 1-10-2024 Insertion of new section 122A. After section 122 of the Central Goods and Services Tax Act, the following section shall be inserted, namely:–

"Section 122A. Penalty for failure to register certain machines used in manufacture of goods as per special procedure.

(1) Notwithstanding anything contained in this Act, where any person, who is engaged in the manufacture of goods in respect of which any special procedure relating to registration of machines has been notified under section 148, acts in contravention of the said special procedure, he shall, in addition to any penalty that is paid or is payable by him under Chapter XV or any other provisions of this Chapter, be liable to pay a penalty equal to an amount of one lakh rupees for every machine not so registered.

(2) In addition to the penalty under sub-section (1), every machine not so registered shall be liable for seizure and confiscation:

Provided that such machine shall not be confiscated where–

(a) the penalty so imposed is paid; and

(b) the registration of such machine is made in accordance with the special procedure within three days of the receipt of communication of the order of penalty." [Notification No. 16/2024–Central Tax | Dated: 6th August, 2024].

Illustrative Example

- **Scenario:**
  - A manufacturer uses 10 machines for producing goods and is required to register these machines as per the special procedure notified under Section 148.
  - Out of these, 3 machines were not registered by the due date.
- **Consequences:**
  - Penalty: ₹1,00,000 × 3 machines = ₹3,00,000.
  - Seizure: The 3 unregistered machines are liable for seizure and confiscation.
- **Avoiding Confiscation:**
  - If the manufacturer:
    1. Pays the penalty of ₹3,00,000, and
    2. Registers the 3 unregistered machines within 3 days of receiving the penalty order,

  then confiscation will not apply, and the machines can continue to be used.

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 74A inserted w.e.f. 1-11-2024, F.A. 2024, dt. 16-8-2024] 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.

New Section 128A. Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods (w.e.f 1-11-2024, F.A. 2024, dated 16-8-2024):

- Section 128A allows taxpayers to waive interest and penalties on tax demands raised under Section 73 if the full tax is paid by the prescribed deadline.
- This provision applies to tax periods from 1st July 2017 to 31st March 2020 i.e. FY 2017-18, FY 2018-19, and FY 2019-20.
- Taxpayers must ensure that there are no pending appeals or writ petitions and no erroneous refunds to avail of the waiver.

Notification No. 21/2024 (October 8, 2024):

- o On October 8, 2024, the Ministry of Finance, Department of Revenue, issued Notification No. 21/2024 - Central Tax under the CGST Act, 2017. This notification outlines the timelines for registered taxpayers to pay their outstanding tax liabilities as per notices, statements, or orders under Section 128A.
- o For registered persons who have received notices, statements, or orders under section 128A(a), (b), or (c), the payment due date is up to March 31, 2025. These clauses refer to the cases where the order is not passed u/s 73(9), 107(11), 108(1), or 113(1).
- o In cases where the order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority, Appellate Tribunal, or a court, the due date for payment is the Date ending on completion of six months from the date of issuance of the order by the proper officer redetermining tax under section 73 of the said Act.

GST Circular No. 238/32/2024 (October 15, 2024):

- o On October 15, 2024, the Goods and Services Tax (GST) authorities issued an important circular that provides much-needed clarification on Section 128A of the CGST Act.
- o This circular provides important clarifications about the implementation of Section 128A, confirming that taxpayers must file applications using FORM GST SPL-01 or FORM GST SPL-02 on the common portal to avail of the waiver.
- o The proper officer shall issue an order in FORM GST SPL-05, accepting the said application, if he is satisfied that the applicant is eligible for a waiver of interest or penalty or both under Section 128A. However, if the proper officer, based on the application and the reply in FORM GST SPL-04 received from the taxpayer, is of the view that the applicant is not eligible for a waiver of interest or penalty or both under Section 128A, he shall issue an order in FORM GST SPL-07, rejecting the said application.
- o If the application is rejected, taxpayers may appeal the decision.

GST Advisory (November 8, 2024):

- o The advisory from GSTN elaborates on the procedural aspects of the waiver scheme under Section 128A.
- o As per the waiver scheme, if a notice or order is issued under Section 73 for the financial years 2017-18, 2018-19, and 2019-20, the taxpayers are required to apply FORM GST SPL-01 or FORM GST SPL-02, respectively on the common portal within three months from notified date, which is 31.03.2025.
- o These forms will be available on the common portal tentatively from the first week of January 2025.
- o In the meantime, taxpayers can pay the demanded tax amount through the "payment towards demand" facility in case of demand orders and through Form GST DRC-03 in case of notices. However, if payment has already been done through Form GST DRC-03 for any demand order then the taxpayer needs to link the said Form GST DRC 03 with such demand order through Form GST DRC-03A, which is now available on the common portal.

Insertion of Rule 164 through Notification 20/2024- Central Tax prescribing procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73:

1. A New Amnesty scheme has been notified u/s 128A from 1st November 2024 for certain tax periods in respect of non-evasion cases u/s 73. The waiver would cover the entire interest and penalty under the case.

2. The conditions for opting this scheme would be as follows:

   a) The Demand should pertain to the period from 1st July 2017 to 31st March 2020 (FY 2017-18 to 2019-20)

   b) The demand falls under any of the following categories.

      Clause (a) of Section 128(1) - Where Notice has been issued u/s 73 but adjudication order not yet issued, or

      Clause (b) of Section 128(1) - Adjudication order issued u/s 73 but first appellate order is not yet issued, or

      Clause (c) of Section 128(1) - First appeal order is issued but the order from Tribunal/court has not been issued.

   c) In case of Revision or Appeal by the Department before First Appellate Authority / Appellate Tribunal, the amnesty would be subject to the condition that the person pays the additional tax payable within 3 months of the order of Appellate Authority / Tribunal / Court / Revisional Authority.

   d) The entire tax amount as per the relevant demand / notice has been discharged within 31st March 2025 (Notified Date).

   e) It would cover cases where notice was issued u/s 74 but was reclassified u/s 73 by Appellate Authority/ Tribunal / Court. Here, the due date of payment would be 6 months from the date of issuance of order redetermining tax u/s 73.

   f) No refund would be granted for the interest and penalty already paid in the case.

   g) This would be only for demand cases and not for erroneous refund.

   h) The Appeal or Writ Petition before the Appellate Authority / Tribunal / Court would be withdrawn within the specified due date.

   i) Once the proceedings stand concluded upon payment, no appeal can be made against the relevant adjudication / appeal order.

3. A notice or order can cover both demands from 2017-2020 (allowable under 128A) and subsequent periods (not allowable under 128A). Further, the notice / order can cover both demand orders (allowable under 128A) and erroneous refund orders (not allowable under 128A).

4. To avail amnesty scheme, one needs to pay full tax for the portion 'allowable under 128A' and for the portion 'not allowable under 128A'

5. In case of multiple notices/ statements/ orders pertaining to period July 2017 to March 2020, separate applications in FORM GST SPL-01 or FORM GST SPL-02 shall be made w.r.t each of the concerned notice/ statement/ order. (as per Circular 238/32/2024- GST issued on 15-10-2024)

6. W.r.t application under clause (a) – payment shall be made via DRC-03.

7. W.r.t application under clause (b) or (c) - payment shall be made only against the debit entry created in the Part II of the Electronic Liability Register (ELR) by the demand order. (procedure mentioned in para 4 of Circular No. 224/18/2024 -GST dated 11th July 2024 may be referred to)

8. In case where payment of tax demanded in the order has already been made through DRC-03, the procedure prescribed in rule 142(2B) may be followed. The taxpayer is required to file an application in FORM GST DRC-03A, in order to adjust the amount already paid via DRC-03, towards the demand created in the ELR-Part II, before filing the application for waiver under Section 128A in FORM GST SPL-02. (date of payment in DRC-03 will be considered and not date of adjustment using DRC-03A).

9. In case if the tax payable as per the notice/ statement/ order includes the amount demanded due to contravention of provisions of section 16(4), which is however not payable anymore due to the retrospective insertion of section 16(5) & 16(6), the amount of tax payable for eligibility of waiver of interest or penalty or both shall be calculated after deducting the amount, which is not payable anymore in terms of section 16(5) & 16(6).

10. Very Important: Where the taxpayer is deducting the amount of ITC which was denied on account of contravention of section 16(4), but which is now available as per retrospectively inserted provisions of section 16(5) & 16(6) of the CGST Act, he is NOT required to file an application for rectification of the same in terms of the special procedure notified under section 148 vide notification No. 22/2024-Central tax dated 8th October 2024.

11. Only ITC now available as per 16(5) & 16(6) shall be reduced and the tax officer scrutinizing such applications is also required to verify the same.

12. Proper Officer: For SPL-01 – PO will be PO to issue Notice u/s 73 and for SPL-02, PO shall be PO for recovery u/s 79.

13. In case of an appeal by the dept. officer against orders mentioned in clause (b) & (c), the waiver shall be conditional upon payment of the additional tax as determined in such appeal/revision, within 3 months from such order, otherwise Orders issued in SPL- 05/SPL-06 shall become void.

14. If any amount of interest and penalty is payable by the applicant on account of some demand pertaining to the period OTHER than the period mentioned in section 128A(1) or pertaining to demand of erroneous refund, the detail of the same shall be mentioned in GST SPL-05 or FORM GST SPL-06, as the case may be.

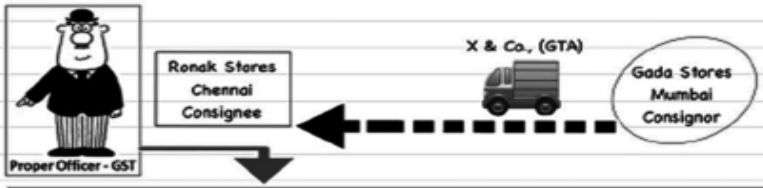
    Further, in such cases, an opportunity of personal hearing may be granted to the applicant, before issuance of order in FORM GST SPL-05 or FORM GST SPL-06.

15. The applicant is required to pay the amount of interest or penalty or both mentioned above in GST SPL-05 or GST SPL-06, within a period of 3 months from the date of issuance of the said order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be.

16. In case where the said amount is not paid within the period of 3 months from the date of issuance of the said order in FORM GST SPL- 05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void, as per sub-rule (17) of rule 164.

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

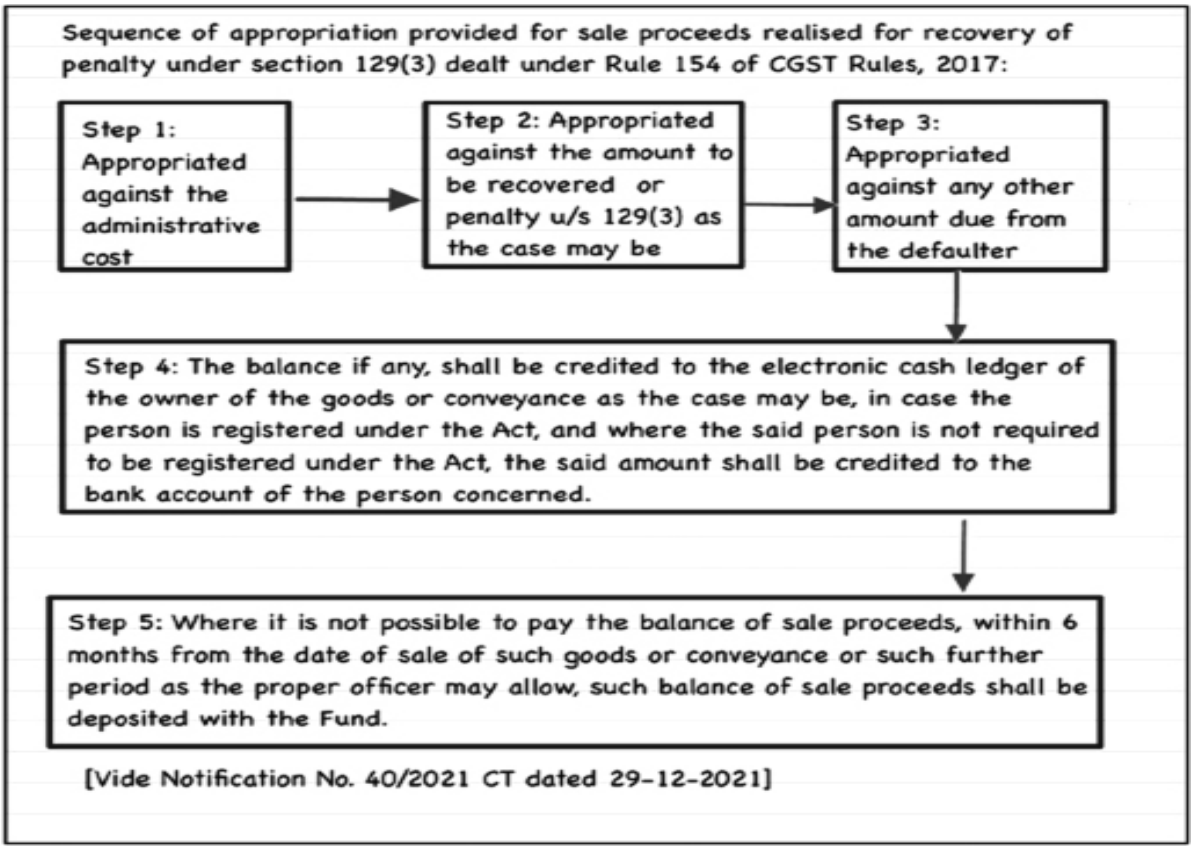
2,70,000 × 200% = 5,40,000

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/-

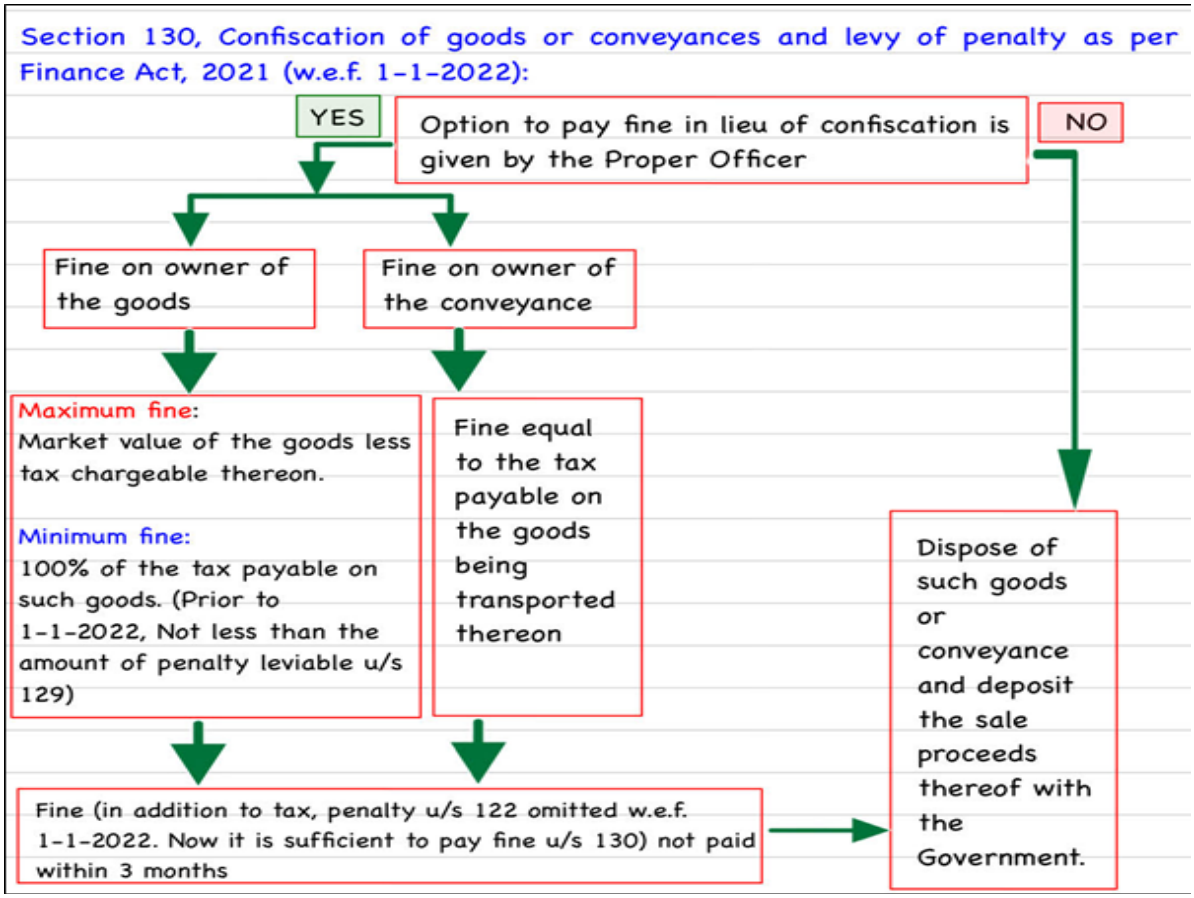
Note:

(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.



Confiscation takes place in the following cases u/s 130(1):

(i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made there under leading to evasion of tax.

(ii) does not account for any goods on which he is liable to pay tax under this Act.

(iii) supplies any goods liable to tax under this Act without having applied for the registration.

(iv) Contravenes any of the provisions of the CGST/SGST Act or rules made there under with intent to evade payment of tax."

(v) Uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made there under.

However, the conveyance shall not be confiscated if 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.

A circular has been issued clarifying various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices:

[Circular No. 171/03/2022-GST, dated 6th July, 2022]

Case 1:

Issued Tax invoice

Without any underlying supply of goods or services or both

Mr. A registered person under GST

Mr. B registered person under GST.

ITC not allowed. ITC not availed & utilised by Mr. B.

This activity does not satisfy the criteria of "supply", as defined under section 7 of the CGST Act.
As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against 'A' for the said transaction.

Accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against 'A' in respect of the said transaction.

The registered person 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.

Penalty u/s 122(1)(ii) = ₹20,000 (CGST + SGST) or Tax Evaded (whichever is higher)

Case 2:

Issued Tax invoice

Without any underlying supply of goods or services or both

Mr. A registered person under GST

Mr. B registered person under GST.

No tax to be recovered from 'A'

'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies.

The registered person 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.

Penalty u/s 122(1)(ii) = ₹20,000 (CGST + SGST) or Tax Evaded (whichever is higher)

Since, 'B' has availed and utilised fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both in contravention of Section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.

Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including under section 122. It means no other penalty will be levied.

On Mr. B: Penalty of 15% or 25% or 50% or 100% of tax {CGST & SGST} (depending on time of payment of tax) u/s 74.

Case 3:

Issued Tax invoice

Without any underlying supply of goods or services or both

Mr. A registered person under GST

Mr. B registered person under GST.

No tax to be recovered from 'A'

'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both.

The registered person 'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.

Penalty u/s 122(1)(ii) = ₹20,000 (CGST + SGST) or Tax Evaded (whichever is higher)

As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same.

Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.

However, in such cases, 'B' shall be liable for penal action both under section 122(1)((ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goodsand/or services.

Penalty to Mr. B ₹20,000 (CGST + SGST) or Tax Evaded (whichever is higher) u/s 122(1)(ii) & ₹20,000 (CGST +SGST) or Tax Evaded (whichever is higher) u/s 122(1)(vii)

Since, 'C' has availed and utilised fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both in contravention of Section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.

Mr. C has to pay penalty @ 15% or 25% or 50% or 100% of tax as the case may be u/s 74 along with Interest u/s 50.

Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invokable, subject to conditions specified therein, based on facts and circumstances of each case.

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

15.1 Introduction

15.2 Inspection, Search, Seizure (Section 67 of CGST Act, 2017)

15.3 Arrest and Prosecution

15.4 Compounding of Offences

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.

Monetary limit of ₹500 lakh is not applicable to prosecute a person:

(i) Habitual evaders: A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.

(ii) Arrest Cases: Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.

Guidelines on issuance of summons under section 70 of the CGST Act, 2017:

(Instruction No. 03/2022-23 (GST-Investigation) dated 17.08.2022)

Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.

↓

the officer issuing summons should record in file about appearance/ non-appearance of the summoned person

↓

Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.

↓

Summons should not issued in first instance to Senior management officials unless their involvement in the decision making leads to loss of revenue.

↓

Generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation.

↓

The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.

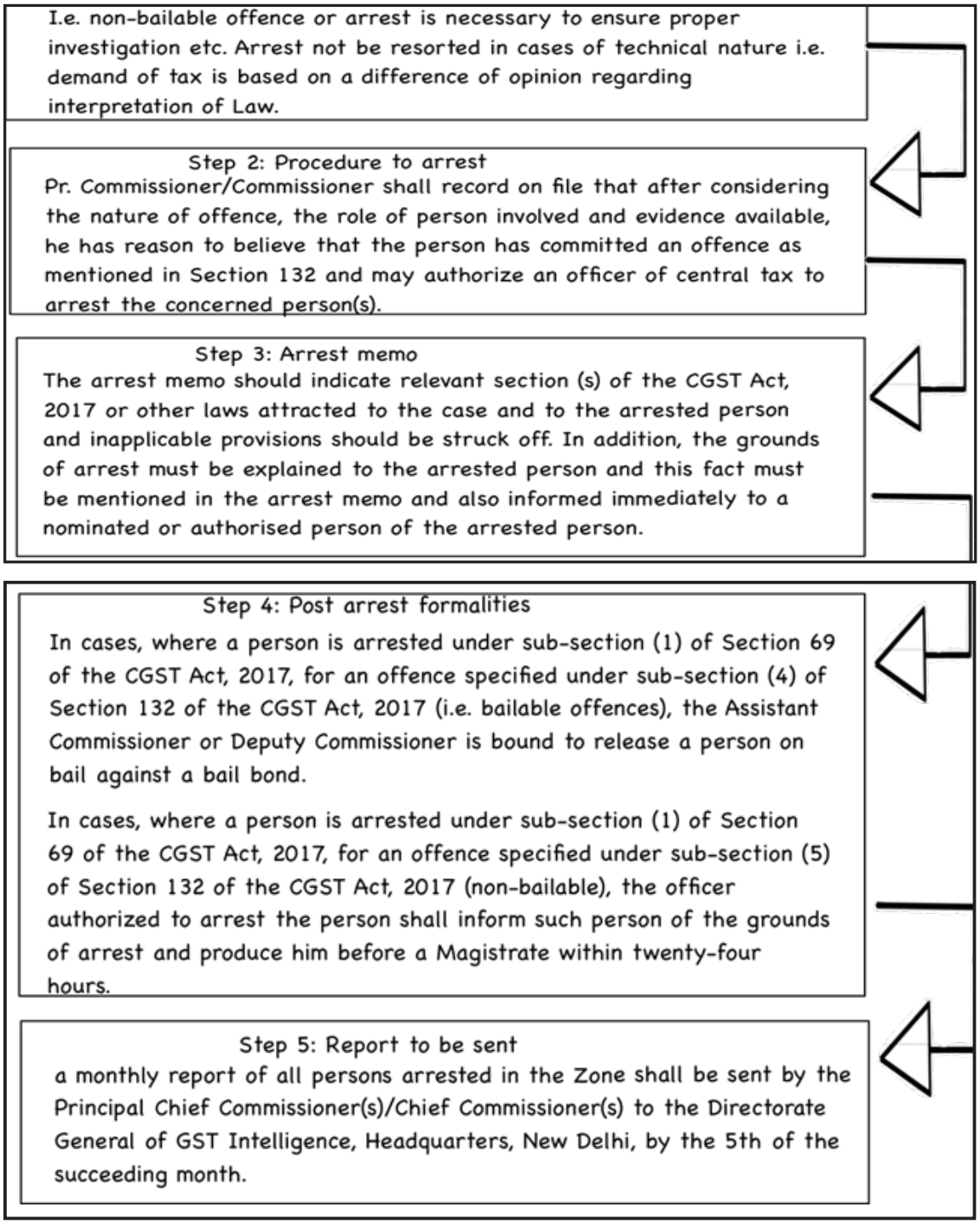
↓

All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons.

↓

Generally 3 summons at reasonable intervals will be issued in case summoned person does not join investigation. After that a complaint should be filed with jurisdictional magistrate. However, this does not bar to issue further summons to the said person under section 70 of the CGST Act, 2017.

Guidelines for arrest and bail in relation to offences punishable under the CGST Act, 2017 (Instruction No. 02/2022-23 (GST-Investigation), dated 17.08.2022):



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.

w.e.f. 1-11-2024, F.A 2024 dated 16-8-2024, the following sub-section shall be inserted, namely: —

[(1A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.]

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) Omitted w.e.f. 1st October 2023, 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) Omitted w.e.f. 1st October 2023, tampers with or destroys any material evidence or documents;

(k) Omitted w.e.f. 1st October 2023, 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) (W.e.f. 1st October 2023, read as) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) and (i) 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-cognizable	Bailable
132(1)(iii)	> ₹100 lakhs ≤ ₹200 lakhs	Upto 1 years with fine	Non-cognizable	Bailable
132(1)(iv)	w.e.f. 1st October 2023, Offence specified in clause (f), of Section 132(1) of the CGST Act, 2017	Upto 6 months or with fine or with both	Non-cognizable	Bailable

Section 132(1)(iii), in case of [w.e.f. 1st October 2023 an offence specified in clause (b)], (prior to 1st October 2023 "any other offence") where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds ₹100 lakh but does not exceed ₹200 lakh with imprisonment for a term which may extend to one year and with fine.

Simplified approach:

OFFENCES

Cognizable offences if the tax evaded > ₹500 lakh (section 132(5) of the CGST Act, 2017)	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): 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.	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), (h), (i) & (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 April 2024:

(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-2B 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-2B	Not applicable	Not applicable	Not applicable
'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 [omitted w.e.f. 1-10-2023 Section 132(1)(k)]	not an offence u/s 132		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.

Section 138(1): Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

w.e.f. 1st October 2023, 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), (h), (i) and (l) of sub-section (1) of section 132;

(b) (omitted – 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 clause (b) of sub-section (1) of Section 132;

(d) a person who has been convicted for an offence under this Act by a court;

(e) (omitted - 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)

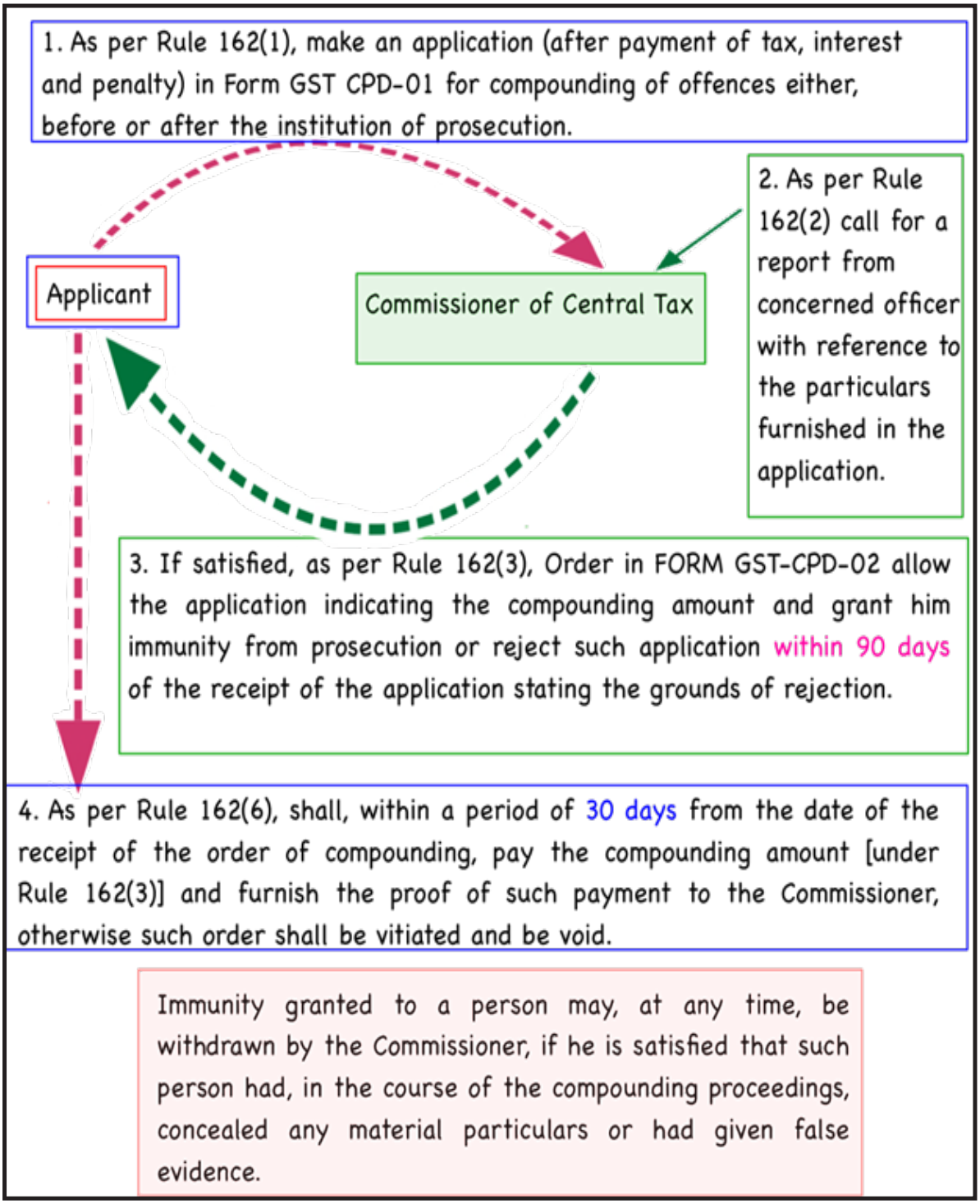
(f) any other class of persons or offences as may be prescribed:

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.

Section 138(2): The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than 25%. of the tax involved and the maximum amount not being more than 100% of the tax involved.

Section 138(3): On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.


1. As per Rule 162(1), make an application (after payment of tax, interest and penalty) in Form GST CPD-01 for compounding of offences either, before or after the institution of prosecution.
Applicant
Commissioner of Central Tax
2. As per Rule 162(2) call for a report from concerned officer with reference to the particulars furnished in the application.
3. If satisfied, as per Rule 162(3), Order in FORM GST-CPD-02 allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within 90 days of the receipt of the application stating the grounds of rejection.
4. As per Rule 162(6), shall, within a period of 30 days from the date of the receipt of the order of compounding, pay the compounding amount [under Rule 162(3)] and furnish the proof of such payment to the Commissioner, otherwise such order shall be vitiated and be void.
Immunity granted to a person may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence.

w.e.f. 1st October 2023, Rule 162(3A) of the CGST Rules, 2017, The Commissioner shall determine the compounding amount under sub-rule (3) of Rule 162 of the CGST Rules, 2017 as per the Table below:-

S. No.	Offence	Compounding amoun if offence is punishable under clause (i) of subsection (1) of Section 132 (i.e. tax amount involved > ₹500 lakhs)	Compounding amoun if offence is punishable under clause (ii) of subsection (1) of Section 132 (i.e. tax amount involved > ₹200 lakhs ≤ ₹500 lakhs)
(1)	(2)	(3)	(4)
1	Offence specified in clause (a) of sub-section (1) of section 132 of the Act	Up to 75% of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 50% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.	Up to 60% of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.
2	Offence specified in clause (c) of sub-section (1) of section 132 of the Act		
3	Offence specified in clause (d) of sub-section (1) of section 132 of the Act		
4	Offence specified in clause (e) of sub-section (1) of section 132 of the Act		
5	Offence specified in clause (f) of sub-section (1) of section 132 of the Act	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6	Offence specified in clause (h) of sub-section (1) of section 132 of the Act		
7	Offence specified in clause (i) of sub-section (1) of section 132 of the Act		
8	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of sub-section (1) of section 132 of the Act	Amount equivalent to 25% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.

Provided that where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.".

Rule 162(4), the application shall not be decided under sub-rule (3) without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

Rule 162(5), The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

Rule 162(6) The applicant shall, within a period of thirty days from the date of the receipt of the order under sub-rule (3), pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.

Rule 162 (7) In case the applicant fails to pay the compounding amount within the time specified in sub-rule (6), the order made under sub-rule (3) shall be vitiated and be void.

Rule 162 (8) Immunity granted to a person under sub-rule (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted.

Summary: w.e.f. 1-10-2023, the prescribed fees for compounding of GST offences have been reduced to the range of 25% to 100% of the tax amount involved (as opposed to the earlier 50 to 150%). However, option of compounding has been taken away for cases of fake invoicing.

Example 1:

Are there any monetary limits prescribed for compounding of offence?

Answer:

As per Section 138(2), the amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than 25%. of the tax involved and the maximum amount not being more than 100% of the tax involved.

Example 2:

What happens after the offence has been compounded?

Answer:

On payment of compounding amount, no further proceeding shall be initiated under the CGST Act, 2017 against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence shall stand abated.

Example 3:

Answer whether the following offences are compoundable as per section 138 of CGST Act, 2017 read with Rule 162 of the CGST Rules, 2017.

Particulars	Compoundable –Yes/No	Reason
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 with the above said Invoices issued by X Firm Case A: where the ITC wrongly availed or utilised is ₹300 lakh. Case B: where the ITC wrongly availed or utilised is ₹150 lakh.	In case of X Firm- (a) Committed offence for First time or Second time as the case may be. 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). Not Punishable under Section 132(1)(iii) because not tax is invovled. Since, it is not a supply. Penalty can be imposed under section 122(1)(ii) of the CGST Act, 2017 for issuing tax invoice without supply of goods or services or both (vide CBIC Circular No. 171/03/2022 dated 6th July 2022). However, option of compounding has been taken away for cases of fake invoicing irrespective of value.

		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. Case A: Compounding amount as per Rule 162(3A) of the CGST Rules, 2023 is as follows Up to 60% of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken Maximum Compounding amount ₹300 lakh x 60% = ₹180 lakh And Minimum Compounding amount ₹300 lakh x 40% = ₹120 lakh Note: Compounding amount if offence is punishable under clause (ii) of sub-section (1) of Section 132. Case B: Compounding amount as per Rule 162(3A) of the CGST Rules, 2023 is as follows No compounding is allowed. Since, the offence covered under Section 132(1)(iii) where the ITC credit wrongly availed or utilised does not exceeds ₹200 lakh. Note: Compounding of amount is allowed if the offence is punishable under Section 132(1)(i) or Section 132(1)(ii).

Z LLP has a tax liability of `510 Lakhs for the month of December 2023. Z LLP failed to pay till 30th April 2024. Due date of payment for Z LLP is 20th January 2024.	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. The Maximum Compounding amount if offence is punishable under clause (i) of sub-section (1) of Section 132 is ₹382.5 lakh (i.e. ₹510 lakh x 75%). The Minimum Compoounding amount if offence is punishable under clause (i) of sub-section (1) of Section 132 is ₹255 lakh (i.e. ₹510 lakh x 50%).
Y, an exporter availed excess refund of Input Tax credit of ₹600 lakh	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. The Maximum Compounding amount if offence is punishable under clause (i) of sub-section (1) of Section 132 is ₹450 lakh (i.e. ₹600 lakh x 75%). The Minimum Compoounding amount if offence is punishable under clause (i) of sub-section (1) of Section 132 is ₹300 lakh (i.e. ₹600 lakh x 50%).
F a dealer has furnished wrong information in return in order to evade or minimize tax outflow to the extent of ₹700 lakh.	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. Compounding Amount equivalent to 25% of tax evaded. Therefore, compounding amount is ₹175 lakh (i.e. ₹700 lakh x 25%)
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	Such offence is not compoundable
ABC Ltd have tampered or destroyed material evidence under this Act for Assessment Z Pvt Ltd company Intentionally fails to provide information or supplied wrong information to the officer	NOT COMPOUNDABLE	Such offence is not compoundable

Mr.A being a GTA knowingly transported drugs or goods without proper Invoice to other place. Such goods are liable to confiscation. Case A: Tax evasion quantified by the Proper Officer of ₹150 lakh. Case B: Tax evasion quantified by the Proper Officer of ₹250 lakh. Case C: Tax evasion quantified by the Proper Officer of ₹550 lakh.	Compoundable where tax evasion is more than ₹200 lakh. Committed offence for First time – Yes Committed offence for Second time – No	This offence falls in Section 132(1)(h). Case A: Not compoundable. Since, amount of tax evasion not exceed ₹200 lakh. Case B: compounding amount is ₹62.50 lakh (i.e. ₹250 lakh x 25%) Case C: compounding amount is ₹137.50 lakh (i.e. ₹550 lakh x 25%)
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.

Amendment of section 151, Power to collect statistics: w.e.f. 1-1-2022, Section 151 of the CGST Act has been substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

Earlier, Commissioner was required to issue a notification to call for information from the concerned persons relating to any matter in respect of which statistics were to be collected.

Amendment of section 152, Bar on disclosure of information: w.e.f. 1-1-2022, Section 152 of the CGST Act has been amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

w.e.f. 1st October 2023 New Section 158A: Concent based sharing of information furnished by taxable person:

(1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of subsection (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified (w.e..f 1st October 2023 vide Notification No. 33/2023 dt. 31-7-2023 notifies "Account aggregator" as the system with which information may be shared by common portal based on consent u/s 158A) by the Government, in such manner and subject to such conditions as may be prescribed, namely:-

(a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;

(b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;

(c) such other details as may be prescribed.

(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of –

(a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of subsection (1); and

(b) the recipient, in respect of details furnished under clause (b) of subsection (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient,

in such form and manner as may be prescribed.

(3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

Consent based sharing of information furnished by taxable person {vide NOTIFICATION No. 06/2024 – Central Tax dated 22nd February 2024):

the Central Government, on the recommendations of the Council, hereby notifies "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent under subsection (2) of Section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017).

Explanation.— For the purpose of this notification, "Public Tech Platform for Frictionless Credit" means an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its "Statement on Developmental and Regulatory Policies" dated the 10th August, 2023 and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

Insertion of new Rule 163 (w.e.f. 01-10-2023):

New provision prescribing rules for consent based sharing of information with respect to particulars furnished in registration applications, returns filed etc. by a registered person with "Account Aggregator" [a NBFC which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI and defined as such in the NBFC Aggregator (Reserve Bank) Directions, 2016] ("requesting system") as a consequence of insertion of section 158A vide Finance Act, 2023.

"Account Aggregator" [a NBFC which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI and defined as such in the NBFC Aggregator (Reserve Bank) Directions, 2016] **as the systems with which information may be shared by the common portal based on consent under the newly inserted Section 158A**

[Notification No 33/2023-CT dt 31-07-2023 w.e.f. 01-10-2023]

Amendment of section 168, Power to issue instructions or directions: w.e.f 1-1-2022, Section 168 of the CGST Act has been amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for information.

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 not being less than 25% of the tax involved and

_____

(ii) The upper limit for compounding amount is not being more than 100% of the tax involved.

Answer:

1.	2.	3.	4.	5.
d	c	d	b	d

Anti-Profiteering 16

This Module Includes

16.1 Provisions

16.2 Key Rulings

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 -			Service provider cannot avail VAT paid as Input tax credit in Service tax regime
Towards Input services	15	15	
Towards Material 'M'	NIL	5	
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.'.

Amendment of section 171(2): the following proviso and Explanation shall be inserted [w.e.f. 27-9-2024, F.A.2024, dated 16-8-2024], namely: —

'Provided that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to 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.

Explanation 1.—For the purposes of this sub-section, "request for examination" shall mean the written application filed by an applicant requesting for examination as to 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.';

Explanation 2.—For the purposes of this section, the expression "Authority" shall include the "Appellate Tribunal".

NOTIFICATION No. 18/2024 – Central Tax: The notification derives its authority from Section 171(2), Section 109(1), and the second proviso of Section 109(5) of the CGST Act, 2017. It empowers the Principal Bench of the Appellate Tribunal, which is constituted under Section 109(3) of the Act, to oversee compliance with anti-profiteering provisions. This notification will come into effect on October 1, 2024.

The Tribunal is tasked with examining whether:

- The input tax credits availed by registered persons (taxpayers) have been used to reduce the cost of goods or services provided.
- The benefits of any tax rate reduction have been passed on to consumers by lowering the prices of goods or services.

Notification No. 19/2024 – Central Tax: the Central Government, on the recommendations of the Goods and Services Tax Council, hereby appoints the 1st day of April, 2025 as the date from which the Authority referred to in the said section shall not accept any request for examination as to 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 that registered person.

Application& process flow of Anti profiteering hierarchy mechanism:

Empowering the Competition Commission of India to handle Anti-Profiteering cases under the CGST Act:

Central Government on the recommendations of GST Council has empowered the Competition Commission of India (CCI) established under section 7(1) of the Competition Act, 2002 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 above amendment shall become effective from 01.12.2022 (Notification No. 23/2022-CT dt. 23.11.2022). Resultantly, National Anti-Profiteering Authority (NAA) ceased to exist from 01.12.2022.

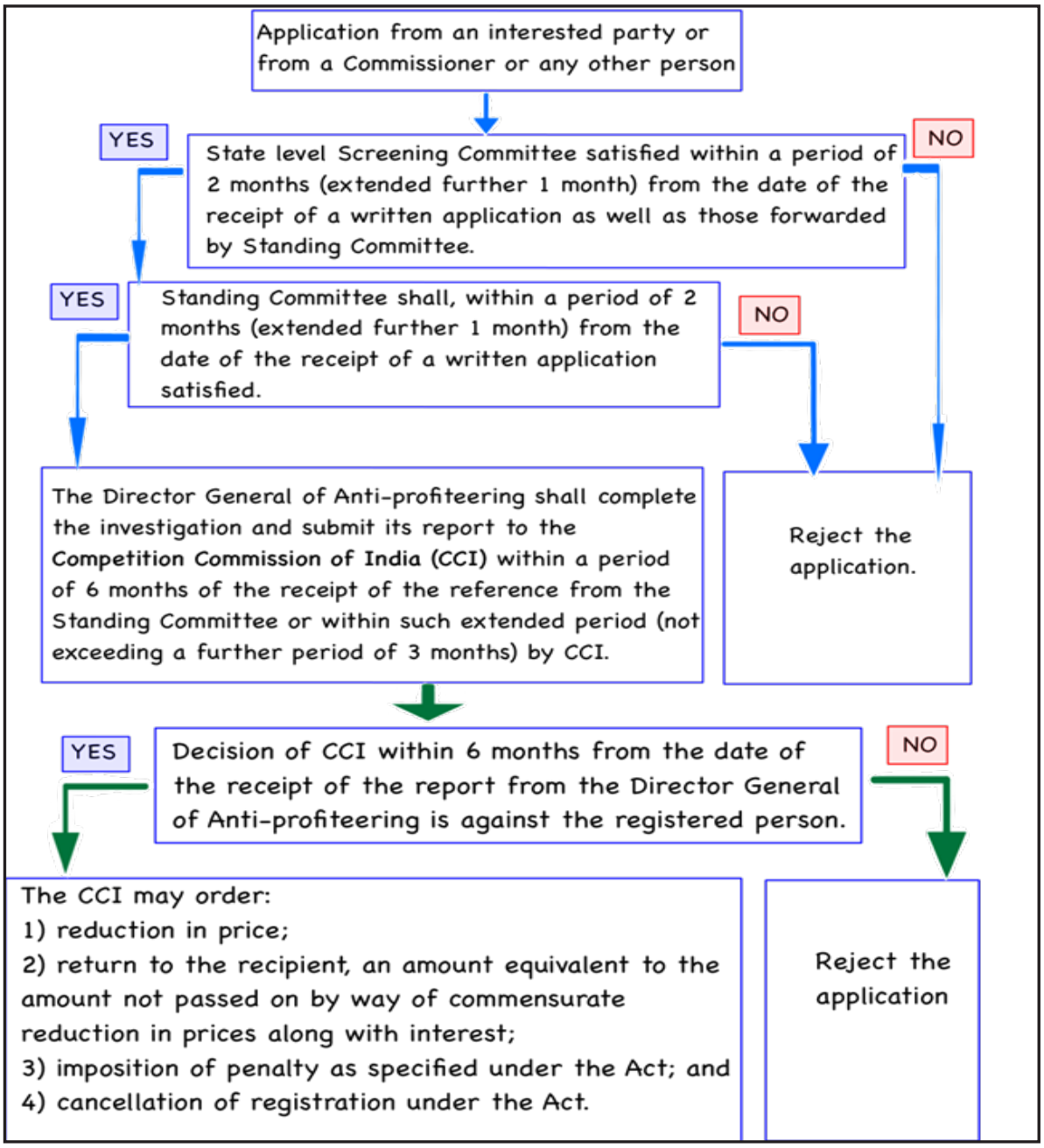
Further, rule 127 which provides for 'Duties of the Authority' has been amended to substitute the word 'Duties' with the word 'Functions'.

Furthermore, in the Explanation provided after rule 137, the meaning of 'Authority' has been amended to mean the authority notified under sub-section (2) of section 171 of the Act.

The above amendments shall become effective from 01.12.2022 (Notification No. 24/2022-CT dt. 23.11.2022).

In rule 161, for the word, "order", the words, "intimation or notice" shall be substituted (NT. No. 26/2022 CT dated 26.12.2022).

The procedure followed in decision making / investigation:



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

17.1 Introduction

17.2 Provisions Relating to GSTN

17.3 Pre-Login Details in GSTN Portal Home Page

17.4 Post-Login Details in GSTN Portal

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.

New functionalities in GSTIN Portal:

1. Display of details of suspended registration in Part A of registration application under registrations mapped against the same PAN:

- Taxpayer can view list of all GST registration applications filed using the same PAN in Part A of the registration application. Taxpayers will now also be able to view the suspended GSTIN details mapped to the said PAN.

2. Facility to view supporting document attached in Form GST REG 17:

- The supporting documents uploaded by Tax officer while issuing show cause notice for cancellation of registration in Form GST REG-17, shall now be made available for view/download to the taxpayers as well as the tax officers.

3. Enabling of bank account validation for taxpayers:

- A new functionality has been implemented on the GST portal to validate the bank account details of the taxpayers to establish its authenticity. This validation has been enabled by the GSTN through linkage with NPCI Database.

4. Enabling Cash Transfer between different GSTINs registered on the common PAN:

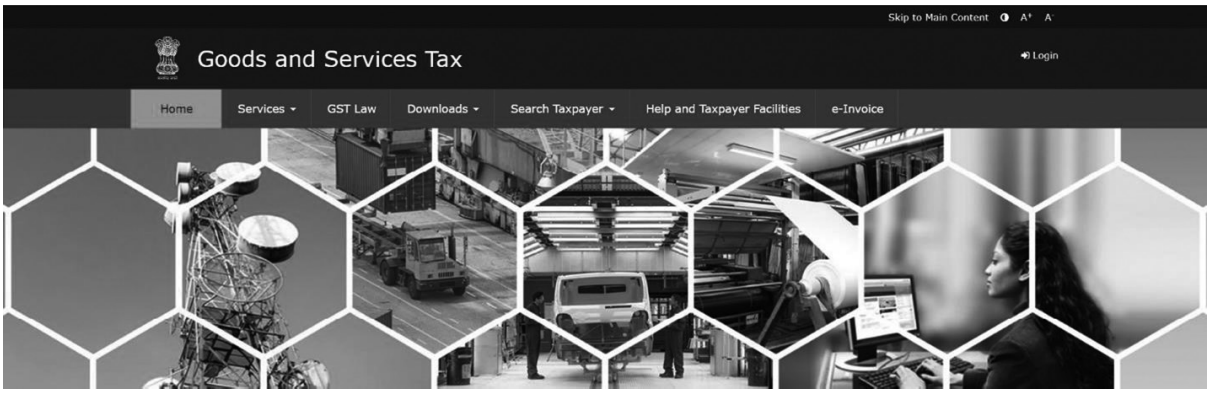
- A new functionality has been provided on the portal for the taxpayers to transfer an amount lying in their cash ledgers across GSTINs registered on the same PAN using the Form GST PMT-09.

Pre-Login Details in GSTN Portal Home Page

17.3

The home page of the GST online login Portal contains the following sections:

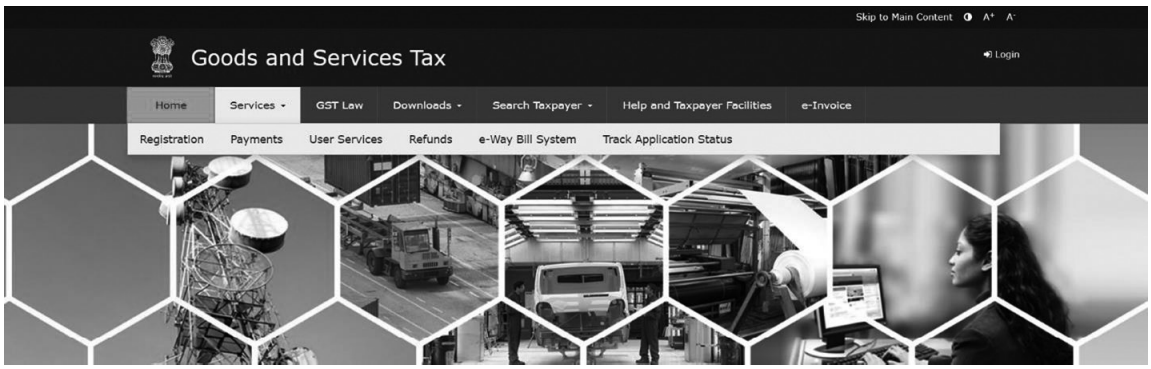
Home, Services, GST Law, Downloads, Search Taxpayer, Help and Taxpayer Facilities and e-invoice



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.

Functions of GST Practioner's:

- furnish details of outward supples (section 37 and (omitted w.e.f. 01-10-2022 inward supplies u/s 38) and furnish monthly return & quarterly, return u/s 39, annual u/s 44 or final return u/s 45.
- make deposit for credit into the electronic cash ledger
- file a claim for refund
- file an application for amendment or cancellation of registration
- Furnish information for generation of e-way bill;
- Furnish details of challan in Form GST ITC-04;
- Furnish an application for amendment or cancellation of enrolment under rule 58 (i.e. records to be maintained by owner or operator of godown or warehouse and transporters); and
- File an intimation to pay tax under the composition scheme or withdraw from the said scheme; etc.,

w.e.f. 26th October 2023, Amendment in FORM GST PCT-01 [Application for Enrolment as Goods and Services Tax Practitioner]:

Format of FORM GST PCT-01 amended to incorporate all the options of qualification as required by any person desirous of enrolling as a GST Practitioner.

(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

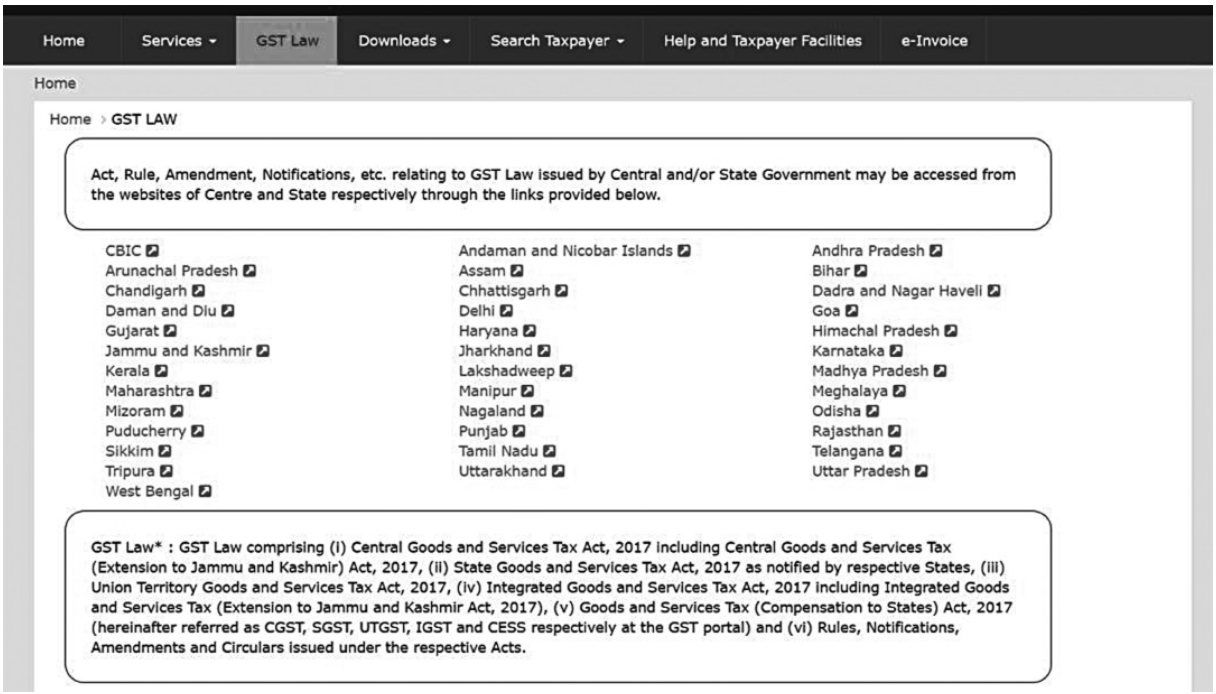
The 'E-way Bill System' section helps the taxpayer to navigate through the e-way bill portal. The user can also access the user manual and FAQs on the e-way bill portal.

(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.

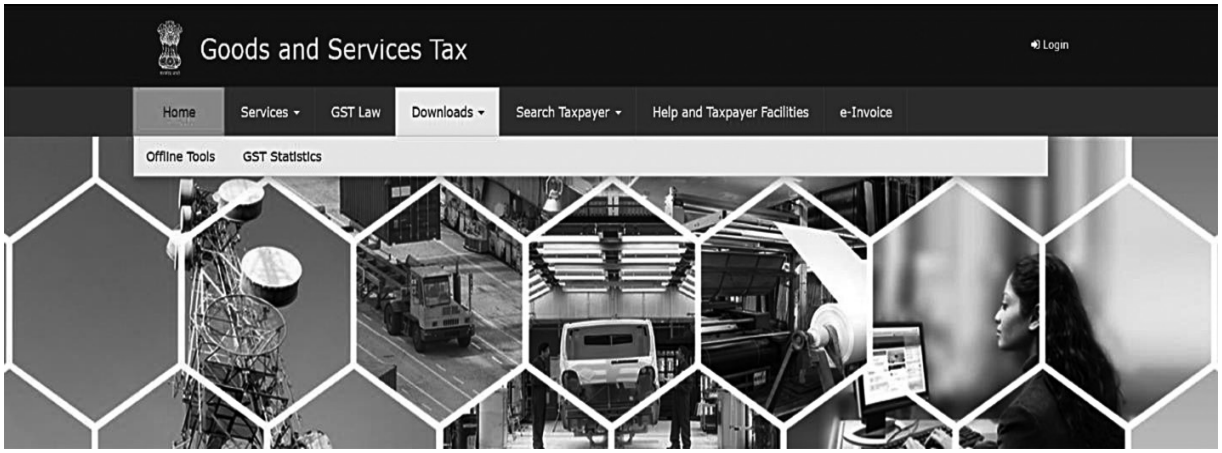
GST Law

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.



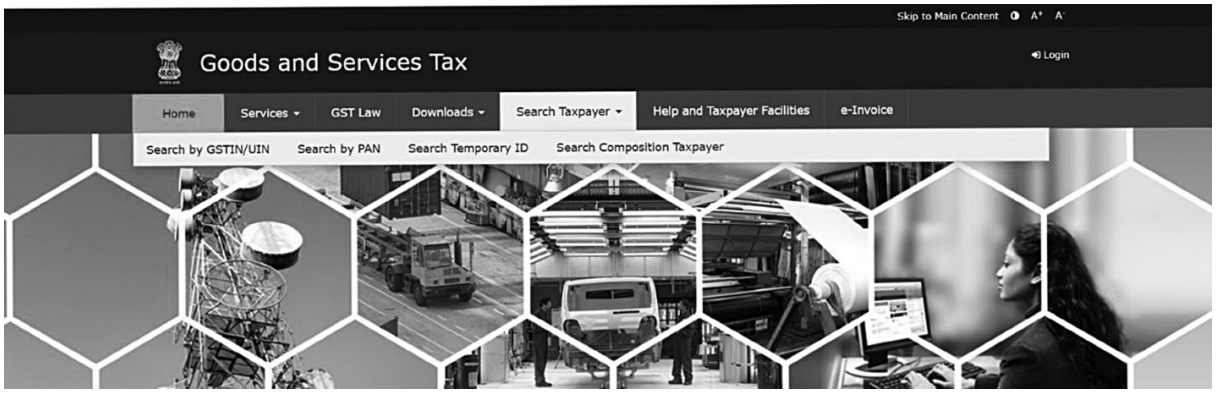
Download

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.



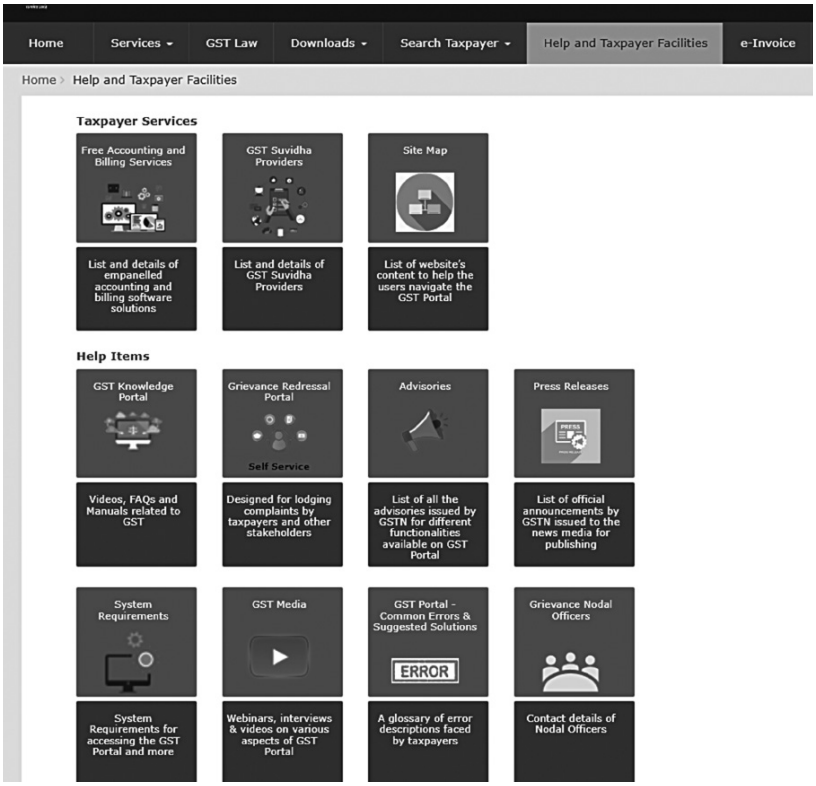
Search Taxpayer

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.

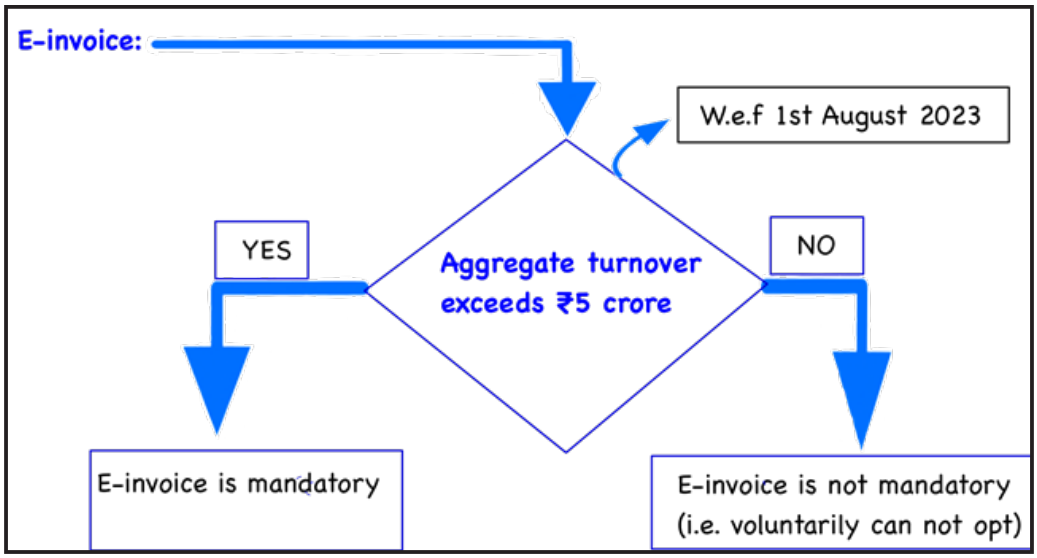


e-invoice:

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.

w.e.f. 1-4-2022, e-invoicing mandatory for all registered businesses with aggregated turnover in any preceding financial year from 2017-2018 onwards exceeded ₹20 crore (Notification No. 01/2022-CT, dated 24.02.2022).



The above situation has been summarized as follows:

E-invoicing is mandatory for every taxpayer* whose aggregate turnover in any of the F.Y. from 17-18 exceeds:	mandatory w.e.f.	As per Notification No.
₹ 500 crores	01.10.2020	61/2020 CT dated 30.07.2020
₹ 100 crores	01.01.2021	88/2020 CT dated 10.11.2020
₹ 50 crores	01.04.2021	05/2021 CT dated 08.03.2021
₹20 crores	01.04.2022	01/2022 CT dated 24.02.2022
₹10 crores	01.10.2022	17./2022 CT dated 01.08.2022
₹5 crores	01-08-2023	10/2023 CT dated 01.08.2023

With effect from 01-08-2023, registered persons other than

- a Special Economic Zone unit,
- a Government department, a Local authority and,
- persons as referred in Rule 54(2)/(3)/(4)/(4A) [Insurer/ a banking company/ Financial Institution including a NBFC, GTA, Supplier of passenger transportation service & Multiplexes]

whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs 5 Cr shall prepare e-invoice in accordance with rule 48(4)

[Notification No 10/2023-CT dt 10-05-2023 w.e.f. 01-08-2023 (842-F .T dt 19-05-2023)]

Question: Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act?

Answer: As per CBIC Circular No. 198/10/2023-GST dated 17th July 2023, Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct tax at source as per provisions of section 51 of the CGST/SGST Act, are liable for compulsory registration in accordance with section 24(vi) of the CGST Act.

Therefore, Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of tax at source as per provisions of section 51 of the CGST Act, are to be treated as registered persons under the GST law as per provisions of clause (94) of section 2 of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc under rule 48(4) of CGST Rules.

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices: -

Circular No. 165/21/2021-GST dt. 17.11.2021 has amended Circular No. 156/12/2021-GST dt. 21.06.2021 issued to provide clarifications in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of Notification 14/2020 CT dt. 21.03.2020.

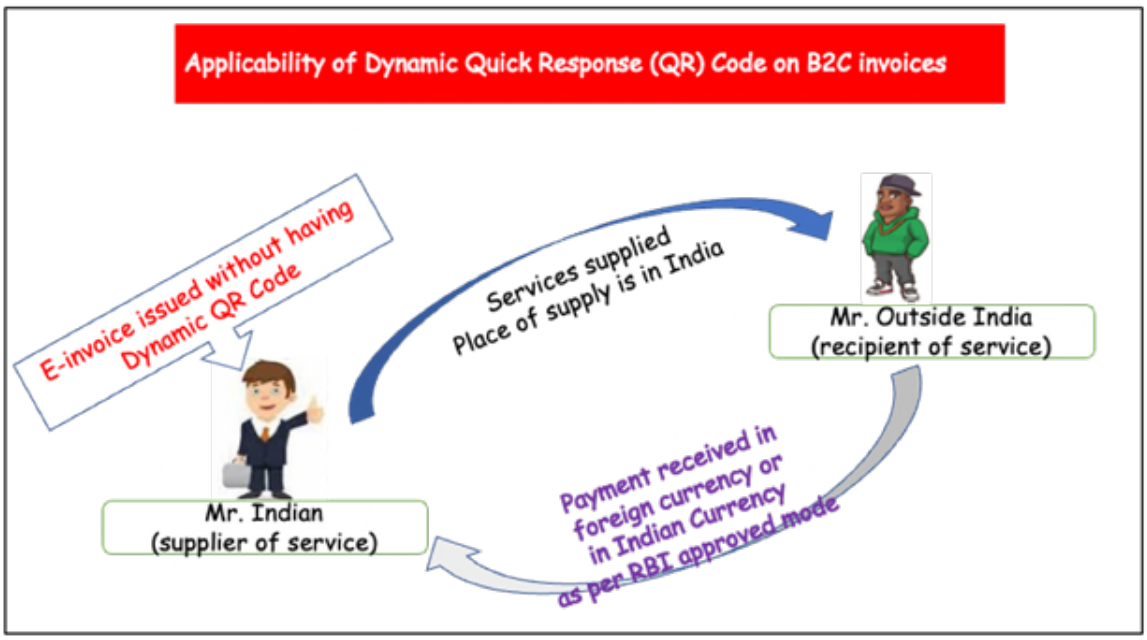
S. No. 4 of Circular No. 156/12/2021 clarified that wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act, 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

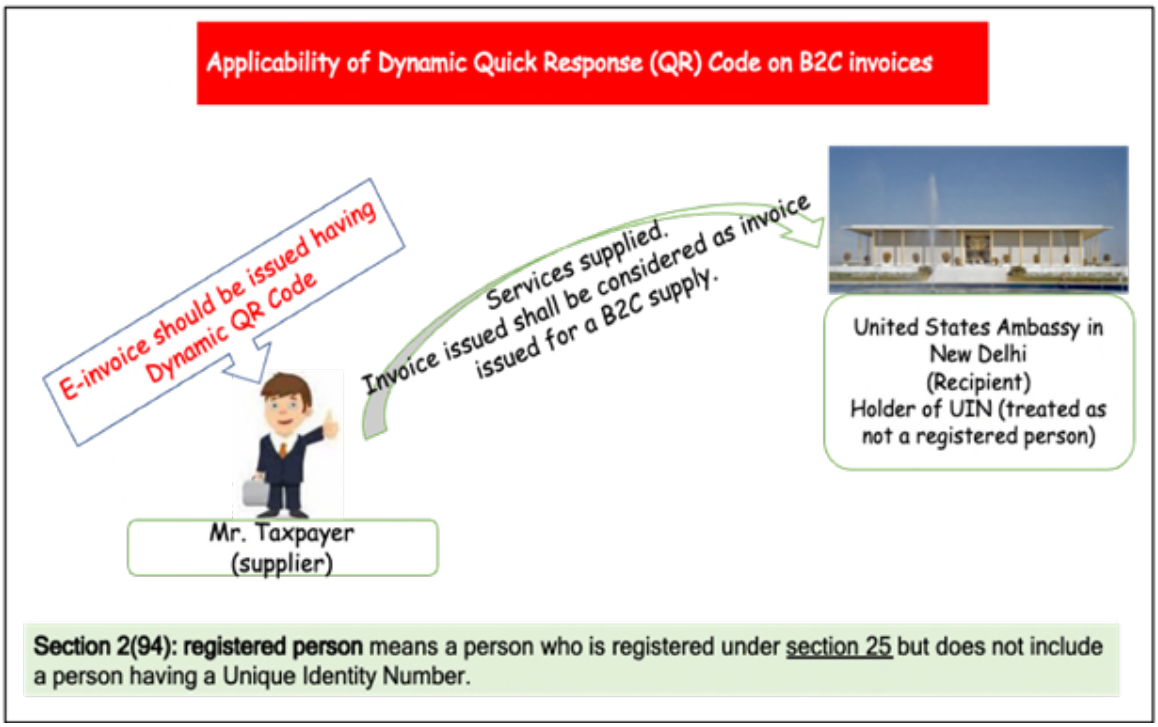
The wordings of S. No. 4 of Circular No. 156/12/2021 created doubt as to whether the relaxation from the requirement of dynamic QR code on the invoices would be available to such supplier, who receives payments from the recipient located outside India through RBI approved modes of payment, but not in foreign exchange. It has been clarified vide Circular No. 165/21/2021 that the intention of clarification as per S. No. 4 in the said circular was not to deny relaxation in those cases, where the payment is received by the supplier as per any RBI approved mode, other than foreign exchange.

S. No. 4 of Circular No. 156/12/2021 has been substituted vide Circular No. 165/21/2021 to clarify that dynamic QR code is not required on the invoice issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act, 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees, wherever permitted by the RBI. This is so because such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

Dynamic QR Code is required to be provided on an invoice, issued to a person, who has been obtained a UIN. Any person, who has obtained a Unique Identity Number (UNI), is not a "registered person" as per the definition of registered person provided in section 2(94) of CGST Act, 2017. Therefore, any invoice issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices:





Important Note: As of now, B2C invoices are exempted from e-invoicing. However, a taxpayer is required to generate a dynamic QR code for enabling digital payments on all B2C invoices.

In cases involving supply of online money gaming/service provided by/through ECO or by supplier of OIDAR services to unregistered recipient, tax invoice to contain the name of the State irrespective of value of supply [Rule 46 amended w.e.f. 4th August 2023]:-

Amended proviso to rule 46(f) provides as follows:

In cases involving supply of online money gaming or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient.

As a result with effect from 04.08.2023 to provide that the tax invoice may contain the name of the State of the recipient only and the same shall be deemed to be the address on record of the recipient. The name and address of the recipient along with its PIN code is not mandatory to be declared on the tax invoice.

[Notification No. 38/2023 CT dated 04.08.2023 and 51/2023 CT dated 29.09.2023]

Note: Where recipient is registered, tax invoice shall contain the name, address and GSTIN/UIN of the recipient [Clause (d) of Rule 46(f)].

Post-Login Details in GSTN Portal

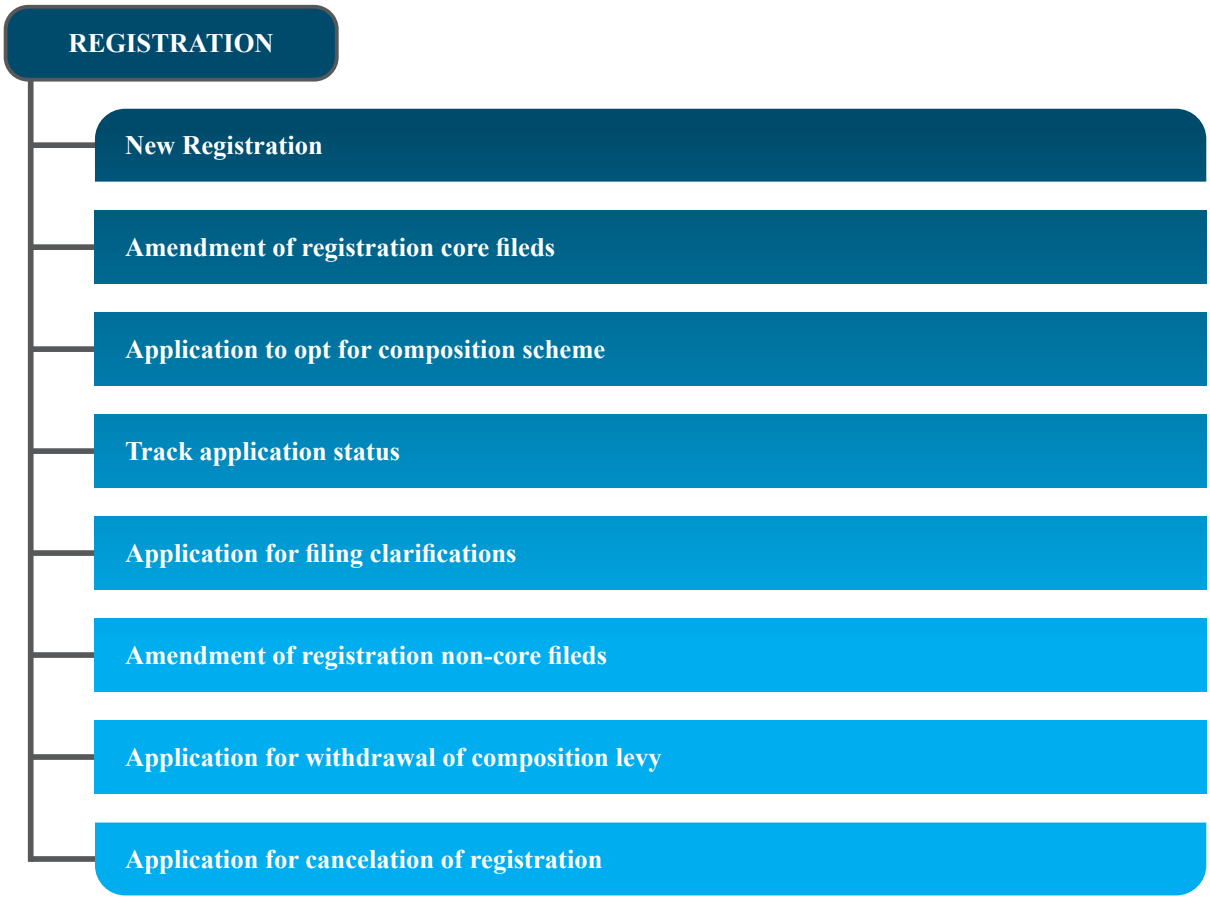
17.4

Dashboard

After the login process, the taxpayer will get access to certain new services on the home page.

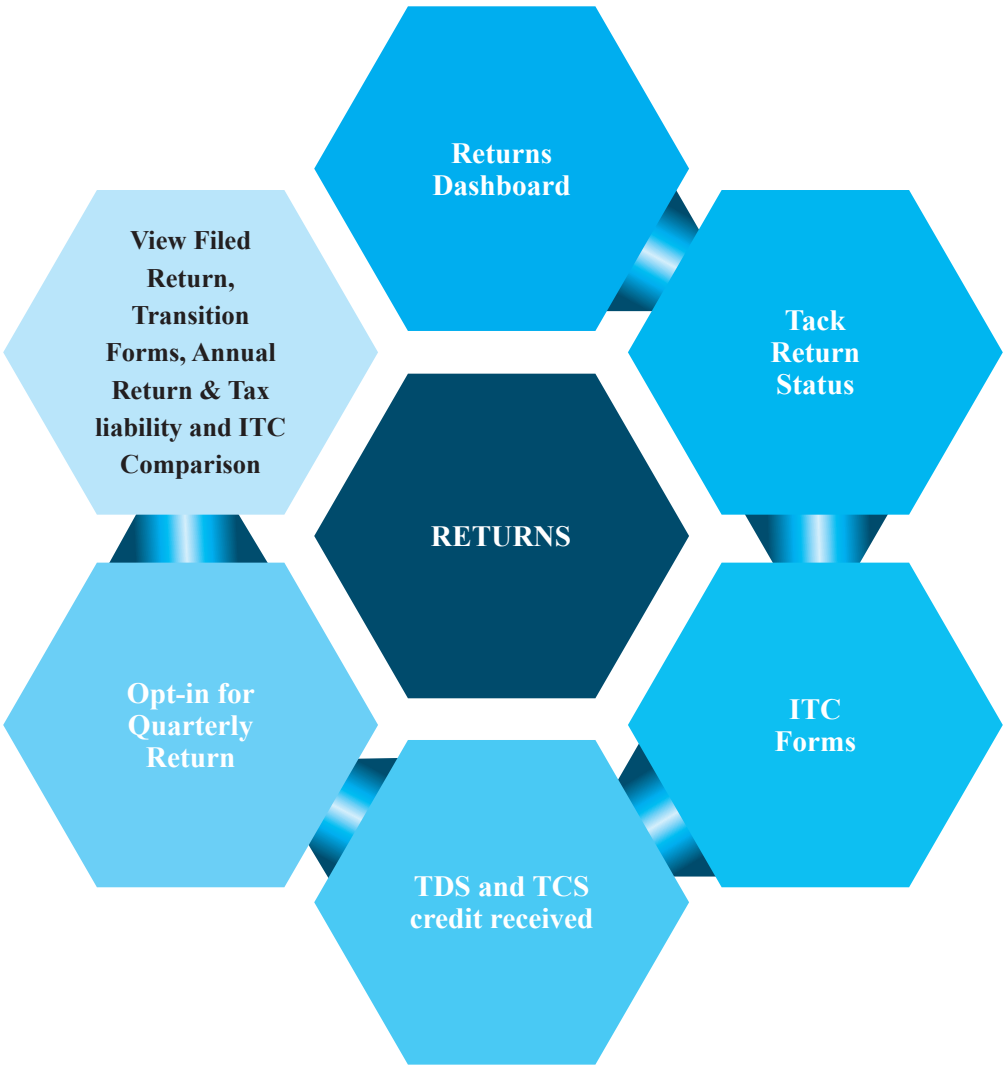
The 'Dashboard' section appears immediately after a taxpayer logs in to the portal. The user can check all notices and orders, edit the profile, file GST returns on this page. Under this section, the tax challan preparation occurs.

Under **Services** Tab one can view the following:



Ledgers: The 'ledgers' section consists of following:

Returns: The 'returns' section consists of following different options



Payments: The 'Payments' section consists of following 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

18.1 Valuation of Imported and Exported Goods

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

Onnce 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:

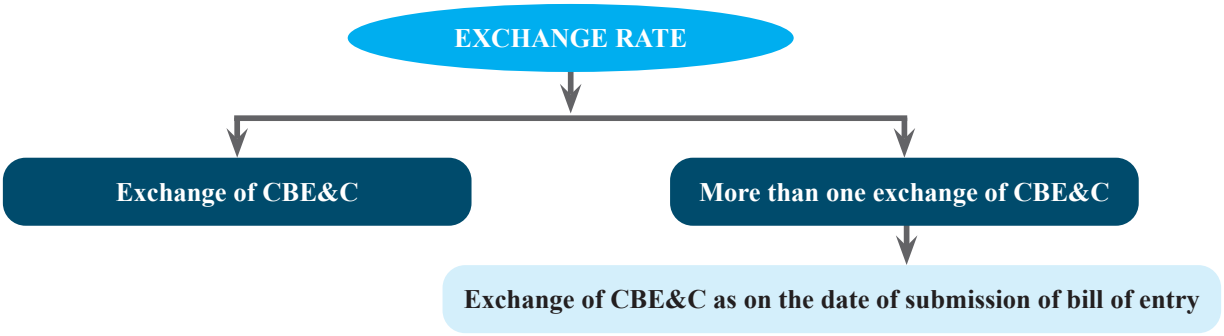
   Cost of tooling is ₹2,00,000 and the tool expected to produce 20,000 pieces. If the importer imports 2,000 pieces in the first lot, 10% of cost of such tooling i.e. ₹20,000 may be apportioned to the 2,000 pieces and ₹20,000 may be added to transaction value for ascertaining assessable value.

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.

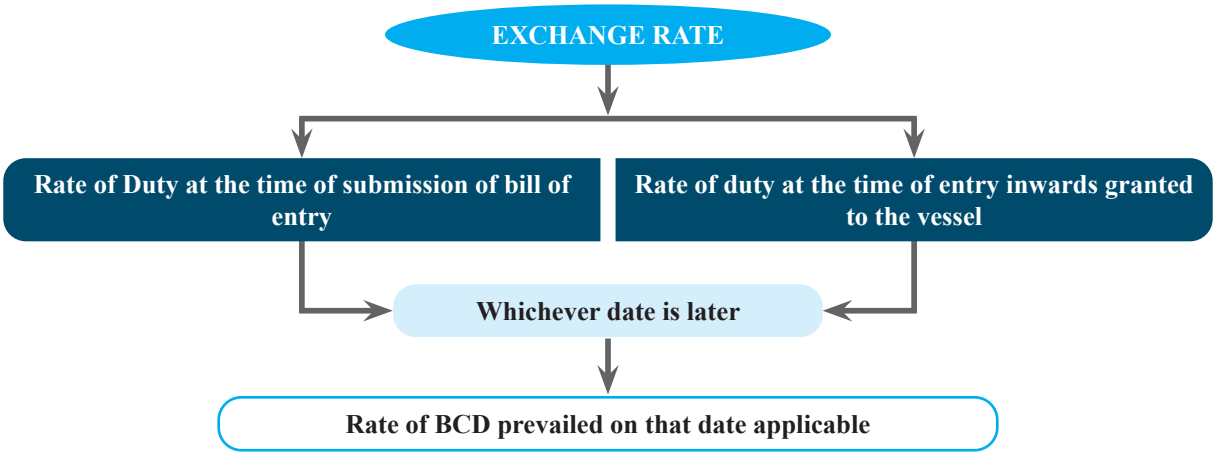
6. However, demurrage charges payable to port trust authorities for delay in clearing goods are not to be added in the transaction value.

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.

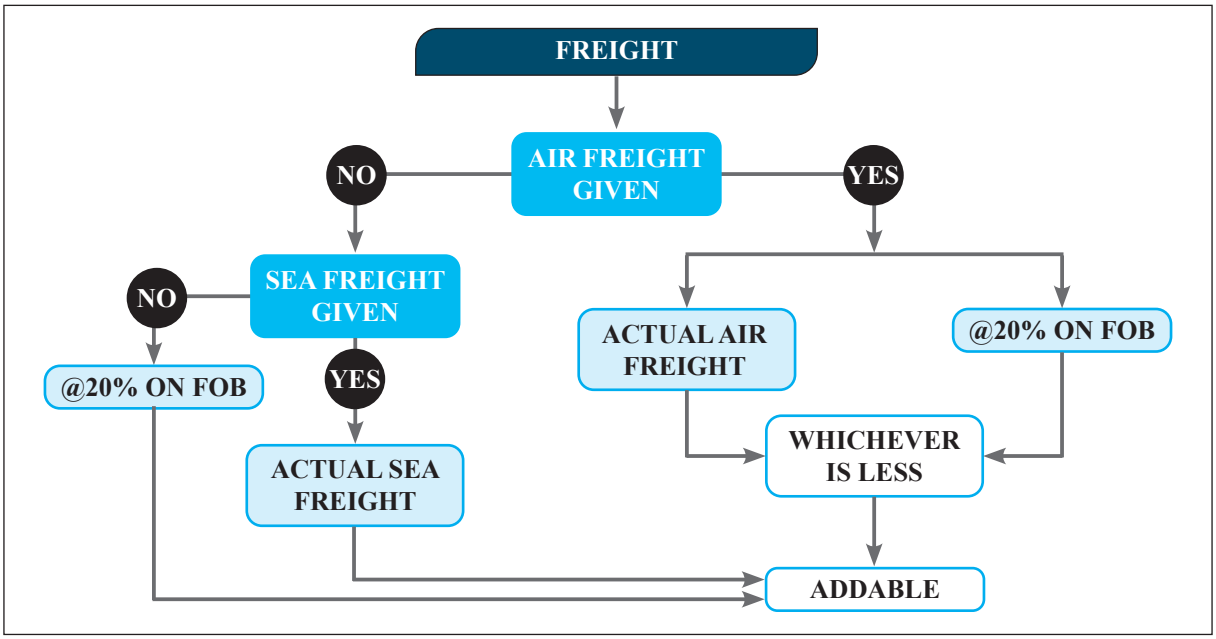
8. **Exchange Rate:** we should consider the exchange rate of CBE&C for finding assessable value in Indian Rupees.



9. Rate of determination of Basic Customs Duty:



10. Freight from the exporter country to importer port or airport addable into assessable value.

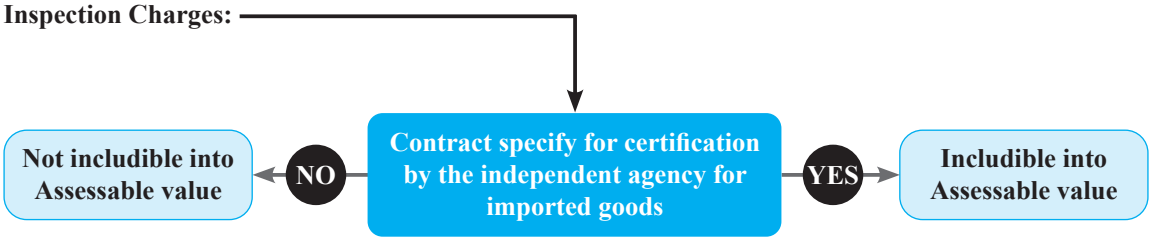


11. **Service charges paid to canalizing agent:** It is includible in the assessable value of imported goods.

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:**



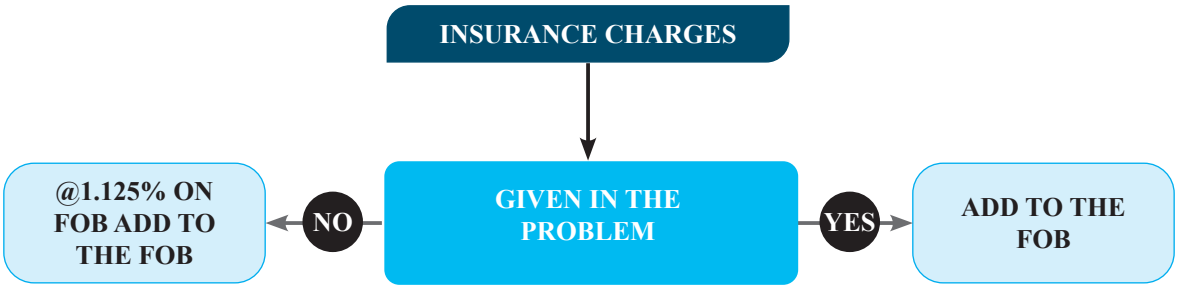
Case 2:

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:

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Agriculture Infrastructure and Development Cess (AIDC):

A new cess called Agriculture Infrastructure and Development Cess (AIDC) was introduced vide Finance Act, 2021 for the purpose of financing the agriculture infrastructure and other development expenditure. Such cess is applicable on certain specified goods such as apple, kabuki Chanda, chickpeas, lentils, various types coals, urea, silver (including imports by eligible passengers), Silver Dore, Gold (including imports by eligible passengers), Gold Dore etc.

Where the duty is leviable on the goods at any percentage of its value, then for the purpose of calculating the Agriculture Infrastructure and Development Cess, the value of such goods is calculated in the same manner as the value of goods is calculated for the purpose of customs duty under section 14 of the Customs Act, 1962.

For Example:

Particulars	Amount	Remarks
Cost of imported goods	1,00,000	Transaction value
Add: Basic customs duty	10,000	1,00,000 × 10%
Add: Agriculture Infrastructure Development Cess	7,500	1,00,000 × 7.5%
Add: Social Welfare Surcharge	1,750	17,500 × 10%
Sub-total	1,19,250	

Particulars	Amount	Remarks
Add: IGST	21,465	1,19,250 × 18%
Add: GST Compensation Cess	17,888	1,19,250 × 15%
Total cost of imported goods	1,58,603	
Note: Please note that IGST and GST compensation cess would be available as input tax credit under GST Laws subject to fulfilment of prescribed conditions.		

As per Section 14(1)(iv) is inserted in Finance Act, 2022 (w.e.f. 30.03.2022), provisions for rules enabling the Board to specify the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly, the criteria of selection of such goods, and the checks in respect of such goods. This amendment is a measure to address the issue of undervaluation in imports.

The government has recently proposed draft Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2022.

Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 (vide Notification No. 03/2023 Cus (N.T.) dated 11.01.2023 read with customs circular no. 01/2023 Cus dated 11.01.2023):

The trend of undervaluing imported goods, for the purpose of evading customs duty or for other ulterior purposes, has been on a constant rise. Finance Act, 2022, amended section 14 of the Customs Act, 1962, with the intent of addressing the issue of undervaluation in imports. Now, the Central Government has notified the Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 (CAV Rules, 2023) which shall come into force from 11th February 2023, to tackle the menace of undervaluation of imports.

The aspects in these rules are explained in the following steps:

Step 1: Written Reference: Any person having a reason to believe that the value of any class of goods, imported thereof may not have been declared truthfully or accurately, shall make a written reference (containing evidence and other specified details) of the same to the Board, and submit the same electronically. The reference may also be made to an officer of Customs (i.e., the Commissioner or Additional Director General), or to any person representing a government department.

The written reference shall also be accompanied with all evidence which established the claims made by person submitting the written reference. Thereafter, the written reference so received shall be forwarded to the Screening Committee.

Step 2: Examination by the Screening Committee: The Screening Committee shall, after having taken all material evidence on record, do a scrutiny of the same. Thereafter, having conducted a preliminary examination, the findings of the Screening Committee shall be recorded within a period of 15-21 days. Based on preliminary examinations and findings, the written reference may have the following fate:

- On being found suitable for a detailed examination, shall be taken up for detailed evaluation by the Evaluation Committee.
- being found unsuitable for a detailed examination, the Screening Committee shall close the reference after recording their reasons.

Step 3: Examination by the Evaluation Committee: The Evaluation Committee, after having conducted a detailed examination of the relevant class of goods by analyzing the international prices of the goods, research papers and reports, disclosures made under the act etc., shall submit a reasoned Report, signed by all members of the Evaluation Committee.

The detailed Report being submitted by the Evaluation Committee shall provide complete description of the class of imported goods, with the 8-digit HS code, the Unique Quantity Code (UQC) used by the importer, along with other technical specifications as provided under Rule 8 of CAV Rules, 2023.

Alternatively, the Evaluation Committee may close the reference and submit its reasons for such closure to the Screening Committee for filing.

Step 4: Confirmation and recommendation by Screening Committee: The detailed Report submitted by the Evaluation Committee shall subsequently be forwarded to the Screening Committee under Rule 9 of CAV Rules, 2023 for recommendation (regarding completeness of the Report) and rectifications, if any. The Screening Committee shall make its recommendation to the Board within 15 days of receipt of such Report.

Step 5: Recommendation by the Board: The recommendations made by the Screening Committee shall be considered by the Board, and on the said Report being accepted, the board may issue an Order under Rule 5 wherein specifications regarding the 8-digit HS Code, Unique Quantity Code and other details shall be specified.

Step 6: Procedure with respect to the identified goods:

(A) Obligations on the importer:

Once certain goods have been identified in the Order by the Board under these Rules, the importer of such goods will have to declare the value of goods as specified under Rule 10 of the CAV Rules, 2023, while importing such identified goods. As such, the overall consequences or additional obligations that may be cast upon the importer are as follows:

(1) Unique Quantity Code (UQC), as specified in the Order, would be necessarily used by the importer to declare the value in the bill of entry.

(2) Technical or other specifications (e.g., make, model, brand, grade, size, quality, composition, quantity in UQC) to be declared in the bill of entry.

(3) Other additional obligations may have to be met by the importer to demonstrate the truthfulness and accuracy of the declared value (including manufacturer invoice, manufacturer test report, expert certification issued in the country of origin, manufacturing process, costing, purchase order or contract etc.)

(B) Assessment including provisional assessment:-

(1) The importer shall have to fulfil the details as required by the Customs Automated System. If the details have not been provided, the importer shall have to, if required by the proper officer, provide such details within 10 days.

(2) The importer shall have to provide further information and documents as required by the proper officer to examine the truthfulness of the declared value.

(3) The proper officer shall clear the goods after provisional assessment, on request of the importer and upon furnishing appropriate security under section 18 of the Customs Act, 1962.

(4) The proper officer may accept the declared value of the goods upon being satisfied with the truthfulness and accuracy of the declared value.

(5) Where the importer does not provide requisite information or does not fulfil other obligations cast upon him or where the proper officer has reasonable doubt about the truth or accuracy of the declared value, the further proceedings shall take place as per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Step 7: Review: After half of the validity period has lapsed, the Screening Committee shall review its order issued under Rule 5, to identify whether the goods specified under Rule 5 may be de-specified before its expiration period, or the validity period of the specified goods might be extended as per the reasoned report of the Screening Committee.

Step 8: Exceptions.- These rules shall not be applied to, –

(a) imports not involving duty;

(b) goods for which tariff value has been fixed by the Board in terms of sub-section (2) of section 14 of the Act;

(c) goods which attract import duty on specific rate basis;

(d) imports made in terms of authorization or license issued under duty exemption scheme of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) in which the inputs imported prior to export are physically contained in the export product;

(e) imports where buyer and seller are related and an investigation on relationship has already been contemplated or finalized;

(f) Project imports;

(g) imports by Government, Public Sector Undertakings;

(h) imports made in non-commercial quantities;

(i) goods imported for the purpose of re-export; or

(j) imports specified by the Board.

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	
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment	500	

Sl. No.	Particulars	Value US $	Workings
(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	
Development charges	—	Not addable into the assess-able value, because these are post shipment expenses	

Particulars	Amount in Yen	Remarks	Working note
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
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
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.

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.	Cost of Materials and General expenses for producing the imported goods	=	₹ xxx
	Add: profit of the exporter	=	xxx
	Add: all expenditure as per Rule 10	=	xxx
	Assessable Value	=	XXX

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.
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

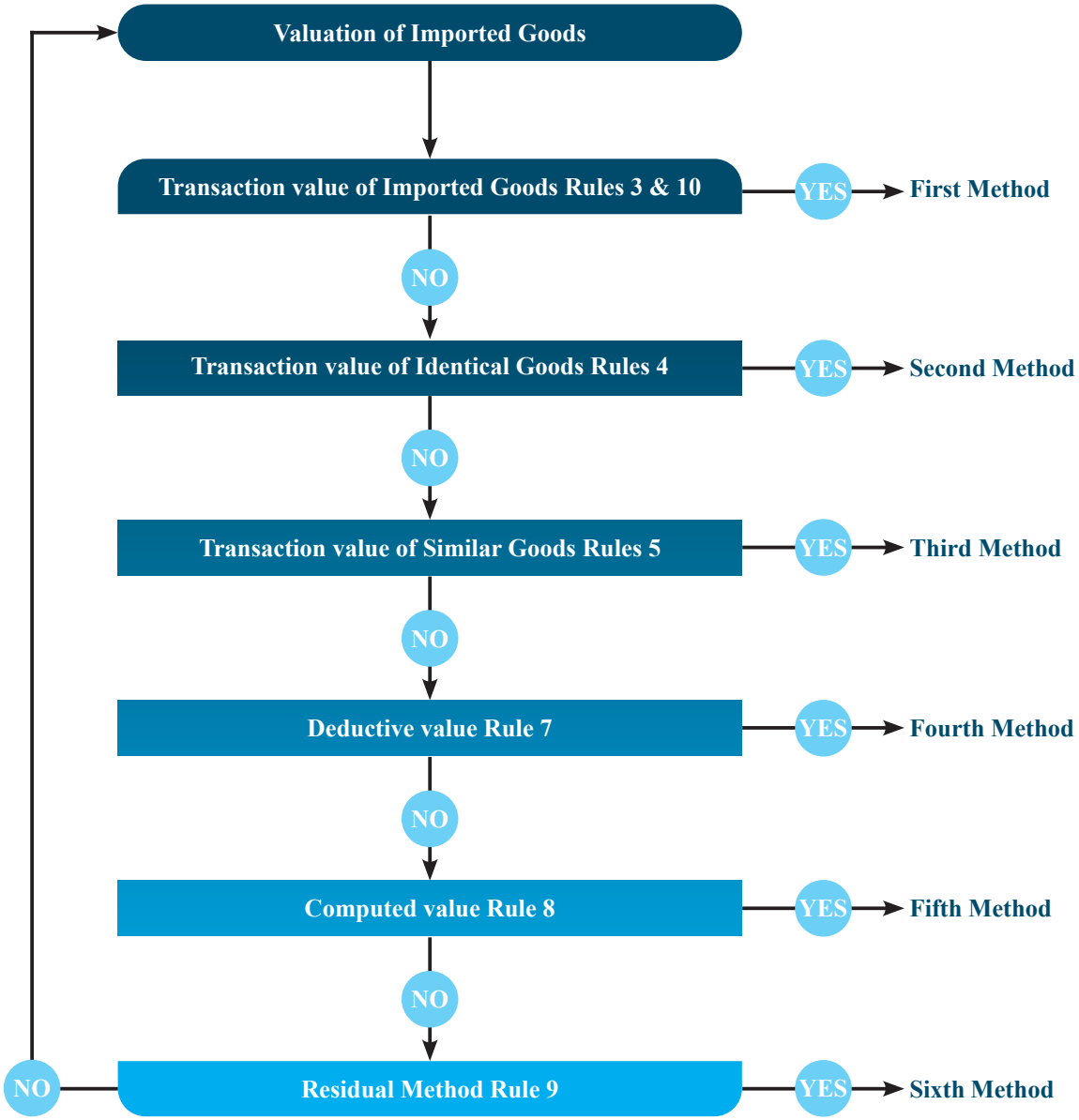
Rule 12: Rejection of Declared Value:

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
January 2025	250	25,000	Egypt
January 2025	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 2024	Mumbai Intil	50	35,000	Dubai
October 2024	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.	8.	9.	10.	11.	12.	13.	14.
c	b	a	d	b	c	c	c	a	b	a	d	d	c

Customs Procedures- Baggage & Courier/Post

19

This Module Includes

19.1 Provision Regarding Baggage

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

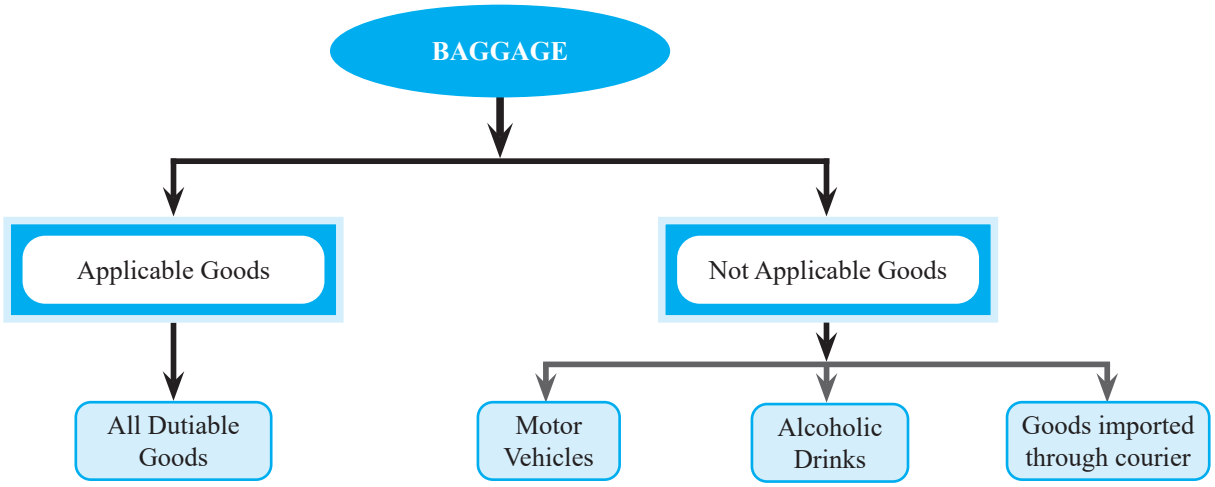
General Meaning: Baggage means all dutiable goods imported by a passenger or a member of a crew in his baggage.

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. 24-7-2024, vide Notification No. 29/2024-Customs dated 23-7-2024).

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 01.04.2024. His wife also joined him in London on 01.12.2024. The following details are submitted by them with the Customs authorities on their return to India on 30.04.2025.—

(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	(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 05-04-2024. The following details, regarding imports are submitted by him with the Customs authorities on return to India on 20-02-2025.

(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	Nil	Up to 100 cigarettes allowed under GFA.
Less: GFA.	=	₹10,000		
Taxable goods.	=	nil		
Cartridges of firearms				Up to 50 cartridges of fire allowed under GFA.
Value for 50 cartridges	=	₹25,000		
Less: GFA.	=	₹5,000	20,000	
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

20.1 Introduction

20.2 Manufacture and other Operations in Warehouse

20.3 Manufacture in Bond

20.4 Licensing of Public, Private and Special Warehousing

20.5 Step by Step Approach to Start Manufacturing in Bond

20.6 Clearance of Warehoused Goods

20.7 Maintenance of records and filing monthly returns

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.

- Relevant date when goods are warehoused can be summarized hereunder.

S. No.	Goods warehoused under Bond	Relevant date	Remarks
(i)	Rate of exchange	At the time of submission of 'into bond' bill of entry	When goods are removed for home consumption
(ii)	Rate of duty	As on the date of submission of sub-bill of entry	When goods are removed for home consumption
(iii)	Rate of duty	The rate of duty prevails on the date on which the goods should have been removed is to be considered	When the goods are not removed from warehouse within the permissible period and permission is also not obtained for the extended period – Improper removal.

Warehousing period: As per section 61 of the Customs Act, 1962 period of warehousing has been suggested in the following lines:

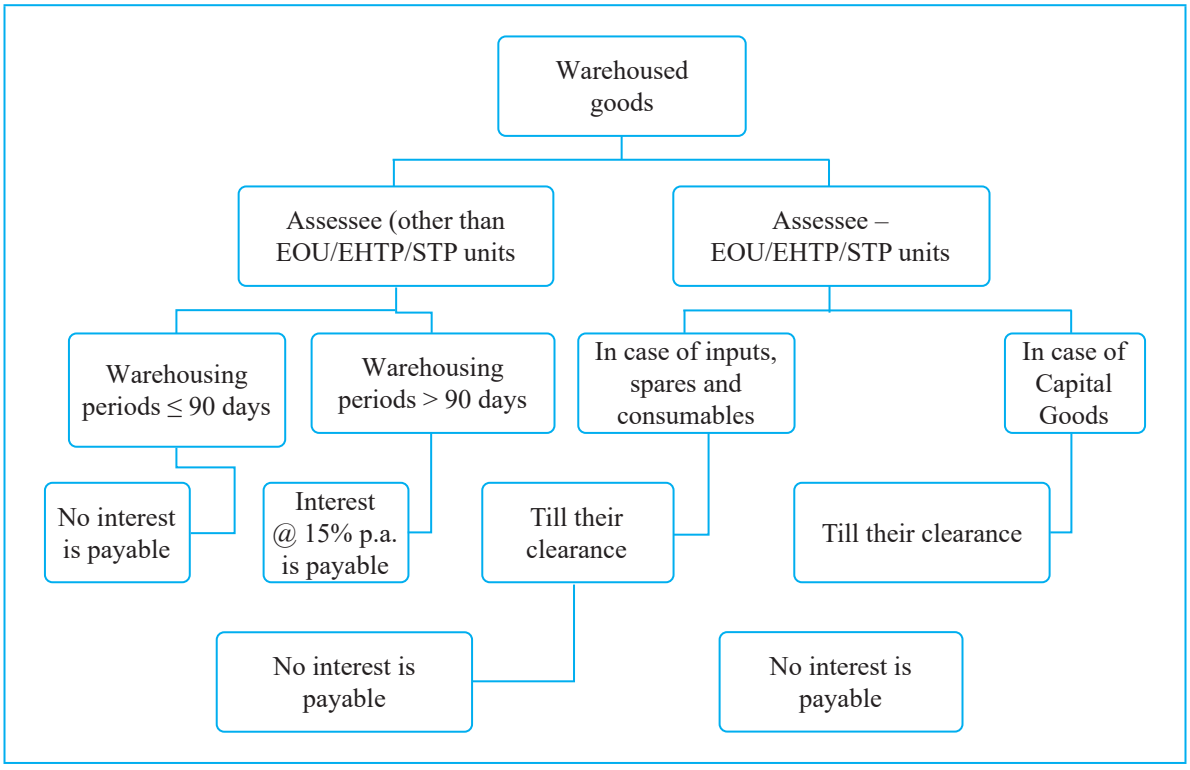
Importer	Normal warehousing period	Remarks
Other than EOU	One year	From the date of issuing the order by Customs Officer permitting deposit of goods in a warehouse.
EOU	till the consumption or clearance of such goods from warehouse – for inputs, spares and consumables till the clearance of such goods from warehouse –for capital goods	In the case of EOU units, the whole factory is treated as a bonded warehouse.

The period of 1 year can be extended by the Commissioner of Customs for further 6 months. However, for extending it further, authorization of Chief Commissioner of Customs is required.

In the case of goods warehoused by other than EOU, if they are likely to deteriorate, the normal warehousing period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit.

1 Applicability of interest on warehoused goods:

Applicability of interest on warehoused goods 14-5-2016:



Warehousing Bond Section 59:

An importer desirous of warehousing the goods without paying customs duty duties needs to execute an indemnity bond to cover the risk to Government revenue. Importer is required to execute the bond for the goods in respect of which an into-bond bill of entry has been presented and assessed to duty.

The bond can be executed in respect of a particular consignment called as Consignment Bond or it can be a General Bond to cover the duty on goods to be imported by the person during a specified period.

Section 64 of the Customs Act, 1962, Owner's right to deal with warehoused goods:

W.e.f. 14-5-2016 The owner of any warehoused goods may, after warehousing the same:

(a) inspect the goods;

(b) deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;

(c) sort the goods; or

(d) show the goods for sale.

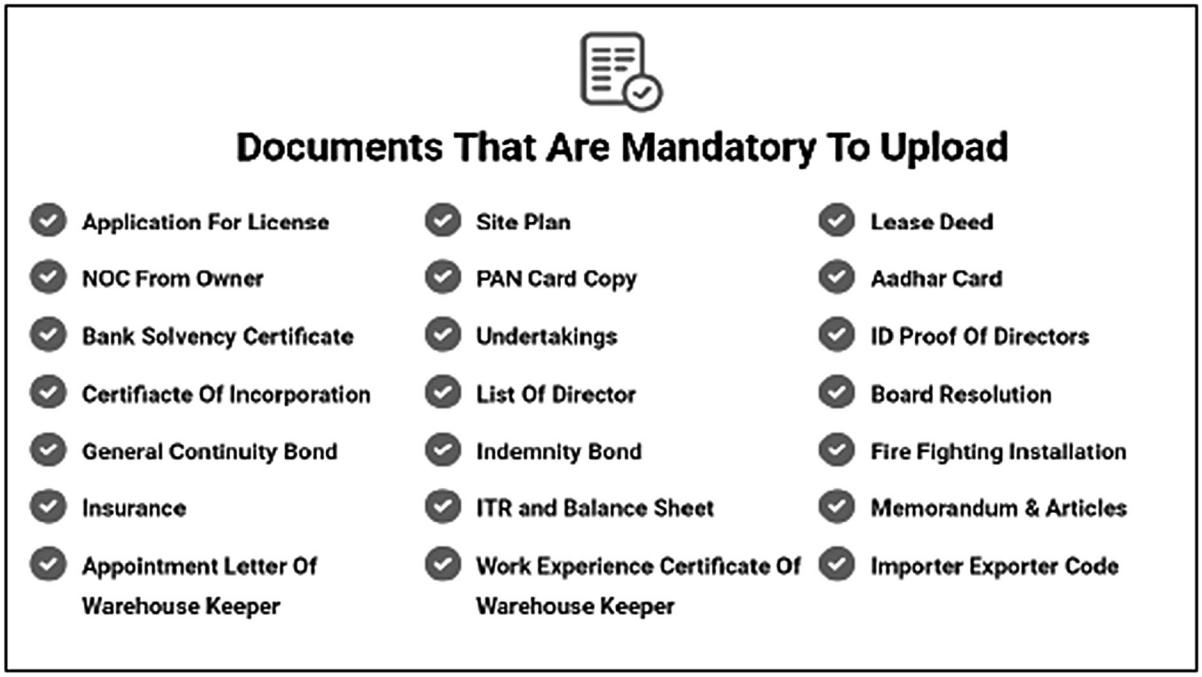
Note: Since physical control has been abolished, there is no need of obtaining sanction on payment of MOT charges.

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.



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.

(iii) Importer shall execute a bond binding himself in a sum equal to **Thrice** the amount of the duty assessed on such goods to cover all duties and interest if any payable.

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 Act 1962).

Section 65 of the Customs Act, 1962 Manufacture and other operations in relation to goods in a warehouse:

With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions 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.

The Indian Government has set its sights on turning India into a global manufacturing hub and achieving the goals of "Make in India" and "Atma Nirbhar Bharat". One such initiative was the introduction of the Manufacture and Other Operations in Warehouse Regulations ('**MOOWR**') Scheme.

As per the amendment to Section 65 of the Customs Act, the owner of the warehoused goods can carry on such manufacturing process or other operations subject to Section 65A of the Customs Act. However, Section 65A of the Customs Act has been inserted to provide for payment of IGST and Compensation Cess while depositing the goods in warehouse for carrying out manufacturing and other operations as per Section 65 of the Customs Act.

PAYMENT OF IGST AND COMPENSATION CESS ON GOODS STORED FOR MANUFACTURING AND OTHER OPERATIONS IN WAREHOUSE:

Section 65 of the Customs Act permits the owner of any warehoused goods to carry on any manufacturing process or other operations in the warehouse subject to the permission of the Principal Commissioner of Customs or Commissioner of Customs. Currently, the Customs Act (ie., prior to the Finance Bill 2023 coming into force) permits such manufacturing process or other operations in warehouse without payment of Duties of Customs which include IGST and Compensation Cess.

As per Section 46 of the Customs Act, the importer has to file a Bill of Entry (BOE) for warehousing and thereafter, to clear such goods for home consumption, the importer has to file BOE for home consumption. The Custom Duties are payable only after the goods are cleared for home consumption from the warehouse.

As per the amendment to Section 65 of the Customs Act, the owner of the warehoused goods can carry on such manufacturing process or other operations subject to Section 65A of the Customs Act. However, Section 65A of the Customs Act has been inserted (w.e.f. 1st April 2023, Goods brought for operations in warehouse to have

ordinarily paid certain taxes) to provide for payment of IGST and Compensation Cess while depositing the goods in warehouse for carrying out manufacturing and other operations as per Section 65 of the Customs Act.

As per Section 65A(B)(i) of the Customs Act the importer will, after the Finance Bill 2023 comes into force, need to file a BOE for home consumption (instead of a BOE for warehousing) even for the purpose of depositing the goods in warehouse. Consequently, the importer, while filing such BOE for home consumption has to pay IGST and Compensation Cess.

Further, the transfer of goods from one warehouse to another in terms of Section 67 of the Customs Act, will only be permitted upon filing of a BOE for home consumption and on payment of IGST and Compensation Cess.

Section 65A of the Customs Act is applicable prospectively inasmuch as it will not be applicable to goods which have already been deposited to the warehouse prior to notifying of Section 65A.

The Central Government has retained the power to exempt certain categories of goods, importers or exporters or industry from the purview of Section 65A of the Customs Act.

Note: Finance Bill, 2023 has been passed by Parliament and became Finance Act, 2023 on 31-3-2023, after receiving assent of President. Some changes have become effective from 1-4-2023. Provisions in respect of section 65A of Customs Act will be effective from date to be notified.

New section 65A of the Customs Act, 1962 have not become effective till 30th November 2023.

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.

Illustration 9

Vipul imported certain goods in December 2024. A 'Thrice the duty bond' bill of entry was presented on 14th December 2024 and goods were cleared from the port for warehousing. Assessable value on that date was US $1,00,000. The order permitting the deposit of goods in warehouse for four months was issued on 21st December 2024. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 20th April 2025.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty, interest, and other charges. Vipul cleared the goods on 14th May 2025. Compute the amount of duty and interest payable by Vipul while removing

the goods on the basis of following information:

Particulars	14-12-2024	20-4-2025	14-5-2025
Rate of exchange per US $ (as notified by Central Board of Indirect Taxes & Customs)	₹65.20	₹65.40	₹65.50
Basic Customs Duty	15%	10%	12%

No other customs duty is payable except basic customs duty.

Solution:

Assessable vale ₹ 65,20,000/-

Customs duty is ₹ 7,17,200/-

(USD 1,00,000 × ₹ 65.20) × 11% = ₹ 7,17,200 (includes BCD + SWS)

Interest payable is ₹16,505/-

(7,17,200 x 15/100) × 56 days/365 = ₹16,505/-

Working note:

Month	No. of days delay
From 21st Dec 2024 to 31st Dec 2024	11
Jan 2025	31
Feb 2025	29
Mar 2025	31
April 2025	30
May 2025	14
Total	146
Less: No. of days for which no interest	-90
No. of delay for interest	56

Note: If the goods which are not removed from warehouse within the permissible period, would be deemed to have been improperly removed on the day it should have been removed. Hence, duty applicable on such date (i.e. last date on which the goods should have been removed) is applicable, and not the actual date on which goods are removed. [**Kesoram Rayon v Commissioner of Customs (1996)**].

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

21.1 Introduction

21.2 Types of Duty Drawbacks

21.3 Duty Drawback on Re-Export

21.4 Payment of Erroneous or Excess Payment of Duty Drawback and Interest

21.5 Re-Export of Imported Goods by POST

21.6 Negative List of Duty Drawback

21.7 Interest on Draw Back Amount

21.8 Duty Deferment

21.9 New Customs and Central Excise Duties Drawback Rules, 2017

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.

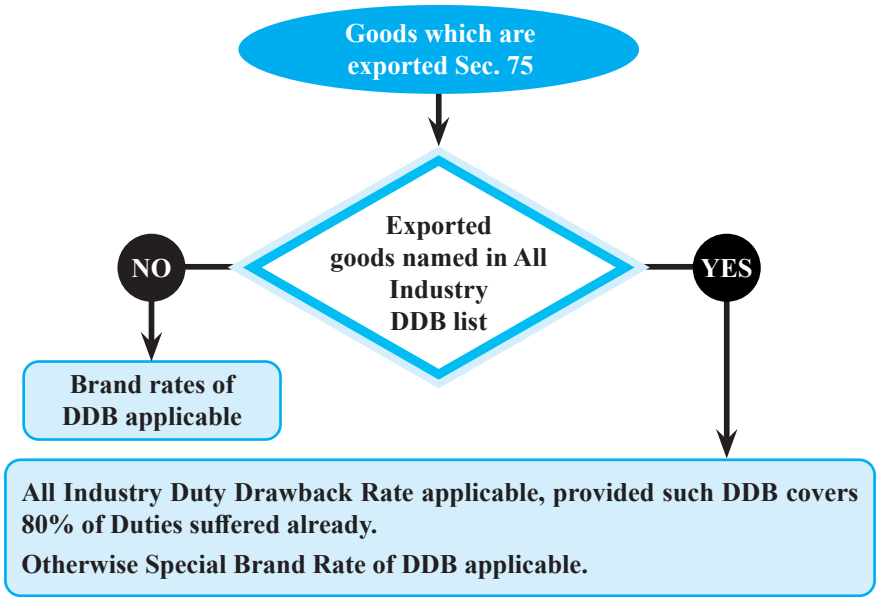
All Industry Rates

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.

- 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.

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.

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.

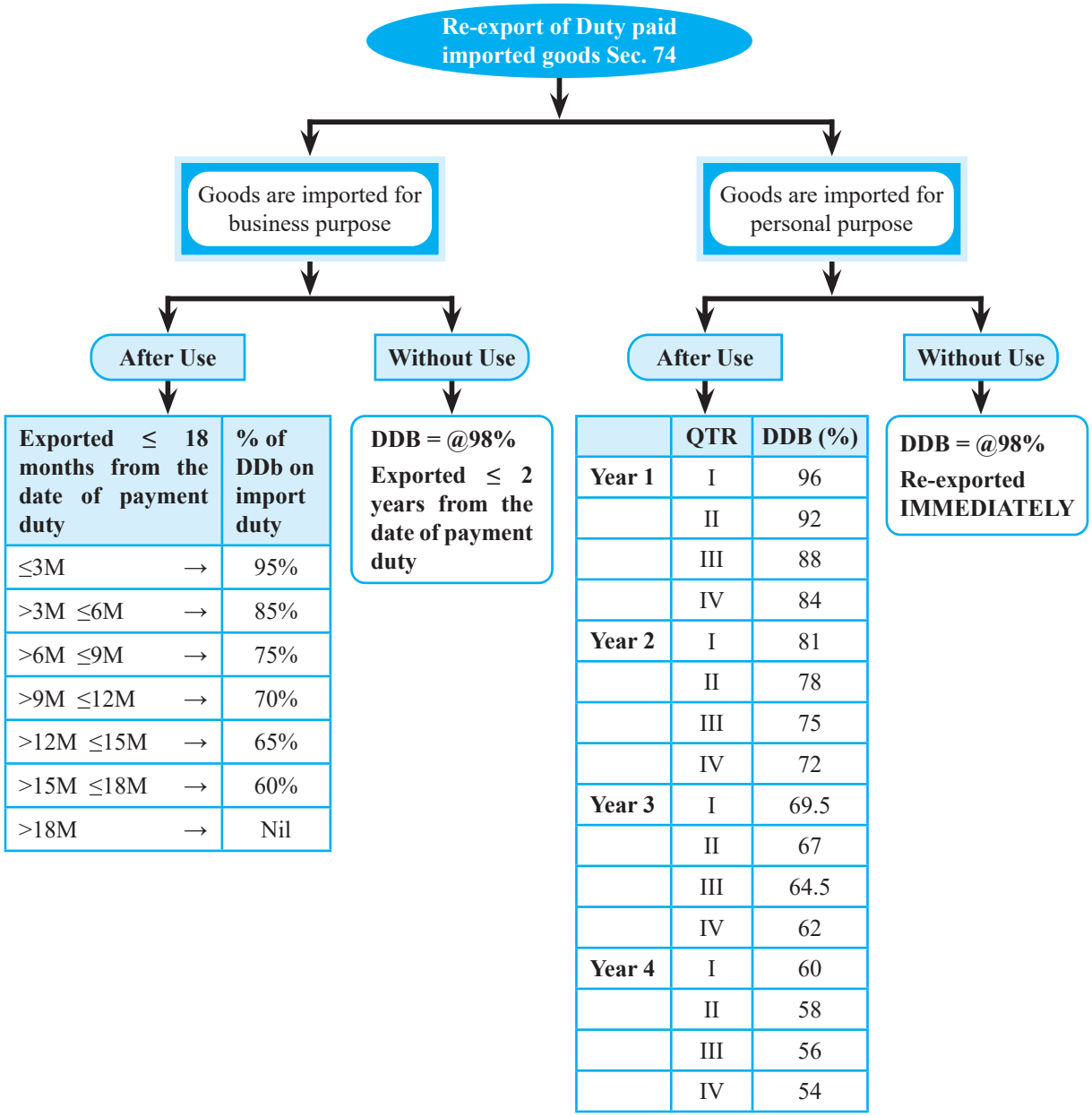
Illustration 1

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:



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

	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

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 16-6-2025. A demand for recovery of the same was issued by the Department on 24.08.2025. Abdul Overseas Private Limited returned the erroneous refund to the Department on 16-10-2025. 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 200 kgs. Artware of brass, whose actual weight was 190 Kgs. only.	40,000	₹24 per Kg.	4,800
(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

22.1 Introduction

22.2 Miscellaneous Provisions

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 2024 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 2025. M/s X Ltd., clear the capital goods imported, after having been used for the specified purpose on 15th June 2025. 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 2025.

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 2025 to 15th June 2025 = 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 2024 to 30th June 2025 = 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.

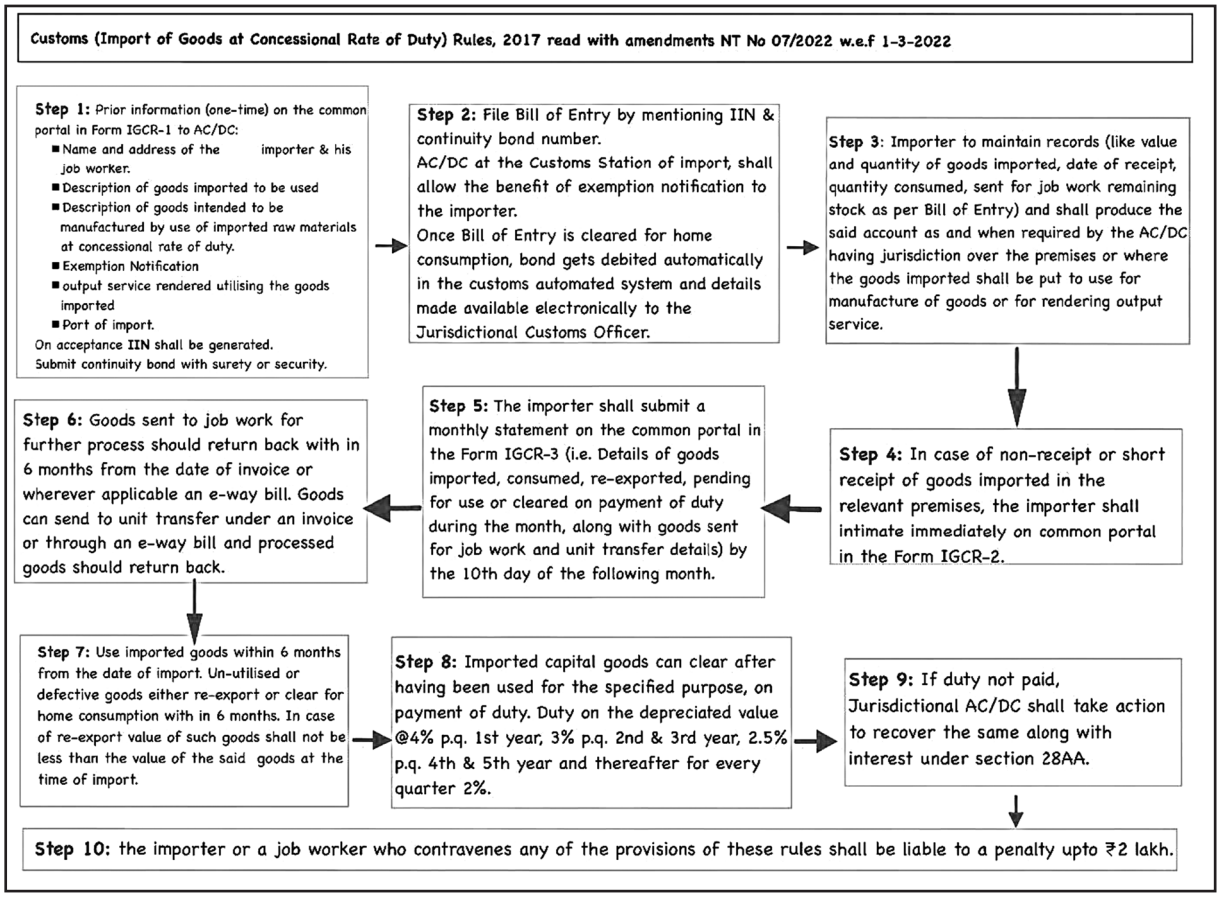
Rule 8A: Penalty:

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:



Implementation of automation in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 with effect from 01.03.2022 are being amended to provide the following facilities:

The amendments are aimed at simplifying the procedures with a focus on automation and making the entire process contact-less.

These include:

(a) The process is being automated. The Rules prescribe the submission of the necessary details electronically, through the common portal. (The common portal is the one notified vide notification 33/2021, dated 29-03-2021 and accessible at the URL www.icegate.gov.in).

(b) The various forms have been standardized and notified for the purpose of electronic submission of details.

(c) Individual transaction based permissions and intimations, such as - intimation of the intent to import goods at a concessional rate of duty, intimation of the receipt of goods, permission to re-export or clear goods domestically etc, are all being done away with.

(d) A monthly statement would to be submitted by the importer on the common portal

(e) A procedure for inter-unit transfer of the imported goods has been provided for

(f) An electronic option for voluntary payment through the common portal, as specified in the Rules, is also being developed for implementation.

Duty concessions on specified items when imported by bonafide exporters:

A scheme is being introduced for bonafide exporters on duty-free imports for the purpose of use in goods meant for export, based on end-use monitoring subject to the requirement of exporting value added products manufactured using inputs imported under specified exemptions, within a period of 6 months. Importer shall be required to follow the procedure under the IGCR Rules.

W.e.f. 10th September 2022, Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 notified vide Notification 74/2022, dated 9th September, 2022:

To further facilitate the trade and to expand the scope of application, the IGCRS Rules, 2022 have been notified, while retaining the basic contours of IGCR, 2017. It is pertinent to note that these changes are of the nature that broaden the scope of coverage of IGCR and ensure that useful additional data fields are effectively captured.

It is reiterated that these rules are not a departure from the existing procedure and hence all the clarifications provided vide Circulars 48/2017, dated 08.12.2017, 10/2021 dated 17.05.2021 and 04/2022 dated 27.02.2022, will continue be in effect, unless specifically modified by this Circular.

The salient changes include:

(a) Clarifying the time period of utilisation to be the time period for compliance and bringing in a provision to extend the said period in certain cases for the reasons beyond the importer's control.

(b) Prescribing a procedure for immediate re-credit of Bonds by Jurisdictional customs officer, rather than waiting till the time of filing of the monthly statement.

(c) Expanding the scope of the IGCR procedure applicable to Specified End Use mentioned in Customs Notifications, i.e. apart from those pertaining to manufacturing and in respect of those for providing output services. In case of end use, supply to the end use recipient and the nature of the supply is to be captured in the IGCR automated module.

(d) Changes in the forms to capture the details where intended purpose is the export of goods using the goods imported.

(e) Corresponding changes in the forms to better capture the different intended purposes (manufacturing, import for specified end use, export of goods using goods imported, supply to end use recipient or for provision of output service) and additional details such as Sl.No. of the Notification etc.

(f) In Rule 13 of IGCRS Rules, 2022, it is mentioned that reference in any rule, notification, circular, instruction, standing order, trade notice or other order in pursuance of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules,1996 and any provision thereof or to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 and any corresponding provisions thereof or to the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 and any corresponding provisions thereof shall be construed as reference to the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

Time period for utilisation of goods:

When time period for utilisation is specified in the notifications, the said time period will apply. If not specified, the time period of six months will apply.

Further, multiple representations have been received in the Board regarding the inability to utilise the goods imported for intended purpose under IGCR within the prescribed time period of 6 months. In order to facilitate trade in such situations, a provision has been introduced wherein the jurisdictional Commissioner can further extend such period of six months by another 3 months. However, it is clarified that such extension can be given provided the importer furnishes sufficient reason/s for not conforming to the time period so prescribed, which were beyond the importer's control.

Specified End Use:

IGCRS Rule, 2022 is also expanded to include cases where the intended purpose is for putting the goods imported to specified end use and not necessarily manufacturing or for providing output services. In this regard, it is clarified that:

(a) Procedure of intimation, generation of a unique IGCR Identification Number (IIN), import of the goods, submission of bond, maintenance of records, filing of monthly statement or any other procedures remains the same. The Importer shall undertake compliance to the officer having jurisdiction over primary address specified in the Importer Exporter Code (IEC) issued by DGFT.

(b) End use may be specified by a notification under sub-section (1) of section 25 or under section 11 of the Customs Act, 1962.

(c) Where the import is undertaken for a specified end use and no differential duty is involved, the value of the bond shall be equal to the assessable value of the goods.

(d) In cases where the intended purpose of import is supply of the goods to an end use recipient, the importer shall supply these goods under an invoice or where ever applicable, through an e-way bill, as mentioned in the CGST Act, 2017. The description and quantity of such goods shall be clearly mentioned by the importer.

(e) The importer shall maintain a record of all such goods supplied in a month and provide the details in the monthly statement.

(f) The restrictions on job work are only relating to the case where it is undertaken on the goods belonging to importer and does not apply to the end use recipient who receives the goods on the supply and deals with it as stipulated in the notification.

Bond & Bank Guarantee:

In view of the changes introduced to the procedures, the Bank guarantee/cash security/surety shall be taken as per the following norms for the purpose of extending the benefit under the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

	Quantum of Bank Guarantee/Cash Security/Surety
Government or PSU or Autonomous institute under the said government or authorised economic operator or banks & PSU's	Nil
Importers annual turnover in the preceding year is above ₹1 crore	Importers shall given surely for the amount of duty foregone. However, where the importer is not able to provide the surety, a bank guarantee/cash security equivalent to not more than 5% of bond debit value (i.e. - Duty foregone in case of concessional rate and assessable value of the goods in other cases) shall be furnished.
Others	Bank guarantee/Cash security not more than 25% of the bond debit value (i.e. Duty foregone in case of concessional rate and assessable value of the goods in other cases)

As a trade facilitation measure, a new Form IGCR-3A has been notified for confirmationof consumption for intended purpose at the common portal at any point in time for immediate re-credit of the bond by the jurisdictional AC/DC, without waiting for the filing of monthly statement on the 10th of every month. The details filed in form IGCR-3A shall get auto populated in the monthly statement of the subsequent month, which has to be only confirmed by the importer.

Form IGCR-1

[*See* rule 4(1)]

(Prior information to be provided by the importer)

PART-A

I. Details of im porter

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. UN:

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
(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)	(II)	(12)	(13)	(14)	(l5)	(16)	(17)	(18)

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)

Contd...

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 puiposeand 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)	(S)	W

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

23.1 Introduction

23.2 Remission of Duty on Loss, destroyed or abandoned goods [Section 23 of the Customs Act, 1962]

23.3 Cases where Importer may relinquish his title to the goods

23.4 Pilferage of Goods

23.5 Difference between Refund of Duty, Rebate of Duty and Remission of Duty

23.6 Power to Grant Exemption from Duty.

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 Duty paid on exempted goods is qualify for refund	**Example 2** 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.	**Example 3** 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.

w.e.f 1st April 2023, Section 25(4A) is being amended to insert a proviso to the effect that the validity period of two years shall not apply to exemption notifications issued in relation to

(a) multilateral or bilateral trade agreements;

(b) obligations under international agreements, treaties, convertions including with respect to UN agencies, diplomats, international organisations;

(c) privileges of constitutional authorities;

(d) schemes under Foreign Trade Policy;

(e) Central Government schemes having a validity of more than two years;

(f) re-imports, temporary imports, goods imported as gifts or personal baggage;

(g) any duty of customs under any law for the time being in force including IGST leviable under section 3(7) of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

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.

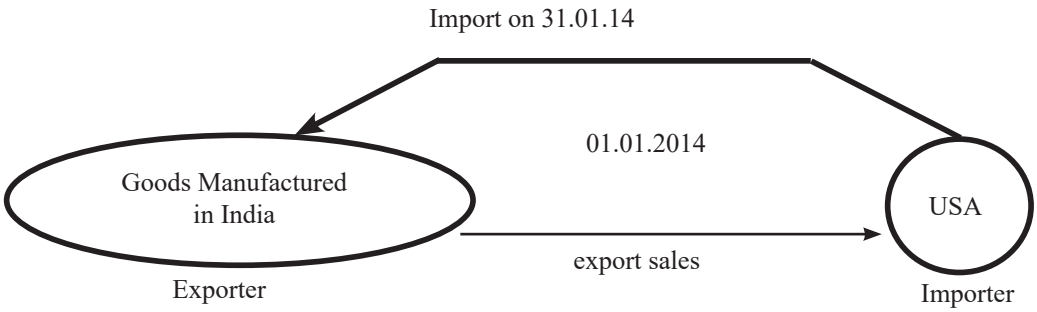
The provisions relating to payment of interest on delayed refund of duty as contained in section 27A of the Customs Act also become applicable in respect of delayed refunds of special CVD which is granted to give effect to the exemption contained in an exemption notification.

Duty liability in certain special circumstances

- Goods are imported into India after exportation therefrom.
- Imported goods have been originally exported to the overseas supplier for repairs.
- Exported goods may come back for repairs and re-export.

(1) Goods are imported into India after exportation therefrom

Good manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, which are imported.



If the exporter has availed of export incentives in the nature of duty drawback, other incentives like MEIS and so on the import duty shall be restricted to the amount of incentive availed of at the time of export.

► **Example**

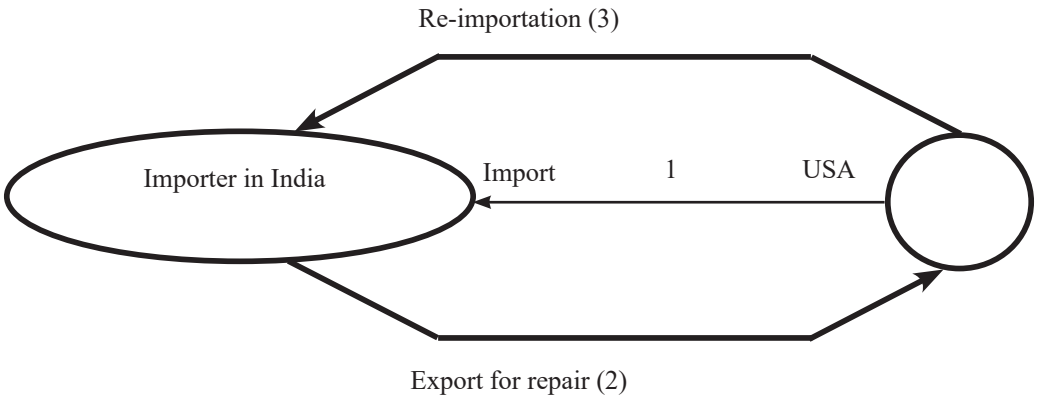
Mr. M manufactured goods worth ₹1,00,000 exported to Mr. U of USA on 1st January 2014. Mr. M availed the duty drawback for ₹1,000. If Mr. M imported the same on 31st January 2014, the import duty that can be levied on Mr. M is ₹1,000.

CBIC vide Notification No. 60/2018-Cus., dated 11.09.2018 has amended Notification No. 158/95-Cus., dated 14.11.1995 exempting goods manufactured in India and re-imported for repairs/reconditioning/reprocessing/ refining/remaking etc. as under

S. No.	Particulars	Time-limit for re-importation from the date of exportation	Other conditions to be satisfied
1.	Goods manufactured in India and re-imported for Repairs or for reconditioning other than the specified goods	7 years In case of export to Nepal, such time-limit is 10 years	Goods must be re-exported within six months (extendable till one year) of the date of re-importation. The Assistant Commissioner/ Deputy Commissioner of Customs is satisfied as regards identity of the goods. The importer at the time of importation executes a bond
2.	Goods manufactured in India and re-imported for (a) reprocessing (b) refining (c) re-making (d) Subject to any process similar to the processes referred to in clauses (a) to (c) above.	1 year	

(2) Imported goods have been originally exported to the overseas supplier for repairs

If the imported goods are exported for repairs, then import duty on re-importation of such repaired goods is restricted to the cost of repairs done abroad, insurance and freight charges.



Conditions to avail the aforesaid benefit:

- the time limit for re-importation is 3 years from the date of export (extended upto 5 years)
- The exported and imported goods must be in the same form and ownership of the goods should also not have changed.
- This concept is not applicable if the repairs amount to manufacture and exports from EPZ or EOUs.

► **Example 1:** Mr. A imported an Air conditioner on 1st January 2025 for ₹5,00,000 from USA. Mr. A has paid import duty for ₹50,000. Due to some technical problems, the same was exported for want of repairs on 31st January 2025. After incurring some additional cost for repairs and replacement worth for ₹1,00,000 the same was re-imported on 5th February 2025. The import duty in such case will be restricted on the value of repairs and replacement of ₹1,00,000.

Example 2: A machine was originally imported from Japan at ₹250 lakhs in August 2024 on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in January 2025 and re-imported without any re-manufacturing or re-processing in October 2025 after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material ₹6 lakhs) would have been ₹9 lakhs. Actual insurance and freight charges (to and fro) were ₹3 lakhs. The rate of basic customs duty is 10% and rate of IGST in India on like article is 12%.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

Answer:

Particulars	₹
Value of goods re-imported after exports [₹9 lakhs (including cost of materials) + ₹3 lakhs]	12,00,000
Basic customs duty @ 10%	1,20,000
Social welfare Surcharge 10% on (BCD)	12,000

Balance (i.e. Transaction value)	13,32,000
Add: IGST @12% on ₹13,32,000	1,59,840
Landed Value	14,91,840
Total Customs Duty	2,91,840

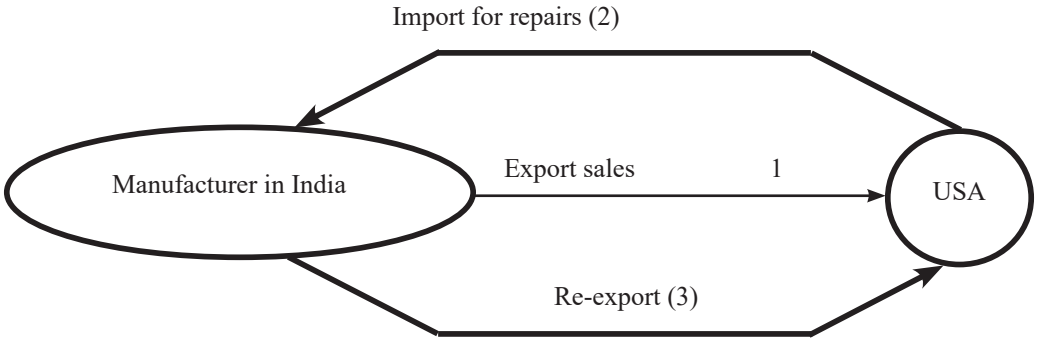
Note: the goods which had been sent for repairs abroad, would on their re- importation, be subjected to a customs duty calculated on the fair cost of repairs including the cost of materials used in repairs, insurance and freight charges, both ways (vide Circular No. 61/95, dated 6/6/95)

(3) Exported goods may come back for repairs and re-export

Sometimes exported goods come back for repairs into India, in such situation the re-imported goods can avail exemption from paying duty subject to satisfaction of some conditions.

Conditions:

- The re-importation is for repairs or reconditioning only
- The time limit for re-import should be within 3 years from the date of export Notification 39/2024 Customs dt. 23rd July 2024, w.e.f. 24-7-2024, increases the time-period for duty-free re-import of goods exported under warranty from 3 years to 5 years, further extendable by 2 years. In case of export to Nepal, such time limit is 10 years.
- The time limit for re-export is 6 months from the date of import [Notification 38/2024 Customs dt. 23rd July 2024, w.e.f. 24-7-2024, The duration for re-exportation of articles imported for repairs has been increased from 6 months to 1 year]. (extended upto 12 months).
- The importer at the time of importation executes a Bond.
- The re-importation is for reprocessing, refining or re-making then the time limit for re-importation should be within 1 year from the date of exportation.



Example: Mr. B exported the Machinery to Mr. S of USA on 1st January 2014 for ₹10,00,000. Due to technical problems Mr. S of USA returned the goods for want of repairs and the same was imported by Mr. B on 15th January 2014. The same was repaired and brought into good condition and re-exported to Mr. S. Hence, Mr. B is not liable to pay any import duty.

Note: any loss notice during reprocessing, refining or re-making shall be exempt from the whole the customs duties subject to the satisfaction of the Assistant or Deputy Commissioner of Customs.

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 1.1.2025. The duty paid on export of product 'P' for ₹1,00,000. Y Ltd. returned product 'P' to X Ltd., on 1.8.2025. 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. 1.8.2025).

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 May 2025, 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 May 2025. The period was extended by mutual agreement and goods were shipped on 5th August 2025 at old agreed prices.

In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August 2025 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.

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

25.1 Introduction

25.2 Indian Customs Trade Facilitation Measures

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. 24×7 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.

The same has been amended to further provide that the eligible importer shall be permitted to make the deferred payment if he has—

(i) paid the duty for a bill of entry within due date and

(ii) paid the differential duty for the same bill of entry along with the interest on account of reassessment within one day (excluding holidays).

[Notification No.58/2023-Cus (N.T.) dated 03.08.2023]

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

The said rules have been amended to further provide that where the Central Government considers it necessary and expedient, it may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date (vide Notification No. 58/2023-Cus Dt.03.08.2023)

Section 51A of the Customs Act, 1962, Payment of duty, interest, penalty, etc.—

(1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.

(2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.

(4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.]

Phased implementation of Electronic Cash Ledger (ECL) w.e.f. 1-4-2023 section 51A of Customs Act, 1962:-

Section 51A(4) provides that CBIC may by notification exempt certain deposits to which provisions of Electronic Cash Ledger will not be applicable. Accordingly, in the first phase from 01.04.2023 till 30.04.2023, CBIC has exempted following deposits from the payment of electronic cash ledger under section 51A of the Customs Act, 1962.

Exemption of deposits under Section 51A of Customs Act, 1962 till 30.11.2023:-

(i) with respect to goods imported or exported in customs stations where customs automated system is not in place;

(ii) with respect to accompanied baggage;

(iii) with respect to goods imported or exported at international courier terminals;

(iv) other than those used for making electronic payment of:

(a) any duty of customs, including cesses and surcharges levied as duties of customs;

(b) integrated tax;

(c) Goods and Service Tax Compensation Cess;

(d) interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975.

In the second phase, from 01.05.2023, the exemptions cited above would continue, except for the deposits with respect to goods imported or exported at international courier terminals (Notification No. 18/2023 and 19/2023 Cus dated 30.03.2023 and Notification No, 69/2023 Cus. Dated 27.09.2023)

Phased implementation of Electronic Cash Ledger (ECL) in Customs - Section 51A of the Customs Act, 1962 [vide Notification No 05-06/2024 Cus (NT) both dated 19.01.2024]:

The Electronic Cash Ledger (ECL) functionality is covered in section 51A of the Customs Act, 1962. It provides enabling provision whereby the importer, exporter or any person liable to pay duty, fees etc., under the Customs Act, 1962 has to make a non-interest- bearing deposit with the Government for the purpose of payment. Section 51A(4) provides that CBIC may by notification exempt certain deposits to which provisions of the Electronic Cash Ledger will not be applicable. Accordingly, CBIC has exempted following deposits from all of the provisions of section 51A of the Customs Act till 29.02.2024-

(i) with respect to goods imported or exported in customs stations where customs automated system is not in place;

(ii) with respect to goods imported or exported at international courier terminals (In next phase, from 01.03.2024, the exemptions cited above would continue, except for the deposits with respect to goods imported or exported at International Courier Terminals. In other words, payments relating to Courier shipments would be required to be done through ECL from 01.03.2024 onwards.);

(iii) with respect to accompanied baggage;

(iv) other than those used for making electronic payment of:

a. any duty of customs, including cesses and surcharges levied as duties of customs;

b. Integrated Goods and Services Tax (IGST);

c. GST Compensation Cess;

d. interest, penalty, fees or any other amount payable under the Act, or Customs Tariff Act, 1975.

The phased introduction of ECL is aimed at leveraging technology and reforming the payment process, inter-alia related to clearance of goods as the deposit may be held in ECL by the trade for making subsequent transaction-wise payments of various types. This has potential to easing compliance in numerous ways.

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

26.1 Advance Authorization Scheme

26.2 Duty Free Import Authorization (DFIA) Scheme

26.3 Duty Remission Schemes

26.4 Export Promotion Capital Goods Scheme (EPCG)

26.5 RoDTEP's

26.6 EOU, EHTP, STP & BTP Schemes

26.7 Deemed Exports

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

The Foreign Trade Policy (FTP) 2023 is notified by Central Government, in exercise of powers conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992) [FT (D&R) Act], as amended.

Foreign Trade Policy - 2023 (w.e.f. 1st April, 2023):

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 Foreign Trade Policy (FTP) 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.

Duration of FTP:

The Foreign Trade Policy (FTP) 2023 incorporating provisions relating to export and import of goods and services, shall come into force with effect from 1st April, 2023 and shall continue to be in operation unless otherwise specified or amended. All exports and imports made up to 31.03.2023 shall, accordingly, be governed by the relevant FTP, unless otherwise specified.

It means unlike of earlier FTP, there is no end date to the new policy.

Any License/Authorisation/Certificate/Scrip/instrument bestowing financial or fiscal benefit issued before commencement of FTP 2023 shall continue to be valid for the purpose and duration for which it was issued, unless otherwise stipulated.

The Foreign Trade Policy is closely knit with the Customs, GST Laws and Excise/state laws of India. However, the policy provisions per-se do not override tax laws.

The Director General of Foreign Trade (DGFT):

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.

In order to facilitate international trade, DGFT consults various Export Promotion Councils as well as Trade and Industry bodies from time to time.

DGFT is to work in close coordination with other agencies like CBIC, RBI, etc.

DGFT issues authorisation for import/export. It also grants Importer Exporter Code (IEC) Number to importers and Exporter. Import and Export without IEC number is not permitted, unless specifically exempted.

The decision of DGFT shall be final and binding on all matters relating to interpretation of Policy, or provision in Handbook of Procedures, Appendices and Aayat Niryat Forms or classification of any item for import/export in the ITC (HS).

A Policy Interpretation Committee (PIC) may be constituted to aid and advice DGFT. The composition of the PIC would be as follows:

(i) DGFT: Chairman

(ii) All Additional DGFTs in Headquarters: Members

(iii) All Joint DGFTs in Headquarters looking after Policy matters: Members

(iv) Joint DGFT (PRC/PIC): Member Secretary

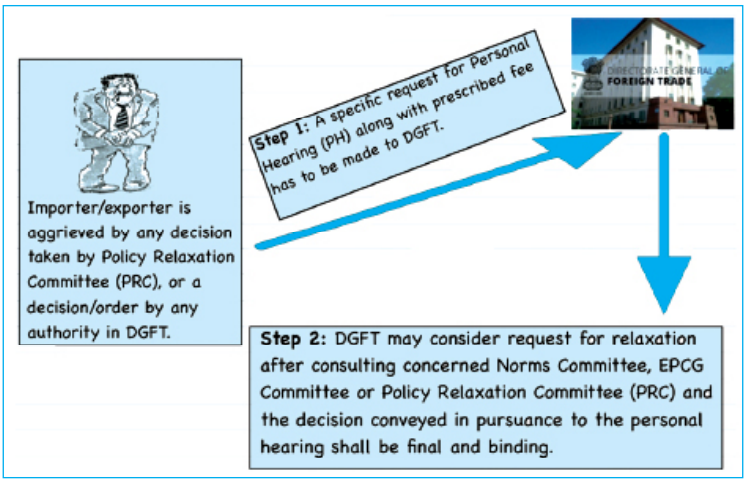
(v) Any other person/representative of the concerned Ministry/Department, to be co-opted by the Chairman.

While granting exemption from Policy/Procedures, DGFT may impose such conditions as he may deem fit after consulting the Committees as under:

Sl No.	Description	Committee
(a)	Fixation/modification of product norms under all schemes	Norms Committees
(b)	Nexus with Capital Goods (CG) and benefits under EPCG Schemes	EPCG Committee
(c)	All other issues	Policy Relaxation Committee (PRC)

Personal Hearing by DGFT for Grievance Redressal:

Government is committed to easy and speedy redressal of grievances from Trade and Industry.



Note: The opportunity for Personal Hearing will not apply to a decision/order made in any proceeding, including an adjudication proceeding, whether at the original stage or at the appellate stage, under the relevant provisions of FT (D&R) Act, 1992, as amended from time to time.

The Settlement Commission set up by the Department of Revenue has been empowered to settle matters of default in export obligation (EO) also

Hand Book of Procedures (HBP) and Appendices & Aayat Niryat Forms (ANF):

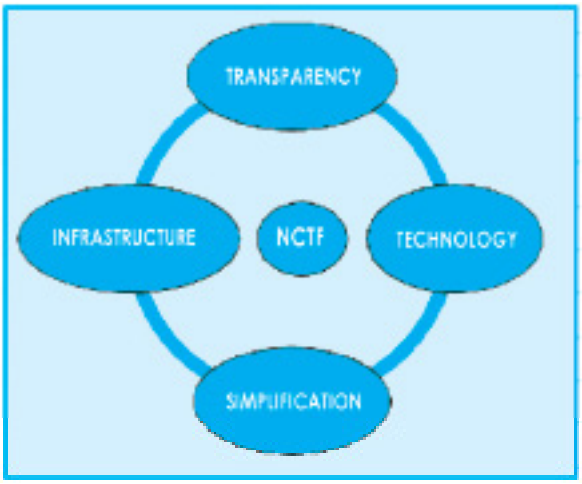
Director General of Foreign Trade (DGFT) may, by means of a Public Notice, notify Hand Book of Procedures, including Appendices and Aayat Niryat Forms or amendment thereto, if any, laying down the procedure to be followed by an exporter or importer or by any Licensing/Regional Authority or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made thereunder and provisions of FTP.

Trade Facilitation and Ease of Doing Business:

1. National Committee on Trade Facilitation (NCTF):

   India has ratified the World Trade Organization's Trade Facilitation Agreement (TFA) in April 2016. To facilitate coordination and implementation of the TFA provisions, an inter-ministerial body i.e. National Committee on Trade Facilitation (NCTF) has been constituted.

TFA emanates from the following four pillars:



National Trade Facilitation Action Plan aims to achieve:—

- Improvement in Ease of Doing Business through reduction in transaction cost and time
- Reduction in cargo release time
- A paperless regulatory environment
- A transparent and predictable legal regime
- Improved investment climate through better infrastructure

2. Free passage of Export Consignment:

   Consignments of items meant for exports shall not be withheld/delayed for any reason by any agency of Central/State Government. In case of any doubt, authorities concerned may ask for an undertaking from exporter and release such consignment.

3. Niryat Bandhu - Hand Holding Scheme for new export/import entrepreneurs:

   DGFT is implementing the Niryat Bandhu Scheme for mentoring new and potential exporter on the intricacies of foreign trade through counseling, training and outreach programmes including the 'Districts as Export Hubs' initiative with 'industry partners', 'knowledge partners' and other stakeholders to create vibrant District-Product-Market relevant knowledge ecosystem.

4. DGFT Online Customer Portal:

   Export Import related information including Acts, Rules, Policy and Procedures etc. are available online at DGFT portal https://dgft.gov.in/.

5. Issue of e-IEC (Electronic-Importer Exporter Code):

   Importer Exporter Code (IEC) is mandatory for export/import from/to India as detailed in paragraph 2.05 of this Policy. DGFT issues Importer Exporter Code in electronic form (e-IEC). For issuance of e-IEC, application can be made on DGFT website (https://dgft.gov.in).

6. Online facility for e-RCMC/RC Related Processes:

   DGFT has created a common digital platform for application of issuance, renewal, amendment and related processes pertaining to Registration Cum Membership Certificate (RCMC)/Registration Certificate (RC) issued by Registering Authorities in electronic form as per Chapter 2 of HBP.

7. Online facility for e-Certificate of Origin (e-CoO).

8. Online facility to file Quality Control and Trade Disputes (QCTD).

9. Electronic record of export proceeds through eBRC & EDPMS:

   (a) e-BRC (Electronic Bank Realisation Certificate) has enabled DGFT to capture details of realisation of export proceeds directly from the Banks through secured electronic mode. This has facilitated the implementation of various export promotion schemes without any physical interface with the stake holders.

   (b) RBI has also developed a comprehensive IT-based system called Export Data Processing and Monitoring System (EDPMS) for monitoring of export of goods and software and facilitating AD banks to report various returns through a single platform. RBI EDPMS data available in DGFT IT System can also be used by exporters on DGFT portal.

10. 24×7 Helpdesk Facility.

11. Authorised Economic Operator (AEO) Programme:

    Authorised Economic Operator (AEO) programme has been developed by Indian Customs to enable business involved in the international trade to reap the following benefits:

    (i) Secure supply chain from point of export to import;

    (ii) Ability to demonstrate compliance with security standards when contracting to supply overseas importers /exporters;

    (iii) Enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries;

    (iv) Minimal disruption to flow of cargo after a security related disruption;

    (v) Reduction in dwell time and related costs; and

    (vi) Customs advice/assistance if trade faces unexpected issues with Customs of countries with which India have MRA.

12. Towns of Export Excellence (TEE):

Selected towns which are contributing handsomely to India's exports by producing goods of specified amount may be granted recognition as TEE. They will be provided targeted support and infrastructure development to maximize their export competitiveness and enable them to move up the value chain and also to tap new markets by granting specified privileges to them.

13. Status Holder Certification:

The objective behind certifying certain exporter firms as "Status Holder" is to recognize such exporter firms as business leaders who have excelled in international trade and have successfully contributed to country's foreign trade.

Status holder Categories:

Status category	Export Performance FOB/FOR (as converted) Value (in US $ Million) during current year and preceding three financial years
One Star Export House	3
Two Star Export House	15
Three Star Export House	50
Four Star Export House	200
Five Star Export House	800

The export performance shall be counted on the basis of FOB of export earnings in freely convertible foreign currencies or in Indian Rupees.

For deemed export, FOR value of exports in Indian Rupees shall be converted in USD at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.

For granting status, an export performance would be necessary in all the three preceding financial years.

Export performance is not transferrable among IEC holders.

Export made on re-export basis shall not be counted for recognition.

Export of items under authorisation, including Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) items, would be included for calculation of export performance.

14. Grant of double weightage:

For calculating export performance for grant of One Star Export House Status category, exports by IEC holders under Micro and Small Enterprises, manufacturing units having ISO/BIS certification, units located in Northeastern States including Sikkim and Union Territories of Jammu, Kashmir and Ladakh and export of fruits and vegetables shall be granted double weightage once in any of these categories.

Privileges of Status Holders:

(a) Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;

(b) Input-Output norms may be fixed on priority within 60 days by the Norms Committee;

(c) Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP or HBP;

(d) Exemption from compulsory negotiation of documents through banks. Remittance/receipts, however, would be received through banking channels;

(e) Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.

(f) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

(g) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their Industrial Entrepreneurs Memorandum (IEM)/Industrial License (IL)/Letter of Intent (LOI) as originating from India with a view to qualify for preferential treatment under specified agreements.

(h) Status holders shall be entitled to export freely exportable items (excluding Gems and Jewelry, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit of

Rupees One Crore or @2% of average annual export realization during preceding three licensing years, whichever is lower.

For export of pharma products by pharmaceutical companies, the annual limit would be 2% of the average annual export realisation during preceding three licensing years. In case of supplies of pharmaceutical products, vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government health programmes, the annual limit shall be upto 8% of the average annual export realisation during preceding three licensing years. Such free of cost supplies shall not be entitled to Duty Drawback or any other export incentive under any export promotion scheme.

Miscellaneous provisions:

1. Every district has products and services which are being exported, and can be further promoted, along with new products/services, to increase production, grow exports, generate economic activity and achieve the goal of Atma Nirbhar Bharat, Vocal for local and Make in India. DGFT Regional Authorities will be engaging with all the relevant State and Central agencies to take forward this initiative in each district.

2. Further, a mechanism has been laid down to resolve complaints/trade disputes between foreign buyer/supplier and Indian exporter/importer in respect of quality of goods/services/technology supplied or unethical commercial dealings including non-supply/partial supply/wrong supply/non- payment; non- adherence to delivery schedules, etc.

   Committee on Quality complaints and Trade Disputes (CQCTD) will be responsible for enquiring and investigating into all quality related complaints and other trade related complaints falling under the jurisdiction of the respective RAs. It will take prompt and effective steps to redress and resolve the grievances of the importers/exporters and overseas buyers/suppliers.

3. SPECIAL CHEMICALS, ORGANISMS, MATERIALS, EQUIPMENT AND TECHNOLOGIES:

   India is a signatory to international conventions on disarmament and non-proliferation and is a member of major multilateral export control regimes. Resultantly, export of dual-use items, including software and technologies, having potential civilian/industrial applications as well as use in weapons of mass destruction is regulated under FTP. It is either prohibited or is permitted under an Authorization unless specifically exempted. SCOMET list is our National Export Control List of dual use items munitions and nuclear related items, including software and technology and is aligned to the control lists of the all the multilateral export control regimes and conventions.

13. General Provisions Regarding Imports and Exports:

Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized

System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at https://dgft. gov.in

Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force

14. Other general provisions:

1. Indian Trade Classification (Harmonized System) [ITC (HS)]:

Schedule I - Import Policy - ITC(HS) 2023	**Schedule II - Export Policy - ITC(HS) 2023**
Rules and guidelines relating to import policies	Rules and guidelines relating to export policies

Based on ITC (HS) we can find which product is

1. Free,
2. Restricted, or
3. Prohibited

for export or import.

Schedule I of the ITC-HS code is divided into 21 sections and each section is further divided into chapters. The total number of chapters in the Schedule I is 98. The chapters are further divided into sub-heading under which different

HS codes are mentioned.

Export Policy Schedule II of the ITC-HS code contain 97 chapters giving all the details about the guidelines related to the export policies.

Based on ITC (HS) we can find which product is Free, Restricted or Prohibited for import or export.

2. State Trading Enterprises (STEs):

State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and/or import. Any good, import or export of which is governed through exclusive or

special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS).

Some of the STEs are

- Food Corporation of India,
- Oil and Natural Gas Corporation Ltd,
- National Fertilizers Limited,
- Indian Rare Earth Ltd.,
- National Dairy Development Board,
- National Agricultural Cooperative Marketing Federation of India (NAFED), State Cooperative Marketing Federation, etc.

3. Importer-Exporter Code (IEC):

An IEC is a 10-character alpha-numeric number allotted to an entity (firm/company/LLP etc.) and is mandatory for undertaking any export/import activities.

With a view to maintain the unique identity of an entity, consequent upon introduction/implementation of GST, IEC shall be same as Permanent Account Number (PAN) and shall be separately issued by DGFT based on an online application.

IEC details have to be electronically updated every year, even if there are no changes; failing which it will be de-activated till updation.

4. Mandatory documents for export/import of goods from/into India:

For Export of goods from India	For Import of goods into India
1. Bill of Lading / Airway Bill / Lorry Receipt / Railway Receipt/Postal Receipt	1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt in form CN-22 or CN 23 as the case may be.
2. Commercial Invoice cum Packing List*	2. Commercial Invoice cum Packing List**
3. Shipping Bill/Bill of Export/Postal Bill of Export	3. Bill of Entry

Note: *(i) As per CBIC Circulars issued under the Customs Act, 1962 (ii) **Separate Commercial Invoice and Packing List would also be accepted.

For import/export of specific goods or in specific cases of export or import, additional documents may be notified/ sought.

5. Penal action and placing of an entity in Denied Entity List (DEL):

In following situations, a person shall be liable to penal action under FT (D&R) Act and rules and orders made thereunder, FTP and any other law for time being in force:

(i) Authorisation holder:-
• Violation of condition of such authorisation
• Fails to fulfil export obligation
• fails to deposit the requisite amount within the period specified in demand notice.
(ii) any information/particulars furnished by applicant subsequently found untrue/incorrect

Denied Entity List (DEL):

A firm may be placed under DEL, by the concerned Regional Authority (RA) of the DGFT. In such a case:

(i) firm may be refused grant or renewal of a licence/authorisation/certificate/scrip/any instrument bestowing financial/fiscal benefits, and

(ii) all new licences, authorisations, scrips, certificates, instruments etc. will be blocked from printing/issue/ renewal.

DEL orders may be placed in abeyance, for reasons to be recorded in writing by the concerned RA. DEL order can be placed in abeyance, for a period not more than 60 days at a time.

A firm's name can be removed from DEL, by the concerned RA for reasons if the firm completes Export Obligation/ pays penalty/fulfils requirement of demand notice(s) issued by the RA/submits documents required by the RA.

6. Provisions relating to import of goods:

6.1 "Actual user" condition:

Goods which are importable freely without any 'restriction' may be imported by any person. However, if such imports require an authorisation, actual user alone may import such good(s) unless said condition is specifically dispensed with by DGFT.

6.2 Samples:

Import of samples of even 'restricted' items, is allowed without import authorisation. Exceptions are defence/ security items, seeds, bees, and new drugs; these need authorisation.

Duty free import of samples upto ₹3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification as amended.

6.3 Import of Gifts:

Import of goods, including those purchased from e-commerce portals, through post or courier, where Customs clearance is sought as gifts, is prohibited except for life saving drugs/ medicines and Rakhi (but not gifts related to Rakhi).

Explanation:

1. Rakhi (but not gifts related to Rakhi) will be covered under Section 25(6) of Customs Act, 1962 that reads that "no duty shall be collected if the amount of duty leviable is equal to or less than Rs. 100"
2. Import of goods as gifts with payment of full applicable duties is allowed.

6.4 Import through Passenger Baggage:

- *Bona fide* household goods and personal effects
- Samples of such items that are otherwise freely importable under FTP may also be imported as part of passenger baggage without an Authorisation subject to Baggage Rules.
- Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage, without authorisation subject to value limit as laid down in FTP or Customs.

6.5 Re-import of goods repaired abroad:

Capital goods, equipment, components, parts and accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorisation.

6.6 Import of goods used in projects abroad:

Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.

6.7 Import of Prototypes:

Import of new/second hand prototypes/second hand samples may be allowed on payment of duty without an Authorisation to an Actual User (industrial) engaged in production of or having industrial license/letter of intent for research in item for which prototype is sought for product development or research, as the case may be, upon a self- declaration to that effect, to the satisfaction of Customs authorities.

6.8 Import of Metallic Waste and Scrap:

Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any types of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

6.9 Removal of Scrap/Waste from SEZ:

A SEZ unit/Developer/Co-developer may be allowed to dispose of in DTA any waste or scrap, including any form of metallic waste and scrap, generated during manufacturing or processing activity, without an Authorisation, on payment of applicable Customs Duty.

6.10 import policy for Second Hand Goods and Import policy of used IT assets (laptop, desktop, monitor, printer) imported from SEZ to DTA notified [vide Notification No. 56/2023 dated 01.01.2024]:

S. No	Second Hand Capital Goods	Import Policy	Conditions, if any
(a)	(i) Desktop Computers; (ii) Refurbished/ re-conditioned spares of re-furbished parts of Personal Computers/ Laptops; (iii) Air Conditioners; (iv) Diesel generating sets	Restricted	Importable against Authorisation
(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time	Restricted	(i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time. (ii)Import of unregistered/ non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited"
(c)	Refurbished / re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare
(d)	All other second-hand capital goods {other than (a) (b) & (c) above}	Free	

S. No	Other than capital goods	Import Policy	Conditions, if any
(a)	Second Hand Goods other than capital goods	Restricted	Importable against Authorisation
(b)	Second Hand Goods imported for the purpose of repair/ refurbishing/ re-conditioning or re-engineering	Free	Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/ Rules/Orders/ Regulations/technical specifications/ Environmental/safety and health norms and the imported item is re-exported back as per the Customs Notification.

Import policy of used IT assets (laptop, desktop, monitor, printer) imported from SEZ to DTA, subject to fulfilment of specified conditions, has been notified in the FTP. The said import is restricted and requires authorization.

6.11 Other Provisions Related to Imports:

- Goods for import into India can be sold on the high seas, subject to FTP/other laws in force.
- Merchanting trade means shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary. This is allowed, subject to RBI guidelines, except for goods in the CITES1_2 and SCOMET lists.
- Import of capital goods under lease financing does not require any specific permission from the DGFT.
- For imported goods, Bank Guarantee/Letter of Undertaking/Bond (BG/LUT/Bond) is to be executed with customs in case of duty-free import or otherwise required, before clearance of goods. For indigenously sourced goods, an authorisation-holder has to execute LUT/BG/Bond with the RA concerned, before sourcing such material.

Merchant trading carried out within one specific foreign country permitted [vide Notification No. 62/2023 dated 20.02.2024]:

Existing Para	Revised Para
merchanting trade involving shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary was allowed, subject to RBI guidelines, except for goods in the CITES and SCOMET lists	Merchant trade involving shipment of goods from one foreign country to another foreign country without touching Indian ports, or shipment or goods within one specific foreign country, involving an Indian intermediary is allowed subject to compliance with RBI guidelines, except for goods in the CITES, or SCOMET.

Effect of the Notification: Merchanting Trade carried out within one specific foreign country is permitted subject to compliance with RBI guidelines, except for goods listed in the CITES Appendices, or under SCOMET.

Note: CITES stands for the Convention on International Trade in Endangered Species of Wild Fauna and Flora. It's an international agreement between governments to regulate or ban international trade in species that are threatened with extinction. The goal of CITES is to ensure that the trade in wild animals and plants doesn't threaten the survival of the species.

7. Provisions relating to Export of Goods:

7.1 Free Exports:

All goods may be exported without any restriction except to the extent that such exports are regulated by ITC(HS) or any other provision of FTP or any other law for the time being in force. DGFT may, however, specify through a Public Notice such terms and conditions according to which any goods, not included in ITC(HS), may be exported without an Authorisation.

7.2 Benefits for Supporting Manufacturers:

Supporting manufacturer is one who manufactures goods/products or any part/accessories/components of a good/product for a merchant exporter/manufacturer exporter under a specific Authorisation. For any benefit to accrue to the supporting manufacturer, the names of both supporting manufacturer as well as the merchant exporter must figure in the concerned export documents, especially in tax invoice/shipping bill/bill of export/airway bill.

7.3 Third Party Exports:

Third party exports is allowed under FTP. Third-party exports means exports made by an exporter/manufacturer

on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate names of both manufacturer exporter/manufacturer and third- party exporter(s). Bank Realisation Certificate (BRC), Self-Declaration Form (SDF), export order and invoice should be in the name of third-party exporter.

Question: LM Corporation, a merchant exporter, procured order of goods from a customer in USA. It approached ST Corporation, a manufacturer, for execution of the said order. The shipping bills relating to the consignment bear the name of LM Corporation. Bank Realization Certificate, GR declaration, export order and invoice are also in the name of LM Corporation. Comment whether ST Corporation would be deemed as the exporter under FTP.

Answer: The given scenario is a case of third-party exports.

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). The conditions for being allowed as third-party exports under FTP are:

(i) Export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third-party exporter(s).

(ii) BRC, GR declaration, export order and invoice should be in the name of third party exporter.

In the above case, though BRC, GR declaration, export order and invoice are in the name of LM Corporation (third party exporter), the shipping bill does not have the name of ST Corporation (manufacturer).

Therefore, ST Corporation will not be treated as the exporter in this case.

7.4 Export of Samples:

Exports of *bona fide* trade and technical samples of goods of freely importable items are allowed without any limit.

7.5 Export of Gifts:

Goods including edible items, of value not exceeding Rs.5,00,000 in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorisation.

7.6 Export of Passenger Baggage:

Bona fide personal baggage may be exported either along with passenger or, if unaccompanied, within 1 year before or after passenger's departure from India. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorisation. Samples that freely exportable can be exported as part of passenger baggage. Authorisation will be required for restricted items.

Samples of freely exportable items may be exported as part of passenger baggage without an authorisation.

7.7 Import for Export:

- Goods that are freely importable as well as freely exportable can be imported and then exported in same or substantially the same form, without any authorisation.
- Goods including capital goods (both new and second hand) can be imported under customs bond and then cleared for export against freely convertible foreign currency provided they are freely exportable. This includes goods that are 'restricted' for import.

- Capital goods that are freely importable and freely exportable can be imported for export upon execution of LUT/BG with the customs authorities.
- Notwithstanding the above, goods of other than Indian origin that are 'restricted' for export (other than 'prohibited' or SCOMET items) but 'free' for import can be imported for exports in same or substantially the same form. Such goods shall be kept in bonded warehouse and re-exported from there subject to provisions of section 69 of the Customs Act, 1962.
- Goods that are imported against payment in freely convertible foreign currency can be exported only against payment in freely convertible foreign currency, unless otherwise notified.

7.8 Payments and Receipts on Imports/Exports:

- 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.
- Non-realisation of export proceeds: If an exporter fails to realize export proceeds within time specified by RBI, he shall be liable to return all benefits/incentives availed against such exports and shall be liable to penal action under FT (D&R) Act and the FTP. However, if such non-realization is for reasons beyond his control, he may approach RBI for writing off the unrealized amount.
- Export Credit Agencies (ECAs): ECAs provide financial support to exporters.

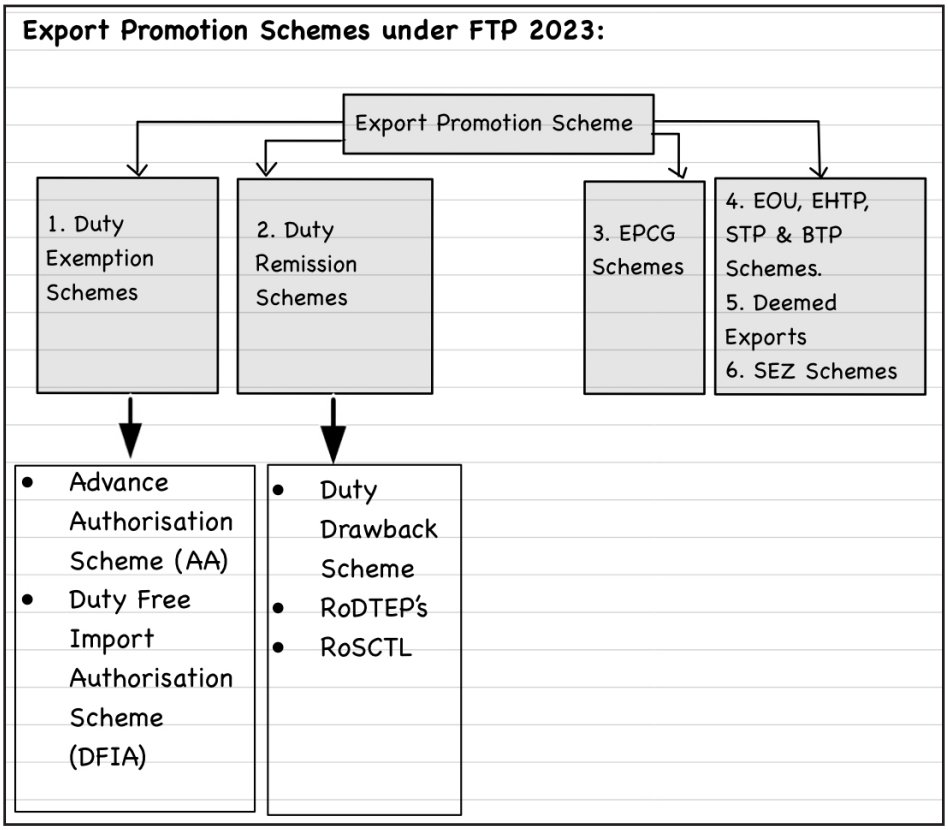
They support exports by insurance, guarantee and also direct lending. For instance, Export Credit Guarantee Corporation of India Ltd. (ECGC), Exim Bank, etc.

7.9 Export Promotion Councils:

Export Promotion Councils (EPCs) are organizations of exporters, set up to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products/projects/services. EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC). RCMC is required to be furnished by any person, applying for an Authorisation to import/export under the FTP (except 'Restricted' items) or applying for any other benefit or concession under FTP.

7.10 Approved Exporter Scheme for Self- Certification of Certificate of Origin:

Approved Exporters will be entitled to self-certify their manufactured goods as originating from India with a view to qualifying for preferential treatment under different Preferential Trade Agreements [PTAs], Free Trade Agreements [FTAs], Comprehensive Economic Cooperation Agreements [CECA] and Comprehensive Economic Partnerships Agreements [CEPA] which are in operation. Self-certification will be permitted only for the goods that are manufactured as per the IEM/IL/LOI issued to manufacturers.



Note: Scheme for Rebate on State and Central Taxes and Levies (RoSCTL) as notified by the Ministry of Textiles.

Advance Authorization Scheme

26.1

Duty Exemption Schemes consist of Advance Authorization Scheme and Duty-Free Import Authorization Scheme:

1. Advance Authorisation (AA) Scheme:

Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed/utilized in the process of production of export product, may also be allowed.

1.1 Eligible Applicant/Export:

- Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
- Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only.

1.2 Eligible Supply:

Advance Authorisation is issued for procurement of inputs for the following kinds of supply:—

- Physical export (including export to SEZ)
- Intermediate supply; and/or
- Deemed exports
- Supply of 'stores' on board of foreign going vessel/aircraft, subject to condition that there is specific SION in respect of item supplied.

1.3 Basis of issuance of Advance Authorisation:

Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

- As per Standard Input Output Norms (SION) notified); or
- On the basis of self declaration; or
- Applicant-specific prior fixation of norm by the Norms Committee or
- On the basis of Self Ratification Scheme

1.4 Self-Ratification Scheme:

Where there is no SION/valid Adhoc Norms for an export product or where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorisation under this scheme on self declaration and self ratification basis.

The expression "additional inputs" refers not to additionality in terms of quantity/value of an input specified in a norm, but to another additional input. Say, if the inputs specified in the norm are X1 and X2 only, then input Y would represent an additional input.

Regional Authority (RA) may issue Advance Authorisations and such cases need not be referred to Norms Committees for ratification of norms.

Application under this scheme shall be made along with a Certificate from Chartered Engineer in the prescribed format.

1.5 Eligibility to opt for Advance Authorisation:

An exporter (manufacturer or merchant), who holds AEO Certificate under Common Accreditation Programme of CBIC is eligible to opt for this scheme. A status holder who is a manufacturer cum actual user and holds valid 2-star or above status and who has already submitted its application for grant of AEO on CBIC's AEO portal is also eligible to apply for this scheme subject to the specified conditions.

However, DGFT may deny authorisation under this scheme to 2-star and above status holder based on its risk management principles. The scheme is not available for the specified export products as well as specified inputs.

1.6 Pre-import condition:

Imported inputs are subject to pre-import condition and they should be physically incorporated in the export product (making normal allowance for wastage). In case of local procurement under invalidation later/Advance release Order (ARO), the inputs shall be procured prior to manufacture of export item and shall be physically incorporated in the export product.

1.7 Invalidation letter- Regional Authority shall issue Invalidation Letter when domestic supplier intends to obtain duty free material for inputs through Advance Authorisation for supplying resultant product to another Advance Authorisation/DFIA/EPCG Auhtorisation.

1.8 Advance Release Order (ARO) - Regional Authority shall issue Advance Release Order if the domestic supplier intends to seek refund of duties exempted through Deemed Exports mechanism.

Holder of an Advance Authorisation/Duty Free Import Authorisation can procure inputs from indigenous supplier/ State Trading Enterprise/EOU/EHTP/BTP/STP in lieu of direct import. Such procurement can be against Advance Release Order (ARO), or Invalidation Letter.

1.9 Validity Period for Import

Import of goods under the Advance Authorisation must be made within 12 months from the date of issue of Authorisation.

Re-validation for another period of 12 months can be allowed once only. Application for re-validation can be made online.

Validity of Advance Authorisation for supplies under deemed exports shall be co-terminus with contracted duration of project execution or 12 months from the date of issue of Authorisation, whichever is later.

1.10 Export Obligation Period and its Extension:

"Export Obligation" means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

The Export Obligation Period (EOP) of Advance Authorisations issued for such items shall be 90 days from the date of clearance of import consignment and no extension in EOP shall be allowed. Such import shall be subject to actual user condition and no transfer of imported raw material, for any purpose, including job work, shall be permitted.

1.11 Advance Authorisation for Annual Requirement and Eligibility Condition:

Entitlement of AA in terms of CIF value of imports = [300% of the FOB value of physical exports and/or ; FOR value of deemed export in preceding financial year] Whichever is Higher

Note:

- Advance Authorisation for Annual Requirement shall only be issued for items notified in Standard Input Output Norms (SION). And it shall not be available in case of ad hoc norms under self-declaration Authorisations where SION does not exist.
- Advance Authorisation for Annual Requirement shall also not be available in respect of SION where any item of input appears in Appendix 4-J (i.e. Export Obligation Period for Specified Inputs with Pre-import Condition under Advance Authorizations).
- Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.

1.12 Value Addition (VA):

$$VA = (A-B)/B \times 100$$

Where

A = FOB value of export realised/FOR value of Supply received

B = CIF value of inputs covered by Authorisation, plus value of any other input used on which benefit of Duty Drawback (DBK) is claimed or intended to be claimed.

1.13 Minimum Value Addition:

(i) Minimum value addition required to be achieved under Advance Authorisation is 15%.

(ii) Export Products where value addition could be less than 15% are given in Appendix 4D (i.e. petroleum products etc).

(iii) Minimum value addition for Gems & Jewellery Sector is given inparagraph 4.60 of Handbook of Procedures.

(iv) In case of Tea, minimum value addition shall be 50%.

(v) In case of spices, minimum value addition shall be 25%.

Example: Jigsaw Puzzle has imported inputs, having CIF value of ₹25,00,000 without payment of duty under Advance Authorisation. 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.

Jigsaw Puzzle wants to know what should be the minimum value addition under Advance Authorisation scheme.

Minimum FOB value of supply to SEZ = ₹34,50,000

[₹25,00,000 + ₹5,00,000) x 115%]

1.14 Import of mandatory spares:

Spares that are required to be supplied with the export product can be imported duty-free under the advance authorisation up to a value of 10% of the CIF value of the authorisation.

1.15 Imports under Advance Authorisation are exempted from payment of

Basic Customs Duty,

Additional Customs Duty,

Education Cess,

Anti- dumping Duty,

Countervailing Duty,

Safeguard Duty,

Transition Product Specific Safeguard Duty, wherever applicable

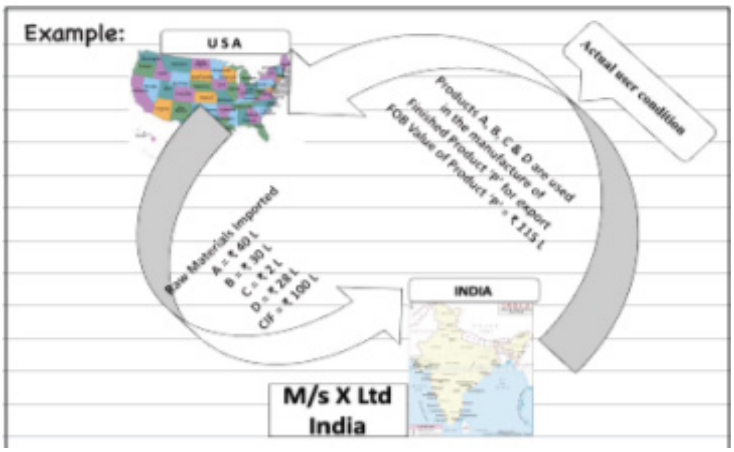
Imports under Advance Authorisation for physical as well as deemed exports are also exempt from whole of the Integrated Tax u/s 3(7) and Compensation Cess u/s 3(9) of the Customs Tariff Act, 1975.

1.16 Admissibility of Drawback:

Duty drawback as per rate determined and fixed by Customs authority is available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product. For this purpose, applicant shall indicate clearly details of duty paid input in the application for Advance Authorisation.

1.17 Actual User Condition for Advance Authorisation:

Advance Authorisation and/or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.



If input tax credit facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against such Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer).

Waste/Scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

1.18 Free of Cost Supply by Foreign Buyer:

Advance Authorisation shall also be available where some or all inputs are supplied free of cost to exporter by foreign buyer. In such cases, notional value of free of cost input shall be added in the CIF value of import and FOB value of export for the purpose of computation of value addition. However, realization of export proceeds will be equivalent to an amount excluding notional value of such input.

Enabling provisions for import of inputs that are subjected to mandatory Quality Control Orders (QCOs) by Advance Authorisation holders, EOU and SEZ [vide Notification No. 71/2023 dated 11.03.2024]:

Quality Control Orders (QCOs) are regulatory mandates issued by the Indian government to ensure that products meet specific quality standards. These orders, typically issued by the Bureau of Indian Standards (BIS) under the BIS Act, 2016, apply to a wide range of products to protect consumer safety, health, and environment. Domestic manufacturers as well as importers need to ensure that products covered by QCOs must not be manufactured/ imported without compliance with specific standards.

Enabling provisions have been incorporated in FTP for exempting inputs imported by Advance Authorisation holders, EOUs and SEZ from mandatory Quality Control Orders (QCOs).

However, import of inputs under Advance Authorisation/EOU/SEZ without compliance to the mandatory QCOs, shall be subjected to the following conditions:

(i) For Advance Authorisation:

(a) Import of inputs under the Advance authorization without compliance to the mandatory QCOs shall be with pre import condition. Such inputs shall be utilised in the manufacturing of the export product (making normal allowance for wastage) and shall be exported under the same authorization. Unutilized imports shall not be transferred to DTA, even after regularization of default in fulfilment of export obligation. It shall be destroyed in the presence of jurisdictional GST/Customs authorities or may be reexported. In addition, such unutilised imports shall be liable to payment of effective duty along with interest to customs authorities and specified composition fee to DGFT.

(b) Said Exemption shall be specifically endorsed in the advance authorization, upon the request of the authorization holder.

(c) The exemption from QCO will be available for physical exports only and such exemption will not be allowed for deemed exports for Advance Authorisation Holders.

(d) Import of Inputs without compliance to the mandatory QCOs under DFIA scheme is not allowed.

(ii) For EOUs

Exemption from applicability of mandatory QCOs issued under the BIS Act, 2016, shall be provided to EOU on import of inputs which are required for export production. No DTA clearance of such inputs or goods manufactured made out of such inputs, are allowed. An undertaking to that effect will be submitted to the Customs authorities by the EOU at the time of importation and a copy of the same shall also be submitted to the Development Commissioner concerned. The exemption from QCO will be available for physical exports only and such exemption will not be allowed for deemed exports.

(iii) For SEZ

Exemption from applicability of mandatory QCOs issued under the BIS Act, 2016, shall be provided to SEZ on import of inputs which are required for export production. No DTA clearance of such inputs or goods manufactured made out of such inputs, are allowed. An undertaking to that effect will be submitted to the concerned Development Commissioner of the SEZ by the SEZ Unit at the time of importation. The exemption from QCO will be available for physical exports only. Above exemption shall be applicable only for the list of notified Ministries/Departments whose notifications on mandatory QCOs are exempted by the DGFT for goods to be utilised/consumed in manufacture of export products

Duty Free Import Authorization (DFIA) Scheme

26.2

Duty Free Import Authorisation is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed/utilised in the process of production of export product, may also be allowed. Import of Tyre under DFIA scheme is not allowed.

Provisions applicable to Advanced Authorisation are broadly applicable in case of DFIA.

However, DFIA shall be issued only for products for which Standard Input and Output Norms (SION) have been notified.

2.1 Duties Exempted:

Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty (BCD).

Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

2.2 Eligibility:

(i) Duty Free Import Authorisation shall be issued on post export basis for products for which Standard Input Output Norms have been notified.

(ii) Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/Bill of Export/Tax Invoice for export prescribed under the GST rules.

(iii) Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorisation.

(iv) No Duty Free Import Authorisation shall be issued for an input which is subjected to pre-import condition or where SION prescribes 'Actual User' condition or Appendix-4J prescribes pre import condition for such an input.

2.3 Minimum Value Addition:

Minimum value addition of 20% shall be required to be achieved.

2.4 Validity & Transferability of DFIA:

Export shall be completed within 12 months from the date of online filing of application and generation of file number. Regional Authority shall issue transferable DFIA with a validity of 12 months from the date of issue. No further revalidation shall be granted by Regional Authority. Separate DFIA shall be issued for each SION.

17. Common provisions applicable to Advance Authorisation and DFIA:

1. Accounting of Input:

Wherever SION permits use of either (a) a generic input or (b) alternative input, unless the name of the specific input together with quantity [which has been used in manufacturing the export product] gets indicated/endorsed in the relevant shipping bill and these inputs, so endorsed, within quantity specified and match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed.

The above provisions will also be applicable for supplies to SEZs and supplies made under Deemed exports.

2. Importability/Exportability of items that are Prohibited/Restricted/STE:

- No export or import of an item shall be allowed under Advance Authorisation/DFIA if the item is prohibited for exports or imports respectively. Export of a prohibited item may be allowed under Advance.
- Authorisation provided it is separately so notified, subject to the conditions given therein.
- Items reserved for imports by STEs cannot be imported against Advance Authorisation/DFIA. However, those items can be procured from STEs against ARO or Invalidation letter.
- Items reserved for export by STE can be exported under Advance Authorisation/DFIA only after obtaining a 'No Objection Certificate' from the concerned STE.
- Import of restricted items shall be allowed under Advance Authorisation/DFIA unless specifically disallowed.
- Export of restricted/SCOMET items however, shall be subject to all conditionalities or requirements of export authorisation or permission.

3. domestic Sourcing of Inputs:

Holder of an Advance Authorisation/Duty Free Import Authorisation can procure inputs from indigenous supplier/State Trading Enterprise/EOU/EHTP/BTP/STP in lieu of direct import. Such procurement can be against Advance Release Order (ARO), or Invalidation Letter

4. Currency for realisation of export proceeds:

Export proceeds shall be realized in freely convertible currency or in Indian Rupees wherever permitted under FTP.

Export to SEZ Units shall be taken into account for discharge of export obligation provided payment is realised from Foreign Currency Account of the SEZ unit.

Export to SEZ Developers/Co-developers can also be taken into account for discharge of export obligation even if payment is realised in Indian Rupees.

Authorisation holder needs to file Bill of Export for export to SEZ unit/developer/co-developer in accordance with the procedures given in SEZ Rules, 2006.

5. Re-import of exported goods under Duty Exemption/Remission Scheme:

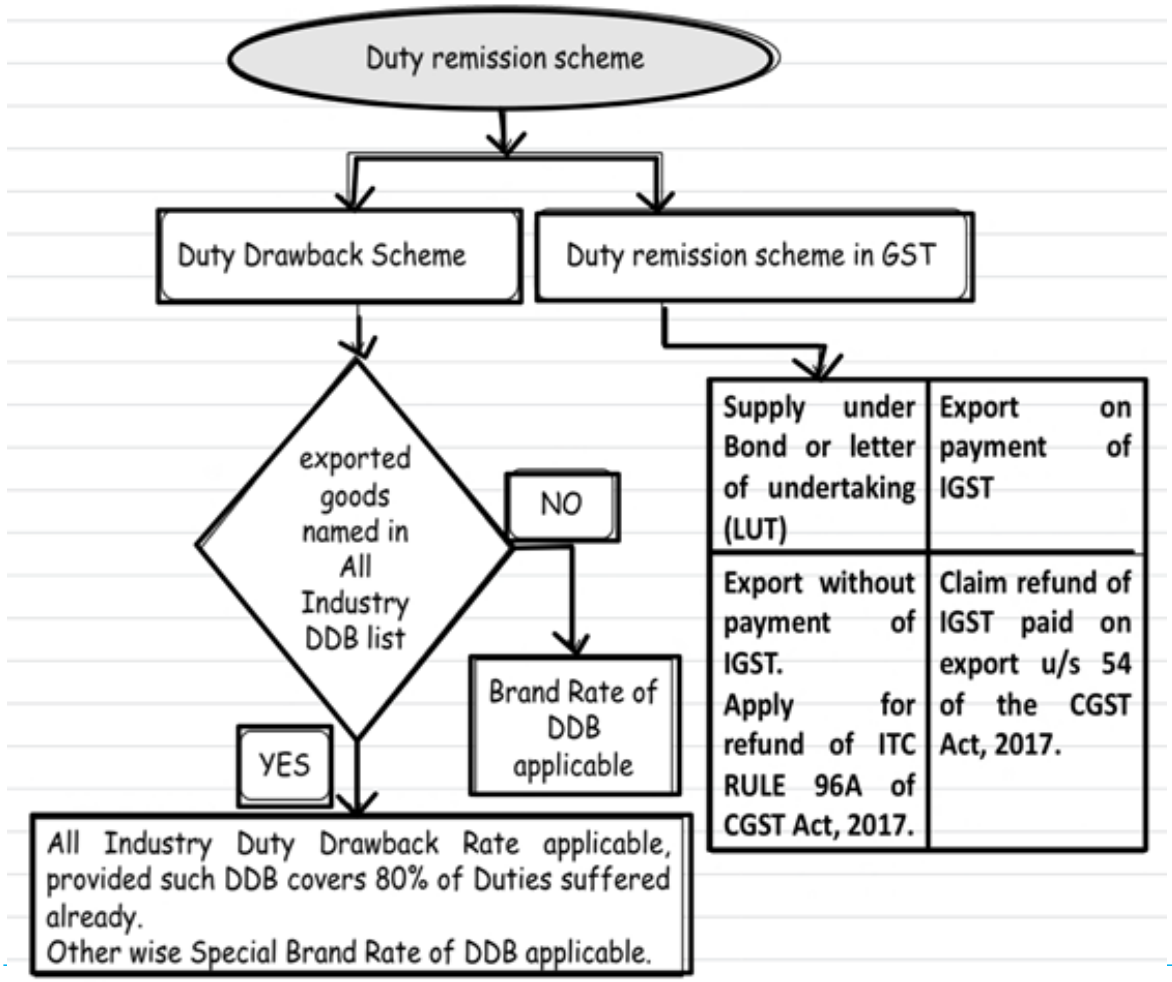
Goods exported under advance authorisation/duty free import authorisation may be re-imported in same or substantially same form subject to the specified conditions.

Duty Remission Schemes

26.3

Duty drawback scheme already explained under Customs Law, and Duty remission scheme is also explained under the GST law.

Duty Remission Scheme:



Export Promotion Capital Goods Scheme (EPCG)

26.4

The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services and enhance India's manufacturing competitiveness.

Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods (except specified goods) for pre-production, production and post-production at zero customs duty or procure them indigenously without paying duty in the prescribed manner. In return, exporter is under an obligation to fulfill the export obligation.

Applicability of IGST and Compensation cess:

Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation.

In case integrated tax and compensation cess are paid in cash on imports under EPCG, incidence of the said integrated tax and compensation cess would not be taken for computation of net duty saved provided, input tax credit is not availed.

Actual User Condition:

Imported capital goods shall be subject to Actual User condition till export obligation is completed and Export Obligation Discharge Certificate (EODC) is granted.

Validity:

Authorisation shall be valid for import for **24 months** from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier:

A person holding an EPCG authorisation may source capital goods from a domestic manufacturer either through Invalidation letter or through Advance Release Order. Such domestic manufacturer shall be eligible for deemed export benefits. Such domestic sourcing shall also be permitted from 100% EOUs.

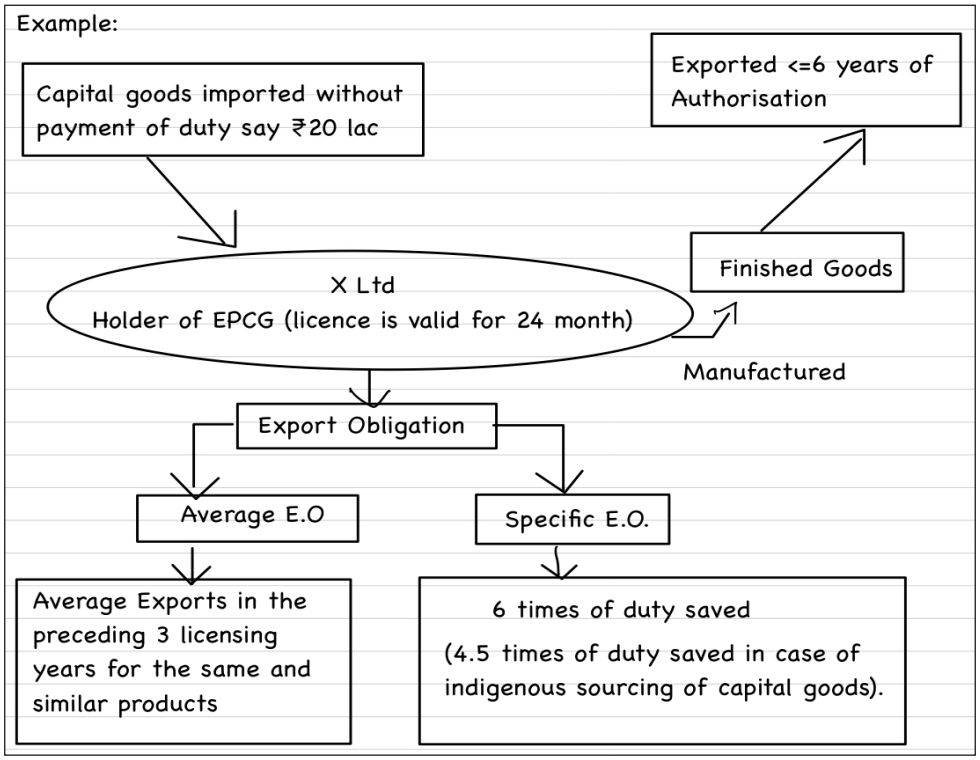
Export Obligation (EO) consist of average export obligation and specific export obligation.

Import under EPCG scheme shall be subject to an export obligation equivalent to 6 times of duties, taxes and cess saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization.

Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme.

Exports made from DTA units shall only be counted for calculation and/or fulfillment of AEO and/or EO 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 fulfilment of export obligation.**8**



Incentives for fulfilment of export obligation:

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.

In case of direct imports, EO shall be reckoned with reference to actual duty/Taxes/Cess saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duty/Taxes/Cess saved on FOR value.

RoDTEP's

26.5

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 RoDTEP 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 (Omitted- vide Notification No. 70/2023 dated 08.03.2024);

(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.] -(Omitted- vide Notification No. 70/2023 dated 08.03.2024).

Note: Effect of this Notification No. 70/2023 dated 08.03.2024:

i. RoDTEP is being extended to AA holders (except Deemed Exports) & EOU units from 11.03.2024 till 30.09.2024 as per Appendix 4RE.

ii. Extension of RoDTEP to SEZ units as per Appendix 4RE will take place on IT integration of SEZs with Customs Automated System (ICEGATE).

iii. RoDTEP Scheme extended earlier in September 2023 till 30.06.2024, is being further extended for exports till 30.09.2024.

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.

10. Validity Period of RoDTEP's:

Validity period of RoDTEP's duty credit scrip is 24 months from the date of issue of duty credit scrip.

EOU, EHTP, STP & BTP Schemes

26.6

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.

Other Entitlements:

Exemption from industrial licensing for manufacture of items reserved for micro and small enterprises. Export proceeds will be realized within 9 months. Units will be allowed to retain 100% of its export earnings in the EEFC (Exchange Earners' Foreign Currency) account. 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 specified conditions. 100% FDI investment permitted through automatic route similar to SEZ units.

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 warehouse.

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.

Sales 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

26.7

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.

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.

Illustration 1

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 2

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 3

Ram Infra has imported inputs, having CIF value of ₹35,00,000 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 = ₹46,00,000 [₹35,00,000 + ₹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 4

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
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 5

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) ₹5,00,000

5. Status holders shall be entitled to export freely exportable items (excluding Gems and Jewelry, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit of
   (a) Rupees One Crore or @2% of average annual export realization during preceding three licensing years, whichever is lower.
   (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. Only projects having a minimum investment of _____in plant & machinery shall be considered for establishment as EOUs.
   (a) ₹1 crore
   (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.

Notification No. 50/2024-Customs (N.T.), dated 19th July 2024, extends the Remission of Duties and Taxes on Exported Products (RoDTEP) scheme to include exports by units located in Special Economic Zones (SEZs). This amendment modifies the earlier Notification No. 24/2023-Customs (N.T.), dated 1st April 2023, to broaden the scope of RoDTEP benefits.

Before the Amendment:

- An SEZ unit exporting goods was not eligible for RoDTEP benefits.

After the Amendment:

- The same SEZ unit, exporting goods with shipping bills presented on or after 1st July 2024, can now claim RoDTEP benefits, reducing their overall tax burden and enhancing export profitability.

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