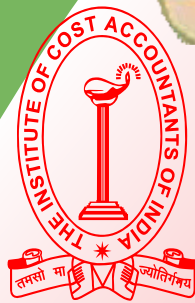


# GST

## GUIDE BOOK FOR PROFESSIONALS



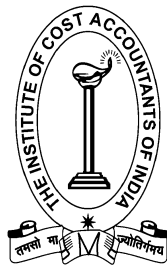
**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

(Statutory Body under an Act of Parliament)

[www.icmai.in](http://www.icmai.in)

# GST

## GUIDE BOOK FOR PROFESSIONALS



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

(Statutory Body under an Act of Parliament)

[www.icmai.in](http://www.icmai.in)

Edition: May, 2021

**Published by**

The President

The Institute of Cost Accountants of India

CMA Bhawan

12, Sudder Street, Kolkata - 700016

**Delhi Office**

CMA Bhawan

3, Institutional Area, Lodhi Road, New Delhi - 110003

**The Institute of Cost Accountants of India  
(Statutory Body under an Act of Parliament)**

© All rights reserved

**Disclaimer:**

This Publication does not constitute professional advice. The information in this publication has been obtained or derived from sources believed by the Institute of Cost Accountants of India (ICAI) to be reliable. Any opinions or estimates contained in this publication represent the judgment officialat this time. Readers of his publication are advised to seek their own professional advice before taking any course of action or decision, for which they are entirely responsible, based on the contents of this publication. ICAI neither accepts nor assumes any responsibility or liability to any reader for this publication in respect of the information contained within it or for any decisions reader may take or decide not to or fail to take.

## **P R E F A C E**

The Indian Indirect tax system has gone through major reforms since 1st July 2017 by rolling out Goods and Services Tax and that was a very significant step in the field of indirect tax era in India. The aim of implementation of GST was to mitigate cascading effect or double taxation in a major way and pave the way for a common national market by amalgamating a large number of Central and State taxes into a single tax.

Four Laws namely CGST Act, UTGST Act, IGST Act and GST Compensation to States Act have been passed by the Parliament and since been notified on 12th April, 2017. The economic integration of India was completed on 8th July 2017. GST would apply to all goods and services except Alcohol for human consumption. GST on five specified petroleum products (Crude, Petrol, Diesel, ATF & Natural gas) would be applicable from a date to be recommended by the Goods and Services Tax Council (GSTC).

CGST, SGST /UTGST & IGST would be levied at rates to be mutually agreed upon by the Centre and the States under the aegis of the GSTC. Goods and Service Tax Network is functioning as a Common Pass-through portal for taxpayers

- submit registration application
- file returns
- make tax payments

Threshold limits of aggregate turnover for exemption from registration and payment of GST for the suppliers of goods is ₹ 40 lakhs and ₹ 20 lakhs (in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura and Uttarakhand) and for the suppliers of services is ₹ 20 lakhs and ₹ 10 lakhs (in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura and Uttarakhand) with effect from 01.04.2019.

Another new feature in GST is E-Invoicing which has been mandatory from 1st April 2021 for the registered taxpayers having a turnover above ₹ 50 crores to eradicate of data entry errors and maintain greater transparency.

We have taken adequate care and tried our best to make the presentation of this book simple as well as impeccable. Here, we would also like to thank and acknowledge the immense contributions of CMA T. K Jagannathan without whose hard work, toil and guidance this book could have never acquired this shape.

**Team – Tax Research Department**

**The Institute of Cost Accountants of India**

May, 2021



# CONTENT

## **Chapter: 1**

Constitutional Background of GST, Concepts of GST 1 - 12

## **Chapter: 2**

Taxable Event, Time of Supply and Place of Supply,  
Composite & Mixed Supply 13 - 62

## **Chapter: 3**

Reverse charge 63 - 78

## **Chapter: 4**

Classification, HSN, SAC 79 - 90

## **Chapter: 5**

Valuation under GST, Valuation Rules 91 - 114

## **Chapter: 6**

Input Tax Credit 115 - 150

## **Chapter: 7**

Basic Procedures of Registration, E-Way Bill 151 - 182

## **Chapter: 8**

Records and Returns 183 - 214

## **Chapter: 9**

Zero Rated Supply, Imports and Exports 215 - 232

## **Chapter: 10**

Payments and Refunds 233 - 266

**Chapter: 11**

Assessment 267 - 272

**Chapter: 12**

Audit 273 - 276

**Chapter: 13**

Demand and Recovery 277 - 290

**Chapter: 14**

Adjudication and Appeals 291 - 306

**Chapter: 15**

Penalties and Prosecutions 307 - 316

**Chapter: 16**

Advance Ruling 317 - 320

**Chapter: 17**

Job Work 321 - 328

**Chapter: 18**

Anti-Profiteering 329 - 334

**Chapter: 19**

Provisions of TDS and TCS 335 - 346

**Chapter: 20**

Provisions of tds and tcs 347 - 376

## CONSTITUTIONAL BACKGROUND OF GST, CONCEPTS OF GST

### CONSTITUTIONAL PROVISIONS RELATING TO INDIRECT TAXES AFTER 1-7-2017

Powers of State and Centre to levy tax on goods and services—Parliament (Central Government) and State Governments have concurrent powers to make laws in respect to goods and services tax in a State. Parliament has exclusive powers to make laws in respect of supply of goods or services or both taking place in the course of inter- State trade or commerce – Article 246A of Constitution of India.

Article 248 of Constitution of India makes it clear that Parliament has exclusive powers to make any law in respect of any matter not enumerated in the Concurrent List or State List. These include the power of making any law imposing a tax not mentioned in Concurrent List or State List. This is also stated in entry 97 of List I of Seventh Schedule.

Thus, all residual powers are with Parliament i.e., Union Government. Powers of State and Centre in case of other taxes - Article 246(1) of

The Constitution specifies that Parliament has exclusive powers to make Laws with respect to any of the matters enumerated in List I in the Seventh Schedule to Constitution. As per Article 246(3) of Constitution of India, State Governments have exclusive powers to make laws with respect to matters enumerated in List II (State List).

Union List relevant to indirect taxation on goods or services.

**Entry No. 83** – Duties of customs including export duties.

**Entry No. 84** – Duties of excise on the following goods manufactured or produced in India, namely (a) Petroleum coke (b) High speed diesel

(c) Motor spirit commonly known as petrol (d) Natural gas (e) Aviation turbine fuel and (f) Tobacco and Tobacco products.

**Entry No. 92A** – 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 [Now, i.e. 1-7-2017, this entry is relevant only in respect of petroleum products and alcoholic liquor].





**Entry No. 92B** – Taxed on consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place during inter-State trade or commerce [Now, w.e.f.1-7-2017, this entry is relevant only in respect of petroleum products and alcoholic liquor].

**Entry No. 97** – Any other matter not included in List II or List III including any tax not mentioned in List II or List III (Entry No. 97 covers all 'Residual Powers').

State list pertaining to indirect taxes on goods or services

**Entry No. 34** – Betting and gambling.

**Entry No. 51**– Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same rate or lower rate on similar goods manufactured or produced elsewhere in India–

- (a) Alcoholic liquor for human consumption
- (b) Opium, Indian hemp and other narcotic drugs and narcotics – but not including medicinal and toilet preparations containing alcohol or any substance included in sub- paragraph (b) of this entry.

**Entry No. 53** – Taxes on the consumption or sale of electricity.

**Entry No. 54**– Tax on sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.

**Entry No. 56** – Tax on goods and passengers carried by road or in inland waterways.

**Entry No. 57** – Taxes on vehicles, whether mechanically propelled or not suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.

**Entry No. 59** – Tolls.

**Entry No. 62** – Tax on entertainment and amusement to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.

### **Compensation to States**

There is fear that State Governments may lose tax revenue on introduction of GST. Hence, it is provided as follows.

**Compensation to States** – Parliament shall, on recommendation of GST Council, provide for compensation to States for loss of revenue



Arising on account of implementation of GST for period up to five years – Section 18 of Constitution (One Hundred and First Amendment) Act, 2016.

**GST Compensation Cess has been imposed for this purpose.**

Since the word used is 'shall', recommendation of GST Council will be normally binding on Parliament.

**EXISTING INDIRECT TAX SUBSUMED IN GST**

Till 30-6-2017, the structure of indirect taxes was as follows –

- (a) Central Excise duty was on manufacture of goods, levied and collected by Central Government
- (b) State Vat on sale of goods within State, levied and collected by individual State Governments
- (c) Central Sales Tax (CST) on inter-State sale of goods i.e., sale from one State to another. The tax was levied by Central Government but collected and retained by State Government at a place from where goods were dispatched outside the State
- (d) Service tax on services levied by Central Government
- (e) Entry tax on entry of goods within the State –levied and collected by State Government.

**Besides, there were many cesses.**

Following can be summarized as major defects in structure of indirect taxes, as existing up to 30-6-2017:

- ❖ Central Sales Tax (CST) was payable @ 2% for every movement of goods from one State to other. Even in case of stock transfers or branch transfers, there is incidence of tax as input service credit (set off) of input taxes was not fully available.
- ❖ Cascading effect of taxes (tax on tax and same goods getting taxed again and again). This could not be avoided due to CST and Entry Tax. State Vat was payable on Central excise element also.
- ❖ India did not have a national market due to invisible barriers of central sales tax, Entry Tax and State Vat and visible barriers of check posts.
- ❖ Millions of man-hours and truck hours were lost at check posts.
- ❖ In some cases, (like works contract, construction industry, restaurants,

hotels, software) same transaction was taxed both by Central and State Government which created confusion, litigation and double taxation in many cases.

- ❖ Each State had its own State Vat Laws with different provisions, different Vat rates different forms and different procedures. Thus, taxable person having business in more than one States found it extremely difficult to keep pace with tax laws of each State.

### **Abolition of earlier duties and taxes**

Earlier Central excise duty (except of petroleum products), service tax, duties of excise on medical and toilet preparations have been subsumed in CGST and SGST w.e.f.1-7-2017.

State Vat, Central Sales Tax, Octroi, Entry Tax, Entertainment Tax, Luxury Tax, Tax on lotteries, betting and gambling have been subsumed in SGST (Of course, CGST will also be payable].

CVD and Special CVD on imported goods have been replaced by IGST w.e.f. 1-7-2017. Input tax credit of this IGST is available.

Basic customs duty on import goods (which is generally 10%) is continuing after 1-7-2017. Stamp duties, tolls and motor vehicle taxes are also continuing.

Cesses abolished – Following cesses have been abolished – Education Cess, SAHE Cess, Mica, Salt, Textile, Limestone, Tobacco, Iron Ore mines, Manganese Ore mines, Cine Workers Welfare, Cement, Strawboard, R&D Cess, Rubber Cess.

Check posts at State borders abolished –Check posts at State borders have been abolished.

### **GOODS OUTSIDE THE PURVIEW OF GST**

States will have powers to impose sales tax on sale within the State on petroleum products and alcoholic liquor for human consumption [Entry 54 of List II (State List) of Seventh Schedule of Constitution of India as amended w.e.f.16-9-2016]

Tobacco products will be subject to excise duty plus GST.

Central Excise duty will continue on petroleum products and tobacco products [Entry 84 of List I (Union List) of Seventh Schedule of Constitution of India as amended w.e.f. 16-9-2016].

Thus, petroleum products will be presently out of GST.



Petroleum products will be brought in GST network at a later stage on recommendation of GST Council – section 5(2) of IGST Act.

Meaning of petroleum products –Petroleum Products means petroleum crude, high speed diesel, motor spirit (commonly known as petrol).

Natural gas and aviation turbine fuel [Entry 84 of List I of Seventh Schedule of Constitution of India, section 5(2) of IGST Act and section 9(2) of CGST and SGST Act].

## **DUAL MODEL OF GST**

There will be dual GST – State GST (SGST) and Central GST (CGST) on supply of goods and services within the State [Article 246A of Constitution of India inserted w.e.f.16-9-2016].

Territorial waters (i.e., 12 nautical miles inside the sea) will be part of State so far as GST is concerned.

SGST will also apply in Union Territories having legislature. These are– Delhi and Puducherry.

Both CGST and SGST will be on supply of goods and services within the State.

## **IGST Act for inter-State transactions**

In case of inter-State supply of goods and services, there will be integrated GST (IGST) imposed by Government of India [Article 269A (1) of Constitution of India inserted w.e.f.16-9-2016].

Equivalent IGST (CVD) will also be imposed on imports [Explanation to Article 269A (1) of Constitution of India].

The IGST Rate will be double the CGST rate.

IGST and CGST rates will be uniform all over India and will not vary from State to State. Presently, SGST rates are also uniform all over India and are equal to CGST rate.

Revenue from IGST will be apportioned among Union and State by Parliament and basis of recommendation of Goods and Service Tax Council [Article 269A (2) and Article 270 (1A) of Constitution of India inserted w.e.f. 16-9-2017].

This apportionment will be required as input tax credit of IGST can be used for SGST and vice versa.

Since IGST will be on 'supply of goods or services', IGST will be payable on inter-state stock transfers, branch transfers, etc.



However, CGST, SGST, UTGST or IGST will not be payable if goods are sent for job work outside the premises of taxable person.

## **CGST Act**

Central Goods and Services Act, 2017 (CGST) is the main Act which covers all important provisions relating to GST like tax liability, Input Tax credit, valuation for payment of tax, procedures, appeals, penalties, offences, transitory provisions etc.

Provisions of this Act are discussed at appropriate places in this book.  
Amendment to CGST Rules, 2017

- Notification No. 20/2019 – Central Tax dated 23rd April, 2019
  - Rule 23(1) of CGST Rules, 2017: Revocation of cancellation of Registration- Two provisos inserted
  - For cancellation without retrospective effect:
    - All returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed
- All returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of 30 days from the date of order of revocation of cancellation of registration.
- For cancellation with retrospective effect:
  - The common portal does not allow furnishing of returns after the Effective date of cancellation

A third proviso was added to rule 23(1) of the said Rules enabling filing of application for revocation of cancellation of registration, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of thirty days from the date of order of such revocation of cancellation of registration.

- Rule 62 of CGST Rules, 2017: Form and manner of submission of statement and return-Taxpayers opting for composition schemes to pay tax on quarterly basis, file returns on annual basis; Need to file statement for purpose of payment of tax
- Annual Return by Composition tax payers: They shall furnish a return for



every financial year or, as the case may be, part thereof in FORM GSTR-4, till the 30<sup>th</sup> April following the end of such financial Year

Quarterly Statement by Composition taxpayers: They shall furnish a statement, every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in FORM GST CMP-08, till the 18th of the month succeeding such quarter

- Form GST CMP – 08- Statement for payment of self-assessed tax
- New Format for GST CMP-08 notified
- “Nil” Statement shall be filed if there is no tax liability due during the Quarter.
- Interest shall be levied if payment is made after the due date.
- Negative value may be reported as such if such value comes after Adjustment.

If the total tax payable becomes negative, then the same shall be carried forward to the next tax period for utilizing the same in that tax period.

Effective date of implement 138E of CGST Rules, 2017

- Notification No.22 /2019 – Central Tax dated 23rd April,2019
- Rule 12 of the CGST (14th) Amendment Rules, 2018 viz Rule138E  
Of the CGST Rules, 2017 shall come into force w.e.f 21st June, 2019
- Rule 138E of CGST Rules, 2017- Restriction on furnishing of Information in PART A of FORM GSTEWB-01.
- Any person who has not furnished the returns for a consecutive period of two months(Two tax periods for composition tax payers), shall not be allowed to furnish Part A of GST EWB-01w.e.f 21st June, 2019

## **SGST Act**

Each State has passed its own State Goods and Services Tax Act, 2017 (SGST). The SGST Act of each State virtually copy of CGST Act. Even section numbers and sub-section numbers are same. Rules and notifications are also identical. The only change is in respect of mention of State Authority instead of Central Authority and State Tax instead of Central Tax.

The notifications under CGST Act and SGST Act are expected to be issued simultaneously. However, most of States do not do that at all or do after considerable time.



Presently, all taxable persons are blindly following notifications, rules and circulars issued by Central Government under CGST Act. This is technically and even legally incorrect.

## **Union Territory Goods and Services Tax (UTGST)**

In case of Union Territories which do not have legislature, UTGST(Union Territory Goods and Services Tax) will be payable.

### **UTGST Act has been passed by Parliament**

These Union Territories are as follows section 2(8) of UTGST Act and section 2 (114) of CGST Act –(a) Andaman and Nicobar Islands (b) Lakshadweep (c) Dadra and Nagar Haveli and Daman and Diu (d) Ladhak (e) Chandigarh; and (f) other territory.

For the purposes of CGST Act and UTGST Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory.

Delhi and Puducherry have their own legislatures and they have passed their own SGST Act.

‘Other Territory’ - ‘Other Territory’ includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of section 2(114) – section 2(81) of CGST Act.

This will cover Exclusive Economic Zone (except territorial waters). Thus, ‘other territory’ means area inside sea between 12 nautical miles to 200 nautical miles inside the sea.

### **UTGST will apply for supply of goods and services within that area.**

‘Other Territory’ will not cover Jammu and Kashmir as CGST and IGST Acts have been extended to J&K w.e.f. 8-7-2017

Notifications issued under CGST Act apply to UTGST Act also in respect of matters under section 21 of UTGST Act also w.e.f. 22-6-2017 i.e., retrospectively – Notification No.17/2017 – UTT dated 24/10/2-17

Section 21 of UTGST Act covers all issues relating to scope of supply, registration, returns, assessments, refunds, demand, recovery, audit, appeals, tax invoices, returns etc.

## **FUNDAMENTALS REGARDING SGST, CGST, IGST, UTGST**

Goods and Services Tax means a tax on supply of goods or services, or both, except taxes on supply of alcoholic liquor for human consumption [Article 366(12A) of Constitution of India inserted w.e.f.16-9-2016]



Note that the word used is 'supply' and not 'sale'. Thus, stock transfers, branch transfers will also get covered under GST net.

GST will be payable on free supplies made to related persons. GST will not be payable to free gifts and free samples to unrelated person, but input tax credit in respect of such goods will have to be reversed.

### **IGST will be payable on inter-state stock transfers and branch transfers.**

For stock transfers or branch transfer within the State, SGST and CGST will be payable only where the taxable person has more than one GST Registrations within the State. If there is single registration within State, 'Bill of Supply' (challan) will be sufficient.

#### **Overall structure of Goods and Services Tax**

- Goods and services Tax (GST) will be on 'supply' of goods or services or both, in India w.e.f. 1-7-2017 (including Jammu and Kashmir w.e.f. 8-7-2017). Area up to 200 nautical miles inside sea is 'India' for purpose of GST.
- For supplies within the State or Union Territory – (a) Central tax (Central GST i.e., CGST) will be payable to Central Government and (b) State tax (State GST – SGST) or Union Territory Tax [UTGST – Union Territory GST] will be payable to State Government or Union Territory (as applicable). Area up to 12 nautical miles inside sea is part of State or Union Territory which is nearest.
- For inter – State supplies (supply from one State or Union Territory to another State or Union Territory), Integrated tax (Integrated GST- IGST) will be payable to Central Government. IGST is payable if supply is beyond 12 nautical miles but up to 200 nautical miles.
- In addition, GST Compensation Cess will be payable on pan masala, Tobacco products, coal, aerated waters, motor cars etc.
- Basic customs duty, Education Cess of customs and Secondary and Higher Education Cess of Customs, IGST and GST Compensation Cess (on goods where Compensation Cess is applicable) will be payable on import of goods.
- Distinction between goods and services will be mostly eliminated. This will eliminate problem of dual taxation presently faced by construction industry, works contract, food related services like restaurant and outdoor catering, leasing and hire services and software services.
- GST is based on Vat concept of allowing input tax credit of tax paid on inputs, input services and capital goods, for payment of output tax. This will avoid cascading effect of taxes.





- GST is consumption based tax i.e., tax is payable in the State where goods or services or both are finally consumed.
- The Rate of GST–0%,0.1%,0.25%,1%,1.5%,3%,5%,7.5%,12%, 18% and 28%. In case of supply within State, CGST will be 50% of IGST Rates and SGST/UTGST for supply within the State or Union Territory Authorities or Central Government Authorities. This will avoid dual control.
- Central Excise duty will continue on petroleum products i.e., petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. These products are Out of GST at present and may be brought under GST later.
- Tobacco products will be subject to excise duty plus GST.
- Alcoholic liquor will be subject to State duty. This product is out of GST.
- GST Council (Goods and Services Tax Council) is Apex Constitutional Body which will determine policies of GST.

**Note:** The terms used in CGST, SGST, UTGST and IGST Acts are 'Central Tax', 'State Tax', 'Union Territory Tax' and 'Integrated Tax'. However, in this book, for sake of brevity, the terms used are CGST, SGST, UTGST and IGST respectively.

### **GST Compensation Cess on goods and services**

Section 8 of Goods and Services Tax(Compensation to States)Act,2017 [GST Cess Act for short]makes provision for levy of GST Compensation Cess on supplies of goods and services. This Cess will be in addition to GST payable. The ceiling on GST Compensation Cess is 15% though higher Cess is levied on pan masala and tobacco products.

Thus, all what is achieved by GST can be lost through such Cess. Only solace is that this Cess can be levied by Central Government. Further, such Cess will be only on luxury or SIN goods, though legally, such Cess can be imposed on all goods and services.

Let us hope that it will not be imposed on other goods and services. If such Cess is imposed on all goods and services, the basic purpose of GST will be defeated.

Clarification in respect of utilization of ITC under GST

- Circular No. 98/17/2019-GST dated 23rd April,2019
- Clarification on Section 49A and Section 49B inserted w.e.f 1st February, 2019 and Rule 88A of CGST Rules, 2017 inserted w.e.f 29th March, 2019

The newly inserted rule 88A in the CGST Rules allows utilization of input tax credit of Integrated tax towards the payment of Central tax and State tax, or



as the case may be, Union territory tax, in any order subject to the condition that the entire input tax credit on account of Integrated tax is completely exhausted first before the input tax credit on account of Central tax or State / Union territory tax can be utilized.

### Order of utilization of input tax credit after insertion of Rule 88A

Input tax Credit on account of	Output liability on account of Integrated tax	Output liability on account of Central tax	Output liability on account of States tax/Union Territory tax
Integrated tax	(I)	(II)–In any order and in any proportion	
(III) Input tax Credit on account of Integrated tax to be completely exhausted mandatorily			
Central tax	(V)	(IV)	Not permitted
State tax / Union Territory tax	(VII)	Not permitted	(VI)

### Clarification in respect of utilization of ITC under GST (Contd.)

Presently, the common portal supports the order of utilization of input tax credit in accordance with the provisions before implementation of the provisions of the CGST (Amendment) Act i.e. pre-insertion of Section 49A and Section 49B of the CGST Act. Therefore, till the new order of utilization as per newly inserted Rule 88A of the CGST Rules is implemented on the common portal, taxpayers may continue to utilize their input tax credit as per the functionality available on the common portal.

### Returns in a Staggered Manner

Presently the last date of filing GSTR-3B returns for every taxpayer is 20th of every month. The new proposal is - the last date for filing of GSTR-3B for the taxpayers having annual turnover of ₹ 5 crore and above in the previous financial year would be 20<sup>th</sup> of the month.

The taxpayers having annual turnover below ₹5 crore in previous financial year will be divided further in two categories. The tax filers from 15 States/ UTs, i.e., Chhattisgarh, Madhya Pradesh, Gujarat, Daman and Diu, Dadra and Nagar Haveli, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry, Andaman and Nicobar Islands, Telangana and Andhra Pradesh will have the last date of filing GSTR-3B returns as 22<sup>nd</sup> of the month without late fees.

For the remaining 46 lakh taxpayers from the 22 States/UTs of Jammu and Kashmir, Laddakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh,

Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha having annual turnover below Rs 5 crore in previous financial year will have last date of filing the GSTR-3B as 24th of the month without late fees.

## **E-Invoice System**

The GST Council has approved introduction of E-invoicing to Electronic invoicing in a phased manner for reporting of business to business (B2B) invoices to GST System. As per the notification of GST (Notification No. 61 dtd: 30th July, 2020), E – Invoice system has been enabled for the taxpayers with PAN based turnover more than ₹500 Crores, during financial year 2019-20. As per (Notification No. 05/2021 – CT) The CBIC has notified that e-invoicing will be applicable from 1st April 2021 for businesses with a turnover of more than ₹50 crores (in any financial year from FY 2017-18 onwards).

The notified tax payers have to generate the IRN for the supplies/sales. That is, the IRN has to be generated for the documents of Invoices, Debit Notes and Credit Notes for the local, interstate and export transactions. The tax payer has to upload the complete invoice details, prepared manually or through internal ERP/accounting system, as per the format, and after due validations of the data, the system returns the IRN with the signed invoice and QR code back to the tax payer. The IRN, ACK No, Date and QR code has to be printed by the tax payer on the invoice being issued to the buyer. It may be noted that the IRN can be generated by the supplier only and not by buyer or transporter.

The machine readability and uniform interpretation is the key objective. This is also important for reporting the details to GST System as part of Return. Apart from the GST System, adoption of a standard will also ensure that an e-invoice shared by a seller with his buyer or bank or agent or any other player in the whole business eco-system can be read by machine and obviate and hence eliminate data entry errors.

## **Deferment of E-invoice and QR Code**

- Certain class of registered persons (insurance company, banking company, financial institution, non banking financial institution, GTA, passenger transportation service etc.) to be exempted from issuing e invoices or capturing dynamic QR code and
- The dates for implementation of e invoicing and QR Code to be extended .
- Deferment of e wallet Scheme Extension of the time to finalize e Wallet scheme up to 31-03-2021 and
- Extension of the present exemptions from IGST and Cess on the imports made under the Advance Authorization (AA)/ Export Promotion Capital Goods (EPCG) Scheme/ Export Oriented Unit (EOUs) up to 31-03-2021.

## **Taxable Event, Time of Supply and Place of Supply, Composite & Mixed Supply**

### **Taxable event in GST**

'Taxable event' is that on happening of which the charge is fixed. It is that event, which on its occurrence creates or attracts the liability to tax. Such liability does not accrue at any earlier or later point of time.

Tax becomes payable when liability to pay tax arises and liability to pay tax arises by the happening of the taxable event.

### **'Supply of goods or services or both' is 'Taxable event' in GST**

Goods and Services Tax means a tax on supply of goods or services, or both, except taxes on supply of alcoholic liquor for human consumption [Article 366(12A) of Constitution of India inserted w.e.f.16-9-2016]

Note that the word used is 'supply' and not 'sale' or 'manufacture'. 'Consideration' is not required for supply.

### **Charging section in CGST, SGST, UTGST and IGST**

Section 9(1) of CGST Act is the charging section for CGST. The section reads as follows –

Subject to section 9 (2) of CGST Act (which states that GST on petroleum products will be levied at a later stage), there shall be levied a tax called the Central Goods and Services Tax (CGST) on all intra-State supplies of goods or services or both, except on supply of alcoholic liquor for human consumption, on the value determined under section 15 of CGST Act and at such rates not exceeding 20% as may be notified by Central Government, on the recommendation of GST Council and collected in such manner as may be prescribed.

Sections 5(1) and 5(2) of IGST Act have parallel provisions in respect of IGST. Thus, CGST is on – (a) Intra State supplies (b) of goods or services or both (except on supply of alcoholic liquor for human consumption). Value will be as per section 15. Rate of GST will be notified by Central Government – maximum 20%.

There is parallel provision in SGST Act.

## **Supply as per GST law**

Section 7(1) of CGST Act, states that for the purpose of CGST Act, the expression 'supply' includes–

- (a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business
- (b) Importation of services, for a consideration whether or not in the course or furtherance of business.
- (c) The activities specified in Schedule I, made or agreed to be made without a consideration and activities which are neither supply of goods nor supply of services

Irrespective of anything contained in Section 7(1) of CGST Act, following will not be treated as supply of goods or services–

- (a) Activities or transactions specified in Schedule III; or
- (b) Activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by Central Government – section 7(2) of CGST Act.

## **Main part of definition covers all supplies for consideration**

Main part of definition in section 7(1)(a) of CGST Act makes it clear that all supplies made for consideration in course of business are subject to GST.

Import of services for consideration will be subject to GST even if not made in course of business. Thus, even import for charity activities will get covered, even if they are not in course of business – section 7(1) (b) of CGST Act.

## **Supply to be in course of business of supplier and not of recipient**

The term 'supply' is from the point of view of person who is supplying and not person who is receiving the supply. Thus, if supplier is not in the business of supplying the goods or services, GST is not applicable [and consequently, the recipient will not be liable to pay tax under reverse charge].

Really, even otherwise, GST cannot apply as the individual selling his old goods is not in the course of business (as selling old goods is not the business of an individual).



In PIB press release dated 13-7-2017 18:57 IST (CBI & C press release No.78/2017 dated 13-7-2017), it has been clarified that an individual

Selling old jewelry is not in business of selling such jewelry. Hence, GST will not be payable by recipient under reverse charge.

Though the view is in respect of old jewelry, principle applies to all supplies made by individual in his individual capacity.

### **Transactions that will be taxable as 'supply' even if no consideration**

A supply specified in Schedule I, made or agreed to be made without a consideration is 'supply' for purpose of CGST Act – section 7(1)(c) of CGST Act.

Thus, these transactions will be subject to GST, even if there is no consideration. The valuation for purpose of GST will be as per GST Valuation Rules.

The Schedule I of CGST Act reads as follows –

Schedule I [section 7] – Activities to be treated as supply even if made without consideration

1. Permanent transfer / 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 [section 25(4) of CGST Act states that establishments of same person with distinct GST Registration Numbers will be treated as 'distinct persons']
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 this principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course of furtherance of business.

### **Illustration:**

**Question**–Mrs. Pragati received legal advice for her personal problems and paid 1,000 pound as legal fees to Miss Unnati of U.K (London). Explain whether the above activity of import of service would amount to supply u/s. 7 of the CGST Act, 2017? If in above case both of them are real sisters and no consideration is paid then will it change your answer? Further in the above case both of them are real sisters & Mrs. Pragati receives legal Advice for her business & she didn't pay any consideration then what will be your answer?

**Answer:**

(1) Yes as importation of service for consideration is supply whether or not in the course of business – section 7(1) (b) of CGST Act (1) No–import of service by taxable person from a related person in the course of furtherance of business is taxable, even if no consideration – clause (4) of Schedule I of CGST Act. Here the import of service is for personal issues and not in course of business. Hence not taxable (3) Taxable as import of service is without consideration, but is in course of business and is taxable.

**Permanent transfer/disposal of business assets**

Permanent transfer / disposal of business assets (even without consideration) will be subject to GST only where input tax credit (ITC) has been availed on such assets – clause I of Schedule I to CGST Act.

As per clause 4(a) of Schedule II of CGST Act, where goods forming part of assets of a business are transferred or disposed of, with or without consideration, such transfer will be supply of goods.

By combined reading, in our view, transfer of business assets without consideration will attract GST only in respect of those goods where ITC has been availed.

This clause also has to be read with clause 4(c) of Schedule II, which states that transfer of business as going concern is not a 'supply'. Thus, transfer of entire business as a going concern can not be subject to GST.

Further, services by way of transfer of a going concern, as a whole or an independent part thereof is exempt from GST – Notification Nos.12/2017-CT (Rates) and 9/2017-IT (Rates) both dated 28-6-2017, effective from 1-7-2017 [This exemption has been included in 'services', as anything which is not 'goods' is 'service'. Otherwise, in normal trade understanding, this activity cannot be termed as 'service'].

Thus, transfer of business asset as whole an independent part is not subject of GST.

**Supply between related persons and distinct persons**

Supply of goods or services or both between (a) related persons, or (b) between distinct persons as specified in section 25, when made in the course of furtherance of business will be subject to GST, even if there is no consideration – clause 2 of Schedule I to CGST Act.

Supply to own branch or division with distinct GSTIN– Section 25(4) of CGST



Act states that establishment of same person with distinct GST Registration Numbers will be treated as 'distinct persons'.

Thus, inter-state stock transfers or branch transfer will be subject to GST.

Even intra-State stock transfer or branch transfer will be subject to GST if there are separate GST registration.

### **Supply to Related persons without consideration**

Supply to related person in course of business is liable to GST, even if there is no consideration.

The term 'Related Person' has been defined in section 15(9) of CGST Act. This definition is for all purposes of CGST Act and hence will apply to Schedule I also.

The definition is discussed in chapter on GST Valuation.

Free samples to unrelated persons will not be subject to GST but input tax credit will have to be reversed.

### **Transaction between principal and agent**

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, will be subject to GST, even if there is no consideration – clause 3 of Schedule I of CGST Act.

"Agent" means a person, including a factor, broker, commission agent, arhatia, del-credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carried on the business of supply or receipt of goods or services of both on behalf of another – section 2(6) of CGST Act.

"Principal" means a person on whose behalf an agent carried on the business of supply or receipt of goods or services or both–section 2(88) of CGST Act.

Liability only of C&GA gents, not of commission agents–As per aforesaid clause (a), the agent will be liable for GST on value goods or services only if undertakes to supply any goods or services or both on behalf of any principal (like consignment agent). However, if the agent does not supply goods or services, he is not liable for GST on value of goods or services. In case of commission agent, he does not undertake supply of goods or services. He will be liable for GST only on his commission.





## **Clause (b) will cover cases where agent returns goods to principal.**

### **Business**

Section 2(17) of CGST act defines 'Business' as follows – "Business" includes –

- (a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.
- (b) Any activity or transaction in connection with or incidental or ancillary to (a) above.
- (c) Any activity or transaction in the nature of (a) above, whether or not There is volume, frequency, continuity or regularity of such transaction.
- (d) Supply of acquisition of goods including capital goods and services in connection with commencement or closure of business.
- (e) Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.
- (f) Admission, for a consideration, of persons to any premises.
- (g) Services supplied by a person as the holder of an office which has been accepted by him in the course of furtherance of this trade, profession or vocation.
- (h) Services provided by a race club by way of totalizator or a license to book maker in such club and
- (i) Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

### **Deemed supply of goods and services**

Section 7(1) (d) of CGST Act states that supply includes activities to be treated as supply of goods or supply of services referred to in Schedule II to CGST Act.

Thus, these are 'deemed supply of goods 'or' deemed supply of service', subject to GST.

The distinction between goods or service will also be relevant to determine place of supply and time of supply.

### **Schedule II of CGST act**

Schedule II of CGST Act is as follows.



## Schedule II [section 7] – Matters to be treated as supply of goods or Supply of services

### 1. Transfer

- (a) Any transfer of the title in goods is a supply of goods [This covers Sale, barter, exchange etc. In fact, it should cover gift of goods also, as this clause does not talk of consideration].
- (b) Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services [This covers renting or operating lease of goods. 'Undivided share' means that exclusive possession is not required to be transferred E.g. renting of one locker by bank, share taxi]
- (c) Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed, is a supply of goods [This covers financial lease and hire purchase]

### 2. Land and building

- (a) Any lease, tenancy, easement, license to occupy land is a supply of services [The lease of tenancy of land can be of any period – even 99 years or 999 years].
- (b) Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services [This covers renting or leasing of building. Even renting a part of residential complex for business or commerce will be subject to GST. Thus, if a residential flat is given to company as residence of their employees, it can get covered under GST].

### 3. Treatment or process

Any treatment or process which is being applied to another person's goods is a supply of services [This covers job work, testing].

### 4. Transfer of business assets

- (a) Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the persons carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person [This clause as to be read with clause I Schedule I. Hence, such transfer will be subject to GST if Input Tax Credit was availed on such goods. This clause also has to be read with clause

4(c) of Schedule II. Further, services by way of transfer of a going concern, as a whole or an independent part thereof is exempt from GST Notification Nos.12/2017-CT (Rates) and 9/2017-IT (Rates) both dated 28-6-2017, effective from 1-7-2017. Thus, transfer of entire business as a going concern cannot be subject to GST]

- (b) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services [This covers use of property of taxable person like motor vehicles, residential premises, guest house, telephone, laptop etc. for private use of partner / director / executives /employees].
- (c) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course of furtherance of his business immediately before he ceases to be a taxable person, unless – (a) the business is transferred as a going concern to another person; or (b) the business is carried on by a personal representative who is deemed to be a taxable person [Transfer of entire business is not subject to GST. Only goods transferred are subject to tax].

## **(b) Supply of services**

The following shall be treated as “supply of service”

- a. Renting of immovable property [Since lease of building and land is already covered in clause 2(a) and (b) above, this can cover other immovable property like plant and machinery].
- b. Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation – For the purposes of this clause – (1) The expression “competent authority” means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972, or (ii) a chartered engineer registered with the



Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development of planning authority (2) The expression "construction" includes additions, alterations, replacement or remodeling of any existing civil structure.

[This covers sale of flat in a residential complex before it is occupied. Once it is occupied, any sale by the buyer after that will not attract GST, even if completion certificate is not obtained. However, if builder himself is selling, he will be exempt from GST only if his sale after completion certificate is obtained].

- c. Temporary transfer or permitting the use or enjoyment of any intellectual property right [This covers allowing use of trade mark, Copyright, design, patents].
- d. Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software [This covers development of software but not software itself in physical form].
- e. Agreeing to the obligation to refrain from an act, or to tolerate an actor a situation ,or to do an act [ this covers demurrage, LD charges, notice pay, penalty for violation of contract] and
- 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 [This is renting, where possession and control of goods is transferred to recipient].

### **(c) Composite supply**

The following shall be treated as a supply of services, namely –

- a. Works contract as defined in section 2(119) of CGST Act [The definition covers only works contract relating to immovable property]
- b. Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration [supply of food. The clause does not say 'in restaurant'. Thus, even home delivery of cooked food will be covered, as it includes service. However, sale of tinned food items is sale of goods as no 'service element is involved.

The following taxable person shall be excluded from the ambit of the composition scheme section 10, namely –

- (a) Supply of services not levied to tax under the GST Act
- (b) Inter-State outwards supply of Services
- (c) Outward supply of services through e-commerce operator
- (c) Supply of goods

The following shall be treated as supply of goods, namely – supply of goods by any unincorporated association or body of persons to a member thereof for cash deferred payment or other valuable consideration[supply of goods by club to its members. Interestingly, this does not cover supply of services].

### **Activities which are neither supply of goods nor supply of services**

As per Schedule III of CGST Act read with section 7(2) (a) of CGST Act, the following matters will not be treated as supply of goods or services.

#### **Schedule iii [section7]**

Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

1. Services by an employee to the employer in the course of or in relation to his employment
2. Services by any Court or Tribunal established under any law for the time being in force.[Explanation–The term 'Court' includes District Court, High Court and Supreme Court]
3. (a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities (b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or (c ) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause [true indeed].
4. Services of funeral, burial, cremations or mortuary including transportation of the deceased [small mercy after death]
5. Sale of land and, subject to paragraph 5(b)of Schedule II, sale of building [paragraph 5(b) covers sale of flat in a complex after completion or after its first occupation].



## 6. Actionable claims, other than lottery, betting and gambling. Services by employee to employer not subject to GST

Services by employee to employer are not subject to GST. However, services provided by employer to employee can be subjected to GST, if these are for personal use of employees.

It has been clarified that fringe benefits are in relation to employment and hence outside GST-PIB press release dated 10-7-2017 17:09 IST.

Gifts up to ₹50,000 to employees may be exempted. However, reversal of input tax credit will be required.

In common parlance, gift is without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a right by employee and the employee cannot move a Court for obtaining gift – PIB press release dated 10-7-2017 17:09IST

**Meaning of 'gift'** – Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee – section 122 of Transfer of Property Act.

## Services by employee to employer not subject to GST

Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building is neither supply of goods nor a supply service as per paragraph 5 of Schedule III of CGST Act.

Para 5(b) of Schedule II of CGST Act covers supply of building before completion or before occupancy. Thus, sale of completed building after completion certificate will not be subject to GST.

Surrender of tenancy rights - Surrender of tenancy rights is subject to GST. However, surrender of tenancy rights of residential property is not subject to tax – CBI&C Circular No.44/18/2018-C GST dated 2-5-2018 [This issue arises in States where statutory protection is available to tenants].

This is really 'tolerating an act or situation' though CBI&C circular does not specifically say so.

## Salary to partners not subject to GST

Working partners are entitled to draw salary from the firm. On the basis of provisions of Partnership Act, it is settled that a partner is not 'employee' of the firm and salary is only share of profit. The issue is whether such remuneration will be subject to GST.



Luckily, it has been clarified vide S Nos. 58 and 71 of Tweet FAQ released by CBI&C on 26-6-2017, that GST is not payable on salary to partners.

### **Activities in relation to functions under Article 243G are neither good nor services**

Activities or transactions undertaken by the Central Government or State Government or Local Authority in which they are engaged as public authority i.e., services by way of any activity in relation to a function interested to a Panchayat under Article 243G of Constitution of India are neither supply of goods nor supply of services – Notification No.14/2017- CT (Rate) dated 28-6-2017.

Functions under Article 243G relate to (a) Preparation of plans for economic development and (b) Implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to matters listed in Eleventh Schedule.

Inter-State movement of modes of conveyance, carrying goods or passengers or for repairs and maintenance is neither supply of goods nor services

### **CBI&C circular No.1/1/2017-IGST dated 7-7-2017 has clarified as follows –**

Inter-State movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance is neither supply of goods nor supply of services, as per decision of GST Council.

This will cover trains, buses, trucks, tankers, trailers, vessels, containers and aircrafts.

However, if such movement is for further supply of same conveyance, GST provisions will apply (i.e., car or truck or vehicle itself is driven to other State for sale in that State)

### **Inter-state movement of rigs, tools and spares and all goods on wheel like cranes**

CBI&C circular No.21/21/2017-IGST dated 22-11-2017 has clarified as follows–

Inter-State movement of rigs, tool sands pares and all goods on wheels (like cranes) shall be treated neither as 'supply of goods' nor 'supply of services'. IGST will not apply. However, if these are repaired, GST will apply on such repair or maintenance charges.



## **Services provided by government or local authority which are not taxable**

Any activity or transaction undertaken by Central Government, State Government or Local Authority as public authority has been specifically included for definition of 'business' under section 2(1b) of CGST Act.

However, some of these activities have been specifically excluded from scope of GST by issuing notification under section 7(2) (b) of CGST Act on recommendation of GST Council.

Activities or transactions undertaken by the Central Government or State Government of Local Authority in which they are engaged as public authority i.e., services by way of any activity in relation to a function interested to a Panchayat under Article 243TG of Constitution of India are neither supply of goods nor supply of services–Notification No.14/2007- CT (Rate) dated 28-6-2017.

## **Supply of Goods**

GST Law defines 'goods' as follows –

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

"Actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882) – section 2(1) of CGST Act.

## **Goods must be movable and marketable**

The item must be such that it is capable of being bought or sold. This is the test of 'Marketability'. The goods must be known in the market. Unless this test of marketability is satisfied, these will not be goods. This view, expressed in UOI v. Delhi Cloth Mills – AIR 1963 SC 791 = 1963 (Supl.)

(1) SCR 586 = 1977 (1) ELT (J177) (SC 5 member Constitution bench), has been consistently followed by Supreme Court in subsequent cases and by all High Courts. It was held that to become 'goods' an article must be something which can ordinarily come to the market to be bought and sold.

Any movable property is 'goods'. Thus, intangible property like copyright, trade mark can be 'goods'.

Electrical energy – In following cases, it was held that electricity is 'goods' Electricity has been mentioned in Customs Tariff under heading 2716 0000 with tariff rate of ₹2,000 per 1,000 Kwh.



In GST Tariff, the GST rate is Nil.

### **Actionable claim**

Definition of 'goods' specifically includes 'actionable claim'.

"Actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 – section 2(1) of CGST Act.

Actionable claims, other than lottery, betting and gambling are neither as a supply of goods nor a supply of services– Schedule III of CGST Act read with section 7(2)(a) of CGST Act.

Thus, only activities relating to lottery, betting and gambling will be subject to GST.

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

Section 130 of Transfer of Property Act provides that an actionable claim may be assigned for consideration or without consideration. Transfer of actionable claim shall be affected only by execution of an instrument in writing signed by the transferor or his authorized agent. Once transferred, the transferee can sue or institute proceedings for the same in his own name without any consent of transferor or without making him a party thereto.

Basically, actionable claim means a claim for any amount receivable (debt) or claim for benefit of any movable property not in possession for which relief can be claimed in Civil Court? Such claim can be assigned/ transferred.

Transfer / assignment of unsecured debt is assignment/transfer of 'actionable claim'. Claim to secured debt is not actionable claim. Thus, transfer of secured debt through securitization is not assignment of 'actionable claim'. However, it is mere transaction in money or mere transfer of title of immovable property and hence not a 'service'.

### **Illustrations of 'Actionable claim'**

Following are illustrations of 'actionable claim'

- Lottery ticket (before draw)
- Insurance Policy



- Claim for arrears of rent
- Claims for future rents (these can be assigned)
- Unsecured loans
- Option to purchase securities or movable / immovable property
- Claim for unpaid dower (in case of Muslim woman getting divorce)
- A claim in profit by partner in firm, dividend declared
- Right to sue for infringement of brand or copyright (IPR) even when brand or copyright is not registered [Note that registration of patent is mandatory as without such registration, protection under law is not available. However, in case of copyright and brand, action for infringement can be initiated even if brand or copyright was not registered]

Actionable claims, other than lottery, betting and gambling are neither as a supply of goods nor a supply of services–Schedule-III of CGST Act read with section 7(2)(a) of CGST Act.

### **Lottery tickets are subject to GST**

Lottery ticket is actionable claim. Actionable claim has been included from definition of 'goods' under GST Law.

Transfer of unsecured debt is actionable claim but not subject to GST

If an unsecured debt is transferred to a third person for a consideration, the activity be treated as 'goods' as it is actionable claim.

However, in essence, it is mere transaction in money.

However, actionable claims, other than lottery, betting and gambling are neither as a supply of goods nor a supply of services – Schedule III of CGST Act read with section 7(2) (a) of CGST Act.

Hence, such transfer of unsecured debt will not be subject to GST.

### **Supply of goods at future date – hire purchase and financial lease**

Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed, is a supply of goods – paragraph 1(c) of Schedule-II of CGST Act.

The financial lease or hire purchase of goods should get covered under 'supply of goods', in view of aforesaid specific definition.

## **Securities is neither 'Goods' nor 'Service'**

Securities have been specifically excluded from definition of 'goods' and 'service' – see section 2(102) which defines 'service' and section 2(52) of CGST Act which defines 'goods'.

Hence, 'supply of securities' will not be subject to GST.

"Securities" shall have the same meaning assigned to it in section 2(h) of the Securities Contract (Regulation) Act, 1956 – section 2(101) of CGST Act.

Section 2(h) of Securities Contracts (Regulation) Act, 1956 defines 'securities'.

Units in mutual funds is security and hence neither good nor service – Units of mutual fund is included in definition of 'security'.

## **Supply of services**

'Services' means anything other than goods [Article 366(26A) of Constitution of India].

However, definition of 'services' in GST Act is different. Section 2(102) of CGST Act defines 'services' as follows –

"Services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Though definition of 'service' can cover even immovable property, sale of land and sale of completed building has been excluded from definition of goods or service.

The definition of 'service' is so broad that practically sky is the limit for imposing any tax by Union or State Governments.

## **Tax liability in case of mixed supply and composite supply**

Often, various supplies are made together e.g., (a) Supplier of car arranges for its registration with RTO (b) Supplier of goods or food arranges for its packing, insurance and delivery (c) Commercial coaching institute supplies printed study material, recorded lectures (d) Goods Transport Agency arranges loading, unloading and storage (e) Tour operator arranges hotel booking, sight-seeing, travel arrangement, visa etc. (f) Car repairer also supplying spare parts (g) Supplier of machinery also undertaking its erection and commissioning (h) Hotel providing laundry and intercom services.



In some cases, such combined supply is normal trade practice. This is termed as 'composite supply'. In some cases, it is not normal trade practice. This is termed as 'mixed supply'. Normally, in case of composite supply, consolidated bill may be issued, while in case of mixed supply, bill is often split in various separate supplies.

### **Tax liability in case of composite and mixed supply**

The statutory provisions are as follows:

The tax liability on a composite or a mixed supply shall be determined in the following manner – (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply (b) a mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax – section 8 of CGST Act.

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

“Composite supply means a supply made by a taxable person to a recipient comprising of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

**Illustration:** Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply – section 2(30) of CGST Act.

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

**Illustration:** A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these item scan be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately – Section 2(74) of CGST Act.

### **Distinction between 'composite supply' and 'mixed supply'**

A composite supply is 'naturally bundled' while mixed supply is not naturally bundled in ordinary course of business.

A supply can be 'mixed supply' only if it is for a single price, while a supply can be 'composite supply' if separate prices are charged.

Trade practice is also relevant. A vehicle repair shop also supplies spare parts. However, the long trade practice is to treat these two supplies separately. Hence, such activity is not 'composite supply'. It is also not 'mixed supply' as single price is not charged.

### **Illustrations of naturally bundled service**

An airline provides movie or catering on board. A service provider of pandal and shamiana may also offer to provide catering service. A job worker may also agree to provide delivery of goods after job work.

A CA may offer income tax consultancy in addition to auditing services.

A contractor may offer services right from design, getting necessary approvals, actual construction, finishing, arranging electrical and water connections and getting completion certificate of a building.

A 'turnkey project' is another example of bundled service.

In such cases, the service is required to be classified as per essential character.

A Goods Transport Agency (GTA) provides composite services which may include ancillary services like loading/unloading, packing/unpacking, transshipment, temporary storage during transit etc. All such ancillary services will form part of GTA service and would be eligible for abatement available to GTA service – MF (DR) circular No.186/5/2015-ST dated 5-10- 2015.

### **Power of government to grant exemption**

Government needs flexibility in operations of taxing statute. As the circumstances change, quick adoption to changing situations is required.

Hence, as per section 11(1) of CGST and SGST Act, Central / State Government has been granted to reduce GST rates as per requirements, by issuing a general exemption notification. This notification can be issued only on the basis of recommendation of GST Council. The exemption should be in public interest.

The general exemption can be general either absolutely or subject to such conditions as may be specified in the notification. The exemption can be absolute (unconditional) or subject to conditions.

The exemption can be in respect of goods or services or both of any specified description. Exemption can be from the whole or any part of the tax levied thereon.



There is identical provision in section 6(1) of IGST Act.

There is parallel provision in section 5A(1) of Central Excise Act in respect of excise duty and section 25(1) of Customs Act in respect of customs duty.

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

Explanation to section 11(3) of CGST and SGST Act states that where an exemption in respect of any goods or services or both from the whole or part of the tax levied thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax on such goods or services or both in excess of effective rate, on such supply of goods or services or both.

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

Thus, if a notification grants unconditional exemption from whole or part of GST to certain goods or services, the taxable person cannot pay GST on such goods or services in excess of effective rate of CGST, SGST or IGST.

### **Conditional exemption at option of taxable person**

The provision applies only in cases where exemption has been granted 'absolutely' i.e., unconditionally. It may be wholly or partly.

Some exemptions are subject to some conditions. In such cases, the taxable person may or may not avail of the concession or exemption.

### **Exempt, nil and non-GST supply**

**Nil rated supply** – Nil rated means where GST Tariff itself indicates GST rate as Nil. Really GST Tariff does not have any 'Nil' rated goods.

**Exempted supply**—exempted supply means exempted under an exemption notification. 'Exempted supply' includes non-taxable supply. It is not clear what is meant by 'non-taxable supply', as there is a separate head for non GST supply in GSTR-1 return. Agricultural products are exempt. Electrical energy (2716 00 00) is 'goods' and Nil rated.

**Non-GST supply**—Non-GST supply means supply of petroleum products and alcoholic liquor which are out of GST. It should cover supply of securities and money as such supply is neither good nor services.

### **Composite levy, composition rule, persons not eligible for composition scheme**

It is normal to provide threshold limit for imposition of any tax, so that very small taxable persons are out of tax net. This is also administratively expedient

as it is not possible to exercise control over large number of small taxable persons, where revenue generated is negligible compared to costs involved.

Very small taxable persons whose aggregate turnover is less than ₹40 lakhs are not required to register under GST (The limit is ₹20 lakhs in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura and Uttarakhand). (20/10 lakhs upto 31.3.2019).

This exemption (of 40/20 lakhs) is not available to person who makes inter-State supply of goods. However, this exemption is available to a person making inter-State supply of services–Notification No.10/2017- IT dated 13-10-2017.

The exemption is not available to a person liable to pay tax under reverse charge as per section 9(3) of CGST Act or section 5(3) of CGST Act.

However, once a person obtains registration, he is liable to pay GST, even if his turnover is below ₹40/20 lakhs. He will be also liable to pay GST under reverse charge, wherever applicable.

### **Relief to small and medium size taxable persons**

GST required heavy compliance cost due to detailed accounting work involved.

Small taxable persons do not have sufficient knowledge and expertise to comply with the requirements relating to records and accounts. Hence, for them, a simplified composition scheme has been provided; vide section 10 of CGST Act.

### **Who is eligible for the composition scheme**

The scheme is available to those whose aggregate turnover of supply of goods in a financial year in the previous financial year did not exceed 150 lakhs (Amendment effective from 29th August 2018). [The limit was 100 lakhs up to 28-08-2018. The limit was ₹75 lakhs up to 13- 10-2017]

The scheme is not available to supplier of services, except supply of food for human consumption [This has been defined as 'service' in paragraph 6(b) of Schedule II of CGST Act].

### **The scheme is optional.**

The option lapses on the day his aggregate turnover exceeds the specified limit in the current financial year – section 10(3) of CGST Act.

If the aggregate turnover in financial year exceeds ₹150 lakhs or ₹100 lakhs or ₹75 lakhs (as applicable), composition scheme can be availed in financial year 2017-18. However, if aggregate turnover in 2017-18 is more than ₹150 lakhs or ₹100 or ₹75 lakhs (as applicable), composition scheme is not available in 2018-19.



All registered taxable persons having same PAN number should opt for the composition scheme.

Casual taxable person and a non-resident taxable personal are not eligible for composition scheme.

Composition scheme not applicable to persons supplying aerated water

### **Rates under composition scheme**

The taxable person opting for composition scheme will have to pay a fixed percentage of gross turnover as tax.

The CGST rates of composition scheme are as follows [section 10(1) of CGST Act and rule 7 of CGST Rules, 2017].

- (a) 0.5% of turnover in State or Union territory incase of a manufacturer [The rate was 1% up to 31-12-2017. It is 0.5% w.e.f.1-1-2018].
- (b) 2.5% of turnover in State or Union territory in case of persons engaged in making supplies referred to in paragraph 6(b) of Schedule II of CGST Act [service of supply of food for human consumption].

The suppliers of food will be eligible for composition scheme even if they supply exempted services. Including service of extending deposits or loans and receiving interest– Removal of Difficulties Order No.1/2017. CT dated13-10-2017.

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

A bar supplying food will be eligible for composition scheme if his aggregate turnover including liquor is less than ₹100 lakhs / 75 lakhs. However, since tax is payable on 'turnover within the State or Union Territory', he will be liable to pay GST on sale of liquor also.

- (c) 0.5% of taxable turnover in State or Union Territory in case of other suppliers [i.e., traders][The work 'aggregate' has been added w.e.f. 1-1-2018].

Total tax double above rate – There will be equal SGST. Thus, total tax payable will be double the aforesaid rates.

Meaning of 'aggregate turnover' – '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 a person having the same Income Tax, PAN, to be computed on all India basis but excludes taxes [CGST, SGST, UTGST and IGST – section 2(6) of CGST Act].



However, interest or discount received by him on deposits, loan or advances will not be considered for calculating aggregate turnover [though interest is exempted service] – Removal of Difficulties Order No.1/2017-CT dated 13-10-2017.

**Since the term used is 'value', it should be without taxes.**

"Exempt supply" means supply of any goods or services or both which attracts Nil rate of tax or which may be wholly exempt from tax under section 11 of CGST Act or under section 6 of IGST Act, and includes non-taxable supply section 2(47) of CGST Act.

'Non-taxable supply' means a supply of goods and services or both which is not levied to tax under CGST Act or IGST Act – Section 2(78) of CGST Act.

"Zero-rated supply" means a supply of any goods or services or both in terms of section 16 of IGST Act – section 2(23) of IGST Act.

**Meaning of 'turnover in a State or Union Territory'** – Tax at fixed rate is payable on 'turnover in a state or union territory'.

'Turnover in a 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 – section 2(112) of CGST Act.

**Thus, tax at fixed rate is payable on 'exemption supplies also'.**

Tax of 0.5% (in case of manufacturer) and 2.5% (in case of restaurant) is payable even on exempted goods also – The tax is payable on 'turnover in a State or Union Territory'. Thus, tax is payable even on goods which are exempt from GST (like milk, food-grain etc.). This should be kept in mind.

If a taxable person is supplying both taxable and exempt goods, it may be advisable to deal in exempted goods under a separate partnership firm.

Tax of 0.5% (in case of trader) is on 'taxable turnover' w.e.f. 1-1-2018 – In case of traders, tax @ 0.5% is payable on 'taxable turnover'

w.e.f. 1-1-2018 [Till 31-12-2017, the traders were liable to pay tax on 'turnover within the State' which included exempted goods also.

Tax payable at fixed rate on exempted goods also in case of manufacturer or service provider – If a taxable person (who is manufacturer or supplier of services) deals in both taxable as well as exempted service, tax at fixed



rate is payable even on supply of exempted goods also. This condition is not applicable to trader's w.e.f.1-1-2018.

### Illustrations:

**Question** – Prem is running a consulting firm and also a fancy store, registered under the same PAN number. Turnover of the fancy stores is 65,00,000 year 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 Prem eligible for composition scheme under CGST Act?(ii)Whether it is possible for Prem to opt to composition scheme only for fancy store?(iii)If Prem 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?

**Answer:** (i) No as he is supplier of services (ii) No. (iii) Yes.

**Question** – M/s. Sai Trading Company, an eligible registered dealer in goods making intra-State supplies within the State of Andhra Pradesh, has reported an aggregate turnover of ₹ 78 lakhs in the preceding financial year – (i) determine whether Sai Trading Company will be eligible for composition levy? (ii) Will your answer be different, if in the above scenario, M/s. Sai Trading Company is making Intra- State supply within the State of Jammu and Kashmir?

**Answer:** (i) Not eligible (ii) Not eligible as even for J&K, the limit is 100 lakhs

**Question** – M/s. Ginny and John Company is a partnership firm of interior decorators and also running a readymade garment showroom. Turnover of the showroom was ₹ 80 lakhs and Receipts of the interior decorators service was ₹ 22 lakhs in the preceding financial year. With reference to the provisions of the CGST Act, 2017 examine whether the firm can opt for the composition scheme? Will your answer change, if the turnover of the showroom was ₹70 lakhs and Receipts of the interior decorators service was ₹22 lakhs in the preceding financial year? Also discuss whether it is possible for–Ms. Ginny and John Company to opt for composition scheme only for the showroom?

**Answer:** Supplier of service is not eligible for composition scheme. Hence, in both the cases, composition scheme is not available.

### Who is eligible for composition scheme

As per section 10(2) of CGST Act, following taxable persons will be eligible for composition scheme –

- (a) He is not engaged in the supply of services other than supplies referred to in paragraph 6(b) of Schedule II of CGST Act [service of supply of food

for human consumption] [Thus, suppliers of services (other than food service) are not eligible for this scheme]

- (b) He is not engaged in making any supply of goods which are not levied to tax under this Act [This should cover petroleum products and alcoholic liquor. If in addition to these products, he is making another supply, the composition scheme is not available]
- (c) He is not engaged in making any inter-State outward supplies of goods [Thus he can make inter-State purchases from registered persons but not inter-State supplies]
- (d) He is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52 of CGST Act and
- (e) He is not manufacturer of such goods as may be notified on the recommendation of the Council [some items like pan masala may be excluded]

### **Manufacturers who are not eligible for composition scheme**

Following manufacturers of goods will not be eligible for Composition Levy [Notification No.8/2017- CT dated 27-6-2017].

1. Customs Tariff item 2105 00 00 – Ice cream and other edible ice, whether or not containing cocoa.
2. Customs Tariff item 2106 90 20 – Pan masala
3. Customs Chapter 24– Tobacco and manufactured tobacco substitutes.

### **Conditions and restrictions for composition levy as specified in**

#### **Rules**

Taxable persons whose all outward supplies of goods and services are within the State only will be eligible for the simplified scheme. He should not be engaged in making any inter-State outward supplies of goods.

He can make inter-State purchases from registered taxable person. However, the supplier of goods outside the State will have to upload the invoice with the GSTN of the recipient. Otherwise, it will be treated as purchases from unregistered persons and then he will have to pay GST on those goods under reverse charge.

Taxable persons who opt for composition scheme will not be allowed to charge GST in their invoice. They cannot show GST in their invoice. They are not entitled to any input tax credit. [Section 10(4) of CGST Act]



The person exercising the option to pay tax under section 10 shall comply with the following further conditions [rule 5(1) of CGST Rules, 2017].

- (a) He is neither a casual taxable person nor a non-resident taxable person.
- (b) The goods held in stock by him on the appointed day (1-7-2017) have not been purchased in the course of inter-State trade or commerce of imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under rule 3(1) of CGST Rules[ i.e., option to avail composition scheme is indicated by filing declaration].
- (c) The goods held in stock by him have not been purchased from an unregistered person and where purchased, he pays the tax under section 9(4) [i.e., reverse charge] [Section 9(4) of CGST Act has been kept in abeyance from 13-10-2017 to 31-3-2018. Thus, this condition will not apply during this period].
- (d) He shall pay tax under section 9(3) or section 9(4) on inward supply of goods or services or both received from un-registered persons [reverse charge] [Section 9(4) of CGST Act has been kept inabeyancefrom13-10-2017 to 31-3-2018. Thus, this condition will not apply during this period for reverse charge under section 9(4)].
- (e) He was not engaged in the manufacture of goods as notified under section 10(2) (3) of CGST Act, during the preceding financial year [ice cream, pan masala and tobacco products have been notified under these provisions as not eligible for composition scheme].
- (f) He shall mention the words "composition taxable person, not eligible to collect tax on supplies' at the top of the bill of supply issued by him; and
- (g) He shall mention the words "composition taxable person" on every notice or signboard displayed at a prominent place at his principal place of business a date very additional place or places of business.

### **Composition levy for services**

- Circular No. 97/16/2019-GST dated 5th April,2019
- A registered person who wants to opt for composition scheme by availing the benefit of the notification no. 02/2019-CT(R) dated 7th March, 2019, may do so by filing intimation in the manner specified in rule 3(3) of the CGST Rules in FORM GST CMP-02 by selecting the category of registered person as "Any other supplier eligible for composition levy" as listed at Sl. No. 5(iii) of the said form, latest by 30th April, 2019. Such person shall also

furnish a statement in FORM GST ITC-03 in accordance with the provisions of rule 3(3) of the CGST Rules.

- Any person who applies for registration and who wants to opt for composition scheme by availing the benefit of the notification no. 02/2019-CT(R) dated 7th March, 2019, if eligible, may do so by indicating the option at serial no. 5 and 6.1(iii) of FORM GST REG-01 at the time of filing of application for registration.

The option of payment of tax by availing the benefit of the said notification in respect of any place of business in any State or Union territory shall be deemed to be applicable in respect to all other places of business registered on the same Permanent Account Number.

- The option to pay tax by availing the benefit of the said notification would be effective from the beginning of the financial year or from the date of registration in cases where new registration has been obtained during the financial year.

The provisions contained in Chapter II of the CGST Rules shall mutatis mutandis apply to persons paying tax by availing the benefit of the said notification, except to the extent specified above.

### **Special Procedure for Return filing by Composition Taxpayers**

- Notification No.21 /2019 – Central Tax dated 23rd April, 2019
- Notifies the registered persons paying tax under the provisions of section 10 of the CGST Act or by availing the benefit of notification No.02/2019– Central Tax (Rate), dated the 7th March, 2019, as the class of registered persons who shall follow the special procedure for furnishing of return and payment of tax
- Quarterly Statement in form GST CMP-08 by 18th of the month succeeding such quarter, for payment of self-assessed tax

### **Annual Returning GSTR-4 by 30<sup>th</sup> April following the end of such**

#### **Financial year**

#### **Bill of Supply to be issued and not tax invoice**

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



Thus, taxable person paying GST under composition scheme should issue Bill of Supply and not tax invoice.

### **Procedure for exercising option to avail composition scheme**

Any person who has been granted registration on a provisional basis under rule 24(1) of CGST Rules [i.e., who was earlier registered under central excise, service tax or Vat and has migrated to GST] and who opts to pay tax under composition scheme under section 10, shall electronically file an intimation for GST CMP-01, duly signed or verified, on the Common Portal, on or before 16-8-2017, or such further period as may be extended by the commissioner [The time limit was 21-7-2017, which has been extended to 16-8-2017, vide order No.01/2017- GST dated 21-7-2017].

Where the intimation in form GST CMP-01 is filed after 1-7-2017, the registered person shall not collect any tax from 1-7-2017 but shall issue bill of supply for supplies made after the said day – proviso to rule 3(1) of CGST Rules, 2017.

Intimation in form GST REG 1 sufficient for fresh applicants – If a person is applying for fresh registration, he can indicate the option in the application for registration in Part B of GST REG 1. Then any further intimation will not be required – rule 3(2) of CGST Rules, 2017.

### **Withdrawal from scheme of composition levy**

The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in form GST CMP-04, duly signed or verified, electronically on the Common Portal – rule 6(3) of CGST Rules, 2017. The due date to file GSTR-4 for FY 2020-21 was extended from 30th April 2021 to 31st May 2021.

The taxable person paying GST under composition scheme is required to file only one return per Quarter FORM GST CMP 08, within 18 days after end of each quarter – section 39(2) of CGST Act. Form CMP-08 that was due by 18<sup>th</sup> April 2021 for January-March 2021 has been given a relaxation in the interest charges. No interest for filing on or before 8<sup>th</sup> May, interest reduced to 9% between 9<sup>th</sup> May and 23<sup>rd</sup> May, but charged at 18% thereafter.

Quarterly return is mandatory, even if there is no transaction during a quarter – section 39(8) of CGST Act.

Thus, nil return is required to be filed even if there are no transactions in a quarter.

Commissioner can extend date of filing return by issuing notification – section 39(6) of CGST Act.

Further, he is also required to file Annual Return under section 44 of CGST Act, before 31st December following the end of financial year.

They do not have to file monthly returns of receipt and supplies of goods/services under sections 37 and 38 of CGST Act.

Form of quarterly return – The taxable person will get details of his inward supplies auto populated in GSTR-4A. He can accept, add, correct or delete those details. Then the return is required to be filed in form GSTR-4 – Rule 62(1) of CGST and SGST Rules, 2017.

The return should contain invoice wise inter-State and intra-State supplies received from registered and unregistered suppliers. He will also furnish consolidated details of outward supplies made by him – Rule 62(2) of CGST and SGST Rules, 2017.

Quarterly payment of tax, penalty, fee, interest in cash only – The payment of tax, interest, penalty, fee etc., is to be made in Electronic Cash Ledger only, as he is not eligible for any Input Tax Credit – Rule 62(2) of CGST and SGST Rules 2017.

Since tax has to be paid at the time of filing return, registered persons paying tax under composition scheme are required to pay tax on quarterly basis before the 20th of the month next to the quarter.

Annual return – A person paying tax under section 10 of CGST Act (composition scheme) shall furnish the annual return in form GSTR-9A – provision to rule 80(1) of CGST and SGST Rules, 2017

Composition Scheme has been made available for suppliers of services (to those who are not eligible for the presently available Composition Scheme) with a tax rate of 6% (3% CGST + 3% SGST) having an annual turnover in the preceding FY up to Rs 50 lakhs. They would be liable to file one Annual Return with quarterly payment of taxes. This has been made effective from 01.04.2019.

### **Notification No. 2/2019-Central Tax (Rate) dated 7th March, 2019**

First supplies of goods or services or both up to an aggregate turnover of fifty lakh rupees made on or after the 1<sup>st</sup> day of April in any financial year, by a registered person shall be liable to pay central tax at the rate of three percent to all outward supplies (Total 6%)

#### **Conditions:**

- Not engaged in making any supply which is not leviable to tax under the CGST Act
- Not engaged in making any Inter-State outward supply
- Neither a casual taxable person nor a non-resident taxable person
- Not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52



- Shall not collect any tax from the recipient on supplies made by him nor shall be entitled to any credit of input tax.
- Shall issue, instead of tax invoice, a bill of supply as referred to in clause(c) of subsection(3) of section 31(3)(c) of the CGST Act with particulars as prescribed in rule 49 of CGST Rules.
- The registered person shall mention the following words at the top of the bill of supply, namely: - 'taxable person paying tax in terms of notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies'.
- Shall be liable to pay central tax on inward supplies on which he is liable to pay tax under Section 9(3) or 9(4) of CGST Act at the applicable rates.

### **Explanation:**

"First supplies of goods or services or both" shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

### **Time of supply of Goods and services**

The liability to pay CGST/SGST on the goods and services shall arise at the time of supply of goods and services, as determined in accordance with provisions of section 12 of CGST Act – section 12(1) of CGST Act.

### **Time of supply of goods**

The time of supply of goods shall be the earlier of the following dates [section 12(2) of CGST Act] -

- (a) The date of issue of invoice by the supplier or the last date on which he is required, under section 31(1) of CGST Act, to issue the invoice with respect to the supply or
- (b) Not applicable w.e.f. 15-11-2017 [Till 15-11-2017, the event was as follows – Receipt of payment i.e., when advance payment received. This provision is not applicable w.e.f. 15-11-2017 as per Notification No. 66/2017-CT dated 15-11-2017]





Time of supply is date of issue of invoice in case of supply of goods and not on date of receipt of advance—In case of supplier of goods, the tax is payable on issue of invoice only i.e., no tax payable when advance is received – Notification No.66/2017-CT dated 15-11-2017.

This relaxation is only to suppliers of goods and not to providers of services. During the period 13-10-2017 to 15-11-2017, this relaxation was available only to taxable persons whose annual turnover in the preceding financial year was less than ₹1.50 crores (or in case of new taxable persons, where turnover in current financial year is likely to be less than ₹1.50 crores). This relaxation was only to suppliers of goods and not to providers of services. – Notification No.40/2017-CT dated 13-10-2017 as existing up to 15-11-2017.

After 15-11-2017, this relaxation applies to all suppliers of goods, irrespective of turnover, but not to supplier of services.

### **Time of supply when GST on goods payable on reverse charge basis**

As per section 12(3) of CGST Act, 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 earliest of the following dates—

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

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

### **Time of supply in case of supply of vouchers for goods**

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

- (a) The date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher, in all other cases – section 12(4) of CGST Act.

“Voucher” means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their



potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument – section 2(118) of CGST Act.

### **Time of supply in other situations**

In case it is not possible to determine the time of supply under any of aforesaid provisions, the time of supply shall – (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed, or (b) in any other case, be the date on which the CGST/SGST is paid – section 12(5) of CGST Act.

### **Time of supply when interest, late fee or penalty for late payment is received**

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 12(6) of CGST Act.

This is small mercy. Otherwise, they would have asked taxable person to pay GST as soon as demand of interest, late fee or penalty is issued to recipient.

### **Time of supply of services**

The liability to pay CGST/SGST on services shall arise at the time of supply as determined in terms of the provisions of section 13 – section 13(1) of CGST Act.

As per section 13 (2) of CGST Act, the time of supply of services shall be the earliest of the following dates, namely:-

- (a) The date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31(2) of CGST Act or the date of receipt of payment, whichever is earlier; or
- (b) The date of provision of service, if the invoice is not issued within the period prescribed under section 31(2) or the date of receipt of payment, whichever is earlier or
- (c) The date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) Do not apply [How the supplier of service would know that date?]

**Explanation**– For the purposes of clauses (a) and (b) - the supply shall be deemed to have been made to the extent it is covered by the invoice or, as

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

Time of supply of services when GST on services is payable on basis of Reverse charge

As per section 13(3) of CGST Act, 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 earliest of the following dates–

- (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.

Where it is not possible to determine the time of supply under clause (a) or (b), the time of supply shall be the date of entry in the books of account of the recipient of supply – first proviso to section 13(3) of CGST act.

Time of supply in reverse charge when service received from Associate Enterprise outside India

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 – second provision to section 13(3) of C GST Act.

“Associated enterprises” shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961.

In case the associated enterprise is situated in India, no separate provision has been made as normal provisions of time of supply apply.

Associated enterprise has the meaning assigned to it in section 92A of Income Tax Act, 1961. The definition is so broad that generally, group companies will fall in at least one of the 13 clauses specified in section 92A (2) of Income Tax Act.

### **Supply of voucher for services**

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

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



(b) the date of redemption of voucher, in all other cases – section 13(4) of CGST Act.

### **Time of supply of service in other cases**

Where it is not possible to determine the time of supply of services in any of the above manner, the time of supply shall (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or (b) in any other case, be the date on which the CGST/SGST is paid – section 13(5) of CGST Act.

### **Time of supply when interest, late fee or penalty for late payment is received**

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 date on which the supplier receives such addition in value – section 13(6) of CGST Act.

This is small mercy. Otherwise, they would have asked taxable person to pay GST as soon as demand of interest, late fee or penalty is issued to recipient.

Time of supply in case of change in rate of tax in respect of supply of goods  
Or services or both

In cases where there is a change in the rate of tax in respect of goods or services or both, time of supply shall be determined in the following manner, as per section 14 of CGST Act.

Goods or services supplied before change in rate – In case goods or services or both have been supplied before the change in rate of tax, time of supply will be as follows –

- (i) Where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
- (ii) Where the invoice has been issued prior to change in rate of tax but the payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
- (iii) Where the payment is received before the change in rate of tax, but the invoice for the same has been issued after the change in rate of tax, the time of supply shall be the date of receipt of payment – section 14(a) of CGST Act.

Goods or services supplied after change in rate – In case the goods or services or both have been provided after the change in rate of tax –

- (i) Where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; [How invoice can be issued before supply?]
- or
- (ii) Where the invoice has been issued and the payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; [How invoice can be issued before supply?]
- or
- (iii) Where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice – section 14(b) of CGST Act.

### **Time of supply in case of land development rights**

Usually, land owner provides land for which he is given some flats/ industrial shed, etc. Thus, when the builder/developer gets land from the land owner, this can be said to be 'advance received' and SGST may become payable immediately.

However, CBI&C, vide its Circular No.151/2/2012-ST dated 10-2-2012 had clarified that service tax will be payable by the builder / developer on the 'construction service' involved in the flats to be given to the land owner, at the time when the possession or right in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (e.g. allotment letter) – this view has been confirmed in CBI&C Instruction F No.354/311/2015-TRU dated 20-1-2016.

This principle has also been confirmed in case of transfer of TDR by land owner to builder / developer in Notification No.4/2018-CT (Rate) and 4/2018-IT (Rate) both dated 25-1-2018.

Thus, now it is well settled that GST on such flats given to land owner will be payable only when these flats are handed over to the land owner.

### **Illustrative examples**

**Question** – On 4th September, 2017, V.R. Mehman a famous music composer, received ₹ 3 crore of consideration from Zilmil Music Co. Ltd., for sale of copyright of his original music album. He finished his work & made available the CD to the Music Company on 20th July, 2017 & raised the invoice on 24<sup>th</sup> July 2017. What will be the time of supply as per CGST Act, 2017?



Note: Above Service is taxable under reverse charge basis.

**Answer:** 4-9-2017 as payment was made within 60 days from the date of invoice.

**Question –** M/s. Mansh & Vansh Trading Company, a registered supplier, is liable to pay GST under forward charge. Determine the time of supply from the following information furnished by it – (i) Goods were supplied on 03-10-2017(ii) Invoice was issued on 05-10-2017(iii) Payment received on 09-10-2017.

**Answer:** Invoice is required to be issued before delivery of goods or removal of goods, as per section 31(1) of CGST Act. Thus, invoice should have been issued on 3-10-2017. As per section 12(2) of CGST Act, time of supply is date of invoice or last date on which invoice should have been issued, whichever is earlier. Hence, time of supply is 3-10-2017.

**Question –** Determine the time of supply from the following particulars:

8th September	Community hall booked for a marriage, Sum agreed ₹1,20,000 Advance ₹20,000 recorded in the books of Account
10th September	Advance amount credited in bank account
2nd November	Marriage held in the Community hall
18th December	Invoice issued for ₹ 1,20,000 indicating the balance of ₹1,00,000 payable.
22nd December	Balance ₹ 1,00,000 recorded in the banks of account
24th December	Payment ₹ 1,00,000 credited to the bank account

**Answer:**

- In respect of advance received, the time of supply is date of entry in books of account, if amount is credited in bank account within four working days. Hence, time of supply is 8-9-2017.
- Service was supplied on 2-11-2017. Invoice should have been issued within 30 days i.e., on or before 2-12-2018. Since invoice was issued on 18-12-2017 i.e., after 30 days, the time of supply is date of provision of service i.e., 2-11-2017.

### **Place of supply of goods or services or both other than exports or imports**

CGST and SGST is payable in case of Intra-State trade or commerce i.e., Intra-State supply of goods and services.



IGST is payable in case of inter-state trade or commerce i.e., inter-State supply of goods and services.

Principle behind the provisions – The basic principle behind provisions relating to place of supply is that GST is destination based tax. Thus, tax is finally payable where goods and services are consumed. This issue is relatively easy in case of goods, but not so easy in case of services. Hence, in many cases, location of person receiving the service is relevant. If he is registered under GST, that is taken as criteria.

Even if he is not registered, address on record of recipient is taken as criteria to determine place of supply in some cases. However, this is not so in case of services relating to immovable property and some performance based services.

Meaning of supply of goods or services or both in the course of inter- State trade or commerce

Section 7 of IGST Act makes provisions in respect of supply of goods or services or both in the course of inter-State trade or commerce (i.e., from one State to another).

Inter-State supply of goods – As per section 7(10) of IGST Act, supply of goods in the course of inter-State trade or commerce (i.e., from one State to another) means any supply where the location of the supplier and the place of supply are in two different States or two different Union Territories or a State and Union Territory. However, this is subject to the provisions of section 10 Act [i.e., provisions of section 10 override provisions of section 7].

Import of goods shall be deemed to be inter-State supply – 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(2) of IGST Act.

Thus, IGST will be payable, at the time of import of goods from customs.

IGST will be payable on value determined under section 3 of Customs Tariff Act on value determined under said Act at the point where duties of customs are levied on the said goods under section 12 of Customs Act, 1962 – proviso to section 5(1) of IGST Act.

Inter-State supply of services–Supply of services in the course of inter-state trade or commerce means any supply where the location of the supplier and the place of supply are in different states or two different Union Territories or a State and Union Territory. However, this is subject to the provisions of section 12 of IGST Act – section 7(3) of IGST Act.



Import of services shall be treated to be inter-state supply – Supply of services imported into the territory of India shall be deemed to be a supply of services in the course of inter-State trade or commerce – section 7(4) of IGST Act.

Thus, IGST will be payable, mostly under reverse charge.

Export of goods or services shall be treated to be inter-State supply– 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 – section 7(5) (a) of IGST Act.

Supply to and by SEZ developer or SEZ unit shall be treated to be inter- State supply – Supply of goods and / or services to or by a SEZ developer or an SEZ unit, shall be deemed to be a supply of goods

or services or both in the course of inter-State trade or commerce – section 7(5) (b) of IGST Act.

Supply which is not intra-state supply is inter-state supply–Any supply of goods or services or both in the taxable territory, not being an intra- state supply and not covered else wherein this section, shall be deemed to be a supply of goods or services or both in the course of inter-state trade or commerce – section 7(5) (c) of IGST Act.

Thus, any supply which is not intra-State supply is inter-State supply and will be subject to IGST.

Meaning of supply of goods or services or both in the course of intra- State trade or commerce

Section 8 of IGST Act makes provision in respect of supply of goods or services or both in the course of intra-State trade or commerce, i.e., trade or commerce within the State.

Intra-State supply of services – As per section 8(1) of IGST Act, supply of goods where the location of the supplier and the place of supply of goods are in same State or same Union Territory shall be treated as intra-State supply. However, this is subject to the provisions of section 10 of IGST ACT.

Further, the intra-State supply of goods shall not include – (i) supply of goods to or by a SEZ developer or to or by an SEZ unit (ii) supply of goods brought into India in the course of import till they cross the customs frontiers of India (iii) supplies made to a tourist under section 15 of IGST Act.

Intra-State supply of services – Supply of services where the location of the



supplier and the place of supply are in the same State or same Union Territory shall be treated as intra-State supply. However, this is subject to the provisions of section 12 of IGST Act. Further, the intra- State supply of services shall not include supply of services to or by a SEZ developer or to or by an SEZ unit – section 8(2) of IGST ACT.

If place of supply of service and location of supplier is in same State, CGST and SGST is payable – S No. 64 of Tweet FAQ released by CBI&C on 26-6- 2017.

## **Meaning of India**

“India” means the territory of India as referred to in article 1 of the constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976, and the air space above its territory and territorial waters – section 2(56) of CGST Act.

Definition of ‘India’ is wide. It covers all landmass of India plus 200 nautical miles inside the sea, sea bed and air space above land and territorial waters.

Area up to 12 nautical miles belongs to State/Union Territory at least as far as GST is concerned.

## **Place of supply of goods other than imports and exports**

As per section 10(1) of IGST Act, place of supply of goods, other than supply of goods imported into or exported out of India, will be determined on following basis, if it is within India (i.e., other than imports and exports of goods)

**place of supply is where movement of goods terminates** – Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for deliver to the recipient – section 10(1) (a) of IGST Act.

**Goods delivered on direction of third person** – Where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, its hall 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 – section 10(1)(b) of IGST Act.



This would cover sale in transit by transfer of documents of title.

This clause would also cover situation when goods are sent to job worker on the instruction of 'principal'.

Place of supply is delivery to recipient when no movement of goods – Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient – section 10(1)(c) of IGST Act.

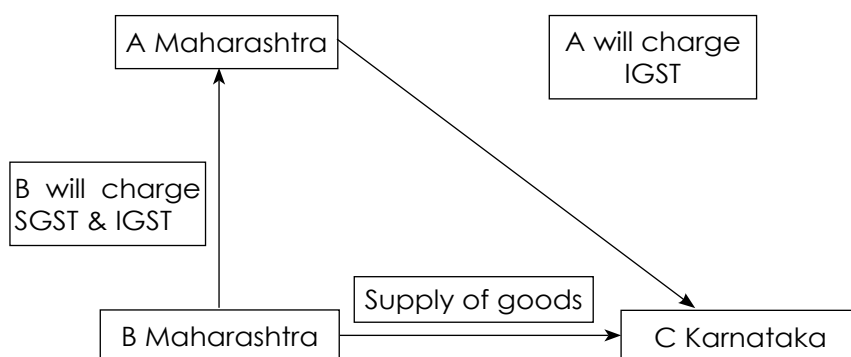
Place of supply in case of installation or assembly–Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly - section 10(1) (d) of IGST Act.

Place of supply when goods are supplied on board a conveyance–Where the goods are supplied on board a conveyance, including a vessel, an aircraft a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board - section 10(1)(e) of IGST Act.

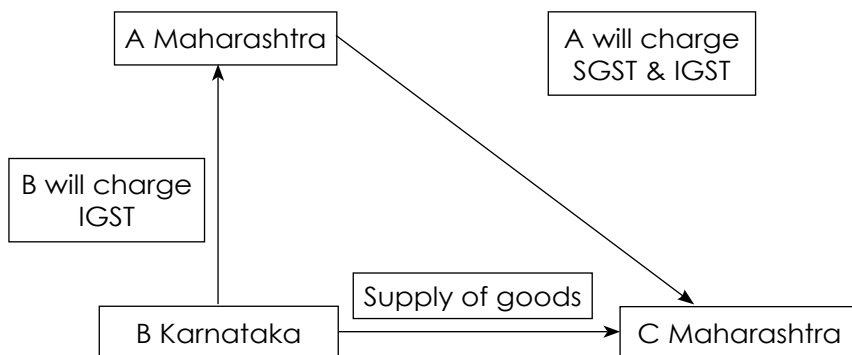
Residual provision – Where the place of supply of goods cannot be determined in aforesaid terms, the same shall be determined in such manner as may be prescribed – section 10(2) of IGST Act.

### Bill to ship transaction

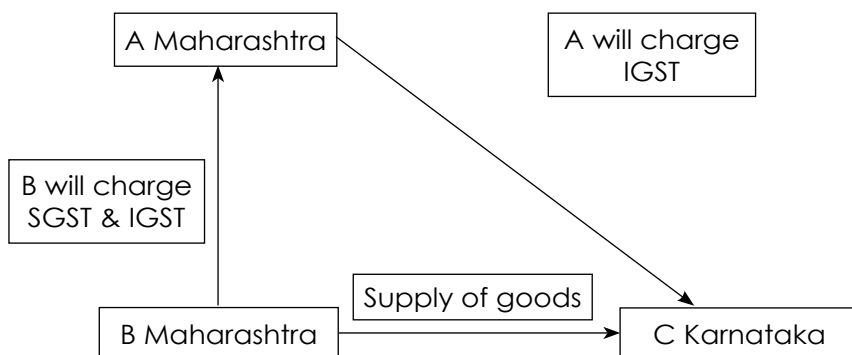
Section 10(1)(b) of IGST Act covers supply before or during movement of goods by transfer of documents or otherwise. In case of such sale, it shall be presumed that the final recipient's place is place of supply of goods. Thus, if supplier and final recipient are in different States, the supply will be inter-State even if goods are delivered in the same State on direction of final customer (third party).



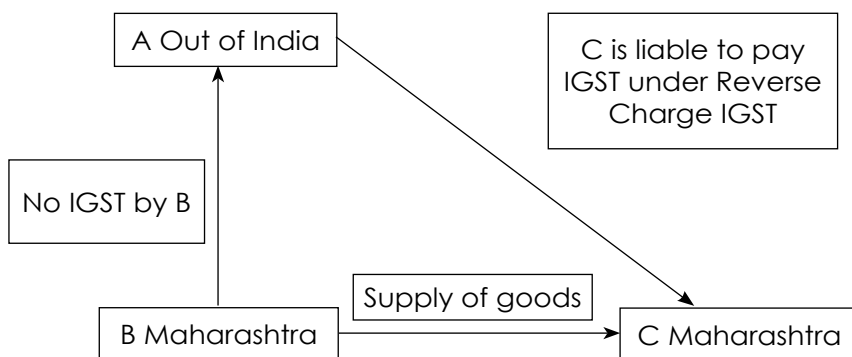
**Note:** ITC of SGST and CGST will be available to A for paying IGST



**Note:** ITC of IGST will be available to A for paying SGST and CGST



**Note:** ITC of SGST and CGST will be available to A for paying IGST





## Illustration

**Question–** Raman Rao, a registered supplier under GST in Mumbai, is directed by Nero Enterprises, Kolkata to deliver goods valued at 12,00,000 to Fabricana of Aurangabad in Maharashtra. Raman Rao 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.

**Answer:** Invoice is wrong. He should have charged IGST to Nero Enterprises, Kolkata as per section 10(1) (b) of IGST Act. Now, Raman Rao should first pay IGST and then claim refund of CGST and SGST paid by him earlier.

Place of supply of services if location of supplier and recipient of service is in India.

Issue relating to place of supply of services is tricky as there is no physical movement like in case of goods.

For this purpose, definition of location of supplier and location of recipient of service are important.

Place of supply in case of export or import of services– IGST Act has made separate provisions in respect of place of supply in case of import and export of services i.e., where the location of the supplier of service or the location of the recipient of service is outside India.

Place of supply of service except export or import of services–residuary provision

As per Section 12(1) of GST Act, place of supply of services will be determined on following basis, where location of supplier of services and recipient of services is in India.

The place of supply of services in cases directly relating to immovable property or lodging in boat or vessel–other than export or import of services

In following cases, the place of supply of services shall be the location at which the immovable property or boat or vessel is located or intended to be located – section 12(3) of IGST Act.

- (a) 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 coordination of construction work, or



- (b) By way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called and including a house boat or any other vessel, or
- (c) By way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property, or
- (d) Any services ancillary to the services referred to in clauses (a), (b) and (c).

Where 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 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 – Explanation to section 12(3) of IGST Act.

Place of supply shall be location of service recipient if immovable property outside India – If the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient—proviso to section 12(w3) of IGST Act.

Thus, even if immovable property is located outside India, if the location of service recipient is in India, IGST will be payable

Location of boat or vessel is relevant only in case of lodging accommodation.

Performance based services i.e., restaurant, beauty treatment, health services other than export and import of services

The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed – section 12(4) of IGST Act.

Note that this provision applies only to services specified in section 12(4) of IGST Act and no other performance based services. In case of import and export of services, this provision applies to all the performance based services.

Training and performance appraisal service – other than export and import  
Of services

The place of supply of services in relation to training and performance appraisal to (a) a registered person, shall be the location of such person (b) a person



other than a registered person, the location where the services are actually performed – section 12(5) of IGST Act.

### **Admission to events – other than export and import of services**

The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located – section 12(6) OF IGST Act.

### **Other event based services– other than export and import of services**

Services provided by way of – (a) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or (b) services ancillary to organization of any of the above events or services, or assigning of sponsorship to such events, shall be as follows–

- (i) If the service is provided to a registered person, place of supply shall be the location of such person
- (ii) If the service is provided to a person other than a registered person. Place of supply shall be place where event is actually held. If the event is held outside India, place of supply shall be the location of service recipient. – section 12(7) of IGST Act.

If such service is provided in more than one State, the amount will be apportioned on a reasonable basis.

### **Transportation of goods – other than export and import of services**

The place of supply of services by way of transportation of goods, including by mail or courier to (a) a registered person, shall be the location of such person (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation – section 12(8) of IGST Act.

#### **Passenger transportation service – other than export and import of services**

The place of supply of passenger transportation to (a) a registered person shall be the location of such person (b) a person other than a registered person shall be the place where the passenger embarks on the conveyance for a continuous journey. If for future use, then as per residual provision in section 12(2) – section 12(9) of IGST Act.

“Conveyance” includes a vessel, aircraft and a vehicle – section 2(34) of CGST Act.

Service on board a conveyance originating – other than export and import of services

The place of supply of services on board a conveyance including vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey – section 12 (10) of IGST Act.

“Conveyance” includes a vessel, aircraft and a vehicle – section 2(34) of CGST Act.

Telecommunication service, data transfer, broadcasting, DTH – other than export and import of services

The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall be as specified in section 12(11) of IGST Act, 2017.

Banking and other financial services– other than export and import of services

The place of supply of banking and other financial services including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services–section 12(12)of IGST Act.

However, if the location of the recipient of services is not on the records of the supplier of services, the place of supply shall be location of the supplier of services.

### **Insurance service – other than export and import of services**

The place of supply of insurance services shall be as follows – (a) to a registered person, be the location of such person (b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services – section 12(13) of IGST Act.

### **Advertisement services to Government**

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



agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed – section 12(14) of IGST Act.

This provision is made because Central Government issues orders for advertisements from Delhi, while advertisements are published all over India.

Similarly, State Government may release advertisements outside the State also.

Place of supply in case Residuary Services – other than export and import of services.

In case of services other than those specified above, the place of supply of services–(a) made to a registered person shall be location of service recipient – section 12(2) (a) of IGST Act (b) made to any person other than a registered person shall be (i) the location of the recipient where the address on record exists, and (ii) the location of the supplier of services in other cases - 12(2) (b) of IGST Act.

The principle behind these provisions is that GST is destination based tax and where destination of service is known, that should be the place of supply of service.

“Address on record” means the address of the recipient as available in the records of the supplier – section 2(3) of CGST Act.

Service taxable where provided and receiver are located in India, even if service provided outside India– If both supplier of service and recipient of service are in India, GST may be payable even if service is provided outside India, if the service falls under residual category.

### **Place of supply in case of export or import of Goods or services or both**

#### **The provisions are different in case of exports and imports. Place of supply in case of imports and exports of goods**

“Export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India– section 2(5) of IGST Act.

“Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India- Section 2(10) of IGST Act.

The place of supply of goods imported into India shall be the location of the importer – section 11(a) of IGST Act.





The place of supply of goods exported from India shall be the location outside India – section 11(b) of IGST Act.

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(2) of IGST Act.

“Customs frontiers of India” means the limits of a customs area as defined in section 2 of the Customs Act, 1962–section 2(4) of IGST Act.

Thus, in case of import of goods, only IGST can apply. SGST and CGST will never apply.

Export or supply to SEZ unit or developer of goods or services is inter- State trade or commerce

Supply of goods or services or both – (a) when the supplier is located in India and the place of supply is outside India (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section – shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce – section 7(5) of IGST Act. Thus, in case of export of goods or services, SGST cannot apply.

### **Export and import of services**

Place of supply of service is relevant to determine issue of export and import of services.

Export of services – Section 2(6) of IGST Act states as follows – “Export of services” means the supply of any service when -

- (a) The supplier of service is located in India
- (b) The recipient of service is located outside India
- (c) The place of supply of service is outside India
- (d) The payment for such service has been received by the supplier of service in convertible foreign exchange, and
- (e) The supplier of service and recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 of section 8 of IGST Act [what is meant is that branch and HO of same taxable person shall not be treated as two distinct persons for this provision. Thus, there cannot be export of service to own branch office outside India].

Import of services–Section 2(11) of IGST Act states as follows–“Import of services” means the supply of any service where–



- (a) The supplier of service is located outside India
- (b) The recipient of service is located in India and
- (c) The place of supply of service is in India

### **Place of supply in case of export or import of service**

The provisions of section 13 of IGST Act shall apply to determine the place of supply of services where the location of the supplier of service or the location of the recipient of service is outside India—section 13(1) of IGST Act.

Services supplied partly in India and partly outside India

Where any service referred to in section 13(3), 13(4), or 13(5) of IGST Act is supplied at more than one location, including a location in the taxable territory (i.e., India), its place of supply shall be the location in the taxable territory (i.e., India) – section 13(6) of IGST Act.

### **Services supplied in more than one states in India**

Where the services referred to in section 13(3), 13(4), or 13(5) of IGST Act are supplied in more than one State or Union Territory, the place of supply of such services shall be taken as being in each of the respective States or Union Territories and the value for services separately collected or determined in terms of the contractor agreement entered into in this regard or, in absence of such contract or agreement, on such other basis as may be prescribed – section 13(7) of IGST Act.

Place of supply of service in case of performance on goods made available by service recipient

In case of services supplied in respect of goods which are required to be made physically available by the recipient of service to the supplier of service, or to a person acting on behalf of the supplier of service in order to provide the service the place of supply shall be the location where the services are actually performed - section 13(3) (a) of IGST Act.

Services provided electronically from remote location – When such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of service – first proviso to section 13(3)(a) of IGST Act.

Place of supply if goods supplied by recipient are repaired and re-exported – In the case of a service supplied in respect of goods that are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India (i.e., other than which is required for such repairs), the place of supply of service will be location of recipient of service as per residuary provision contained in section 13(2) of IGST Act – second proviso to section 13(3) (a) of IGST Act.

## **Services where physical presence of person is required**

In case of services supplied to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of the service, the place of

Supply shall be the location where the services are actually performed- section 13(3) (b) of IGST Act

## **Services directly in relation to immovable property**

The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or coordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located – section 13(4) of IGST Act.

## **Services relating to admission or organization of events**

The place of supply of services supplied by way of admission to, or organization 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, shall be the place where the event is actually held located – section 13(5) of IGST Act.

In case of boat show, the place of provision of service is where the show takes place.

Services supplied by Bank, NBFC or Financial Institution to account holders.

In case of services supplied by a banking company, or a financial institution, or anon- banking financial company, to accountholders, the place of supply shall be the location of the supplier of service- section 13(8)(a) of IGST Act.

Really, this provision applies only to Indian bank or Financial Institution, as a foreign bank can never be banking company or Financial Institution as defined.

“Account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account – Explanation (a) to section 13(8) of IGST Act.

## **Services by intermediary like commission agent**

In case of intermediary services, the place of supply shall be the location of the supplier of service - section 13(8) (b) of IGST Act.



“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 on his own account - section 2(13) of IGST Act.

### **Services of hiring of means of transport**

In case of services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, upto a period of one month. The place of supply shall be the location of the supplier of service - section 13(8) (c) of IGST Act.

### **Services of transportation of goods**

The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods - Section 13(9) of IGST Act.

### **Services of transportation of passengers**

The place of supply in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey - section 13(10) of IGST Act.

### **Services on board a conveyance**

Place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey section 13(11) of IGST Act.

### **Residuary provision applies to all services not specified else where**

Except in case of specified services discussed above, the place of supply of services shall be the location of the recipient of service. However, in case the location of the recipient of service is not available in the ordinary course of business, the place of supply shall be the location of the supplier of service - section 13(2) of IGST Act.

Section 13(2) of IGST Act is a residuary provision and applies when no other provision relating to any specific service applies.

### **Illustrative examples**

**Question**—Determine the place of supply for the following independent case under the IGST Act, 20XX: (i) Grand Gala Events, an event management company at Kolkata, organizes two award functions for Kalyan Jewelers of Chennai (Registered in Chennai) at New Delhi and at Singapore (ii) Perfect Planners (Bengaluru) is hired by Dr. Kelvin (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?

**Answer:** (i) Place of supply is Chennai (ii) Mumbai – if event in Malaysia, place of supply is Kochi – section 12(7) of IGST Act.

**Question** – Examine whether GST is exempted on the following supply of services– Teja & co, a tour operator, provided services to a foreign tourist for tour conducted to Jammu & Kashmir and receives a sum of 3,00,000?

**Answer:** The recipient of service is out of India and his address is available. Hence, location of recipient of service is out of India, as per section 2(14) (d) of IGST Act. Location of supplier of service is India as it is presumed that he is registered in India or required to be registered in India. As per section 13(3) (b) of IGST Act, in case where services supplied to individual where physical presence of recipient is required, the place of supply is where the services are actually performed. Hence, place of supply is J&K. Hence, there is no exemption available for GST.

**Question**–Mr. Mahindra Goyal, an interior decorator provides professional services to Mr. Harish Jain 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. Mahindra Goyal	Location of Mr. Harish Jain	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.

**Answer:**

- i – Mumbai – proviso to section 12(3) of IGST Act.
- ii – Paris (France) – directly relating to immovable property – section 13(4) of IGST Act. It is export of service.

**Question**–Mr. Murthy, an unregistered person and a resident of Pune, hires the services of M/s. Sun Ltd., an event management company registered in Delhi ,for organizing of the new product launch in Bengaluru–

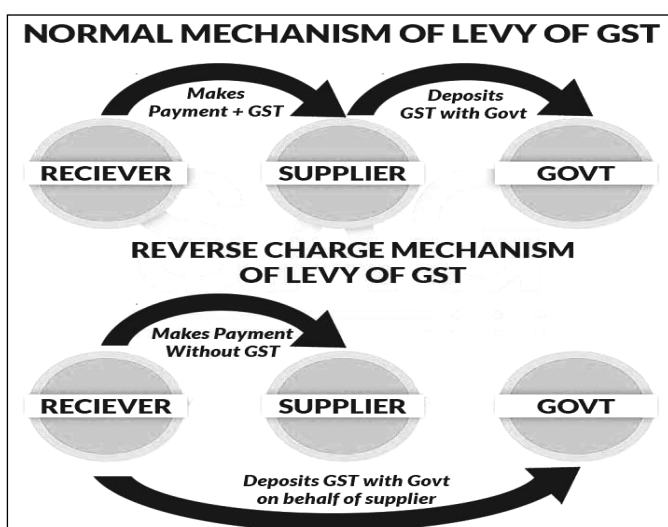
- (i) Determine the place of supply of services provided by M/s. Sun Ltd.
- (ii) What would your answer be in case the Product launch takes place in Bangkok?
- (iii) What would your answer be in case Mr. Murthy is a registered person and product launches take place in Bengaluru and Bangkok?

**Answer:** (i) Bengaluru (ii) Pune (iii) Pune in both the cases [section 12(7) of IGST Act].

## REVERSE CHARGE

### Concept of reverse charge

- Normally, the supplier of goods or services pays the tax on supply. However in the case of Reverse Charge, the receiver becomes liable to pay the tax.
- The power to levy tax on reverse charge arrives from Section 9(3) of the CGST Act and Section 5(3) of the IGST Act which states that government may notify services on which reverse charge would be applicable.
- For Normal Taxpayers, threshold limit of turnover is ₹ 20 lakh for GST registration. But under reverse charge the person has to be registered under GST irrespective of the aggregate turnover.
- Tax paid on reverse charge basis will be available for input tax credit if such goods and/or services are used, or will be used, for business. The recipient (i.e., who pays reverse tax) can avail input tax credit.
- An ISD cannot make purchases liable to Reverse Charge. If the ISD wants to procure such supplies and take the Reverse Charge paid as credit, the ISD should register as a Normal Taxpayer.





## Time of supply under reverse charge

Time of Supply in case of Goods Earlier of the followings -

- the date of receipt of goods
- the date immediately after 30 days from the date of issue of an invoice by the supplier

If it is not possible to determine the time of supply, the time of supply shall be the date of entry in the

### Example:

1. Goods Received - 16th May 2019
2. Invoice Date - 10th June 2019
3. Date of entry in books of receiver 20th May 2019

**Answer:** The Time of supply will be 16th May 2019 Time of Supply in case of Services

Earlier of the followings -

- The date of payment
- The date immediately after 60 days from the date of issue of invoice by the supplier

If it is not possible to determine the time of supply, the time of supply shall be the date of entry in the books of account of the recipient.

### Illustration:

1. Payment Date - 20th August 2019
2. Date immediately after 60 days from the date of issue of invoice (Suppose the date of invoice is 15th May 2019, then 60 days from this date will be 14th July 2019)
3. Date of entry in books of receiver 22nd August 2019

**Answer:** The Time of supply will be 14th July 2019

## Applicability of reverse charge

### • Supply from an Unregistered dealer to a registered dealer

If unregistered person under GST supplies goods to a person who is registered under GST, then RCM would apply. In this case GST will have to be paid by the receiver to the Government instead of the supplier.



The registered dealer who has to pay GST under reverse charge has to do self-invoicing for the purchases made.

- Services through an E-commerce operator

In case of supply by E-commerce operator, RCM will be applicable. E-commerce operator will be liable to pay GST.

**Example:** A customer buys clothes through Flipkart. In this case Flipkart will pay GST by collecting it from the customers.

If the e-commerce operator does not have a physical presence in the taxable territory, then a person representing such electronic commerce operator for any purpose will be liable to pay tax. If there is no representative, the operator will appoint a representative who will be held liable to pay GST.

## **Applicability of reverse charge in case of services under section 9(3) of CGST act**

### **1. GTA service**

Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road

#### **Service provider**

Goods Transport Agency (GTA)

#### **Service receiver**

- a) Any person registered under CGST/SGST/UTGST/ IGST Act;
- b) Anybody corporate established, by or under any law; or
- c) Any partnership firm whether registered or not under any law including association of persons.
- d) Casual taxable person
- e) Co-operative Society under any Law
- f) Any factory registered under or governed by the Factories Act, 1948

### **Services provided by GTA**

The service provided by GTA does not include only the actual transportation of goods, but other intermediate/ancillary service provided also as follows -

- Loading/unloading
- Packing/ unpacking





- Trans-shipment
- Temporary warehousing etc.

### Exclusion from GTA provisions

- Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA.(Notification no.12/2017-Central Tax Rate).

### GST rate of GTA service

Services by GTA	GST rate
Carrying- <ul style="list-style-type: none"><li>• agricultural produce</li><li>• milk, salt and food grain including flour, pulses and rice</li><li>• organic manure</li><li>• newspaper or magazines registered with the Registrar of newspapers</li><li>• relief materials meant for victims of natural or man-made disasters</li><li>• defense or military equipment</li></ul>	0%
Carrying goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage is less than ₹1,500	0%
Carrying-goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹750	0%
Any other goods	5% (No ITC) 12% (Without ITC)
Hiring out vehicle to a GTA	0%

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 20lakhs).

- Also after 22<sup>nd</sup> GST Council Meeting, Services provided by GTA to Unregistered Dealers are exempted.
- However if GTA wants to claim ITC and set off, then compulsorily they need to register and charge GST under Forward Charge to claim GST Set Off.



**Example:** GTA wants to claim set off or ITC on Purchase of Truck ,Rent of warehouse and other expenses then GTA will need to register and charge GST under Forward Charge.

### Place of supply for a GTA

The place of supply of services by way of transportation of goods, including by mail or courier to--

- (a) a registered person, shall be the location of such person
- (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

### Examples:

1. **Mr. A is a registered dealer in Hyderabad. He hires a GTA to deliver goods to Kerala.**

**Answer:** Place of supply will be Hyderabad.

2. **Mr. Singh is unregistered dealer in Rajasthan who hires a GTA to deliver goods to Kolkata.**

**Answer:** Place of supply will be Rajasthan where Mr. Singh hands over the goods to the transporter.

### FAQs on GTA service

1. **Mr. X hired a GTA to transport his goods. The consideration charged was ₹ 1,200. Will Mr. X pay GST?**

**Answer:** Mr. X will not pay GST under RCM as the consideration for transportation of goods on a consignment transported in a single carriage is less than 1,500.

2. **Mr. X hired a GTA to transport goods in batches. The entire consideration was ₹ 600. Will Mr. X pay GST?**

**Answer:** Mr. X will not pay GST because the consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750.

3. **Mr. X, a working professional, is moving houses and hires ABCpvt. ltd. (GTA service provider) to transport his household items. ABC demands Mr. X to pay GST under RCM as moving charges are ₹6,000.**

**Answer:** Mr. X is unregistered and if ABC is also unregistered under GST then, GST is not applicable. If ABC is registered, then it will pay GST of 5%. RCM will not apply on Mr. X.

- 4. Mr. X, a shop owner in Kolkata, hires a truck to deliver goods from wholesaler to his shop. His turnover is less than ₹20 lakhs and he has not registered under GST. The GTA demands that Mr. X should pay tax under RCM. Mr. X argues that since he is not registered, he does not have to pay any GST.**

**Answer:** Unregistered dealer Mr. X purchasing goods/ services from unregistered GTA. So, Mr. X is not liable to pay GST under RCM. If the Unregistered dealers hire service from a registered GTA, then the registered GTA is liable to pay GST.

So, Mr. X is not liable to pay GST under RCM.

- 5. Mr. X has purchased garments from Gujarat and pays for a truck to deliver the goods to his shop in Kolkata. The GTA says that Mr. X has to register for GST as he is making an inter-state purchase as only registered dealers can have inter-state trade.**

**Answer:** An unregistered person can make inter-state purchases. For making inter-state sales, he will have to be compulsorily registered.

Since, Mr. X is an unregistered dealer and the GTA is also unregistered then the concept of RCM does not arise.

- 6. The GTA is registered at Pune and its branch is collecting cash in Kolkata on his behalf. Recipient of service Mr. X is in Kolkata. If Mr. X was registered, would he have charged IGST or SGST/CGST under RCM?**

**Answer:** If the original transporter in Pune raises invoice to Mr. X, then IGST should be charged. If he raises invoice to the branch in Kolkata, then SGST/CGST will apply.

- 7. Mr. X has received a one-time contract to sell garments to a dealer in Gujarat. Mr. X hires a truck to send the goods.**

**Answer:** Since, Mr. X is not registered under GST, he cannot make any inter-state sale. To make an inter-state sale, he must register as a casual taxable person. Then when he hires a truck to send the garments, automatically he is liable to pay GST under RCM.

- 8. Mr. X turnover of Mr. X is increased to ₹ 45 lakhs. He wants to shift to composition scheme as he sells mainly to end consumers.**

**Answer:** Composition dealers are liable to pay GST under RCM. Mr. X will pay GST on RCM if he hires a GTA whether he is registered as a composition dealer or as a normal dealer.



### 3. Legal services

Services provided or agreed to be provided by an individual advocate or firm of advocates by way of legal services, directly or indirectly

**Meaning of Legal service**-Legal service' means any service provided in relation to advice, consultancy or assistance in any manner and includes representational services before any court, tribunal or authority

#### Service provider

An individual Advocate or Firm of Advocates

#### Service receiver

Any Business Entity having Turnover greater than ₹20 Lakhs located in Taxable Territory

### 4. Arbitral tribunal

Services supplied by an Arbitral Tribunal to a business entity

#### Service provider

Arbitral Tribunal

#### Service receiver

Any business entity located in the taxable territory

### 5. Sponsor ship service

Services provided by way of Sponsorship to any Body corporate or partnership firm.

#### Service provider

Any Person

#### Service receiver

Any Body Corporate or Partnership Firm located in Taxable Territory

#### Examples:

1. Mr. B wants to start New Business. Company XYZ sponsors computer and other capital goods for Mr. B. In return Mr. B puts hoarding of Company XYZ in its business premises.



**Answer:**

- In this case Mr. B has indirectly supplied advertisement services to Company XYZ and instead of monetary consideration Company XYZ has given Capital Goods to Mr. B.
  - In this case Mr. B is supplier of advertisement services and Company XYZ is recipient of services.
  - Under Reverse Charge, Sponsored (Body Corporate / Partnership firm) shall be subject to GST under Reverse Charge.
  - Hence Company XYZ will bear GST under Reverse Charge.
  - Value of supply shall be cost of computers and capital assets sponsored to Mr. B.
2. Mr. Z wants to start New Business. Company XYZ sponsors computer and other capital goods for Mr. Z . Company XYZ does not want any benefit from Mr. Z . It has sponsored in good faith.

**Answer:**

- In this case Mr. Z has not supplied any services to Company XYZ
- Company XYZ has sponsored in good faith and has not made any demand/request in consideration for capital goods given.
- Hence there will be no GST on above transaction.

1. Service provided by central government/state government

Services provided by the Central Government, State Government, Union territory or local authority to a business entity excluding,–

(1) renting of immovable property, and

(2) services specified below-

- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;
- (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii) Transport of goods or passengers.

**Service provider**

Central Government, State Government, Union territory or local authority

**Service receiver**

Any business entity located in the taxable territory

**2. Renting of Immovable property**

Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).

Service provider

Central Government, State Government, Union territory or local authority

**Service receiver**

Any Person registered under Central Goods and Service Tax Act 2017

**3. Transfer of Development rights**

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.

**Service provider**

Any Person

**Service receiver**

Promoter

**FAQs**

- Who is liable to pay GST on TDR and floor space index?

**Answer:** The promoter is liable to pay GST on TDR or floor space index supplied on or after 01-04-2019 on reverse charge basis.

- At what point of time, the promoter should discharge its tax liability on TDR.

**Answer:** The liability to pay GST on development rights shall arise on the date of completion or first occupation of the project, whichever is earlier. Therefore, promoter shall be liable to pay tax on reverse charge basis, on supply of TDR on or after 01-04-2019, which is attributable to the residential apartments that remain un-booked on the date of issuance of completion certificate, or first occupation of the project.

#### 4. Leasing service

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.

##### **Service provider**

Any Person

##### **Service receiver**

Promoter

#### 5. Service by company Director

Services supplied by a Director of a company or a body corporate to the said company or the body corporate.

Service provider

A director of a company or a body corporate

##### **Service receiver**

A company or a body corporate located in the taxable territory

#### **Example:**

1. Company borrows loan from Bank. Mr. A director of Company acts as a guarantor for Company. In return Company pays ₹50,000/- as Guarantee Commission

#### **Answer:**

- Director is providing services to Company by giving guarantee.
  - Giving Guarantee is not in relation to employment hence such commission will not form part of salary Income of Director. It will be commission income in hands of director. Hence Company shall be subject to GST under Reverse Charge on ₹50,000/-
2. Company (Foreign Co located in US) holds board meeting via video-conference. Mr. B director of company attends board meeting online in Gujarat. Company pays ₹2000 (1,20,000) to Mr. B for attending meeting.

#### **Answer:**

- Director is providing services to Company (Foreign Co) by attending a meeting.



- Company is Foreign Co as it is located in Non Taxable Territory
  - Since Company is located in Non Taxable Territory hence such transaction shall not be subject to GST under Reverse Charge.
  - Director is required to collect GST(Forward Charge)if his turnover is exceeding ₹ 20 Lakhs.
3. Director of a company has let out its property to Company (PQR Ltd) for business purpose. Director is collecting 1 lakhs Rent. Will PQR Ltd be subjected to GST under Reverse Charge?

### **Answer:**

- Only the services supplied by a Director in capacity of a Director will be covered under RCM.
- Here PQR Ltd will not pay GST under RCM
- Director shall be required to collect GST if his aggregate turnover is exceeding ₹ 20Lakhs.

## **6. Insurance agency service**

Services provided or agreed to be provided by an Insurance agent to any person carrying on insurance business

### **Service provider**

Insurance agent

### **Service receiver**

Any person carrying on insurance business.

### **Examples:**

BAJAJ Finance pays Insurance commission of ₹ 80,000/- to Mr. B for an entire year.

### **Answer:**

- If this transaction was covered under forward charge than GST will not be applicable as Turnover of Mr. B is less than 20 Lakhs.
- But for concept of Reverse Charge BAJAJ Finance shall be subject to GST under Reverse Charge for any amount paid to agents.
- BAJAJ Finance shall pay GST on ₹80,000/-
- Insurance agents are not required to get registered under GST.





## **1. Service to Banking company/NBFC**

Services provided or agreed to be provided by a Recovery agent to a banking company or a financial institution or a non-banking financial company

### **Service provider**

Recovery Agent

### **Service receiver**

Banking company or a financial institution or a nonbanking financial company

## **2. Service by artist**

Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright *covered under section 13(1) (a) of the Copyright Act, 1957* relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like

### **Service provider**

Author or music composer, photographer, artist, or the like

### **Service receiver**

Publisher, music company, producer or the like, located in the taxable territory

## **3. Service to RBI**

Supply of services by the members of Overseeing Committee to Reserve Bank of India

### **Service provider**

Members of Overseeing Committee constituted by the Reserve Bank of India

### **Service receiver**

Reserve Bank of India

## **4. Service by DSAs**

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)

### **Service provider**

Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm

### **Service receiver**

A banking company or a non-banking financial company, located in the taxable territory



## 5. Service by Business facilitator

Services provided by Business facilitator (BF) to a banking company.

**Service provider** Business facilitator (BF) **Service receiver**

A banking company, located in the taxable territory

## 6. Service by Business correspondent

Services provided by an agent of **Business correspondent** (BC) to business correspondent (BC).

**Service provider**

An agent of business correspondent (BC).

**Service receiver**

A business correspondent, located in the taxable territory

## 7. Security service

Services provided by way of supply of security personnel to a registered person:

**Exception-***(Government Department/Establishment/Agency who have taken registration under GST only for TDS purpose and those paying tax under Composition Scheme are not required to pay GST on RCM basis).*

**Service provider**

Any person other than a body corporate.

**Service receiver**

A registered person, Located in the "taxable territory."

## 8. Renting of Motorvehicle

Services provided by way of Renting of a Motor Vehicle provided to a body corporate

**Service provider**

Any person other than a body corporate, who opts to pay tax at the rate of 5% and he is eligible to claim input tax credit (Persons who are ineligible to claim ITC u/s 17(5) are not covered here) **service receiver**

Any body corporate located in the taxable territory.

## 9. Service under securities lending scheme

Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of the Securities and Exchange Board of India ("SEBI"), as amended

## Service provider

Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorized on his behalf, with an approved intermediary for the purpose of lending under the Scheme of SEBI

## Service receiver

Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI

## 10. OIDAR services

- Supplier of OIDAR is in India and Recipient is outside India (No Consideration)

**Answer:** Since Supplier is in India and Recipient is outside India, it will be Forward Charge Transaction. It will be Export under GST. OIDAR is required to take GST Number. But since there is no consideration it is not supply under GST assuming non related person. Hence GST is not applicable.

- Supplier of OIDAR is in India and Recipient is outside India (Consideration = ₹1,00,000)

**Answer:** Since Supplier is in India and Recipient is outside India it will be Forward Charge Transaction. It will be Export under GST. OIDAR is required to take GST Number.. Also there is consideration hence it is supply under GST. Hence GST is applicable under Forward Charge and OIDAR is required to pay IGST. If LUT obtained than no GST to be paid

- Supplier of OIDAR is outside India and Recipient (Business Entity) is in India and there is no Consideration.

**Answer:** Since Supplier is outside India and Recipient is Business Entity in India it will be Reverse Charge Transaction. But since there is no consideration it is not supply under GST assuming non related person. Hence GST is not applicable.

- Supplier of OIDAR is outside India and Recipient (Business Entity) is in India and there is Consideration of ₹1,00,000/-

**Answer:** Since Supplier is outside India and Recipient is Business Entity in India it will be Reverse Charge Transaction. Also there is consideration hence it is supply under GST. Hence GST is applicable under Reverse

Charge and Recipient (Business Entity) is subject to pay under Reverse Charge.

- Supplier of OIDAR is outside India and Recipient (URD Individual- Non Business) is in India and there is no Consideration.

**Answer:** Since Supplier is outside India and Recipient is Individual (Non Business) in India it will be Forward Charge Transaction. OIDAR is required to take GST Number. But since there is no consideration it is not supply under GST assuming non related person. Hence GST is not applicable.



- Supplier of OIDAR is outside India and Recipient (URD Individual- Non Business) is in India and there is Consideration of ₹1,00,000/-

**Answer:** Since Supplier is outside India and Recipient is Individual (Non Business) in India it will be Forward Charge Transaction. OIDAR is required to take GST Number.. Also there is consideration hence it is supply under GST. Hence GST is applicable under Forward Charge and OIDAR is required to pay IGST.

- Supplier of OIDAR is in India and Recipient is outside India (No Consideration)

**Answer:** Since Supplier is in India and Recipient is outside India it will be Forward Charge Transaction. It will be Export under GST. OIDAR is required to take GST Number. But since there is no consideration it is not supply under GST assuming non related person. Hence GST is not applicable.

- Supplier of OIDAR is in India and Recipient is outside India (Consideration = ₹1,00,000)

**Answer:** Since Supplier is in India and Recipient is outside India it will be Forward Charge Transaction. It will be Export under GST. OIDAR is required to take GST Number. Also there is consideration hence it is supply under GST. Hence GST is applicable under Forward Charge and OIDAR is required to pay IGST. If LUT obtained than no GST to be paid

## 11. Other services

- Any service supplied by any person who is located in anon-taxable territory to any person other than non-taxable online recipient.

### Service provider

Any person located in a non-taxable territory

### Service receiver

Any person located in the taxable territory other than non-taxable online recipient. Services supplied by a person located in nontaxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

### Service provider

A person located in a non-taxable territory

### Service receiver

Importer, as defined in clause (26) of section 2 of the Customs Act, 1962, located in the taxable territory.

## Applicability of reverse charge in case of goods under section 9(3) of CGST act



### **1. Agricultural goods**

Supply of Cashew nuts, not shelled or peeled, Bidi wrapper leaves (tendu), Tobacco leaves, Raw Cotton

#### **Service provider**

Agriculturist

#### **Service receiver**

Any registered person

### **2. Silk Yarn**

Supply of Silk Yarn

#### **Service provider**

Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn

#### **Service receiver**

Any registered person

### **3. Lottery**

Supply of lottery

#### **Service provider**

State Government, Union Territory or any local authority

#### **Service receiver**

Lottery distributor or selling agent

### **4. Other goods**

(a) Used vehicles, seized and confiscated goods, old and used goods, waste and scrap

#### **Service provider**

Central Government, State Government, Union territory or a local authority

#### **Service receiver**

Any registered person

(b) Priority Sector Lending Certificate

#### **Service provider**

Any registered person

#### **Service receiver**

Any registered person

## CLASSIFICATION, HSN, SAC

### Need for classification

There are in numerous varieties of goods and services. It is not possible to apply one common tax rate to all goods and services. It is also not possible to list all types of goods and services and specify GST rate against each of such goods and services.

Hence, the only option is to classify the goods on basis of groups and sub-group and specify GST rate against each sub-group of items. In case of service also only broad description can be given for providing abatements and exemptions to various types of services.

The most scientific way of classifying goods is on basis of HSN. The HSN classification is used in customs, central excise and Foreign Trade Policy. The classification is also followed by DGCIS (Director General of Commercial Intelligence and Statistics).

The common classification reduces transaction costs and reduces diversion of classification among different agencies.

Under GST, goods will have to be classified on the basis of HSN. There is no other scientific way the goods can be classified.

The Customs Tariff Act is based on HSN. That Tariff will be used to classify goods under GST.

The GST rates have been notified on basis of Customs Tariff.

### Background of HSN

As international trade increased, need was felt to have universal standard system of classification of goods to facilitate trade flow and analysis of trade statistics. Hence, Harmonized Commodity Description and Coding System (Generally referred to as 'Harmonized System of Nomenclature' or simply 'HSN') were developed by World Customs Organization (WCO) [[www.wcoomd.org](http://www.wcoomd.org)].

This is an International Nomenclature standard adopted by about 200 Countries to ensure uniformity in classification in International Trade.

HSN is multi-purpose international product nomenclature developed by WCO (World Customs Organization). It comprises about 5,000 commodity groups, each identified by Asix-Digit code, arranged in a legal and logical structure. The

system is used by more than 200 countries. Over 98% of the merchandise in international trade is classified in terms of HS-WCO website – quoted in Hitachi Home and Life Solutions v. CC (2012) 285 ELT 504 9CESTAT), where it was held that HSN automatically classifies the trade parlance test.

Harmonized System (HS) provides commodity / product codes and description up to four-digit (Heading) and six-digit (Sub-Heading) levels only and member countries of WCO are allowed to extend the codes up to any level subject to the condition that nothing changes at the four- digit or six-digit levels. India has developed eight-digit level classification to indicate specific statistical codes for indigenous products and also to monitor the trade volumes – Chapter 4 Para 2.2 of Customs Manual 2011.

HSN is amended periodically in a cycle of 4/6 years, taking note of the trade flow, technological progress etc. Member countries including India are under obligation to amend the Tariff Schedules in alignment with HS - Chapter 4 Para 2.3 of Customs Manual 2011.

For purpose of uniform interpretation of HS, the WCO has published detailed Explanatory Notes to various headings /sub- headings. WCO in its various committees discusses classification of individual products and gives classification opinion on them. Such information, though not binding in nature, provides a useful guideline for classifying goods - Chapter 4 Para 2.4 Of Customs Manual 2011.

### **Sections, chapters and headings in tariff**

A 'section' is a grouping of a number of Chapters which codify a particular class of goods. Each of the sections is related to a broader class of goods e.g., Section I is 'Animal Products', Section VII is 'Plastics and Articles thereof', Section XI is 'Textile and Textile Articles', Section XVII is 'Vehicles, Aircrafts, Vessels and associated transport equipment', etc. Section Notes are given at the beginning of each Section, which govern entries in that Section. These notes are applicable to all Chapters in that section.

### **There are 21 sections in case of customs tariff**

Section divided in Chapters and chapters in sub-chapters – Each of the sections is divided into various Chapters and each Chapter contains goods of one class. For example, section XI relates to Textile and Textile Articles and within that Section, Chapter 50 is Silk, Chapter 51 is Wool, Chapter 52 is Cotton, Chapter 53 is other vegetable textile fabrics, and Chapter 61 is Articles of Apparel and soon.

Some Chapters are divided into sub-chapters e.g., Chapter 72 (Iron and Steel) is divided into – Primary Materials. II – Iron and Non-Alloy Steel, III – Stainless Steel and IV – Other Alloy Steel



**Chapter Notes** - Chapter Notes are given at the beginning of each Chapter, which govern entries in that Chapter.

**Headings and sub-headings within the chapter** – Each chapter and sub- chapter is further divided into various headings depending on different types of goods belonging to same class of products.

For instance, Chapter 50 relating to silk is further divided in to 5 headings, 5001 related to silk worm cocoon, 5002 relates to raw silk, 5003 relates to silk waste etc. The headings are sometimes divided into further sub-headings. For example 5003 10 means 'silk waste not carded or combed ', while 500390 means 'other silk waste'. These are preceded by single dash. 500390 is further classified as 50039010 (Mulberry silk waste), 5003 90 20 (Tussar waste) and 5003 9090 (Other).

**Grouping of goods** – In the HSN, commodities/products are arranged in a fixed pattern with the duty rates specified against each of them. The pattern of arrangement of goods in the HSN is in increasing degree of manufacture of commodities/products in the sequence of natural products, raw materials, semi-finished goods and fully manufactured goods/article/ machinery etc. – Chapter 4 Para 1.2 of CBI & C's Customs Manual, 2011.

**Eight-Digit classification in customs**–All goods are classified using four- digit system. These are called 'headings'. Further 2 digits are added for sub-classification, which are termed as 'sub-headings'. Further 2 digits are added for sub-sub-classification, which is termed as 'tariff item'. Rate of duty is indicated against each 'tariff item' and not against heading or sub- heading.

## Overview of HSN

Following is broad grouping of goods in HSN.

- ❖ Animal products (Section I – Chapters 1 to6)
- ❖ Vegetable Products (Section II – Chapters 6 to14)
- ❖ Animal or vegetable fats and oils (Section III – Chapters 15)
- ❖ Prepared foodstuffs, beverages (Section IV – Chapters 16 to 24)
- ❖ Mineral Products (Section V – Chapters 25 to27)
- ❖ Products of Chemicals and allied industries (Section VI – Chapters 28 to 38)
- ❖ Plastics and Rubber and their articles (Section VII – Chapters 39 to 0)
- ❖ Raw hides and Skins, Leather and articles (Section VIII – Chapters 41 to 43)
- ❖ Wood, cork, straw and their articles (Section IX– Chapters 44 to 46)
- ❖ Pulp of wood, Paper, Paper-board and articles (Section X – Chapters 47 to 49)



- ❖ Textile and Textile Products (Section XI – Chapters 50 to 63)
- ❖ Footwear, Headgear, Umbrellas, Articles of human hair (Section XII– Chapters 68 to 70)
- ❖ Pearls, precious metals (Section XIV – Chapters 71)
- ❖ Base metals and articles of based metal (Iron, Steel, Copper, Nickel, Zinc, etc. (Section XV – Chapters 84 to 85)
- ❖ Vehicles, Aircrafts, vessels and associated transport equipment (Section XVII – Chapters 86 to 89)
- ❖ Optical, photographic, medical, surgical instruments, clocks, musical instruments (Section XVIII – Chapters 90 to 92)
- ❖ Arms and Ammunition (Section XIX – Chapters 93)
- ❖ Misc. Manufactured articles like Furniture, toys etc. (Section XX – Chapters 94 to 96)
- ❖ Works of Art, collectors' pieces and antiques (Section XXI – Chapters 97 to 99).

### **Rules for interpretation of HSN rules:**

For Interpretation of HSN are given in the HSN itself. These are termed as 'General Interpretative Rules' (GIR).

GIR (General Interpretative Rules) are to be applied for interpretation of Tariff, if classification is not possible on the basis of tariff entry and relevant chapter notes and section notes.

Following are the steps of classification of a product as per GIR.

- (1) The title of Sections and Chapters are provided for ease of reference only; for legal purposes, refer the heading and sub-heading. Read corresponding Section Notes and Chapter Notes (Rule 1 of GIR). If there is no ambiguity or confusion, the classification is final. You do not have to look to classification rules or trade practice or dictionary meaning. If classification is not possible, then only go to GIR. The rules are to be applied sequentially.
- (2) If meaning of work is not clear, refer to trade practice. If trade understanding of a product cannot be established, find technical or dictionary meaning of the term used in the tariff. You may also refer to BIS or other standards, but trade parlance is most important. If goods are incomplete or un-finished, but classification of finished product is known, find if the un-finished item has essential characteristics of finished goods. If so, classify the same heading– Rule 2(a).
- (3) If ambiguity persists, find out which heading is specific and which heading is more general. Prefer specific heading. – Rule 3(a)
- (4) If problem is not resolved by Rule 3(a), find which material or component is giving 'essential character' to the goods in question– Rule 3(b).



- (5) If both are equally specific, find which comes last in the Tariff and take it – Rule 3(c)
- (6) If you are unable to find any entry which matches the goods in question, find goods which are most akin – Rule 4.
- (7) In case of mixtures or sets too, the procedure is more or less same, except that each ingredient of the mixture or set has to be seen in above sequence. As per rule 2(b), any reference to a material of substance includes a reference to mixtures or combinations of that material or substance with other material or substance.
- (8) Packing materials is classified along with the goods except when the packing is for repetitive use – Rule 5

### Coding of dashes

Single dash (-) at the beginning of description of any article in Tariff indicates a group, while two dashes (- -) at the beginning indicate a sub-group. The single dash (-) indicates primary classification of article covered by the heading, while double dash (-- ) is the sub-classification of the preceding article which has single dash (-) i.e., it is a sub- classification of primary classification.

Triple dash (- - -) and quadruple dash ( ) indicate sub-sub-classification

Of immediately preceding description of article, which has `-' or `-' -. In other words, a single dash or double dash may be followed by either three dashes or four dashes. Both three dashes and four dashes are used to indicate 8 digit classification i.e., 'tariff item'.

Goods to fall in tariff entry with double dash (- -) have to satisfy specification of single dash (-) preceding them – *Schneetady Herdialla Ltd. v. CCE (2007) N 208 ELT 110 (CESAT)*

Following hypothetical example illustrating classification of 'Ready Made Garments' will make the distinction clear [Note that this is not actual extract from the tariff]

A		Ready Made Garments
AA	-	Men's Wear
AA-1	--	Suits
AA-2	--	Shirts
AA-3	--	Other
AB	-	Ladies wear
AB-1	--	Salwar
AB-2	--	Skirts
AB-3	--	Other
AC	-	Other

The 'ready-made garments' are classified as (a) Men's wear (b) Ladies wear (c) other. The men's wear and ladies wear are further sub-classified. Thus, 'Other' in AA-3 means men 'swear other than suits and shirts, while 'other' in AC means all ready-made garments excluding Men's wear and Ladies wear.

Rule 6 of Interpretation Rules of Schedule to Tariff state that Classification of goods in sub-headings shall be determined in terms of those sub-headings. Only sub-headings at the same level are comparable e.g., in aforesaid example, AB-1 and AB-3 can be compared, but AB-3 cannot be compared with (say) AA-3

### **Standard unit of quantity**

Third column of tariff is "Unit" which is unit of measure. The unit of measure is indicated by abbreviations. Some abbreviations are as follows—cc-Cubic Centimeter, cm.- Centimeter(s), g-gram(s), g/cm<sup>3</sup>

–Gramper cubic centimeter, l-liter, m-meter, MT–Metric Tone, t

–Tone, Tu–Thousand in number, u-Number, Vol.–Volume, W-Watt.

In many cases, these units are impractical in trade.

### **Application of GIR in tariff**

GIR (General Interpretative Rules) are to be applied for interpretation of Tariff, if classification is not possible on the basis of tariff entry and relevant chapter notes and section notes.

Rules to be applied sequentially– The Rules are to be applied sequentially. Rule 1 gives precedence to Section Notes / Chapter Notes while classifying a product – Chapter 4 Para 2.6 of CBI\*C's Customs Manual, 2011. Classification is to be first tested in light of Rule 1. Only when it is not possible to resolve the issue by applying this rule, recourse is taken to Rules 2, 3 and 4 in seriatim [Though rules nowhere state that these should be applied sequentially, the general arrangement and wording does clearly indicate that intention].

Titles are for reference – Titles of sections or chapters cannot be used for classification. The titles of sections and chapters are provided for use of reference only, and have no legal importance for purposes of classification. (Rule 1)

Rule 1. –The titles of Sections and Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions hereinafter contained.

Section Notes and Chapter Notes have overriding effect– Classification is to be determined only on the basis of description of the head, read with relevant section or chapter notes. Since these notes are part of the Act itself, these have full statutory (legal) backing.



If the description read with section of chapter notes is not enough to correctly classify the goods, following further rules have been provided:

### **Classification of Incomplete or un-assembled Goods**

Any reference to complete goods also includes in complete or unfinished goods if such incomplete or un-finished goods have the essential characteristic of finished goods [First part of Rule 2(a)]. The heading will also include finished goods removed unassembled or disassembled i.e., in SKD or CKD packs [Second part of Rule 2 (a)].

### **Classification of Mixture or Combinations**

Any reference in heading to material or substance will also include the reference to mixture or combination of that material or substance with other materials or substance e.g. 'Article of Gold' will include an Article which is made partly of Gold. Reference to goods of a given material or substance shall also include reference to goods consisting wholly or partly of such material or substance [Rule 2(b)].

### **Classification in case of conflict between various headings**

While applying the aforesaid rules, some conflict may arise e.g., (a) a mixture or combination containing more than one material may be classifiable under more than one headings by applying Rule 2(b). if it contains two items A and B, one classification may be on the basis of "a" and other on the basis of 'B' (b) There may be two descriptions which may both seem possible.

In such cases, Rule 3 states as follows –

Rule 3 – When by application of sub-rule (b) of Rule 2 or for any other reason goods are, prima facie, classifiable under two or more headings, classification shall be effected as given in Rule 3(a), 3(b) or 3(c).

### **Classification as per Essential Character**

If Mixture and Composite goods consisting of different materials or different components cannot be classified based on above rule i.e., Rule 3(a), it should be classified as if they consisted of the material or component which gives it their essential character [Rule 3(b)]

For example, if a set consists of drawing instruments (90.17), pencil (96.09) and pencil sharpener (83.14), put up in a leather case (4201.90); the set will be classifiable under 90.17 i.e., drawing instrument.

If both are specific – Latter the better

If two or more headings seem equally possible and the dispute cannot be resolved by any of the aforesaid rules, if both the headings appear equally specific, the heading which occurs last in numerical order is to be preferred (i.e., latter the better) [Rule 3(c)].

## **Other Provisions Relating to Classification**

### **Other provisions are as follows:**

Akin Goods – Last Rule of classification – If the classification is not possible by any of the aforesaid Rules 1, 2 and 3, then it should be classified under the heading appropriate to goods to which they are most akin (Rule 4 of GIR].

This is only a last resort and a desperate remedy to resolve the classification issue, as the matter of classification cannot be kept hanging indefinitely.

Classification of packing containers and packing materials

Rule 5 for interpretation of schedule to Customs Tariff Act and CETA specifically provides for classification of packing material and packing cases.

Rule 5 In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

- (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklaces cases and similar containers, specially shaped or fitted to contain a specific article and set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;
- (b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

As per this rule, cases for camera, musical instruments, drawing instruments, and necklaces etc., specially shaped for that article, suitable for long term use will be classified along with that article, if such articles are normally sold along with such cases. Further, packing materials and containers are also to be classified with the goods except when the packing is for repetitive use.

This provision is obviously made to ensure that the packing and the goods are charged at same rate of duty. Goods can be compared at the same level only

### **Sub-Headings can be compared only at the same level {Rule 6}.**

This means that if one heading contain 5-6 sub-headings, these sub- headings can be compared with each other. However, sub-heading under one heading cannot be compared with sub-heading under a different heading. Thus, first heading has to be decided and none of the sub- headings within that heading has to be selected.

### **Classification of Parts**

Classification of parts is subject to notes in Sections and Chapters, Question of classification of parts is relevant for parts of machinery, electrical equipment, vehicles, instruments, arms, furniture and toys (Chapters 82 to 96).



Broadly, parts suitable solely for a particular machine generally fall in the same heading number in which main item falls. However, there are many exceptions–

- ❖ Parts of general use are not to be classified as part of any particular machine. 'Parts of General Use' are to be classified in the irrespective specified heads and not to be classified under the heading of the machine where they are used.
- ❖ Parts are to be classified as parts if separate heading is available for parts, as per section note 2 to section XVI and section note 2 to section SVIII. (E.g. there is separate heading for parts of engine).
- ❖ Various articles as specified in notes to sections XVI and XVII are not to be classified as parts of any particular machine. e.g. articles of leather, belts, tools and appliances, instruments, clocks, watches, etc.]
- ❖ The direction that parts are to be classified along with that machine appears only in section XVI. However, in *Camlin Ltd. v. CCE2000 (121) ELT 178 (CEGAT)*, it was held that application of this note should be made to goods falling under other sections also. Where parts are not of general use, these are too classified under the heading of main article (even when the Article falls under any section, other than section XVI).

### **Parts of General Use**

Parts of general use are defined as (a) tube and pipe fittings, stranded wire, ropes, cables, chains, nails, screws, bolts, springs (other than clock springs) of base metal i.e. Iron and Steel, Copper, Aluminum, Tin, Nickel, Lead, Zinc etc. or of plastic (b) Padlocks, locks; mountings and fittings suitable for furniture, doors, windows etc.; clasps, buckles, eyelets; sign-plates, nameplates; frames of pictures; mirrors; of Iron and Steel, Copper, Aluminum, Tin, Nickel, Lead, Zinc etc., or of plastic. These parts are to be classified in their respective heading and not as part of the machine or equipment e.g. a bolt used in a vehicle will be classified as 'bolt' and not as 'motor vehicle part'. Plastic piping and fitting will be classified under Plastic articles (3917) only, even if used as machine component.

### **Classification of services**

Scheme of Classification of Services has been notified by Government as Annexure to Notification No. 11/2017-CT (Rate) dated 28-6-2017.

Since Customs Tariff has 1 to 98 Chapters, chapter No. 99 has been given for services. The service classification is six-digit code.

The services have been classified in five broad sections as follows:

Section 5 – Construction service

Section 6 – Distributive Trade Services, Accommodation, Food service



Section 7 – Financial and related Services

Section 8 – Business and Production Services

Section 9 – Community, social and personal services

This section number forms third digit e.g. construction services commence with '995'.

The sections are divided into headings which is a four-digit code. These are divided in groups which becomes a fifth digit code. Its further division is made in 'Tariff Item' which is a six-digit code.

Often there is overlapping and some activities can fall in more than one tariff items.

In this book, the classification of services, as given above, has been followed, as far as possible.

Service code is not SAC– The term often used in returns under GSTN is 'SAC' i.e., Service Accounting Code. This term was used in service tax law. This is really hangover of the past, as there is no concept of 'accounting code' in GST. It seems in the application for registration under GST, they are still using old service tax accounting codes, though the classification of services under GST is entirely different.

### **Principles of classification**

Classification is to be done on basis of entries in Tariff. However, there are some general principles of classification.

Words used in Tariff are to be understood in the sense these are understood in the trade. This is 'trade parlance theory'. The trade parlance is more important than dictionary or technical meaning, unless the word is specifically defined in the Tariff itself.

HSN is very important guide in classifying a product and it should be normally followed.

End use is generally not relevant for classification, except when the tariff description so requires and classification is relating to function of the product.

### **Trade Parlance theory**

Since the primary objective of the Excise Act is to raise revenue, resort should not be had, for purpose of classification, to the scientific and technical meaning of the terms and expressions used therein, but to their popular meaning, that is to say, the meaning attached to that by those using the product.

The burden of proof that a product is classifiable under a particular tariff head is on the revenue and must be discharged by proving that it is so understood by the consumers of product in common parlance-CCE v. Vicco Laboratories 2005 (179) ELT 17 (SC3-member bench).



Criteria for classifications are given in the Tariff. However, basic principle of classification, devised more than a century ago by Justice Pollok in Grenfellv. IRC (1876) 1 Ex D 242 continues. As per this principle, a word in statute should be construed in its popular sense and not in the strict or technical sense. 'Popular sense' means that which people conversant with the subject matter with which the statute is dealing, would attribute to it.

### Dictionary meaning/ Technical literature

Apex Court in Indo International Industries v. CAT, UP-AIR 1981SC1079— (1981) 3 SCR 294 = 1981 (2) SCC 528 = 47 STC 359 - 8 ELT 325(SC)—held "In interpreting items in statutes like Excise Tax Act or Sales Tax Act, where diverse products, articles and substances are classified, resort should be had, not to the scientific and technical meaning of terms and expressions used, but to their popular meaning i.e. the meaning attached to them by those dealing with them. If any term or expression has been defined in the enactment then it must be under stood in the sense in which it is defined, otherwise, common parlance or commercial parlance has to be obtained".

In absence of any definition of any word or expression in statute, it would be permissible to refer to the dictionary meaning of that expression. Star Paper Mills Ltd v. CCE - 1989 (43) ELT178 (SC).

### New Requirement to mention HSN/SAC in Annexure 'B'

References have been received from the field formations that HSN wise details of goods and services are not available in FORM GSTR-2A and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in Annexure B of the circular No 125/44/2019 GST dated 18-11-2019 to easily identify between the supplies of goods and services.

Annexure-B													
Statement of invoice to be submitted with application for refund unutilized ITC													
Sr. No.	GSTIN of the Supplier	Name of the Supplier	Invoice Details			Category of input supplies		Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Eligible for ITC	Amount of eligible ITC
			Invoice No.	Date	Value	Inputs/ Input Services/ capital goods	HSN/ SAC						
1	2	3	4	5	6	7	8	9	10	11	12	13	14



## CLARIFICATION ON REPORTING 4-DIGIT/6-DIGIT HSNs

GST helpdesk is in receipt of some tickets at helpdesk wherein it was reported that certain 6-digit HSN codes are not available in HSN Master/ not accepted on e-invoice/e-Way bill portals.

**Background:** Notification No. 12/2017-Central Tax dated June 28, 2017, as amended vide Notification No. 78/2020 – Central Tax, dated October 15, 2020, mandates taxpayers to declare specified digits, *as follows*, of Harmonised System of Nomenclature (HSN) / Service Accounting Code (SAC) Code on raising of tax invoices, w.e.f. April 1, 2021.

S. No.	Aggregate Turnover in the preceding Financial Year	Number of Digits of HSN Code
1.	Upto INR 5 crores	4
2.	More than INR 5 crores	6

It may be noted that *specific* 6-digit HSNs, as available in the HSN/Customs Tariff (with corresponding description of goods) are allowed in the system. It also follows that the declaration of HSN at 4/6 Digits has to be out of valid HSN codes only.

However, there are instances that some taxpayers are trying to report truncated first 6-digits out of an otherwise valid 8-digit HSN; which are actually not available in Tariff at 6-digit level and with no corresponding description of goods; these are invalid and hence not being allowed in the System.

Taxpayers may, therefore note that based on the harmonious interpretation of the Notifications, as referred above, read with Customs Tariff Act, 1975, as made applicable to GST; the number of digits of HSN, as specified vide Notifications No. 12/2017 & 78/2020 (Central Tax), are the *minimum* number of digits of HSN to be mentioned on the invoice.

**Example:** Where HSN 6 digits are specified to be reported in invoice, valid HSN codes as available in tariff, at both 6-digits and 8-digits can be mentioned. Similarly, where HSN at 4-digits are specified, valid HSN codes as available in tariff, at 4-digit, 6-digit and 8-digit can be mentioned. However, the 4/6 Digit HSN Codes, which are not available in the tariff; along with specific description, Unit and GST Rate; are not allowed to be mentioned.

Further, if the HSN of any Goods/Service is otherwise valid but not accepted on **GST Portal / e-invoice Portal / e-way Bill portal**, please raise a ticket on GST Self-Service Portal: <https://selfservice.gstsystem.in/> > Report Issue > Type 'HSN' in 'Type of Issue/Concern' search box > Select relevant sub-category, e.g. 'e-Invoice – IRP – HSN Code related'

## VALUATION UNDER GST, VALUATION RULES

### **Transaction Value is basis for Valuation**

The value of a supply of goods or services or both shall be the transaction value, that is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply – section 15(1) of CGST and SGST Act.

Conditions for accepting transaction value for valuation–The conditions for accepting transaction value are – (a) supplier and recipient should not be related (b) price is sole consideration.

Value does not include GST but includes other taxes.

Any taxes, duties, fees and charges levied under any statute other than the SGST Act or the CGST Act or the IGST Act or GST (Compensation to States for Loss of Revenue) Act; are includible in value, if charged separately – section 15(2)(a) of CGST Act.

Thus, SGST and CGST will be payable on net value only.

‘Value’ for GST will not include IGST, CGST, SGST, UTGST and GST Compensation Cess. However, other taxes (like entertainment tax or some other Cess) will be includible if charges separately in invoice.

### **Amount paid by recipient on behalf of supplier**

Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both is includible in value – section 15(2)(b) of CGST Act.

This cannot cover free inputs or services supplied by recipient, as only ‘amount paid by recipient on behalf of supplier is includible. This would be only where there was contractual liability on supplier to make those supplies.

### **Incidental expenses incurred before supply**

Incidental expenses, including commission and packing, charges by the supplier to the recipient of a supply, including any amount charged for anything done by

the supplier in respect of the supply of goods or services or both at the time of, or before delivery of the goods or, as the case may be, supply of the services are includible in value-section 15(2)(c) of CGST Act.

Thus, expenses like weighment, loading in factory, inspection, testing before supply will be includible in 'value'. Design charges incurred before supply will also be includible in value.

Development charges like design and tooling are includible in value – Development charges like design and tooling are includible in value. These are necessary concomitant of final sale price – *Tata Johnson Controls v. State of Maharashtra* (2017) 105 VST 107 (Bom HC DB). [Decision in sales tax matter but principle applies here also].

### **Interest, late fee or penalty for delayed payment**

Interest or late fee or penalty for delayed payment of any consideration for any supply is includible in value - section 15(2) (d) of CGST Act.

The term 'delayed' obviously means 'delay beyond agreed terms'. This interpretation can also be justified because the word 'interest' has been used with the words 'late fee' or 'penalty'. This is on principle of 'Noscitur a sociis' – Meaning of a word should gathered from its context i.e., by associate words.

Thus, GST should not be leviable on normal interest payable by recipient as per agreed terms of contract.

This is also justifiable from the fact that 'interest' is an exempt supply as per Notification No.12/2017-CT (Rate) and No.9/2017-IT (Rate)both dated 28-6-2017, effective from1-7-2017.

### **Tax payable when value is inclusive of GST**

Legally, GST is to be indicated separately in tax invoice. However, provision has been made for situations where GST is not shown separately in tax invoice.

If value of supply is inclusive of IGST, CGST, STGST or UTGST, the tax payable will be calculated by back calculations as follow –

Tax amount = [Value inclusive of tax x Tax rate in % of IGST or CGST plus UTGST/SGST]/ (100 + sum of applicable tax rates in%)–Rule 9 of Valuation Rules – Rule 35 of CGST and SGST Rules,2017.

Note that the provision applies only the value of supply included GST. The rule does not say that the value is deemed to be inclusive of GST.

For example, when GST is payable under reverse charge, the amount charged by supplier of goods or services cannot be taken as inclusive of GST.



**Illustration**–If value inclusive of IGST is ₹1180 and IGST rate is 18%, integrated tax amount (IGST) =  $(1180 \times 18 / (100 + 18)) = 21,240 / 118 = 180$ . Value = ₹1,000. Check that value plus integrated tax = ₹1,180.

### **When demand is raised for past period**

If a person has not paid GST and demand is made later, issue arises whether the amount charged by him should be taken as inclusive of GST or exclusive of GST.

If goods are cleared without payment of duty and later demand is raised, the invoice value should be taken as cum-duty price and duty payable should be calculated by back calculations – CCE v. Maruti Udyog 2002 AIRSCW1039=141ELT3=-2002(3)SCC547=49RLT1=122

Taxman 105 (SC 3-member bench).

Let us hope that the case law will be valid in GST also.

However, since Input Tax Credit is not admissible if invoice is beyond one year, ITC cannot be availed.

### **GST on out ward freight, packing and other charges in tax invoice**

In case of FOR basis contract, the supplier arranges transport. In that case, he pays GST under reverse charge on outward freight. He then charges outward freight in the tax invoice. In such case, the outward freight charged is part of value of goods and GST is payable on value including outward freight. Similarly, packing charges, weighment charges and other charges are includible in value for levy of GST. The GST rate is same as applicable to goods, as this is a composite supply as per section 2(3) of CGST Act.

It is not correct to charge freight separately and charge GST @5% as the service of supplier of goods is not Goods Transport Agency Service at all.

### **Subsidies directly linked to supply other than government subsidies**

Subsidies directly linked to the price excluding subsidies provided by the Central and State Governments are includible in 'value' for charge of GST.

Explanation – The amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy - section 15(2) (e) of CGST Act.

This is also made clear in definition of 'consideration' in section 2(31) of CGST Act.

## Discount or Incentive given after supply

The value of supply shall not include any discount that is given:

- (a) Before or at the time of the supply provided such discount has been duly recorded in the invoice issued in respect of such supply; and
- (b) After the supply has been effected, provided that (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and (ii) input tax credit as is attributable to the discount has been reversed by the recipient of the supply - section 15(3) of CGST Act

Thus, discount after supply is permissible as deduction only if it was known before or at the time of supply.

There is provision of issue of 'credit note' for deficiency in supply. However, section 34(1) of CGST and SGST Act do not make provision for issue of credit note for passing of discount which was not contemplated at the time of supply.

Further, if incidence of GST and interest has been passed on to another person, reduction in output tax liability of the supplier shall not be permitted – provision to section 34(2) of CGST and SGST Act.

Giving discounts and price reductions after supply of goods and services is not uncommon in business.

Since credit note cannot be issued after supply giving discount, the taxable person has to find some other nomenclature like deficiency in service or excess charged by clerical and other mistake etc.

Giving trade discount after sale is a regular trade practice – In *Maya Appliances P Ltd. v. ACCT* (2018) 2 SCC 756 (SC 3 member bench), giving benefit of discount at a point of time subsequent to original sale/ purchase is a regular trade practice and qualifies for deduction. All regular trade discounts are allowable as permissible deductions. It is a matter of common experience that in the present contemporary competitive market, trade discounts not only are dependent on variable factors but also might be strategically not disclosable at the time of original sale / purchase – confirming *Southern Motors v. State of Karnataka* (2017) 3 SCC 467.

Trade discount can be given later through credit note – In *IFB Industries Ltd., v. State of Kerala* (2012) 4 SCC 618 = 49 VST 1 = AIR 2012 SC 1466 = 295 ELT 186 (SC), it was held that trade discounts are allowable as deduction even if not shown in invoice but given separately by credit note – same view in *TV Sundaram Iyengar v. State of Karnataka* (2012) 51 VST 249 (Karn HCDB) \* *Nagarjuna Fertilizers v. ACCT* (2012) 51 VST 453 (WBTT) \* *Prathan Motors P Ltd. v. ACCT* (2014)



41 taxmann.com 74=71VST522(Karn HCDB)\*Southern Motors v. State of Karnataka (2017)3SCC467=50GST502=77taxmann.com 251=98VST207 (SC).

Trade discounts given on basis of performance of dealers in the previous quarter is allowance as deduction from value–Maya Appliances v. ACCT (2018) 66 GST 210 = 90 taxmann.com 317(SC).

The statutory provision in respect of discount is clearly against normal business practice.

Input Tax Credit to be reversed if payment is not made to supplier within 180 days

As per second proviso to section 16(2) of CGST Act, if payment of invoice amount is not made to supplier within 180 days, input tax credit is required to be reversed.

It seems that the intention is to avoid bogus transfer so input tax credit e.g., if a person has excess input tax credit, he can pass on this credit to others. However, the remedy thought of seems to be worse than disease as many genuine transactions will get affected. It is not clear why Government is acting as recovery agent of suppliers.

Further, the provision of interest is baffling. Interest is compensatory in nature. Here, interest is payable even when Government money was not used at all.

Often in case of large works contract, some retention money is kept which is released after warranty period. Further, some deductions from invoice for various reasons is common. In such case, this provision will create great nuisance to taxable persons. Post-sale discounts after negotiations are common in business.

All such transactions will get affected. It will be necessary to issue credit notes and debit notes.

No unjust enrichment if discount amount returned to buyer by cheque or credit note.

If credit note is issued after supply, its input tax credit can be adjusted in Electronic Credit Ledger.

Even otherwise, there is ample case law that if the discount amount is refunded by supplier by way of credit note or cheque, there is no unjust enrichment and refund is admissible.

### **Meaning of 'consideration'**

'Consideration' in relation to the supply of goods or services or both to any person, 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 said person or by any other person' but shall not include any subsidy given by Central or 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 Central or State Government section 2(31) of CGST Act.

Clause (b) would cover service of 'refraining from act or tolerating an act or situation'.

### **Deposit is not consideration**

A deposit, whether refundable or not, given in respect of the supply of goods or services or both shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply. – Proviso to section 2(31) of CGST Act.

Normally, term 'deposit' is used when amount is refundable and term 'advance' is used when amount is adjustable (and not refundable). However, definition of 'consideration' envisages non-refundable deposit also.

GST is payable when advance is received. Hence, instead of receiving advance from customer, it is advisable to receive 'deposit'. In that case, GST will be payable only when such deposit is adjusted against supply.

However, this will raise issues under Companies Act, 2013.

### **Price should be 'sole consideration'**

The term 'price is sole consideration' has been copied from valuation provisions in excise, customs and service tax. This was required as excise duty or customs duty was on 'goods' and service tax was on 'services'. However, in GST, the tax is on 'supply of goods or services or both'.

The consideration' should be for supply of goods and services or both. Since the input tax credit is integral part of law of GST, the term 'supply' has to be read with reference to 'input' and 'input services' which are eligible for Input Tax Credit.

### **Returnable packing material**

In some cases, goods are packed in returnable packing, like gas cylinder, drums etc. In such case, tax is payable only on consideration received for the supply—SNo. 61 of Tweet FAQ released by CBI & Con 26-6-2017.



Thus, it is not required to add amortized cost of durable and returnable packing.

### **Meaning of 'Related Person'**

Explanation (a) to section 15 of CGST Act states that for the purposes of CGST Act, Persons shall be deemed to be "related persons" if–

- (a) Such persons are officers or directors of one another's business.
- (b) Such persons are legally recognized partners in business.
- (c) Such persons are employer and employee.
- (d) Any person directly or indirectly own, controls or hold twenty-five per cent or more of the outstanding voting stock or shares of both of them
- (e) One of them directly or indirectly controls the other
- (f) Both of them are directly or indirectly are controlled by a third person
- (g) Together they directly or indirectly controls a third person; or
- (h) They are members of the same family.

Explanation (b) – The term "person" also includes legal persons.

Explanation (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.

This definition has been practically copied from Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Rule 2(2) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007, except that in clause (d), the percentage share holding has been increased from 5% to 25%.

### **Meaning of 'Family'**

"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 – section 2(49) of CGST Act.

The definition is very practical and sensible.

Otherwise, broad definition of 'family' includes many persons with whom the taxable person has practically no financial transactions or often they are not even on speaking terms.

Price to related person acceptable if the recipient is eligible for entire ITC.



Even if the supply is to related person, if 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—proviso to Rule 28 of CGST and SGST Rules.

This is a very sensible provision as when the recipient can take entire input tax credit, there cannot be any intention to evade tax.

Really, this provision should apply to all transactions, as in such cases, there can be no intention to evade tax.

### **Government can notify any other method**

Notwithstanding anything contained in sections 15(1) or section 15(4) of CGST Act, the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed – section 15(5) of CGST Act.

Thus, any other method (like value based on MRP) may be fixed. However, 'value' cannot be determined on the basis of production capacity.

### **Rate of exchange of currency for determination of value**

Rate of exchange for value of taxable goods – The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange notified in CBI&C under section 14 of CGST Act as on date of supply of such goods in terms of section 12 of CGST and SGST Act – Rule 34(1) of CGST Rules, 2017 (amended w.e.f. 27-7-2017)

### **Rate of exchange for determination of value of services**

Determination of rate of foreign exchange is relevant for determination of value of services in case of export of services and import of services. The rate is also relevant when place of supply of service is India and hence GST is payable under reverse charge, but payment is received in foreign exchange.

Rate of exchange for value of taxable services – The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange as per Generally Accepted Accounting Principles (GAAP) on the date of time of supply of such service, in terms of section 13 of CGST Act – Rule 32(2) of CGST Rules, 2017 (amended w.e.f. 27-7-2017).

This provision has been made, since, as per section 129(0) of the Companies Act 2013, Financial Statements of companies must comply with Accounting Standards, and shall be in prescribed form.



Thus, it will be easy to reconcile value of service tax as per books of account and as per service tax returns.

### **Valuation rules if Value for GST not ascertainable**

The value of the supply of goods or services or both which cannot be valued under section 15(1) of CGST and SGST Act, shall be determined as per rules – section 15(4) of CGST Act.

Such valuation may be required in following situations –

- (i) The consideration, whether paid or payable, is not money, wholly or partly.
- (ii) The supplier and the recipient of the supply are related.

Value of supply of goods or services where the consideration is not wholly in money

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall be as follows – Rule 27 of CGST and SGST Rules, 2017–

- (a) The open market value of such supply,
- (b) If open market value is not available, the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money if such amount is known at the time of supply.
- (c) If the value of supply is not determinable under clause (a) or clause (b) the value of supply of goods or services or both of like kind and quality.
- (d) If the value is not determinable under clause (a) or clause (b) or clause (c) the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by rule 30 or 31 of CGST and SGST Rules, 2017, in that order.

### **Meaning of 'Open market value'**

“Open market value ” of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the Cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made – Explanation (a) to Rule 35 of CGST and SGST Rules, 2017.

“Supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components,

materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both—Explanation(b) to Rule 3 of CGST and SGST Rules, 2017.

The important points are as follows –

- ❖ Value should be exclusive of IGST, CGST, UTGST and GST Compensation Cess (but all other taxes, if applicable).
- ❖ Price should be full value in money to unrelated buyer and price should be sole consideration.
- ❖ Supply should be at the same time when supply being valued is made.
- ❖ 'Such supply' means of 'like kind and quality'.
- ❖ Even brand image is relevant. For example, Lux and Lifebuoy of same weight are not 'like goods'.
- ❖ Quantity and quality should be comparable.

### **Price should be of supply similar in all respects**

The price should be at same commercial level e.g., whole price and retail price or OE price and spare parts price cannot be compared.

### **Value in case of exchange or barter**

In case of exchange or barter, the actual value of goods is higher than the amount received for such exchange e.g., exchange of old mixer or computer for new mixer or computer. In such case, the real price of such goods should be considered, as illustrated below:

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 ₹24,000—Illustration 2 to Rule 27 of CGST and SGST Rules, 2017.

Where a laptop is supplied for ₹40,000 along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is ₹4,000 but the open market value of the laptop is not known, the value of the supply of laptop is ₹44,000—Illustration 2 to Rule 27 of CGST and SGST Rules, 2017.

The first illustration is correct but second illustration does not appear to be correct as it is not full barter.

Value of supply of goods or services or both between distinct or related persons,



other than through an agent the value of the supply of goods or services or both between distinct persons as specified in section 25(5) of CGST Act or where the supplier and recipient are related, other than where the supply is made through an agent, shall be as follows–

- (a) The open market value of such supply.
- (b) If open market value is not available, the value of supply of goods or services of like kind and quality.
- (c) If value is not determinable under clause (a) or (b), the value as determined by application of rules 30 and 31 of CGST and SGST Rules, in that order

Section 25(4) and 25(5) of CGST Act covers those cases where same person has taken separate registration in different States or even in the same state.

Value declared accepted when recipient is eligible for full input tax credit 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 – proviso to rule 28 of CGST and SGST Rules.

This is not a general provision. This applies only in following cases–(a) distinct person as specified in section 25(4) and 25(5) of CGST Act i.e., where same person with single PAN has taken separate registration in different States or even in the same State (b) Related person.

This is a very sensible provision as when the recipient can take entire input tax credit, there cannot be any intention to evade tax.

Really, this provision should apply to all transactions, as in such cases, there can be no intention to evade tax.

Manipulation is possible– Though provision is sound, some manipulation is possible e.g., lower price may be shown to reduce blockage of funds in tax. Sometimes, higher price may be charged so that available ITC is fully utilized. Such manipulation is possible to some extent, but it has to be ensured that there is no loss of Input Tax Credit at either end.

### **Value of supply of goods made or received through an agent**

Specific provisions have been made where sale is made through Consignment Agent. This is because property in goods does not pass to Consignment Agent when goods are dispatched to him on consignment basis.

“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 – section 2(6) of CGST Act.

“Principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both—section 2(88) of CGST Act.

Liability only of Consignment Agents, not of commission agents—As per aforesaid clause(a) the agent will be liable for GST on value of goods or services only if he undertakes to supply any goods or services or both on behalf of any principal (like consignment agent). However, if the agent does not supply goods or services, he is not liable for GST on value of goods or services. For example, in case of commission agent, he does not undertake supply of goods or services. He will be liable for GST only on his commission. He is not covered under this clause. Clause (b) will cover cases where agent returns goods to Principal.

Value of supply by Principal to Agent – The value of supply of goods between the principal and his agent shall be as follows –

- (a) Open market value of the goods being supplied, or at the option of the supplier, 90% of the price charged for the supply of goods of like kind and quality by the recipient to this 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 rules 30 and 31 in that order – Rule 29 of CGST and SGST Rules, 2017.

Provision does not apply when sale is to selling agent on principal to principal basis – The rule 29 really covers only C&F Agents who store and sale goods on behalf of Principal. This rule does not cover distributor or selling agents who purchase goods from Principal and then sale on their own. Here, their relations are on Principal to Principal basis.

The Consignment Agent merely stores goods and sales on behalf of Principal. That is the reason why provision of 90% price charged to final customer can be taken for valuation purposes.

### **Value of supply of goods or services or both based on cost**

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be one hundred and ten percent of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services – Rule 30 of CGST and SGST Rules, 2017.

### **Principles of cost analysis for captive consumption**

Institute of Cost Accountants of India (ICAI) has issued Cost Accounting Standard CAS-4 titled 'Cost of Production for Captive Consumption'. The standard deals



with determination of cost of production for captive consumption. CBI&C, vide circular No.692/8/2003 dated 13-2-2003, has clarified that in case of captive consumption, cost calculation should be as per CAS-4 standard only.

### **Costing method for valuation has limited utility**

The valuation method based on cost has limited value as in case of stock transferor supply to related person where he is in position to avail entire Input Tax Credit, the value as declared in invoice is acceptable.

Further, for valuation of supply of services, costing method is optional– proviso to Rule 31 of CGST Rules, 2017.

Residual method for determination of value of supply of goods or services or both

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30 of CGST and SGST Rules, the same shall be determined using reasonable means consistent with the principles and general provisions of section 15 of CGST Act and provision of rules 27 to 30 of CGST Rules – rule 31 of CGST and SGST 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 – proviso to Rule 31 of CGST and SGST Rules, 2017.

### **Composition schemes when value cannot be easily determined**

In some cases, it is not easy to find value of 'supply'. In such cases, composition schemes have been provided. These are (a) Exchange of foreign currency (b) Booking of air tickets (c) Life Insurance business (d) State of second hand goods.

### **Margin scheme for valuation in buying and selling second hand goods**

A 'margin scheme' has been provided for dealers in second hand goods.

If 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 purchase of such goods, the value of supply shall be the difference between the selling price and purchase price and where the value of such supply is negative it shall be ignored – Rule 32(5) of CGST and SGST Rules, 2017.



'Value of supply is negative' means sale price is less than purchase price. In such case, no GST is payable.

The provision applies to all taxable persons dealing in second hand goods, including old and used empty bottles – PIB press release dated 15-7-2017 15:35 IST – CBI&C press release No.79/2017 dated 15-7- 2017.

No reverse charge on purchase of old goods – The taxable person may purchase second hand goods from an unregistered person. However, he is not required to pay GST under reverse charge on such purchases. When a taxable person is engaged in business of buying and selling old goods, he is not required to pay tax on reverse charge basis if he is paying tax under this rule–Notification No.10/2017-CT(Rate)dated 28-6-2017.

Problem in margin scheme – One problem in margin scheme is that if the supplier charges GST on difference, the buyer knows purchase price of supplier and then can start negotiating the price. No seller would like to disclose his margin to the recipient.

Tax rate on sale of old and use motor vehicles under margin scheme-The tax rate on motor vehicles was 28% plus GST Compensation Cess. This was too high for sale of old and used vehicles.Hence,w.e.f.25-1-2018, the rates have been reduced as follows Ref. – Notification Nos.8/2018- CT(Rate) dated 25-1-2018 and No.1/2007–Compensation Cess (Rate) dated 28-6-2017 as amended on25-1-2018.

The following concessional rates are not available if input tax credit under GST or Cenvat Credit under Cenvat Credit Rules or ITC under State Vat was availed.

The tax rate will be 18% IGST or 18% [9% CGST plus 9% SGST /UTGST (no GST Compensation Cess) for (a) petrol, LPG or CNG driven motor vehicles with engine capacity of 1200 cc or more and length of 4000 mm or more(b)diesel driven motor vehicles with engine capacity of 1500 cc or more and length of 4000 mm or more (c) Sports Utility Vehicles and Utility motor vehicles with engine capacity of 1500 cc or more.

The tax rate will be 12% IGST or 12% [6% CGST plus 6% SGST /UTGST for old and used vehicles other than above(no GST Compensation Cess)

Margin in case of other taxable persons selling old motor vehicles–The aforesaid tax rates are also applicable to all taxable persons selling old cars which were their business asset. In their case, the margin will be the consideration received for supply of old and used motor vehicle and the depreciated value as per depreciation claimed under section 32 of Income Tax Act.

However, the concessional rates are not available if input tax credit under GST or Cenvat Credit under Cenvat Credit Rules or ITC under State Vat was availed.



## **Value in case of lottery ticket, gambling, horse races**

Rule 31A of CGST Rules, inserted w.e.f. 23-1-2018 states as follows;

- (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.
- (2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

*Explanation:* – For the purposes of this sub-rule, the expression ‘Organising State’ has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.

- (3) 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.

## **Value of token, voucher or coupon**

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 – Rule 32(6) of CGST and SGST Rules, 2017.

## **Value of supply of services in case of pure agent**

Often a supplier incurs some expenditure on behalf of recipient and then recovers the amount from him. Such expenditure is not part of value of supply provided by him to service recipient, but is incurred by him as per business practice or convenience.

Following illustrations may clarify the provisions –

- ❖ Outward transport charges paid on behalf of recipient
- ❖ Entry tax amount paid by Clearing & Forwarding Agent, Customs
- ❖ Broker or Transporter on behalf of owner of goods / Principal.
- ❖ Customs duty, dock dues, demurrage, transport charges etc., paid by Customs Broker on behalf of client.
- ❖ Special inspection arranged as per specific requirement of recipient.
- ❖ Advertisement charges paid by Advertising Agency to newspaper on behalf of clients.



- ❖ Ticket charges paid by Travel Agent to railways or airlines and recovered from his customer.

Expenses incurred as pure agent of recipient – The aforesaid amounts are not part of value of 'supply' and hence are not includible in value of supply.

Hence, Rule 33 of CGST Rules, 2017 provide as follows –

Notwithstanding anything contained in these rules, the expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services shall be excluded from the value of supply, if all the following conditions are satisfied: -

The supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient.

- (i) The payment made by the supplier on behalf of the recipient of supply has been separately indicated in the invoice issued by the supplier to the recipient of service and
- (ii) 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.

### **Meaning of 'Pure agent'**

For the purpose of rule 33, "Pure agent" means a person who -

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

**Illustration–** Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the Companies registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore,



A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B—Illustration to Rule 33 of CGST and SGST Rules, 2017.

## **GST on reimbursement of expenses**

Reimbursements of expenses received by supplier of goods or services from the recipient of goods or services are of two types. One type of expenses is that which is not part of his scope of supply, but paid by supplier of goods or services on behalf of recipient of services or goods for administrative convenience and then recovered from service receiver—e.g., port expenses incurred by Customs, Broker, air ticket charges paid by air travel agent, advertisement bill paid by advertising agency etc. These are not part on value of service.

Other types of expenses are incurred by the supplier for supply of services or goods and recovered from recipient of service separately on actual basis e.g., travelling expenses by market survey agency, out of pocket expenses of auditors, consulting engineer or maintenance engineer, design charges for special purpose of machinery etc.

These are essential for supplying the goods or services as goods or services cannot be supplied without such expenses. In my view, these are part of value of goods or services.

Really, this aspect is directly linked with concept of 'pure agent'.

As per section 2 (31) of CGST Act, 'Consideration' includes any payment made or to be made, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the said person or by any other person.

Thus, the payment made for travelling expenses, hotel expenses etc., are in respect of supply of service and should be includible.

However, in *Inter-continental Consultants and Technocrats P Ltd., v. UOI* (2012) 28 taxmann.com 213 = 38 STGT 75 = 59 VTS 487 (DelH CDB),

It was held that service tax is payable 'for such service'. The reimbursable expenses are not charges for 'such service' and hence are not includible in value. The Rule 5(1) providing for inclusion of such expenses is ultra vires and sections 66 and 67 of Finance Act, 1994 – followed in *ESPN Software India P Ltd .v. CST* (2104) U70 VST 205 (CESTAT) \* *Ashita International v. CST* (2014) 73 VST 195 (CESTAT) CJ Shah v. CCE (2015) 77 VST 378 (CESTAT) – view confirmed in *UOI v. Inter continental Consultants* (2018) 66 GST 450 = 91 taxmann.com 67 (SC).



This decision should apply in GST also.

Thus, in view of judgment of Delhi High Court upheld by Supreme Court, GST should not be payable on reimbursement of expenses.

This can be justified on the basis that tax is payable on 'supply' and scope of 'supply' of any service is on basis of mutual agreement between supplier and recipient of service.

This can also be justified on the well settled principle that ambiguity in tax law, if any, should be resolved in favour of taxable person.

### Numerical illustrations

**Question** – Shri. Krishna Pvt. Ltd., a registered dealer, furnishes the following information relating to goods sold by it to Shri. Balram Pvt. Ltd., in the course of Intra-State – (i) Price of goods ₹1,00,000 (ii) Municipal Tax ₹2,000 (iii) Inspection charges ₹15,000 (iv) Subsidies received from Shri Ram Trust (As the products is going to be used by blind association) ₹50,000 (v) Late fees for delayed payment (Though Shri Balaram Pvt. Ltd., made late payment but these charges are waived by Shri. Krishna Pvt. Ltd.) – ₹1,000 (vi) Shri Balraj Pvt Ltd., paid to Radhe Pvt. Ltd., (on behalf of Shri Krishna Pvt. Ltd.) weightment charges ₹2,000.

According to GST Law, determine the value of taxable supply made by Shri Krishna Pvt Ltd. Items given in Points (ii) to (vi) are not considered while arriving at the price of the goods given in point No.(i).

**Answer:** The value for GST is as follows –

(i) Price of goods	₹ 1,00,000
(ii) Municipal Tax (presumed that it has been charged and recovered from customer separately) – includible as exemption only GST is not includible – section 15(2)(a) of CGST Act	₹2,000
(iii) Inspection charges (presumed that it has been charged and recovered from customer separately)	₹15,000
(iv) Subsidies received from Shri Ram Trust (As the product is going to be used by blind association) (includible as only subsidy received from Government is not includible)	₹50,000



(v) Late fees for delayed payment (Though Shri Balram Pvt. Ltd., made late payment but these charges are waived by Shri Krishna Pvt. Ltd.,) – ₹1,000 (not to be added as tax is payable only when amount is actually received as per)	-
(vi) Shri Balram Pvt. Ltd., paid to Radhe Pvt. Ltd., (on Behalf of Shri Krishna Pvt. Ltd.,) weightment charges– includible as 'consideration' can be paid by third person also	₹2,000
Total value	₹1,69,000

**Question** – Candy Blue Ltd., Mumbai, a registered supplier, is manufacturing Chocolates and Biscuits. It provides the following details of taxable inter- State supply made by it for the month of October 20XX: (i) List price of goods supplied inter-State – ₹12, 40,000. – Item already adjusted in the price given in (i) above – (1) Subsidy from Central Government for supply of Biscuits to Government School – ₹1,20,000 (2) Subsidy from Trade Association for supply of quality Biscuits– ₹30,000. –Items not adjusted in the price given in (i) above–(3)Tax levied by Municipal Authority– ₹24,000, (4) Packing Charges– ₹12,000 (5) Late fee paid by the recipient of supply for delayed Payment of invoice ₹5,000. Calculate the Value of taxable supply made by M/s. Candy Blue Ltd., for the month of October 20XX.

**Answer:** The value of taxable supply is as follows –

(j)	List price of goods supplied inter-State	₹12,40,000
(1)	Subsidy from Central Government for supply of Biscuits to Government school – ₹1,20,000 (Item already adjusted in the price given in (i) above) – Not to be added back in value	-
(2)	Subsidy from Trade Association for supply of quality Biscuits – Items adjusted in the price given in (i) above – to be added as not eligible for deduction from value	₹30,000
(3)	Tax levied by Municipal Authority – Items not adjusted in the price given in (i) above – to be added as tax (other than GST) is not allowed as deduction – section 17(1)(a) of CGST Act (It is presumed that this amount has been separately recovered from customer)	₹24,000



(4)	Packing Charges – Items not adjusted in the price given in (i) above – to be added as in respect of goods before delivery – section 17(1) (c) of CGST Act.	₹12,000
(5)	Late fee paid by the recipient of supply for delayed Payment of invoice. Items not adjusted in the price given in (i) above – to be added as per section 17(1) (d) of CGST Act [cannot be added at the time of making tax invoice]	-
	Value of taxable supply (Total of all above)	₹13,06,000
	Credit note for Late fee paid by the recipient of supply for delayed Payment of invoice –Items not adjusted in the price given in (i) above – to be added as per section 17(1) (d) of CGST Act.	₹5,000

**Note:** Practically, at the time of making tax invoice, the late fee cannot be added. A separate debit note or supplementary invoice with GST is required to be issued after receipt of payment.

**Question** – Vayu Ltd., provides you the following particulars relating to goods supplied by it to Agni Ltd.:

List price of the goods (Exclusive of Taxes and discounts) – ₹76,000

Special packing at the request of customer to be charge to the customer – ₹5,000

Duty levied by local authority on the sale of such goods – ₹4,000

CGST and SGST charged in invoice. – ₹14,400

Subsidy received from a NGO (The price of ₹76,000 given above is after considering the subsidy) – ₹5,000

Vayu Ltd. offers 3% discount on the list price of the goods which is recorded in the invoice for the goods. Determine the value of taxable supplies made by Vayu Ltd.



**Answer:** Value of supplies made by Vayu Ltd.

Net price of goods – ₹76,000 less 3% discount ₹2,280	₹73,720
Special Packing includible as payment made in respect of supply	₹5,000
Duty levied by local authority on the sale of such goods (note – It is not clear whether this duty has been separately recovered from customer or included in the list price. It is presumed that the amount has been separately recovered from customer and hence includible in value)	₹4,000
CGST and SGST charged in invoice is not includible in value as per section 15(2)(a) of CGST Act	–
Subsidy received from NGO is includible (only subsidy received from Government is not includible)	₹5,000
Value of supply of goods for GST	₹87,720

**Question –** 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% SGST 9%.

Provide suitable explanations where required.

**Answer:** Taxability is as follows – Rent – ₹18,00,000 – taxable

Maintenance charges – ₹2,50,000 – reimbursed by tenant (to owner) is in respect of supply of services and hence is 'consideration' – taxable.

Refundable advance – ₹6,00,000 – no GST on refundable advance as it is in nature of deposit. Tax is payable only if the advance is adjusted towards rent receivable.



Municipal taxes – ₹3,00,000 – deduction of only GST is allowable. deduction of any other tax is not allowable [It is presumed that this amount is not recovered separately from tenant].

Hence, value for GST = ₹18,00,000 + ₹2,50,000 = ₹20,50,000.

CGST @ 9% - ₹1,84,500. SGST @ 9% - ₹1,84,500. Total tax payable = ₹3,69,000.

**Question** – Laxmi Ltd., of Bhopal (Madhya Pradesh) is a supplier of machinery. Laxmi Ltd., has supplied machinery to PQR Enterprises in Indore (Madhya Pradesh) on 1st October, 2017. The invoice for supply has been issued on 1st October, 2017. Thus, the time of supply of machinery is 1st October, 2017. Laxmi Ltd., and PQR Enterprises are not related. Following information is provided –

- (a) Basic price of machinery excluding all taxes but including design and engineering charges of ₹10,000 and Loading charges of ₹10,000 and loading charges of ₹20,000 – ₹20,00,000
- (b) Laxmi Ltd., provides 2 years free warranty for the machinery. Laxmi Ltd., also provides an extended one-year warranty on payment of additional charges of ₹1,00,000. PQR Enterprises opted for one- year warranty
- (c) Laxmi Ltd., has collected consultancy charges in relation to pre- installation planning of ₹10,000 and freight and insurance charges from place of removal to buyer's premises of ₹20,000
- (d) Laxmi Ltd., received subsidy of ₹50,000 from Central Government for supplying the machinery to backward region since receiver was located in a backward region.
- (e) Laxmi Ltd., also received ₹50,000 from the joint venture partner of PQR Enterprises for making timely supply of machinery to the recipient
- (f) A cash discount of 1% on the basic price of the machinery is offered at the time of supply, if PQR Enterprises agrees to make the payment within 30 days of the receipt of the machinery at his premises. Discount @ 1% was given to PQR Enterprises as it agreed to make the payment within 30 days
- (g) The machinery attracts CGST and SGST @18% (9% + 9%) and IGST@18%.

Compute the CGST and SGST or IGST payable, as the case may be on the machinery.

**Answer:** Computation of value for purpose of GST –

(a)	Basic price of machinery excluding all taxes but including design and engineering charges of ₹10,000 and loading charges of ₹20,000 (deduction of design and engineering charges and loading charges is not available)	₹20,00,000
(b)	One year warranty on payment of additional charges	₹1,00,000
(c)	Consultancy charges in relation to pre-installation planning of ₹10,000 and freight and insurance charges from place of removal to buyer's premises of ₹20,000	₹30,000
(d)	Subsidy of ₹50,000 from Central Government for supplying the machinery to backward region since receiver was located in a backward region – not includible in value	-
(e)	₹50,000 from the joint venture partner of PQR Enterprises for making timely supply of machinery to the recipient –includible	₹50,000
(f)	Total Value (a + b + c+ e)	₹21,80,000
(g1)	CGST @ 9% of (f) as per invoice dated 1-10-2017	₹1,96,200
(g2)	SGST @ 9% of (f) as per invoice dated 1-10-2017	₹1,96,200
(h)	Less – Credit note for Cash discount @ 1% of basic price to be issued on 31-10-2017 (Note- deduction of design and engineering charges and loading charges not considered as included in basic price of machinery)	₹20,000
(i1)	CGST @ 9% on (h) as per credit note dated 31-10-2017	₹1,800
(i2)	SGST @ 9% on (h) as per credit note dated 31-10-2017	₹1,800
(j1)	Net CGST payable (g1-i1)	₹1,94,000
(j2)	Net SGST payable (g2-i2)	₹1,94,000

**Note:** The payment was made after deliver and after supply was made. Thus, the deduction on account of cash discount cannot be given at the time of making invoice on 1-10-2017, (cash discount is calculated on entire ₹20,00,000 and deduction of design and engineering charges and loading charges not considered as it is included in basis price of machinery.





**Question** – Kamal & Co. manufactures customized products at its unit situated in Rajasthan. Cost of production for Kamal & Co. for 1,000 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 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 1,000 each time by another manufacturer located in Punjab. The price of such goods is ₹19,00,000. Determine the value of 1,000 products supplied by Kamal & Co. to its Punjab unit as per the provisions of CGST Act, 2017.

**Answer:** Since the Punjab unit is entitled to full Input Tax Credit, Kamal and Co. can declare any price and pay IGST on that – proviso to rule 28 of CGST Rules.

If the Punjab Unit is not entitled to entire Input Tax Credit, value can on basis of value of supply of goods of like kind and quality i.e., ₹19,00,000.

## INPUT TAX CREDIT

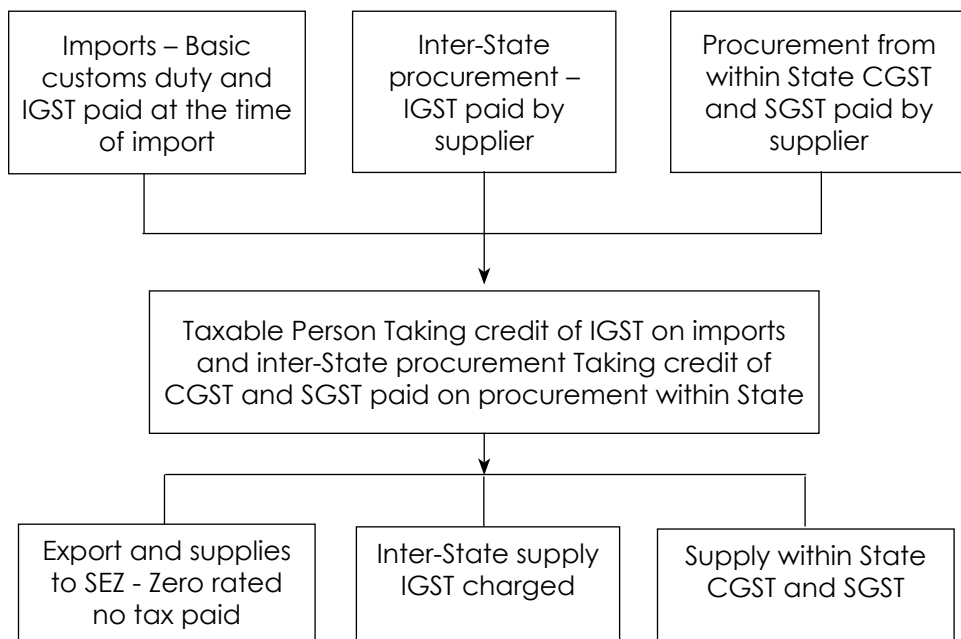
### ITC is core provision of GST

Input Tax Credit (ITC) is the core concept of GST as GST is destination based tax. ITC avoids cascading effect of taxes and ensures that tax is collect in the State in which goods or services or both are consumed.

“Input tax credit” means credit of ‘input tax’ – section 2(56) of CGST Act.

Burden of proof on taxable person availing input tax credit–Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person – section 155 of CGST Act.

### Flow of input tax credit



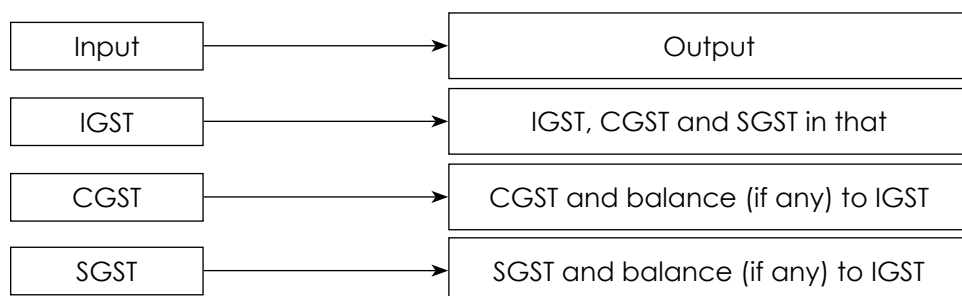
### Input Tax

Section 2(62) of CGST Act defines ‘input tax’ as follows –

“Input tax” in relation to a registered person, means the Central tax (CGST) State tax (SGST), integrated tax (IGST) or Union territory tax (UTGST) charged on any supply of goods or services or both made to him and includes —

- (a) The integrated goods and services tax charged on import of goods.
- (b) The tax payable under the provisions of sub-sections(3)and(4)of section 9 [reverse charge of CGST].
- (c) The tax payable under the provisions of sub-sections (3) and sub- section (4) of section 9 of the respective State Goods and Services Tax Act; [reverse charge of SGST]or
- (d) The tax payable under the provisions of sub-section (3) and sub- section (4) of section 7 of the Union Territory Goods and Services Tax Act [reverse charge of UTGST] but does not include the tax paid under the composition levy.

Input Tax Credit is eligible only when it is credit to electronic credit ledger of taxable person.



### Manner of taking input tax credit

Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of CGST Act, 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 of furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person –section 16(1) of CGST Act.

Electronic Credit Ledger means the electronic credit ledger referred to in section 49 (2) of CGST Act – section 2(46) CGST Act.

“Electronic Credit Ledger ”is the input tax credit ledger in electronic form maintained at the common portal for each registered taxable person. This credit can be utilized for GST liability as specified in section 49(4)of CGST Act.



“Input” means any goods other than capital goods, used or intended to be used by a supplier in the course of furtherance of business – section 2(59) of CGST Act.

“Input Service” means any service used or intended to be used by a supplier in the course of furtherance of business–section 2(60)of CGST Act.

“Outward supply” in relation to a person, means supply of goods or services 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 of furtherance of business – section 2(83) of CGST Act.

### **Documentary requirements and conditions for claiming input tax credit**

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 of CGST and SGST Rules, 2017 –

- (a) An invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31 [Invoice of supplier of goods or services or both]
- (b) An invoice issued in accordance with the provisions of section 31(3) (f), subject to payment of tax [tax paid on reverse charge basis]
- (c) A debit note issued by a supplier in accordance with the provisions of section 34.
- (d) A bill of entry or similar document prescribed under Customs Act or Rules for assessment of IGST.
- (e) An invoice or credit note issued by an Input Service Distributor in accordance with rule 54(1) of CGST Rules, 2017.

Input tax credit cannot be taken after one year from date of invoice or filing of annual return.

A taxable person shall not be entitled to take input tax credit in respect of any supply of goods and / or services to him after the expiry of one year from the date of issue of tax invoice relating to such supply – section 18(2) of CGST Act.

Further, a taxable 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 filing of the return under section 39 of CGST Act for the month of September following the end of financial year to which such invoice or invoice relating to debit note pertains or filing of the relevant annual return, whichever is earlier – section 16(4) of CGST Act.



Really, in view of section 16(4), in case of invoices received after October, the taxable person gets less than one year to take input tax credit.

No Input tax credit if GST was paid by supplier on advance paid to him

Normally, ITC is taken on the basis of 'Electronic Credit Ledger'. However, if advance payment was made before receipt of goods and services, input tax credit cannot be taken as goods and services are not received.

At the time of payment of GST on advance, the supplier of goods and services cannot issue tax invoice. He has to issue only 'receipt voucher'.

### **Requirements for availing input tax credit**

As per section 16(2) of CGST Act, registered taxable person shall not be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless following conditions are satisfied–

- (a) He is in possession of a tax invoice or debit note issued by a supplier registered under GST Act or such other taxpaying document as may be prescribed.
- (b) He has received the goods or services or both.
- (c) Subject to section 41 or section 43A of CGST Act, the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply [section 41 of CGST Act allows taking input tax credit in electronic credit ledger on self- assessment basis] and
- (d) He has furnished the return under section 39 [every taxable person is required to file electronic return every month as per section 39 of CGST Act]

Inputs or capital goods received in installments – Where the goods against an invoice are received in lots or installments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or installment – first proviso to section 16(2) of CGST Act.

Delivery to transporter by supplier is sufficient to take input tax credit – For the purpose of section 16(2)(b) of CGST Act, it shall be deemed that the taxable person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise–Explanation to section 16(2)(b) of CGST Act.



Section 39(1) of Sale of Goods Act, states that delivery of goods to carrier is prima facie delivery to buyer

As per section 23(2) of Sale of Goods Act, if, in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other Bailee, for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. It does not make difference whether the Bailee or buyer was named by buyer or not.

In *Manwar Tent Factory*, UOI AIR 1990 SC 1735, it was held that when contract stipulates for delivery of goods F.O.R. basis at place of dispatch, risk passes from consignor to consignee as soon as goods are loaded at the place of dispatch.

Thus, transporter is agent of buyer for collection of goods. Hence, in my view, delivery to transporter is delivery to agent and ITC can be taken even if goods do not physically reach the place of taxable person.

Of course the supplier has to upload the invoice in his GSTR-1 and the recipient has to accept it and include it in his GSTR-2.

Input tax credit only after supplier makes payment of GST—The receiver (of goods and services) can take provisional credit on the basis of return filed by supplier. However, he will be eligible to take final Input Tax Credit only after the supplier of such goods and services has paid the tax.

Taking input tax credit in respect of inputs sent for job work – Input tax credit is available in respect of goods sent for job work and brought back for further use. Provisions are contained in another chapter under job work.

Reversal of Input tax credit if payment not made supplier within 180 days

Where a recipient fails to pay to the supplier of goods or services of 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 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed – second proviso to section 16(2) of CGST Act.

If partial payment is made, the reversal will be proportionate to the amount not paid to the supplier.

If the recipient later makes payment to supplier, he can take credit of input tax – third proviso to section 16(2) of CGST Act.

Proportionate reversal if part amount paid – If (say) 90% amount of supplier's invoice (including tax amount) is paid, only 10% tax amounts should be reversed.

## Procedure for reversal of Input tax credit in case of non-payment of consideration

A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to section 16(2), shall furnish the details of such supply and the amount of input tax credit availed of in form GSTR-2 for the month immediately following the period of 180 days from the date of issue of invoice – Rule 37(1) of CGST and SGST Rules, 2017.

In cases where GST is payable without consideration as specified in Schedule I of CGST Act, the amount shall be deemed to have been paid – proviso to Rule 37(1) of CGST and SGST Rules, 2017 [Thus, in such case, actual receipt of payment is not required].

The amount of input tax credit as above shall be added to the output tax liability of the registered person for the month in which the details are furnished - Rule 37(2) of CGST and SGST Rules, 2017.

The registered person shall be liable to pay interest at the rate notified under section 50(1) of CGST Act for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned above is paid - Rule 37(3) of CGST and SGST Rules, 2017.

## **Blocked credit—supply of goods and services ineligible for ITC**

Though definition of input tax is broad, input tax credit shall not be available in respect of the following, as per section 17(5) of CGST Act.

- Motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—
  - (a) further supply of such motor vehicles; or
  - (b) transportation of passengers; or
  - (C) imparting training on driving such motor vehicles;
- Vessels and aircraft except when they are used—
  - (a) for making the following taxable supplies, namely:— further supply of such vessels or aircraft; or transportation of passengers; or imparting training on navigating such vessels; or imparting training on flying such aircraft;
  - (b) for transportation of goods;



- (a) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause(aa):

Provided that the input tax credit in respect of such services shall be available—

- (i) where the motor vehicles, vessels or aircraft referred to in clause(a) or clause(aa) are used for the purposes specified therein;
- (ii) where received by a taxable person engaged—
  - (i) In the manufacture of such motor vehicles, vessels or aircraft; or
  - (ii) In the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;
- (b) the following supply of goods or services or both—

- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance.

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (ii) membership of a club, health and fitness center; and
- (iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force”

These expenses are predominantly for personal use. However, ineligibility of input tax credit on rent-a-cab service, even if used for business purposes is highly unfair. In respect of services covered under this clause, the input tax credit is eligible when used by registered person to provide similar



service or as part of mixed supply of composite supply. This is a good and sensible provision.

Works Contract service - Works Contract services when supplied for construction of an immovable property (other than plant and machinery) is not eligible except where it is an input service for further supply of works contract service - section 17(5)(c) of CGST Act.

'Other than plant and machinery' means input tax credit of GST paid on plant and machinery procured will be available.

Further, this credit of works contract will be available to builder or contractor who himself is undertaking works contract service.

Construction service-Goods or services received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in course of furtherance of business is not eligible for Input Tax Credit - section 17(5)(d) of CGST Act.

Explanation – For the purpose of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

GST paid under composition scheme – Goods or services or both on which tax has been paid under section 10(composition scheme) are not eligible - section 17(5) (e) of CGST Act.

Goods or services or both received by a non-resident taxable person - Goods or services or both received by a non-resident taxable person are not eligible for input tax credit, except on goods imported by him - section 17(5)(f) of CGST Act.

Goods or services used for personal consumption-Goods or services or both used for personal consumption are not eligible for input tax credit - section 17(5) (g) of CGST Act.

What probably it means is that goods or services or both used for non- business purposes like personal use on consumption by partners or directors or proprietor will not be eligible for ITC.

Lost, stolen or destroyed goods and free samples- Goods lost, stolen or destroyed written off or disposed of by way of gift or free samples are not eligible for input tax credit - section 17(5) (h) of CGST Act.

GST paid after Detection of fraud or suppression or goods removed in contravention of GST Act –Any tax paid in terms of section 74, 129 and 130 of CGST Act are not eligible for input tax credit. This covers GST paid after



detection of fraud or suppression or goods removed in contravention of GST Act – section 17(5) (i) of CGST Act – same provision in Rule 36(3) of CGST and SGST Rules, 2017.

In such cases, if the supplier issues Tax Invoice at a later stage, it should be clearly marked as 'INPUT TAX CREDIT NOT ADMISSIBLE' – Rule 53(3) of CGST and SGST Rules, 2017.

### **Meaning of 'plant and machinery'**

For purpose of Chapter V of CGST Act (Input Tax Credit) and Chapter VI of CGST Act (Registration), expression 'plant and machinery' is defined as follows:

"Plant and machinery' means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes – (i) land, building or any other civil structures (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises. (Explanation below section 17(6) of CGST Act]

### **Meaning of 'works contract'**

"Works contract' means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract – section 2(119) of CGST Act.

Only composite contract relating to immovable property are covered under 'works contract'.

### **Meaning of 'motor vehicle'**

Motor Vehicle has meaning assigned to it in section 2(28) of Motor Vehicles Act – section 2(76) of CGST and SGST Act.

As per section 2 (28) of Motor Vehicles Act, 1988, Motor vehicle or vehicle means any mechanically propelled vehicle adopted for use upon roads whether the power of propulsion is transmitted thereto from external or internal source and includes a chassis to which a body has not been and a trailer, but does not include a vehicle running upon fixed rails or vehicle of a special type adapted for use only in a factory or any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 (Twenty-five) cubic centimeters.

No ITC or GST paid on excavators and road rollers, but available on tippers and dumpers – The ITC or GST paid on excavators and road rollers will not be available, as they are 'motor vehicles' as per MV Act (unless some specific provision is made).

However, ITC of GST paid on tippers and dumpers will be available as they are not 'motor vehicle' – FAQ No.21 of FAQ on Mining issued by Directorate General of Taxpayer Services on 31-7-2017.

### **Input tax credit of capital goods**

Entire ITC of GST paid on capital goods will be available in first year itself, as these are 'goods'.

Term 'capital goods' is defined in section 2(19) of CGST Act as follows –

"Capital goods" means goods, the value of which is capitalized in the books of account of the person claiming the credit and which are used or intended to be used in the course of furtherance of business—section 2(19) of CGST Act.

### **Meaning of 'capital goods' for purpose of ITC**

"Capital goods" shall include "plant and machinery" as defined in the Explanation to section 17 of CGST Act – Explanation below Rule 45 of CGST and SGST Rules, 2017.

For purpose of Chapter V of CGST Act (Input Tax Credit) and Chapter VI of CGST Act (Registration), expression 'plant and machinery' is defined as follows:

"Plant and machinery" means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-(i)land, building or any other civil structures(ii) telecommunication towers; and(iii)pipelines laid outside the factory premises. [Explanation to section 17 of CGST Act]

Input tax credit of tax not allowed if depreciation claimed on tax component.

Where the registered taxable person has claimed depreciation on the tax component of the cost of capital goods under the provisions of the Income- tax Act, 1961, the input tax credit on the said tax component shall not be allowed – section 16(3) of CGST Act.

Thus, if net value of capital goods is ₹100 lakhs and GST paid is ₹18 lakhs, the taxable person should claim depreciation in income tax only on ₹100 lakhs.

Ineligibility of ITC on pipelines and telecommunication tower



Credit of input tax in respect of pipelines laid outside the factory and telecommunication towers fixed to earth by foundation or structural support including foundation and structural support are not eligible for input tax credit -Explanation to section 17 of CGST Act.

### **Removal of capital goods after use**

In case of supply of capital goods 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 the percentage points as may be specified or the tax on the transaction value of such capital goods or plant and machinery determined under section 15 of CGST Act, whichever is higher—section 18(6) of CGST Act.

The amount of credit shall be calculated by reducing the input tax @ 5% for every quarter or part thereof, from the date of issue of invoice for the capital goods – Rule 40(2) of CGST and SGST Rules, 2017.

However, in case of 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 of CGST Act— proviso to section 18(6) of CGST Act.

### **Illustration:**

**Question** – Bharat Associates Pvt. Ltd. purchased machinery worth

₹9,00,000 (excluding GST) on 20-07-2017 on which it paid GST @ 18%. It availed the ITC. On 05-03-2018 it sold the machinery for ₹7,00,000 (excluding GST) to Hindustan Associates Pvt. Ltd. the GST rate on sale is 18%. What will be the course of action for Bharat Associates Pvt. Ltd. to follow under CGST Act, 2017?

**Answer:** GST paid on machinery was 18% of ₹9,00,000 i.e., ₹1,62,000. The machinery was used for three quarters. Hence, it is eligible of ITC of 15% (5% per quarter or part thereof), i.e., ₹24,300. Balance ineligible ITC is ₹1,37,700. The machinery was sold for ₹7,00,000 GST @ 18% is ₹1,26,000.

Bharat Associates Pvt. Ltd. is liable to pay 'amount' which is higher among the two i.e., ₹1,37,700 (as higher than ₹1,26,000).

### **Merger, Amalgamation or sale of business**

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 provision for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed – section 18(3) of CGST Act.

Procedure for transfer of credit on sale, merger, amalgamation, lease or transfer of a business a registered person shall, on sale, merger, demerger, amalgamation, lease or transfer or change in ownership of business for any reason, furnish the details of sale, merger, demerger, amalgamation, lease or transfer of business, in for GST ITCA-02 electronically on the Common Portal along with a request to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee – Rule 41(1) of CGST and SGST Rules, 2017.

In case of demerger, the input tax credit shall be apportioned in the ratio of the value of asses of the new units as specified in the demerger scheme.

The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, demerger, amalgamation, lease of transfer of business has been done with a specific provision for transfer of liabilities – Rule 41(2) of CGST and SGST Rules, 2017.

The transferee shall, on the Common Portal, accept the details so furnished by the transferor and, upon such acceptance, the unutilized credit specified in for GST ITC-02 shall be credited to his electronic credit ledger – Rule 41(3) of CGST and SGST Rules, 2017.

The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account –Rule 41(4)of CGST and SGST Rules, 2017.

### **Input tax credit when taxable person becomes eligible for first time**

In some cases, the taxable person becomes liable to pay GST at a later stage e.g., exemption to his supply of goods or services is withdrawn or when he opts out of composition scheme or when he applies for registration after he becomes liable to pay GST. In such cases, provisions have been made to enable him to avail input tax credit.

### **Input tax credit when person opts out of composition scheme**

Where any registered taxable person ceases to pay tax under section 10 of CGST Act [which provides for composition scheme], 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 of CGST Act [on the basis of transaction value]. Credit on capital goods shall be reduced by such percentage as may be prescribed – section 18(1) (d) of CGST Act.

Input tax credit on stock when exemption on goods or services withdrawn

Where an exempt supply of goods services or both by a registered taxable 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 - section 18(1) (d) of CGST Act.

The credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf – proviso to section 18(1) (d) of CGST Act.

Reversal of input tax credit if goods become exempt or taxable person switches to composition scheme

If a taxable person switches over from normal scheme to composition scheme, or his product which was earlier taxable becomes exempt, he is required to reverse input tax credit of GST paid on stock, WIP and finished goods. He is also required to reverse ITC taken on capital goods, after allowing deduction of 5% per quarter.

Provisions for this purpose are made in section 18(4) and Rule 44 of CGST and SGST Rules, 2017.

Where any registered taxable person who has availed of input tax credit switches over as a taxable person for paying tax under section 10 of CGST Act (composition scheme] or where the goods and / or services 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 such switch over or, as the case may be, the date of such exemption – section 18(4) of CGST Act.



After payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse—proviso to section 18(4) of CGST Act.

The amount payable under section 18(4) of CGST Act shall be calculated in such manner as may be prescribed - section 18(5) of CGST Act.

### **Recovery of ITC wrongly taken**

Where credit has been taken wrongly, the same shall be demanded from the registered person by issuing show cause notice sections 73 and 74 of CGST Act.

### **Numerical Illustrations**

**Question**—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 September 20XX—

Rate of tax –

Product A – CGST – 6%, SGST – 6%, IGST – 12%

Product B – CGST – 9%, SGST – 9%, IGST – 18%,

Intra-State Supply of goods—Product A— ₹8,00,000, Product B— ₹2,00,000

Intra-State Supply of goods – Product-A ₹3,00,000, Product B— ₹1,50,000.

He has also furnished the following information in respect of supplies received by him during September 20XX –

Intra State Supply of goods – Product A - ₹2,00,000, Product B— ₹1,00,000

Intra State Supply of goods – Product A – ₹1,50,000, Product B – ₹80,000.

Mr. NY has following ITCs with him at the beginning of September 20XX— CGST – ₹40,000, SGST – ₹28,000, IGST – ₹44,600.

Compute net GST payable by Mr. NY for the month of September 20XX. Make suitable assumptions wherever required.

**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.

**Answer:**

Input Tax credit available		Value (₹)	CGST	SGST	IGST
(i)	Intra-State – Product A (6% CGST plus 6% SGST)	2,00,000	12,000	12,000	
(ii)	Intra-State – Product B (9% CGST plus 9% SGST)	1,00,000	9,000	9,000	
(iii)	Inter-State – Product A (12% CGST)	1,50,000			18,000
(iv)	Inter-State – Product B (18% CGST)	80,000			14,000
(v)	Input tax credit on supplies received during September 20XX (I + ii + iii + iv)		21,000	21,000	42,000
(vi)	Add – Opening balance of ITC as on 1-9-20XX		40,000	28,000	44,600
(vii)	Total Input Tax Credit Available on 30-9- 20XX		61,000	49,000	77,000

**Calculation of tax payable**

Tax payable on Supply made		Value (₹)	CGST	SGST	IGST
(viii)	Intra-State – Product A (6% CGST plus 6% SGST)	8,00,000	48,000	48,000	

Tax payable on Supply made		Value (₹)	CGST	SGST	IGST
(ix)	Intra-State – Product b (9% CGST plus 9% SGST)	2,00,000	18,000	18,000	
(x)	Inter-State – Product A (12% IGST)	3,00,000			36,000
(xi)	Inter-State – Product B (18% IGST)	1,50,000			27,000
(xii)	Total tax payable for September 20XX (vii + ix + x + xi)		66,000	66,000	63,000
(xiii)	Less – Total Input Tax Credit Available on 30- 9-20XX (from aforesaid table)		61,000	49,000	77,000



Tax payable in cash (xii – xiii)	5,000	17,000	-14,000	
<b>Less–transfer of excess IGST credit for utilization of payment of CGST and SGST</b>	-5,000	-9,000	14,000	
Net Tax payable in cash	Nil	8,000	Nil	

Note–IGST credit can be utilized for payment of CGST first. Balance, if any, can be utilized for payment of SGST. There is no balance of ITC to be carried forward.

**Question** – Mr. Ajay, a registered supplier of goods, pay GST under regular scheme and provides the following information for the month of August 20XX –

- (i) Inter-State taxable supply of goods ₹10,00,000
- (ii) Intra-State taxable supply of goods ₹2, 00,000
- (iii) Intra-State purchase of taxable goods ₹5,00,000.

He has the following Input tax credit at the beginning of August 20XX: CGST– ₹20,000, SGST– ₹30,000, IGST ₹25,000.–Rate of CGST,SGST

and IGST are 9%, 9% and 18% respectively. Both inward and outward supplies are exclusive of taxes wherever applicable. All the conditions necessary for availing the ITC have been fulfilled. Compute the net GST

payable by Mr. Ajay for the month of August 20XX.

**Answer:**

(a) Tax payable (In Rupees)

Description	CGST	SGST	IGST
Inter-State taxable supply of goods – ₹10,00,000 – IGST @ 18%			1,80,000
(II) Intra-State taxable supply of goods – ₹ 2,00,000 – CGST @ 9% and SGST @ 9%	18,000	18,000	
Total tax payable	18,000	18,000	1,80,000

(a) Input Tax Credit Available

Description	CGST	SGST	IGST
(i) Opening Balance	20,000	30,000	25,000
(ii) Intra-State purchases – ₹ 5,00,000 – CGST @ 9% and SGST @ 9%	45,000	45,000	
(iii) Total ITC available	65,000	75,000	25,000



## (C) Net Taxpayable

(In Rupees)

Description		CGST	SGST	IGST
(i)	Total tax payable	18,000	18,000	1,80,000
(ii)	Total ITC available	65,000	75,000	25,000
(iii)	Excess/short Credit Available (i) – (ii)	47,000	57,000	(-) 1,55,000
(iv)	Excess credit transferred to IGST	(-) 57,000	(-) 57,000	(+)1,04,000
(v)	Net tax payable by cash (iii) – (iv)	Nil	Nil	51,000

**Question** – ABC Company Ltd., of Bengaluru is a manufacturer and registered supplier of machine. It has provided the following details for the month of November, 2017. Details of GST paid on inward supplies during the month -

- (a) Health Insurance of factory employees. – ₹20,000
- (b) Raw materials for which invoice has been received and GST has also been paid for full amount but only 50% of material has been received, remaining 50% will be received in next month.– ₹18,000
- (c) Work contractor's service used for installation of plant and machinery. – ₹12,000
- (d) Purchase of manufacturing machine directly sent to job worker's premises under challan. – ₹50,000
- (e) Purchase of car used by director for the business meetings only. – ₹25,000
- (f) Outdoor catering service availed for business meetings. – ₹8,000.

ABC Company Ltd. Also provides service of hiring of machines along with man power for operation. As per trade practice machines are always hired out along with operators and also operators are supplied only when machines are hired out. Receipts on outward supply (exclusive of GST) for the month of November 2017 are as follows:

- (a) Hiring receipts for machine - ₹5,25,000
- (b) Service charges for supply of man power operators– ₹2,35,000

Assume all the transactions are inter-State and the rates of IGST to be as under:

- (i) Sale of machine 5%



- (ii) Service of hiring of machine 12%
- (iii) Supply of man power operator service 18%.

Compute the amount of Input Tax Credit available and also the net GST payable for the month of November 2017 by giving necessary explanations for treatment of various items. Note: Opening balance of input tax credit is Nil.

**Answer:** (A) Eligibility of Input Tax Credit

- (a) Health Insurance of factory employees. – ₹20,000 – Not eligible as not obligatory under any law.
- (b) Raw materials for which invoice has been received and GST has also been paid for full amount but only 50% of material has been received remaining 50% will be received in next month. – ₹18,000 – Not eligible as credit can be taken only when entire lot is received as per first proviso to section 16(2) of CGST Act.
- (c) Work contractor's service used for installation of plant and machinery – ₹12,000 – eligible – ₹12,000
- (d) Purchase of manufacturing machine directly sent to job worker's premises under challan. – ₹50,000 – eligible – ₹50,000 – section 12(2) of CGST Act.
- (e) Purchase of car used by director for the business meetings only – ₹25,000 – not eligible as motor vehicles not eligible for ITC except in specified cases – section 17(5) (a) of CGST Act.
- (f) Outdoor catering service availed for business meetings. – ₹8,000 – not eligible as specifically included in blocked credit under section 17(5) (b) (i) of CGST Act.

Hence, eligible ITC is ₹62,000 (50,000 + 12,000).

(B) Total Tax payable on supply made

- (a) This is a composite supply of rate as applicable to principal supply will apply to total value of services. The total value of services is ₹7,60,000 [Hiring receipts for machine – ₹5,25,000]
- (b) Service charges for supply of man power operators – ₹2,35,000. GST @ 12% is ₹91,200 [Note – Really, for hire services, the same rate as applicable to sale of machinery i.e., 5% should apply. However, the example specifically states that GST rate on hire is 12%].

(C) Net Tax payable by cash

Total Tax payable – ₹91,200 less ITC available – ₹62,000. Hence, net tax payable by cash = ₹29,200.



**Question** – Mr. Nimit, a supplier of goods, pays GST under regular scheme. He is not eligible for any threshold exemption. He has made the following outward taxable supplies in the month of August, 2017 – Intra-State supplies of goods ₹6, 00,000, Inter-State supplies of goods ₹2, 00,000.

He has also furnished following information in respect of purchases made by him from registered dealers during August 2017. Intra-State purchase of goods ₹4,00,000, Inter-State purchase of goods ₹50,000. Balance of ITC available at the beginning of the August 2017 – CGST ₹15,000, SGST ₹35,000, IGST ₹20,000.

Compute the net GST payable by Mr. Nimit for the month of August, 20XX.

**Note:** (i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively, on both inward and outward supplies (ii) Both inward and outward supplies given above are exclusive of taxes, wherever applicable (iii) All the conditions necessary for availing the ITC have been fulfilled.

**Answer:**

(a) Tax payable

(In Rupees)

Description		CGST	SGST	IGST
(i)	Inter-State taxable supply of goods – ₹2,00,000 – IGST @ 18%			36,000
(ii)	Intra-State taxable supply of goods – ₹6,00,000 – CGST @ 9% and SGST @ 9%	54,000	54,000	
	Total Tax payable	54,000	54,000	36,000

(b) Input Tax Credit available

(In Rupees)

Description		CGST	SGST	IGST
(i)	Opening Balance	15,000	35,000	20,000
(ii)	Intra-State purchases – ₹4,00,000 – CGST @ 9% and SGST @ 9%	36,000	36,000	
(iii)	Inter-State purchase of goods – ₹50,000 – IGST rate 18%			9,000
	Total Tax payable	51,000	71,000	29,000

### (C) Net Tax payable

(In Rupees)

Description		CGST	SGST	IGST
(i)	Total tax payable	54,000	54,000	36,000
(ii)	Total ITC available	51,000	71,000	29,000
(iii)	Excess/Short Credit Available (i) – (ii)	(-) 3,000	17,000	(-) 7,000
(iv)	Excess/Short Credit transferred to IGST	-	(-) 7,000	(+) 7,000
(v)	Net tax payable by cash (iii) – (iv)	Nil	Nil	Nil
(vi)	Excess credit to be carried forward	Nil	10,000	Nil

**Question**–Fun Pharma Private Limited, a registered supplier is engaged in the manufacture of taxable goods. The company provides the following information of GST paid on the purchases made/input services availed by it during the month of September 20XX:

- Purchase of cabs used for the transportation of its employees–GST paid ₹3,30,000
- Inputs consisting of three lots, out of which first lot was received during the month – GST paid ₹1, 25,000
- Capital Goods (out of three items, invoice for one item was missing and GST paid on that item was ₹25,000) – GST paid ₹2,50,000
- Outdoor catering service availed on Women’s day–GST paid ₹72,000.

Determine the amount of Input Tax Credit available with M/s. Fun Pharma Private Limited for the month of September 20XX by giving necessary explanations for treatment of various items. All the conditions necessary for availing the input tax credit have been fulfilled.

**Answer**– Eligibility of each input is as follows –

- Purchase of cabs used for the transportation of its employees–GST paid ₹3,30,000–Not eligible as tax paid on motor vehicle is eligible for ITC only if used for transport of passengers[section 17(5)(a)(ii) of CGST Act]. Further, the service is for personal consumption and not eligible [section 17(5) (g) of CGST Act].
- Inputs consisting of three lots, out of which first lot was received during the month – GST paid ₹1,25,000 – not eligible – ITC can be availed only when last lot is received–first proviso to section 16(2) of CGST Act.
  - Capital goods (out of three items, invoice for one item was missing



and GST paid on that item was ₹25,000) – GST paid ₹2,50,000 – eligible ₹2,25,000 only – ₹25,000 not eligible for ITC – possession of tax invoice is essential requirement of taking ITC–section 16(2) (a) of CGST Act.

- (iii) Outdoor catering service availed on Women's day–GST paid ₹72,000 – Not eligible for ITC as specifically included in blocked credit [section 17(5) (b) (i) of CGST Act]

### **Input tax credit when exempted as well as taxable supplies made**

Principle of Vat is that input tax credit is available only when tax is payable on his output. If some of supplies are taxable and some are exempt, the taxable person can take only proportionate input tax credit.

This principle applies to input goods, input services and capital goods. These are provided in section 17 of CGST Act.

Where the goods or services or both are used by the registered taxable person partly for the purpose of any business and partly for other purposes, the amount of input tax credit shall be restricted to so much of the input tax as is attributable to the purposes of his business section 17(1) of CGST Act.

Where the goods and/or services or both are used by the registered person partly for effecting taxable supplies including zero rated supplies under CGST or IGST Act 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 taxable supplies including zero-rated supplies - section 17(2) of CGST Act.

The Central or a State Government may, by notification issued in this behalf, prescribe the manner in which the proportionate input tax credit is to be taken - section 17(6) of CGST Act.

This provision is similar to rule 6 of Cenvat Credit Rules.

"Taxable supply" means a supply of goods or services or both which is leviable to tax under CGST Act – section 2(109) of CGST Act.

"Non-taxable supply "means a supply of goods or services or both which is not leviable to tax under CGST Act or IGST Act – section 2(78) of CGST Act.

Zero rated supply – "Zero rated supply" means a supply of any goods or services or both in terms of section 16 of IGST Act–section 2(23) of IGST Act.

Export of goods or services or both and supplies of goods or services or both to SEZ unit or SEZ developer will be Zero rated supply – section 16(1) of IGST Act.

Credit of input tax may be availed for making zero-rated supplies, even if such supply is exempt supply – section 16(2) of IGST Act.

The registered person making zero rated supply can claim refund under either of two options – (a) supply goods under bond or LUT without payment of IGST and claim refund of unutilized input tax credit or (b) supply goods on payment of IGST and claim Refund of IGST paid on goods and services. The refund will be in accordance with section 54 of CGST Act – Section 16(3) of IGST Act.

### **Calculation of value of 'exempt supply'**

"Exempt supply" means supply of any goods or services or both which attracts Nil rate of tax or which may be wholly exempt from tax under section 11 of CGST Act or under section 6 of IGST Act, and includes non-taxable supply – section 2(47) of CGST Act.

As per section 17(3) of CGST Act, value of exempt supply shall include–

- (a) Supply where GST is payable on reverse charge basis
- (b) transactions in securities
- (c) sale of land
- (d) sale of building (except construction of complex where supply is made before obtaining completion certificate) [This exception has been made as in fact, GST is payable and hence it is not 'exempt supply'].

For determining the value of an exempt supply as per section 17(3) of CGST Act – (a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty, and (b) the value of security shall be taken as 1% of the sale value of such security. Explanation under Rule 45 of CGST and SGST Rules, 2017

'Exempt Supply' shall not include supply of services to Nepal and Bhutan for the purpose of reversal of ITC–Value of 'Exempt Supply' for purposes of rules 42 and 43 of CGST Rules (reversal of ITC) shall not include supply of services to Nepal and Bhutan where place of supply in Nepal or Bhutan even when payment is received in Indian rupees [These services are exempt vide Notification No.42/2017-IT (Rate) dated 27-10-2017]

- Explanation to rule 43(2) of CGST Rules, inserted w.e.f. 15-11-2017.

### **Special provisions in respect of banks, FI and NBFC**

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 section 17(2) of CGST Act, 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 – section 17(4) of CGST Act.

The option once exercised shall not be withdrawn during the remaining part of the financial year – first proviso to section 17(4) of CGST Act.

The 50% restriction shall not apply to the tax paid on supplies made by one registered person to another registered person having same PAN number – second proviso to section 17(4) of CGST Act.

This provision applies when Bank/FI/NBFC in one State provides services (or supplies goods) to its own branch in another State.

In most of the cases, Bank, FI or NBFC may find it easy and profitable to avail 50% of input tax credit instead of availing input tax credit on proportionate basis as per section 17(2) of CGST Act.

### **Determination of input tax credit when partly used for taxable supply and partly for exempt supply**

The detailed mode of calculation has been prescribed in rule 42 of CGST Rules. Initially, input tax used exclusively for taxable or exempt supplies are segregated. Then, for common input tax, eligible credit is calculated on ratio basis. Non-eligible ITC is reversed.

Final calculations are made at the end of financial year of eligible ITC before the due date for filing the return for the month of September following the end of the financial year, on same basis.

### **Numerical Illustrations**

**Question** – PQR, a taxable person supplies goods and services during January 20XX as per following particulars – (a) Product A – taxable under GST – turnover within India – ₹15 lakhs (b) Product A – taxable under GST – exports without payment of GST – ₹20 lakhs (c) Product B – exempt from GST – turnover ₹10 lakhs.

His input tax details are as follows – (i) total input tax credit in the taxable period– ₹4,20,000 (ii) tax on Inputs and input services intended to be used exclusively for product B – ₹1,10,000 (iii) tax on Inputs and input services intended to be used exclusively for product A– ₹1,20,000

Calculate the input tax credit available to PQR.





**Answer:** Calculations as per rule 42 of CGST Rules are as follows – T – Total input tax – ₹4,20,000

T1 – Tax on inputs and input services attributable exclusively for non- business purposes – Nil

T2 – Tax on Inputs and input services intended to be used exclusively for effecting exempt supply – ₹1,10,000

T3 – Input tax credit ineligible under section 17(5) of CGST Act – Nil C1–Input Tax Credit credited to electronic credit ledger–T–(T1+T2

+ T3) = ₹4,20,000 – ₹1,10,000 = ₹3,10,000

T4–tax on Inputs and input services intended to be used exclusively for effecting taxable supply – ₹1,20,000.

C2 – Common Credit = C1 – T4 = ₹3,10,000 – ₹1,20,000 = ₹1,90,000.

Now,

E – Aggregate value of exempt supplies = ₹10 lakhs F – Total turnover – ₹45 lakhs

D1 – Input Tax Credit attributable to exempt supplies –  $(E/F) \times C2 = (10/45) \times 1,90,000 = ₹42,222.22$ .

This amount of ₹42,222.22 is to be debited to electronic credit ledger. Balance credit of ₹2,67,777.78 [C-1 – ₹3,10,000 less D1 – ₹42,222.22) is available.

Separate calculations are required for CGST, SGST, UTGST and IGST on same lines.

At the end of financial year, final calculations should be made for whole financial year.

**Question -** XYZ, a taxable person supplies goods and services during December 20XX as per following particulars –

- (a) Product A – taxable under GST – turnover within India – ₹20lakhs
- (b) Product A – taxable under GST – exports without payment of GST – ₹5 lakhs
- (c) Product B – exempt from GST – turnover ₹10lakhs
- (d) Product C – subject to excise duty but not to GST – ₹25 lakhs
- (e) Service D – taxable under GST – ₹5 lakhs. His input tax details are as follows–
- (i) total input tax credit in the taxable period – ₹4,00,000



- (ii) tax on inputs and input services attributable exclusively for non- business purpose – ₹50,000 (no common input services were used for non-business purposes)
- (iii) tax on Inputs and input services intended to be used exclusively for effecting supply of products B and C – ₹1,00,000
- (iv) tax on Inputs and input services intended to be used exclusively for product A and service D – ₹1,20,000
- (v) Input tax credit ineligible under section 17(5) of CGST Act – ₹30,000. Calculate the input tax credit available to XYZ.

### Answer:

Calculations as per rule 42 of CGST Rules are as follows – T – Total input tax – ₹4,00,000

T1 – tax on inputs and input services attributable exclusively for non- business purposes – ₹50,000.

T2 – tax on Inputs and input services intended to be used exclusively for effecting exempt supply – ₹1,00,000

T3 – Input tax credit ineligible under section 17(5) of CGST Act – ₹30,000.

C1 – Input Tax Credit credited to electronic credit ledger –  $T - (T1 + T2 + T3)$   
 $= ₹4,00,000 - (50,000 + 1,00,000 + 30,000) = ₹4,00,000 - ₹1,80,000 = ₹2,20,000.$

T4. – tax on Inputs and input services intended to be used exclusively for effecting taxable supply – ₹1,20,000.

C2 – Common Credit =  $c1 - T4 = ₹2,20,000 - ₹1,20,000 = ₹1,00,000.$

Now,

E – Aggregate value of exempt supplies = ₹10 lakhs F – Total turnover – ₹40 lakhs

[**Note:** For purpose of aggregate value of exempt supplies and total turnover, the turnover of ₹25 lakhs of Product C subject to excise duty but not to GST is not required to be included].

D1 – Input Tax Credit attributable to exempt supplies –  $(E/F) \times C2 = (10/40) \times 1,00,000 = ₹25,000.$

This amount is to be debited to electronic credit ledger. Balance credit of ₹1,95,000 [C-1 – ₹2,20,000 less D1 – ₹25,000] is available.

Separate calculations are required for CGST, SGST, UTGST and IGST on same lines.

At the end of financial year, final calculations should be made for whole financial year.

**Question** – In aforesaid example, if the common inputs and input services were partly used for non-business purposes also, what will be the eligibility of Input Tax Credit?

**Answer:** If the common inputs and input services are used for non-business purposes also. D1 – tax on inputs and input services are attributable to non-business purposes = 5% of C2 i.e. 5% of ₹1,00,000 = ₹5,000.

C3 = Common inputs and input services for taxable and zero rated supplies eligible for credit = C2 – (D1 + D2)

Hence, C3 = ₹1,00,000 – (25,000 + 5,000) = ₹70,000

The balance ₹30,000 [₹1,00,000 – 70,000] is to be debited to electronic credit ledger.

In effect, the credit of ₹5,000 of common inputs and input services used for non-business purposes are not eligible for ITC and hence has to be debited to electronic credit ledger.

Separate calculations are required for CGST, SGST, UTGST and IGST on same lines.

At the end of financial year, final calculations should be made for whole financial year.

**Question** – JMK Finance Ltd., an NBFC (Non-Banking Financial Company) gives following details for January, 20XX – Interest income –

₹200 lakhs, Loan processing fees– ₹10 lakhs, Other income– ₹15 lakhs. During this Period, its input tax credit was ₹7 lakhs. Out of this credit, ₹1 lakh was ineligible under section 17(5) of CGST Act.

Calculate the Input Tax Credit available to JMK Finance Ltd., for January, 20XX.

**Answer:** Eligible Input Tax Credit is ₹6 lakhs (₹7 lakhs – ₹1 lakh). As per section 17(2) of CGST Act, the NBFC is eligible to avail 50% of the credit. Thus JMK Finance Ltd., should take credit of ₹3 lakhs in electronic credit ledger and immediately reverse ₹3 lakhs.

**Determination of input tax credit in respect of capital goods used partly for taxable supply and partly for exempt supply**



If capital goods are partly used for taxable goods and partly for exempt goods, the ITC on capital goods is available on proportionate basis [just like ITC on common input goods and input service].

The calculations seem quite clumsy, but basic concept is simple.

First, identify capital goods which are to be used exclusively for exempted goods. Do not take ITC of tax paid by supplier on those capital goods. Identify capital goods which are to be used exclusively for taxable goods. Take entire ITC of tax paid by supplier on those capital goods.

Balance credit is of common capital goods. Divide it by 60 months to arrive at monthly credit in respect of common capital goods. Credit that entire amount to your ITC. Later, every month (tax period), find ratio between exempted goods and total goods. Apply that ratio to monthly credit of capital goods and reverse that credit by adding that amount to output tax liability, with applicable interest.

The meaning of 'with applicable interest' is not very clear. In my view, the interest can apply only when the amount is not added to output liability by 20th of next month at the time of filing of return. Otherwise, really, interest cannot be charged on ITC which has been legitimately taken.

There is no provision to make final calculations at the end of every financial year.

The calculations are to be made separately for SGST, CGST, IGST and UTGST.

If capital goods which were earlier used exclusively for exempted goods are later used for taxable goods, its credit can be added by reducing the tax paid on capital goods @ 5% per quarter. On the other hand, if capital goods earlier used exclusively for taxable goods are later used for exempted goods, its credit is to be reversed by reducing the tax paid on capital goods @ 5% per quarter [quite clumsy calculations indeed]. Mode of calculations of ITC of tax paid on common capital goods

The statutory provisions are as follows:

Subject to the provisions of section 16(3) [i.e., not claiming depreciation on tax portion of capital goods], the input tax credit in respect of capital goods, which attract the provisions of sections 17(1) and 17(2) [i.e., 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 as specified in rule 43.- Rule 43(1) of CGST and SGST Rules, 2017.



## Numerical Illustrations

**Question** – LMN Company, a taxable person purchased capital goods on 29-9-2017 on which GST paid was ₹10 lakhs. These capital goods were used exclusively for manufacture of taxable goods. On 2-10-2018, exemption was granted to the taxable goods manufactured by the taxable person. Advise LMN Company about his eligibility of input tax credit.

**Answer:** LMN Company can take Input Tax Credit of ₹10 lakhs on 29-9-2017. The capital goods were used for supply of taxable goods for six- quarters (two- quarters in 2017 and four- quarters in 2018. Note that part of quarter is also treated as full quarter).

Thus, LMN Company is entitled to Input Tax of 30% (5% per quarter). Hence, it should reverse 70% credit i.e., ₹7 lakhs in Input Credit Ledger on 2-10-2018.

**Question** – NNN Company, a taxable person purchased capital goods on 29-9-2017 on which GST paid was ₹10 lakhs. These capital goods were used exclusively for manufacture of exempted goods. On 1-1- 2019, exemption was withdrawn and GST was imposed on the goods manufactured by the taxable person. Advise NNN Company about his eligibility of input tax credit.

**Answer:** NNN Company cannot take any Input Tax Credit on 29/9/2017 as the goods manufactured using the capital goods was exempt. The capital goods were used for supply of exempted goods for six- quarters (two- quarters in 2017 and four- quarters in 2018). Note that part of quarter is also treated as full quarter).

Thus, NNN Company is not entitled to Input Tax of 30% (5% per quarter). It is eligible for credit of 70% of credit i.e., ₹7 lakhs in Input Credit Ledger on 1-1- 2019. NNN should take credit of ₹7 lakhs on 1-1- 2019.

**Question** – In the aforesaid case, on or after 1-1-2019, the capital goods were utilized for both taxable supplies and exempt supplies. In such case, explain availability of Input Tax Credit on capital goods by NNN Company.

**Answer:** In that case, the NNN Company can take credit of ₹7 lakhs on 1-1- 2019. The balance life is to be taken as 60 months as per provision of Rule 43(1) (d) of CGST Rules [though actually balance life is less than 60 months]. Hence, credit per month is ₹11,666.67 per month. After January 2019, every month, the ratio of E (Aggregate value of exempt supplies) and F (Total turnover)



should be calculated and proportionate input tax credit should be reversed by debiting Input Credit Ledger.

**Question** – A manufacturer purchased a machine in September 20XX. Tax paid was – CGST – ₹1, 00,000, SGST – ₹1, 00,000. He started manufacture of products A and B in October 20XX. Product A was taxable while product was exempt from GST. His turnover was as follows–

- (a) October 20XX – Product A ₹20,000 – Product B – ₹10,000.
- (b) November 20XX – product A – Nil, Product B – ₹50,000
- (c) December 20XX – product A –Nil, product B –Nil.

Explain eligibility of input tax credit of tax paid on the machine.

**Answer:** Input tax credit on machine per month =  $\text{CGST} - 1,00,000 / 60 = ₹1,666.67$ . The ineligible input tax credit per month is as follows –

- (a)  $(10,000 / 30,000) \times 1,666.67 = ₹555.56$  CGST and ₹555.56 SGST.

This amount is to be debited to electronic credit ledger.

- (b) Entire ₹1,666.67 of CGST and ₹1,666.67 of SGST is not eligible as used only for exempt product. This amount is to be debited to electronic credit ledger.
- (c) Since details of current month are not available turnover of previous month should be taken. Hence, on basis of turnover of previous month, Entire credit of ₹1,666.67 of CGST and ₹1,666.67 of SGST is not eligible.

This amount is to be debited to electronic credit ledger.

**Question** – Soren Enterprises is in possession of certain capital goods and purchases more of them as per the following particulars:

- (a) Capital Goods A – Input tax ₹12,000 – Exclusively used for non- business purpose
- (b) Capital Goods B – Input tax ₹24,000 – Exclusively used for zero- rated supplies
- (c) Capital Goods C–Input tax ₹60,000–Used both for taxable and exempt supplies
- (d) Capital goods D (has been exclusively used for 2 years for exempted supplies) – Input tax ₹1,20,000 – Now there is change in use, both for taxable and exempt supplies



- (e) Capital goods E (has been exclusively used for 3 years for taxable supplies)– Input tax ₹1,80,000– Now there is change in use, both for taxable and exempt supplies. Useful life of all the above capital goods is considered as 5 years.

Apportion the input tax credit of capital goods, while being informed that aggregate value of exempt supplies during the tax period being ₹6,00,000 and total turnover during the tax period being ₹12,00,000.

**Answer:**

- (a) ₹12,000 not eligible
- (b) ₹24,000 fully eligible. The amount to be credited to Electronic Credit Ledger.
- (c) ₹60,000–The amount to be credited to Electronic Credit Ledger and then proportionate monthly reversal should be made.  $T_c = \text{Common Credit in respect of capital goods} = ₹60,000$ .  $T_m = \text{Amount of input tax credit attributable to tax period} = T_c/60$  i.e.,  $₹60,000/60 = ₹1,000$ .
- (d) ₹1,20,000 – Initially used for exempted goods and hence not eligible. After two years, now used for both taxable and exempt supplies. Since initially it was used for exempted supplies, no credit was available. Hence, credit for first two years @ 5% per quarter was not eligible i.e., ₹6,000 (5% of ₹1,20,000)  $\times 8$  (eight quarters as two years) = ₹48,000 was not eligible. Now used for exempted as well as taxable supply. Hence, credit of balance amount of ₹72,000.  $T_m = \text{Amount of input tax credit attributable to tax period} = T_c/60$  i.e.,  $₹72,000/60 = ₹1,200$ , [Note – really the residual life is only three years. However, the formula in rules specifically states that  $T_c$  should be divided by 60. Thus, total life of capital goods effectively becomes seven years].
- (e) ₹1,80,000 – Initially used for taxable goods. Hence, credit in Electronic Credit Ledger must have been taken three years ago. Hence, credit eligibility for first three years ITC eligible for first three years @ 5% per quarter i.e., ₹9,000 per quarter. Hence, eligibility for three years i.e., 12 quarters =  $9,000 \times 12 = ₹1,08,000$ . Credit of first three years i.e., ₹1,08,000 is fully available.

Balance is ₹72,000 (₹1,80,000 – ₹1,08,000) is now used for taxable as well as exempt supplies.  $T_c = ₹72,000$ .  $T_m = \text{Amount of input tax credit attributable to tax period} = T_c/60$  i.e.,  $₹72,000/60 = ₹1,200$ , [Note – really the residual life is only two years. However, the formula in rules specifically states that  $T_c$  should be divided by 60. Thus the total life of capital goods effectively becomes eight years].



Hence,

Try = Aggregate of Tm for all capital goods used for exempted as well as taxable supplies = ₹1,000 + ₹1,200 + ₹1,200 = ₹3,400  
Common Input Credit attributable to exempt supplies = Tc = (E/F) x Tr  
E = Aggregate value of exempted supply = ₹6,00,000

F = Total turnover during tax period = ₹12,00,000  
Tc = (6,00,000/12,00,000) x 3,400 = ₹1,700

This amount of ₹1,700 will be debited to output tax liability of the Soren Enterprises for the tax period(month).

### **Reversal of input tax credit means is not taken**

Some exemption notifications are subject to condition of non-availment of Input Tax Credit. In such cases, if proportionate ITC is reversed, it means that ITC has not been taken and the condition of exemption notification gets satisfied.

Explanation 4(iv) of Notification No.13/2017-CT (Rates) and 10/2017-IT (Rates) dated 28-6-2017, effective from 1-7-2017 reads as follows – Wherever a rate has been prescribed in this notification subject to the

Condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that, -

- (a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and
- (b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of section 17(2) of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

### **Transfer of ITC in case of death of sole proprietor**

Circular No. 96/15/2019-GST dated 28th March, 2019

- Section 29(1) (a) of the CGST Act, 2019-Cancellation of registration on account of transfer of business for any reason including death of the proprietor
- For the purpose of sections 18(3), 22(3) and 85(1) of CGST Act and rule 43(1) of CGST Rules, Transfer or change in the ownership of business will include transferor change in the ownership of business due to death of the sole proprietor



In case of death of sole proprietor if the business is continued by any person being transferee or successor, the input tax credit which remains unutilized in the electronic credit ledger is allowed to be transferred to the transferee

- Registration liability of the transferee/successor: As per section 22(3) of the CGST Act, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession, where a business is transferred to another person for any reasons including death of the proprietor. While filing application in FORM GSTREG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as "death of the proprietor".

**Section 43a:** Procedure for furnishing return and availing input tax credit. Newly inserted section:

"43A. (1) Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.

(2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.

(3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.

(4) The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent. Of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.

(5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.

(6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.



- (7) For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.
- (8) The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person,—
  - (i) within six months of taking registration;
  - (ii) Who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount, shall be such as may be prescribed.”

### **Input service distributor (ISD)**

A supplier of goods and services may have head office / regional office at different place/s. the services may be received at head office / regional office, but ultimately, these services will be indirectly used for manufacture or providing output service.

Provision has been made to avail input credit of services received and paid for at head office/regional office. Such head office/regional office can be registered under GST as 'Input Service Distributor' and it can issue invoice on its branches/factories/depots.

If a taxable person intends to use the facility, he has to register under GST as Input Service Distributor. A separate registration is required even if he is otherwise registered under GST.

“Input Service Distributor” means an office of the supplier of goods and / or services which receives tax invoices issued under section 31 of CGST Act towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services or both having same PAN as that of the said office – section 2(61) of CGST Act.

### **Manner of distribution of credit by Input service distributor**

The Input Service Distributor may distribute the credit as per the following conditions – section 20(2) of CGST Act.

- (a) The credit can be distributed against a prescribed document issued to each of the recipients of the credit so distributed, and such invoice or other document shall contain such details as may be prescribed.

- (b) The amount of 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 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 recipient 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 prorata 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.

Transitory provision for distribution of credit by Input service distributor of service invoices received after GST – Input service distributor can distribute credit in respect of services received prior to GST, even if invoices of such services were received after introduction of GST – section 140(7) of CGST Act.

### **Monthly return by ISD**

ISD (Input Service Distributor) has to file monthly return by thirteenth of the following month – section 39(4) of CGST Act.

Monthly return is not required, if there is not transaction during a month – Section 39(8) of CGST Act.

His inward supplies will be self-populated in his form GSTR-6A. He can accept, reject, delete or add to these details and then file return in form GSTR-6, before 20th of the following month – Rule 65 of CGST and SGST Rules, 2017.

Commissioner can extend date of filing return by issuing notification – section 39(6) of CGST Act.

### **Numerical example**

**Question** – Sarani Weavers at Mumbai is an input service distributor and intends to distribute input tax credit u/s 20 of the CGST Act, 2017, for the month of March 20XX. The following are the details available for such distribution:



Branch	Turnover of the last quarter (Amt. in ₹)	ITC specifically applicable to the branch (Amt. in ₹)
Ganganagar Branch	₹10,00,000	IGST – ₹12,000, CGST – ₹3,000, SGST – ₹3,000
Madhugiri Branch	₹5,00,000	Nil
Kosala Branch	₹15,00,000	Nil
Mumbai HO	₹20,00,000	IGST ₹1,50,000, CGST – ₹15,000, SGST – ₹15,000

Inputs / Input services used commonly by all branches against which ITC available is – CGST – ₹60,000, SGST – ₹60,000, IGST – ₹1,20,000.

ITC (IGST) of December 20XX, ₹10, 000 which was inadvertently left out, whether the same can be considered for distribution in March, 20XX. Madhugiri branch uses inputs to manufacture exempted products. All branches are outside Maharashtra. Turnover excludes duties & taxes payable to Central and State Government. Determine the input tax distribution.

**Answer:** IGST Credit of ₹10,000 not taken in December 20XX – Considering that invoice is valid for one year from the date of invoice and that any mistake can be corrected in the next returns (but till September return), the credit of IGST of ₹10,000 is allowable. There is no provision that credit lapses if not taken in the same month. However, it is not stated whether that credit is attributable to any specific branch or it is common for all branches. Hence, not considered for calculations.

Total Turnover– ₹50,00,000. The distribution of input tax is as follows:

(Amount in Rupees)

Branch	CGST (₹)	SGST (₹)	IGST (₹)	ITC specifically applicable to the branch ₹	Distribution of Credit (₹)
Ganganagar Branch Turnover ₹10,00,000 [20%]	₹12,000	₹12,000	₹24,000	IGST- ₹12,000 CGST- ₹3,000 SGST - ₹3,000	₹66,000 as IGST
Madhugiri Branch Turnover ₹5,00,000 [10%]	₹6,000	₹6,000	₹12,000	Nil	₹24,000 as IGST



Kosala Branch Turnover ₹15,00,000 [30%]	₹18,000	₹18,000	₹36,000	Nil	₹72,000 as IGST
Mumbai HO Turnover ₹20,00,000 [40%]	₹24,000	₹24,000	₹48,000	IGST- ₹1,50,000 CGST- ₹15,00, SGST - ₹15,000	CGST -₹39,000 SGST -₹39,000 IGST-₹1,98,000
Total Turnover ₹50,00,000	₹60,000	₹60,000	₹1,20,000	₹1,98,000	₹4,38,000

## BASIC PROCEDURES OF REGISTRATION, E-WAY BILL

### Background of procedures

GST is very procedure oriented legislation. Substantial benefits can be lost and penalties can be imposed simply because proper procedures were not followed.

GST procedures are based on e-governance. Submission of papers and physical inter-face with department is minimum.

Basic Procedures are as follows –

- (a) Registration with GST which is common for IGST, SGST, UTGST and CGST
- (b) Maintenance of stock records
- (c) Tax Invoice, debit note and credit note
- (d) Dispatch of goods by electronic way bill (presently not applicable)
- (e) Electronic payment of taxes
- (f) Filing of returns which are common for IGST, SGST, UTGST and CGST

These are core procedures.

Other non-core procedures – Other non-routine procedures are as follows–

- i. Job work procedure
- ii. Refunds
- iii. Appeals
- iv. Procedure for export of goods and services

These procedures are discussed at appropriate places in this book.

No statutory records or registers - No statutory records or registers have been specified in GST Act. Normal records of taxable person, giving required details are sufficient.

## **Requirement of registration**

Registration under GST is the first and most important step.

Relief to very small taxable persons

It is normal to provide threshold limit for imposition of any tax, so that very small taxable persons are out of tax net.

Very small taxable persons whose total turnover is less than ₹20 lakhs are not required to register under GST (The limit is ₹10 lakhs in case of North Eastern States, Himachal Pradesh and Uttarakhand).

This exemption (of ₹ 40/20 lakhs) is not available to person who makes inter-State supply of goods. However, this exemption is available to a person making inter-state supply of services. Notification No.10/2017-IT dated 13-10-2017.

The exemption is not available to a person liable to pay tax under reverse charge as required under section 9(3) of CGST Act or section 5(3) of IGST Act.

Persons having turnover above this limit are required to be registered and pay tax even if their turnover is below ₹ 40/20 lakhs.

For small and medium sized taxable persons, a simple composition scheme is available, which is discussed separately.

GST payable once registered even if turnover less than ₹40/20 lakhs

Note that once a taxable person is registered under GST Act, he is bound to pay GST. He is required to pay GST even if he voluntarily registered under GST.

He is required to pay tax even if his annual turnover is below ₹20/10 lakhs.

He is also liable to pay GST under reverse charge, wherever reverse charge is applicable.

Once he is registered, he is required to file returns in time. Even filing of Nil return is mandatory.

Of course, he can avail GST composition scheme, if he is otherwise eligible.

## **Person liable to be registered**

As per section 22(1) of CGST Act, every supplier shall be liable to be registered in the State or Union Territory (other than special category States) from where he makes supply of goods or services or both, if his aggregate turnover in a financial year exceeds ₹40 lakhs. (₹20 lakhs up to 31.3.2019)

In case of 'special category States', registration is required if his aggregate turnover in a financial year exceeds ₹10 lakhs – proviso to section 22(1) of CGST Act.



## For Sale of Goods

Aggregate Turnover	Registration Required	Applicability
Exceeds ₹ 40 lakh	Yes – For Normal Category States	From 1 <sup>st</sup> April 2019
Exceeds ₹ 20 lakh	Yes – For Special Category States	From 1 <sup>st</sup> April 2019

## For Providing Services

There has been no change in the threshold limits for service providers. Persons providing services need to register if their aggregate turnover exceeds Rs. 20 lakh (for normal category states) and Rs.10 lakh (for special category states).

Special Category States means States as specified in Article 279A(4)(g) Of Constitution of India–Explanation (iii) to section 22 of CGST Act.

These are – States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

Aggregate turnover – For purpose of section 22 of CGST Act, the expression “aggregate turnover” shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals – Explanation (i) to section 22 of CGST Act.

The term ‘principal’ [defined in section 2(88) of CGST Act] applies to clearances made by C&F Agent on behalf of Principal. It does not apply to clearances made by job worker.

In case of job work, value of material will be included in aggregate turnover of principal and not of job worker – The supply of goods, after completion of job-work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker – Explanation (ii) to section 22 of CGST Act.

## Illustrations

**Question**–Rajesh Dynamics, having its head office in Chennai, carries On the following activities with respective turnovers in a Financial Year– Supply of petrol at Chennai ₹18,00,000

Value of inward supplies on which tax is payable on reverse charge basis ₹9,00,000

Supply of transformer oil at Chennai – ₹ 2,00,000





Value of branch transfer from Chennai to Bengaluru without payment of consideration ₹ 1,50,000

Value of taxable supplies at Manipur branch ₹ 11,50,000.

Value of taxable supplies at Manipur branch ₹ 11,50,000. It argues that it does not have taxable turnover including turnover at Manipur branch. It believes that the determination of aggregate turnover is not required for the purpose of obtaining registration but it is required for determining composition levy. Decide based on the above facts –

- (i) The aggregate turnover of Rajesh Dynamics
- (ii) All conditions that fulfil the requirements for registration under CGST Act, 2017 in the given circumstances.

**Answer:**

“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 a person having the same Income Tax PAN, to be computed on all India basis and excludes taxes [CGST, SGST, UTGST and IGST – section 2(6) of CGST Act].

“Exempt supply” means supply of any goods or services or both which attracts Nil rate of tax or which may be wholly exempt from tax under section 11 of CGST Act or under section 6 of IGST Act, and includes non-taxable supply – section 2(47) of CGST Act.

‘Non-taxable supply’ means a supply of goods or services or both which is not leviable to tax under CGST Act or IGST Act – section 2(78) of CGST Act.

For purpose of registration under GST, ‘aggregate turnover’ shall include all supplies made by the taxable person. ‘Taxable person’ includes person liable to be registered.

For calculation of ‘aggregate turnover’, the following should be considered.

Supply of petrol at Chennai ₹ 18,00,000 – It is non-taxable supply and hence included in definition of ‘exempt supply’. Hence, includible.

Value of inward supplies on which tax is payable on reverse charge basis ₹9,00,000. This is not supply made by him and hence not includible in aggregate turnover and specifically excluded from definition of ‘aggregate turnover’.

- Supply of transformer oil at Chennai ₹ 2,00,000 – includible in aggregate turnover
- Value of branch transfer from Chennai to Bengaluru without payment of consideration ₹ 1,50,000 – includible in aggregate turnover as per clause 2 of Schedule me of CGST Act and definition of aggregate turnover.



- Value of taxable supplies at Manipur branch ₹11,50,000 – includible in aggregate turnover.

Hence, 'aggregate turnover' is ₹ 32,00,000 [18,00,000 + 2,00,000 + 1,50,000 + 11,50,000], which is more than ₹ 20 lakhs.

Further, as per section 24(1) of CGST Act, persons making inter-State supply of goods and persons liable to pay tax under reverse charge require registration, even if aggregate turnover is below ₹ 20 lakhs. On these two counts, Rajesh Dynamics will require registration.

**Question –** With the help of the following information in the case of M/s. Jayant Enterprises, Jaipur (Rajasthan) for the year 2017-18, determine the aggregate turnover for the purpose of registration under CGST Act, 2017. –

- Sale of diesel on which Sale Tax (VAT) is levied by Rajasthan Government – ₹1,00,000
- Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal. – ₹3,00,000
- Export supply to England (U.K) – ₹5,00,000
- Supply to its own additional place of business in Rajasthan – ₹ 5,00,000
- Outward supply on which GST is to be paid by recipient under reverse charge. – ₹ 1,00,000.

All the above amounts are excluding GST. You are required to provide reasons for treatment of various items given above.

**Answer:** For calculation of 'aggregate turnover', following should be considered:

- ₹ 1,00,000 includible as diesel is non-taxable under CGST Act and hence comes within the definition of 'exempt supply'.
- Not includible as it is includible in the turnover of Principal.
- Includible in aggregate turnover as it is supply – ₹5,00,000
- If it is within the same State with same PAN and same GSTIN, it is not supply.
- Even if tax is payable by recipient, it is still a taxable supply and hence includible in aggregate turnover – ₹1,00,000

Hence, 'aggregate turnover' for the purpose of registration under section 22 of CGST Act is ₹7,00,000. Hence, registration under GST is not required.

Registration is State/UT Specific, outside the State/UT the person is 'unregistered' Registration under SGST Act or UTGST Act is obviously State / Union Territory



specific. Since registration is common both for SGST/UTGST and CGST, as a natural corollary, registration under CGST Act can also be said to be State / Union Territory specific.

Though the CGST Act specifically does not say so, section 22 of CGST Act requires a person to get registered 'in the State or Union Territory' from where he makes a supply, Section 25 of CGST Act also states that a person shall apply for registration in the State or Union Territory.

If supply is made from different States or Union Territories, separate registration is required.

As per departmental clarification, SGST and CGST credit for a State can be utilized for payment of their respective CGST / SGST liabilities within the State for same GSTIN only– S.Nos. 40 and 41 of Tweet FAQ released by CBI&C on 26-6-2017 and FAQ No.50 issued by CBI&C on 20-7-2017.

Thus, it can be stated that a person registered in one State is 'unregistered person' outside the State.

### **Persons who are not required to register under GST**

Following persons are not required to register under GST. Government can grant exemption to other category of persons on recommendation of GST Council by issuing notification – section 23(2) of CGST Act.

Since these persons are not required to be registered a tall, they are not required to be registered even where they are liable in respect of certain supplies of goods or services received by them, where GST is payable under reverse charge by recipient of goods or services.

### **Person not liable to pay GST need not register**

Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or are wholly exempt from tax under this act or under IGST Act does not require registration – section 23(1)(a) of CGST Act.

**Agriculturist need not register**

An agriculturist, to the extent of supply of produce out of cultivation of land does not require registration – section 23(1) (b) of CGST Act.

"Agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land – (a) by own labor, or (b) by the labor of family or (c) by servants on wages payable in cash or kind or by hired labor under personal supervision or the personal supervision of any member of the family – section 2(7) of CGST Act.

Thus, definition of 'agriculturist' is restrictive. Only those who are directly engaged in cultivation of land are engaged in cultivation of land are eligible for the exemption.



Persons providing services where service recipient is liable to pay GST under reverse charge need not register under GST

Persons who are making supplies of taxable goods or services or both, where total tax is payable on recipient of goods or services are exempt from registration under GST Act – Notification No.5/2017-CT dated 19-6-2017.

Person supplying handicraft having turnover less than ₹40/20 lakhs but making inter-state supplies

Persons engaged in supply of handicraft goods making inter-State supply are exempt from registration, if the aggregate value of all their supplies on all India basis is less than ₹20 lakhs/₹10 lakhs per annum.

They are required to have income tax PAN and are required to generate e-way bill – Notification No.8/2017-IT dated 14-9-2017.

They are also not required to obtain casual registration if they supply

Goods outside the State where they are having their fixed establishment– Notification No.32/2017-CT dated 15-9-2017.

Job worker with turnover less than ₹40/20 lakhs exempt from registration, even if they make inter-State supplies to registered person

A job worker with turnover less than ₹40/20 lakhs are exempt from registration, even if they make inter-state supplies to registered person. This exemption is not available to Jewelry, goldsmiths and silver smiths wares and other articles (Chapter 71) manufactured on job work basis - Notification No.7/2017-IT dated 14-9-2017.

Person making inter-State supply of taxable services not required to register if aggregate turnover less than ₹40/20 lakhs

The exemption of ₹20/10 lakhs is not available if a person makes inter-State supplies of goods. However, in case of services, the exemption is available even if a person makes inter-State supply of services. Thus, if aggregate turnover of a supplier of service, including inter-State supplies is less than ₹40/20 lakhs, he is not required to register under GST under section 23(2) of CGST Act and hence there is no tax liability-Notification No.10/2017- IT dated 13-10-2017.

Persons supplying services through e-commerce operator not required to register if aggregate turnover is less than ₹ 40/20 lakhs

Persons who are suppliers of service and supplying services through e-commerce operator are not required to register under GST if their aggregate turnover is less than ₹20 lakhs per annum (₹10 lakhs in case of specified State)–Notification No.65/2017-CT dated 15-11-2017. This relaxation is not applicable to supplier of goods.

## **Persons requiring registration without threshold limit of ₹ 40/20 lakhs**

The following categories of persons shall be required to be registered under this Act (except those exempted under section 23 of CGST Act), even if their aggregate turnover is below specified exemption limit and are exempt from registration under section 22(1) – section 24(1) of CGST and SGST Act.

- (i) Persons making any inter-state tax able supply of goods [In case of supply of services, person making inter-State supply of services is not required to register if his aggregate turnover is less than ₹40/20 lakhs – Notification No.10/2017-IT dated 13-10-2017. Casual taxable persons making taxable supply.
- (ii) Persons who are required to pay tax under reverse charge.
- (iii) Persons who are required to pay tax under section 9(5) [electronic Commerce operators]
- (iv) Non-resident taxable persons making taxable supply.
- (v) Persons who are required to deduct tax under section 51 (TDS), whether or not separately registered under the CGST/SGST Act [Thus, separate registration is required for TDS purposes]
- (vi) Persons who supply goods or services or both on behalf of other taxable persons whether as an agent or otherwise.
- (v) Input service distributor whether or not separately registered under the CGST/SGST Act [Thus, separate registration is required for ISD purposes]
- (vi) Persons who supply goods or services or both, other than supplies specified under section 9(5), through such electronic commerce operator who is required to collect tax under section 52 [Under section 9(5) of CGST Act, Government can notify e-commerce operators who will be liable to pay entire GST]. However, persons who are suppliers of service and supplying services through e-commerce operator are not required to register under GST if their aggregate turnover is less than ₹ 20 lakhs per annum (₹10 lakhs in case of specified States)–Notification No. 65/2017-CT dated 15-11-2017. This relaxation is not applicable to supplier of goods.
- (vii) Every electronic commerce operator.
- (viii) Every person supplying online information and database access or retrieval services (OIDAR) from a place outside India to a person in India, other than a registered taxable person [Thus, if a person is already registered under GST, separate registration is not required] and



- (ix) Such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the GST Council.

Provision of compulsory registration does not apply to persons not required to be registered as per section 23

Section 24(1) of CGST and SGST Act is not applicable to persons who are not liable for registration under section 23 of CGST and SGST Act. Thus, following need not register even if they fall under any of category specified in section 24(1)–(a) persons who are supplying goods or services which are not liable to tax or (b) wholly exempt from tax (c) agriculturist or (d) person supplying goods or services where service recipient is liable to paytax.

### **Requirements and procedure for registration**

Every person who is liable to be registered under section 22 or 24 shall apply for registration in every such State in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed – section 25(1) of CGST Act.

A casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business– proviso to section 25(1) of CGST Act.

He must have income tax PAN – section 25(6) of CGST Act.

Person supplying goods or services from territorial waters, Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate base line is located – Explanation to section 25(1) of CGST Act.

Area upto 12 nautical miles belong to State/Union Territory atleast as far as GST is concerned – section 9 of IGST Act.

### **Application for registration**

Every person applying for registration shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of FOR GSTREG-01 on the common portal – Rule 8(1) of CGST Rules.

This provision applies to persons liable to be registered under section 22 or 24 or who intends to obtain voluntary registration under section 25(3) of CGST and SGST Act.

Such application is not required for – (a) a person required to deduct tax at source under section 51 (b) a person required to collect tax at source under section 52 and (c) a person supplying OIDAR services from a place outside

India to a non-taxable online recipient referred to in section 14 of the IGST Act.  
– For them, different provisions have been made.

SEZ are required to register separately under GST – SEZ is a separate business vertical and requires separate GST registration under section 25 of CGST Act – first proviso to Rule 8(1) of CGST Rules, 2017 and FAQ No.6 of FAQ on Drugs and Pharmaceuticals issued by Directorate General of Taxpayer Services on 31-7-2017.

Registration as Input Service Distributor - Input Service Distributor shall make a separate application for registration as such Input Service Distributor – second proviso to Rule 8(1) of CGST Rules, 2017.

### **Validation of details and temporary number**

The PAN shall be validated online by the Common Portal from the database maintained by CBDT. The mobile number declared shall be verified through a one-time password sent to the said mobile number. The e-mail address declared shall be verified through a separate one time password sent to the said e-mail address – Rule 8(2) of CGST Rules.

On successful verification of the PAN, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on his mobile number and e-mail address.

Provision in respect of casual taxable person – A person apply for registration as a casual taxable person shall be given a temporary reference number by the Common Portal for making advance deposit of tax in accordance with the provisions of section 27 of CGST and SGST Act. The acknowledgement under Rule 8(5) shall be issued electronically only after the deposit of amount in the electronic cash ledger. – Rule 8(6) of CGST Rules.

### **Submission of application after verification of mobile and e-mail address**

Using the reference number generated as above, the applicant shall electronically submit an application in Part B of form GST REG-01, duly signed or verified through Electronic Verification Code (EVC – Aadhaar based), along with documents specified in that Form at the Common Portal – Rule 8(4) of CGST Rules.

On receipt of an application, an acknowledgement shall be issued electronically to the applicant in form GST REG-02 – Rule 8(5) of CGST Rules.

### **Document to be attached to application**

Following documents are to be scanned and attached

❖ Photographs of proprietor, partner, Trustees, CEO, MD/NTD, Karta



- ❖ Constitution of business – partnership deed or registration certificate
- ❖ Proof of address of Principal Place of Business – ownership details, rent / lease agreement, electricity bill, and property tax receipt.
- ❖ Bank account related proof, scanned copy of cancelled cheque
- ❖ Authorization in prescribed form [as given in form GSTREG-01].

The applicant shall, while submitting an application under sub-rule (4), with effect from 01.04.2020, undergo authentication of Aadhaar number for grant of registration.

### **Verification of the application and approval**

The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents. If the same are found to be in order, approve the grant of registration to the applicant within three working days from the date of submission of application – Rule 9(1) of CGST Rules, 2017.

[Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases.]

Superintendent of Central Tax has been specified as 'proper officer' for all purposes of Rule 9 – CBI & C circular No.1/1/2017 dated 26-6-2017.

Seeking clarification if application deficient –If the application is found to be deficient, or where the proper officer requires any clarification with regard to any information provided in the application or documents, he may issue a notice to the applicant electronically in form GST REG-03 within three working days from the date of submission of application. The applicant shall furnish such clarification, information or documents sought electronically, in form GST REG-04, within seven working days from the date of receipt of such notice. The clarification includes modification or correction of particulars declared in the application for registration [but not PAN, State, mobile number and e-mail address declared in Part A of form GST REG-01] – Rule 9(2) of CGST Rules, 2017.

If the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within seven working days from the date of receipt of such clarification or information or documents – Rule 9(3) of CGST Rules, 2017.





If no reply is furnished by the applicant or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, for reasons to be recorded in writing, reject application for registration under GST and inform the applicant electronically in form GST REG-5 – Rule 9(4) of CGST Rules, 2017.

Deemed registration if no action within 3/7 days – The application for grant of registration shall be deemed to have been approved, if the proper officer fails to take any action – (a) within three working days from the date of submission of application, or (b) within seven working days from the date of receipt of clarification, information or documents furnished by the applicant under Rule 9(2) - Rule 9(5) of CGST Rules, 2017.

### **Issue of registration certificate and GSTIN**

If the application for grant of registration has been approved under rule 9, a certificate of registration in form GST REG-06 showing the principal place of business and additional place(s) of business shall be made available to the applicant on the Common Portal.

Certificate shall be signed by Superintendent of Central Tax as he is 'proper officer' for purpose of rule 9 – CBI&C circular No.1/1/2017 dated 26-6-2017.

GSTIN number – Goods and Services Tax Identification Number ("GSTIN") shall be assigned in the following format–(a) two characters for the State code (b) ten characters for the PAN or the Tax Deduction and Collection Account Number (c) two characters for the entity code; and (d) one checksum character – Rule 10(1) of CGST Rules, 2017.

Effective date of registration – The registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within thirty days from such date – Rule 10(2) of CGST Rules, 2017. Thus, retrospective effect is given.

However, if application for registration was submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration – Rule 10(3) of CGST Rules, 2017. Thus only prospective effect is given.

Revised Invoice for the period between date of commencement of business and date of registration – If application for GST registration is made within 30 days from the date of the person was liable to pay GST, he can issue revised invoices for GST for the period prior to registration. The provisions are contained in Rule 53(2) of CGST and SGST Rules, 2017.

**Illustrations:**

**Question** – Pari & Sons is an unregistered dealer. On 10<sup>th</sup> August, 2017 aggregate turnover of Pari & Sons exceeded ₹20, 00,000. The firm applied for registration on 27<sup>th</sup> August, 2017 and was granted the registration certificated on 1<sup>st</sup> September, 2017. Under CGST Rules, 2017, you are required to advise Pari & Sons as to what is the effective date of registration in its case. It has also sought our advice regarding period for issuance of revised tax invoices.

**Answer:** 10th August, 2017 as application was filed within 30 days.

**Question** – Determine the effective date of registration in the following instances–

- (i) The aggregate turnover of Madhu Ltd., engaged in taxable supply of services in the State of Punjab, exceeded ₹20 lakhs on 25<sup>th</sup> August, 2017. It applies for registration on 19<sup>th</sup> September, 2017 and is granted registration certificate on 29<sup>th</sup> September, 2017
- (ii) What will be your answer, if in the above scenario Madhu Ltd., submits the application for registration on 27th September, 2017 and is granted registration on 5th October, 2017 ?

**Answer:**

- (i) 25-8-2017 as he applied within 30 days
- (ii) 5-10-2017 as he did not apply within 30 days – Rule 10 of CGST Rules.

**Question** – Determine the effective date of registration under CGST Act, 2017 in respect of the following cases with explanation:

- (i) The aggregate turnover of Varun Industries of Mumbai has exceeded ₹20 lakhs on 1<sup>st</sup> August, 2017. It submits the application for registration on 20th August, 2017. Registration certificate granted on 25th August, 2017.
- (ii) Sweta Info-Tech Services are the provider of internet services in Pune. The aggregate turnover of them exceeds ₹20 lakhs on 25<sup>th</sup> September, 2017. It submits the application for registration on 27<sup>th</sup> October, 2017. Registration certificate is granted on 5<sup>th</sup> November, 2017.

**Answer:**

- (i) 1-8-2017
- (ii) 5-11-2017 – Rule 10 of CGST Rules



## **Display of registration certificate and GSTIN on the name board**

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

Every registered person shall display his GSTIN on the name board exhibited at the entry of his principal place of business and at every additional place or places of business – Rule 18 of CGST Rules, 2017.

## **Taxable persons having multiple business verticals**

As per section 2(18) of CGST Act, “Business vertical” means a distinguishable component of an enterprise that is engaged in supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of other business verticals.

This definition has been deleted in its entirety

## **Voluntary registration**

A person though not liable, to be registered under section 22 or 24, may get himself registered voluntarily, and all provisions of CGST Act, as are applicable to a registered person, shall apply to such person – section 25(3) of CGST Act.

If once registered, he must pay GST.

He must have income tax PAN – section 25(6) of CGST Act. Voluntary registration can be cancelled at any time - Voluntary registration can be cancelled at any time. [Till 23-1-2018, application for cancellation of voluntary registration could not be considered before the expiry of one year from the registration could not be considered before the expiry of one year from the effective date of registration] - proviso to Rule 20 of CGST Rules, 2017 as existing up to 23-1-2018. This proviso has been omitted w.e.f. 23-1-2018.

Tax must be paid once registered even if annual turnover is less than ₹20 lakhs - Tax must be paid once voluntary registration is obtained, even if annual turnover is less than ₹20 lakhs – S. No.18 of Tweet FAQ released by CBI&C on 26-6-2017.

Voluntary registration can be cancelled anytime – Voluntary registration can be cancelled any time. [Till 23-1-2018, application for cancellation of voluntary registration could not be considered before the expiry of one year from the effective date of registration] – Proviso to Rule 20 of CGST Rules, 2017 as existing up to 23-1-2018. This proviso has been omitted w.e.f 23-12-2018.



## **Registration by person liable to deduct tax at source (TDS)**

A Person liable to deduct TDS under section 51 of CGST Act requires registration. He can be granted registration even if he does not have income tax PAN – proviso to section 26(6) of CGST Act.

At present, TDS provisions are not applicable. However, they still require registration, though, at present they need not pay GST under reverse charges (unless GST registration is required under some other provision of law).

## **Registration by non-resident taxable person**

A non-resident taxable person may be granted registration on the basis of any other document (other than Income Tax PAN) as may be prescribed – section 25(7) of CGST Act.

## **Registration by proper officer SUO MOTU without application**

Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action that is, or may be taken under this Act, or under any other law for the time being in force, proceed to register such person in the manner as may be prescribed – section 25(8) of CGST Act.

## **Unique identification number (UIN) to UN agencies, embassy, consulates and other persons without registration**

UN Agencies, Embassies, Consulates etc., are entitled to get refund of GST paid by them on goods and services received by them. However, they do not have to pay GST.

Any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1945, Consulate or Embassy of foreign countries and any other person or class of persons as may be notified by the Commissioner shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed – section 25(9) of CGST Act.

The Unique Identity Number granted under Rule 17(1) shall be applicable to Territory of India. Thus, different registration in each State is not required – Rule 17(1A) of CGST Rules, 2017 inserted w.e.f.29-12-2017.

## **Registration of casual taxable person and non- resident taxable person**

“Non-resident taxable person” means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity but who has no fixed place of business or residence in India – Section 2(77) of CGST Act.

“Casual taxable person” means a person who occasionally undertaken transactions involving supply of goods or services or both in the course of furtherance of business whether as principal, agent or in any other capacity, in a State of Union Territory where he has no fixed place of business – section 2(20) of CGST Act.

A casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business– proviso to section 25 (1) of CGST Act.

The provision of ‘casual registration’ are optional and not mandatory. Provision of casual registration may be useful in case where a taxable person is participating in exhibition in other State and would like to make sales from that place.

Registration for 90 days but can be extended by further 90 days – the certificate of registration issued to a casual taxable person or a non -resident taxable person shall be valid for a period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier. Such person can make taxable supplies only after issuance of certificate of registration – section 27(1) of CGST Act.

The proper officer may, at the request of the said taxable person, extend the aforesaid period of ninety days by a further period not exceeding ninety days – proviso to section 27(1) of CGST Act.

Assistant / Deputy Commissioner / Director of Central Tax has been specified as ‘proper officer’ for this purpose– CBI & Ccircular No.1/1/2017 dated 26-6-2017.

Advance deposit of tax at the time of submitting application for registration – A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under section 25 (1) of CGST Act, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought – section 27(2) of CGST Act.

Where any extension of time is sought for registration as casual taxable person, such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought – proviso to section 27(2) of CGST Act.



The amount deposited under section 27(2) shall be credited to the electronic cash ledger of such person and shall be utilized in the manner provided under section 49 – section 27(3) of CGST Act.

Section 49 of CGST Act make provision for payment of tax by cash and utilization of input tax credit and pay tax on self-assessment basis.

Submission of returns – Non-resident taxable person has to file electronically monthly return by 20th of the following month or within seven days after last day of registration under section 27(2) of CGST Act, whichever is earlier – section 39(5) of CGST Act.

If there is no transaction in a particular month, he is not required to file return for that month – section 39(8) of CGST Act.

Time limit for filing return can be extended by Commissioner by issuing notification – section 39(6) of CGST Act.

Refund to casual taxable person or non-resident taxable person only after he files all returns – The amount of advance tax deposited by a casual taxable person or a non-resident taxable person under section 27(2) of CGST Act, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained inforce, furnished all the returns required under section 39 of CGST Act – section 54(13) of CGST Act.

These are overriding provisions.

Grant of registration to non-resident taxable person

A non-resident taxable person shall electronically submit an application, along with a valid passport, for registration, duly signed, in form GST REG- 09, at least five days prior to the commencement of business – Rule 13(1) of CGST Rules, 2017.

If the business entity is incorporated or established outside India, application shall be submitted with tax identification number of unique number to establish the identity of the applicant or his PAN–proviso to rule 13(1) of CGST Rules.

A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the Common Portal for making an advance deposit of tax under section 27 of CGST and SGST Act in electronic cash ledger. Acknowledgement of application under rule 8(5) shall be issued thereafter – Rule 13(2) of CGST Rules, 2017.

The provisions of rules 9 and 10 relating to verification and grant of registration shall mutatis mutandis, apply to an application submitted under this rule – Rule 13(3) of CGST Rules, 2017.

Signature of authorized signatory – The application for registration made by a non-resident taxable person shall be duly signed or verified through electronic verification code (EVC), by his authorized signatory who shall be a person resident in India having a valid PAN – Rule 13(4) of CGST Rules, 2017.

Extension in period of operation by casual taxable person and non- resident taxable person

If a registered casual taxable person or a non-resident taxable person intendstoextendtheperiodofregistrationindicatedinhisapplicationof registration, he shall submit an application in form GST REG-11, before the end of the validity of registration granted to him – Rule 15(1) of CGST Rules,2017.

The application under rule 15(1) shall be acknowledged only on payment of the amount specified in section 27(2) of CGST and SGST–Rule 15(2) of CGST Rules, 2017.

### **Grant of registration to a person supplying online information and database access or retrieval services (OIDAR) from a place outside INDIA to a non-taxable online recipient**

Any person supplying online information and data base access or retrieval services from a place outside India to a non-taxable online recipient shall electronically submit an application for registration, duly signed, in form GST REG-11, Rule 15(1) of CGST Rules, 2017.

The applicant shall be granted registration, inform GSTREG-06, subject to such conditions and restrictions and by such officer as may be notified– Rule 15(2) of CGST Rules, 2017.

Principal Commissioner of Central Tax, Bengaluru West and all officers subordinate to him as officers empowered to grant registration in case of OIDAR services provided by person located in non-taxable territory and received by non-taxable online recipient – Notification No.2/2017- IT dated 19-6-2017.

He will also be authority for the purpose of administration of service suppliers in non-taxable territory providing cross border OIDAR services provided to 'non-taxable online recipient' in India.

### **Grant of registration to persons required to deduct tax at source or to collect tax at source**

Any person required to deduct tax in accordance with the provisions of section 51 or a person required to collect tax at source in accordance with the provisions of section 52 shall electronically submit an application, duly signed



or verified through electronic verification code, in form GST REG-07 for grant of registration – Rule 12(1) of CGST Rules.

The proper officer may grant registration after due verification and issue a certificate of registration in form GST REG-06 within a period of three working days from the date of submission of the application – Rule 12(2) of CGST Rules.

The registration can be cancelled after notice, enquiry and hearing. The cancellation shall be communicated to the said person electronically in form GST REG-08 – rule 12(3) of CGST Rules.

Superintendent of Central Tax has been specified as 'proper officer' for this purpose – CBI&C circular No.1/1/2017 dated 26-6-2017.

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.

Every commerce 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.

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.

### **Amendment of registration**

Every registered person and a person to whom UIN has been granted shall inform the proper officer of any changes in the information furnished at the time of registration, or that furnished subsequently, in the manner and within such period as may be prescribed—section 28(1) of CGST Act.

The proper officer may, on the basis of information furnished under section 28(1) or as ascertained by him approve or reject amendments in the registration particulars in the manner and within such period as may be prescribed. Approval





of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed – section 28(2) of CGST Act.

The proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard – second proviso to section 28(2) of CGST Act.

Any rejection or approval of amendments under the CGST Act / SGST Act shall be deemed to be a rejection or approval of amendment under the SGST Act / CGST Act – section 28(3) of CGST Act.

Superintendent of Central Tax has been specified as 'proper officer' for this purpose – CBI&C circular No.1/1/2017 dated 26-6-2017.

### **Illustration**

**Question** – State with reason whether the following statement is true or false – “When there is change in constitution of business results in change in PAN, the business entity can apply for amendment of registration in prescribed manner within 15 days.”

**Answer:** No. If PAN number changes, fresh a registration is required (as per rule 19) (1) (d) of CGST Rules.

### **Cancellation of GST registration**

The proper officer may, either on his own motion or on an application filed by registered person or his legal heir (in case of death of such person) cancel the registration, in the prescribed manner and within prescribed period – section 29(1) of CGST and SGST Act.

The proper officer will have regard to the following while cancelling registration–

- (a) Whether the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
- (b) Whether there is any change in the constitution of the business; or
- (c) Whether the taxable person, other than the person registered under section 25(3) [voluntary registration], is no longer liable to be registered under section 22 or 24 of CGST or SGST Act.

Superintendent of Central Tax has been specified as 'proper officer' for this purpose – CBI&C circular No.1/1/2017 dated 26-6-2017.



## **Application for cancellation of registration**

Application for cancellation of registration shall be filed electronically in form GST REG-16. He will give following – (a) the details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and (b) of capital goods held in stock on the date from which cancellation of registration is sought and liability thereon.

He will also furnish details of the payment against such liability. Application should be submitted thirty days of occurrence of the event warranting cancellation, either directly or through a Facilitation Centre – Rule 20 of CGST Rules, 2017.

Following persons cannot apply for cancellation under this provision –

- (a) person registered for TDS or TCS under rule 12
- (b) person who has obtained a unique identification number (UIN) [For them, separate provisions have been made for cancellation of registration]

Voluntary registration cannot be cancelled within one year– Application for cancellation of voluntary registration shall not be considered before the expiry of one year from the effective date of registration – proviso to Rule 20 of CGST Rules, 2017.

Cancellation of Registration for violation of rules or not doing business at declared place

The registration granted to a person is liable to be cancelled if the said person

- (a) does not conduct any business from the declared place of business; or
- (b) issues invoice or bill without supply of goods or services in violation of the provisions of CGST/SGST Act, or the rules made CGST/ SGST Act
- (c) violates provisions of section 171 of CGST/SGST Act (relating to Anti Profiteering – Rule 21 of CGST Rules, 2017).

## **Suo Motu cancellation of registration under GST by proper officer**

The proper officer may cancel the registration of taxable person from such date, including any retrospective date, as he may deem fit, where,-

- (a) The registered taxable person has contravened such provisions of the act or the rules made thereunder as may be prescribed; or
- (b) A person paying tax under section 10 [composition scheme] has Not Furnished returns for three consecutive tax period; or

- (c) Any taxable person, other than a person specified in clause(b), has not furnished returns for a continuous period of six months; or
- (d) Any person who has taken voluntary registration under section 25(3) has not commenced business within six months from the date of registration; or
- (e) Registration has been obtained by means of fraud, willful misstatement or suppression of facts [section 29(2) of CGST and SGST Act].

Superintendent of Central Tax has been specified as 'proper officer' for this purpose – CBI&C circular NO.1/1/2017 dated 26-6-2017.

Opportunity of hearing before cancellation of registration– The proper officer shall not cancel the registration with out the person an opportunity of being heard – proviso to section 29(2) of CGST Act.

### **Revocation of cancellation of registration**

Where registrations have been cancelled till 14-03- 2020 application for revocation of cancellation of registration can be filled up to 30-06-2020 (extension of period of application as one time measure to facilitate those who want to conduct business)

### **Final order of cancellation of registration**

If a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in form GST REG- 19, within thirty days from the date of submission of application submitted by registered person under rule 20 or the date of reply to the show-cause notice issued to him, cancel the registration, with effect from a date to be determined by him. He will notify the taxable person, directing to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5) of CGST and SGST Act – Rule 22(3) of CGST Rules, 2017.

The provisions of rule 22(3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself – Rule 22(5) of CGST Rules, 2017.

### **Cancellation of voluntary registration**

Section 29 (1) of the CGST Act, for clause (c), the following clause shall be substituted, namely:--

- "(c)the taxable person is no longer liable to be registered under section 22 or section 24 or ***intends to opt out of the registration voluntarily made under sub-section (3) of section 25:***"



- Thus, now it also provides for cancellation of registration which has been obtained voluntarily under section 25(3)

### **Section 30(1)-Time limit for revocation of cancellation of registration**

Section 30(1) of the CGST Act (Revocation of cancellation of registration)

- Time limit of 30 days to apply for revocation of cancellation of registration
- Made extendable by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days and by the Commissioner, for a further period not exceeding thirty days

### **Background of e-way bill provisions**

On introduction of GST w.e.f. 1-7-2017, many States have removed the physical barriers at State border for transport of goods by road. This has speeded up movement of goods to some extent.

In the absence of physical restrictions on movement of goods, some control is essential to ensure that goods are not clandestinely removed and sold. Hence a system of e-way bill has been introduced.

Provisions relating to E-way Bill have been made by amending rules 138, 138A, 138B, 138C and 138D in CGST Rules, 2017.

The revised rules were notified on 7-3-2018. These rules were made effective from 1-4-2018, except one provision relating to issue of e-waybill by transporter when value of consolidated cargo in inter-state movement of goods in a vehicle exceeds ₹50, 000 even if individual consignment value is less than ₹ 50,000. This provision may be brought into effect at a later stage.

### **Common portal to upload details of e-way bills**

Central Government has notified [www.ewaybillgst.gov.in](http://www.ewaybillgst.gov.in) as the common portal for generation of e-way bill [EWB System for short]. It is managed by National Informatics Centre, as common portal for furnishing e-way bill – Notification No.9/2018-CT dated 23-1-2018.

Various modes of generation of e-way bill – The e-way bill can be generated through various modes like Web (online), Android App, SMS, using bulk upload tool and API bases site to site integration.

The mobile app is not available on play store. The taxpayer has to register mobile numbers. He has to register the IMEI (International Mobile Equipment Identity) number of the mobile phones through which he intends to generate e-way bill. He will get link through SMS. Then he can download the app by clicking that link and enable it to get installed on his mobile.



Register or enroll on the portal before you start using the EWB portal

Consignor, Consignee or transporter, as the case may be, is required to get registered on the EWB system even if he has GSTIN.

After filling the GSTIN, he will get OTP and then he can generate username and password. It is advisable to have same username and password as used for GSTIN.

A Transporter not having GSTIN is required to enroll on the EWB system. Income Tax PAN is mandatory and it should match with details the transporter is uploading. Anyone of director, partner, manager or employee must have Aadhaar. It should be linked with mobile. Without that the transporter is 'Niradhar'.

After enrolment, the transporter will get a 15 digit number based on State Code, PAN and check digit. The transporter will get user name and password, which should be properly recorded.

### **Generation of e-way bill**

The e-way bill is of three parts.

Part A is description of goods, which is normally expected to be filled by consignor, but can be filled by others also.

Part B is description of mode of transport, which is normally expected to be filled in by transporter but in many cases, by other also.

Part C, The third part is unique e-way bill number and date, which is generated on common portal once both parts get filled in.

### **Who is required to generate part a of GST EWB - 01**

The consignor is required to furnish specified details before movement of goods commences, if value exceeds ₹50,000 electronically in Part A of form GST EWB-01. If the consignor is unregistered, the consignee is required to furnish the information.

Every registered person who causes movement of goods of consignment

Value exceeding fifty thousand rupees –

- (i) in relation to asupply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said



goods as specified in Part A of form GSTE WB-01, electronically, on the common portal along with such other information as may be required on the common portal, a unique number will be generated on the said portal— Rule 138(1) of CGST Rules.

E-way bill to be generated for inter-state if aggregate value in conveyance exceeds ₹50,000—

It is possible that in a conveyance, each consignment may be less than ₹50,000 but aggregate value of consignments may exceed ₹50,000. In such case, a provision has been made to generate e-way bill by transporter, courier or e-commerce operator.

Where the consignor or the consignee has not generated the e-way bill in Form GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-state supply, generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in Form GST EWB-02 on the common portal prior to the movement of goods.

Where the goods to be transported and supplied through an e-commerce operator or a courier agency, the information in Part A or FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

### **Contents of part a of e-way bill form GST EWB-01**

GSTIN of supplier – If supplier is unregistered, indicate 'URP'.

Place of dispatch – Giving PIN Code of place of dispatch.

GSTIN of recipient – If recipient is unregistered, indicate 'URP'.

Place of Delivery–PIN Code of place of delivery shall be indicated Document Number – Tax Invoice, Bill of Supply, Delivery Challan or Bill of Entry (when goods transported from port/airport/customs warehouse).

Document Date – The date of the aforesaid document should be supplied.

Value of goods – Value shall be as per section 15 of CGST Act, as declared in tax invoice, bill of supply or delivery challan. The value should be inclusive of IGST, CGST, SGST and GST Compensation Cess, but exclusive of value of exempted goods—Explanation 2 to Rule 138(1) of CGST Rules.

HSN Code – Six digits if annual turnover was above ₹5 crores and four digits if annual turnover is less than ₹5 crores.



Reason for Transportation – Select one from following –

1. 'Supply'
2. 'Export or Import'
3. 'Job Work'
4. 'SKD or CKD'
5. 'Recipient not known'
6. 'Line Sales'
7. 'Sales Return'
8. 'Exhibition or fairs'
9. 'For own use'
10. 'Others'.

### **Part b of the form GST EWB-01**

Part B of GST EWB-1 has the following two columns.

– Vehicle Number for Road

Transport Document Number

Part B to be filled in by consignor or consignee if movement of goods via own conveyance – Part B is to be filled by consignor or consignee if the movement of goods is in own conveyance or hired conveyance or public conveyance by road – rule 138(2) of CGST Rules.

Thee – way bill is valid only when Part A and Part B are filled in and e-way bill number is generated by system.

Filling of vehicle number – The vehicle number should be entered without space in between. The last number is required to be of four digits. Any middle number is required to be of two digits. For example, UP 1 345 should be entered as UP010345. AP 5 P 23 should be entered as AP05P0023. TN 10 DE 45 should be entered as TN10DE0045.

Deference vehicle number should start with DF. Temporary RC vehicle should start with TR

Bhutan vehicle should start with 'BP'



Nepal vehicle should start with BP [seems to be mistake in FAQ. It seems it should be 'NP'].

Filling of Part B by transporter or both Part A and Part B by transporter–

Part B is to be filled in by transporter if goods are booked with transporter for further delivery if part A is filled in by consignor or consignee who is registered under GST – Rule 138(3) of CGST Rules.

If the consignor is unregistered, the transporter shall fill in part A on the basis of information supplied by consignor, fill in part B and complete e-way bill – second proviso to Rule 138(3) of CGST Rules.

When Part B is not required to be filled in

If the goods are transported for a distance of less than fifty kilometers within the State or Union Territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of form GST EWB01 [third proviso to Rule 138(3) of CGST Rules]. If distance exceeds 50 Km, e-way bill is required to be generated.

Similarly, when transporter delivers goods to ultimate consignee at destination within the State or Union Territory, details of conveyance may not be furnished in GST EWB-01, if distance is less than 50 Km [proviso to Rule 138(5) of CGST Rules].

If distance is beyond 50 Km within the State or Union Territory, part B has to be filled in.

### **Generation of e-way bill by portal**

The portal generates e-way bill after both Part A and Part B are filled in. Following details will be filled in by portal after Part A and Part B are filled in.

E-way Bill No. – E-way Bill Date –

Generator – Supplier, recipient or transporter. Seems these details are to be filled in when Part A is filled in.

Valid from –

Valid until –

Validity up to midnight –The e-way bill will be valid up to midnight on last day – Explanation 1 to Rule 138(10) of CGST Rules.



Validity period of e-way bill will be counted by Portal on basis of PIN CODE Part A of e-way bill required PIN CODE of place of dispatch and place of delivery. On this basis, the Portal will calculate distance between place of dispatch and place of delivery and will calculate the validity period of e-way bill.

The present Part A does not have a column to indicate whether cargo is over-dimensioned. Hence, the Portal will calculate validity period on basis of e-way bill on basis of normal cargo. They have to add one Column in Part B where transporter has to indicate whether cargo is over dimensioned.

### **Validity of e-way bill generated**

An e-way bill or a consolidated e-way bill generated shall be valid as follows, for normal cargo – (1) Upto 100 km– one day (2) One day for every 100 km or part after first 100 km [Rule 138(10) of CGST Rules]

In case of over dimensioned cargo, an e-way bill or a consolidated e-way bill generated shall be valid as follows – (1) Up to 20 km – one day (2) One day for every 20 km or part after first 20 Km [Rule 138(10) of CGST Rules].

### **Procedure by transporter after generation of e-way bill**

The procedure to be followed by transporter is as follows –

E-way bill to accompany goods E-way bill in electronic or physical form must accompany the goods.

Transshipment of goods to another conveyance – Any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of conveyance in e-way bill on the common portal in form GST EWB-01 [Rule 138(5) of CGST Rules].

### **Cancellation of e-way bill**

If an e-way bill has been generated under the rule 138 of CGST Rules, 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) of CGST Rules.

Thus, if there is accident to truck, the driver should first rush to cancel e-way bill before sending injured persons to hospital and even before informing police and owner of the vehicle about accident!



An e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of Rule 138B [proviso to Rule 138(9) of CGST Rules].

It is not clear what would be the consequences if the transport is unable to cancel three-way bill. In such case, only option seems to show delivery as complete at place where goods are relying and prepare fresh e-way bill either for onward journey or for return to supplier. [We cannot imagine any other solution].

### **Extension of E-Way Bill due to COVID 2019 Notification No. 40/2020 Central Tax dated 5th May 2020**

- Seeks to extend the validity of e-way bills till 31-05-2020 for those e way bills which expire during the period from 20-03-2020 to 15-04-2020 and generated till 24-03-2020
- E-way bill issued on or before 24th March and whose validity were expiring between 20th March to 15th April, shall now be valid till 31st May 2020

### **Notification No 47 2020 Central Tax dated 9th June 2020**

- Amends Notification No 40 2020 Central Tax dated 05-05-2020 in respect of extension of validity of e way bill generated on or before 24 03 2020 (whose validity has expired on or after 20 th day of March 2020 till the 30th day of June
- Where an e way bill has been generated under rule 138 of the CGST Rules, 2017 on or before the 24th day of March, 2020 and whose validity has expired on or after the 20th March, 2020 the validity period of such e way bill shall be deemed to have been extended till the 30th June 2020

### **Document and devices to be carried by a person-in-charge of a conveyance**

The person in charge of a conveyance shall carry – (a) the invoice or bill of supply or delivery challan, as the case may be; and (b) a copy of three-way bill or three-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner [Rule 138A(1) of CGST Rules]. Rule 138A(1) (b) shall not apply for transport of goods by rail or air or vessel [proviso to Rule 138A (1) of CGST Rules].

Thus, for transport by rail, air or vessel, copy of e-way bill is not required to be carried.

## **Transport of goods for which e-way bill is not required**

No e-way bill is required to be generated in the following cases [Rule 138(14) of CGST Rules].

- (a) The goods being transported are specified in Annexure (see below) [these cover jewelry, coral, pearls, personal and household goods, currency].
- (b) The goods are being transported by a non-motorized conveyance.
- (c) The goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs.
- (d) In respect of movement of goods within such areas as are notified under Rule 138(14) (d) of the GST Rules of the concerned State. Thus, each State has been delegated powers to grant exemption from provisions relating to e-way bill within are anotified.
- (e) All items (except de-oiled cake) exempted under Notification No.2/2017-CT (Rate) and No.2/2017-IT 9Rate) both dated 28-6- 2017. The major among them are as follows – Fresh Meat, Fish Chicken, Eggs, Milk, Butter Milk, Curd, Natural Honey, Fresh Fruits and Vegetables, coffee, beans, wheat, rye, rice, Flour, Besan, Bread, Prasad, Salt, Bindi, Sindoor, Stamps, Judicial Papers, Printed Books, Newspapers, Bangles, Handloom, Pooja equipment, jute, khadi, national flag, raw silk.
- (f) Alcoholic liquor for human consumption, Petroleum crude, HSD, petrol, natural gas or aviation turbinefuel.
- (g) Where the supply of goods being transported is treated as no supply under Schedule III of the Act
- (h) Where the goods are being transported – (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or (ii) under customs supervision or under customs seal.
- (i) Where the goods being transported are transit cargo from or to Nepal or Bhutan.
- (j) Where the goods being transported are exempt from tax under notification No.7/2017-CT (Rate), dated 28-6-2017 and notification No.26/2017-CT (Rate), dated the 21-9-2017 as amended from time to time. Notification



No.7/2017-CT (Rate) exempts supplies of goods by Canteen Stores Department, Notification No. 26/2017-CT (Rate) exempts intra-State supplies of heavy water and nuclear fuels by Department of Atomic Energy to Nuclear Power Corporation Ltd.;

- (k) Any movement of goods caused by defense formation under Ministry of defense as a consignor or consignee;
- (l) Where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;
- (m) Where empty cargo containers are being transported; and
- (n) Where the goods are being transported up to a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with Rule 55.

### **Goods for which e-way bill not required as per annexure to rule 138(1)**

E-way bill is not required for transport of following goods as specified in Annexure A to Rule 138(14) of CGST Rules:

- ❖ Liquefied petroleum gas (LPG) for supply to household and non-domestic exempted category (NDEC) customers
- ❖ Kerosene oil sold under PDS
- ❖ Postal baggage transported by Department of Posts
- ❖ Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
- ❖ Jewelry, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
- ❖ Currency
- ❖ Used personal and household effects
- ❖ Coral, unworked (0508) and worked coral (9601).

### **Road checks and Verification documents and conveyances**

There are no physical barriers like check posts. Hence, provision of road checks has been made.

The Commissioner or an office empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all Inter-State and Intra-State movement of goods [Rule 138B(1) of CGST Rules]

The physical verification of conveyances shall be carried out by the proper officer as authorized by the Commissioner or any officer empowered by him in this behalf – Rule 138B (3) of CGST Rules.

### **Inspection and verification of goods during road checks**

A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A or GORM GST EWB- 03 within twenty four hours of inspection and the final report in Part B of FORM GST EWB- 03 shall be recorded within three days of such inspection [Rule 138C(1) of CGST Rules]

## RECORDS AND RETURNS

### Accounts and other records

Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of – (a) production or manufacture of goods (b) inward or outward supply of goods or services or both (c) stock of goods (d) input tax credit availed (e) output tax payable and paid, and (f) such other particulars as may be prescribed – section 35(1) of CGST Act.

Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business – first proviso to section 35(1) of CGST Act.

Records in electronic form in prescribed manner–The registered person may keep and maintain such accounts and other particulars in the electronic form in the prescribed manner – second proviso to section 35(1) of CGST Act.

Demand of tax if goods or services not accounted for–If the registered person fails to account for goods or services or both under section 35(1) of CGST Act, the proper officer shall determine the tax payable on such goods or services as if such goods or services or both have been supplied. Provisions of section 73 and 74 will apply MUTatis MUTandis for recovery of such tax - section 35(6) of CGST Act

Superintendent of Central Tax has been designated as 'proper officer' for the purpose of raising demand – CBI & C circular No.3/3/2017-GST dated 5-7-2017[State Government will prescribe 'proper officer' for the purpose of SGST in the respective State].

### Maintenance of accounts by registered persons

Every registered person shall keep and maintain, in addition to the particulars mentioned in section 35(1), a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with relevant documents, including invoices, bills of supply, delivery challan, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers –Rule 56(1) of CGST and SGST Rules, 2017.

Stocks records – Every registered person (other than those under composition scheme) shall maintain accounts of stock in respect of each commodity 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 samples and balance of stock including raw materials, finished goods, scrap and wastage thereof–Rule 56(2) of CGST and SGST Rules, 2017.

This is not required for a person paying tax under section 10 [composition scheme].

Record of Advances received and adjusted - Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto – Rule 56(3) of CGST and SGST Rules, 2017.

Record of tax payable, tax collected, input tax credit etc. – Every registered person (except a person paying tax under section 10 i.e., composition scheme), shall keep and maintain an account, containing the details of tax payable (including tax payable under reverse charge and purchases from unregistered persons), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit note, debit note, delivery challan issued or received during any tax period – Rule 56(4) of CGST and SGST Rules, 2017.

Details of supplies received and supplies made- Every registered person shall keep the particulars of – (a) names and complete addresses of suppliers from whom he has received the goods or services (b) names and complete addresses of the persons to whom he has supplied the goods or services (c) the complete addresses of the premises where the goods are stored by him, including goods stored during transit along with the particulars of the stocks to red therein–Rule 56(5) of CGST and SGST Rules, 2017.

### **Maintenance of books of accounts at principal place of business**

Every registered person shall keep the books of account at the principal place of business and at every related place(s) of business mentioned in his certificate of registration. Such books of account shall include any electronic form of data stores on any electronic device – Rule 56(7) of CGST and SGST Rules, 2017.

### **Tax invoice, bill of supply, debit note, credit note**

Tax Invoice, Credit and Debit Notes are very important documents in administration of GST, E-documents are permitted, even for transit checks and border posts.



Revised Invoice is also a 'tax invoice' – For purpose of section 31 of CGST Act, the expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier – Explanation to section 31 of CGST Act.

Supplementary invoice is Debit Note – For the purpose of CGST Act, 'Debit Note' shall include a supplementary invoice – Explanation to section 32 of CGST Act.

Supplier – "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 – section 2(102) of CGST Act.

Tax invoice may not be issued if value is less than ₹ 200 – Tax invoice may not be issued if value goods or services or both less than ₹ 200, subject to such conditions and in such manner as may be prescribed – section 31(3) of CGST Act.

Unregistered person should issue normal commercial invoice – An unregistered person should issue normal commercial invoice – FAQ No.17 – Invoices and returns issued by CGE & C on 28-8-2017.

### **Tax Invoice in respect of goods**

A registered person supplying taxable goods shall, before or at the time of, - (a) removal of goods for supply to the recipient, where the supply involves movement of goods, or (b) delivery of goods or making available thereof to the recipient, in any other case, —issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed—section 31(1) of CGST Act.

Removal – Meaning – "Removal", in relation to goods, means –

- (a) Dispatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier, or
- (b) Collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient – section 2(96) of CGST Act.

Tax Invoice or bill of supply to accompany transport of goods when e-way bill not required – The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of Rules 46, 46A or 49 of CGST Rules in a case where such person is not required to carry an e-way bill under CGST Rules – Rule 55A of CGST Rules inserted w.e.f. 23-1-2018.



## **Tax Invoice in case of continuous supply of goods**

“Continuous supply of goods ‘means a supply of goods which is provided, or agreed to be provided, continuously or on a recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify – section 2(32) of CGST Act.

In case of continuous supply of goods, where successive statement of account or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received – section 31(4) of CGST Act.

## **Delivery note and tax Invoice when goods sent on approval basis**

Goods (including jewelry) can be cleared on approval basis within the State or outside the State. Delivery challan should be issued at the time of removal of goods. E-way bill will also be issued wherever applicable. The person carrying goods for such supply can carry the invoice book so that he can issue the invoice once the supply is fructified. If sale is outside the State, IGST will be payable–CBI & C circular No.10/10/2017- GST dated 18-10-2017.

Notwithstanding anything contained in section 37(1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at any time of supply or six months from the date of removal, whichever is earlier– section 31(7) of CGST Act.

## **Thus, tax invoice must be issued within six months from removal.**

Removal of art work to galleries for subsequent sale – Artists remove their art works to various galleries where these are exhibited and sold from such galleries, if work is selected by buyer. In such case, the art works should be removed under delivery challan and e-way bill (where applicable). Such movement may be within the State or outside the State. Once the art work is sold, tax invoice should be generated. If the sale is inter-state, IGST should be charged. If sale is within State, obviously CGST and SGST should be charged – CBI&C circular No.22/22/2017-GST dated 21-12-2017.

Invoice for transportation of goods in knocked down conditions in more than one consignments

Where the goods are being transported in a semi-knocked down or completely knocked down condition (a) the supplier shall issue the complete invoice before dispatch of the first consignment (b) the supplier shall issue a delivery challan



for each of the subsequent consignments, giving reference of the invoice (c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and (d) the original copy of the invoice shall be sent along with the last consignment—Rule 55(5) of CGST and SGST Rules, 2017.

Really, this procedure is possible and practical when machinery is dispatched in span of few days. In case of large machinery, if supply is likely to be spread over months or even years, separate invoice for each consignment is the only practical solution.

Delivery challan instead of tax invoice for transportation of goods in some specific circumstances

For the following purposes, a delivery challan may be issued by consigner instead of tax invoice—(a) supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known (b) Transportation of goods for job work (c) transportation of goods for reasons other than by way of supply, or (d) such other supplies as may be notified by the Board – Rule 55(1) of CGST and SGST Rules, 2017.

The delivery challan, serially numbered should be issued at the time of removal of goods for transportation, containing following details (i) date and number of the delivery challan (ii) name, address and GSTIN of the consigner, if registered (iii) name, address and SGTIN or UIN of the consignee, if registered (iv) HSN code and description of goods (v) quantity (provisional, where the exact quantity being supplied is not known) (vi) taxable value (vii) tax rate and tax amount – IGST, CGST, SGST or UTGST, where the transportation is for supply to the consignee (viii) place of supply, in case of inter-state movement, and (ix) signature.

Delivery challan to be in triplicate—The delivery challan shall be prepared in triplicate, in case of supply of goods, with the following marking—(a) the original copy being marked as ORIGINAL FOR CONSIGNEE (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and (b) the triplicate copy being marked as TRIPLICATE FOR CONSIGNER—Rule 52(2) of CGST and SGST Rules, 2017.

Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared in as specified in Rule 138 (e-way bill) – Rule 55(3) of CGST and SGST Rules, 2017.

### **If tax invoice could not be issued at the time of removal**

Where the goods being transported are for the purpose of supply to the recipient

but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods – Rule 55(4) of CGST and SGST Rules, 2017.

This can happen when weighment is to be done after clearance of goods.

If it is not possible to issue tax invoice, at least delivery challan should be issued.

### **Tax invoice in respect of services**

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

Other document instead of tax invoice or tax invoice may not be issued – Central/ State Government may, on the recommendation of the Council, by notification and subject to such conditions and limitations as maybe prescribed, specify the categories of services, in respect of which (a) any other document issued in relation to the supply shall be deemed to be a tax invoice, or (b) tax invoice may not be issued – section 32(2) of CGST Act.

### **Tax Invoice in case of continuous supply of services**

“Continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify – section 2(33) of CGST Act.

In case of continuous supply of services, provisions for issue of tax invoice are as below. These provisions are subject to section 31(3) (d) of CGST Act, which provide for issue of receipt voucher when advance is received – section 31(5) of CGST Act.

Before due date of payment – Where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before due date of payment [However, if advance is received, receipt voucher is required to be issued and not tax invoice].

When due date of payment is not ascertainable, date on which payment received – Where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when supplier receives payment [However, if advance is received, receipt voucher is required to be issued and not tax invoice].



When payment linked with completion of event i.e., milestones—Where the payment is linked to the completion of an event (i.e., milestones as specified in contract), the invoice shall be issued on or before the date of completion of that event.

For example, in construction contracts, various milestones (like plinth, first floor, and slab et.) may be prescribed for payments. In that case, tax invoice is required to be issued when each such milestone is reached.

Tax Invoice when supply of services ceases before completion of supply. In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply affected before such cessation – section 31(6) of CGST Act.

### **Time limit for issuing tax invoice for services**

The invoice in case of taxable supply of services, shall be issued within a period of thirty days from the date of supply of service – Rule 47 of CGST and SGST Rules, 2017.

If the supplier of services is an insurer or a banking company or a financial institution, or NBFC, invoice can be issued within forty-five days from the date of supply of service—first proviso to Rule 47 of CGST and SGST Rules, 2017.

Relaxations to insurance, Bank, FI, telecom operator and NBFC in issuing Invoice for own branch/division in other States.

As per section 25(5) of CGST and SGST Act, if a person (with single PAN) has establishments in different States, he requires GST registration in each State. Such establishments in different States are treated as 'distinct persons' for the purpose of CGST and SGST Act.

The establishment in one State may supply service to establishment in another State. This is particularly in sectors like banking, insurance, NBFC, Financial Institutions and telecom. In such cases, they may be given relaxation by Government on issue of invoice either when the supplier records the same in his books or on quarterly basis – second proviso to Rule 47 of CGST and SGST Rules, 2017.

So far such notification has not been issued.

Such inter-State invoices and transfers are required as GST is a destination based tax and tax is to be paid where the services or goods are finally consumed.

## **Tax Invoices issued by Bank, FI, NBFC and insurance company**

Bank, FI, NBFC and insurer may issue consolidated tax invoice on monthly basis. It can be made available physically or electronically. It may not have serial number and address of recipient. However, it should have other details as specified in Rule 46 of CGST and SGST Rules – Rule 54(2) of CGST and SGST Rules, 2017 amended on 13-10-2017. [The word 'consolidated' was inserted w.e.f. 13-10-2017. The word 'shall' was changed to 'may' w.e.f. 15-11-2017].

This relaxation shall also apply to Bill of Supply, Receipt Voucher, Refund Voucher, Payment Voucher, Debit Note, Credit Note and Revised Invoice.

## **Tax Invoice of Goods transport agencies**

In case of goods transport agency (GTA) supplying taxable services in relation to transportation of goods by road in a goods carriage, the GTA shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing (a) the gross weight of the consignment (b) name of the consignor and consignee (c) registration number of goods carriage in which the goods are transported (d) details of goods transported (e) details of place of origin and destination (f) GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and (g) other information as prescribed under Rule 46 of CGST Rules, 2017 – Rule 54(3) of CGST and SGST Rules, 2017.

Ticket issued in case of passenger transportation service is tax invoice where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as mentioned in Rule 46 of CGST and SGST Rules – Rule 54(4) of CGST and SGST Rules, 2017.

## **Tax Invoice by Input service distributor**

An ISD invoice or an ISD Credit note issued by an Input Service Distributor shall contain the following details:-

- (a) name, address and GSTIN of the Input Service Distributor
- (b) a consecutive serial number (not exceeding 16 characters), in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolized as, "-", "/", respectively, and any combination thereof, unique for a financial year
- (c) date of its distributed name, address and GSTIN of the recipient to whom the credit is distributed



- (d) amount of the credit distributed; and
- (e) Signature of digital signature of the Input Service Distributor or his authorized representative – Rule 54(1) of CGST and SGST Rules, 2017.

Invoice of ISD of banking, FI or NBFC – Where the Input Service Distributor is an office of a banking company or a financial institution or NBFC, a tax invoice shall include any document in lieu thereof, by whatever name called whether or not serially numbered but containing the information as prescribed above – proviso to Rule 54(1) of CGST and SGST Rules, 2017.

### **Invoice-cum-Bill of supply**

A registered person supplying taxable as well as exempted goods or services or both can issue 'invoice-cum-bill of supply' – Rule 46A of CGST and SGST Rules, 2017 inserted w.e.f. 13-10-2017.

### **Issue of revised invoices for goods sold during period prior to registration**

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

This is to enable customer to avail input tax credit during the transition period.

A taxable person is required to apply for registration within 30 days from the date on which he becomes liable under GST. The aforesaid provision covers the period between date of application and date of issuance of registration certificate but not earlier period during which he was not liable to pay GST.

### **Illustrations:**

**Question**—Chidanand Products Pvt. Ltd., started its business of supply of goods on 1st August, 2017. Its turnover exceeds ₹20, 00,000 on 5th September, 2017. It applied for registration on 28th September, 2017 and granted registration certificate on 6th October, 2017. Guide the company regarding invoices to be issued between 5th September, 2017 and 6th October, 2017 to registered dealers. Further, it had also made supplies to unregistered dealers in that period. How it can raise invoices?

**Answer:** Chidanand Products Pvt. Ltd., started should issue revised invoice against the invoices issued earlier, with tax within 30 days from 6-10-2017 i.e., before 5-11-2017. In case of supplies to registered persons, their GSTIN should be indicated in supplementary invoice which should be uploaded for the period 5-9-2017 to 6-10-2107 in GSTR-1 return so that the recipient can take Input Tax Credit. Revised invoice is required in case of supplies made to unregistered personal so for the period 5-9- 2017 to 6-10-2017.

### **Contents of tax invoice**

Rule 54 of CGST Rules, 2017 make specific provisions in respect of invoice of Input Service Distributor, Banks, FI, NBFC, GTA and passenger transportation service.

Excluding these special cases, general requirement of invoices is given in Rule 46 of CGST and SGST Rules, 2017.

Relaxation is giving HSN code or accounting code of service

HSN code is an eight-digit code. Service Accounting Code is a six-digit code. However, in invoice, relaxation can be given by CBI & C in indicating the number of digits of HSN code for goods or the Accounting Code for services for class of registered persons—first proviso to Rule 46 of CGST and SGST Rules, 2017.

The relaxation is as follows –

HSN code at four-digit is required for tax payers having annual turnover in preceding year below ₹5 crore. In case of taxable persons having annual turnover above ₹5 crores, HSN code at six-digit level is required – Instruction No.13 to form GSTR-1 and Notification No.12/2017-CT, dated June 28, 2017, as amended vide Notification No. 78/2020 – CT, dated October 15, 2020

Marking on invoices for exports or supplies to SEZ

In case of exports of goods or services or supplies to SEZ unit or developer, the invoice shall carry an endorsement "SUPPLY MEANT FOR EXPORT/ SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORIZED OPERATIONS ON PAYMENT OF INTEGRATED TAX (IGST)" or "SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORIZED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX (IGST)", as the case maybe.

In lieu of details specified in clause (e), the invoice shall contain the following details: (i) name and address of the recipient (ii) address of deliver and (iii) name of the country of destination – third proviso to Rule 46 of CGST and SGST Rules, 2017 amended w.e.f. 27-7-2017.



## **Consolidated daily tax invoice when sale to unregistered person**

A registered person may not issue a tax invoice in accordance with the provisions of section 31(3) (b) of CGST Act, subject to the following conditions: - (a) the recipient is not a registered person; and (b) the recipient does not require such invoice.

In such case, the registered person shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies– fourth proviso to rule 46 of CGST and SGST Rule, 2017.

## **Marking on invoice and number of copies of invoice**

The invoice shall be prepared in triplicate, in case of supply of goods, with following marking– (a) the original copy being marked as ORIGINAL FOR RECIPIENT (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and (c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER – Rule 48(1) of CGST and SGST Rules, 2017.

In case of supply of services, invoice shall be in duplicate with following marking – (a) the original copy being marked as ORIGINAL FOR RECIPIENT (b) The duplicate copy being marked as DUPLICATE FOR SUPPLIER – Rule 48(2) of CGST and SGST Rules, 2017.

Amount of tax to be indicated in tax invoice and other documents

Notwithstanding anything contained in CGST Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which will form part of the price at which such supply is made – section 33 of CGST Act.

Information of serial numbers on monthly basis

The serial number of invoices issued during a tax period shall be furnished electronically through the Common Portal in FORM GSTR-1–Rule 43(3) of CGST and SGST Rules, 2017.

There is specific column in GSTR 1 return for this purpose.

## **Bill of supply when no tax invoice is required**

A registered taxable person supplying exempted goods or services or both or paying tax under the provisions of Section 10 (composition scheme) shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed – section 31(3)(c) of CGST Act.



No bill of supply for small value goods and services – The registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees, subject to conditions as may be prescribed – proviso to section 31(3)(c) of CGST and SGST Act.

### **Contents of Bill of supply**

A bill of supply referred to in section 31(3) (c) of CGST and SGST Act shall be issued by the supplier containing details specified in Rule 49 of CGST and SGST Rules, 2017.

### **Receipt voucher in case of receipt of advance**

A registered taxable person shall, on receipt of advance payment with respect to any supply of goods or services by him, issue a receipt voucher or any other document, including therein such particulars as may be prescribed, evidencing receipt of such payment – section 31(3)(d) of CGST Act.

If subsequently, supply is not made and tax invoice not issued, refund voucher should be issued against such payment – section 31(3) (e) of CGST Act.

If against an advance, tax Invoice is issued in same tax period, advance need not be shown in the GSTR 1 return. Details of invoice itself should be uploaded. Details of advances against which supply is not made during the month shall be reported in consolidated basis in table 11 of GSTR1. As and when invoice is issued against the advance, the invoices should be uploaded in form GSTR 1 and adjustment of tax paid against these advances against the tax payable on the invoices uploaded in GSTR 1 shall be done in table 11 of form GSTR-1 – FAQ No.18 of FAQ on Mining issued by Directorate General of Taxpayer Services on 31-7- 2017.

This is also made clear in Note No.15 below the form GSTR-1.

Advance can be adjusted in totality. While raising invoice subsequent to receipt of advance, tax payable will get reduced by the amount of tax paid on advance and balance amount of advance may be adjusted against future supplies – FAQ No.20 of FAQ on Mining issued by Directorate General of Taxpayer Services on 31-7-2017.

No tax on advance received in respect of goods–Provision for payment of tax on advances received have been deleted vide Notification No.66/2017- CT dated 15-11-2017. This relaxation is in respect of supply of goods and not in respect of supply of services.

### **Required contents of receipt Voucher**

A receipt voucher referred to in section 31(3) (d) of CGST Act shall contain particulars as specified in Rule 50 of CGST and SGST Rules, 2017.



Provision for payment of tax on advances received have been deleted vide Notification No.66/2017-CT dated 15-11-2017. This relaxation is only in respect of supply of goods and not in receipt of services.

### **Contents of refund Voucher**

Contents of Refund Voucher are specified in Rule 51 of CGST and SGST Rules, 2017. The requirements are identical with requirements of Receipt Voucher as specified in rule 50, except that cross reference of Receipt Voucher is required and amount of refund is to be indicated, instead of amount received as advance.

If refund voucher is made, it should be for full value of advance including the amount of GST:-FAQ No.19 of FAQ on Mining issued by Directorate General of Taxpayer Services on 31-7-2017.

### **Invoice and payment voucher when GST payable under reverse charge, if supplier not registered**

A registered person who is liable to pay tax under section 9(3) or 9(4) of CGST Act [reverse charge] shall issue an invoice in respect of goods or services received by him on the date of receipt of goods or services from the supplier who is not registered under the Act – section 312(3)(f) of CGST Act.

Such invoice is required only when supplier is not registered under GST, as the recipient is required to pay tax when supplier is not registered under GST.

Such invoice can be issued on monthly basis in consolidated form, if reverse charge applies under section 9(4) of CGST Act, where value of such supplies exceeds ₹ 5,000 in a day from any or all suppliers—second proviso to Rule 46 of CGST and SGST Rules, 2017.

This is obviously to reduce compliance costs.

This relaxation is only in respect of invoices where reverse charge is under section 9(4) of CGST Act. Thus, when tax is payable under reverse charge under section 9(3) of CGST Act [corresponding section 5(3) of IGST Act] (in case of specified services), consolidated invoice is not permissible.

When payment is made by recipient of supply to supplier in respect of supplier where tax is payable under reverse charge, payment voucher is required to be issued – section 31(3)(g) of CGST Act.

### **Contents of payment voucher**

Contents of Payment Voucher are specified in Rule 52 of CGST and SGST Rules, 2017. Broadly, contents are similar to receipt voucher with some changes.

## **Tax cannot be collected by unregistered taxable person in his invoice**

A person who is not a registered taxable person shall not collect in respect of any supply of goods or services or both any amount by way of tax under the CGST/SGST Act. Further, no registered person shall collect tax except in accordance with the provisions of this act and the rules made there under – section 32 of CGST Act.

## **Credit and Debit notes**

Debit Note or Credit Notes can be issued only in specified situations.

Credit Note means a document issued by a registered person under section 34(1) – section 2(17) of CGST Act.

Debit Note means a document issued by a registered person under section 34(1) – section 2(18) of CGST Act.

Credit Note cannot be issued on account of renegotiation of prices after supply. In such cases, credit note or debit note should be issued without showing GST. This would be more so when recipient is in position to avail input tax credit.

Such debit note or credit note is not required to be uploaded in monthly return.

### **What is debit note and credit note?**

When goods supplied are returned or when there is a revision in the invoice value due to goods (or services) not being up to the mark or extra goods being issued, then a Debit Note or Credit Note is issued by the supplier and receiver of goods and services.

a debit note or a credit note can be issued in 2 situations–

1. **When the amount payable by buyer to seller decreases** – Sometimes there might be change in the value of goods after the goods are being delivered and invoice is issued by the seller. This may happen due to a return of goods or due to bad quality of the goods delivered. In these circumstances, Debit Note is issued by the purchaser to the seller.

The Debit Note provides details of the amount of money debited from the sellers' account along with reason.

2. **When the amount payable by buyer to seller increases**–When the value of invoice increases due to extra goods being delivered or the goods already delivered have been charged at an incorrect value a Debit Note is required to be issued.

The Debit Note, in this case, is issued by the seller to the buyer. And the buyer as an acknowledgment to the receipt of Debit Note issues a Credit Note.

**Credit note cannot be issued for bad debts.**

Where a tax invoice has been issued for supply of any goods or services or both and the taxable value of tax charged in that tax invoice is found to exceed both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed – section 34(3) of CGST Act.

Declaration in return of details of credit notes issued– Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in the manner specified in this Act – section 34(2) of CGST Act.

Reduction in tax liability subject to unjust enrichment – Reduction in output tax liability of the supplier shall be permitted if the incidence of tax and interest on such supply has been passed on to any other person– proviso to section 34(2) of CGST Act.

Thus, if the credit note is not accepted by recipient and if he does not reverse equivalent input tax credit, reduction in tax liability will not be allowed to supplier.

Debit note or supplementary invoice with GST if amount charged was less where a tax invoice has been issued for supply of any goods or services or both and the taxable value and / or tax charged in that tax invoice is found to be less than the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed – section 34(3) of CGST Act.

‘Debit Note’ shall include a supplementary invoice – Explanation to section 34(4) of CGST Act.

Declaration of debit note in the return of supplier– Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed – section 34(4) of CGST Act.

## Requirements of revised tax invoice and Credit or debit notes

A revised tax invoice referred to in section 31 and credit and debit note referred to in section 34 shall contain the particulars specified in Rule 53(1) of CGST and SGST Rules, 2017.

Revised Invoice for the period between date of commencement of business and date of registration.

If application for GST registration is made within 30 days from the date the person was liable to pay GST, he can issue revised invoices for GST for period prior to registration. The provisions are contained in Rule 53(2) of CGST and SGST Rules, 2017. The recipient can take ITC on the basis of such revised invoice.

Every registered person who has been granted registration with effect

From a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration—Rule 53(2) of CGST and SGST Rules, 2017.

The registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period – first proviso to rule 53(2) of CGST and SGST Rules, 2017.

In case of inter.-State supplies, where the value of a supply does not exceed ₹2,50,000, a consolidated revised invoice may be issued separately in respect of all recipients located in a State, who are not registered under the Act – second proviso to rule 53(2) of CGST and SGST Rules, 2017.

## **Invoice issued after suppression of facts, fraud, seizure and confiscation**

Any tax paid in terms of sections 74, 129 and 130 of CGST Act are not eligible for input tax credit. This covers GST paid after detection of fraud or suppression or goods removed in contravention of GST Act – section 17(5)(i) of CGST Act – same provision in Rule 36(3) of CGST and SGST Rules, 2017.

In such cases, if the supplier issues Tax Invoice at a later stage, it should be clearly marked as 'INPUT TAX CREDIT NOT ADMISSIBLE' – Rule 53(3) of CGST and SGST Rules, 2017.

## **Returns under GST**

Return is very important aspect of GST as all control over tax paid and Input tax credit availed is on the basis of return filed by taxable person. The returns are to be filed electronically.



The present GST Rules envisaged filing of three returns per month and Input Tax Credit (ITC) on the basis of matching of invoices, debit notes and credit notes. However, this scheme could not be implemented by GSTN. Hence, revised scheme of returns is being implemented. The scheme, as approved in the GST Council Meeting on 4-5-2018 is briefly explained below.

### **Scheme of filling returns**

GST Council has approved principle for filing of new return design at its 27th meeting on 4-5-2018. The proposed changes are as follows:

**Stage I** – Present provisions to continue up to October 2018 –Present Provision of filing monthly GSTR-3B and GSTR-1 will continue from May 2018 up to October 2018. Input Tax Credit will be allowed on provisional credit basis as is presently allowed in GSTR-3B return. GSTR-4 return by taxable persons under composition scheme will also continue. This is stage I of revised scheme of returns.

**Stage II** – Invoice wise data upload (on daily basis) and monthly return – In stage 2, new return will be introduced. This will have facility for invoice-wise data upload and also facility for claiming input tax credit on self-declaration basis (as at present under GSTR-3B). The taxable person will be constantly supplied with information about gap between credit available to them as per invoices uploaded by their suppliers and the provisional credit being claimed by them. Taxpayer shall be also given user friendly IT interface and offline IRT tool to upload the invoices. This stage II will be from October 2018 to March, 2019.

**Stage III** – Input Tax Credit only on the basis of invoices uploaded by supplier– This stage is expected to start in April, 2019. Input tax credit will be allowed only on the basis of invoices, debit notes and credit notes uploaded by the suppliers from whom the taxable person has received the goods and not on self-declaration basis.

**One monthly/quarterly return** – All taxpayers (except those under composition scheme and those having nil transactions) shall file one monthly return. Return filing dates shall be staggered based on the turnover of the registered person to manage load on the IT system. Composition dealers and dealers having nil transaction shall have the facility to file quarterly return as at present. Return will be simplified.

**Uploading of invoices by supplier of goods and services** – There shall be unidirectional flow of invoices uploaded by the supplier on anytime basis during the month. This will be a valid document to avail input tax credit by the buyer. Buyer would also be able to continuously see the uploaded invoices during the

month. Invoices for B2B transaction shall need to use HSN at four-digit level or more to achieve uniformity in the reporting system. Supplier shall be also given user friendly IT interface and offline IT tool to upload the invoices.

Calculation of tax liability by system – In stage III, the B2B suppliers will have to fill invoice-wise details of the outward supply made by them, based on which the system will automatically calculate his tax liability. The input tax credit will be calculated automatically by the system based on invoices uploaded by his suppliers.

Recovery from supplier if tax not paid by supplier but can be made from buyer also in specified cases – In case of default in payment of tax by the supplier, recovery shall be made from the supplier. However, reversal of input tax credit from buyer can be ordered by the revenue authorities in exceptional situations like (a) missing dealer (b) closure of business by supplier or (c) supplier not having adequate assets, etc.

Recovery of tax (from seller) or reversal of input tax credit (by buyer) shall be through a due process of issuing notice and order. The process would be online and automated to reduce the human interface.

Blocking of uploading of invoices by supplier if he is in default – Uploading of invoices by the supplier to pass input tax credit who has defaulted in payment of tax above a threshold amount shall be blocked to control misuse of input tax credit facilitit. Similar safeguards would be built with regard to newly registered taxable persons also. Analytical tools would be used to identify such transactions at the earliest and prevent loss of revenue.

## Other returns

Returns to be filed by other persons are as follows –

Form of return	Person required to file return	Periodicity
GSTR-1	Details of invoices, debit notes and credit notes issued for supplies by taxable person (including casual taxable person) other than under composition scheme	The due dates for GSTR-1 are based on your turnover.



## Returns under GST

Form of return	Person required to file return	Periodicity
GSTR-3B	Taxable person (including casual taxable person) other than under composition scheme	Monthly, within 20 days from end of month (Not Opted QRMP)
GSTR-4	Taxable person under composition scheme	Quarterly within 18 days from end of quarter
ITC-04	Details of inputs sent for job work	Quarterly within 25 days from end of quarter
GSTR-5	Return by non-resident taxable person	Within 20 days from end of taxable period or seven days after end of validity period of registered person
GSTR-5A	Taxable person supplying OIDAR services	Monthly, within 20 days from end of month
GSTR-6	Input Service Distributor	Monthly, within 13 days from end of month
GSTR-7	Return by person required to deduct tax at source under section 51	Monthly, within 10 days from end of month
GSTR-8	Return by e-commerce operator of tax collected at source under section 52	Monthly, within 10 days from end of month
GSTR-9	Annual Return	On or before 31st December after close of financial year
GSTR-9A	Annual Return by taxable person under composition scheme	On or before 31st December after close of financial year
GSTR-9B	Annual Return by e-commerce operator required to collect TCS under section 52	On or before 31st December after close of financial year
GSTR-9C	Audit report of aggregate turnover exceeds Rupees Two crores	With annual return
GSTR-10	Final Return after cancellation of GST registration	Within three months from date of cancellation or date of cancellation order, whichever is later
GSTR -11	Inward supply details by persons having UIN	28th of the month following the month for which statement is filed.





## Meaning of 'Valid return'

"Valid return" means a return furnished under section 39(1) of CGST Act on which self-assessed tax has been paid in full – section 2(117) of CGST Act.

Thus, a return is not valid unless all tax dues as shown in the return (including of previous period, interest and penalty) are paid in full.

## Furnishing details of outward supplies within ten days in form GSTR-1

Every registered taxable person, other than (a) an input service distributor (b) A non-resident taxable person and (c) a person paying tax under the provisions of section 10 (composition scheme), (d) section 51 (TDS) or (e) section 52 (TCA by e-commerce operator), shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or as may be prescribed, the details of outward supplies of goods or services or both effected, during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within the time and in the manner as may be prescribed – section 37(1) of CGST Act.

Such details cannot be supplied during eleventh day to fifteenth day of the month – first proviso to section 37(1) of CGST Act.

"Details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies during any tax period – Explanation to section 37 of CGST Act.

Commissioner in Board can extend the time limit for furnishing such details by issuing notification - second proviso to section 37(1) of CGST Act.

To ensure uniformity all over India, such notification shall be issued by Commissioner or Joint Secretary in Board – section 168 (2) of CGST Act.

Any extension granted by Commissioner of State Tax or Commissioner of Union Territory Tax shall be deemed to be notified by Commissioner in Board – third proviso to section 37(1) of CGST Act. Thus, extension by Commissioner of State GST/UTGST is sufficient.

Input service distributor, a person paying tax under the provisions of section 10 (composition scheme) or section 51 (TDS) or section 52 (TCS) is not required to furnish such details.

Procedure for submission of details – The details of outward supplies of goods or services or both under section 37 shall be furnished in form GSTR-1 electronically through the Common Portal – Rule 59(1) of CGST and SGST Rules, 2017.



In case of inter-State and intra-State supplies to registered person, invoice-wise details should be furnished (B2B transactions)

In case of inter-State supplies to unregistered person where invoice value is more than ₹ 2.50 lakhs, invoice-wise details shall be submitted. Where value is less than ₹2.50 lakhs, consolidated State-wise details shall be submitted, with State codes (B2C inter-State transactions)

In case of intra-state supplies to unregistered persons, only consolidated details shall be submitted (irrespective of value of each invoice) – Rule 59(2) of CGST and SGST Rules, 2017. [B2C intra-state transaction]

Late fee if GSTR-1 return not filed in time – Fee for late filing of return is ₹25 per day of CGST and SGST/UTGST each [total ₹ 50 per day]. In case of nil return, the late fee is ₹ 10 per day of CGST and SGST/UTGST each [total ₹ 20 per day]. – Notification No. 4/2018-CT dated 23-1-2018.

However, the upper ceiling of ₹ 10,000 per return is not changed. Thus, maximum late fee continues to be ₹ 10,000 per return. Really, for small tax payers, the upper limit should be reduced to ₹1, 000 at the most.

Details will be made available to recipient, ISD and person paying tax under composition scheme – The details of outward supplies furnished by the supplier shall be made available electronically to the concerned registered persons (recipients) in part A of Form GSTR-2A, (registered person paying tax under normal scheme) in Form GSTR-4A (person paying under composition scheme) and in Form GSTR-6A (ISD) through the Common portal after the due date of filing of form GSTR-1 [i.e., after tenth of a month] – Rule 59(3) of CGST and SGST Rules, 2017.

## **Monthly / Quarterly return**

Every registered taxable person, [other than a, non-resident taxable person, person paying tax under section 10 (composition scheme), section 51(TDS) or section 52(TCS by-commerce operator)] shall file monthly return electronically within twenty days after the end of such month. The return shall contain details of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and other prescribed particulars – section 39(1) of CGST Act.

A registered taxable person paying tax under the provisions of section 10 of this Act (composition scheme) shall file quarterly return within eighteen days after the end of such quarter – section 39(2) of CGST Act.

Quarter – “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 – section 2(92) of CGST Act.



**Tax period** – “Tax period” means the period for which the tax return is required to be filed – section 2(106) of CGST Act.

**Due date for payment of tax**–Every registered taxable person filing return shall pay the tax due as per such return on or before the last date on which he is required to furnish such return – section 39(7) of CGST Act.

If the last date for filing return is extended by Commissioner, last date for payment of tax will also get extended automatically.

**Nil return mandatory even if no supplies made**–Every registered taxable person who is required to file return under section 39(1) or 39(2) shall furnish a return for every tax period, whether or not any supplies of goods or services or both have been effected during such tax period – section 39(8) of CGST Act.

**Monthly return is not mandatory for ISD, person covered under TDS, non-resident taxable person or e-commerce operator making tax collection at source (TCS), if there is no transaction during a month.**

**Monthly return and payment before tent in case of TDS** – Deduct or deducting tax under section 51 of CGST Act is required to pay TDS amount to Government. The return is to be filed in prescribed form and manner within ten days after end of each month in form GSTR-7 section 39(3) of CGST Act.

**Monthly Return by ISD within 13 days** – ISD (Input Service Distributor) has to file monthly return by thirteenth of the following month in form GSTR-6 section 39(4) of CGST Act.

**Return by non-resident taxable person and supplier of OIDAR services by 20th of following month** – Non-resident taxable person has to file electronically monthly return by 20th of the following month or within seven days after the last day of registration under section 27(2) of CGST Act, whichever is earlier, in form GSTR-5 – section 39(5) of CGST Act.

If there is no transaction in a particular month, he is not required to file return for that month – section 39(8) of CGST Act.

**In case of OIDAR services, return is to be filed monthly in form GSTR- 5A, by 20th of the following month. Nil return is mandatory even if tax is not payable.**

**Extension of time limit of filing return** – Commissioner can extend the time limit for furnishing such return by issuing notification. Any extension granted by Commissioner of State GST/UTGST shall be deemed to be notified by Commissioner – section 39(6) of CGST Act.

[Thus, extension by Commissioner of State GST/UTGST is sufficient] To ensure uniformity all over India, such notification shall be issued by Commissioner or Joint Secretary in Board–section 168(2) of CGST Act.



Notice to non-filers of returns – If a registered taxable person fails to furnish a return under section 39, 44 or 45, a notice shall be issued requiring him to furnish such return within 15 days in prescribed form and manner – section 46 of CGST Act.

A notice in form GSTR-3A shall be issued, electronically, to a registered person who fails to furnish return under section 39, 44, 45 or 52 of CGST Act – Rule 68 of CGST and SGST Rules, 2017.

Discharge of tax liability – Every registered person furnishing the monthly / quarterly return shall, subject to the provisions of section 49 of CGST Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger or electronic credit ledger and include the details in Part B of the return in form GSTR-3 – Rule 61(3) of CGST and SGST Rules, 2017.

Subject to section 49 of CGST Act means payment in Electronic Cash Ledger, after adjusting the Input Tax Credit available in Electronic Credit Ledger.

Refund of balance in Electronic Cash Register can be claimed – A registered person, claiming refund of any balance in the electronic cash ledger in accordance with section 49(6), may claim such refund in Part B of the return in form GSTR-3. Such return shall be deemed to be an application filed under section 54 of CGST Act–Rule 61(4) of CGST and SGST Rules, 2017.

The amount in Electronic Cash Ledger is actually amount to credit of taxable person paid in cash. He can claim its refund if the amount is not required for payment of his tax liability.

## **QRMP or Quarterly Return Monthly Payment Scheme**

“Ease of doing business” in India and providing relief to small taxpayers; the GST Council in their 42nd Meet on 5th October 2020 proposed a quarterly return filing system for small taxpayers to be implemented w.e.f. 1st January, 2021. QRMP or Quarterly Return Monthly Payment Scheme is an optional scheme that CBIC has rolled out for small scale businesses having aggregate turnover up to 5 crore rupees to furnish return on a quarterly basis along with monthly payment of tax. Thus, the small taxpayers would only need to file 8 returns (4 GSTR 1 and 4 GSTR 3B) in a year as compared to 16 returns a year at present.

This scheme would bring in a big relief to those taxpayers who may have been losing their eligible credits due to compliance of Rule 36(4) where their suppliers are filing GSTR 1 quarterly. Now, with the introduction of QRMP scheme, Invoice Furnishing Facility (IFF) will help the taxpayers to opt for quarterly filing of returns (GSTR-1 as well as GSTR-3B) and simultaneously upload the invoices

on a monthly basis which will be duly reflected in the GSTR-2A and GSTR-2B of the customer based on which the customer can avail the input tax credit timely.

## Eligibility & Conditions

### Eligibility

- A registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to Rs. 5 crores in the preceding financial year
- Any person obtaining a new registration or opting out of the Composition Scheme can also opt for this Scheme.

### Conditions

- Return for the preceding month as on the date of exercising option has to be furnished
- Once option is exercised, it will continue to remain until it is changed, or the taxpayer becomes ineligible.

### Note:

1. The aggregate turnover (PAN wise) of preceding FY will be considered for calculating threshold limit of Rs. 5 cr.
2. The option can be availed GSTIN wise. Therefore, few GSTINs for that PAN can opt for the Scheme and the remaining GSTINs can remain out of the Scheme.
3. In case the aggregate turnover exceeds Rs. 5 cr during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

### Time limit to opt for QRMP Scheme

- The facility is available online and can be availed throughout the year, in any quarter
- Option for QRMP, once exercised, will continue till registered person (RP) revises the option or his annual aggregated turnover exceeds INR 5 Cr.

**Note:** The RPs opting for the scheme can avail the facility of Invoice Furnishing Facility (IFF), so that the outward supplies to registered person are reflected in their respective Form GSTR 2A & 2B.



## Timeline for exercising option under QRMP Scheme during FY 2020-21

Sl. No.	Period – Quarter	Timeline
1	April – June	1st Feb 2021 to 30th April 2021
2	July – Sept	1st May 2021 to 31st July 2021
3	Oct – Dec	1st August 2021 to 31st Oct 2021
4	Jan – March	1st Nov 2021 to 31st Jan 2022

## Invoice Furnishing Facility (IFF) for Taxpayers under QRMP Scheme

1. An Invoice Furnishing Facility (IFF) facility has been provided to taxpayers under QRMP Scheme (Quarterly filers of Form GSTR-1 and also of Form GSTR-3B returns), as per sub-rule (2) of Rule-59 of the CGST Rules, 2017. Taxpayers who have opted for quarterly filing frequency under the scheme can file their details of outward supplies (B2B invoices only) for first two months of a quarter (M1 and M2 respectively of a Quarter) in IFF. For e.g. for Apr-June qtr., B2B invoices only for the months of April (M1) and May (M2) can be filed in IFF by a taxpayer.
2. The IFF is a facility similar to Form GSTR-1, and it allows filing of details of B2B invoices in following tables only:
  - a. 4A, 4B, 4C, 6B, 6C - B2B Invoices
  - b. 9B - Credit / Debit Notes (Registered) - CDNR
  - c. 9A - Amended B2B Invoice - B2BA
  - d. 9C - Amended Credit/ Debit Notes (Registered) – CDNRA
3. The option to upload details in IFF can be availed till 13th of the subsequent month. Any invoices remaining to be furnished, can be filed using the IFF in the subsequent month IFF or in the quarterly Form GSTR-1. For e.g. for Apr-June qtr., B2B invoices for the month of April (M1) can be filed in IFF by a taxpayer till 13th May. Any IFF which is not filed till the due date of 13th of the subsequent month will expire.
4. To file the IFF form for M1 and M2 of the month, login to GST Portal and navigate to Returns > Services > Returns Dashboard > File Returns and then  
 Select the Financial Year & Return Filing Period (M1/M2 of a quarter) and click on SEARCH button to file the IFF forms for M1 or M2 month.
5. IFF is an optional facility provided to taxpayers under QRMP scheme to pass on Input Tax Credit (ITC) to their recipients for M1 and M2 months of a quarter. However, filing of Form GSTR-1 for M3 month of a quarter is mandatory.



- a) Records uploaded in IFF by the Supplier will reflect in Form GSTR-2A/2B of the Recipient.
  - b) Supplier Taxpayers can also upload details in their IFF, through JSON file, generated using Returns Offline Tool.
  - c) Records filed in IFF need not be filed again in Form GSTR-1 of that quarter.
  - d) Only the details saved in IFF can be deleted/edited using RESET button. Once submitted or filed, these details can't be deleted.
6. For UM, click on [https://tutorial.gst.gov.in/userguide/returns/index.htm#t=Manual\\_IFF.htm](https://tutorial.gst.gov.in/userguide/returns/index.htm#t=Manual_IFF.htm)

For FAQs, click on [https://tutorial.gst.gov.in/userguide/returns/index.htm#t=FAQs\\_IFF.htm](https://tutorial.gst.gov.in/userguide/returns/index.htm#t=FAQs_IFF.htm)

### **Rectification of mistake can be made in subsequent return**

If any taxable person after furnishing a return discovers any omission or incorrect particulars therein, he can rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed by filing revised return – section 39(9) of CGST Act.

### **Interest is payable where applicable.**

Such rectification cannot be done if mistake or short payment was found during scrutiny, audit, inspection or enforcement activity by the tax authorities. Such rectification is not allowed after the due date for filing of return for the month of September or second quarter, as the case may be, following the end of the financial year, or the actual date of filing of relevant annual return, whichever is earlier – proviso to section 39(9) of CGST Act.

### **Subsequent return cannot be filed if previous period was not filed**

A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him – section 39(10) of CGST Act.

Supplies made prior to registration to be included in First Return

Every registered taxable person who has made outward supplies in the period between the dates on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return filed by him after grant of registration.–section 40 of CGST Act.



## Monthly return in form GSTR-3B

Where the time limit for furnishing of details in form GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended, the Commissioner may specify the manner and conditions subject to which that return shall be furnished in form GSTR-3B electronically – Rule 61(5) of CGST and SGST Rules, 2017 (amended w.e.f. 27-7-2017 and 17-8-2017).

GSTR-3B–GSTR-3B monthly return is required to be filed till June 2018. Return of each month should be filed on or before 20th of the following month, e.g. return of December 2017 should be filed on or before 20-1-2018. Return of June 2018 is to be filed on or before 20-7-2018 para 1 of Notification No.35/2017-CT dated 15-9-2017, No.56/2017-CT dated 15-11-2017 and No.16/2018-CT dated 23-3-2018.

## Return Filing Form GSTR 3B, through EVC

- The taxpayers who are required to mandatorily use DSC to file Form GSTR-3B, now have an option to file it using EVC
- This is applicable to for all categories of Companies (including Limited Liability Partnerships and PSUs), registered under Companies Act, 2013
- This option is available for returns filed in Form GSTR-3B during the period starting from 21-04-2020 to 30-06-2020

Notification No 38 2020 Central Tax dated 5th May 2020

- Furnishing of GSTR 3 B through EVC From 21st April 2020 to 30th June 2020 Companies can furnish the return under section 39 in GSTR 3 B through electronic verification code (EVC) without using DSC

**Manner of furnishing of return or details of outward supplies by short messaging service facility.-** 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** for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies through a short messaging service using the registered mobile number and the said return or the details of outward supplies 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 shall mean a return under section 39 or details of outward supplies under section 37, for a tax period that has nil or no entry in all the Tables in **FORM GSTR-3B or FORM GSTR-1**, as the case may be.





Payment of tax, interest or penalty for each month shall be made by debiting electronic cash ledger or electronic credit ledger on or before the due date of filing return – para 2 of Notification No.35/2017-CT dated 15-9-2017. No.56/2017-CT dated 15-11-2017 and No.16/2018- CT dated 23-3-2018.

Discharge of tax liability – Every registered person furnishing the monthly/ quarterly return shall subject to the provisions of section 49 of CGST Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger or electronic credit ledger – Rule 61(3) of CGST and SGST Rules, 2017.

The details are too indicated in GSTR-3B of GSTR-4.

Subject to section 49 of CGST Act means payment in Electronic Cash Ledger, after adjusting the Input Tax Credit available in Electronic Credit Ledger.

### **Quarterly return in form GSTR-4 under composition scheme**

The quarterly return to be filed by taxable persons paying tax under

Composition scheme contains the following details.

Time limit for filing GSTR-4 return for quarter July-September 2017 has been extended to 24-12-2017 – Notification No.41/2017-CT dated 13-10-2017as amended vide Notification No.59/2017-CT dated 15-11-2017.

Discharge of tax liability – Every registered person furnishing the monthly / quarterly return shall, subject to the provisions of section 49 of CGST Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger or electronic credit ledger – Rule 61(3) of CGST and SGST Rules,2017.

The details are to be indicated in GSTS-3B or GSTR-4.

Subject to section 49 of CGST Act means payment in Electronic Cash Ledger, after adjusting.

### **Annual return in formGSTR-9 or GSTR-9a**

Annual return has to be filed by 31st December following the close of financial year under section 44 of CGST Act. The return is to be filed by registered person supplying goods or services or both. The Annual return is not required to be filed by Input Service Distributor, person paying TDS under section 51, casual taxable person and anon-resident taxable person.

Following Registered persons have to file annual returns – (a) Those charging GST invoices paying GST on monthly basis (b) Persons paying GST under composition scheme(c) Persons have to file nil return if they are not paying GST, long as they are registered under GST.



Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year – section 44(1) of CGST Act.

#### Procedure for filing Annual Return in form GSTR-9 or GSTR-9A

An annual return as specified under section 44(1) of CGST Act will be filed electronically in form GSTR-9 through the Common Portal either directly or through a Facilitation Centre.

A person paying tax under section 10 of CGST Act (composition scheme) shall furnish the annual return in form GSTR-9A–proviso to Rule 80(1) of CGST and SGST Rules, 2017

Every e-commerce operator required to collect tax at source under section 52 of CGST Act shall furnish annual statement in form GSTR-9B–Rule 80(2) of CGST and SGST Rules, 2017.

#### **Annual report in form GSTR-9C if aggregate turnover exceeds ₹two crores**

Every registered person who is required to get his accounts audited in accordance with the provisions of section 35(5) of CGST Act shall furnish, electronically, the annual return under section 44(1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed – section 44(2) of CGST Act.

Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under section 35(5) of CGST Act and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in form GSTR-9C, electronically – Rule 80(3) of CGST and SGST Rules, 2017. (For the FY 2018-19 only Turnover limit five crore rupees)

#### **Annual Return:**

- Relaxation to MSMEs from furnishing of Reconciliation Statement in FORM GSTR 9 C for the financial year 2018-19 for taxpayers having aggregate turnover below Rs 5 crores.
- Due date for filing the Annual return and the Reconciliation Statement for financial year 2018-19 to be extended to 30-09-2020 and

- Late fees not to be levied for delayed filing of the Annual return and the Reconciliation Statement for financial year 2017-18 and 2018-19 for taxpayers with aggregate turnover less than Rs 2 crores.
- A new facility called 'Know Your Supplier' to be introduced so as to enable every registered person to have some basic information about the suppliers with whom they conduct or propose to conduct business.
- The requirement of furnishing FORM GSTR 1 for 2019-20 to be waived for taxpayers who could not opt for availing the option of special composition scheme under notification No 2/2019 Central Tax (rate) dated 07-03-2019 by filing FORM CMP-02.
- A special procedure is being prescribed for registered persons who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 and are undergoing the corporate insolvency resolution process, so as to enable them to comply with the provisions of GST Laws during the CIRP period
- A special procedure for registered persons in Dadra and Nagar Haveli Daman and Diu during transition period, consequent to merger of the UTs w.e.f. 26-01-2020 transition to be completed by 3-05-2020.
- Extension of due dates for FORM GSTR-3B for the month of July, 2019 to January, 2020 till 24<sup>th</sup> March, 2020 for registered persons having principal place of business in the Union territory of Ladakh. Similar extension is also recommended for FORM GSTR 1 FORM GSTR- 7.
- Bunching of refund claims allowed across financial years to facilitate exporters

### **Final return after cancellation of GST registration**

Every registered taxable person who is required to file return under section 39(1) of CGST Act and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of cancellation order, whichever is later – section 45 of CGST Act.

In our view, really such return should be filed before cancellation of registration.

An input service distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 (composition scheme), section 51 (TDS) or section 52 (TCS by e-commerce operator) is not required to file return under section 39 of CGST Act. Hence, they are not required to file final return after cancellation.

Procedure for filing final return – Every registered taxable person required to furnish a final return under section 45, shall furnish such return electronically in Form GSTR-10 – Rule 81 of CGST and SGST Rules, 2017.



## **Submission of return by non-resident taxable person in form GSTR-5**

Every registered non-resident taxable person shall furnish a return in form GSTR-5 electronically through the Common Portal.

The return should include details of outward supplies and inward supplies.

He shall pay the tax, interest, penalty, fees or any other amount payable under the Act or these rules within twenty days after the end of a tax period or within seven days after the last day of the validity period of registration, whichever is earlier – Rule 63 of CGST and SGST Rules, 2017.

Return in form GSTR-5 for July 2017 to December 2017 should be filed on or before 31-1-2018 – Notification No.68/2017-CT dated 21-12- 2017.

[Earlier notification– Return in form GSTR-5 for July 2017, August 2017, September 2017 and October 2017 should be filed on or before 11-12-2017 – Notification No.60/2017-CT dated 15-11-2017. Now this notification stands superseded].

Late fee if GSTR-5 return not filed in time – Fee for late filing of return is ₹ 25 per day of CGST and SGST/UTGST each [total ₹ 50 per day]. In case of nil return, the late fee is ₹ 10 per day of CGST and SGST/UTGST each[total ₹ 20 per day]–NotificationNo.5/2018-CTdated23-1-2018.

However, the upper ceiling of ₹10,000 per return is not changed. Thus, maximum late fee continues to be ₹10,000 per return. Really, for small tax payers, the upper limit should be reduced to ₹1,000 at the most.

## **Return in case of OIDAR services**

In case of OIDAR services, return will be in form GSTR-5A every month before twentieth day of succeeding month–Rule 64 of CGST and SGST Rules, 2017.

Return in form GSTR-5A for July 2017 to December 2017 should be filed on or before 31-1-2018 – Notification No.69/2017-CT dated 21- 12-2017.

[Earlier notification – Return in form GSTR-5A for July 2017, August 2017, September 2017 and October 2017 should be filed on or before 11-12-2017 – Notification No.61/2017-CT dated 15-11-2017. Now this notification stands superseded].

## **Return by input service distributor in form GSTR-6**

In case of Input Service Distributor, return will be in form GSTR-6every month before thirteenth day of succeeding month – section 39(4) of CGST Act and Rule 64 of CGST and SGST Rules, 2017.

Last date for filing GSTR-6 returns for July 2017 to February, 2018 has been extended to 31-3-2018 – Notification No. 8/2018-CT dated 23-1-2018 [earlier notification No.62/2017-CT dated 15-11-2017].

Late fee if GSTR-6 return not filed in time – Fee for late filing of GSTR- 6 return is ₹25 per day of CGST and SGST/UTGST each [total ₹50 per day]. – Notification No.7/2018-CT dated 23-1-2018.

However, the upper ceiling of ₹ 10,000 per return is not changed. Thus, maximum late fee continues to be ₹10,000 per return. Really, for small tax payers, the upper limit should be reduced to ₹1, 000 at the most.

### **Return Adjustment of negative ITC, while distributing credit to its units by ISD, through Form GSTR 6**

- The persons registered as ISD can distribute ITC among its Units by filing Form GSTR 6 every month
- Previously, ISD were not able to adjust negative ITC to its units, under a major head through ITC available under another major head For example, if in a particular month, no ITC had accrued under a head but ITC reversal was required to be done under that head or in cases where no inward supplies under a head but receipt of Credit Note(s) under that head for past supplies etc
- ISD would now be able to adjust negative ITC while distributing credit through Form GSTR 6

### **Late fee for late filing of details and returns**

Any registered taxable person who fails to furnish the details of outward or inward supplies required under section 37 or 38 returns required under section 39 or section 45 by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues subject to a maximum of amount of rupees five thousand – section 47(1) of CGST Act.

Any registered taxable person who fails to furnish the return required under section 44 (annual return) by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues subject to a maximum of amount calculated at a quarter per cent of his turnover in the State or Union Territory [0.25% of turnover in State or Union Territory – it can be huge amount] – section 47(2) of CGST Act.

## ZERO RATED SUPPLY, IMPORTS AND EXPORTS

### Zero rated supply

“Zero-rated supply” means a supply of any goods or services or both in terms of section 16 of IGST Act –section 2(23) of IGST Act.

Export of goods or services or both and supplies of goods or services or both to SEZ unit or SEZ developer will be zero rated supply – section 16(1) of IGST Act.

Credit of input tax may be availed for making zero-rated supplies, even if such supply is exempted supply- section 16(2) of IGST Act.

The registered person making zero rated supply can claim refund under either of two options - (a) supply goods under bond or LUT without payment of IGST and claim refund of unutilized input tax creditor (b) supply goods on payment of IGST and claim refund of IGST paid on goods and services. The refund will be in accordance with section 54 of CGST Act – section 16(3) of IGST Act.

GST Compensation Cess is covered under ‘zero rated supply’ - Basic principle is that taxes should not be exported. Exports have to be zero rated. This principle applies to GST Compensation Cess also. Hence,(a) Exporters can claim refund of GST Compensation Cess (b) Compensation Cess will not be charged on goods exported under bond or LUT -CBI&C circular No. 1/1/2017- Compensation Cess dated 26-7-2017.

### Export of goods and services

Exports of goods and services are important for any nation.

Exports of goods - “Exports of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India – section 2(5) of IGST Act.

### Export promotion under GST

Exports are priority of any country.

Goods and services are to be exported, taxes are not to be exported. WTO stipulates free and fair global trade. Giving export incentives will be against



principle of fair trade and hence export incentives are not allowed under WTO. However, goods and services can be made free of domestic taxes.

Supplies to SEZ unit and SEZ Developer are treated at par with physical exports.

Provisions in CGST Act have been designed to make exports tax free.

Export benefit under GST - In relation to GST, following are the concessions / Incentives for exports:

(1) Exemption from GST on final products or

(2) Refund of GST paid on inputs.

Exporting units need raw materials without payment of taxes and duties, to enable them to compete with world market. Government has devised following schemes for this purpose–

(a) Special Economic Zones at various places where inputs are allowed to be imported without payment of duty and finished goods are exported

(b) Export Oriented Undertakings(EOU)

(c) Duty Drawback Scheme

(d) Schemes of Advance Authorization and DFIA.

(e) EPCG scheme to import capital goods without payment of customs duty for use in goods to be exported.

Elaborate procedures have been prescribed for the above, to ensure that

The benefits are not misused.

Refund of input tax credit in case of export of goods or services or both

In case of zero-rated supplies made without payment of tax, refund of input tax credit will be available as per proviso (i) to section 54(1) of CGST Act.

No refund of unutilized input tax credit shall be allowed in cases other than exports including zero-rated supplies or in cases 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 - first proviso to section 54(3) of CGST Act.

No refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty – second proviso to section 54(3) of CGST Act.

No refund of input tax credit shall be allowed if the supplier of goods or

Services avails duty drawback of CGST/SGST/UTGST or claims refund of IGST paid on such supplies – third proviso to section 54(3) of CGST Act.



Deputy/Assistant Commissioner of Central Tax is designated as 'proper officer' for the purpose of granting refund of ITC- CBI&C circular No. 3/3/2017- GST date 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

It has been clarified that restriction is only one drawback of IGST/CGST/UTGST/SGST. Thus, refund is available if duty drawback of only customs portion has been availed. Further, if drawback of central tax (CGST) has been availed, refund of SGST can be claimed – CBI&C circular No. 37/11/2018- GST dated 15-3-2018.

Receipt of payment in foreign exchange required only in case of export of services and not in case of export of goods – It has been clarified vide CBI&C circular No.37/11/2018 – GST dated 15-3-2018. That BRC (Bank Remittance Certificate) or FIRC (Foreign Inward Remittance Certificate) is required only in case of export of services and not in case of export of goods.

Drawback- "Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or Cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods – section 2(42) of CGST Act.

Frequency or Period for which refund claim of Input Tax Credit should be filed – It is possible that input tax credit may be received in a month while exports may be made in subsequent month. In some months, there will be exports but no input tax credit available. In such cases, the refund claim can be filed during 'relevant period' which is different from 'tax period'. Hence, exporter may file refund claim per month or per quarter or by clubbing successive calendar months/quarters. However, such refund claim cannot spread over different financial years (really, why not?) - CBI&C circular No. 37/11/2018- GST dated 15-3-2018.

This principle should apply for refund of tax due to inverted duty structure also.

## **Export of services**

Section 2(6) of IGST Act states as follows-

"Export of services" means the supply of any service when-

- (a) the supplier of service is located in India
- (b) The recipient of service is located outside India
- (c) The place of supply of service is outside India
- (d) The payment for such service has been received by the supplier of service in convertible foreign exchange, and the supplier of service and recipient



of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8 of IGST Act [what is meant is that branch and HO of same taxable person shall not be treated as two distinct persons for this provision. Thus, there cannot be export of service to own branch office outside India].

If payment for export of services is not received in specified period

One of the conditions for 'export of service' is that payment should be received in convertible foreign exchange. If such payment is not received, the supply is not 'export of service'. Consequently, it will not be zero rated supply.

As per section 7(5)(a) of IGST Act, when the supplier is located in India and the place of supply is outside India, the supply of goods or services or both shall be treated to be a supply in course of inter State trade or commerce.

Section 5(1) of IGST Act levies IGST on all inter-state supplies of goods or services or both.

Thus, if payment is not received within prescribed period, IGST will become payable. Mere reversal of input tax credit will not be sufficient.

This appears strange for the following reasons - (a) GST is a consumption - based tax. If the service is consumed outside India, GST should not be payable (b) The CGST Act and IGST Act applies to whole of India. Thus, these Acts do not have extra territorial jurisdiction.

Interestingly, in case of export of goods, there is no condition of receipt of payment in foreign exchange- confirmed in CBI&C circular No. 37/11/2018-GST dated 15-3-2018.

Export to Nepal will be treated as normal export and export procedure to Nepal will be same as that to other countries - SNo. 34 of Tweet FAQ released by CBI&C 26-6-2017.

In case of export of goods to Nepal, there is no requirement of receipt of payment in foreign exchange.

Export of goods on payment of 0.1% IGST (or 0.05% of CGST plus 0.5% of SGST/UTGST) if export through merchant exporter

The manufacturer exporter can export his goods directly either on payment of GST or without payment of GST.

'Manufacturer exporter' means a person who exports goods manufactured by him or intends to export such goods - para 9.32 of FTP 2015-2020.

Manufacturer exporter means a person engaged in trading activity and exporting or intending to export goods - para 9.33 of FTP 2015-2020.



In case of exports by manufacturer through merchant exporter, the provision was that the manufacturer was required to pay tax and the Merchant exporter was required to claim refund. This was blocking funds of exporters and exports were suffering.

Provisions relating to tax on export of goods have been altered w.e.f. 23-10-2017, vide Notification Nos. 40/2017-CT (Rate), 41/2017-IT (Rate) and 40/2017-UTT (rate) all dated 23-10-2017. The revised procedure is as follows.

The manufacturer supplier (termed as registered supplier) should be registered under GST. He should supply goods to merchant exporter (termed as registered recipient). The registered recipient should be registered under GSTIN and Export Promotion Council or Commodity Board recognized by Department of Commerce.

The merchant exporter (registered recipient) should place an order of registered supplier and its copy shall be provided to jurisdictional tax officer of registered supplier.

The registered supplier shall clear goods on payment of 0.1% of IGST (or 0.05% of CGST plus 0.5% of SGST/UTGST).

Goods should be dispatched directly from place of registered supplier to port, ICD, Airport of Land customs station from where goods are to be exported.

Goods can also be sent to a registered warehouse from where goods can be sent to port, ICD, Airport of Land customs station from where goods are to be exported.

The goods can be aggregated at the registered warehouse and then sent to port, ICD, Airport of Land customs station from where goods are to be exported. In such cases, the registered recipient shall endorse receipt of goods on the tax invoice and also acknowledgement of receipt of goods in the registered warehouse. These should be provided to the registered supplier as well as to jurisdictional tax officer of such supplier.

The registered recipient is required to export the goods within 90 days from date of issue of tax invoice. Otherwise, the exemption is not available.

The registered recipient shall indicate GSTIN of supplier and tax invoice number of registered supplier in the shipping bill or bill of export, as applicable.

After export, the registered recipient shall provide copy of shipping bills or bill of export containing details of GSTIN of supplier and his tax invoice of registered supplier with proof of filing of export general manifest (EGM) or export report.

Refund of ITC to registered supplier – Though the notification does not specifically say so, really it is a situation of inverted duty structure. Hence, the

registered supplier can claim refund of ITC [Thus, problem of fund blockage has been transferred from merchant exporter to the manufacturer-supplier].

Payment of 0.5%/0.1% tax by supplier is optional, not mandatory - Payment of 0.1%/0.05% tax by registered supply is conditional and not mandatory. The supplier can supply goods to merchant exporter on full payment of tax at normal rate – CBI&C circular No. 37/11/2018- GST dated15-3-2018.

In such case, the merchant exporter can export goods on payment of GST and claim refund. Alternatively, He can export under bond/LUT and claim refund of Input Tax Credit of GST paid by supplier.

Merchant Exporter can take ITC of 0.05%/0.1% tax paid by supplier – The Merchant Exporter can take Input Tax Credit (ITC) of 0.05%/0.1% tax paid by supplier - CBI&C circular No. 37/11/2018- GST dated15-3- 2018.

Refund of ITC to registered supplier –Though the notification or rule does not specifically say so, really it is a situation of inverted duty structure. Hence, the registered supplier who is paying tax @0.1% can claim refund of ITC. This view has been confirmed in CBI&C circular No. 37/11/2018- GST dated15-3-2018.

(Thus, problem of fund blockage has been transferred from merchant exporter to the manufacturer supplier).

Merchant Exporter cannot pay IGST on exported goods and claim refund of IGST, if supplier has supplied goods on payment of 0.1% tax – If goods were procured on payment of 0.1% GST, export on payment of IGST not permissible. If still IGST is paid on export of goods or services, its refund is not available – Rule 96(10) of CGST Rules, inserted on23- 1-2018 but with retrospective effect from 23-10-2017 – reiterated in CBI&C circular No. 37/11/2018- GST dated15-3-2018.

Refund to merchant exporter permitted on other inputs or input services if he makes zero rate supply –If the supplier has claimed benefit of deemed exports under Notification No.48/2017 - CT date 18-10-2017 (deemed export), refund of input tax credit, availed in respect of other inputs or input services is available if the recipient makes a zero rated supply or exports goods – rules 89(4A) and 89(4B) of CGST Rules, inserted on 23- 1-2018 but with retrospective effect from23-10-2017.

Procedure for export by direct exporter under bond or LUT without payment of GST

The procedure has been specified in rule 96A of CGST Rules.

Till 23-10-2017, this provision was applicable to all exporters. Now, for merchant exporters, the provision has been changed as discussed above.



In case of other exporters, the requirement of bond has been dispensed with. Thus, all direct exporters are required to execute only LUT w.e.f. 4-10-2017. Now, bond and guarantee are required in very few cases.

The exporters are required to execute a bond or Letter of Undertaking, prior to exports, binding him to pay tax with interest, within 15 days after three months from date of issue of invoice, if goods are not exported. This period can be extended by Commissioner.

Refund of input tax credit will be permissible even if export is made after three months. It is not necessary to pay IGST and claim refund of IGST. Extension of three months period can be given by jurisdictional Commissioner on ex-post facto basis keeping in view the facts and circumstances of each case. This principle applies in case of export of service also - CBI&C circular No. 37/11/2018- GST dated 15-3-2018.

Forms of bond and LUT have been given in CBI&C circular No. 26/2017-Cus dated 1-7-2017.

The bond should be in form RFD-11 submitted on common portal. The LUT shall be deemed to have been accepted as soon as an acknowledgement reference number (ARN) is generated online. Any physical document is not required to be submitted. If it is later found that the exporter was not eligible to submit LUT, the LUT shall be deemed to have been rejected ab initio - CBI&C circular No. 40/14/2018-GST dated 6-4-2018.

Details of GST invoice should be indicated in shipping bill. Details of export shall be submitted in form GSTR-1 return.

Application for refund shall be filed electronically after the export manifest or export report is delivered by person in charge of conveyance under section 41 of Customs Act CBI&C circular No. 26/2017- Cus dated 1-7- 2017.

Further, if payment is not received in convertible foreign exchange, within one year from date of export, exporter has to bind himself to pay tax with interest [If exports are to Nepal and Bhutan, how payment can be received in convertible foreign exchange?]

If such payment is not made, facility of clearance under bond or LUT will be withdrawn.

The procedure will apply to supplies to SEZ and SEZ Developer also – Rule 96A (6) of CGST Rules, 2017.

[Really, how payment can be received from SEZ in convertible foreign Currency?]

## **Who can execute LUT**

CBI&C, vide circular no. 8/8/2017-GST dated 4-10-2017 has clarified as follows-

All exporters registered under GST can export goods or services without payment of IGST, on execution of LUT, except those who have been prosecuted for offence under any law where tax evade exceeds ₹250 Lakhs. The LUT is valid for whole financial year. However, if payment is not received within prescribed period, facility of LUT is deemed to have been withdrawn. If payment is received later, the facility to export under LUT is restored.

During the period when LUT is not allowed, export can be under bond with bank guarantee or on payment of IGST.

LUT/bond is to be submitted to concern Central/State tax authority having jurisdiction over the taxable person will be accepted by Deputy/ Assistant Commissioner within three working days. If the LUT/bond is not accepted within three working days, it will be deemed to have been accepted.

Running bond is required to maintain. The bond amount should cover amount of self-assessed estimated tax liability on export. If bond amount is not sufficient, fresh bond should be executed.

## **Extension for submission of LUT for 2020-21**

- Notification No 37/2017 Central Tax, dated 04-10-2017 requires LUT to be furnished for a financial year. However, in terms of notification No 35/2020 Central Tax dated 03-04-2020 where the requirement under the GST Law for furnishing of any report, document, return, statement or such other record falls during between the period from 20-03-2020 to 29-06-2020 has been extended till 30-06-2020.
- Therefore, in terms of Notification No 35/2020 Central Tax, time limit for filing of LUT for the year 2020-21 shall stand extended to 30-06-2020 and the taxpayer can continue to make the supply without payment of tax under LUT provided that the FORM GST RFD-11 for 2020-21 is furnished on or before 30-06-2020. Taxpayers may quote the reference no of the LUT for the year 2019-20 in the relevant documents

## **Refund of IGST paid on goods exported out of India**

A taxable person has option to pay IGST on goods exported out of India and claim refund. He may like to do this if he has excess Input Tax Credit which may be otherwise not utilizable. Provisions are contained in rule 96 of CGST and SGST Rules, 2017.



These are explained in CBI&C circular No.26/2017-m Cus dated 1-7-2017 and Instruction No. 15/2017 – Cus dated 9-10-2017.

Shipping Bill shall be deemed to be application for refund - Shipping Bill filed by exporter shall be deemed to be application for refund of IGST. Export Manifest or Export Report covering the number and date of shipping bill should have been filed. The applicant should have filed valid return in form GSTR-3 or GSTR-3B as the case may be—Rule96 (1) of CGST and SGST Rules, 2017.

Details of export invoices shall be transferred to customs electronically—Details of export invoices contained in valid return in form GSTR-3 or GSTR-3B as the case maybe, shall be transmitted to system designated by Customs. The system shall confirm that the goods have been exported out of India – Rule96 (2) of CGST and SGST Rules, 2017.

Submission of details of export of export invoices when extension has been granted to filing of GSTR-1– Where date of filing GSTR-1 has been extended by Commissioner, the supplier shall furnish information relating to export in voices in table 6A of form GSTR-1 after return inform GSTR- 3B has been furnished. This will be transmitted electronically by common portal to system designated by the Customs – first proviso to rules 96(2) and 96A (2) of CGST Rules inserted w.e.f.28-10-2017.

Information in table 6A furnished will be auto drafter in form GSTR-1 for same tax period - second proviso to rules 96(2) and 96A (2) of CGST Rules inserted w.e.f.28-10-2017.

### **Export data in Shipping Bills to include District level details Circular No.09/2020 Customs dated 5th February, 2020**

Board has decided to incorporate additional attributes in the Shipping Bill to enable the Customs System to capture the Districts and States of Origin for goods being exported The initiative is also aimed at bringing uniformity with the data/ information captured in the GSTN

- With effect from 15 02 2020 the declaration of GSTIN shall also be mandatory in import/ export documents for the importers and exporters registered as GST taxpayers

Regulation 3 of Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulations 2019 the following additional information will be required to be furnished for every item in the Shipping Bill

- (i) The State of Origin of goods.
- (ii) The State of Origin of goods.

- (iii) Details of Preferential Agreements under which the goods are being exported, wherever applicable.
- (iv) Standard Unit Quantity Code for that CTH as per the first schedule of the Customs Tariff Act, 1975

Processing of refund by customs system – The system designated by customs will process the refund application on confirmation of export of goods and valid return. IGST in respect of each shipping bill will be transferred to bank account of application as mentioned in registration particulars of applicant – Rule 96(3) of CGST and SGST Rules, 2017.

Refund applications will be processed through PFMS portal. Till PFMS system is functional, refund may be made through issue of consolidated check – CBIC instruction No. 16/2017- Cus. Dated 9-10-2017.

Withholding of refund – The refund can be withheld if jurisdictional Commissioner of CGST, SGST or UTGST requests withholding under section 54(10) or 54(11) of CGST and SGST Act or the customs officer determines that goods were exported in violation of customs law – Rule 96(4) of CGST and SGST Rules, 2017.

If the refund is withheld, intimation shall be sent to applicant and jurisdictional Commissioner and copy will be transmitted on common portal – Rule 96(5) of CGST and SGST Rules, 2017.

After such intimation, the proper officer of CGST, SGST or UTGST will pass order in part B of form GST RFD-07 – Rule 96(6) of CGST and SGST Rules, 2017.

If refund was withheld on request from Commissioner, the jurisdictional Officer shall proceed with refund after passing order under GST RFD-06.

Refund to Government of Bhutan instead of refund to exporter – Central Government may refund IGST to Government of Bhutan on exports to Bhutan for such class of goods as may be notified – Rule 96(8) of CGST and SGST Rules, 2017.

Instructions by customs department – The Guidance Note for Importers and Exporters' issued by Customs issued on 30-6-2017 prescribes following procedure.

Shipping Bill (or Bill of Export) filed by an exporter will be deemed to be application for refund of IGST paid on goods exported. The application will be deemed to have been filed only when person-in-charge of conveyance carrying the goods files export manifest or export report, covering number and date of shipping bill or bill of export and applicant had furnished a valid return.



## Deemed exports

India gets foreign aid from World Bank, Asia Development bank etc. For Various prestigious projects in India for which global tenders are invited and India gets aid in foreign currency. Indian manufacturers and suppliers of services from India have to quote in competition with foreign suppliers. Evaluation of bids is done without considering customs duty. Since the supply of goods and services are for projects financed with free foreign exchange, these supplies are treated as 'deemed exports'. Similarly, supplies to EOU units and supplies against annual advance authorization are also 'deemed exports'.

These are so called because the goods and services do not leave the country. Suppliers of goods and services get payment in Indian rupees and not in foreign currency.

Deemed exports refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in para 7.02 of Foreign Trade Policy 2015-2020 shall be regarded as 'deemed exports', provided that goods are manufactured in India.

As per Foreign Trade Policy 2015-2020, following are treated as deemed exports:

- ◆ Supplies against Advance Authorization/DFIA
- ◆ Supplies to EOU/STP/EHTP/BTP
- ◆ Supplies against EPCG authorization
- ◆ Supplies to projects against international competitive bidding
- ◆ Supplies to projects with zero custom duty
- ◆ Supply of goods to mega power projects against International Competitive Bidding
- ◆ Supplies to UN Agencies
- ◆ Supplies of goods to nuclear projects through competitive bidding

## Deemed Exports in GST

CGST Act has made provisions of 'deemed exports'.

Deemed exports means such supplies of goods as may be notified under Section 147 of CGST Act.

The government may, on the recommendations of the GST 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 –section 147 of CSGT Act.

As per Explanation 2(b) to section 54 of CGST Act, “relevant date” for filing refund in case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, is the date on which the return relations to such deemed exports is filed.

### **Deemed Exports as notified on 18-10-2017**

Following has been notified as ‘deemed exports’ vide Notification No.

48/2017- CT, dated 18-10-2017.

1. Supply of goods by a registered person against Advance Authorization
2. Supply of good capital goods by a registered person against Export Promotion Capital Goods Authorization
3. Supply of goods by a registered person to Export Oriented Unit/STP/ EHTP/ BTP.
4. Supply of gold by a bank or Public Sector Undertaking specified in the notification No.50/2017 Customs, dated the 30<sup>th</sup> June, 2017 (as amended) against Advance Authorization.

In respect of supplies to UN Agencies, they are entitled to refund from Government and hence are not notified as ‘deemed exports’.

Other supplies, though notified as ‘deemed exports’ under Foreign Trader Policy are not declared as ‘deemed exports’ under GST Law.

Refund claim in case of deemed export either by recipient or supplier

In case of ‘deemed exports’, there is no provision that supply can be made without payment of tax. GST is indeed payable and then the supplier or recipient can claim refund of GST.

In respect of supplies regarded as deemed exports, the application may be filed by - (a) the recipient of deemed exports supplies; or (b) the supplier of deemed exports supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund--third proviso to Rule 89(1) of CGST and SGST Rules, 2017 as amended w.e.f. 18-10-2017.

Refund to recipient permitted of ITC on other inputs or input services if he makes zero rated supply – If the supplier has claimed benefit of deemed exports under Notification No.48/2017-CT, dated 18-10-2017, refund of input



tax credit, availed in respect of other inputs or input services is available if the recipient makes a zero rated supply - - rule 89(4A) of CGST Rules, inserted on 23-1-2018 but with retrospective effect from 23-10- 2017.

If supplier/recipient claims refund of GST, the recipient cannot export on payment of IGST and claim refund of IGST – If the supplier is claiming deemed export benefits, export by recipient of goods on payment of IGST not permissible. If still IGST is paid on export of goods or services, its input tax credit is not available–Rule 96(10) of CGST Rules, inserted on 23-1- 2018 but with retrospective effect from 23-10-2017.

### **Changes in export promotion schemes**

Changes have been made in Export Promotion Schemes to align then with GST provision.

'Guidance Note for Importers and Exporters' issued by Customs issued on 30-6-2017 clarifies as follows-

Customs duties will be exempt under export promotion schemes i.e. EPCG, Advance Authorization and DFIA.

IGST and GST Compensation Cess will be payable up to 31-3-2018.

EXIM scrip's (like MEIS and SFIS) can utilized for payment of basic customs duty and CVD on items not covered by GST (i.e. petroleum products). However, the scrip's cannot be utilized for payment of IGST and Compensation Cess at the time of imports. These also cannot be utilized for payment of CGST, SGST or IGST for domestic procurements.

In case of EOU, they will be liable to pay IGST. When they clear goods in DAT, payment of amount equal to Basic Customs Duty exemption availed will be payable.

Supplies to SEZ for authorized operations will be exempt from IGST. Foreign Trade Policy Changes relating to GST

DGFT Trade Notice No.11/2018, dated 30-6-2017 had clarified as follows [There are some changes in policy notified on 5-12-2017] – Customs Authority instead of Central Excise Authority – The words 'Central Excise Authority' will be replaced by 'Jurisdictional Customs Authority'.

Duty Credit Scrip's - Duty Credit Scrip's cannot be used for payment of IGST and GST Compensation Cess on imports or domestic procurement.

Advance Authorization and DFIA–IGST and GST Compensation Cess will be payable on imports under Advance Authorization and DFIA. However, basic

customs duty, CVD, education Cess, SAHE Cess, anti-dumping duty, safeguard duty and SAD will not be payable.

In case of domestic procurement, the supplier will charge IGST against invalidation letter of Advance Authorization/DFIA. Its ITC will be available (then what is the use of invalidation letter?)

Advance Release Order facility shall not be available for procurement of inputs under Advance Authorization Scheme, except in case of goods covered under fourth schedule of Central Excise Act.

EPCG – IGST will be payable at the time of imports. Its ITC can be taken. ARO facility is not available for sourcing of capital goods manufactured indigenously.

Deemed Credit– Supplies up to 30-6-2017 will be eligible for benefits as applicable.

In case of supplies after 1-7-2017, advance authorization will be available. Duty exemption benefit under Advance Authorization will be limited to basic customs duty only.

Deemed Export Drawback will be limited to basic customs duty only.

In case of items covered under Schedule 4 of Central Excise Act, TED refund will be available. Deemed Export Drawback will also be available.

## **Import of goods**

“Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India- section 2(10) of IGST Act.

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 or commerce - section 7(2) of IGST Act.

## **IGST on import of goods**

So far, CVD (Countervailing Duty) equal to excise duty was imposed on imported goods. In addition, SAD (Special Additional Duty) of 4% was imposed in lieu of sales tax or Vat.

Now, these two duties have been replaced by IGST w.e.f. 1-7-2017.

As per section 3(7) of Customs Tariff Act (introduced w.e.f. 1-7-2017), any article being imported into India shall be liable to pay Integrated Goods and Services Tax (IGST) at such rate as is leviable under section 5 of IGST Act,



2017, on a like article on its supply in India, on the value of imported article on value as determined under section 3(8) of Customs Tariff Act.

As per section 3(8) Customs Tariff Act (introduced w.e.f. 1-7-2017), the 'value' will be - (a) Value of imported article determined under section 14(1) of Customs Act or tariff value of such article under section 14(2) of Customs Act (b) duty of customs leviable on that article under section 12 of Customs Act and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include any tax referred to in section 3(7) or the Cess referred to in section 3(9) of Customs Tariff Act.

IGST is not customs duty – IGST collected at time of import is not levied under Customs Act or Customs Tariff Act. Only machinery of Customs Law is used to collect IGST.

IGST on education Cess and SAHE Cess – Section 94 of Finance (No.2) Act, 2004 states that education Cess on customs duty a 'duty of customs'. As per section 94(3) of Finance (No.2) Act, 2004, all provisions of Customs Act, and rules and regulations made under that Act will apply to education Cess on imported goods, including those relating to refund, exemption from duty and imposition of penalty.

Secondary and higher education Cess of 1% of the total duties of customs has been imposed on imported goods vide section 136 read with section 139 of Finance Act, 2007, which have parallel provisions.

Thus, Education Cess and Secondary and Higher Education Cess are collected as 'duty of customs'. Hence, IGST will be payable on education Cess and SAHE Cess. This is confirmed in SNo.32 of Tweet FAQ released by CBI&C on 26-6-2017.

IGST on project imports – In case of project imports, the goods will be classified under 9801 and IGST rate will be taken as 18%.

No IGST on baggage – IGST is not payable on baggage GST Compensation Cess on import of goods

As per section 3(9) of Customs Tariff Act (introduced w.e.f. 1-7-2017), any article being imported into India shall be liable to pay Goods and Services Tax Compensation Cess at such rate as is leviable under section 8 of GST (Compensation to States) Cess Act, 2017, on a like article on its supply in India, on the value of imported article on value as determined under section 3(10) of Customs Tariff Act.

As per section 3(10) of Customs Tariff Act (introduced w.e.f. 1-7-2017), the 'value' will be-(a) Value of imported article determined under section 14(1) Act

(b) duty of customs leviable on that article under section 12 of Customs Act and any sum chargeable on that article under any law for the time being enforce as an addition to, and in the same manner as, a duty of customs, but does not include any tax referred to in section 3(7) or the Cess referred to in section 3(9) of Customs Tariff Act.

Since IGST is not 'duty of customs', really such Cess cannot be levied on IGST. Further, first proviso to section 8(2) of GST (Compensation to States) state that value for purpose of compensation Cess is same as per section 15 of CGST Act.

The guidance Note for Importers and Exporters' issued by Customs issued on 30-6-2017 also calculates Compensation Cess on same value as applicable to IGST. However, in case 2 as per Annexure 1 of the Note, there is typing mistake. Instead of (a) + (b) + (c), it is typed as (a)+(b) + (d), though calculation is correct.

Calculation of customs duty w.e.f. 2-2-2018

Total customs duty payable w.e.f.2-2-2018 is 30.80%, as given below, if IGST rate is taken as 18% and basic customs duty rate is taken as 10%.

Assessable value = CIF Value of imported goods converted into Rupees at exchange rate specified in notification issued by CBI&C.

Calculation of customs duty payable is as follows, w.e.f. 2-2-2018. —

Seq	Duty Description	Duty %	Amount	Total Customs Duty
(A)	Assessable Value		₹ 10,000	
(B)	Basic Customs Duty	10	₹1,000.00	₹1,000.00
(C)	Sub-total for IGST – A + B		₹11,000.00	
(D)	IGST – on 'C' as per IGST rate	18	₹1,980.00	₹1,980.00
(E)	Social Welfare Surcharge on 'B'	10	₹100.00	₹100.00
(F)	Total Customs Duty			₹3,080.00
(G)	Total duty rounded to			₹3,080

### Credit of IGST paid on imported goods

'Guidance Note for Importers and Exporters' issued by Customs issued on 30-6-02017 has clarified as follows –

An importer has to declare GSTIN in Bill of Entry. Relevant details will be furnished by importer in form GSTR-2 return. Customs EDI system will be inter-connected with GSTN for validation of ITC. Bill of Entry data in on-EDI locations will be digitized and used for validation of ITC provided by GSTN.



## High seas sale i.e., sale in course of imports

Many importers, acting as agents, import goods and goods are sold before goods are cleared from customs. The buyer then clears goods from Customs. This was termed as 'sale in the course of import' in Central Sales Tax Act, if such sale takes place before goods are cleared from customs.

The Central Sales Tax Act required that such sale should be by transfer of documents. In IGST Act, there is no requirement that such supply should be by transfer of documents. However, it is advisable to transfer of documents, as evidence.

This is terms as 'high seas sale', though really that term was not used in CST Act at all. This term is not used in GST Act also. [Really High Seas means beyond 200 nautical miles from baseline].

Import complete only when goods cross customs barrier – In J V Gokalv. ACST 1960(2) SCR 852 = AIR 1960 SC 595 = 11 STC 186 = 110 ELT 106 (SC5 member constitution bench), it was held that sale by transfer of documents when goods are on high seas or before they cross customs barrier is a 'sale in the course of import'. It was also held that import is complete only when goods cross customs barrier in India. Import starts when goods cross the customs barrier in a foreign country and ends when they cross customs barrier in the importing country.

GST on High seas sale only while clearing goods from customs

Section 7(2) of IGST Act provides that supply of goods imported into India, till they cross customs frontiers of India, shall be treated to be supply of goods in inter-State trade or commerce.

On such 'high seas sale', SGST or CGST will not be payable even if such sale take place within 12 nautical miles inside the sea or even when goods are lying in customs area.

As per proviso to section 5(1) of CGST Act, IGST levied on goods imported into India shall be paid at the point when customs duties are leviable on such imported goods. Thus, in case of high seas sale, IGST is not leviable. It will be levied only when the goods are cleared from customs. The importer, i.e., last buyer will be required to furnish the entire chain of documents such as original invoice, high seas sale contract, details of service charges / commission etc. In case of doubt, the declared value may be rejected by department. In that case, valuation will be as per Customs Valuation Rules –CBI&C circular No.33/2017 – Cus, dated 1-8-2017.

This can also be justified from the fact that there is no provision in Customs Act to grant set off (Input Tax Credit) of IGST paid on earlier high seas sale, while clearing goods from customs.

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

The rate of exchange for determination of 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 on the date when point of taxation arises in respect of such supply in terms of section 12 or, as the case may be, section 13 of the CGST Act – Rule 34 of CGST and SGST Rules, 2017.

## **Importation of service is 'supply'**

As per section 7(1)(b) of CGST Act, importation of service, for a consideration whether or not in the course of furtherance of business, is 'supply' and subject to GST.

Further, importation 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 treated as 'supply' even if made without consideration – para 4 of Schedule I of CGST Act.

Thus, import of service from HO or branch outside India will be subject to GST even if no payment was made to HO or branch outside India.

## **Reverse charge on import of services**

If service is imported from out of India, the recipient is liable to pay GST under reverse charge.

As per Notification Nos.13/2017-CT (Rates) and 10/2017-IT (Rates), dated 28-6-2017, effective from 1-7-2017, in case of any service supplied by any person who is located in a non-taxable territory to any person (other than non-taxable online recipient)(Import of service), if the supplier of service is any person located in a non-taxable territory, any person located in the taxable territory (other than non-taxable online recipient), is liable to pay GST under reverse charge.

If the recipient of OIDAR service is non-taxable online recipient, reverse charge is not applicable.

## **Extension of exemptions to imports by EOUs or against AA/EPCG**

Notification No. 18/2020 Customs dated 30th March 2020

- Extends the exemption on goods imported against AA/EPCG authorizations from Integrated Tax and Compensation Cess up to 31-03-2021

Notification No 16/2020 Customs dated 24th March 2020

- Extends exemption to EOUs on imports from IGST and compensation cess till 31-03-2021 Notification No 52/2003 Customs dated 31 03 2003 amended accordingly.

## PAYMENTS AND REFUNDS

### Payment of taxes by cash and through input tax credit

The tax due can be paid either by cash or through utilization of input tax credit. Payment of interest, penalty, fee and other payments have to be made through cash only.

Payment by cash is to be made electronically. This is reflected in Electronic Cash Ledger (form GST PMT-5). The Input Tax Credit available is reflected in Electronic Credit Ledger (form GSTPMT-2).

All return related liabilities are reflected in Electronic Liability Ledger (GST PMT-01 part 1). When the closing balance in Electronic Liability Ledger is Nil, the return of that month will be treated as valid.

Major and minor heads in the electronic ledgers and challans

The major heads in the electronic cash ledger (GST PMT-5), electronic liability register (GST PMT-1) and challan for deposit of tax (GST PMT-

6) are Central tax (CGST), State tax (SGST), UT tax (UTGST) and GST Compensation Cess. In each major head, the minor heads are – Tax, Interest, Penalty, Fee, others and total.

Payments and debits in each major head and minor head are required to be shown in Electronic Credit Ledger (GST PMT-2), there will be only column of tax as interest, penalty, fee and other payments cannot be made through Input Tax Credit (ITC). This ledger can be used only for payment of output tax (and not where tax is payable under reverse charge).

### Temporary provisions

Though rules make provision for GSTR-2 and GSTR-3 returns, the GSTN system is not ready to accept these returns.

Hence, as temporary arrangement, GSTR-3B monthly return is required to be filed. Return of each month should be filed on or before 20<sup>th</sup> of following month.

Payment of tax, interest or penalty for each month shall be made by debiting electronic cash ledger or electronic credit ledger on or before the due date of



filing return – Notification No. 35/2017-CT dated 15-9- 2017 and No. 56/2017-CT dated 15-11-2017.

### **Electronic payment of tax, interest, penalty and other amounts**

Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by internet banking or by using credit/ debit cards or National Electronic Fund Transfer [NEFT] or Real Time Gross Settlement [RTGS] or by such other mode and subject to such conditions and restriction as may be prescribed. The payment shall be credited to the electronic cash ledger of such person – section 49(1) of CGST Act.

“Electronic Cash Ledger” means the electronic cash ledger referred to in section 49(1) of CGST Act – section 2(43) of CGST Act.

Rounding off of tax etc., – The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of the Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored – section 170 of CGST Act.

Note that rounding of tax shown in each invoice is not required to be rounded off. Only consolidated payment to Government has to be rounded off.

Credit of ITC to Electronic Credit Ledger - The input tax credit as self- assessed in the return of a taxable person shall be credited to his electronic credit ledger – section 49(2) of CGST Act.

“Electronic credit ledger” means the electronic credit ledger referred to in section 49(2) - section 2(46) of CGST Act.

### **Identification number of each transaction**

A unique identification number shall be generated at the Common Portal for each debit or credit to the electronic cash or credit ledger, as the case may be – Rule 88(1) of CGST and SGST Rules, 2017.

The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability ledger - Rule 88(2) of CGST and SGST Rules, 2017.

A unique identification number shall be generated at the Common Portal for each credit in the electronic liability register for reasons other than those covered under rule 88(2) - Rule 88(3) of CGST and SGST Rules, 2017.



## **Utilization of amount in electronic cash ledger**

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 CGST Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed – section 49(3) of CGST Act.

## **Maintenance of Electronic Cash Ledger**

The electronic cash ledger under section 49(1) shall be maintained in form GST PMT-05 for each person. Liable to pay tax, interest, penalty, late fee or any other amount, on the Common Portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount – Rule 87(1) of CGST and SGST Rules, 2017.

Generation of challan for payment of tax, interest, penalty or fee any person, or a person on his behalf, shall generate a challan in form GST PMT-06 on the Common Portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount - Rule 87(2) of CGST and SGST Rules, 2017.

The challan generated will be valid for fifteen days – first proviso to Rule 87(2) of CGST and SGST Rules, 2017 inserted w.e.f.17-8-2017.

The deposit under rule 87(2) shall be made through any of the following modes - (i) Internet Banking through authorized banks (ii) Credit card or Debit card through the authorized bank (iii) National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) from any bank (iv) Over the Counter payment (OTC) through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft Rule 87(3) of CGST and SGST Rules, 2017.

## **Over the Counter payment to Bank**

Over the Counter payment (OTC) can be made through authorized banks for deposits up to ₹10,000 per challan per tax period, by cash, cheque or demand draft.

The restriction for deposit upto ten thousand rupees per challan in case of an Over the Counter (OTC) payment shall not apply to deposit to be made by- (a) Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf (b) Proper officer or any other officer authorized to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or

sale of movable or immovable properties (c) Proper officer or any other officer authorized for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit – first proviso to rule 87(3) of CGST and SGST Rules, 2017.

For making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.

Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the Common Portal - Rule 87(4) of CGST and SGST Rules, 2017.

### **Mandate when payment made by NEFT or RTGS**

Where the payment is made by way of NEFT or RTGS mode from any bank, the mandate form shall be generated along with the challan on the Common Portal and the same shall be submitted to the bank from where the payment is to be made Rule 87(5) of CGST and SGST Rules, 2017.

The mandate form shall be valid for a period of fifteen days from the date of generation of challan.

Generation of CIN on successful payment – On successful credit of the amount to the concerned government account maintained in the authorized bank, a Challan Identification Number (CIN) will be generated by the collecting Bank and the same shall be indicated in the challan Rule 87(6) of CGST and SGST Rules, 2017.

On receipt of CIN from the authorized Bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf he deposit has been made and the Common Portal shall make available a receipt to this effect - Rule 87(7) of CGST and SGST Rules, 2017.

### **Intimation when CIN not generated**

If the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number (CIN) is generated or generated but not communicated to the Common Portal, the said person may represent electronically in form GST PMT-07 through the Common Portal to the Bank or electronic gateway through which the deposit was initiated - Rule 87(8) of CGST and SGST Rules, 2017.

### **Credit of TDS or TCS**

Any amount deducted under section 51 (TDS) or collected under section 52



(TCS) and claimed in form GSTR-02 by the registered taxable person from whom the said amount was deducted or collected shall be credited to his electronic cash ledger in accordance with the provisions of rule 87 - Rule 87(9) of CGST and SGST Rules, 2017.

### **Debit to Electronic Cash Ledger if refund claimed**

Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger Rule 87(10) of CGST and SGST Rules, 2017.

If the refund so claimed is rejected, either fully or partly, the amount debited under rule 87(10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in form GST PMT-03 - Rule 87(11) of CGST and SGST Rules, 2017.

A refund shall be deemed to be rejected if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal – Explanation to Rule 87 of CGST and SGST Rules, 2017.

Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose of re-crediting the amount if refund claim is finally rejected – CBI&C circular No. 3/3/2017- GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

### **Payment by person supplying OIDAR service from out of India**

Person supplying OIDAR service from out of India to an on-taxable online recipient may deposit the amount in Electronic Cash Ledger through CBI&C's payment system i.e., Electronic Accounting System in Excise and Service tax from date to be notified – second proviso to Rule 87(2) of CGST and SGST Rules, 2017 inserted w.e.f. 17-8-2017.

They can make payment through Society for Worldwide Inter-bank Financial Telecommunication payment network from date to be notified – second proviso to Rule 87(3) of CGST and SGST Rules, 2017 inserted w.e.f. 17-8-2017.

### **Utilization of amount in electronic credit Ledger**

The amount available in the electronic credit ledger may be used for making any payment towards output tax under the provisions of the Act or the rules made thereunder in prescribed manner – section 49(4) of CGST Act.



“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 – section 2(82) of CGST Act.

Thus, amount in electronic credit ledger cannot be used for payment of interest, penalty or fees. It also cannot be used where GST is payable under reverse charge basis.

Credit of IGST for payment of IGST, CGST and SGST/UTGST in that order – the amount of input tax credit on account of IGST available in the electronic credit ledger shall first be utilized towards payment of IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST/UTGST, in that order - - section 49(5)(a) of CGST act.

Credit of CGST for CGST and balance for IGST– The amount of input tax credit on account of CGST available in the electronic credit ledger shall first be utilized towards payment of CGST and the amount remaining, if any, may be utilized towards the payment of CGST and IGST - section 49(5) (b) of CGST act.

The input tax credit on account of CGST shall not be utilized towards payment of SGST / UTGST.

Credit of SGST/UTGST first for SGST/UTGST and balance for IGST–The amount of input tax credit on account of SGST/UTGST available in the electronic credit ledger shall first be utilized towards payment of SGST/ UTGST and the amount remaining, if any, may be utilized towards the payment of IGST and IGST - section 49(5) (c) of CGST act.

The input tax credit on account of SGST/UTGST shall not be utilized towards payment of CGST.

### **Electronic Credit Ledger to record ITC**

The electronic credit ledger shall be maintained in form GST PMT-02 for each registered person eligible for input tax credit under the Act on the Common Portal and every claim of input tax credit under the Act shall be credited to the said Ledger–Rule 86(1) of CGST and SGST Rules, 2017.

### **Debits to Electronic Credit Ledger**

The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with section 49 of CGST Act – Rule 86(2) of CGST and SGST Rules, 2017.



Debit to Electronic Credit Ledger if refund of credit claimed under section 54 – If a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54 of CGST Act (refund in case of zero rated supply or inverted tax structure), the amount to the extent of the claim shall be debited in the said ledger – Rule 86(3) of CGST and SGST Rules, 2017.

Such claim is for refund of ITC in case of export of goods or services or suppliers to SEZ. The amount is required to be debited at the time of filing refund claim.

Re-credit if refund claim is rejected – If the refund so filed is rejected, either fully or partly, the amount debited under rule 2(3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in form GST PMT-03 Rule 86(4) of CGST and SGST Rules, 2017.

For the purpose of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal – Explanation to Rule 86 of CGST and SGST Rules, 2017.

Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose of accepting undertaking and granting re-credit of refund claim – CBI&C circular No.3/3/2017-GST, dated 5-7- 2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

No other debit or credit in Electronic Credit Ledger – Save as provided in the chapter relating to payments [Chapter IX of CGST and SGST Rules], no entry shall be made directly in the electronic credit ledger under any circumstances – Rule 86(3) of CGST and SGST Rules,2017.

Intimation of discrepancy to officer – A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the Common Portal in form GST PMT-04 – Rule 86(4) of CGST and SGST Rules,2017.

### **Refund of balance to credit of cash or credit Ledger**

The balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the Act or the rules made thereunder may be refunded in accordance with the provisions of section 54 of CGST Act – section 49(6) of CGST Act.

### **Electronic liability register (ELR) for recording liability of a taxable Person**

All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register (ELR) as may be prescribed– section 49(7) of CGST and SGST Act.

## Form of Electronic Liability Register

The electronic liability register specified under section 49(7) shall be maintained in form GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the Common Portal and all amounts payable by him shall be debited to the said register – Rule 85(1) of CGST and SGS Rules, 2017.

## Amounts that will be debited to Electronic Liability Register

The electronic liability register of the person shall be debited by:- (a) the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person (b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person (c) the amount of tax and interest payable as a result of mismatch under section 42 or 43 or section 50, or (d) any amount of interest that may accrue from time to time –Rule 85(2) of CGST and SGS Rules, 2017.

Payable of liability through Electronic Liability Register –Subject to the provisions of section 49 of CGST and SGST Act, payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly – Rule 85(3) of CGST and SGST Rules, 2017.

The adjustment is subject to section 49 of CGST and SGST Act. i.e., where payment by cash is mandatory, liability cannot be adjusted through Electronic Credit Ledger. Similarly, restrictions and sequence of utilization of Input Tax Credit is required to be followed.

## Sequence of discharge of tax and dues by taxable person

Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order:

- (a) Self-assessed tax, and other dues related to returns of previous tax periods.
- (b) Self-assessed tax, and other dues related to return of current tax period.
- (c) Any other amount payable under the Act or the rules made thereunder

Including the demand determined under section 73 or 74 of CGST Act– section 49(8) of CGST Act.

Unless all earlier dues of tax, interest, penalty and fee are paid, the return filed will not be considered as valid return. Thus, the recipient of those dues, separate provisions have been made.



Luckily, demands raised under sections 73 and 74 of CGST Act are not required to be adjusted before adjusting the dues. For recovery of those dues, separate provisions have been made.

**Meaning of 'tax dues' and 'other dues' –** The expression "tax dues" means the tax payable under this Act and does not include interest, fee and penalty – Explanation (b)(i) to section 49(9) of CGST Act.

The expression "other dues" means interest, penalty, fee or any other amount payable under the Act or the rules made thereunder-Explanation (b)(ii) to section 49(9) of CGST Act.

### **Incidence of tax deemed to have been passed to recipient**

Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both - section 49(9) of CGST Act.

This is for application of doctrine of 'unjust enrichment' when refund claim is filed.

### **Interest on delayed payment of tax**

Every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the of the Central or a State Government within the period prescribed shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rate, not exceeding 18%, as may be notified by the Central or a State Government on the recommendation of the Council – section 50(1) of CGST Act.

The interest shall be calculated from the day succeeding the day on which such tax was due to be paid – section 50(2) of CGST Act.

The interest rate notified is 18% w.e.f. 1-7-2017 – Notification No.6/2017- IT dated 28-6-2017 and 13/2017-CT, dated 28-6-2017.

**Interest if undue or excess ITC claimed –** In case a taxable person makes an undue or excess claim of input tax credit under section 42(10) or undue or excess reduction in output tax liability under section 43(10), he shall be liable to pay interest on such undue or excess claim at such rate not exceeding 24%, as may be notified by Government on the recommendation of GST Council – section 50(3) of CGST Act.





If undue ITC is claimed or undue or excess reduction in output tax liability is claimed, interest is payable @ 24% - Notification No.13/2017- CT, dated 28-6-2017 and 6/2017-IT, dated 28-6-2017, w.e.f.1-7-2017.

### Numerical Examples

**Question** – Chethan has self-assessed tax liability under IGST Act, 20XX, as ₹80,000. He fails to pay the tax within 30 days from the due date of payment of such tax. Determine the interest and penalty payable by him explaining the provisions of law, with the following particulars available from his records – Date of collection of tax: 18th December, 2017. Date of payment of tax: 26th February, 2018. No Show Cause Notice (SCN) has been issued to him so far while he intends to discharge his liability even before it is issued to him, on the assumption that no penalty is leviable on him as payment is made before issue of SCN.

**Answer:** (A) Due date of payment of tax – 20-1-2018. Tax was paid beyond 30 days.

The delay in payment was as follows – January, 2018 – 11 days, February, 2018 – 26 – total – 37 days. Interest payable under IGST =  $(80,000 \times 18 \times 37) / (100 \times 365) = ₹1,459.73$ .

(B) As per section 73(11) of CGST Act penalty equal to 10% of tax is payable if self-assessed tax is not paid within 30 days from due date. This is notwithstanding any relaxation in penalty given under section 73(6) and 73(8) of CGST Act for voluntary payment of tax. Hence, penalty payable under IGST is ₹8,000 (10% of ₹80,000).

### Adjustment of credit between state government and central government

If credit of CGST is utilized for payment of IGST, the credit of CGST will be transferred by Central Government to IGST.

If credit of SGST is utilized for payment of IGST, the credit of SGST will be transferred by State Government to IGST – section 53 of CGST Act and SGST Act.

[This is adjustment between Central Government and State Governments. The taxable person does not come into picture]

Goods and Service Tax Settlement of Funds Rules, 2017 have been notified for this purpose.



## Refund of tax and interest

Normally, refund provisions apply in case of (a) zero rated supplies (exports and supplies to SEZ) and (b) Inverted duty structure i.e., input credit more than tax payable on output supply (but not in case of exempted supply or supply with Nil rate of tax).

'Taxable person' can also claim refund if he has paid excess tax by mistake.

Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application in that regard to the proper officer of IGST/CGST/SGST/UTGST before the expiry of two years from the relevant date in prescribed form and manner – section 54(1) of CGST Act.

## Two options to export of Goods and/or Services

There are altogether two options available with such persons in order to export and thereafter claim refund namely:

**Option 1:** Export on payment of IGST without any requirement of Bond or Letter of Undertaking

The exporter 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.

**Option 2:** Export without payment of IGST under Bond or Letter of Undertaking

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 unutilized input tax credit. The person engaged in making zero-rated supplies shall be allowed credit of input tax. It must be relevant to note that even if the supplies made under the zero rated supplies are exempt i.e. output goods and/or services are exempt, then also such person shall be allowed to avail the credit of input tax.

Refund in respect of export of goods and/or services:

Export of	Export under	Refund form
Export of Goods	On Payment of IGST	Shipping Bill
	Under Bond or LUT	GST RFD-01
Export of Services	On Payment of IGST	GST RFD-01
	Under Bond or LUT	GST RFD-01

The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 shall be transmitted electronically by the common portal i.e.

www.gst.gov.in, to the system designated by the Customs i.e. ICEGATE and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India as per Rule 96(2) of the GST Rules, 2017.

Validations in flow of relevant export invoices from GST Common Portal to Customs ICEGATE: The following validation are done by the GST System before transmitting the return data to ICEGATE, for refund on account of IGST paid on export of goods with payment of tax:

- GSTR-1 and GSTR-3B of the corresponding return period is filed
- Export invoices are filed under Table 6A of GSTR-1
- Correct and complete Shipping Bill Number, Shipping Bill Date and Port Code details have been provided in the invoices data, provided under Table 6A of GSTR-1
- IGST amount is reported in Table 3.1(b) of GSTR-3B [and not table 3.1(a) or 3.1(c)]
- IGST amount paid through Table 3.1(b) of GSTR 3B must be either equal to or greater than, the total IGST amount shown to have been paid under table 6A and table 6B of GSTR-1 of corresponding return period.

Refund claim to be filed within two years – Any person claiming refund of any tax and interest, if any paid on such tax or any other amount paid by him, may make an application in that regard to the proper officer of IGST/ CGST/SGST/ UTGST before the expiry of two years from the relevant date in prescribed form and manner – section 54(1) of CGST Act.

Time limit for filing refund claim was one year in excise and service tax was one year.

Processing of refund claim of IGST paid on exported goods by customs department, other refund claims by GST department – If an exporter pays IGST on goods exported by him or goods supplied to SEZ Unit or SEZ Developer, the refund claim will be process by customs department. All other refund claims (like refund of Input Tax Credit in case of export of goods or services, refund of IGST paid on export of services, refund due to inverted duty structure refund of tax paid by mistake, refund for any other reason) will be processed by Central or State Government authorities as per their jurisdiction over the taxable person.

Frequency or Period for which refund claim of Input Tax Credit should be filed– It is possible that input tax credit may be received in a month while exports may be made in subsequent month. In some months, there will be exports but no input tax credit available. In such cases, the refund claim can be filed



during 'relevant period' which is different from 'tax period'. Hence, exporter may file refund claim per month or per quarter or by clubbing successive calendar months/quarters. However, such refund claim cannot spread over different financial years (really, why not?) -- CBI&C circular No.37/11/2018-GST dated 15-3-2018.

The principle should apply for refund of tax due to inverted duty structure also. Refund of cash balance in Electronic Cash Register – Refund from balance in electronic cash register can be made (presumably without time limit) – proviso to section 54(1) of CGST Act. Money in electronic Cash Register is only deposit. Hence, principle of unjust enrichment does not arise.

### **New Online Refund Module (Fully electronic refund process through FORM GST RFD-01 and single disbursement)**

#### **Refunds**

- Online refund processing (End to End) has been deployed by GSTN. Consequently, refund ARNs generated from 26.09.2019 onwards are processed online, including issuance of GSTRFD-04, GSTRFD -06 orders and disbursement of all tax heads like CGST/IGST/Cess and SGST/UTGST throughout India
- Single authority disbursement has been implemented.
- Refund applications filed by the taxpayers in RFD-01 form shall be processed electronically / online by the tax-officer and all communications between the tax officers and the taxpayers shall take place electronically.
- Refund amount shall be disbursed by accredited bank of CBIC through the Public Financial Management System (PFMS) after bank account validation.

#### **New Refund Functionalities**

- Form GST RFD-02 -Sending Acknowledgement (Rule 90(1), 90(2) & 95(2));
- Form GST RFD-03 -Raising Deficiency Memo (Rule 90(3))
- Form GST RFD-04 -Issuing Provisional Refund Order (Rule 91(2));
- Form GST RFD-06 -Issuing Final Refund Order (Rule 92(1), 92(3), 92(4), 92(5) & 96(7));
- Form GST RFD-05 -Generating Payment Order (Rule 91(3), 92(4), 92(5) & 94)
- Form GST RFD-07B -Withholding Refund (Rule 92(2) & 96(6))

- Form GST RFD-08 -Sending Show Cause Notices by tax official for rejection of application for refund (Rule 92(3))
- Form GST RFD-09 -Reply to Show cause notice by taxpayer (Rule 92(3))
- Form GST PMT 03 – Order for re-credit of in admissible ITC (Rule 86(4) & 87(11)) to credit ledger or to cash ledger (When refund of amount taken in cash ledger claimed) on rejection of refund claim
- Online refund processing functionality has been deployed. The taxpayers can file refund application (in Form GST RFD 01) and the tax officers can process there fund application, online.
- Form GSTRFD-05-Generating Payment Order (Rule91 (3), 92(4), 92(5) & 94) After processing there fund application the tax officials will issue payment order online and the amount will be refunded /credited to taxpayer's account, as provided by them in their refund application.
- In case validation of bank account number given by the taxpayer fails, intimation will be sent to taxpayer about the same and the taxpayer will be required to correct bank account details, so that refund amount can be credited to their bank account.
- In the new system, after processing is completed by the tax officer, the sanctioned amount will get credited to the bank account of the Tax payer through the accredited bank of Government and through the PFMS System.
- All communications between the taxpayers and the tax officers will be online. Taxpayers can view the various stages of processing of their refund application and can give replies to notice, if any, online on the GST Portal now. They will also be given information via SMS and Email, at important stages of processing of their refund application.

### **Advisory for Taxpayers**

- **<https://tutorial.gst.gov.in/downloads/advisory.pdf>**
  - GSTN has issued an "Online refund processing and single authority disbursement: Advisory for taxpayers"
- **RFD-01:** The taxpayers were filling refund application in form RFD- 01A online. The RFD-01 a form has been disabled on the portal. The taxpayer shall be able to file his refund application in form RFD- 01 now.
  - However, the taxpayer shall be able to view the status of RFD-01 Applications also along with the new ones.
  - The bank account details mentioned in the refund application shall be



validated by PFMS after filing of RFD-01. The taxpayers must ensure that the bank account details selected in their fund application are valid and correct.

- The taxpayer will need to change / edit the bank account details (through non-core amendment in registration in REG-14) if there is failure of bank account validation by PFMS. After performing this step, the taxpayer needs to enter the updated bank account by clicking on 'Update Bank Account' functionality provided with the ARN of their fund application.
- The taxpayer shall be able to view the status of bank account validation on his dash board. It will also be communicated through the-mail/SMS.
- **RFD-02 (Acknowledgement):** The tax officer issued RFD- 02 manually. The tax officer shall issue RFD-02 electronically to the taxpayer. The taxpayer shall be able to view the acknowledgement in RFD-02 on his dashboard. The taxpayer will also receive communication through email and SMS
- **RFD-03(Deficiency Memo):** The tax officer shall issue RFD-03 electronically to the taxpayer. With the issuance of RFD-03, the ITC/cash will get re-credited to the electronic credit /cash ledger of the tax payer. The taxpayer shall be able to view the deficiency memo in RFD-03 on his dashboard. Once RFD-03 has been issued against an ARN, the taxpayer is required to file a fresh refund application. The tax payer will receive communication through email and SMS.
- **RFD-04(Provisional Refund Order):** The tax officer shall issue RFD-04 electronically to the taxpayer. The taxpayer shall be able to view the provisional sanction order in RFD-04 on his dashboard. The taxpayer will receive communication through email and SMS.
- **RFD-05(Payment Order):** The tax officer shall issue RFD-05 electronically to the taxpayer. The tax officer is not required to send the copy of RFD-05 to the central nodal authority and state AAs. The tax payer shall be able to view the payment order in RFD-05 on his dashboard. The bank account details mentioned in the refund application shall be validated by PFMS after issuance of RFD-05 by the tax-officer.
- **RFD-05 (Payment Order):** The taxpayer will need to change/ edit the bank account details (through non-core amendment in registration in REG-14) if there is failure of bank account validation by PFMS. After performing this step, the tax payer needs to enter the updated bank account by clicking on 'Update Bank Account' functionality provided with the ARN of their fund application.

- The taxpayer shall be able to view the status of bank account validation and disbursement on his dash board. The taxpayer will receive communication through email and SMS
- **RFD-06(Final refund order):** The tax officer shall issue RFD-06 electronically to the taxpayer. The taxpayer shall be able to view the final sanction/rejection order in RFD-06 on his dashboard.
- **RFD-07B (With holding Order):** The tax officer shall issue RFD-07B electronically to the taxpayer. The taxpayer shall be able to view the withhold order in RFD-07B on his dashboard.
  - The taxpayer will receive communication through email and SMS
- **RFD-08(Show Cause Notice):** The tax officer shall issue RFD-08 electronically to the taxpayer. The taxpayer shall be able to view the show cause notice in RFD-08 on his dash board. The tax payer is expected to give reply to the SCN within 15 day so receipt of the SCN. If the tax payer doesn't respond within 15days of the issuance of SCN, the tax office can take action on their fund application. The taxpayer will receive communication through email and SMS.
- **RFD09 (Reply to Show Cause Notice by the Taxpayer):** The taxpayer is required to reply the SCN electronically/online in RFD- 09 form which would be available on his dash board. The taxpayer shall be able to reply to the SCN and upload supporting documents electronically through RFD-09. The tax officer may not process the reply to the SCN if not given electronically in RFD-09 by the taxpayer.

### Fully electronic refund process

- **Circular No. 125/44/2019 – GST dated 18<sup>th</sup> November, 2019**
  - W. e. f 26.09.2019, all refund applications filed by the tax payers in RFD-01 form shall be processed electronically/online by the tax-officer and all communications between the tax officer and the taxpayers shall take place electronically.
  - Refund amount shall be disbursed by accredited bank of CBIC through the Public Financial Management System (PFMS) after bank account validation
  - The fully online mode of refunds i.e. Online filing of RFD-01 application and online processing of the application starting from issuance of acknowledgement / deficiency memo to disbursal of payment (RFD-05) and re-credit of rejected amount through PMT-03 has been developed and gone live w. e. f. 26.09.2019.



- The RFD-01 B functionality would continue to be available to dispose of the older refund applications i.e. the ARNs of RFD – 01 A filed till 25.09.2019 midnight.
- All earlier circulars on refunds viz. Circular No. 17/17/2017- GST dated 15.11.2017, 24/24/2017-GST dated 21.12.2017, 37/11/2018- GST dated 15.03.2018, 45/19/2018-GST dated 30.05.2018 (including corrigendum dated 18.07.2019), 59/33/2018-GST dated 04.09.2018, Circular No. 125/44/2019-GST 70/44/2018-GST dated 26.10.2018, 79 / 53 / 2018-GST dated 31.12.2018 and 94/13/2019- GST dated 28.03.2019 superseded.
- However, the provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26.09.2019 and the said applications shall continue to be processed manually as prior to deployment of new system

### **Form GST RFD-01**

- A comprehensive list of such documents is provided at Annexure-A of circular and it is clarified that no other document needs to be provided by the applicant at the stage of filing of their fund application.
- The facility of uploading these other documents / invoices shall be available on the common portal where four documents, each of maximum 5MB, may be uploaded along with their fund application.
- Neither there shall fund application in FORM GST RFD-01 nor any of the supporting documents be required to be physically submitted to the office of the jurisdictional proper officer.
- The ARN will be generated only after the applicant has completed the process of filing the refund application in FORM GST RFD-01, 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
- The application shall be deemed to have been filed under rule 90 (2) of the CGST Rules on the date of generation of the said ARN and the time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the said date.
- The acknowledgement for the complete application (FORM GST RFD-02) or deficiency memo (FORM GST RFD-03), as the case may be, would be issued electronically by the jurisdictional tax officer based on the documents so received from the common portal.





- If a refund application is electronically transmitted to the wrong jurisdictional officer, he / she shall reassign it to the correct jurisdictional officer electronically as soon as possible, but not later than three working days, from the date of generation of the ARN. Deficiency memos shall not be issued in such cases merely on the ground that the applications were received electronically in the wrong jurisdiction.
- Any refund claim for a tax period may be filed only after furnishing all the returns in FORM GSTR-1 and FORM GSTR-3B or FORM GSTR-4 (along with FORM GST CMP-08), FORM GSTR-5 or FORM GSTR-6 which were due to be furnished on or before the date on which the refund application is being filed.
- Undertaking in relation to sections 16 (2) (c) and section 42 (2), since the functionality of furnishing of FORM GSTR – 2 and FORM GSTR-3 remains unimplemented, and it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit, This undertaking should be submitted electronically along with their refund claim.
- The applicant, an option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to ₹1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid.

### **Deficiency memo**

- Either an acknowledgement (GST RFD-02) or a deficiency memo (GST RFD – 03 as per rule 90 (3) of CGST Rules) should be issued within the aforesaid period of 15 days starting from the date of generation of ARN.
- Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any grounds, may be subsequently issued for the said application.
- After a deficiency memo has been issued, the refund application would not be further processed and a fresh application would have to be filed with fresh ARN. Any amount of input tax credit / cash debited from electronic credit / cash ledger would be re-credited automatically once the deficiency memo has been issued, without any need of order in GST PMT-03



## ● Deficiency memo

- Once an application has been submitted a fresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un- rectified, either wholly or partly, or any other substantive efficiency is noticed subsequently.
- Since are fund application filed after correction of deficiency is treated as a fresher fund application, such are citified refund application, submitted after correction of deficiencies, shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after section 54 (14) of the CGST Act.

## Provisional Refund

- If the proper officer prima-facie has sufficient reasons to believe that there are irregularities in the refund application which would result in rejection of whole or part of their fund amount so claimed. In such cases, the proper officer shall refund on a provisional basis ninety per cent of their fundable amount of the claim (amount of refund claimless the in admissible portion of refunds found) in accordance with the provisions of rule 91 of the CGST Rules. Final sanction of refund shall be made in accordance with the provisions of rule 92 of the CGST Rules.
- If the proper officer is fully satisfied about the eligibility of are fund claim on account of zero-rated supplies, and is of the opinion that no furthers scrutiny is required , the proper officer may issue final order in FORM GST RFD-06 within 7 days of the issuance of acknowledgement. In such cases, the issuance of a provisional refund order in FORM GST RFD- 04 will not be necessary.

## Provisional Refund

- In situations where the final refund amount to be sanctioned in FORM GST RFD-06 is less than the amount of refund sanctioned provisionally through FORM GST RFD-04, the proper officer shall have to issue as how cause notice to the applicant, in FORM GST RFD-08, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act.
- The proper officer for adjudicating the above case shall be the same as the proper officer for sanctioning refund under section 54 of the CGST Act. The above notice shall be adjudicated following the principles of natural justice

and an order shall be issued, in FORM GSTRFD-06, under section 54 of the CGST Act, read with section 73 or section 74 of the CGST Act, as the case maybe.

### ● **Provisional Refund**

- In such cases, FORM GST RFD 08 and FORM GST RFD-06, are to be considered as show cause notice and adjudication order respectively, under both section 54 (for rejection of refund) and section 73/74 of the CGST Act as the case may be (for recovery of erroneous refund).
- No adjustment or with holding of refund, as provided under sub sections(10)and(11)ofsection54oftheCGSTAct,shallbeallowed in respect of the amount of refund which has been provisionally sanctioned

### **Scrutiny of Application**

- In case of refund claim on account of export of goods without payment of tax, the Shipping bill details shall be checked by the proper officer through ICE GATE SITE ([www.icegate.gov.in](http://www.icegate.gov.in)) where in the officer would be able to check details of EGM and shipping bill by keying in port name, Shipping bill number and date.
- It is advised that while processing refund claims, information contained in Table 9 of FORM GSTR-1 of the relevant tax period as well as that of the subsequent tax periods should also be taken in to cognizance, wherever applicable. In this regard, Circular No.26/26/2017–GST dated 29.12.2017 may be referred, where in the procedure for rectification of errors made while filing the returns in FORM GSTR-3B has been provided.

### ❖ **Re-crediting of electronic credit ledger on account of rejection of refund claim**

- In case of rejection of refund claim of unutilized / accumulated ITC due to ineligibility of the input tax credit under any provisions of the CGST Act and rules made there under, the proper officer shall have to issue as how cause notice in FORM GST RFD-08, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:
  - (a) The refund amount corresponding to the ineligible ITC should not be rejected as per the relevant provisions of the law; and



- (b) The amount of ineligible ITC should not be recovered as wrongly availed ITC under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any

#### ❖ **Disbursal of refunds**

- For a refund application assigned to a Central tax officer, both the sanction order (FORM GST RFD- 04 / 06) and the corresponding payment order (FORM GST RFD-05) for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State / UT tax officer, both the sanction order and the corresponding payment order for the sanctioned refund amount, under all tax heads, shall be issued by the State/ UT tax officer only.
- The sanctioned refund amounts, as entered in the payment orders issued by the Central and State / UT tax officers, shall be disbursed through the Public Financial Management System (PFMS) of the Controller General of Accounts (CGA), Ministry of Finance, Government of India

#### ❖ **Disbursal of refunds**

- The disbursement status of their fund amount would be communicated by PFMS to the common portal. The common portal shall notify the same to the tax payer by email / SMS. Such details shall also be available on the status tracking facility on the dashboard.
- Any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant.
- 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 applicant. Accordingly, all tax authorities are advised to issue the final sanction order in FORM GST RFD-06 and the payment order in FORM GST RFD-05 within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

#### ❖ **Refunds of and utilized Input Tax Credit**

- Applicants of refund so fun utilized ITC, shall have to upload a copy of FORM GSTR-2A for the relevant period (or any prior or subsequent

period(s) in which the relevant invoices have been auto-populated) for which there fund is claimed.

- Such applicants shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-B of present circular along with the application for refund claim.
- Such availment of ITC will be subject to restriction imposed under rule 36(4) of the CGST rules inserted vide Notification No.49/2019- CT dated 09.10.2019.

#### ❖ **Refunds of unutilized Input Tax Credit**

- Self- certified copies of invoices in relation to which there fund of ITC is being claimed and which are declared as eligible for ITC in Annexure-B, but which are not populated in FORM GSTR-2A, shall be uploaded by the applicant along with the application in FORM GST RFD01.
- The common portal calculates the refundable amount as the least of the following amounts-
- Maximum refund amount as per the formula in rule 89(4) or rule 89(5)
- Balance in the electronic credit ledger at the end of the tax period for which the refund claim is being filed
- Balance in the electronic credit ledger at the time of filing the refund application

#### ❖ **Refunds of unutilized Input Tax Credit**

- 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 short fall 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).



- The order of debit described above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the tax payers are advised to follow the order as explained above for all refund applications. However, for applications where to be order is not adhered to by the applicant, no adverse view may be taken by the tax authorities.

#### ❖ **Refund of tax paid on deemed exports**

- In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No.49/2017 Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies.
- Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed instatement 5B for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices.

#### ❖ **Refund of Compensation Cess**

- A registered person is eligible to claim refund of unutilized input tax credit of compensation Cess paid on inputs, where the zero-rated final product is not liveable to compensation Cess. For instance, Cess is levied on coal, which is an input for the manufacture of aluminum products, whereas Cess is not levied on aluminum products. There fund of such UN utilized ITC shall be available.
- A registered person uses coal for the captive generation of electricity which is further used for the manufacture of goods (say aluminum) 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. There is no distinction between intermediate goods or services and final goods or services under GST. Since coal is an input used in the production of aluminum, input tax credit in relation to the same cannot be denied.

<b>form</b>	<b>RFD-02</b>
<b>Description</b>	Acknowledgement
<b>Action by</b>	Tax Officer
<b>Previous Processing Work flow</b>	The tax officer issued RED-02 manually.
<b>Electronic Processing</b>	The tax officer shall issue RFD-02 electronically to the taxpayer. The taxpayer shall be able to view the acknowledgement in RFD-02 on his dashboard. The tax payer will also receive communication through email and SMS.

<b>form</b>	<b>RFD-04</b>
<b>Description</b>	Provisional Refund Order
<b>Action by</b>	Tax Officer
<b>Previous Processing Work flow</b>	The tax officer issued RED-04 manually.
<b>Electronic Processing</b>	The tax officer shall issue RFD-04 electronically to the taxpayer. The taxpayer shall be able to view the provisional Sanction order in RFD-04 on his dashboard. The taxpayer will receive communication through email and SMS.

<b>form</b>	<b>RFD-03</b>
<b>Description</b>	Deficiency Memo
<b>Action by</b>	Tax Officer
<b>Previous Processing Work flow</b>	The tax officer issued RFD-03 manually and there was no auto re-credit of ITC/cash.
<b>Electronic Processing</b>	The tax officer shall issue RFD-03 electronically to the taxpayer. With the issuance of RFD-03, the ITC/cash will get re- credited to the electronic credit/ cash ledger of the tax payer. The taxpayer shall be able to view the deficiency memo in RFD-03 on his dashboard. Once RFD-03 has been issued against an ARN, the tax payer is required to file a fresh refund application. The taxpayer will receive communication through email and SMS.



<b>form</b>	<b>RFD-05</b>
<b>Description</b>	Payment Order
<b>Action by</b>	Tax Officer
<b>Previous Processing Work flow</b>	The tax officer issued RFD-05 manually and sent a copy to the central nodal authority and state as respectively for disbursement.
<b>Electronic Processing</b>	The tax officer shall issue RFD-05 electronically to the taxpayer. The tax officer is not required to send the copy of RFD-05 to the central nodal authority and state AAs. The taxpayer shall be able to view the payment order in RFD-05 on his dashboard. The bank account details mentioned in the refund application shall be validated by PFMS after issuance of RFD-05 by the tax- officer. The taxpayer will need to change/ edit the bank account details (through non- core amendment in registration in REG-14) if there is failure of bank account validation by PFMS. After performing this step, the taxpayer needs to enter the updated bank account by clicking on 'Update Bank Account' functionality provided with the ARN of the refund application. The taxpayer shall be able to view the status of bank account validation and disbursement on his dash board. The taxpayer will receive communication through email and SMS.

<b>form</b>	<b>RFD-06</b>
<b>Description</b>	Final Refund Sanction/ Rejection Order
<b>Action by</b>	Tax Officer
<b>Previous Processing Work flow</b>	The tax officer issued RFD-06 manually.
<b>Electronic Processing</b>	The tax officer shall issue RFD-06 electronically to the tax payer. The taxpayer shall be able to view the final sanction/ rejection order in RFD-06 on his dashboard.





<b>form</b>	<b>RFD-7B</b>
<b>Description</b>	With holding Order
<b>Action by</b>	Tax Officer
<b>Previous Processing Work flow</b>	The tax officer issued RFD-07B manually.
<b>Electronic Processing</b>	The tax officer shall issue RFD-07B electronically to the tax payer. The tax payer shall be able to view the withhold order in RFD-07B on his dashboard. The taxpayer will receive communication through email and SMS.

<b>form</b>	<b>RFD-08</b>
<b>Description</b>	Show Cause Notice
<b>Action by</b>	Tax Officer
<b>Previous Processing Work flow</b>	The tax officer issued RFD-08 manually.
<b>Electronic Processing</b>	The tax officer shall issue RFD-08 electronically to the tax payer. The taxpayer shall be able to view the show cause notice in RFD-08 on his dashboard. The taxpayer is expected to give reply to the SCN within 15 days of receipt of the SCN. If the taxpayer doesn't respond within 15days of the issuance of SCN, the tax officer can take action on the refund application. The taxpayer will receive communication through email and SMS.

<b>form</b>	<b>RFD-09</b>
<b>Description</b>	Reply to Show Cause Notice by the Taxpayer
<b>Action by</b>	Tax Officer
<b>Previous Processing Work flow</b>	The taxpayers were submitting reply to the show cause notice manually to the tax officer.
<b>Electronic Processing</b>	The taxpayer is required to reply the SCN electronically/online in RFD-09 form which would be available on his dash board. The taxpayer shall be able to reply to the SCN and upload supporting documents electronically throughRFD-09. The tax officer may not process the reply to the SCN if not given electronically in RFD-09 by the taxpayer.



<b>form</b>	<b>PMT-03</b>
<b>Description</b>	Order for Re-credit of Rejected Amount
<b>Action by</b>	Tax Officer
<b>Previous Processing Work flow</b>	The tax officer uploaded the refund order details in RFD-01B and then the ITC got re-credited to the taxpayer's ITC ledger.
<b>Electronic Processing</b>	The tax officer shall issue PMT-03 electronically. With the issuance of PMT- 03, the in admissible ITC shall get re- credited to the electronic credit ledger of the taxpayer automatically. The taxpayer is required to give an undertaking that he will not file an appeal against the refund order if he/she desires to get a re-credit of the rejected amount. This undertaking has to be submitted to the tax officer manually. The taxpayer shall be able to view the re-credit order in PMT-03 on his dashboard.

### 0.1% scheme

- 0.1% scheme under Notification No.40/2017– Central Tax (Rate) dated 23.10.2017
- The option may or may not be availed by the supplier and /or the recipient and the goods may be procured at the normal applicable tax rate.
- The exporter will be eligible to take credit of the tax @0.1% paid by him
- The exporter of such goods can export the goods only under LUT/ bond and cannot export on payment of integrated tax.
- Refund amount below ₹1000/-
- Section 54 (14) of the CGST Act provides that no refund under sub section (5) or sub-section (6) of section 54 of the CGST Act shall be paid to an applicant, if the amount is less than one thousand rupees.
- In this regard, it is clarified that the limit of rupees one thousand shall be applied for each tax head separately and not cumulatively.

### However, drawback of customs duty portion can be availed

Drawback – 'Drawback' in relation to any goods manufactured in India and exported, means the rebate of duty, tax or Cess chargeable on any imported

inputs or on any domestic inputs or input services used in the manufacture of such goods - section 2(42) of CGST Act.

Refund only in case of (a) exports and supplies to SEZ (a) inverted rate structure – Refund will be admissible only in case of physical exports and supplied to SEZ. Provision of 'deemed export' has been made in CGST Act. However, there is no specific provision of refund in case of deemed exports or supplies to EOU.

Refund is admissible if GST rate on inputs is higher than GST rate of output supplied. However, refund is not available in cases where supply is exempted or nil rated – first proviso to section 54(3) of CGST Act.

Sanctioning 90% of claim on provisional basis in case of exports – Notwithstanding anything contained in section 54(5) [which states that refund should be credited to Consumer Welfare Fund- the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government, on the recommendations of the Council, refund on a provisional basis, 90% of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under section 54(5) for final settlement of the refund claim after due verification of documents furnished by the applicant – section 54(6) of CGST Act.

Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose of granting refund under section 54(6)– CBI&C circular No. 3/3/2017- GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

### **Refund in case of inverted duty structure**

In case of inverted duty rates (i.e., input tax credit more than tax payable on outward supply), there is provision of refund of excess credit under section 54(3) of CGST and SGST Act.

No refund if tax is Nil or exempt – There fund is not admissible where the rate of output supply is Nil or exempt. Thus, some tax must be payable.

No refund in certain cases, even if ITC is more than tax paid - As per proviso (ii) to section 54(3) of CGST and SGST Act, Government can notify supply of goods or services where refund of unutilized Input Tax Credit (ITC) will not be admissible, even if ITC is more than tax payable on output supply. Under these



powers, Notification No.5/2017-CT (Rate) and 5/2017-IF (Rate) both dated 28-6-2017 has been issued. As per this notification, the refund is not admissible even if ITC is more than tax paid, in the following cases–

- Woven textile fabrics falling under specified heading in chapters 50 to 55
- Knotted netting of twine, cordage of rope, made up of fishing nets or other made up nets, of textile fabrics, falling under heading -5608 [inserted w.e.f.14-11-2017]
- Corduroy fabrics falling under heading 5801 [inserted w.e.f. 22-9- 2017]
- Narrowwovenfabricsfallingunderheading5806[insertedw.e.f.22- 9- 2017]
- Knitted or crocheted fabrics (all goods) falling under chapter60
- Railway locomotives and their parts falling under headings 8601 to 8608.

Restriction not applicable in case of export of aforesaid goods – This restriction is only in respect of refunds under section 54(3) (ii) of CGST Act. Thus, the restriction is not applicable to refund under section 54(3) (i) of CGST Act i.e., zero rated supplies. Hence, in case of export of these goods, refund of entire ITC will be available – MF (DR) circular No.18/18/2017- GST, dated 16-11-2017. [The clarification is in respect of fabrics, but principle applies to all goods notified under Notification No.5/2017-CT (Rate), dated 28-6-2017].

No refund of ITC even if input tax credit more than GST payable on outward supply in case of construction of complex – In case of service of construction of complex [specified in Item 5(b) of Schedule II of CGST Act], refund of unutilized ITC will not be available – Notification No.15/2017-CT (Rate) and 12/2017-IT (Rate) dated 28-6-2017].

### **Refund in case of exports or supplies to SEZ**

The taxable person has following options – (a) pay IGST on exports and claim refund of IGST (b) Clear goods for export without payment of IGST and claim refund of Input Tax Credit (c) If his part supplies are exports, he can utilize that credit for payment of GST on supplies within India. In that case he need not apply for refund at all.

The procedure for exports and claiming of refund has been discussed in The chapter on 'Exports'.

### **Doctrine of unjust enrichment in case of refund of GST**

Refund will be normally paid in Consumer Welfare Fund, and not paid to the taxable person who has applied for refund – section 54(5) of CGST Act.

This is on the basis of doctrine of unjust enrichment, as explained below.

If the supplier of goods and services has recovered GST from recipient, it is clear that he has passed on the burden to the recipient and has already recovered GST from him. In such cases, refund of excess GST paid will amount to excess and underserved profit to supplier of goods and services. It will not be equitable or refund the duty to him, as he will get double benefit – first from the recipient of goods and services and again from the Government.

This will be 'unjust enrichment' of supplier

Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both – section 49(9) of CGST Act.

If tax was recovered, it means duty incidence has been passed on – If the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer[indeed obvious]–Explanation(ii) to rule 89(2) of CGST and SGST Rules, 2017.

Precautions while claiming refund to avoid doctrine of unjust enrichment

If the burden of tax has been passed on to customer, there is no point in applying for refund of GST.

In other cases, to establish that burden has not been passed on to customer, the amount should be shown as 'claim receivable' in books of account and should not be charged to profit and loss account.

### **Manual refund applications in case of deemed exports, inverted duty structure and balance in electronic cash ledger**

Provision for manual refund applications in case of deemed exports, inverted duty structure and balance in electronic cash ledger has been made online similar to refund applications in case of exports.

The procedure is similar and has been specified in CBI&C circular No.24/24/2017-GST dated 21-12-2017.

Application should be submitted manually in form RFD-1A on monthly basis. Small taxable persons with turnover less than ₹1.50 crores shall apply for refund on quarterly basis. Refund application should be after filing GSTR-1 and valid GSTR 3B return (valid means after payment of all taxes due as per return).

**Duty drawback of GST should not have been availed.**

Provisional refund will be granted. For this, an undertaking is required to be submitted.

**Due date for filing of refund claim**

- As per notification No 35/2020 Central Tax dated 03-04-2020 where the timeline for any compliance required as per section 54 (1) of the CGST Act, 2017 falls during the period from 20-03-2020 to 29-06-2020 the same has been extended till 30-06-2020.
- Accordingly, the due date for filing an application for refund falling during the said period has also been extended till 30-06-2020

**Refund of IGST paid on services exported**

Refund of IGST paid on services exported shall be filed in form GSTRFD- 01 and shall be dealt with in accordance with provisions of rule 89 of CGST Rules – Rule 96(9) of CGST and SGST Rules, 2017 amended with retrospective effect from 23-10-2017.

**Advisory for Taxpayers to file Refund for Multiple Tax period 16/10/2018**

1. Refund application filing for multiple tax period is available for below Grounds of refund:
  - a. Export of Goods & Services-Without payment of Tax
  - b. Export of services with payment of tax
  - c. Supplies made to SEZ Unit/SEZ Developer-Without payment of Tax
  - d. Supplies made to SEZ Unit/SEZ Developer-With payment of Tax
  - e. ITC accumulated due to inverted tax structure
  - f. Claim by recipient /supplier of deemed exports
2. Refund application can be filed using refund application Form GST- RFD- 01A & selecting the tax period range
3. The multiple tax period application has following restrictions:
  - a. Multiple tax period selection should be within a single financial year
  - b. Application has to be filed chronologically for tax periods and in case refund application is not to be filed for any tax period, a declaration of "No Refund Application" is to be provided.

-For e.g.: If tax payer wants to file refund application for period April 2018 to June 2018 and there is no refund application filed for period previous to April 2018, then: First, taxpayer would have to file No refund application till April 2018 & Post that file refund application for April 2018 to June 2018

4. For claiming refund, taxpayer would have to upload invoice details mandatorily in the statement template available in the refund application itself. The statement uploaded by taxpayers will be validated by system from the invoice data declared/provided by the taxpayer at the time of filing return for that period for which refund is claimed. Only after validating data from system, the taxpayer would be able to file refund application
5. All the invoice details are to be provided in a single statement. Taxpayer is not required to upload multiple statements for different periods separately
6. After filing refund application, taxpayer would not be able to claim refund for that invoice again in some other refund application as the system will lock the invoice for which refund is claimed in one application. Also, taxpayer would not be able to amend invoice details after claiming refund
7. Taxpayer can also attach any other supporting document (maximum 4 documents in pdf format of size 5MB each)
8. After filing of refund application by taxpayer, refund application Form GST-RFD-01A along with the statement and documents uploaded shall be available to jurisdictional tax officer for review and processing of refund.

### **Expediting pending refund claims**

Instruction No. 2/1/2020 GST dated 9th April 2020

- Decision to process pending refund claims has been taken with a view to provide immediate relief to the taxpayers in these difficult times even though the GST Law provides 15 days for issuing acknowledgement or deficiency memo and total 60 days for disposing off refund claims without any liability to pay interest, all pending refund applications must be taken up for processing immediately
- Due diligence, however, may be done before granting the refunds on merits, considering all the relevant legal provisions and circulars
- For facilitation of taxpayers, all communication must be done using official email IDs It may please be noted that the prescribed process doesn't



warrant any physical submission of documents and any such practice must be avoided

- So far as the IGST Refunds of the exporters in whose case the scrolls have been suspended based on instructions from DGARM, extant procedure prescribed vide letter dated 23-01-2020 shall continue to be followed

Daily monitoring of disposal of pending refund claims should be done by the Zonal Principal Chief Commissioner/Chief Commissioners and efforts should be made to dispose of all the pending refund claims by 30th April 2020

### **Refund of GST paid on advance consequent to cancellation of order**

- **Advance received by supplier, GST paid and invoice also issued:** In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim.
- However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01
- **Advance received by supplier, GST paid, receipt voucher issued and invoice not issued:** In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules
- The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax"

### **Refund of GST paid on account of return of goods**

- **Goods returned and tax invoice has been issued:** In such a case where the goods supplied by supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit





notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case.

- However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.

## ASSESSMENT

### Meaning of 'Assessment'

Assessment means determining the tax liability.

"Assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment – section 2(11) of CGST Act.

### Self-Assessment in GST

Every registered taxable person shall self-assess the taxes payable under this Act and furnish a return for each tax period of specified under section 39 of CGST Act – section 59 of CGST Act.

### Provisional Assessment

Where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him – section 60(1) of CGST Act.

Authority empowered to order and finalize provisional assessment - Deputy/ Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose of ordering and finalizing provisional assessment under section 60(1) of CGST Act, read with rule 98 of CGST Rules – CBI&C circular No.3/3/2017-GST, dated 5/7/2017 [State Government will prescribe 'proper officer' for the purpose of SGST in the respective State].

Bond with security - The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as maybe prescribed, and with such surety and security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as



may be finally assessed and the amount of tax provisionally assessed – section 60(2) of CGST Act.

**Final assessment within six months** - The proper officer shall, within a period not exceeding six months from the date of the communication of the order under section 60(1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment.

The period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint/ Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years – section 60(3) of CGST Act.

**Interest payable if tax payable after final assessment is more than tax earlier paid** – The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under section 39 (7) of CGST or the rules made thereunder, at the rate specified under section 50(1) of CGST Act, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment – section 60(4) of CGST Act.

**Refund if tax payable was less** - Where the taxable person is entitled to a refund consequent to the order for final assessment under section 60(3), interest shall be paid on such refund as provided in section 60(5). Such refund is subject to doctrine of unjust enrichment [section 54(8)] – section 60(5) of CGST Act.

## Procedure for Provisional Assessment

Application for provisional application shall be made in form GST **Asmt-01**, along with the documents in support of his request, electronically through the Common Portal – Rule 98(1) of CGST and SGST Rules, 2017.

The proper officer may, on receipt of the application for provisional assessment, issue a notice in form GST **Asmt-02** requiring the registered person to appear in person or furnish additional information or documents in support of his request. The applicant shall file a reply to the notice in form GST **Asmt-03** – Rule 98(2) of CGST and SGST Rules, 2017.

The proper officer shall issue an order in FORM GST **Asmt-04** allowing

The payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional



basis and the amount for which the bond is to be executed and security to be furnished not exceeding **twenty five percent** of the amount covered under the bond.

The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in FORM GST **Asmt-05** along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3): Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the Act and the rules made thereunder. Explanation - For the purposes of this rule, the expression "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.

The proper officer shall issue a notice in FORM GST **Asmt-06**, calling for information and records required for finalization of assessment under subsection (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST **Asmt-07**.

The applicant may file an application in FORM GST **Asmt- 08** for the release of the security furnished under sub-rule (4) after issue of the order under sub-rule (5).

The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in FORM GST **Asmt-09** within a period of **seven working days** from the date of the receipt of the application under sub-rule (6).

### **Scrutiny of returns**

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 – Section 61(1) of CGST Act.

In case the explanation is found acceptable, the taxable person shall be informed accordingly and no further action shall be taken in this regard section 61(2) of CGST Act.

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 measures in his return for the month in which discrepancy

is accepted, the proper officer may initiate appropriate action including those under section 65, 66 or 67, or proceed to determine the tax and other dues under section 73 or section 74 – section 61(3) of CGST Act.

Superintendent of Central Tax has been designated as 'proper officer' for the purpose of scrutiny under section 61 – CBI&C circular No.3/3/2017- GST, dated 5-7-2017 [ State Government will prescribe 'proper officer' for the purpose of SGST in the respective State].

Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in **form GST Asmt-10**, informing him of such discrepancy and seeking his explanation thereto within such time, of exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in **form GST Asmt- 11** to the proper officer.

Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in **form GST Asmt-12**.

### **Best judgment assessment of non-filers of returns**

If a registered taxable person fails to furnish the return under section 39 or 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 judgment taking into account all the relevant material which is available or which he has gathered and issue an assessment order with in 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 – section 62(1) of CGST Act.

Superintendent of Central Tax has been designated as 'proper officer' for the purpose of best judgment assessment under section 62(1) – CBI&C circular No.3/3/2017-GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for the purpose of SGST in the respective State].

Where the taxable person furnishes a valid return within thirty days of the service of the assessment order under section 62(1), the said assessment



order shall be deemed to have been withdrawn but the liability for payment of interest under section 50(1) or payment of late fee under section 47 will continue – section 62(2) of CGST Act.

Even if such best judgment assessment is made, payment of interest and late fee is still payable.

These provisions are independent of sections 73 and 74.

### **Best judgment assessment of unregistered persons**

Notwithstanding anything to the contrary contained in section 73 of section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under section 29(2) of CGST Act 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 – section 63 of CGST Act.

No such assessment order shall be passed without giving a notice to show cause and without giving the person a reasonable opportunity of being heard – proviso to section 63 of CGST Act.

These provisions are independent of sections 73 and 74.

Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose of assessing tax liability with best judgment – CBI&C circular No.3/3/2017-GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

### **Summary assessment in certain exceptional situations**

Summary assessment is permissible only to protect interest of revenue, if delay is likely to adversely affect revenue. Summary assessment is exceptional power.

The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional/Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue. He will issue an assessment order, if he has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue section 64(1) of CGST Act.

Though section does not specifically say so, principles of natural justice like issue of show-cause notice, opportunity of hearing, order with reasons etc. have to be followed.

These provisions are independent of section 73 and 74.

Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose of assessing tax liability under summary assessment – CBI&C CIRCULAR No.3/3/2017-GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for the purpose of SGST in the respective State].

### **Procedure for best judgment and summary assessment**

The procedure is as follows.

**Assessment of non-filers** – The order of assessment of best judgment of non-filers made under section 62(1) shall be issued in form GST ASMT- 13 Rule 100(1) of CGST and SGST Rules, 2017.

**Assessment of unregistered persons** – In case of best judgment assessment of unregistered persons, the proper officer shall issue a notice to an unregistered taxable person in accordance with the provisions of section 63 inform GST ASMT-14 containing the ground on which the assessment is proposed to be made on best judgment basis and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in form GSTASMT-15 - Rule 100(2) of CGST and SGST Rules, 2017.

Deputy/Assistant Commissioner of Central Tax has been designated as 'Proper officer' for the purpose of assessment of unregistered persons– CBI&C circular No.3/3/2017-GT, dated 5-7-2017 [State Government will prescribe 'proper officer' for the purpose of SGST in the respective State].

**Summary assessment under section 64(1)** – The order of summary assessment under section 64(1) of CGST Act shall be issued in form GST ASMT-16 – Rule 100(3) of CGST and SGST Rules, 2017

The person referred to in section 64(2) (i.e., taxable person of whom summary assessment has been made) may file an application for withdrawal of the summary assessment order in form GST ASMT-17– Rule 100(4) of CGST and SGST Rules, 2017.

The order of withdrawal or rejection of the application under section 64(2) shall be issued in form GST ASMT-18 – Rule 100(5) of CGST and SGST Rules, 2017.

### **Assessment cannot be invalid on minor grounds, errors can be rectified**

Assessment or re-assessment cannot be invalidated on minor grounds. Notice cannot be challenged if acted upon. Errors apparent from records can be rectified – see sections 160 and 161 of CGST Act.

## AUDIT

### **Audit by tax authorities**

'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 rules made thereunder – section 2(13) of CGST Act.

Section 71(2) of CGST Act makes provision for demanding and making available records for audit.

There was a system of EA-2000 audit in excise and service tax, this may continue in modified form in GST.

The commissioner or any officer authorized by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed– Section 65(1) of CGST Act.

The tax authorities may conduct audit at the place of business of the taxable person and/or in their office.

The registered person shall be informed, by way of a notice, sufficiently in advance, not less than fifteen working days, and prior to the conduct of audit in such manner as may be prescribed.

The audit under section 65(1) shall be completed within a period of three months from the date of commencement of audit section 65(4) of CGST Act.

'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 – Explanation to section 65(4) of CGST Act.

Appointment of officers for audit – 48 Commissioner of Central Tax (Audit) have been appointed vide notification No.2/2017-CT, dated 19- 6-2017.



Officer empowered to exercise powers under section 71 - 'Proper Officer' to order access to premises and audit of records under section 71, for the purpose of CGST is Additional Commissioner/Joint Commissioner of Central Tax, vide CBI&C circular No. 3/3/2017-GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

### **Procedure during departmental audit**

During the course of audit, the authorized officer may require the taxable 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(5) of CGST Act.

On conclusion of audit, the proper officer shall, within 30 days, inform the registered person, whose records are audited, of the findings, his rights and obligations and the reasons for the findings - section 65(6) of CGST Act.

Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose of informing the findings to the registered person under section 65(6) - CBI&C circular No. 3/3/2017- GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

Where the audit conducted under section 65(1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit erroneously availed or utilized, the proper officer may initiate action under section 73 or 74 - section 65(7) of CGST Act.

Superintendent of Central Tax has been designated as 'proper officer' for the purpose of raising demand under section 65(7) - CBI&C circular No. 3/3/2017- GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

### **Procedure for conducting audit by tax authorities**

Procedure for departmental audit is as follows.

Financial year-wise audit - The period of audit to be conducted under section 65(1) shall be a financial year or multiples thereof - Rule 101(1) of CGST and SGST Rules, 2017.

Powers to order and conduct audit - Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' to order and conduct audit under rule 101- CBI&C circular No. 3/3/2017-GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].



Notice of audit to registered person – Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in form GST ADT- 01 within the time specified in section 65(3) of CGST Act.

Verification of records by audit team and audit notes – The proper officer authorized to conduct audit of the records and books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the Act and the rules made thereunder, to check the correctness of following - (a) the turnover (b) exemptions and deductions claimed (c) the rate of tax applied in respect of supply of goods or services or both (d) the input tax credit availed and utilized (e) refund claimed. He will examine other relevant issues and record the observations in his audit notes – Rule 101(3) of CGST and SGST Rules, 2017.

Inform discrepancies to registered person – The proper officer may inform the registered person of the discrepancies, if any, noticed as observations of the audit and the said person may file his reply and the proper officer shall finalize the findings of the audit after due consideration of the reply furnished - Rule 101(4) of CGST and SGST Rules, 2017.

Inform audit findings to registered person on conclusion of audit – On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of section 65(6) in form GST ADT-02 0 Rule 101(5) of CGST and SGST Rules, 2017.

### **Special audit by chartered accountant/cost accountant**

If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner – section 66(1) of CGST Act.

Section 71(2) of CGST Act makes provision for demanding and making available records for audit.

Audit report within 90 days with further extension of 90 days – The chartered accountant or cost accountant so nominated shall, within the period of ninety

days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified – section 66(2) of CGST Act.

The Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by another ninety days – proviso to section 66(2) of CGST Act.

Expenses of special audit – The expenses of the examination and audit of records under section 66(1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final – 66(5) of CGST Act.

Procedure of ordering special Audit and submission of special audit report.

Where special audit is required to be conducted under section 66 of CGST and SGST Act, the officer referred to in the said section shall issue a direction in form GST ADT-03 to the registered person to get his records audited by the chartered accountant or cost accountant specified in the said direction – Rule 102(1) of CGST and SGST Rules, 2017.

On conclusion of special audit, the registered person shall be informed of the findings of special audit in form GST ADT-04- Rule 102(2) of CGST and SGST Rules, 2017.

## DEMAND AND RECOVERY

### **Demands for tax short paid or not paid or erroneously refund**

Since tax is payable on self-assessment basis, it is possible that the taxable person may not have correctly paid the tax or may not have paid the tax at all. It is also possible that the taxable person might have claimed refund and got refund of tax or input tax credit.

In such case, department can issue show-cause notice and adjudicate the demand.

In normal cases, such order is required to be passed within three years from the due date of filing return. However, if the non-payment was on account of fraud, willful misstatement or suppression of facts to evade tax, the order can be passed within five years from the due date of filing return.

### **The provisions apply to recovery of interest also**

Authority empowered to issue show-cause notice and confirm demand

– Superintendent of Central Tax issue show-cause notice under rule 142(1) of CGST Rules. A demand under section 73 i.e., where charge of suppression of facts or willful misstatement or fraud is not involved, can be confirmed by Superintendent of Central Tax. Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' for purpose of section 74, I.e. to confirm demand where charge of suppression of facts or willful misstatement or fraud is involved—CBI&C circular No. 3/3/2017-GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

### **Demand when no charge of fraud, willful misstatement or suppression of facts**

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 utilized for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall serve notice on



the person chargeable with tax which has not been so paid or which has been so short paid or to whom there fund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause 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 there under – section 73(1) of CGST Act.

The provisions apply to recovery of interest also.

Superintendent of Central Tax has been designated as 'proper officer' for the purpose of issuing show-cause notice – CBI&C circular No.3/3/2017- GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

Form of Notice – The notice shall be in form GST DRC-01 – Rule 142(1)(a) of CGST Rules, 2017.

Notice to be issued at least three months before time limit of issue of order – Notice should be issued at least three months before time limit specified in section 73(10) - section 73(2) of CGST Act.

Taxable Person can pay tax on own before SCN – The person chargeable with tax may, before service of notice under section 73(1) or statement under section 73(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 – section 73(5) of CGST Act.

The taxable person shall inform department in form GST DRC 03. Proper officer shall issue an acknowledgement, accepting payment inform GST DRC-04 – Rule 142(2) of CGST Rules, 2017.

Any notice even for penalty or late fee or co-notices cannot be issued. Show-cause if amount short paid by taxable person–Where the proper Officer is of the opinion that the amount paid under section 73(5) falls short of the amount actually payable, he shall proceed to issue the notice under section 73(1), in respect of such amount which falls short of the amount actually payable – section 73(7) of CGST Act.

No penalty if tax with interest paid within 30 days from issue of SCN – Where any person chargeable with tax under section 73(1) to 73(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 tax shall be deemed to be conducted – section 73(8) of CGST Act.



'All proceedings in respect of the said tax shall be deemed to be concluded' means any further notice even to co-notice for penalty, late fee etc., cannot be issued. However, prosecution under section 132 of CGST Act can continue.

Further, if the taxable person has not paid self-assessed tax or any amount collected as tax within 30 days from due date of payment, penalty of 10% of tax will be payable – section 73(11) of CGST Act.

The taxable person shall inform department in form GST DRC-03. Proper Officer shall issue an order concluding the proceedings in from GST DRC- 05 – rule 142(3) of CGST Rules, 2017.

Superintendent of Central Tax has been designated as 'proper officer' for the purpose of issue of order concluding the proceedings - CBI&C circular No. 3/3/2017-GST, dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

Demand with maximum 10% penalty – If taxable person does not voluntarily pay the tax and interest, the proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to 10% of tax or ten thousand rupees, whichever is higher, due from such person and issue an order – section 73(9) of CGST Act.

Penalty equivalent to 10% means lower penalty cannot be imposed.

Procedure for representation and order – The representation of taxable Person shall be in form GST DRC-06– rule 142(4) of CGST Rules, 2017.

After considering the representation and after giving opportunity of personal hearing, summary of order shall be uploaded electronically in form GST DRC-7, specifying the amount of tax, interest and penalty payable - rule 142(5) of CGST Rules, 2017.

This order shall be treated as notice for recovery - rule 142(6) of CGST Rules, 2017.

Time-limit for issue of order is three years – The proper officer shall issue the order under section 73(9) within three years from the due date for furnishing annual return for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or as the case may be, within three years from the date of erroneous refund- section 73(10) of CGST Act.

Note that the time-limit is for issue of demand order and not only for issuing show-cause notice.

However, if the Show-cause notice was issued but kept pending as department had filed appeal against an order adverse to revenue in some other proceedings

on same issue, and appeal of department is pending before Appellate Tribunal, High Court or Supreme Court, that time will not be counted for calculating three year/five year limit – section 75(11) of CGST Act.

[In such cases, the SCN is transferred to 'call book' in customs department].

Demand when there is fraud, willful misstatement or suppression of facts where it appears to 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 utilized by reason of fraud, or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit.

The notice should require him to show because why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice section 74(1) of CGST Act.

### **The provisions apply to recovery of interest also**

Notice to be issued at least six months before time limit - Notice to be issued at least six months before time limit specified in section 74(10)- section 74(2) of CGST Act.

Taxable Person can pay tax with 15% of tax as penalty on own before SCN – The person chargeable with tax may, before service of notice under section 74(1), pay the amount of tax along with interest payable thereon under section 50 and 15% of tax as penalty on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment–section 74(5) of CGST Act.

The proper officer, on receipt of such information, shall not serve any show cause notice in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made thereunder – section 74(6) of CGST Act.

The taxable person shall inform department in form GST DRC 03. Proper Officer shall issue an acknowledgement, accepting payment in form GST DRC-4 – rule 142(2) of CGST Rules, 2017.

### **This is to promote voluntary compliance and reduce litigation**

Any notice even for penalty or late fee or co-notices cannot be issued.

Show cause notice if amount short paid – Where the proper officer is of the opinion that the amount paid under section 74(5) falls short of the amount



actually payable, he shall proceed to issue that notice as provided in section 74(1) in respect of such amount which falls short of the amount actually payable -section 74(7) of CGST Act.

25% penalty if tax with interest paid within 30 days from issue of SCN – where any person chargeable with tax pays the said tax along with interest payable under section 50 and 25% of tax as penalty within thirty days of issue of show cause notice, all proceedings in respect of the said tax shall be deemed to be concluded - section 74(8) of CGST Act.

'All proceedings in respect of the said tax shall be deemed to be concluded' means nay further notice even to co-notice for penalty, late fee etc. cannot be issued. However, prosecution under section 132 of CGST Act can continue.

Demand with penalty equal to tax, in case of suppression, misstatement etc.-If taxable person does not voluntarily pay the tax and interest, the proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and penalty equal to tax, due from such person and issue an order - section 74(9) of CGST Act.

There is no discretion to reduce penalty in case of fraud, suppression of facts and willful misstatement. However, if the taxable person pays tax, interest and 50% penalty within 30days of communication of order, balance 50% penalty stands waived - section 74(11) of CGST Act.

Procedure for representation and order – The representation of taxable Person shall be inform GST DRC-06– Rule 142(4) of CGST Rules, 2017.

After considering the representation and opportunity of personal hearing, summary of order shall be uploaded electronically in form GST DRC- 7, specifying the amount of tax, interest and penalty payable – Rule 142(5) of CGST Rules, 2017.

This order shall be treated as notice for recovery–Rule 142(6) of CGST Rules, 2017.

Time limit for issue of order is five years in case of suppression, willful misstatement – The proper officer shall issue the order under section 74(9) within five years from the due date of furnishing of annual return for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within five years from the date of erroneous refund - section 74(10) of CGST Act.

Note that the time limit is for issue of demand order and not only for issuing show cause notice.



## **Meaning of fraud or any willful-misstatement or suppression of facts to evade tax**

Time limit for raising demand and penalty amount increases if there is charge of fraud or any willful-misstatement or suppression of facts to evade tax. Hence, this issue becomes litigation prone.

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—Explanation 2 to section 74 of CGST Act.

There can be no suppression of facts if facts which are not required to be disclosed are not disclosed – Smt. Shirisht Dhawanv. Shaw Brothers – 1992 (1) SCC 534 = 1992 AIR SCW 1649 = AIR 1992 SC 1555 \*CCE

i. Ranka Wires (2015) 322 ELT 410(SC).

## **General provisions relating to demand of tax**

The following provisions apply to both types of demands i.e. with charge of fraud, willful misstatement or suppression of facts to evade tax or without such charge.

Period of stay to be excluded for computing period of three/five years – Where the service of notice or issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of three years or five years - section 75(1) of CGST Act.

The stay should be for service of notice or issuance of order. Mere stay of recovery is not sufficient.

If charge of suppression, fraud not established – If Appellate Authority or Appellate Tribunal or Court concludes that the charge of fraud or any willful misstatement or suppression of facts to evade tax has not been established, the proper officer shall determine the tax payable by such person for the period of three years, i.e. without charge of suppression etc. - section 75(2) of CGST Act.

Time limit for issue of order on direction of Tribunal or 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 - section 75(3) of CGST Act.

This happens when matter is remanded to lower authority with certain directions for determining the issue.



Opportunity of personal hearing – An opportunity of personal hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person - section 75(4) of CGST Act.

Adjournment of hearing – The proper officer shall, if sufficient cause is shown adjourn the hearing for reasons to be recorded in writing. Maximum three adjournments can be given - - section 75(5) of CGST Act.

Order with reasons – The proper officer, in his order, shall set out the relevant facts and the basis of his decision - section 75(6) of CGST Act.

Demand cannot be more than specified in notice and cannot be confirmed on other ground – 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 grounds other than the grounds specified in the notice - section 75(7) of CGST Act.

Interest and penalty gets automatically modified, if tax amount increased or reduced – 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- section 75(8) of CGST Act.

Interest mandatory even if not specified in order – Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability — section 75(9) of CGST Act.

Adjudication concludes if order not issued within three/five years – The adjudication proceedings shall be deemed to be concluded if the order is not issued within three/five years - section 75(10) of CGST Act.

However, if the Show Cause Notice was issued but kept pending as department had filed appeal against an order adverse to revenue in some other proceedings on same issue, that period shall be excluded - section 75(11) of CGST Act.

[In such cases, the SCN is transferred to 'call book' in excise and service Tax department].

Recovery proceedings without issue of show cause notice if self-assessed tax and interest thereon not paid– notwithstanding contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79 of CGST Act - section 75(12) of CGST Act.

Penalty equal to 10% of tax is payable if self-assessed tax is not paid within 30 days from due date. This is notwithstanding any relaxation in penalty given under section 73(6) and 73(8) of CGST Act for voluntary payment of tax - section 73(11) of CGST Act.

No other penalty once penalty imposed under section 73 or 74 – Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act - section 75(12) of CGST Act.

### **Tax collected but not deposited with government**

Every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith deposit the said amount to the credit of the, regardless of whether the supplies in respect of which such amount was collected are taxable or not - section 76(1) of CGST Act. This is notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other Law for the time being in force.

Thus, these provisions are overriding provisions.

Proper Officer can issue show cause notice to him and confirm demand after giving him personal hearing.

The person shall be liable to pay interest as specified in section 50 from date of collection of tax to date of payment of tax with Government - section 76(4) of CGST Act.

Penalty up to tax so collected can be imposed - section 76(1) of CGST Act.

The person who has borne the incidence of the amount may apply for the refund of the same and for such refund provisions of unjust enrichment under section 54 will apply - section 76(11) of CGST Act.

Deputy/Assistant Commissioner of Central Tax has been designated as 'proper officer' for purpose of section 76, i.e. to issue notice and demand where tax has been collected but the person but has not deposited it with Government – CBI&C circular No. 3/3/2017-GST dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

Procedure for representation and order – The representation of taxable

Person shall be in form GST DRC - 06 – rule 142(4) of CGST Rules, 2017.

After considering the representation and opportunity of personal hearing summary of order shall be uploaded electronically in form GST DRC-7, specifying



the amount of tax, interest and penalty – Rule 142(5) of CGST Rules, 2017.

This order shall be treated as notice for recovery - Rule 142(6) of CGST Rules, 2017.

### **CGST/SGST/UTGST paid when IGST was payable and vice versa**

A taxable person who has paid CGST/SGST/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, shall, upon payment of IGST, be allowed to take the amount of CGST/SGST/UTGST (in SGST/ UTGST Act) so paid as refund subject to such conditions as may be prescribed – section 77(1) of CGST Act.

### **Luckily interest will not be payable - section 77(2) of CGST act.**

Parallel provision is made in IGST, which reads as follows –

A taxable person who has paid IGST on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall, upon payment of CGST and SGST/UTGST in the appropriate State, be allowed to take the amount of IGST so paid as refund subject to such conditions as may be prescribed – section 19(1) of IGST Act.

Provisions of unjust enrichment will not apply to such refund – section 54(7) (d) of CGST Act.

Demand of tax if goods or services not accounted for or there is shortage if the registered person fails to account for goods or services or both under section 35(1) of CGST Act, the proper officer shall determine the tax payable on such goods or services as if such or services or both have been supplied. Provisions of sections 73 and 74 will apply mutatis mutandis for recovery of such - section 35(6) of CGST Act.

Superintendent of Central Tax has been designated as 'proper officer' for the purpose of raising demand – CBI&C circular No. 3/3/2017-GST dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

### **Recovery of tax**

Once the demand is confirmed, the amount demanded should be paid within three months from date of service of such order. If the amount is not paid, recovery proceedings shall be initiated – section 78 of CGST and SGST Act.



The period of three months can be reduced by 'proper officer' for reasons to be recorded in writing—proviso to section 78 of CGST and SGST Act.

Power to reduce the period of three months for the purpose of CGST is Principal Commissioner/Commissioner of Central Tax, vide CBI&C circular No. 3/3/2017-GST dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

Power of recovery to AC/DC - 'Proper Officer' to initiate and conduct recovery proceedings for the purpose of CGST in Deputy Commissioner/ Assistant Commissioner of Central Tax. All powers of recovery under rules 143 to 156 of CGST Rules have been delegated to Deputy/Assistant Commissioner of Central Tax, vide CBI&C circular No. 3/3/2017-GST dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

Modes of recovery – As per section 79(1) of CGST Act, proper officer (AC/DC) shall proceed to recover the amount.

Recovery can be done by one or more of the modes mentioned below: -

Deduct from other amount payable – 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– section 79(1)(a) of CGST Act.

Such order should be issued 1 form GST DRC-09 – rule 143(1) of CGST Rules, 2017.

Detaining and selling goods under control of department – 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 - section 79(1) (b) of CGST Act.

Inventory and estimated market value shall be made. Goods should be sold by auction or e-auction for which notice should be in form GST REG- 10 – Rule 144 of CGST Rules, 2017.

Notice of auction should be minimum 15 days, except in case of perishable goods - rule 144(3) of CGST Rules, 2017.

Pre-bid deposit should be obtained. Notice to successful bidder shall be in form GST DRC-11. On payment of amount, certificate shall be issued to successful bidder 1 form GST DRC-12 – rule 144 (5) of CGST Rules, 2017. If bids are not received, re-auction can be made.

If defaulter pays the amount with expenses, process of auction should be cancelled - rule 144(6) of CGST Rules, 2017.



Garnishee proceedings – 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 credit of the Central or a State Government either forthwith upon the money becoming due or being held, or at 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–section 79(1)(c)(i) of CGST Act.

The notice of such recovery shall be in form GST DRC-13. When third person pays the amount, the certificate shall be in form GST DRC-14 - rule 145 of CGST Rules, 2017.

Every person to whom the notice is issued under this section shall be Bound to comply with such notice, and in particular, where any such notice 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 of the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary – section 79(1)(c)(ii) of CGST Act.

Distrain and sale any property belonging to the person – The proper officer may, on an authorization by the competent authority and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with 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 - section 79(1)(d) of CGST Act.

Certification proceedings – recovery as arrears of land revenue – 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 authorized 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 - section 79(1)(e) of CGST Act.

The certificate shall be issued to Collector in form GST DRC-18 – Rule 155 of CGST Rules, 2017.



Application to Magistrate to recover amount as fine – 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 section 79(1)(f) of CGST Act.

Application to Magistrate shall be made in form GST DRC-19 – rule 156 of CGST Rules, 2017.

Application for enforcement of order of Court – If any amount is payable to defaulter in the execution of decree of a civil court for payment of money or enforcement of mortgage, request should be issued to Court in form GST DRC-05 and Court shall execute the decree - rule 146 of CGST Rules, 2017.

Recovery by sale of movable and immovable property of defaulter – Recovery can be made by sale of movable and immovable property of defaulter. The detailed procedure has been specified in rule 147 of CGST Rules.

No auction on holidays – Auction cannot be held on holidays - rule 149 of CGST Rules, 2017.

Assistance of police – Help of police can be taken for discharge of duties of proper officer - rule 150 of CGST Rules, 2017.

Superintendent of Central Tax has been designated as 'proper officer' for the purpose for asking help from police - CBI&C circular No. 3/3/2017- GST dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].

Attachment of debts and shares – A debt not secured by a negotiable instrument, a share or movable property not in possession of defaulter can be attached by issuing order in form GST DRC -06. Copy of such order shall be issued to debtors, the company and the person in possession of movable property - Rule 152 of CGST Rules, 2017.

Other modes of recovery – Attachment of property in custody of courts or public officer can be made - rule 152 of CGST Rules, 2017.

Attachment of interest in partnership can be made – Rule 152 of CGST Rules, 2017.

### **No recovery if appeal is pending**

If taxable person files appeal before Appellate Authority or Appellate Tribunal against a demand, he is required to pre-deposit specified amount. Once such pre-deposit is made, there will be no recovery proceeding for balance amount demanded.



## **Payment of tax and other amount in installments**

On an application filed by a taxable person, the Commissioner/Chief Commissioner may, for reasons to be recorded in writing, the time for payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly installments not exceeding twenty-four, subject to payment of interest under section 50 with such conditions and limitation as may be prescribed – section 80 of CGST Act.

Application seeking extension in time or allowing payment in installments, application shall be made in form GST DRC-20. On receipt of report from jurisdictional officer, Commissioner may issue order 1 form GST DRC-21- rule 158 (1) of CGST Rules, 2017.

This facility is not allowed if recovery process is on or amount is less than ₹ 25,000 - Rule 158(3) of CGST Rules, 2017.

However, where there is default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery – proviso to section 80 of CGST Act.

## **Transfer of property to be void in certain cases**

Where a person, after any tax 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 his favor 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 – section 81 of CGST Act.

However, 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 proceeding under this Act, without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer – proviso to section 81 of CGST Act.

Officer empowered to exercise powers under proviso to section 81 - 'Proper Officer' to permit creation of charge, for the purpose of CGST is Additional Commissioner/Joint Commissioner of Central Tax, vide CBI&C circular No. 3/3/2017-GST dated 5-7-2017 [State Government will prescribe 'proper officer' for purpose of SGST in the respective State].



### **Tax to be first charge on property except under insolvency code**

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 – section 82 of CGST Act.

### **Provisional attachment to protect revenue in certain cases**

Where during the pendency of any proceedings under section 62, section 63. Section 64 or section 67 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property belonging to the taxable person in such a manner as may be prescribed – section 83(1) of CGST Act. Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order- section 83 (2) of CGST Act.

Order for provisional attachment shall be 1 form GST DRC-22. If payment is made by defaulter, the property can be released by issuing order in form GST DRC-23 – rule 159 of CGST Rules, 2017.

## ADJUDICATION AND APPEALS

### Adjudicating authority

“Adjudicating authority” means any authority, appointed or authorized 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 Appellate Tribunal – section 2(4) of CGST Act.

Adjudicating Authority can be a rank of Additional / Joint Commissioner or Deputy / Assistant Commissioner.

Superintendent of Central Tax issue show cause notice under rule 142(1) of CGST Rules. A demand under section 73 i.e., where charge of suppression of facts or willful misstatement or fraud is not involved, can be confirmed by Superintendent of Central Tax. Deputy / Assistant Commissioner of Central Tax has been designated as ‘proper officer’ for the purpose of section 74, i.e., to confirm demand where charge of suppression of facts or willful misstatement or fraud is involved. – CBI&C circular No.3/3/2017- GST dated 5-7-2017 [State Government will prescribe ‘proper officer’ for the purpose of SGST in the respective State].

### Appeal against adjudication order

CGST and SGST makes provisions in respect of appeals against orders passed by adjudicating authority.

The CGST Act makes provisions of first appeal before ‘Appellate Authority’.

Appellate Authority will be departmental officer. Pre-deposit of 10% tax is required to be made before filing appeal before Appellate Authority.

The second appeal will be National Bench or Regional Bench of Appellate Tribunal if one of the issue relates to ‘place of supply’.

If issue does not relate to ‘place of supply’, appeal will lie before State /Area Bench of Appellate Tribunal.



The Appellate Tribunal will be common for CGST, IGST, UTGST and SGST. The Appellate Tribunal will have Member (Judicial), Member (Centre) and Member (State). Thus, Appellate Tribunal will have a three member bench.

However, President and State President can entrust matters to division bench consisting of two members.

Small matters upto ₹ 5 lakhs can be decided by single member bench of Appellate Tribunal.

There is provision of mandatory pre-deposit for filing appeal. For first appeal, it is equal to 10% of disputed liability of tax.

For appeal before Appellate Tribunal, further 20% of disputed tax liability is payable.

Appeal against order of Appellate Tribunal can be before High Court only if substantial question of law is involved.

If the matter involves interpretation of 'place of supply', appeal lies before Supreme Court and not before High Court.

Revision by Revisional Authority – The order of adjudicating authority can be revised by Revisional Authority.

Jurisdiction of Civil Court Barred – Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act – section 162 of CGST and SGST Act.

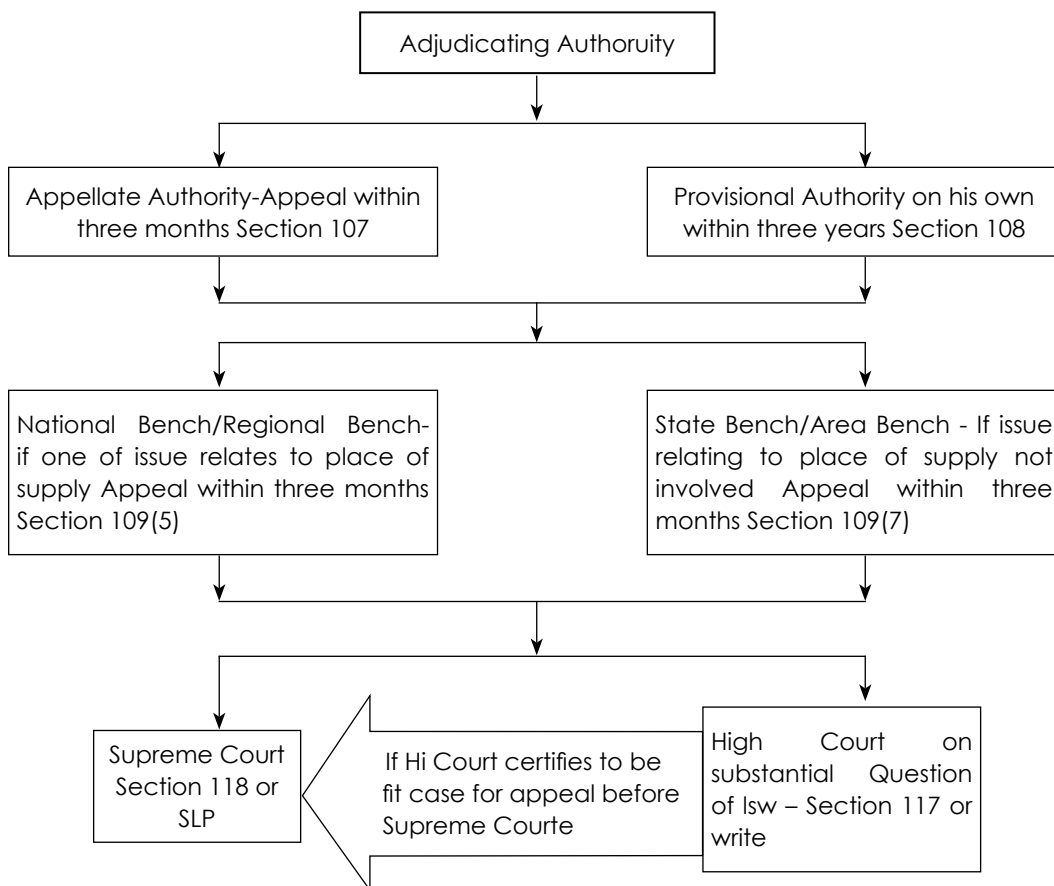
Section 117 of CGST and SGST Act makes provision for appeal to High Court. Section 118 of CGST and SGST Act makes provision for appeal to Supreme



Court. Excluding that, civil court has no jurisdiction in GST matters.

Thus, appeal cannot be filed in civil court.

### Appeal Provisions in GST



### Department cannot file appeal if amount is below specified Monetary limit

National Litigation Policy formulated by Government of India aims to reduce Government litigation. The Policy lays down following policy in respect of revenue matters – (a) Appeals should not be filed where revenue involvement is not high (b) Appeals should not be filed if the matter is covered by a series of judgments of the Tribunal and High Courts which have held the field and have not been challenged before Supreme Court (c) No appeal shall be filed when the assessee has acted in accordance with the long standing practice and also merely because of change of opinion on the part of the jurisdictional officers.



Corresponding provisions have been made in GST law.

The Board (CBEC) may, on the recommendation of the GST Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the tax officer under the provisions of this Chapter – section 120(1) of CGST Act [under section 120(1) of SGST Act, the powers will be exercised by commissioner of State Tax].

It shall not preclude such GST officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

No person, being a party in appeal or application shall contend that the GST officer has acquiesced in the decision on the disputed issue by not filing an appeal or application.

Thus, non-filing of appeal by department cannot be used as precedent.

The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the GST Officer in pursuance of the orders or instructions or directions – section 120(4) of CGST Act.

### **Non Appealable decisions and orders**

As per section 121 of CGST and SGST Act, no appeal shall lie against any decision taken or order passed by a GST officer if such decision taken or order passed relates to any one or more of the following matters–

- (a) An order of the Commissioner or other authority for transfer of Proceeding from one officer to another officer; or
- (b) An order pertaining to the seizure or retention of books of account, Register and other documents; or
- (c) An order sanctioning prosecution under the Act; or
- (d) An order passed under section 80 [order granting or not granting installments for payment of taxes].

These are overriding provisions.

Of course writ jurisdiction of High Court and Supreme Court is not affected.

### **Interest on delayed refund of pre-deposit**

Where an amount deposited by the appellant under section 107(6) or 112(8) 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 – section 115 of CGST Act.

### **Bar of jurisdiction of civil courts**

Save as provided by sections 117 and 118 (Appeal before High Court and Supreme Court), no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act – Section 162 of CGST and SGST Act.

Production of additional evidence before the Appellate Authority of the Appellate Tribunal

All evidence should be normally submitted at the original hearing only. Additional evidence is normally allowed only in very genuine cases. Appellate court should not travel outside the record of lower court.

The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or the Appellate Authority.

However, additional evidence shall be permitted in the following circumstances [Rule 112(1) of CGST and SGST Rules, 2017].

- (a) Where the adjudicating authority or the Appellate Authority has refused to admit evidence which ought to have been admitted; or
- (b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or the Appellate Authority; or
- (c) Where the appellant was prevented by sufficient cause from producing before the adjudicating authority or the Appellate Authority any evidence which is relevant to any ground of appeal; or
- (d) Where the adjudicating authority or the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

### **First appeal before appellate authority**

Any person aggrieved by any decision or order passed against him under CGST Act or SGST Act or UTGST Act or IGST Act by an adjudicating authority, may appeal to such Appellate Authority as may be prescribed within three months



from the date on which such decision or order is communicated to him – section 107(1) of CGST and SGST Act.

Appellate Authority – “Appellate Authority” means an authority appointed or authorized to hear appeals as referred to in section 107– section 2(8) of CGST Act.

If the adjudication order is passed by Deputy Assistant Commissioner, the appeal lies before Additional Commissioner (Appeals). If the adjudication order is passed by Additional / Joint Commissioner, appeal lies before Commissioner (Appeals)–rule 109A (1) of CGST Rules, 2017 inserted w.e.f.15-11-2017.

Departmental appeal before Appellate Authority – The Commissioner may, of his own motion, or upon request from Commissioner of SGST or UGST call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under CGST/ SGST/UTGST/IGST Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from date of communication of the said decision or order as may be specified by the Commissioner in his order – section 107(2) of CGST Act.

This will be considered as departmental appeal before Appellate Authority.

Appeal in prescribed form and verified–Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner – section 107(5) of CGST Act.

Condonation of delay in filing appeal – Appellate Authority can condone delay up to one month beyond 3 months for appellant / 6 months for department if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months – section 107(4) of CGST Act.

Authorities created by statute cannot apply Limitation Act, 1963. They cannot condone delay unless empowered by Statute – Om Prakash v. Ashwini Kumar Bassi (2010) 258 ELT 5(SC).

Mandatory pre-deposit 10% of tax demand before filing appeal before appellate authority – Appeal cannot be filed unless the appellant has deposited a sum in full of tax, interest, fee and penalty arising out of order, as admitted by him and 10% of remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed – section 107(6) of CGST Act.

Opportunity of hearing – The Appellate Authority shall give an opportunity to the appellant of being heard – section 107(8) of CGST Act.



Up to three Adjournment of hearing – The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing. However, however, no such adjournment shall be granted more than three times to a party during hearing of the appeal – section 107(9) of CGST Act.

Additional grounds at the time of hearing–The Appellate Authority may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the Omission of that ground from the grounds of appeal was not willful or unreasonable – section 107(10) of CGST Act.

Order by Appellate Authority – The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he 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 – section 107(12) of CGST Act.

Thus Appellate Authority cannot remand the matter to adjudicating authority.

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.

Enhancing fee, fine or penalty only after issuing notice - Appellate Authority can enhance fee, fine or penalty after giving show cause notice and opportunity of hearing – first proviso to section 107(11) of CGST Act.

Time limit for passing order – The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed. If the issuance of order is stayed by an order of a Court of Tribunal, the period of such stay shall be excluded in computing the period of one year – section 107(13) of CGSTG Act.

Procedure for appeal by aggrieved person to the Appellate Authority

An appeal to the Appellate Authority under section 107(1) of the Act shall be filed in form GST APL-01, either electronically or otherwise as may be notified by the Commissioner. A provisional acknowledgement shall be issued to the appellant immediately– Rule 108 (1) of CGST and SGST Rules, 2017.

The grounds of appeal and the form of verification as contained in form GST APL-01 shall be signed in the manner specified in rule 26 of CGST Rules – Rule 108(2) of CGST and SGST Rules, 2017.



A hard copy of the appeal in form GST APL-01 shall be submitted in triplicate to the Appellate Authority. It shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents within seven days of filing of the appeal as above. Final acknowledgement, indicating appeal number shall be issued thereafter in form GST APL-02 by the Appellate Authority or an officer authorized by him. Rule 108(3) of CGST and SGST Rules, 2017.

### **Departmental application to the appellate authority**

An application by department to the Appellate Authority under section 107(2) of the Act shall be made in form GST APL-03 either electronically or otherwise as may be notified by the Commissioner – Rule 109(1) of CGST and SGST Rules, 2017.

A hard copy of the application in form GST APL-03 shall be submitted in triplicate to the Appellate Authority. It shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents within seven days of filing the application as above. An appeal number shall be generated by the Appellate Authority or an officer authorized by him in this behalf – Rule 109 (2) of CGST and SGST Rules, 2017.

### **Order of Appellate Authority**

The Appellate Authority shall, along with its order under section 107(1) of the Act, issue a summary of the order in form GST APL-04 clearly indicating the final amount of demand confirmed – Rule of 113(1) CGST and SGST Rules, 2017.

The jurisdictional officer shall issue a statement in form GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal – Rule 113 (2) of CGST and SGST Rules, 2017 [The words used are 'Appellate Tribunal'. Hence, it seems such statement is not required in case of order of Appellate Authority].

### **Revision By Revisional Authority**

Provisions relating to revision of order of adjudicating authority were available in many State Vat Laws. However, these powers were not available in Central Excise and service tax.

Now, such powers have been provided in GST Law, though with some restrictions.

“Revisional Authority” means an authority appointed or authorized for revision of decision or orders as referred to in section 108 – section 2(99) of CGST Act.



Powers of revision – Subject to the provisions of section 121 (non- appealable orders) and any rules made thereunder, the Revisional Authority may on his own motion, or upon information received by him or on request from the Commissioner of SGST/UTGST/IGST, call for and examine the record of any proceeding, and if he considers that any decision or order passed under CGST Act or under the SGST/UTGST/ IGST Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order – section 108(1) of CGST Act.

Thus, Revisional Authority can act *suomotu* or at request of State/Union Territory Authorities but not on request of taxable person (appellant).

When Revisional Authority cannot revise order – The Revisional Authority shall not exercise any power under section 108(1), if:-

- (a) The order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118. [However, issue not covered in appeal can be taken in revision]
- (b) The period specified under section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised
- (c) The order has already been taken for revision under this section at any earlier stage
- (d) The order has been passed in exercise of powers under section 108(1) [i.e., once Revisional order is passed, further revision is not permissible] – section 108(2) of CGST Act.

Thus Revisional Authority can take action after the period of appeal (three months) is over but before three years of date of passing of order.

Issue not covered in appeal can be taken in revision – Revisional Authority may pass an order under section 108(1) on any point which has not been raised and decided in an appeal referred to in section 108(2)(a), 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 section 108(2) (b), whichever is later – proviso to section 108(2) of CGST Act.



Order in revision final subject to further appeal - Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113, 117 or 118, be final and binding on all parties – section 108(3) of CGST Act.

### **Appeal before appellate tribunal**

Appeal against order of Appellate Authority or Revisional Authority lies before Appellate Tribunal. Appellate Tribunal is a quasi-judicial authority.

There will be National Bench and Regional Benches of Appellate Tribunal, which will hear appeals where one of the issue involved relates to place of supply 9 i.e., inter-State transactions]. These will be under supervision of President.

State Bench and Area benches of Appellate Tribunal will hear appeals where issue relating to place of supply is not involved i.e., transaction is intra-State. These will be under supervision of State President.

### **Constitution of the Appellate Tribunal**

The Central Government shall on the recommendation of the GST Council constitute an Appellate Tribunal known a Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by Appellate Authority or Adjudicating Authority – section 109(1) of CGST Act.

The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (referred to as "Regional Benches"), State Bench and Benches thereof (referred to as "Area Benches") – section 109(2) of CGST Act.

### **National Bench and regional Benches**

The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State) – section 109(3) of CGST Act.

The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) – section 109(4) of CGST Act.

The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply – section 109(5) of CGST Act.



National Bench of Tribunal will be headed by a President, who will distribute, by general or special order, the business or transfer cases among Regional Benches – section 109(6) of CGST Act.

### **State Bench and area Benches**

The Central Government shall, by notification, specify for each State or Union territory(except J&K), a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union Territory– section 109(6) of CGST Act amended w.e.f. 8-7-2017.

In case of J&K, State Bench of GST Appellate Tribunal constituted under CGST Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017–first proviso to section 109(6) of CGST Act inserted w.e.f.8-7-2017.

Within a State, number of Area Benches can be constituted on the recommendation of GST Council – second proviso to section 109(6) of CGST Act renumbered w.e.f.8-7-2017.

A State Bench can act as Appellate Tribunal for another State or Union Territory – third proviso to section 109(6) of CGST Act renumbered w.e.f.8-7-2017.

The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in section 109(5) – section 109(7) of CGST Act.

Every State GST Tribunal will be headed by a State President, who will distribute, by general or special order, the business or transfer cases among Area Benches - section 109(6) of CGST Act.

### **Division Benches**

In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members – section 109(10) of CGST Act.

Thus appeals can be heard by division bench. There is no specific provision that one of the member of the bench should be a judicial member.

Single member bench where amount involved is up to ₹ Five lakh and question of law not involved

Any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on their commendations of the Council, be heard by a bench consisting of a single member – proviso to section 109(10) of CGST Act.

### **Appeal to appellate tribunal**

Any person aggrieved by an order passed against him under section 107 or 108 of CGST Act or SGST Act or UTGST 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 – section 112(1) of CGST Act.

Refusal of petty appeals – 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 ₹ 50,000 – section 112(2) of CGST Act.

Really if the amount is less than ₹ 50,000, it will be cheaper to pay as cost of appeal is likely to be more than that.

The word used is 'or'. Hence, even if total demand exceeds ₹ 50,000, if individual amounts are less than ₹ 50,000, appeal cannot be refused.

Department appeal – The Commissioner can direct any officer subordinate to him to apply to Appellate Tribunal within six months for determination of such points arising out of the order – section 111(3) of CGST Act. This will be considered as appeal against decision of Appellate Authority – section 112(4) of CGST Act.

Cross objection – On receipt to notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner. Cross-objection can be filed even if he has not have appealed against such order. This will be considered as if it is an appeal filed by party under section 112(1) of CGST Act – section 112(5) of CGST Act.

Condo nation of delay in filing appeal up to three months / 45 days – Appellate Tribunal can condone delay in filing of appeal (by taxable person, applicant or departmental officer) upto three months and cross objection up to 45 days, if it is satisfied that there was sufficient cause for not presenting it within specified period – section 112(6) of CGST Act.



Appeal in prescribed form with fees – An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a prescribed fee. – However, no fee is payable in case of departmental appeal – section 112(7) of CGST Act.

Mandatory pre-deposit before filing appeal before Appellate Tribunal – No appeal shall be filed under section 112(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 20% of the remaining amount of tax in dispute, in addition to the amount paid under section 107(6), arising from the said order, in relation to which the appeal has been filed – section 112(8) of CGST Act.

This pre-deposit should be in addition to pre-deposit of 10% of tax amount made while filing appeal before Appellate Authority under section 107(6) of CGST Act.

Stay for further recovery once pre-deposit paid – Once the appellant has paid the amount as per section 112(8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal – section 112(9) of CGST Act.

Interest if pre-deposit is required to be refunded - Where an amount paid the appellant under section 107(6) or section 112 (8) 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 – section 115 of CGST Act. Fee for filing miscellaneous application – Every application made before the Appellate Tribunal for (a) in an appeal for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application, shall be accompanied by a prescribed fee. – section 112(10) of CGST Act. No fee is payable if application is filed by department.

The appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued – Explanation to Rule 110 of CGST and SGST Rules, 2017.

### **Illustration:**

**Question** – XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 01-11-2017 under section 73 of the CGST Act, 2017 wherein it was decided as follows – CGST and SGST due (Total) - ₹6,00,000, Interest @ 18% p.a., for number of delayed days Penalty - ₹ 60,000. The assessee filed an appeal before the Appellate Authority on 26-11-2017.

**Case i** – How much the company has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017?

**Case ii**– Whether your answer would be different if the assessee appeals only against part of the demanded amount say ₹ 4, 00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 arising from the said order?

**Answer:** Case I – 10% of ₹ 6,00,000 i.e., ₹ 60,000

**Case ii** – Tax, interest and penalty admitted by him plus 10% of ₹ 2,00,000 i.e., plus ₹ 20,000.

Fees payable by taxable person for filing appeal before Appellate Tribunal the fees for filing and restoration of appeal by taxable person shall be ₹ 1,000 for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of ₹ 25,000 – Rule 110(5) of CGST and SGST Rules, 2017.

There will be no fee for application made before the Appellate Tribunal for rectification of errors referred to in section 112(10) of the Act–Rule 110(6) of CGST and SGST Rules, 2017.

It is not clear what would be fees payable for restoration of an appeal or an application.

### **Application by department to the Appellate Tribunal**

An application to the Appellate Tribunal under section 112(3) of the Act (departmental appeal) shall be made electronically, inform GST APL-07, on the common portal – Rule 111(1) of CGST and SGST Rules, 2017.

A certified copy of the decision or order appealed against shall be submitted to the Registrar, along with supporting document within seven days of filing the application and an appeal number shall be generated by the Registrar – Rule 111(2) of CGST and SGST Rules, 2017.

### **Order of appellate tribunal**

The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority or to Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary – section 113(1) of CGST Act.

The order is final and binding save as sections 117 and 118 – section 113(6) of CGST Act.

Section 117 provides for appeal to High Court and section 118 provides to appeal to Supreme Court.



Thus, Appellate Tribunal can remand the matter to lower authority.

Adjournments - Appellate Tribunal can give up to three adjournments– section 113(3) of CGST Act.

Time limit for deciding appeal – The Appellate Tribunal shall, where it is possible to do so hear and decide every appeal within a period of one year from the date on which it is filed - section 112(4) of CGST Act.

Distribution of copies of order of Appellate Tribunal – The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority, or the Revisional authority or to the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner of CGST and the jurisdictional Commissioner or Commissioner of SGST/ UTGST – section 113(1) of CGST Act.

### **Appearance by authorized representative**

Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under the Act, may appear by an authorized representative, otherwise than when required under this Act to appear personally for examination on oath or affirmation – section 116(1) of CGST Act.

### **Appeals before high court and Supreme Court**

Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellant Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law – section 117(1) of CGST Act.

Time limit for filing appeal – An appeal under section 117(1) shall be filed within one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person. It should be in form and manner as prescribed – section 117(2) of CGST Act.

The High Court may admit an appeal after the expiry of the period of one hundred and eighty days, if it is satisfied that there was sufficient cause for not filing the same within that period – proviso to section 117(2) of CGST Act.

High Court can formulate the question – Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

Court can hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question – section 117(3) of CGST Act.



Judgment by High Court on question law – The High Court shall decide the question of law so formulated and deliver such judgment thereon

Containing the grounds on which such decision is founded and may award

Such cost as it deems fit – section 117(4) of CGST Act.

High Court can determine any other issue – The High Court may determine any issue which – (a) has not been determined by the State Bench or Area Benches; or (b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in section 117(3) of CGST Act – section 117(5) of CGST Act.

Appeal to be heard by bench of at least two judges – When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges – section 117(6) of CGST Act.

Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it– section 117(7) of CGST Act.

Code of Civil Procedure applies – Except aforesaid specific provisions, the provisions of the Code of Civil Procedure, 1908, relating to appeal to the High Court shall, as far as may be, apply in the case of appeals under this section – section 117(9) of CGST Act.

Action on basis of certified copy of High Court – Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment – section 117(8) of CGST Act.

### **Appeal to the Supreme Court**

An appeal shall lie to the Supreme Court – (a) from any order passed

By the National Bench or Regional Benches of the Appellate Tribunal; or

(b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certified to be a fit one for appeal to the Supreme Court – section 118(1) of CGST Act.

## PENALTIES AND PROSECUTIONS

### Offences under GST law

Major offence in GST law is obviously non-payment or short payment of taxes or improper availment or utilization of input tax credit or erroneous refund. These are covered under sections 73 and 74 of CGST Act. Once penalty under provisions of section 73 and 74 are paid, all proceedings are concluded and penalty cannot be imposed under any other provision of GST Law [of course, prosecution can be launched].

Provisions relating to other offences are discussed in this chapter.

Following are offences under GST Law other than those covered in sections 74 and 74 of CGST Act Penalties can be imposed by departmental authorities to person committing the specified offence.

Section 122(1) of CGST Act defines offences where penalty can be imposed.

### Supplying goods on which tax not paid or short paid or input tax credit wrongly availed

Section 122(2) of CGST Act states as follows:

Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized,-

- (a) For any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent of the tax due from such person, whichever is higher.
- (b) For reason of fraud or any willful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

### Aiding or a Bating offence or contravening provisions

Section 122(3) of CGST Act states as follows:

Any person who

- (a) Aids or abets any of the offences specified in sections (i) to (xxi) of section 122(1) above.
  - (b) Acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made there under.
  - (c) Receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made there under.
  - (d) Fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry.
  - (e) Fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account,
- Shall be liable to a penalty which may extend to rupees twenty-five thousand.

### **Penalty for failure to furnish information or return under section 150 or 151**

If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under section 150(3) the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues. The penalty imposed under this section shall not exceed five thousand rupees – section 123 of CGST Act.

Deputy / Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose of section 123 – CBI&C circular No.3/3/2017- GST dated 5-7-2017 [State Government will prescribe 'proper officer' for the purpose of SGST in the respective State].

If any person required to furnish any information or return under section 151 - (a) without reasonable cause fails to furnish such information or return as may be required under that section, or (b) will fully furnishes or causes to furnish any information or return which he knows to be false, he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty five thousand rupees – section 124 of CGST Act.



## **General i.e., residual penalty**

Any person, who contravenes any of the provisions of this Act or any rules made there under for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to rupees twenty- five thousand – section 125 of CGST Act.

## **General disciplines related to penalty**

General principles of imposing penalty are given in section 126 of CGST Act. The provisions of this section will not apply in such cases where the penalty prescribed under the Act is either a fixed sum or expresses as a fixed percentage – section 126(6) of CGST Act.

## **The principles are sound but unfortunately followed very rarely**

No penalty form in or breaches – No officer under this Act shall impose any penalty form in or 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.

For this purpose of this sub-section – (a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than rupees five thousand (b) an omission or mistake in documentation shall be considered to be easily rectifiable in the same is an error apparent on record – section 126(1) of CGST Act.

Penalty to be commensurate with severity of breach – The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach – section 126(2) of CGST Act.

No penalty without hearing – No penalty shall be imposed on any person without giving a notice to show cause and without giving him an opportunity of being heard – section 126(3) of CGST Act.

Nature of breach and applicable law should be specified while imposing penalty – 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 applicable law, regulation or procedure under which the amount of penalty for the breach has been specified – section 126(4) of CGST Act.

Lower penalty if breach voluntarily disclosed – 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 – section 126(5) of CGST Act.

No other penalty once penalty in section 73 or 74 is paid – Non-payment or short payment of taxes or improper availment or utilization of input tax credit or erroneous refunds are major offences. These are covered under sections 73 and 74 of CGST Act. Once penalty under provisions of sections 73 or 74 are paid, all proceedings are concluded and penalty cannot be imposed under any other provision of GST Law [of course, prosecution can be launched].

### **Detention of goods and conveyances, and levy of penalty**

Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or rules made thereunder, all such goods and the conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyances shall be liable to detention or seizure.

After detention or seizure, the goods and conveyance shall be released.

- (a) On payment of the applicable tax and penalty equal to 100% of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty.
- (b) On payment of the applicable tax and penalty equal to 50% of the value of goods reduced by the tax amount paid thereon and, in case the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty.
- (c) Upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed – section 129(1) of CGST Act.

No detention or seizure without serving order – No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods – proviso to section 129(1) of CGST Act.

Provisional release on bond and security – The provisions of section 67(6) shall, mutatis mutandis, apply for detention and seizure of goods and conveyances – section 129(2) of CGST Act.

Under section 67(2) of CGST Act, goods can be released on execution of bond with security.



## 1. Passing of order after seizure or provisional release

The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c) – section 129(3) of CGST Act.

Deputy / Assistant Commissioner of Central Tax has been designated as 'proper officer' for the purpose of section 129(3) – CBI&C circular No.3/3/2017-GST dated 5-7-2017 [State Government will prescribe 'proper officer' for the purpose of SGST in the respective State].

No tax, interest or penalty shall be determined under section 129(3) without giving the person concerned an opportunity of being heard – section 129(4) of CGST Act.

On payment of amount referred in section 129(1), all proceedings in respect of the notice specified in section 129(3) shall be deemed to be concluded.

## **Confiscation of goods or conveyance and levy of penalty**

Notwithstanding anything contained in this Act, if any person – (i) supplies or receives any goods in contravention of any of the provisions of this Act or 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 the registration or (iv) contravenes any of the provisions of this Act or rules made there under 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 and/or conveyance shall be liable to confiscation and the person shall be liable to penalty under section 122 – section 130(1) of CGST Act.

Confiscation after notice and adjudication order–No order of confiscation of goods or conveyance or imposition of penalty shall be issued without giving the person a reasonable opportunity of being heard – section 130(4) of CGST Act.

Goods or conveyance belong to Government after confiscation – Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government - section 130(5) of CGST Act.

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



- Section 130(6) of CGST Act.

Redemption fine in lieu of confiscation – Whenever confiscation of any goods is authorized 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. Such fine shall not exceed the market price of the goods confiscated, less the tax chargeable thereon – section 130(2) of CGST Act.

Aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under section 129(1) of CGST Act.

### Numerical Examples:

**Question** – From the details given below determine the maximum amount of fine in lieu of confiscation leviable under section 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.

**Answer:** Maximum amount of fine shall be market price of such goods less the tax chargeable thereon. Hence, maximum fine shall be ₹ 20, 00,000 - ₹ 3, 60,000 = ₹ 16, 40,000. Minimum fine shall be equal to penalty leviable under section 129(1) of CGST Act.

Under section 129(1) of CGST Act, conveyance can be released on payment of applicable tax and penalty equal to 100% of tax payable. Thus, minimum penalty shall be ₹ 3, 60,000 + ₹ 3, 60,000 = ₹ 7,20,000.

### Confiscation of conveyances

Any conveyance used as a means of transport for carriage of taxable goods in contravention of the provisions of this Act or Rules made there under is liable for confiscation and penalty on person under section 122, 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 – section 130(1) (v) of CGST Act.

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 – third proviso to section 130(2) of CGST Act.

Of course, if the owner proves his innocence, conveyance cannot be confiscated.

## **Prosecution and Compounding**

The GST Law envisages two types of punishments. These can be simultaneous and concurrent.

Civil Liability – Penalty for violation of statutory provisions involving a penalty of money and confiscation of goods. This is a civil penalty and can be adjudged in departmental adjudication. This penalty can be imposed by departmental authorities.

In *Indo-China Steam Navigation V. Jaswant Singh* 1983(13) ELT 1392

= AIR 1964 SC 1140 = 1964(6) SCR 594 (SC – 5 member Constitution Bench), it was held that the adjudicating officer is not a Tribunal or Court, though he has to act in a quasi-judicial manner.

Criminal Liability – Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution. These are provided in GST law.

## **Prosecution for offences under GST law**

Section 132(1) of CGST Act describes offences for which prosecution can be launched.

## **Cognizance of offences by magistrate of first class**

No court shall take cognizance of any offence punishable except with the previous sanction of the Commissioner, and no Court inferior to that of a Magistrate of the First Class, shall try any such offence – section 134 of CGT Act.

## **Presumption of culpable mental state**

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect of the act charged as an offence in that prosecution–section 135 of CGST Act.

“Culpable mental state” includes intention, motive, knowledge or a fact, and belief in, or reason to believe, a fact. For the purposes of this section, a fact is



said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance or probability.

### **Offences by companies and certain other persons**

Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly – section 137(1) of CGST Act.

Notwithstanding anything contained in section 137(1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly – section 137(2) of CGST Act.

Company includes firm and director includes partner – (a) “company” means a body corporate and includes a firm or other association of individuals: and (b) “director”, in relation to a firm, means a partner in the firm.

### **Compounding of offences**

Any offence under the Act may, either before or after the institution of prosecution, be compounded by the Competent Authority 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 – section 138(1) of CGST Act.

Compounding does not affect proceedings under other law – Any compounding allowed under the provision of this section shall not affect the proceedings if any, instituted under any other law – second proviso to section 138(1) of CGST Act.

Compounding only after tax, interest and penalty paid – Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences – third proviso to section 138(1) of CGST Act.

### **What is compounding?**

‘Compounding’ means that the accused and the complainant have come to terms and the dispute between the parties has been settled amicably or adjusted by



agreement and the complainant agrees not to prosecute the accused. If the case is pending, the accused and the complainant then make a joint application to the Court that the parties have come to terms and the case may not be proceeded with.

Thus, in compounding, there is a compromise or agreement, while in case of imposition of fine under provisions of an Act, there is no agreement as such. Section 320 of Criminal Procedure Code permit compounding of various offences under Indian Penal Code.

Such compounding can be done either before or after institution of prosecution. After payment of such composition amount, prosecution will not be launched, or if it was launched, it will be withdrawn.

### **Following offences cannot be compounded**

As per first proviso to section 138(1) of CGST Act, offences cannot be

Compounded in respect of following persons:

- (a) A person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the sub- section;
- (b) A person, who has been allowed to compound once in respect of any offence, other than those in clause (a), under this act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
- (c) A person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) A person who has been convicted for an offence under this Act by a court'
- (e) A person who has been accused of committing an offence specified in clause (g) or clause (j) of clause (k) of sub-section (1) of section 132; and
- (f) Any other class of persons or offence as may be prescribed.

### **Compounding fees payable**

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 rupees ten thousand or fifty per cent of the tax involved, whichever is greater, and the



maximum amount not being more than rupees thirty thousand or one hundred and fifty per cent of the tax, whichever is greater – section 138(2) of CGST Act.

### **Discharge after paying compounding fees**

On payment of such compounding amount as may be determined by the competent authority, no further proceedings shall be initiated under the 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 – section 138(3) of CGST Act.

Thus, compounding can be after initiation of criminal proceedings also.

### **Procedure for compounding**

Application for compounding shall be made in form GST CPD-01. The Commissioner shall call for report and issue order in form GST CPD-02 if full and true disclosure has been made – rule 162(3) of CGST Rules, 2017.

Opportunity of personal hearing should be given. Order cannot be passed unless full payment of tax, interest and penalty has been made – Rule 162(5) of CGST Rules, 2017.

If compounding fee is not paid within 30 days, the order becomes void- Rule 162(7) of CGST Rules, 2017.

Immunity can be withdrawn if the person had concealed any material particulars or given false evidence. Then he can be tried in Court of Law - Rule 162(8) of CGST Rules, 2017.

## **ADVANCE RULING**

### **Background**

A businessman would like to be clear in his mind about various aspects of his venture and risks involved, before he starts a new business or adventure. He would like to get clear verdict about his doubts in respect of taxation matters, before he decides to venture in the new business. Otherwise, he may be exposed to certain unexpected risks which may have serious adverse consequences and his business may even fail. Hence, provisions of advance ruling were made in 1993 in Income Tax Act vide sections 245N to 245R.

Advance ruling brings certainty in determining duty liability and it helps in avoiding long drawn and expensive litigation at a later date.

The Authority for Advance Ruling will give a decision on question raised before it. Such ruling will be binding on the applicant and the department.

### **What is 'Advance ruling'**

"Advance ruling" means a written decision provided by the Authority or, as the case may be, the Appellate Authority to an applicant on matters or on question specified in section 97(2) or section 100(1), as the case may be, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant – section 95(a) of CGST Act.

Application for advance ruling can be made in respect of supply 'being undertaken'. Thus, a person can apply even in respect of activity he is already doing, though really that is not the idea of 'Advance Ruling'.

Application should be made by applicant with fees, stating the question on which advance ruling is sought – section 97(1) of CGST Act.

### **Questions for which advance ruling can be sought**

The question on which the advance ruling is sought shall be in respect of any of the following [section 97(2) of CGST Act].

(a) Classification of any goods or services or both under the Act.



- (b) Applicability of a notification issued under provisions of the Act having a bearing on the rate of tax.
- (c) Determination of time and value of the goods or services or both
- (d) Admissibility of input tax credit of tax paid or deemed to have been paid
- (e) Determination of the liability to pay tax on any goods or services or both
- (f) Whether applicant is required to be registered
- (g) 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.

### **Authority for Advance Ruling**

Authority for Advance Ruling will be constituted in each State / Union

Territory – section 96 of CGST Act.

Procedure to be followed by Authority has been specified in section 98 of CGST Act. Advance ruling should be pronounced in 90days.

The Authority or Appellate Authority can amend the order to rectify an error apparent from records, within six months from the date of order.

### **Procedure for application to the authority for advance ruling**

An application for obtaining an advance ruling under section 97(1) of the Act shall be made on the common portal in form GST ARA -1 and shall be accompanied by a fee of five thousand rupees. It should be deposited in the manner specified in section 49 of the Act – Rule 104(1) of CGST and SGST Rules, 2017.

The application for advance ruling, the verification contained therein and all relevant documents accompanying such application shall be signed in the manner specified in rule 26 of CGST Rules - Rule 104(2) of CGST and SGST Rules, 2017.

Application shall be made in form ARA-01 with fees of ₹ 5,000 under CGST and ₹ 5,000 under SGST (total ₹ 10,000) deposited online on common portal. Then, application, duly verified shall be submitted manually.

Appeal can also be filed manually in form GST ARA-2 with payment of fees online.



## **Certification of copies of the advance rulings pronounced by the authority**

A copy of the advanced ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Rulings – Rule 105 of CGST and SGST Rules, 2017.

## **Appeal against order of advance ruling**

Appeal can be filed against order of Authority of Advance Ruling before Appellate Authority for Advance Ruling – section 100 of CGST Act.

This is a new provision. In earlier provisions in respect of excise, customs and service tax, there was no provision for appeal.

Appellate Authority for Advance ruling will be constituted by State/Union Territory – section 99 of CGST Act.

## **For and manner of appeal to the appellate authority for advance ruling**

An appeal against the advance ruling issued under section 98(6) of the Act shall be made on the common portal in form GST ARA – 2. It shall be accompanied by a fee of ten thousand rupees, to be deposited in the manner specified in section 49 of the Act – Rule 106(1) of CGST and SGST Rules, 2017.

Department can also file appeal against advance ruling under section 98(6) of CGST Act in form GST ARA-03 – Rule 106(2) of CGST and SGST Rules, 2017.

The appeal, the verification contained therein and all relevant documents accompanying such appeal shall be signed, in case of concerned officer or jurisdictional officer, by an officer authorized in writing by such officer' and (b) in the case of an applicant, in the manner specified in rule 26t of CGST Rules - Rule 106(3) of CGST and SGST Rules, 2017.

## **Copies of the advance ruling pronounced by the 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 / Union Territory Tax (c) the jurisdictional officer of Central Tax and State / Union Territory Tax; and (d) the Authority for Advance Ruling- Rule 107 of CGST and SGST Rules, 2017.



The copies will be sent in accordance with the provisions of section 104 (4) of the Act.

### **Binding nature of advance ruling**

Advance Ruling of authority shall be binding only on the applicant and jurisdictional tax authorities, unless law, facts or circumstances supporting the original advance ruling have changed – section 105 of CGST Act.

## JOB WORK

### Job work

Service classification for manufacturing services on physical inputs (goods) owned by other (job work) is 9988.

### GST Law makes elaborate provisions relating to job work

The provisions have been made as material sent for job work is 'supply'. Hence, GST would have been payable on material sent for job work. This was not practical.

"Job work" means under taking any treatment or process by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly – section 2(68) of CGST Act.

Section 19 of CGST Act makes provisions relating to taking input tax credit in respect of inputs sent for job work.

Section 143 of CGST Act makes provisions for special procedure for removal of goods for job work without payment of tax.

Transitory provisions – section 141 of CGST Act make provisions in respect of inputs, semi-finished goods and finished goods which were removed for job work before 1-7-2017 (i.e., introduction of GST) and returned after 1-7-2017.

The general GST rate is 18% [(9% CGST and 9% SGST) OR 18% IGST].

Materials recovery services – In case of materials recovery services, the GST rate is 18%.

### Concessional rate of 5% for certain job work

In case of job work relating to printing, textile, jewelry and hides and skins, handicrafts, processing of foods etc., the GST rate is 5% [2.5% CGST and 2.5% SGST/UTGST) or 5% IGST].



## Job Work Services”

For diamond related services–Rate of GST reduced from 5% to 15% on supply of job work service in relation to diamonds.

For Engineering related services other than bus body building–The rate of GST reduced from 18% to 12% on supply of machine, Job work such as in engineering industry, except supply off job work in relation to busbody building which would remain at 18%

.... (Notification No. 20/2019 Central Tax (Rate dated 30.9.2019)

The detailed coverage under this provision is as follows [Notification No.11/2017-CT(Rate) and No.8/2017-IT(Rate) both dated 28-6-2017, effective from 1-7-2017 as amended from time to time] -

Services by way of job work in relation to –

- (a) Printing of newspapers.
- (b) Textiles and textile products falling under Chapters 50 to 63 in the First Schedule to the Customs Tariff Act, 1975 – amended w.e.f. 22-8-2017 [During 1-7-2017 to 22-8-2017, the entry was as follows–Textile yarns (other than of man-made fibers) and textile fabrics]. Thus, from 22-8-2017, job work of garments will also be subject to GST @5%.
- (c) All products falling under chapter 71 of Customs Tariff Act [Pearls, precious and semi-precious stones, precious metals (like gold, silver, platinum) and their Articles, Imitation Jewelry, coin] [Till 13-10-2017, the words were as follows – Cut and polished diamonds; precious and semi-precious stones; or plain and studded jewelry of gold and other precious metals, falling under Chapter 71 in the First Schedule to the Customs Tariff Act, 1975
- (d) Printing of books (including Braille books), journals and periodicals.
- (da) Printing of all goods falling under Chapter 48 or 49 which attract GST Rate of 5% or Nil [inserted w.e.f. 13-10-2017]
- (e) Processing of hides, skins and leather falling under Chapter 41 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- (ea) Manufacture of leather goods or foot wear falling under Chapter 42 or 64 in the First Schedule to the Customs Tariff Act, 1975, respectively [This sub-clause inserted w.e.f. 25-1-2018]
- (f) All food and food products falling under Chapters 1 to 22 of Customs Tariff Act [inserted w.e.f. 13-10-2017]



- (g) All products falling under Chapter 23 of Customs Tariff Act [residues and waste from food industries, prepared animal fodder] except dog and cat food put up for retail sale falling under heading 2309 10 00 [inserted w.e.f.13-10-2017]
- (h) Manufacture of clay bricks falling under tariff item 6901 00 10 [inserted w.e.f.13-10-2017]
- (i) Manufacture of handicraft goods as defined in Notification No.32/2017-CT dated 15-9-2017 [inserted w.e.f. 15-11-2017].

### **Job work of tailoring and manufacture of umbrella**

GST rate in respect of job work of manufacture of umbrella is 12% [(6% CGST and 6% SGST) or 12% IGST] w.e.f.13-10-2017 – Notification No.11/2017-CT (Rate) and No.8/2017-IT (Rate) both dated 28-6-2017 amended w.e.f.13-10-2017.

GST rate in respect of tailoring is 5% [(2.5% CGST and 2.5% SGST) or 5% IGST] w.e.f.25-1-2018 – Sr. No.26(iii) of Notification No.11/2017-CT (Rate) and No.8/2017-IT (Rate) both dated 28-6-2017 inserted on 25-1-2018.

### **Services in relation to printing work**

In case of services by way of any treatment or process on goods belonging to another person, in relation to (a) printing of newspapers (b) printing of books (including Braille books), journals and periodicals, the tax rate is 5% [2.5% CGST and 2.5% SGST] or 5% IGST. – Entry inserted w.e.f.22-8-2017.

In case of services by way of any treatment or process on goods belonging to another person, in relation to printing of all goods falling under Chapter 48 or 49 where IGST rate is 12% [or CGST 6% plus SGST/UTGST 6%] the rate is 12% [(% CGST and 6% SGST) or 12% IGST. Entry inserted w.e.f.13-10-2017.

In this case, the work need not be 'job work', Further, since the words used are 'in relation to', any ancillary service in relating to printing of newspaper, books, journals and periodicals, the GST rate will be 5%.

Printing work when only contents are supplied by publisher – Services by way of printing of newspapers, books (including Braille books), journals and periodicals, which attract IGST @ 12 per cent or 5 per cent or Nil, where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer would attract GST rate of 12% - [6% CGST and 6% SGST] or 12 % IGST. – Amendment to Notification No.11/2017-CT (Rate) and No.8/2017-IT (Rate) w.e.f.22-8-2017[The words in italics inserted w.e.f. 13-10-2017].

This has been reiterated in CBI&C circular No.354/263/2017-TRU dated 20-10-2017, where it is stated that this is a composite supply and predominant nature is 'supply of printing' (whatever that means) and supplies would be supply of service falling under heading 9989.

Supply of books where the supplier owns copyright to the material –In FAQ No.6 of FAQ (Short) on Services issued by CBI&C on 29-8-2017, it was clarified that supply of books shall be treated as supply of goods as long as the supplier owns the books and has the legal rights to sell the books on his own account.

This has been elaborated in CBI&C circular No.27/1/2018 dated 4-01-2018, where it has been clarified that if the books are printed after obtaining copyright from author or another publisher, it will be treated as supply of books so long as supplier owns the books and has right to sell those books on his account.

### **Principal with reference to job work**

Person sending goods for job work is termed as 'Principal'. He should be a registered person.

The term 'principal' used with reference to job work is different from the term 'principal' as defined in section 2(88) of IGST Act.

'Principal' for purpose of job-work provisions means a registered person who sends any input and/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 section 143(1) of CGST Act and Explanation to section 19(7) of CGST Act.

### **In case of job work, value of material will be included in aggregate turnover of principal for considering exemption available to small persons**

The supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143k, and the value of such goods shall not be included in the aggregate turnover of the registered job worker–Explanation (i) to section 22 of CGST Act.

Thus, in case of job work, value of material will be included in aggregate turnover of principal for considering exemption available to small persons (having turnover of 40/20 lakhs) and not in turnover of job worker.

### **Special procedure for removal of inputs or capital Goods for job work**

A registered person (hereinafter referred to in this section as the "principal") may, under intimation and subject to such conditions as may be prescribed, send any inputs and / 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 – section 143(1) of CGST Act.



Intermediate product can be sent for job work – For the purpose of job work, input includes intermediate goods arising from any treatment of process carried out on the inputs by the principal or the job workers – Explanation to section 143 of CGST Act.

The inputs / capital goods can be sent to job worker from place of business of principal. These can also be sent directly from the place of supplier of those inputs and capital goods, without bringing them at the place of business of principal – section 19 of CGST Act.

Intimation through quarterly return is sufficient – Though the section uses the term 'intimation', actually what is required is a quarterly return in form GST ITC-04 to be submitted by 25th of the month succeeding the quarter, as per Rule 45 of CGST and SGST Rules, 2017. Intimation of every job worker or every dispatch to job worker is not required – para 8.4(vi) of CBI&C circular No.38/12/2018 dated 26-3-2018.

### **Which goods can be sent for job work**

Inputs and capital goods can be sent for job work.

'Moulds and dies, jigs and fixtures, or tools' can also be sent for which separate provisions have been made.

### **Bringing back goods after job work**

The 'principal' should bring back inputs, after completion of job-work or otherwise, and/or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out to any of his place of business, without payment of tax– section 143(1)(a) of CGST Act.

There is no time limit for bringing back moulds and dies, jigs and fixtures, or tools.

The term 'bring back' in this sub-section is not correct as the goods after job work can be brought to any of the place of business of 'principal'.

### **Direct dispatch from place of job worker if job worker not registered**

After job work, the finished goods (inputs after job work or capital goods) can be sent directly from place of job worker, instead of bringing them back to place of business of 'principal'. If such supply is in India, GST is payable. Such goods can also be exported directly from place of job worker, either on payment of GST or without payment of GST –section 143(1) (b) of CGST Act.

The goods shall not be permitted to be supplied from the place of business of a job worker in terms of clause (b) unless the 'principal' declares the

Place of business of the job-worker as his additional place of business except in a case – (i) where the job worker is registered under section 25 of CGST Act; or (ii) where the “principal” is engaged in the supply of such goods as may be notified by the Commissioner in this behalf – proviso to section 143(1) of CGST Act. If job worker is registered under GST, then the ‘principal’ is not required to declare the place of job worker as additional place of business.

Supply is of Principal and not of job worker – The supply is of Principal made from place of job worker, it is not supply made by job worker – para 7 of CBI&C circular No.38/12/2018 dated 26-3-2018.

[Hence, invoice and e-way bill should be issued by Principal and not by job worker]

### **Responsibility of tax and goods is of principal**

The responsibility for accountability of the goods including payment of tax thereon shall lie with the “principal” – section 143(2) of CGST Act.

### **If inputs or capital goods are not returned within one/ three years**

If inputs or capital goods are not received back by ‘principal’ within one/ three years. GST shall be payable as if the inputs/capital goods were supplied by the principal to job worker on the day when the inputs/ capital goods were sent out – section 143(3) and 143(4) of CGST Act.

If inputs or capital goods are directly sent to the place of job worker, the period of one/three years will be counted from date of receipt of inputs/ capital goods by the job worker – proviso to section 19(3) and proviso to section 19(6) of CGST Act.

The meaning of ‘on the day when the inputs / capital goods were sent out’ can mean that (a) GST rate as applicable on the day when they are sent out will be relevant (b) Interest for one/three years will be payable.

### **Special provisions relating to mould sand dies, jigs and fixtures, or tools**

The provision of returning goods within one/three years is not applicable to moulds and dies, jigs and fixtures, or tools. These may be retained at place of job worker – section 19(6) of CGST Act.

Thus, the job worker can sell them as scrap on payment of GST if he is registered. If he is not registered, GST can be paid by ‘principal’ on such scrap.

Moulds, tools and dies are not required to be returned to Principal – para 9.5 of CBI&C circular No.38/12/2018 dated 26-3-2018.



## **Clearance of waster and scrap arising during job work**

Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax if such job worker is registered, or by the principal, if the job worker is not registered – section 143(5) of CGST Act.

The Invoice may be issued by Principal if job worker is not registered. If the Principal is located in State A and job worker is located in State B, the Principal while selling scrap should charge IGST if recipient is located in State or any other State. If the recipient of scrap is located in State A, the Principal will charge SGST and CGST – para 9.4 (iii) of CBI&C circular No.38/12/2018 dated 26-3-2018.

## **Input tax credit of inputs and capital goods sent for job work**

The “principal” shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax on input and capital goods sent to a job-worker for job-work – section 19(1) and 19(4) of CGST Act.

The “principal” shall be entitled to take credit of input tax on inputs even if the inputs or capital goods are directly sent to a job worker for job- work without their being first brought to his place of business – section 19(2) and 19(5) of CGST Act.

ITC of capital goods sent to job worker –The “principal” shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax on capital goods sent to a job-worker for job- work if the said capital goods, after completion of job-work, are received back by him within three years of their being sent out – section 19(4) of CGST Act.

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 their being first brought to his place of business, and in such a case, the period of three years shall be counted from the date of receipt of the capital goods by the job worker – section 19(5) of CGST Act.

## **Delivery challan for sending goods for job work**

For transportation of goods for job work, a delivery challan shall be issued by principal. Delivery Challan shall also be issued when material is sent directly to place of job worker from place of supplier–rule 45(1) of CGST Rules.

The delivery challan, serially numbered should be issued at the time of removal of goods for transportation, containing the following details (i) date and number of delivery challan (ii) name, address and GSTIN of the consigner, if registered, (iii) name, address and GSTIN or UIN of the consignee, if registered

(iv) HSN code and description of goods (v) quantity (provisional, where the exact quantity being supplied is not known) (vi) taxable value (vii) tax rate and tax amount—Central tax, State tax, integrated tax, Union Territory tax or Cess, where the transportation is for supply to the consignee (viii) place of supply, in case of inter-State movement, and (ix) signature .- rule 55(1) of CGST Rules.

Delivery challan to be in triplicate –The delivery challan shall be prepared in triplicate, in case of supply of goods, with the following marking—(a) the original copy being marked as ORIGINAL FOR CONSIGNEE (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and (c) the triplicate copy being marked as TRIPLICATE FOR CONSIGNER – rule 55(2) of CGST Rules.

Electronic way bill – Where goods are being transported on a deliver challan in lieu of invoice, the same shall be declared in e-way bill is sued under rule 138 – Rule 55(3) of CGST Rules.

Such e-way bill is required in case of inter-State supply for job work, even if value of consignment is less than ₹ 50,000 – first proviso to rule 138(1) of CGST Rules.

### **Procedure to be followed in respect of inputs and capital goods sent to the job worker**

The inputs or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where the inputs or capital goods are sent directly to job-worker—Rule 45(1) of CGST and SGST Rules, 2017.

The challan issued by the principal to the job worker shall contain the details specified in Rule 55 of CGST Rules - Rule 45(2) of CGST and SGST Rules, 2017.

Quarterly return of material sent for job work – The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in form GST ITC-04 furnished for the quarter on or before 25th of the month succeeding the quarter or within such further period as may be allowed by Commissioner by notification. Extension by State Commissioner will be deemed to be notified by Central Commissioner also – Rule 45(3) of CGST and SGST Rules, 2017 – words in italics inserted w.e.f. 28-10-2017.

For the quarter ending September, 2107, the time limit for filing return has been extended to 31-12-2017. Notification No.53/2017-CT dated 28-10- 2017, amended vide Notification No.63/2017-CT dated 15-11-2017.

Payment of tax with interest if inputs or capital goods are not returned within 1/3 years – If inputs or capital goods are not returned within the period prescribed in section 143 (one or three years), the supply shall be declared in form GSTR-1. Tax with applicable interest shall be paid– Rule 45(4) of CGST and SGST Rules, 2017.

## ANTI-PROFITEERING

### Background

Provision relating to anti-profiteering measure has been introduced vide section 171 of CGST Act.

Profiteering is defined as the sale or offering for sale any basic necessity or prime commodity at a price grossly in excess of its true worth.

Section 171 of the Central Goods and Services Tax Act, 2017 provides for Anti Profiteering measure. As per Sub Section 1 of Sec 171 of CGST ACT, 2017, "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."

A strict interpretation of Section 171 of the GST law requires a registered taxable person to pass on the benefit of every rupee accruing on account of additional input tax credit or reduced tax rate, to the next level of supply chain. Even the transition provisions under the GST law (Section 140 (3)) proposes to allow the credit of eligible duties and taxes in respect of inputs held in stock, subject to the condition that the person passes on the benefit of such credit by way of reduced prices to the recipient.

Comparison of three scenarios:

<b>Description</b>	<b>Pre-GST Provisions</b>	<b>GST (Without adjusting prices)</b>	<b>GST (Without profiteering)</b>
Cost to Consumer	2,63,750	2,95,000	2,69,850
Profit of Dealer	23,850	49,000	23,850
Total Govt. Taxes	38,900	45,000	40,473

The idea is that the taxable person should pass on benefit of reduction in rate of tax on any supply of goods or the benefit of input tax credit to the customer as reduction in prices – section 171(1) of CGST Act.

The Central Government may, on recommendation of GST Council by notification, constitute an Authority, or empower any existing Authority



Constituted under any law, to examine whether input tax credits availed by any registered person or the reduction in the tax rate actually have resulted in a commensurate reduction in the price of the said goods or services or both supplied by him - section 171(2) of CGST Act.

The Authority referred to in section 171(1) shall exercise such function and have such powers as may be prescribed - section 171(3) of CGST Act.

No provision for penalty or recovery of excess profit – Rule 21(c) of CGST and SGST Rules, 2017 provides for cancellation of registration for violation of provisions relating to anti-profiteering.

Precautions to be taken during transition period-Though provisions relating to anti-profiteering are like toothless tiger, it is advisable to take precautionary measures. Cost sheets or earlier period and later period should be prepared to establish that there is no significant change in margins. Wherever required and possible, prices should be reduced after 1-7-2017 and then brought back to original level after some period. Such revision can be justified on basis of cost rise.

It is important, therefore, that organizations not only analyses the direct impact of the tax changes on their own operations, but also the benefits they should expect to have passed on to them by their suppliers as a result of cost reductions from tax changes they enjoy. These may include reduced capital costs or other input costs arising from the tax changes.

Anti-Profiteering - Example



	ITC available pre-GST Vat			ITC available post-GST		
Period	FY 2016-17	FY 2017-18 (April to June, 2017)	Total	July, 2017 to March, 2018	April, 2018 to June, 2018	Total
Input Tax						
VAT	12785849	9217785	22003634			-
CGST				2,06,61,318	12,67,494	2,19,28,812
SGST				2,06,61,318	12,67,494	2,19,28,812
IGST				1,39,00,214	23,53,865	1,62,54,079
Total	12785849	9217785	22003634	5,52,22,850	48,88,854	6,01,11,704
Total Turnover	345927821	134668620	480596441	51,66,84,080	75,95,419	52,42,79,499
Taxable Turnover	259445866	101001465	360447331	51,66,84,080	75,95,419	52,42,79,499
Output Tax						
VAT	24474393	9527805	34002198			-
CGST				4,60,02,406	2,88,504	4,62,90,910
SGST				4,06,04,869	2,88,504	4,08,93,373
IGST				26,90,171	5,01,663	31,91,833
Total	24474393.34	9527804.865	34002198	8,92,97,446	10,78,671	9,03,76,117
ITC Ratio to Taxable Value (%)			6.10			11.47
Additional ITC Availed (%)						5.36
Con- tract Value prior to GST		1,87,00,00,000				

Savings on Account of GST Implementation to be passed on (5.36% of 187 Crores - 10 crores approx.)

## **Procedure to regulate anti-profiteering**

An authority will be constituted with Chairman and four technical members– Rule 122 of CGST and SGST Rules, 2017. They will get salary and allowances as specified in rule 124 of CGST and SGST Rules, 2017.

Mr. Badri Narain Sharma (Mr. B.N. Sharma) has been appointed as Chairman of the Anti-Profiteering Authority w.e.f. 28-11-2017.

Standing Committee and Screening Committees will be constituted. State Level Screening Committees will also be constituted–Rule 123 of CGST and SGST Rules, 2017.

The Central Government can terminate appointment of Chairman or technical member with approval of Chairperson of GST Council–second proviso to rules 124(4) and 124(5) of CGST Rules, as amended w.e.f. 15- 11-2017.

The Authority will determine methodology and procedures to determine whether reduction in rate of supply and benefit of ITC has been passed on to the recipient – Rule 126 of CGST and SGST Rules, 2017.

Duties of Authority have been specified in rule 127 of CGST Rules, 2017.

Applications will be scrutinized by Standing Committee within two months. Applications of local nature will be scrutinized by State Level Screening Committee and then forwarded to the Standing Committee for further action – Rule 128 of CGST and SGST Rules, 2017.

The Standing Committee will scrutinize the cases. If prima-facie evidence of profiteering is found, the matter shall be referred to Director General of Safeguards. The Director General of Safeguards will issue notice to interested parties who may have information. He will collect evidence within three months. He will submit his report within three months to standing committee – Rule 129 of CGST and SGST Rules, 2017.

Interested parties mean (a) suppliers of goods or services under the proceedings (b) recipients of goods or services under the proceedings (c) any other person alleging, under rule 128(1d) of CGST Rules, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices – Explanation(c) To rule 137 of CGST and SGST Rules, 2017 as amended on 23-3-2018.

Director General of Safeguards, (renamed as Director General of Anti-Profiteering) can take assistance of other authorities. He has powers to summon persons to give evidence and produce documents – Rules 131 and 132 of CGST and SGST Rules, 2017.



Provisions of section 11 of RTI Act relating to disclosure of confidential information supplied by third party will apply to information received by Director General of Anti-Profitteering - Rule 130 of CGST and SGST Rules, 2017.

On receipt of report of Director General of Anti-Profitteering, the Authority will give opportunity of hearing to interest parties.

After investigation and hearing, the Authority can pass suitable order like (a) Reduction in price (b) return amount to recipient (c) impose penalty (which is maximum ₹ 25,000) (d) cancellation of registration under GST act – Rule 133(3) of CGST and SGST Rules, 2017.

If the report of the Director General of Anti – Profitteering referred to in rule 129(6) recommends that there is contravention or even non- contravention of the provisions of section 171 of CGST Act or Rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of Safeguards to cause further investigation or inquiry in accordance with the provision of the Act and these rules – Rule 133(4) of CGST and SGST Rules, 2017 inserted w.e.f.23-3-2018.

Quorum of meeting is minimum three members. Decisions of Authority will be taken by majority of members present and voting. In case of equality of votes, Chairman shall have second or casting vote–rule134 of CGST Rules.

If the taxable person does not comply, recovery proceedings can be initiated as per provisions of CGST, SGST and UTGST Act – Rule 135 of CGST and SGST Rules, 2017.

Anti-profitteering clause has sunset clause of two years – Rule 137 of CGST and SGST Rules, 2017.

Standing Committee at Central Level – The address is as follows – Standing Committee on Anti-Profitteering, Second Floor, Bhai VirSingh Sahitya Sedan, Bhai Vir Sing Marg, Gole Market, New Delhi – 110 001. Tel –011-2371537.

Email – anti-profitteering@gov.in.

### **How to make application (really complaint) about profiteering by affected consumer**

Application (really complaint) should be filed by affected consumers before Standing Committee on Anti-profitteering if the profiteering has all India character, or before State Screening Committee if profiteering is of local nature.

Application should be in form APAP-1, giving required details. The application form has been placed on CBI&C website in December, 2017.



If screening committee finds prima facie case, the matter will be forwarded to standing committee.

If the standing committee finds prima facie case, the issue will be referred to Director General of Safeguards, CBI&C for investigating complaint of profiteering. The Director General will report his findings to National Anti-Profiteering Authority to pass appropriate order to ensure consumers benefit from reduced taxes.

### **Role of cost and management accountant**

A CMA can play very crucial role in proper implementation of these provisions. He can prepare cost data to prove or disprove anti- profiteering. He can prepare cost data for this purpose.

Institute of Cost Accountants of India (ICAI) has prepared a detailed guidance note on this issue, which should be referred to.

## PROVISIONS OF TDS AND TCS

### Electronic commerce operator

The provisions of section 51 of CGST Act regarding Tax Collection at Source (TCS) by e-commerce companies are not being implemented so far. These will be made effective later date. However, they are expected to register under GST.

These provisions apply to supply of goods. However, in case of supply of services, the electronic commerce operations can be made liable to pay GST under section 9(5) of CGST/SGST Act and section 5(5) of IGST Act.

This is a new challenge tax authority.

In E-commerce, order for supply of goods or services is placed through portal. The e-commerce companies pass on these orders to actual suppliers of goods and services. Supply of goods or services is done by third party unknown to the person placing order.

So far, e-commerce supplying goods were not liable to pay Vat or CST as t they were not selling goods.

Recently, the services provided through portal were brought under services tax net.

Now, e-commerce companies selling goods on portal are being made liable to collect 1% GST at source.

This 1% TCS (Tax Collected at Source) is mainly for control purposes, as balance GST will be paid by the actual supplier of goods or services.

The actual supplier can take credit of this TCS paid by e-commerce operator.

Thus, effectively, there is no increase in tax liability. However, in case of goods on which GST is not payable (like agricultural produce, fruits, books), the 1% tax collected by the e-commerce will be cost as the actual supplier of such goods will not be able to take credit of this TCS paid by e-commerce companies.

In case of supply of specified services (like taxi and hotel booking), the E-commerce operator himself will be liable to pay entire IGST/CGST/SGST on such services- section 5(5) of IGST Act and section 9(5) of CGST Act.

Thus, Uber and Ola will be liable to pay entire GST. Even today, they are liable to pay service tax and hence there is no increase in GST liability.

‘Electronic commerce operator’ means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce-section 2(45) of CGST Act.

### **Tax collection at source (TCS) by electronic commerce operator**

Notwithstanding anything to the contrary contained in the Act, every electronic commerce operator (hereinafter referred to in this section as the “operator”), not being an agent, shall collect an amount calculated at such rate not exceeding one percent, as may be notified by Government, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation - For the purposes of this sub-section, the expression “net value of taxable supplies” shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under section 9(5) of CGST Act, made during any month by all registered taxable persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month – section 52(1) of CGST Act.

Supplier can take credit of TCS paid by e-commerce operator- The supplier who has supplied the goods or services or both through the electronic commerce operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under section 52(4), in the manner as may be prescribed –section 52(7) of CGST Act.

Amount collected by e-commerce operator to be paid Government-The amount collected by e-commerce operator under section 52(1) shall be paid to the credit of the Government by the operator or within ten day after the end of the month in which such collection is made, in the manner prescribed –section 52(3) of CGST Act,

E-commerce Operator to submit statement to Government every month- Every operator shall, furnish a statement, electronically, of all amounts collected towards outward supplies of goods or services or both effected through it, including supplies of goods or services or both returned to it, and the amount collected under section 52(1) of CGST Act during a calendar month, within ten days after the end of such calendar month– section 52(4) of CGST.

This statement can be rectified by e-commerce operator. He is required to pay tax with interest in such case. However, such rectification is not possible after due date of furnishing statement for the month of September following the end



of financial year or the actual date of furnishing relevant annual statement, whichever is earlier – section 52(6) of CGST Act.

**Annual Statement by e-commerce operator**–The e-commerce operator is required to file Annual Statement before 31st December of following financial year, giving specified details –section 52(5) of CGST Act.

Every e-commerce operator required to collect tax at source under Section 52 of CGST Act shall furnish annual statement in form GSTR-9B –Rule 80(2) of CGST and SGST Rules, 2017

**Matching of statement by e-commerce operator and credit taken by supplier** - The details of supplies and the amount collected furnished by e-commerce operator shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under CGST, in prescribed manner – section 52(8) of CGST Act.

**Discrepancy between the details of operator and supplier**- Where the details of outward supply, on which the tax has been collected, as declared by the operator do not match with the corresponding details declared by the supplier, the discrepancy shall be communicated to both persons in prescribed manner-section 52(9) of CGST Act.

If the discrepancy is not rectified, its shall be added to the output liability of the said supplier for the calendar month succeeding the calendar month in which the discrepancy is communicated.

The concerned supplier shall be liable to pay the tax payable in respect of such supply along with interest on the amount so added from the date such tax was due till the date of its payment –section 52(10) of CGST Act.

The concerned supplier shall pay the tax liable to pay with interest on the amount added to his turnover under section- 52(10) – section 52(11) of CGST Act.

‘Concerned supplier’ shall mean the supplier of goods or service or both making supplies through the e-commerce operator – Explanation to section 52 of CGST Act.

**18.10-1 Persons supplying services through e-commerce operator not required to register if aggregate turnover less than ₹ 40/20lakhs**

Persons who are suppliers of service and supplying services through e-commerce operator are not required to register under GST if their aggregate turnover is less than ₹ 20lakhs per annum (₹ 10 lakhs in case of specified States) Notification No. 65/2017 CT dated 15-11-2017.

This relaxation is not applicable to supplier of goods.





## **Payment of tax by e-commerce operators providing taxi and hotel booking services**

In case of supply of services, the electronic commerce operators can be made liable to pay GST under section 9(5) of CGST and SGST Act and section 5(5) of IGST Act, by issuing a notification.

The Central Government may, on the recommendation of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it. All the provisions of the CGST/ IGST Acts shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services – Section of IGST Act and section 9(5) of CGST Act.

Where entire tax payable by e-commerce operator, persons who supply goods or services or both, through such electronic commerce operator are not required to register under GST-section 24(ix) of CGST Act.

Where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax- first proviso to section 5(5) of IGST Act and section 9(5) of CGST Act.

Where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax-second proviso to section 5(5) of IGST Act and section 9(5) of CGST Act.

**Tax on taxi, hotel booking, housekeeping services by electronic commerce operator**

Notification No. 17/2017-CT (Tax dated 28-6-2017 has been issued under the aforesaid provisions. As per the notification, e-commerce operator will be liable to pay entire GST on following activities, W.e.f. 1-7-2017

**Service of transportation of passengers – service by way of transportation of passengers by radio-taxi, motorcar, maxi cab and motorcycle.**

Radio taxi means taxi (including a radio cab), by whatever name called, which is in two-way radio communication with control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Services (GPRS).

The GST rate is 5% (2.5% CGST and 2.5% SGST). Entire tax is payable by e-commerce operator (like Ola, Uber etc.)



Service of providing accommodation in hotels, inn, campsites– Service by way of providing accommodation in hotels, inn, guest houses, clubs, camp sites or other commercial places meant for residential or lodging purposes.

However, if the person supplying such service (like hotel, guest house) is registered under CGST and SGST Act, the e-commerce operator will not be liable to pay GST. Of course, the e-commerce operators will be liable to pay GST on commission received by them from hotel, guest houses, etc.

Housekeeping, plumbing, carpentry etc.- Services by way of housekeeping, such as plumbing, carpentering etc., except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of CGST Act.

Thus, if the supplier of service has aggregate turnover exceeding ₹ 20 lakhs (₹ 10 lakhs in certain States), he himself is liable to get registered under GST and pay tax. Otherwise, the e-commerce operator will be liable to pay GST

[This service included in e-commerce services w.e.f. 22-08-2017].

### **Tax deduction at source (GST TDS)**

The concept of Tax Deduction at Source (TDS) was there in the erstwhile VAT Laws. GST Law also mandates Tax Deduction at Source (TDS) vide Section 51 of the CGST/SGST Act 2017, Section 20 of the IGST Act, 2017 and Section 21 of the UTGST Act, 2017. GST Council in its 28th meeting held on 21.07.2018 recommended the introduction of TDS from 01.10.2018.

Following would be the deductors of tax in GST under section 51 of the CGST Act, 2017 read with notification No. 33/2017-Central Tax dated 15.09.2017:

- (a) a department or establishment of the Central Government or State Government ;or
- (b) local authority ;or
- (c) Governmental agencies; or (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government,
- (d) an authority or a board or any other body,-  
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 Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);or
- (f) Public sector undertakings.



## GST -TDS diagrammatic presentation.pdf

GST Laws provide for tax deduction at source (TDS) by the specified Category of persons (hereinafter referred to as 'the deductors') from the payment made or credited to the supplier of taxable goods or services or both (hereinafter referred to as 'the deducted') at a prescribed rate.

Notification No. 33/2017 – Central Tax dated 15.09.2017 was issued by the CBIC to enable registration of tax deductors. However, Government suspended the applicability of TDS till 30.09.2018. Now, it has been decided that the TDS provision would be made operative with effect from 01.10.2018. Notification No. 50/2018-Central Tax dated 13.09.2018 has already been issued in this regard by CBIC. Similar notifications have been issued by respective State Governments.

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).

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 deductors 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 deductors 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 deductors 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.



Tax deduction is not required in following situations:

- a) Total value of taxable supply  $\leq$  ₹ 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  $\leq$  ₹ 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 deductors 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 deducted.
- l) Where the payment is made to an unregistered supplier.
- m) Where the payment relates to “Cess” component.

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 supplies are billed together.



### **TDS-Section 51(3) & (4)**

Section 51 of the CGST Act, (a) for sub-section (3), the following sub-section shall be substituted, namely:–

- ***"(3) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed***

### **Due date for TDS under section 51 of CGST Act, 2017**

- As per notification No 35/2020 Central Tax dated 03-04-2020 where the timeline for any compliance required as per section 39 (3) and section 51 of the CGST Act, 2017 falls during the period from 20-03-2020 to 29-06-2020 the same has been extended till 30-06-2020
- Accordingly, the due date for furnishing of return in FORM GSTR-7 along with deposit of tax deducted for the said period has also been extended till 30-06-2020 and no interest under section 50 shall be leviable if tax deducted is deposited by 30-06-2020

Rate of deduction of tax:

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.

Example: Supplier X makes taxable supply worth ₹ 10,000/-to a Municipality where contract for supply is for ₹ 15, 00,000/-. The rate of GST is 18%. Supplier and the deductors are in the same State. 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/-

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/-

- Section 24(vi) of the CGST Act, 2017 provides for compulsory liability for registration for the deductors of TDS.



- Deductors in GST will be required to get registered and obtain a GSTIN [Goods & Services Tax Identification Number] as TDS deductors even if he is separately registered as a supplier.
- Every registered TDS deductors is required to file a Return in FORM GSTR 7 electronically within 10th of the month succeeding the month in which deductions have been made to avoid payment of any late fee, interest. [Section 39(3) of the CGST Act, 2017 read with Rule 66 of the CGST Rules, 2017 refers]
- Tax deposited by challan would get credited in the electronic cash ledger of the deductors. The liability of deductors in FORM GSTR 7 has to be paid by him by debiting his electronic cash ledger.
- The deductors shall furnish to the deducted a system generated certificate in FORM GSTR 7A mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and other related particulars. The said certificate is to be furnished within five days of crediting the amount so deducted to the Government i.e. within five days of furnishing return in FORM GSTR-7.
- The entire exercise has to be completed through [www.gst.gov.in](http://www.gst.gov.in).
- The FORM GSTR-7 for a particular month has to be filed online within 10th of the month succeeding to the month in which deductions have been made.
- If any deductors fails to furnish the certificate of TDS deduction to the deducted [i.e. the supplier] within 5 days of crediting the amount so deducted to the Government (i.e. furnishing return in FORM GSTR-7), the deductors shall pay a late fee of ₹ 100/- per day under CGST Act & SGST/UTGST Act separately from the day after. The expiry of five day period until the failure is rectified, subject to a maximum amount of ₹ 5000/- each under CGST Act & SGST/UTGST Act.
- The deducted (i.e. the supplier) shall claim the credit of such deduction in his electronic cash ledger.

### **Goods and service tax practitioners**

Filing of return is not going to be easy for small taxpayers. Hence, a provision has been made to approve 'GST' Practitioners'.

Eligibility conditions duties and obligations, manner of removal and other conditions of GST Practitioners will be prescribed by rules-section 48 (1) of CGST Act.



A resisted taxable person may authorize an approved GST Practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 (monthly return), section 44 (annual return) or section 45 (final return after closure) in such manner as may be prescribed - section 48(2) of CGST Act.

The responsibility for correctness of any particulars furnished in the return or other details filed by the GST Practitioner shall continue to rest with the registered person on whose behalf such return and details are filed – section 48(2) of CGST Application for enrolment as Goods and Services Tax Practitioner

An application in form GST PCT-1 may be made to the officer authorized in this behalf for enrolment as Goods and Services Tax Practitioner (GST Practitioner) by any person who satisfies the conditions specified in rule 83 (1) of CGST and SGSTRules,2017

There requirements are as follows. (i) he is a citizen of India (ii) he is a person of sound mind (iii) he is not adjudicated as insolvent (iv) he has not been convicted by a competent court for an offence with imprisonment not less than two years.

Assistant/ Deputy Commissioner having jurisdiction over the place declared as address in the application for enrolment in form GST PCT- 1 will be officer authorized to approve the application. The applicant may choose either the Centre or the State as the enrolling authority in items 1 of Part II of GST PCT 1 form – CBI&C circular No.9/9/2019- GST dated18-10-2017.

Qualification required– the GST Practitioner should have any of following qualifications–

- (a) Retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in post not lower in rank than that of a Group-B gazette officer for period of not less than two years or
- (b) Enrolled as sales tax practitioner or tax return preparer under VAT or Service tax law for five years. However, he has to pass examination conducted by Commissioner within one year or
- (c) Graduate in commerce, law, banking, business management or foreign equivalent degree or
- (d) He has passed final examination of CA, CMA or CS Institute.



## **Approval or GST practitioner on receipt of application**

One receipt of the application as above, the authorized officer shall either enroll the applicant as a GST Practitioner and issue a certificate to that effect in FORM GST PCT-2 or reject his application where it is found that the applicant is not qualified to be enrolled as a GST Practitioner—Rule 83(2) of CGST and SGST Rules, 2017

The enrolment made under rule 83(2) shall be valid until it is cancelled.

Examination- the aforesaid persons can continue as GST Practitioner, but they have to pass examination when conducted by Commissioner. In case of enrolled as sale tax practitioner or tax return preparer under Vat or services tax law for five years, they have to pass examination within one year from 1-7-2017 proviso to Rule 83 (3) of CGST and SGST Rules, 2017

Disqualification if GST Practitioner found guilty- If any GST Practitioner is found guilty of misconduct in connection with any proceeding under the Act, the authorized officer may, by order, in form GST PCT-4 direct that he shall henceforth be disqualified under section 48 of CGST Act. Before issuing such order, he should give him a notice to show cause in form GST PCT -3 for such misconduct and give him a reasonable opportunity of being heard, before such passing order of disqualification – Rule 83(4) of CGST and SGST Rules, 2017

Any person against who an order under rule 83(4) is made may, within thirty days from the date of the order under rule 83(4), appeal to the Commissioner against such order—Rule 83(5) of CGST and SGST Rules, 2017

Taxable person may authorize GST Practitioner to file return on his behalf

Any taxable person may, at his option, authorize a GST Practitioner on the Common Portal in form GST PCT-5. He can, at any time, withdraw such authorization in form GST PCT-5. The GST Practitioners authorized Shall be allowed to undertake such tasks as indicated in form GST PC-5 during the period of authorization—Rule 83(6) of CGST and SGST Rules, 2017.

## **Confirmation from taxable person about return filed by GST practitioner**

If a statement required to be furnished by a taxable person has been furnished by the GST Practitioner authorized by him, a confirmation be sought from the taxable person over email or SMS and the statement furnished by the GST Practitioner shall be made available to the taxable person on the Common Portal.

If the taxable person fails to respond to the request for confirmation till the last date of furnishing of such statement, it shall be deemed that he has confirmed



the statements furnished by the GST Practitioner – proviso to Rule 83(7) of CGST and SGST Rules, 2017.

### **Work that can be done by GST Practitioner on behalf of a taxable person**

A GST Practitioner can undertake any or all of the following activities On behalf of a taxable person, if so authorized by the taxable person–

(a) furnish details of outward and inward supplies (b) furnish monthly, quarterly, annual or final return (c) make deposit for credit into the electronic cash-ledger (d) file a claim for refund and file an application for amendment or cancellation of registration - Rule 83(8) of CGST and SGST Rules, 2017.

Confirmation shall be sought from the taxable person on e-mail or SMS as per procedure described above.

Enrolment in any one State or Union Territory is sufficient – Enrolment in any one State or Union Territory is sufficient for working in other State or Union Territory, to carry out the work specified in rule 83(8). Rule 83(11) of CGST and SGST Rules, 2017.

Consent of taxable person authorizing GST Practitioner to file return – Any taxable person opting to furnish his return through a GST Practitioner shall give his consent in form GST PCT-5 to any GST Practitioner to prepare and furnish his return; and before confirming submission of any statement prepared by the GST Practitioner, ensure that the facts mentioned in the return are true and correct - Rule 83(9) of CGST and SGST Rules, 2017.

Duties of GST Practitioner – The GST Practitioner shall prepare the statements with due diligence; and affix his digital signature on the statements prepared by him or electronically verify using his credential - Rule 83(10) of CGST and SGST Rules, 2017.

### **Appearance of GST Practitioner before authority on behalf of taxable person**

A GST Practitioner can appear before any authority, in connection with any proceeding under the Act on behalf of any taxable person or person only if his name has been enrolled as GST Practitioner under rule 83.

A GST Practitioner attending on behalf of a registered person or an unregistered person in any proceeding under the Act before any authority shall produce before such authority, if required, a copy of the authorization given by the taxable person or person in Form GST PCT-5 - Rule 83 of CGST and SGST Rules, 2017.

## MISCELLANEOUS PROVISIONS AND ILLUSTRATIONS

### Numerical Examples:

**Question** - M/s. Pradyumn Corporation Pvt. Ltd. A registered dealer of Mumbai furnishes you following information of the October, 20XX - (i) Intra Sales of Taxable goods(out of above, ₹ 50,000 was received as advance it September, 2017- ₹ 2,00,000 (ii) Goods purchased from unregistered Deale(purchase on 20th October, 20XX) (10,000 in case of Inter-State & Balance Intra State)- ₹50,000 (iii) Received for services way of labor contracts for repairing a single residential unit otherwise than as a part of residential complex (it is Intra-State transaction)- ₹ 50,000 (iv) Professional fee paid to Ms.Udadhi location in a non-taxable territory (it amount to Inter-State transaction)- ₹ 50,000

Compute GST liability (CGST/SGST or IGST, as the case may be) of M/s. Pradyumn Corporation Pvt. Ltd for the month of October, 20XX. Assume the rate of GST as under- CGST 9%, SGST 9%, and IGST-18%

Note: Turnover of M/s. Pradyumn Corporation Pvt., Ltd. was ₹2 Crores in the previous Financial Year

### Answer:

The taxability is as follows -

Description	CGST	SGST	IGST
(i) Intra-State sale of a Taxable goods (out of above, ₹ 50,000 was received as advance in September, 2017)- ₹2,00,000 [no tax was payable when advance on goods was received]	18,000	18,000	-
(ii) Goods purchased from unregistered dealer (purchase on 20th October, 20XX) (10,000 in case of Inter-State & Balance Intra-State) - ₹ 50,000 - no reverse charge	-	-	-



(iii) Received for services by way of labour contacts for repairing a single residential unit otherwise than as apart residential complex (it is Intra-State transaction)- ₹50,000	4,500	4,500	
(iv) Professional fee paid to Ms. Udadhi location in a non-taxable territory (it amounts to Inter-State transaction)- ₹50,000 - tax payable reverse charge	-	-	

**Question** – Mr. Nagarjun, a registered supplier of a Chennai, has received the following amounts in respect of the activities undertaken by him during the month ended on 30th September, 2017 – (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 previous year was ₹ 9,90,000).

**Note:** All the transactions stated above 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. Nagarjun for the month of September, 2017. Working notes should form part answer.

**Answer:** Even if aggregate turnover of Mr. Nagarjun in previous year was 9,90,000. He is not eligible for exemption of first 20 lakhs, as he is registered person.

Taxability of each transaction is as follows –

- (i) Amount charged for service provided to recognized sports body as selector of national team- ₹ 50,000 – taxable – tax-9% CGST and 9% SGST payable by Mr. Nagarjun [the exemption is not available to selector].
- (ii) Commission received as CGST @ 9%, plus SGST @ 9%, an insurance agent from insurance company- ₹ 65,000 – under reverse charge i.e., insurance company is liable. Hence no liability on Mr. Nagarjun.



- (iii) Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to saving bank accounts- ₹ 15,000- Taxable –no exemption tax-9% CGST and 9% SGST payable by Mr. Nagarjun.
- (iv) Service to foreign diplomatic mission located in India–28,000-No exemption. Mr. Nagarjun has to pay GST and the diplomatic mission has to file refund claim tax -9% SGST payable by Mr. Nagarjun.
- (v) Funeral services. – ₹ 30,000 –If religious ceremony, then exempt. Otherwise taxable. If no religious ceremony, then tax -9% CGST and 9 % SGST payable by Mr. Nagarjun.
- (vi) Services from unregistered goods transport agency for his business activities relating to serial numbers (i) to (iii) above and paid freight of 45,000 – taxable under reverse charge–tax payable- 2.5% CGST and 2.5% SGST payable by Mr. Nagarjun.

**Question** – Mohan, a supplier of service had received ₹ 2, 50,000 in advance, from Rakesh. Mohan had deposited tax on such amount in December, 2017. He supplied services valuing to ₹ 2, 20,000 only in February, 2018 and refunded balance amount to Rakesh. Mohan wants to adjust tax on ₹ 30, 000 refunded by him. Advise him.

**Answer:** Mohan is required to issue 'Receipt Voucher' and pay GST when advance is received in December, 2017. What he supplies service in February 2018, he is required to issue Tax Invoice for ₹ 2,20,000 charging GST. For balance amount, he should refund the amount with GST. Mohan should prepare Refund Voucher for this purpose with GST. Consolidated statement of advance received, advance adjusted against supply and advanced refunded shall be uploaded by Mohan in his GSTR-1 return of corresponding month.

**Question** - Dharmendra Ltd. gives the following particulars relating to the services supplied by it to its various clients for the month of January, 2018: (i) Total invoices raised for ₹ 7, 50,000, out of which tax invoice for ₹ 1,50,000 was raised on a SEZ unit for services supplied. (ii) Amount of 1,18,000 (including tax) was received as an advance from Ramotar Ltd. on 25-1-2018 to whom the services were supplied in March, 2018. Compute: (i) Value of taxable services (ii) Amount of tax payable (iii) Last date for tax payment (iv) The documents to be issued. Assume that tax rate is CGST - 9% and SGST -9%.



**Answer:** (i) Value of taxable service – ₹ 6,00,000. Tax – SGST @ 9% -54, 000  
CGST @ 9% -54, 000. No tax is payable on supplies to SEZ

(ii) Advance amount includes tax @18%. Hence, net amount of advance is ₹1,00,000? On advance, SGST @ 9% - ₹ 9,000 and CGST @9%- ₹ 9,000 is payable.

(iii) Last date of payment is 20-02-2018 (IV) Tax Invoice is required to be issued for taxable supplies. In case of supply to SEZ tax invoice should contain specified marking that supply is to SEZ. In case of advance received, a receipt voucher should be issued.

**Question**—A contractor provided service of erection and commissioning to John and Michael Pvt Ltd., without any material. The contractor had charged tax in his invoice. The company paid 5,10,000 to the contractor after deducting income tax (TDS of income tax) @ 10% under section 194J of Income tax Act, in full settlement of Bill. Find the total bill amount of the contractor, assuming CGST rate of 6% and SGST rate of 6%.

**Answer:** Income tax TDS is required to be deducted on net amount excluding tax. Assume that value of service = x. Hence, tax = 0.12 x.

Income tax TDS = 0.10 x (as TDS is on net amount excluding tax). Now,  $x + 0.12x - 0.10x = ₹ 5,10,000$

Thus,  $1.02x = ₹ 5,10,000$

Hence, x = value of service = ₹ 5,00,000 Check as follows- SGST @6%-30,000.  
CGST @ 6% - 30,000.

Hence, Tax Invoice of contractor = ₹ 5,00,000 + 30,000 + 30,000 = ₹ 5,60,000.

TDS on ₹ 5,00,000 @ 10% - ₹ 50,000.

Hence, net amount paid to contractor = Bill amount ₹ 5,60,000 less Income Tax TDS ₹50,000 = ₹5,10,000.

**Question**— Following transactions took place in December 2017 in the books of M/s. Altratech Pvt. Ltd., Mumbai and Maharashtra:

1. Received inputs with invoice evidencing payment of IGST of ₹ 42,800 on 2-12-2017
2. 400 pieces of Final products were dispatched to a customer located in Punjab under Invoice on 6-12-2017. Transaction value was ₹ 800 per piece and IGST rate was 18%



3. 1,000 piece of 'Tran' were procured and directly sent for job work on 10-12-2017. The invoice was received where the supplier had charged CGST ₹ 15, 000 & SGST of ₹ 15,000.
4. An imported consignment of raw material was received on 10-12- 2017. Bill of entry showed that basis customs duty paid was ₹26,000, IGST paid ₹18,200 and anti-dumping duty paid was ₹ 5, 400 and education cess of customs ₹ 780.
5. Goods worth ₹ 2,00,000 were dispatched on 24-12-2017 within Maharashtra. Rate of duty is 18% (CGST 9% & SGST 9%)

There was no opening balance in Electronic Cash Ledger or Electronic Credit Ledger on 1-12-2017. Calculate the amount of GST payable by cash.

### Answer:

#### A. Calculation of Tax payable on Outward Supply

Sr. No.	Particular	Transaction Value	CGST	SGST	IGST	Total
1	Sales Within State	2,00,000	18,000	18,000	-	2,36,000
2	Sales outside State	3,20,000	-		57,600	3,77,600
Total		5,20,000	18,000	18,000	57,600	6,13,600

#### B. Calculation of Input tax credit on Inward Supply

Sr. No.	Particular	CGST	SGST	IGST	Total
1	Purchases Within State	15,000	15,000	-	30,000
2	Purchases Outside State	-	-	61,000 [42,800+18,200]	61,000
Total		15,000	15,000	61,000	91,000

### C. Utilization of input tax credit

Tax Head	Tax Liability	Input Tax Credit	Utilization of credit for payment of		
			CGST	SGST	IGST
CGST	18000	15000	15000		
SGST	18000	15000		15000	
IGST	57600	61000	3000	400	57600
Total	93600	91000	18000	15400	57600

### D. Utilization of Input tax credit & tax payable in Cash

Sr. No.	Particular	CGST	SGST	IGST	Total
1	Tax on Outward Supply	18,000	18,000	57,600	93,600
2	Input tax credit utilized for the payment of tax	18,000	15,400	57,600	91,000
Tax payable in Cash		3,000	2,600	0	2,600

#### Note:

- Integrated tax shall first be utilized towards payment of integrated tax and the amount remaining, if any, maybe utilized towards the payment of central tax and State tax /Union Territory tax, in that order;
- The central tax shall first be utilized towards payment of central tax and the amount remaining, if any, may be utilized towards payment of integrated tax;
- The State tax/UTGST shall first be utilized toward payment of State tax / UTGST and the amount remaining, if any, may be utilized towards payment of integrated tax;
- The central tax shall not be utilized towards payment of State tax or Union territory tax; and
- The State tax or Union territory tax shall not be utilized towards payment of central tax.

**Question** – CB Services Ltd. is providing following for the month of January, 2018 received following receipts (in ₹ ) (Inclusive of GST) –

- Services supplied out of State rendered in January 2018– ₹10,18,000



- (ii) Services supplied out of State to the Branch of World Health Organization a unit of UN- organization – ₹59,000
- (iii) Services rendered to its Auditors within State ₹5,15,000 (no payment received but adjusted against Audit Fee Payable)
- (iv) Advance received for services to be rendered within State in March, 2018- ₹6,18,000
- (v) Gifts to Office staff and their relatives free cost [ITC wasn't availed on tax paid on gifts] - ₹20,000.
- (vi) Out of the advance received, 50% was returned on 15-9-2018 to the party, as they have closed their operations from 31-3-2018.

Compute the taxable supply and tax payable for January, 2018 by CB Services Ltd. Tax rate is 18% (9% CGST = SGST) Input tax credit taken during the month toward input and input services is CGST- ₹ 95,000. SGST ₹ 95,000 and IGST- ₹5,000. When the tax due for payment?

### Answer:

#### Computation of Tax Payable on Outward Supply

Sr. No	Particulars	Value (inclusive of tax)	CGST	SGST	IGST
(i)	Services supplied out of State	10,18,000	-	-	18,000
(ii)	Services supplied out of State Branch of a world Health Organization – a unit of UN	50,000	-	-	9,000
(iii)	Services rendered to its Auditors within State	5,15,000	39,280	39,280	-
(iv)	Advance received for services to be rendered within State	6,18,000	47,135	47,135	-
(v)	Gifts given to office staff free if cost [input tax credit was not availed on these gifts]	20,000	Exempted from GST	Exempted from GST	Exempted from GST



(vi)	Out of the advance received 50% was retuned on 15-9-2018 to the party	-	-	-	-
Total tax payable for the month of December, 2018			86,415	86,415	27,000
Total input tax credit utilized [See input tax credit utilization table]			86,415	86,415	22,170
Integrated Tax payable In cash			-	-	4,830

### Notes:

- [1] Where the value of supply is inclusive of integrated tax or, as the case may be, Central tax, State tax, Union Territory tax, the tax amount shall be determined in the following manner, namely, - Tax amount = (Value inclusive of taxes × tax rate in % of IGST or CGST, SGST/UTGST) ÷ (100 + sum of tax rates, as applicable, in %)
- [2] Service supplied to the Branch of World Health Organization is taxable. Such organizations may file refund claim for taxes paid.
- [3] Gift up to ₹50,000 to an employee is exempted from payment of GST.
- [4] Supplier will have to apply for refund of tax paid on advances after refund. He cannot adjust tax on refund of advance against the tax liability of an advance for that month.

Tax Head	Tax Liability	Input Tax Credit	Utilization of credit for payment of		
			CGST	SGST	IGST
CGST	86,415	95,000	86,415		8,585
SGST	86,415	95,000		86,415	8,585
IGST	18,000	5,000		8,585	5,000
Utilized for payment of IGST			8,585		
IGST payable in cash					
Total	1,90,830	1,95,000	95,000	95,000	27,000

**Question –** Prestige Internationals Ltd, a manufacturer of industrial equipment from their plant at Bangalore from where the products are moved to various locations. They have asked you to calculate tax liability considering the following transactions.



- 1) Supply of goods within State, Consignment value ₹15,00,000 consideration received against such consignment ₹7,50,000.
- 2) Supply to unit located in Special Economic Zone under letter of undertaking located within State amounted to ₹5,00,000
- 3) Export to Bhutan on payment of tax ₹10,00,000
- 4) Supply of Special purpose machineries for construction of road to State of Karnataka. ₹5,00,000 were charged toward machineries and ₹1,00,000 for installation & Commissioning.
- 5) Advance of ₹10,00,000 received for machinery to be supplied to a customer located in United States.
- 6) Supply out of State against an advance received in previous month ₹5,00,000.
- 7) Service received from an advocate for filing of appeal with tribunal ₹50,000.
- 8) Filling fee paid to Ministry of Corporate Affairs amounted to ₹3,000.
- 9) Factory license fee paid to State Industrial Development Corporation ₹5,00,000.
- 10) Sitting fee paid to Non-Executive Director ₹1,50,000.

Consider 18% (CGST 9% + SGST 9%) tax rate for the calculation of tax liability of industrial equipment

### Answer:

#### Calculation of Tax Liability

Sr. No	Transaction	Nature of Supply	Name of Liability	Value	CGST	SGST	IGST
1	Supply of goods within State	Intra State Supply	Tax on Outward Supply	1,500,000	1,35,000	1,35,000	-
2	Supply to SEZ under LUT[See Note-1]	Intra State Supply	Tax on Outward Supply	500,000	-	-	-
3	Export to Bhutan	Intra State Supply	Tax on Outward Supply	1,000,000	-	-	1,80,000



4	Supply of Special purpose machineries to State of Karnataka	Intra State Supply	Tax on Outward Supply	500,000	45,000	45,000	-
5	Installation & Commissioning	Intra State Supply	Tax on Outward Supply	100,000	9,000	9,000	
6	Advance received for USA order [See Note 2]	Intra State Supply	Tax on Outward Supply	1,000,000	0	0	-
7	Supply out of State against advance of previous month [see note 3]	Intra State Supply	Tax on Outward Supply	500,000	-	-	(90,000)
8	Receipt of legal services from an advocate [See Note 5]	Intra State Supply	Tax on Outward Supply under RCM	50,000	4,500	4,500	-
9	Filing Fee paid to MCA [See Note 5]	Intra State Supply	Tax on Outward Supply under RCM	3,000	-	-	0
10	Factory License Fee [See Note 5]	Intra State Supply	Tax on Outward Supply under RCM	500,000	45,000	45,000	-
11	Sitting Paid to Director [See Note 6]	Intra State Supply	Tax on Outward Supply under RCM	150,000	13,500	13,500	
Total				58,03,000	2,52,000	2,52,000	90,000
Total Tax payable on Outward Supply				51,00,000	1,89,000	1,89,000	90,000
Total Tax Payable on inward Supply under RCM				7,03,000	63,000	63,000	-

**Notes:**

- 1) Supply made to unit located in SEZ is Zero rate supply. Therefore, supplier of such goods or services is allowed to remove such goods without payment of tax under letter of undertaking.
- 2) Supply made outside India is a Zero rated supply, hence not liable for the payment of tax on advance received.
- 3) According to section 12 of CGST Act, tax shall be payable earlier of date of invoice or date of payment. When tax paid at the time of receipt to an advance, tax liability of that month shall be reduced to that extent.



- 4) Services received from an advocate is a specific service notified under section 9(3) of CGST Act and recipient is liable for the payment of tax on such services under reverse charge.
- 5) Services received from Government are a specific service notified under section 9(3) of CGST Act and recipient is liable for the payment of tax on such services under reverse charge. However, Services provided by Central Government, State Government, Union territory or a local authority is exempted where consideration charge is less than ₹ 5,000.
- 6) Services received from Director are a specific service notified under Section 9(3) of CGST Act and recipient is liable for the payment of tax on such services under received charge mechanism. Services given by Non-working director cannot be treated as the services given by an employee. Hence, Taxable.

### **GST on real estate sector**

GST Rates for Real Estate Sector to be effective from 1st April, 2019

- Affordable housing properties: Effective GST rate of 1% without ITC
- Residential properties outside affordable segment: Effective GST rate of 5% without ITC
- Definition of affordable housing:
  - A residential house / flat of carpet area of up to 90 sq. min non- metropolitan cities/towns and 60sq.m in metropolitan cities having value up to ₹ 45 lakhs (both for metropolitan and non-metropolitan cities).
  - Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, and Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).

### **Option in respect of ongoing projects:**

2. The promoters shall be given a one -time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019.
3. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply.

**New tax rates:**

4. The new tax rates which shall be applicable to new projects or ongoing projects which have exercised the above option to pay tax in the new regime are as follows. (i) New rate of 1% without input tax credit (ITC) on construction of affordable houses shall be available for, (a) all houses which meet the definition of affordable houses as decided by GSTC (area 60sqm in metros / 90sqm in non- metros and value upto ₹45 lakhs), and (b) affordable houses being constructed in ongoing projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3rd land abatement). (ii) New rate of 5% without input tax credit shall be applicable on construction of, - (a) all houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on installments payable on or after 01.04.2019. (b) All houses other than affordable houses in new projects. (c) Commercial apartments such as shops, offices etc. In a residential real estate project (RREP) in which the carpet area of Commercial apartments are not more than 15% of total carpet area of all apartments.

**Conditions for the new tax rates:**

5. The new tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions, - 2 (a) Input tax credit shall not be available, (b) 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On short fall 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.

Transition for ongoing projects opting for the new tax rate:

Ongoing projects (buildings where construction and booking both had started before 01.04.2019) and have not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.

The transition formula approved by the GST Council, for residential projects (refer to para 4(ii)) extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project. Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined. Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done



for the booked flat is available subject to a few safeguards.

For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

Treatment of TDR/ FSI and Long term lease for projects commencing after 01.04.2019

6. The following treatment shall apply to TDR/FSI and Long term lease for projects commencing after 01.04.2019.

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. This will achieve a fair degree of taxation parity between under construction and ready to move property. The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner 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. Decisions from para 7.1 to 7.4 are expected to address the problem of cash flow in the sector.

### **GST exemption on the upfront amount for long term lease of plots**

- Circular No. 101/20/2019-GST dated 30th April, 2019

GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business under Entry No. 41 of Exemption Notification 12/2017 – Central Tax (R) dated 28.06.2017 is admissible irrespective of whether such upfront amount is payable or paid in one or more installments, provided the amount is determined up front

## **Amendment to ITC rules:**

ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects. The change would clearly provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project.

The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect to through Gazette notifications/ circulars which alone shall have force of law.

## **Amendments to CGST act, 2017 w.e.f 1.2.2019**

Clause 3 of the Bill seeks to amend section 7 of the principal Act relating to "Scope of Supply" in order to clarify the scope of supply.

1. Amendment to section 9 of the principal Act relating to restriction on purchase from unregistered suppliers under Reverse Charge Mechanism:-

Sec. 9(4) of CGST Act, 2017, in respect of payment of GST by registered person on supplies received by him from unregistered person on reverse charge basis is amended to restrict the levy of tax on reverse charge basis to receipt of supplies of certain specified categories of goods or services or both by notified classes of registered persons from unregistered suppliers

On the recommendations of the Council.

2. Amendment to Section 10 of the principal Act relating to Composition levy:-

Sec. 10 of CGST Act, 2017 is amended to increase the statutory threshold of turnover for the composition scheme from One Crore Rupees to One Crore and Fifty Lakh Rupees. Thus, a person whose turnover is below 1.50 Crores is eligible to obtain the composition scheme for payment of GST.

Further a provision is made to allow the composition taxpayer to supply the services other than restaurant services up to a value not exceeding ten percent of turnover in the preceding financial year, or five lakh rupees, whichever is higher.

Earlier, a composition tax payer was not allowed to supply any services except restaurant services.



### 3. Amendment to Section 12 of the principal Act relating to “Time of supply of goods”:-

Time of Supply of goods was earlier of the following:-

The date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply;

Section 31 of CGST Act, 2017 covers only issuance of tax at the time of movement of goods.

Now, amendment has been made to provide that, time of Supply of goods is the date of issue of invoice by the supplier or the last date on which he is required, under Section 31 of CGST Act, 2017 to issue the invoice with respect to the supply.

Thus, last date of issuance of tax invoice; invoice when goods sent on approval basis, revised invoice, invoice in case of continuous supply of goods needs to be considered for determination of time of supply of goods.

### 4. Amendment to section 13 of the principal Act relating to “Time of supply of services”:-

Time of Supply of services was earlier of the following:-

The time of supply of services shall be the earliest of the following dates, namely: -

- a) The date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
- b) The date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
- c) The date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause

(b) Do not apply:

Now, last date of issuance of tax invoice; revised invoice, invoice in case of continuous supply of services needs to be considered for determination of time of supply of goods.

### 5. Amendment to Sec. 17(5) of CGST Act, 2017 to provide inadmissible list of goods or services for availment of Input Tax Credit:-





Given below the amended list of inadmissible goods or services:-

“(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-

- (A) Further supply of such motor vehicles; or
- (B) Transportation of passengers; or
- (C) Imparting training on driving such motor vehicles; (aa) vessels and aircraft except when they are used-

(i) For making the following taxable supplies, namely:-

- (A) Further supply of such vessels or aircraft; or
- (B) Transportation of passengers; or
- (C) Imparting training on navigating such vessels; or
- (D) Imparting training on flying such aircraft;

(ii) For transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause

(a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available-

(i) Where the motor vehicles, vessels or aircraft referred to in clause(a) or clause (aa) are used for the purposes specified therein;

(ii) Where received by a taxable person engaged-

(I) in the manufacture of such motor vehicles, vessels or aircraft ;or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) The following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause(aa) except when used for the purposes specified therein, life insurance and health insurance:



Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (ii) Membership of a club, health and fitness center; and
- (iii) Travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force.”

6. Amendment to section 16 of the principal Act relating to deemed provision of receipt of services in case of provision of services to third party and introduction of provisions relating to the new return format as specified in the proposed new section 43A, for availment of input tax credit:-

In case of supply of goods and services on the direction of third person, it was provided that to consider that goods are deemed to be received to such third person for availing the input tax credit by third person.

Now, deemed provision of receipt of services is made applicable to supply of services to recipient on the direction of third person also. In other words, if services are supplied to recipient on the direction of third person then it is deemed that such third person has received the services.

Further New Sec. 43A is inserted to provide new return formats for matching concept. Format of the return will be notified.

A registered person can avail the input tax credit only if supplier of goods has filed the new prescribed returns as per Sec. 43A of CGST Act, 2017.

7. Amendment to section 17 of the principal Act relating to the scope of determination value of exempt supply for determination of common ITC:-

An Explanation is inserted to Sec. 17 (3) of CGST Act, 2017 i.e. determination of value of exempt supply for apportionment of input tax credit used 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.

Following explanation is inserted:-

For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.’;

In other words, following activities or transactions which shall be treated neither as a supply of goods nor a supply of services as per Schedule III shall not be treated as exempt supply for apportion/ reversal of ITC used for taxable supply including zero rated supply and exempt supply.

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

However, sale of land shall be treated as exempt supply for apportionment/ reversal of common input tax credit used for supplying taxable supply including zero rated supply as well as exempt supply.

8. Amendment to section 20 of the principal Act relating to determination of value of turnover for the purposes of distribution of credit by ISD:-

It has been clarified that for determination of state turn over for Distribution of input tax-credit by Input Service Distributor, the amount of tax levied under Entry 92A of List I of the Seventh Schedule of the Constitution i.e. Central Sales Tax on goods other than newspapers shall be excluded.

9. Amendment to section 22 of the principal Act relating to increase the threshold limit of turnover for registration in special category States:-



Vide amendment to Sec. 22 of CGST Act, 2017, the threshold turnover for registration under GST Act in special category States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand has been increased from ten lakhs rupees to twenty lakhs rupees

10. Amendment to section 24 of the principal Act relating to mandatory registration for only those ecommerce operators who are liable to collect tax at source under section 52 of the principal Act:-

Amendment in Section 24 of CGST Act, 2017, to provide that compulsory registration is required for those e-commerce operators who are liable to collect tax at source under section 52 of the principal Act.

11. Amendment to section 25 of the principal Act relating to separate registration for each such place of business, and for separate registration for Special Economic Zone:-

A proviso has been inserted for separate registrations to a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer, distinct from his other units located outside the Special Economic Zone.

A proviso to Sec. 25 of CGST Act, 2017 is inserted to allow separate registrations to a person having multiple place of business for each place of business in a state or union territory. Thus, multiple registrations for each place of business within a state can be obtained.

By making this amendment and by omitting clause (18) of Sec 2, the concept of business vertical has been removed. Now any taxpayer having multiple place of business can have option to obtain separate registration for each premise.

12. Amendment to section 29 of the principal Act relating to temporary suspension of registration while cancellation of registration is under process:-

Provided that registration may be suspended during the proceedings related to Cancellation of registration by the registered person who is no longer required to be registered.

13. Amendment to section 34 of the principal Act relating to Credit and debit notes.

Sec. 34 is amended to allow registered persons to issue consolidated credit or debit notes in respect of multiple invoices issued in a Financial Year.

14. Amendment to section 35 of the principal Act relating to Accounts and other records.

A provision inserted in Sec.35 of CGST Act, 2017 to provide that GST audit by Chartered Accountant or Cost Accountant of a registered person whose turnover is more than 2 crores is not required to any Department of the Central or State Government or local authority which is subject to audit by the Comptroller and Auditor-General of India.

15. Amendment to section 39 of the principal Act relating to furnishing of returns:-

Specific provision for due date of payment of taxes and filing of GST return on or before the twentieth day of the month succeeding such calendar month or part thereof is omitted.

So that Central government may notify certain class of person who shall furnish their return quarterly and pay taxes quarterly.

Government may notify form and manner for rectification of omission or incorrect particulars in GST return.

16. Insertion of new section 43A relating to the procedure for furnishing return and availing input tax credit:-

New Sec. 43A is inserted to prescribe the procedure for furnishing return and availing input tax credit. As per Sec. 43A, government may prescribe the procedure for furnishing the return and avail the input tax credit after matching.

17. Amendment to section 48 of the principal Act relating to Goods and Services Tax Practitioners:-

Amendment is made in Sec. 48 of CGST Act, 2017 to allow Goods and Services Tax Practitioners to perform other functions such as filing refund claim, filing application for cancellation of registration, etc. on behalf of registered person.

18. Amendment to section 49 of the principal Act relating to payment of tax, interest, penalty and other amounts:-

Proviso is inserted in Sec. 49 of CGST Act, 2017 to provide that Input Tax Credit of State Tax and Union Territory Tax can be utilized against the payment of IGST only when there is no balance of Central Tax Credit.

In other words, ITC of Central Tax to be utilized first for payment of CGST then IGST and then ITC of State Tax or Union Territory tax can be utilized for payment of IGST.



19. Insertion of two new sections, namely, section 49A and section 49B to prescribe specific order of utilization of input tax credit and for payment of any tax

Section 49A is inserted to provide that IGST shall be utilized fully first for payment of IGST, Central Tax, State Tax or Union Territory Tax as the case may be.

Section 49B seeks to empower the Government to prescribe any specific order of utilization of input tax credit of any of the taxes for payment of any tax i.e. cross utilization of Central tax and State Tax or Union Territory Tax.

20. Amendment to section 52 of the principal Act relating to Collection of tax at source:-

If the details of outward supplies furnished by the operator in his return do not match with the corresponding details furnished by the supplier under section 37 (return for outward supply) and under Sec. 39 i.e. GST return, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

21. Amendment to section 54 of the principal Act relating to appliance of principle of unjust enrichment in case of refund claim arising out of supplies to SEZ and to allow receipt of payment in Indian rupees, where permitted, by the Reserve Bank of India in case of export of services:-

In Sec. 54 (8) of CGST Act, 2017 it has been provided that the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, 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.

Now, thus this provision is applicable to export of goods or services or on inputs or input services used in making such exports and not applicable to supplies to SEZ Units or SEZ Developers.

In other words, principle of unjust enrichment will be applicable to refund claims arising out of supplies to SEZ unit or SEZ Developer.

Amendment in explanation to Sec. 54 of CGST Act, 2017 is made to provide the refund claim on account of export of services on receipt of foreign exchange as well as receipt of Indian Rupees whenever permitted by the Reserve Bank of India.

Relevant date for refund claim in case of inverted duty structure shall be the due date for furnishing the GST return for the period in which such claim for refund arises.

Refund claim shall be filed within 2 years from relevant date.

22. Amendment to section 79 of the principal Act relating to recovery of tax:-

Sec. 79 of CGST Act, 2017 relating to "Recovery of tax", to enable recovery to be made from distinct persons registered in different States or Union territories in order to ensure speedy recovery from other establishments of the registered person.

23. Amendment to section 107 of the principal Act relating to payment of pre-deposit before filing an appeals before Appellate Authority"

Maximum cap of ₹ 25 Crores is provided for payment of pre-deposit before filing an appeal to Appellate Authority (i.e. 1st Appeal).

As per Sec.107 of CGST Act, no appeal can be filed before Appellate Authority unless the appellant pre-deposit the following amounts:- In full, such part of the amount of tax, interest, fine, fee and penalty Arising from the impugned order, as is admitted by him ;and

- (b) A sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, subject to maximum of 25 crores, in relation to which the appeal has been filed.

24. Amendment to section 112 of the principal Act relating to payment of pre-deposit before "Appeals to Appellate Tribunal"

Maximum cap of ₹ 50 Crore is provided for payment of pre-deposit before filing an appeal to Tribunal

As per Sec. 112 of CGST Act, no appeal can be filed before Appellate

Tribunal unless the appellant pre-deposit the following amounts:-

- (a) In full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
- (b) A sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid at the time of filing appeal before Appellate Authority under sub-section (6) of section 107 (i.e. 10% of amount of tax in dispute), subject to maximum of ₹ 50 crore, arising from the said order, in relation to which the appeal has been filed.



25. **Amendment of section 122 sub section (1)** 1A) Any person who retains the benefit of a transaction covered under clauses (i) (ii), (vii) or clause (ix) of sub section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on

Thus, it makes the beneficiary of the transactions of passing on or availing fraudulent Input Tax Credit liable for penalty similar to the penalty leviable on the person who commits such specified offences

26. Amendment to section 129 of the principal Act relating to "Detention, seizure and release of goods and conveyances in transit"

Time limit for payment of taxes, interest and penalty on goods detained or seized in order to release of goods is extended from 7 days to 14 days.

27. **Amendment of section 132** Section 132 of the CGST Act, in sub section (1), (i) for the words "Whoever commits any of the following offences", the words "Whoever commits, or causes to commit and retain the benefits arising out of any of the following offences" shall be substituted

(ii) for clause ( the following clause shall be substituted, namely : "(c ) avails input tax credit using the invoice or bill referred to in clause ( or fraudulently avails input tax credit without any invoice or bill

(iii) in sub clause (the words fraudulently avails input tax credit" shall be omitted)

28. ~~Amendment to section 140 of the principal Act in respect of carry forward of Cesses in Transitional ITC~~

~~Amended Section 140 of CGST Act, 2017 in respect of carry forward of closing balance Cenvat Credit on inputs and input services to~~

Amendment to Section 140- Transition Provisions

Section 140 of the CGST Act is being amended retrospectively w e f 01 07 17 to prescribe the manner and time limit for taking transitional credit

Sub sections 1 2 3 5 6 7 8 9 of sec 140 are proposed to be amended retrospectively from 1 st July 2017 to enable the government to provide by rules the time limits to file TRAN 1 and for other compliances

### **Extension of due date for TRAN1 in specific cases**

Order 01/2020 GST dated 07th February, 2020 issued vide, No. CBEC 20/06/17/2018 GST



- Extension of time limit for submitting the declaration in FORM GST TRAN 1 under rule 117 (1 A) of the CGST Rules, 2017
- For the class of persons who could not file their form GST TRAN 1 by due date on account of technical difficulties on the common portal and whose cases have been recommended by the council
- Till 31 st March, 2020

GST to clarify with retrospective effect from 1st July, 2017 that the cesses and additional duty of excise (on textile and textile articles) levied under the pre-Goods and Service Tax laws shall not be a part of transitional input tax credit under the goods and services tax.

In other words, it is clarified that Cenvat Credit balance pertaining to cesses and additional duty of excise (on textile and textile articles) levied under Central Excise, Service tax or Sales tax was not eligible to carry forward in GST regime.

29. Amendment to section 143 of the principal Act relating to extension of time limit for return of inputs and capital goods sent on job-work:-

Provision to Section 143 of CGST Act, 2017 is inserted to empower the Commissioner to extend the time limit for return of inputs and capital goods sent on job work, up to a period of one year and two years, respectively.

In other words, time limit one year for return of inputs sent on job work can be extended by Commissioner up to further one year and time limit of three years for return of capital goods sent on job-work can be extended by Commissioner for further two years.

30. Amendment to Schedule I of the principal Act relating to "Activities to be treated as supply even if made without consideration":-

As per paragraph 4 of Schedule I of CGST Act, 2017, 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 even if made without consideration was to be treated as taxable supply.

An amendment is made in Paragraph 4 of Schedule I to omit the words taxable person.

In other words, a person even if he is not registered under GST is liable to pay GST on import of services from a related person or from any of his other establishments outside India, in the course or furtherance of business even if made without consideration.



31. Amendment to Schedule III of the principal Act relating to “Activities or transactions which shall be treated neither as a supply of goods nor a supply of services”:-

Following activities or transaction shall be treated neither as a supply of goods nor a supply of services as per Schedule III of CGST Act, 2017.

32. 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.
33. (a) Supply of warehoused goods to any person before clearance for home consumption;
- (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.”

“Explanation 2. - For the purposes of this paragraph, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962.”.

### **Rule 80 of CGST rules, 2018 – annual returns**

Format of Annual Return- Forms GSTR- 9 (Normal Taxpayers) and GSTR- 9A (for composition taxpayers) introduced.

The form GSTR-9 has six parts as under:

- ❖ Part I – Basic Details
- ❖ Part II – Details of outward and inward supplies declared during the financial year
- ❖ Part III – Details of ITC as declared in returns filed during the financial year
- ❖ Part IV - Details of tax paid as declared in returns filed during the financial year
- ❖ Part V-Particulars of the transactions for the previous FY declared in returns of April to September of current FY or up to date of filing of annual return of previous FY whichever is earlier
- ❖ Part VI – Other Information

The form GSTR – 9 A has five parts as under:

- ❖ Part I – Basic Details
- ❖ Part II – Details of Outward and inward supplies declared during the financial year
- ❖ Part III-Details of tax paid as declared in returns filed during the financial year
- ❖ Part IV-Particulars of the transactions for the previous FY declared in returns of April to September of current FY or up to date of filing of annual return of previous FY whichever is earlier
- ❖ Part V – Other Information

Form GSTR-9C is a reconciliation statement to be submitted by every registered person whose turnover exceeds ₹ 2 Crores.

**in terms of rule 80(3) of CGST rules, every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub- section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, inform GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the commissioner**

### **GST Taxpayers can file their GSTR-3B**

#### **Net ITC**

- “Net ITC as defined in rule 89(4) of the CGST Rules means input tax credit availed on inputs and input services during the relevant period.
- Relevant period means the period for which there fund claim has been filed.
- It is clarified that the input tax credit of invoices issued in August, 2019, “availed” in September, 2019 cannot be excluded from the calculation of their fund amount for the month of September, 2019.
- It is clarified that the ITC of the GST paid on inputs, including 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.



## **Synopsis of Amendment proposed by Finance Bill 2020 (BILL No. 26 of 2020) related to GST Central Goods and services Act.**

1. Clause 116 of the Bill seeks to amend clause(114) of section 2 of the Central Goods and Services Tax Act so as to align the definition of "Union territory" in line with the Jammu and Kashmir re-organization act, 2019 and the dadra and nagar Haveli and daman and diu (merger of union territories), act,2019.
2. Clause 117 of the Bill seeks to amend clauses (b), (c) and (d) of sub-section (2) of section 10 of the Central Goods and Services Tax Act to harmonize the conditions for eligibility for opting to pay tax under sub-section (1) and subsection (2A) of the said Act.
3. Clause 118 of the Bill seeks to amend sub-section (4) of section16 of the Central Goods and Services Tax Act so as to delink the date of issuance of debit-note from the date of issuance of the underlying invoice for purposes of availing input tax credit. Clause 119 of the Bill seeks to amend clause (c) of subsection (1) of section 29 of the Central Goods and Services Tax Act so as to provide for cancellation of registration obtained voluntarily under sub-section (3) of section25.
4. Clause 120 of the Bill seeks to substitute the proviso to sub-section (1)of section 30 of the Central Goods and Services Tax Act so as to empower the jurisdictional tax authorities to extend the period provided to file an application for revocation of cancellation of registration.
5. Clause 121 of the Bill seeks to amend section 31 of the Central Goods and Services Tax Act so as to empower the Government to notify the categories of services or supplies in respect of which tax invoice shall be issued and to make rules regarding the time and manner of its issuance.
6. Clause 122 of the Bill seeks to amend section 51 of the Central Goods and Services Tax Act so as to empower the Government to make rules to provide for the form and manner in which a certificate of tax deduction at source shall be issued.
7. Clause 123 of the Bill seeks to amend sub-section (6) of section 109 of the Central Goods and Services Tax Act so as to make the provisions for Appellate Tribunal and its benches there of applicable in the Union territories of Jammu and Kashmir and Ladakh
8. Clause 124 of the Bill seeks to insert a new sub-section (1A) in section 122 of the Central Goods and Services Tax Act so as to make the beneficiary of certain transactions at whose instance such transactions are conducted liable for penalty.



9. Clause 125 of the Bill seeks to amend section 132 of the Central Goods and Services Tax Act so as to make the offence of fraudulent availment of input tax credit without invoice or bill cognizable and non-bailable under sub-section (1) of section 69 and to make any person who retains the benefit of certain transactions and at whose instance such transactions are conducted liable for punishment.
10. Clause 126 of the Bill seeks to amend section 140 of the Central Goods and Services Tax Act relating to transitional arrangements for input tax-credit, so as to prescribe the time limit and the manner for availing input tax credit against certain UN availed credit under the existing law. This amendment shall take effect retrospectively from the 1st day of July, 2017.
11. Clause 127 of the Bill seeks to amend section 168 of the Central Goods and Services Tax Act so as to make provisions for enabling the jurisdictional Commissioners to exercise powers under sub- section (5) of section 66 and also under second proviso to sub- section (1) of section 143.
12. Clause 128 of the Bill seeks to amend section 172 of the Central Goods and Services Tax Act so as to extend the time limit provided for removal of difficulties there under from three years to five years, with effect from the date of commencement of the said Act.
13. Clause 129 of the Bill seeks to amend paragraph 4 of Schedule II to the Central Goods and Services Tax Act so as to omit the words "whether or not for consideration" so as to give clarity to the meaning of the entries (a) and (b) of said paragraph. This amendment shall take effect retrospectively from the 1st day of July, 2017.
14. Clause 130 of the Bill seeks to provide retrospective exemption from central tax on supply of fishmeal, during the period from the 1st day of July, 2017 upto 30<sup>th</sup> day of September, 2019 (both days inclusive). It further seeks to retrospectively levy central tax at the reduced rate of six per cent. on supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery of headings 8432, 8433 and 8436, during the period from the 1st day of July, 2017 up to 31st day of December, 2018 (both days inclusive). It also seeks to provide that no refund shall be made of the tax which has already been collected.
15. Clause 131 of the Bill seeks to give retrospective effect to the notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 708(E), dated the 30th September, 2019 with effect from 1st day of July, 2017.



## **Integrated goods and services act**

16. Clause 132 of the Bill seeks to amend section 25 of the Integrated Goods and Services Tax Act so as to extend the time limit provided for removal of difficulties there under from three years to five years with effect from the date of commencement of the said Act.
17. Clause 133 of the Bill seeks to provide retrospective exemption from integrated tax on supply of fishmeal, during the period from the 1st day of July, 2017 up to 30th day of September, 2019(both days inclusive). It further seeks to retrospectively levy integrated tax at the reduced rate of twelve per cent. on supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery of headings 8432, 8433 and 8436, during the period from the 1st day of July, 2017 up to 31st day of December, 2018 (both days inclusive). It also seeks to provide that no refund shall be made of the tax which has already been collected.

## **Union territory Goods and services act**

18. Clause 134 of the Bill seeks to amend section 1 of the Union Territory Goods and Services Tax Act so as to give effect to the change in the status of Union territory of Dadra and Nagar Haveli and Union territory of Daman and Diu and to make the said Act applicable to the Union territory of Ladakh.
19. Clause 135 of the Bill seeks to amend section 2 of the Union Territory Goods and Services Tax Act so as to align the definition of "Union territory" in line with the Jammu and Kashmir Re-organization Act, 2019 and the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories), Act, 2019.
20. Clause 136 of the Bill seeks to amend section 26 of the Union Territory Goods and Services Tax Act so as to extend the time limit provided for removal of difficulties thereunder from three years to five years, with effect from the date of commencement of the said Act.
21. Clause 137 of the Bill seeks to provide retrospective exemption from Union territory tax on supply of fishmeal, during the period from the 1st day of July, 2017 up to 30th day of September, 2019 (both days inclusive).

It further seeks to retrospectively levy Union territory tax at the reduced rate of six per cent. on supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery of



headings 8432, 8433 and 8436, during the period from the 1st day of July, 2017 up to 31st day of December, 2018 (both days inclusive).

It also seeks to provide that no refund shall be made of the tax which has already been collected.

### **Goods and services act (compensation to states)**

22. Clause 138 of the Bill seeks to amend section 14 of the Goods and Services Tax (Compensation to States) Act so as to extend the time limit provided for removal of difficulties there under from three years to five years with effect from the date of commencement of the said Act.



# **THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

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