

Chapter 11

Payment of Tax

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Statutory Provisions

49. Payment of Tax, Interest, Penalty and other Amounts

- (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.
- (2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with ¹[section 41 ~~²[or section 43A]~~], to be maintained in such manner as may be prescribed.
- (3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

¹ Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. date yet to be notified. Prior to such substitution it read as: "section 41".

² Omitted vide The Finance Act 2022 through Notf No. 18/2022 - CT dated 28.09.2022, before it was read as, "or section 43A" w.e.f. 1st October, 2022.

- (4) *The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions ³[and restrictions] within such time as may be prescribed.*
- (5) *The amount of input tax credit available in the electronic credit ledger of the registered person on account of-*
- (a) *integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;*
 - (b) *the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;*
 - (c) *the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax*
⁴[Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]
 - (d) *the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;*
⁵[Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]
 - (e) *the central tax shall not be utilised towards payment of State tax or Union territory tax; and*
 - (f) *the State tax or Union territory tax shall not be utilised towards payment of central tax.*
- (6) *The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable*

³ *Inserted vide The Finance Act, 2022 through Notf No. 18/2022 - CT dated 28.09.2022 applicable w.e.f. 1st October, 2022.*

⁴ *Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 read with Notf No. 2/2019-C.T., dt.29.01.2019 - w.e.f. 01.02.2019.*

⁵ *Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 read with Notf No.2/2019-C.T. dt. 29.01.2019 - w.e.f. 01.02.2019.*

under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

- (7) *All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.*
- (8) *Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:*
- (a) *self-assessed tax, and other dues related to returns of previous tax periods;*
 - (b) *self-assessed tax, and other dues related to the return of the current tax period;*
 - (c) *any other amount payable under this Act or the rules made thereunder including the demand determined under Section 73 or 74.*
- (9) *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.*
- ⁶[(10) *A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,-*
- (a) *integrated tax, central tax, State tax, Union territory tax or cess; or*
 - (b) *integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:*
- Provided** *that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.]*
- (11) *Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1).]*

⁶ *Substituted vide The Finance Act, 2022, notified through Notf No. 9/2022-C.T, dated 05-07-2022, brought into force w.e.f. 05-07-2022.*

⁷[(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed]

Explanation. — For the purposes of this section, —

- (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;
- (b) the expression, —
 - (i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and
 - (ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder

⁸**[49A. Utilisation of input tax credit subject to certain conditions**

Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilized fully towards such payment.]

⁹**[49B. Order of utilisation of input tax credit**

Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.]

Extract of the CGST Rules, 2017

⁷ Inserted vide The Finance Act, 2022, notified through Notf No. 18/2022 - CT dated 28.09.2022, w.e.f. 1st October, 2022.

⁸ Inserted vide The Central Goods and Services (Amendment) Act, 2018 read with Notf No. 2/2019-C.T., dt.29.01.2019 - w.e.f. 01.02.2019.

⁹ Inserted vide The Central Goods and Services (Amendment) Act, 2018 read with Notf No. 2/2019-C.T., dt.29.01.2019 - w.e.f. 01.02.2019.

85. Electronic Liability Register

- (1) *The electronic liability register specified under sub-section (7) of section 49 shall be maintained in FORM GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.*
- (2) *The electronic 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 ¹⁰[said person; or]*
 - (c) ~~*¹¹[the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or]*~~
 - (d) *any amount of interest that may accrue from time to time.*
- (3) *Subject to the provisions of section 49, ¹²[section 49A and section 49B,] 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.*
- (4) *The amount deducted under section 51, or the amount collected under section 52, or the amount payable on reverse charge basis, or the amount payable under section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.*
- (5) *Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.*
- (6) *The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause*

¹⁰ Substituted vide Notf No. 19/2022- CT dated 28.09.2022, w.e.f. 01.10.2022.

¹¹ Omitted vide Notf No. 19/2022 - CT dated 28.09.2022, w.e.f. 01.10.2022. Before it read as, "(c) the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or"

¹² Inserted vide Notf No. 03/2019-CT dt. 29.01.2019 – w.e.f. 01.02.2019.

notice or demand order and the electronic liability register shall be credited accordingly.

- (7) *A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.*

86. Electronic Credit Ledger

- (1) *The electronic credit ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.*
- (2) *The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49¹³[or section 49A or section or 49B].*
- (3) *Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.*
- (4) *If the refund so filed is rejected, either fully or partly, the amount debited under sub rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.*

¹⁴*[(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.]*

¹⁵*[(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him,—*

- (a) *under sub-section (3) of section 54 of the Act, or*
- (b) *under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,*

along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on

¹³ *Inserted vide Notf No. 03/2019-CT dt. 29.01.2019 – w.e.f. 01.02.2019.*

¹⁴ *Inserted vide Notf No. 16/2020-CT dt. 23.03.2020.*

¹⁵ *Inserted vide Notf No. 14/2022-CT dated 05.07.2022.*

being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.]

- (5) *Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.*
- (6) *A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.*

Explanation. – For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

¹⁶[86A. Conditions of use of amount available in electronic credit ledger

- (1) *The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as-*
 - (a) *the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-*
 - (i) *issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
 - (ii) *without receipt of goods or services or both; or*
 - (b) *the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or*
 - (c) *the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
 - (d) *the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document*

¹⁶ Inserted vide Notf No. 75/2019 - CT dt. 26.12.2019.

prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

- (2) *The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.*
- (3) *Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.]*

¹⁷[86B. Restrictions on use of amount available in electronic credit ledger.

Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:

Provided that the said restriction shall not apply where -

- (a) *the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or*
- (b) *the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or*
- (c) *the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or*
- (d) *the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or*

¹⁷ Inserted vide Notf No. 94/2020 – CT dt. 22.12.2020 - w.e.f. 01.01.2021.

- (e) *the registered person is –*
- (i) *Government Department; or*
 - (ii) *a Public Sector Undertaking; or*
 - (iii) *a local authority; or*
 - (iv) *a statutory body:*

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.]

87. Electronic Cash Ledger

- (1) *The electronic cash ledger under sub-section (1) of section 49 shall be maintained **FORM GST PMT-05** for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.*
- (2) *Any person, or a person on his behalf, shall generate a challan in **FORM GST PMT-06** on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount:*

¹⁸*[Provided that the challan in **FORM GST PMT-06** generated at the common portal shall be valid for a period of fifteen days.]*

¹⁹~~*[Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also do so through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax from the date to be notified by the Board.]*~~

- (3) *The deposit under sub-rule (2) shall be made through any of the following modes namely:*
- (i) *Internet Banking through authorised banks;*
 - ²⁰*[(ia) Unified Payment Interface (UPI) from any bank;*

¹⁸ *Inserted vide Notf No. 22/2017 – CT dt. 17.08.2017.*

¹⁹ *Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019, w.e.f. 28.6.2019 before it was read as, "Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also do so through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax from the date to be notified by the Board."*

²⁰ *Inserted vide Notf No.14/2022 - CT dated 05.07.2022.*

- (ib) *Immediate Payment Services (IMPS) from any bank;]*
- (ii) *Credit card or Debit card through the authorised bank;*
- (iii) *National Electronic Fund Transfer or Real Time Gross Settlement from an bank; or*
- (iv) *Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:*

Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter payment shall not apply to deposit to be made by –

- (a) *Government Departments or any other deposit to be made by persons as maybe notified by the Commissioner in this behalf;*
- (b) *Proper officer or any other officer authorised to recover outstanding due 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 authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit:*

²¹*[Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in ²²[section 14, or a person supplying online money gaming from a place outside India to a person in India as referred to in section 14A,] of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board]*

Explanation. – For the purposes of this sub-rule, it is hereby clarified that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.

- (4) *Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the common portal.*
- (5) *Where the payment is made by way of National Electronic Fund Transfer*

²¹ *Substituted vide Notf No. 22/2017 – CT dt 17.08.2017.*

²² *Substituted vide Notif No. 51/2023 – CT dated 29.09.2023 w.e.f. 01.10.2023 before it was read as, "section 14"*

or Real Time Gross Settlement ²³[or Immediate Payment Service] mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:

Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan

- (6) On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.
- (7) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.
- (8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number 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.
- ²⁴[Provided that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.]
- (9) Any amount deducted under section 51 or collected under section 52 and claimed ²⁵[~~in FORM GSTR-02~~] by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger ²⁶[~~in accordance with the provisions of rule 87~~].
- (10) Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.

²³ Inserted vide Notf No.14/2022 - CT dated 05.07.2022.

²⁴ Inserted vide Notf No. 26/2022-CT dated 26.12.2022.

²⁵ Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019, w.e.f. 28.6.2019.

²⁶ Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019 w.e.f. 28.6.2019.

(11) If the refund so claimed is rejected, either fully or partly, the amount debited under sub-rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in FORM GST PMT-03.

(12) A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

Explanation 1. –The refund shall be deemed to be rejected if the appeal is finally rejected.

Explanation 2. –For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

²⁷[(13) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09.]

²⁸[(14) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in FORM GST PMT-09:

Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.]

88. Identification number for each transaction

(1) A unique identification number shall be generated at the common portal for each debit or credit to the electronic cash or credit ledger, as the case may be.

(2) The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability register.

²⁷ Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019 w.e.f. 21.04.2020 vide Nott No. 37/2020 – CT dt. 28.04.2020.

²⁸ Inserted vide Notf No.14/2022 - CT dt. 05.07.2022.

- (3) *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 sub-rule (2).*

²⁹**[88A. Order of utilization of input tax credit**

Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order:

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.]

³⁰**[88B. Manner of calculating interest on delayed payment of tax.-**

- (1) *In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.*
- (2) *In all other cases, where interest is payable in accordance with sub-section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.*
- (3) *In case, where interest is payable on the amount of input tax credit wrongly availed and utilized in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3)*

²⁹ Inserted vide Notf No. 16/2019-CT dt. 29.03.2019.

³⁰ Inserted vide Notf No. 14/2022-CT dt. 05.07.2022 w.e.f. 01.07.2017.

of section 50.

Explanation.- For the purposes of this sub-rule, -

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilization of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be, -

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.]

³¹[88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.-

(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

(a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or

(b) explain the aforesaid difference in tax payable on the common portal,

within a period of seven days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the

³¹ Inserted vide Notf No. 26/2022 - CT dt. 26.12.2022.

intimation referred to in that sub-rule, either,-

- (a) *pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or*
 - (b) *furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B, within the period specified in the said sub-rule.*
- (3) *Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.]*

³²**[88D. Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return]**

- (1) *Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in FORM GSTR-2B in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC- 01C, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—*
- (a) *pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or*
 - (b) *explain the reasons for the aforesaid difference in input tax credit on the common portal, within a period of seven days.*
- (2) *The registered person referred to sub-rule (1) shall, upon receipt of the*

³² Inserted vide Notf No. 38/2023- CT dt. 04.08.2023.

<p><i>intimation referred to in the said sub-rule, either,</i></p> <p>(a) <i>pay an amount equal to the excess input tax credit, as specified in Part A of FORM GST DRC- 01C, fully or partially, along with interest payable under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01C, electronically on the common portal, or</i></p> <p>(b) <i>furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess input tax credit that has still remained to be paid, if any, in Part B of FORM GST DRC-01C, within the period specified in the said sub-rule.</i></p> <p>(3) <i>Where any amount specified in the intimation referred to in sub-rule (1) remains to be paid within the period specified in the said sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.]</i></p>
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Related provisions of the Statute

Section or Rule	Description
Section 2(43)	Definition of 'Electronic Cash Ledger'
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 2(62)	Definition of 'Input Tax'
Section 2(82)	Definition of 'Output Tax'
Section 2(94)	Definition of 'Registered Person'
Section 2(97)	Definition of 'Return'
Section 2(117)	Definition of 'Valid Return'
Section 9	Levy and Collection
Section 10 (IGST)	Place of supply of goods other than supply of goods imported into, or exported from India
Section 11 (IGST)	Place of supply of goods imported into, or exported from India
Section 12 (IGST)	Place of supply of services where location of supplier and recipient is in India

Section 13 (IGST)	Place of supply of services where location of supplier or location of recipient is outside India
Section 16	Eligibility and Conditions for taking Input Tax Credit
Section 17	Apportionment of Credit and Blocked Credits
Section 39	Furnishing of Returns
Section 41	Availment of input tax credit
Section 50	Interest on Delayed Payment of Tax
Section 51	Tax deduction at source
Section 54	Refund of tax
Section 77	Tax wrongfully collected and paid to Central or State Government
Section 19 (IGST)	Tax wrongfully collected and paid to Central or State Government

49.1 Introduction

This section provides for the following:

1. Methodology or mode of payment of tax, interest, penalty, fee or any other amount by a person,
2. This section prescribes maintenance of three kinds of ledgers in respect of the taxable person.
 - (a) Electronic Cash Ledger;
 - (b) Electronic Input Tax Credit Ledger or Electronic Credit Ledger;
 - (c) Electronic Tax Liability Register.
3. The section further provides for the availability of credit in the cash ledger or the credit ledger depending on the payment made by the taxable person or filling of return.
4. It provides for utilization of credit and prescribes the method of cross utilization of credit amongst IGST and CGST, IGST and SGST or UTGST.
5. Transfer of input tax credit from CGST to IGST account when CGST is utilized for payment of IGST; similar provisions are enacted in SGST Act and UTGST Act as well.
6. Restrict ITC claim on finding of defect prescribed.
7. Restrict utilisation of ITC in certain transactions.

8. Permit transfer of any cash lying in Electronic Cash Ledger from one major/minor head to another major/minor head within the GSTIN Permit transfer of any cash lying in Electronic Cash Ledger to the Electronic Cash Ledger of another unit of distinct persons (different GSTIN).
9. Permit transfer of any cash lying in Electronic Cash Ledger among distinct persons.

Sections 49A and 49B

Section 49 was amended and section 49A & section 49B were inserted *vide* the Central Goods and Services Tax (Amendment) Act, 2018. The amended provisions came into effect from 01.02.2019 *vide Notification No. 2/2019-C.T., dated 29-1-2019*. These provisions provide for utilisation of the ITC under the head CGST / S(UT)GST, only after the ITC available on account of the head IGST has first been utilized fully.

49.2 Analysis**A. ELECTRONIC CASH LEDGER [Section 49 (1), (3), (6), (10) and (11) read with Rule 87]:**

The provisions regarding Electronic Cash Ledger and amounts credited into this ledger are dealt with in sub-section (1) & (3) of section 49 of the CGST Act.

1. Deposit of tax, interest, penalty, fee or any other amount by a person can be made by the following modes: -
 - Internet Banking through authorised banks;
 - Unified Payment Interface (UPI) from any bank *;
 - Immediate Payment Services (IMPS) from any bank *;
 - Credit /Debit cards*;
 - National Electronic Fund Transfer (NEFT)
 - Real Time Gross Settlement (RTGS)
 - Over the Counter payment (OTC) through authorized banks for deposits up to ₹ 10,000/- per challan per tax period, by cash, cheque or demand draft. This amount restriction is not applicable to remittances by:
 - Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;

- Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties. Proper Officer or any other Officer recovering outstanding dues or during any investigation or enforcement activity or ad hoc deposit.
- International money transfer through Society for Worldwide Interbank Financial Telecommunication payment network for person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient.
- Any other mode as may be prescribed.

GST Portal has been recently updated allowing payment through Debit Cards, Credit Cards and UPI. To utilize this feature, taxpayers need to opt for the E-Payment option, where they can find a specific section dedicated to Credit/ Debit Card and UPI payments.

2. The 'deposit' made by one of the above-mentioned modes will be credited to the Electronic Cash Ledger of the taxable person. This ledger shall be maintained in **FORM GST PMT-05**.
3. 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.
4. The challan in **FORM GST PMT-06** generated on the common portal shall be valid for a period of 15 days.
5. A person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 or a person supplying online money gaming from a place outside India to person in India as referred to in section 14A of IGST Act, 2017 may also make the deposit in electronic cash ledger through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network from the date to be notified by the Board.
6. 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 (TIN) generated through the common portal.

7. Date of credit into the account of the Government is deemed to be the date of deposit in the electronic cash ledger (not the actual date of debit to the account of the taxable person).
8. On successful credit of the amount to the concerned Government account maintained in the authorised bank, a Challan Identification Number (CIN) will be generated by the collecting Bank and the same shall be indicated in the challan.
9. Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no 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. However, PMT 07 shall not be used in the following situations:
 - a. Before 24 hours of debit of amount from the bank account.
 - b. If payment status is PAID and amount is updated in Cash Ledger.
 - c. In case of E-payment, payment not initiated from the GST Portal.
 - d. In case of OTC Payment, status is AWAITING BANK CLEARANCE and cheque/ Demand Draft is not realized.
 - e. If Memorandum of error (MoE) is raised against the CIN.
10. Where the bank fails to communicate the details of Challan Identification number (CIN) to the Common Portal, The Electronic Cash ledger may be updated on the basis of e-scroll of the RBI in cases where the details of the e-scroll are in conformity with the details in the challan generated in Form GST PMT 06 on the Common Portal.
11. Electronic Cash Ledger has 4 major heads of taxes and 5 minor heads for payment, which is as follows:

Major Head	Minor Head				
	Tax	Interest	Penalty	Fees	Others
IGST					
CGST					
SGST					
CESS					

12. Any payment made towards respective major heads shall only be utilized for offset of liability of that head of account. For example, if

IGST is paid through a Challan, then this cash balance against IGST in the cash ledger shall only be utilized for payment of IGST.

13. Likewise, the amount paid in the minor head may be used for making any payment towards the liability of such minor head, say, tax, interest, penalty, fees or any other amount payable as per the provisions of the Act or Rules.
14. Any amount deducted under section 51 (TDS by Central / State Government or Local Authority or Government Agencies) or collected under section 52 (TCS by E-Commerce Operator) and claimed by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger.
15. Under the powers vested by sub-section (10) of section 49 read with sub-rule (13) of rule 87, any balance in the electronic cash ledger available under any head can be transferred to any other head within cash ledger. This transfer may be done using **FORM GST PMT-09**, provided that there is no unpaid liability in the Electronic Liability Register. For example, cash balance under minor head Interest under CGST may be transferred to any of the minor head under CGST or SGST or IGST as desired by the registered person.

According to sub-section (11) of section 49, such amount transferred shall be deemed as deposit of tax to the electronic cash ledger under the head to which such transfer takes place.

16. The registered person may transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger to the electronic cash ledger for Central tax or integrated tax of the distinct person as specified in the sub-section (4) or (5) of section 25 in Form GST PMT 09.

Further, it shall be allowed only if there is no unpaid liability in the Electronic Liability Register.

17. **CONTENT OF THE LEDGER:**

DR. Electronic Cash Ledger (FORM GST PMT - 05)	CR
(a) The payment of tax, interest, penalty, fee or any other amount	(a) Deposit, of tax, interest, penalty, fee or any other amount, though a challan in FORM GST PMT-06
(b) Refund of any amount from the electronic cash ledger in FORM GST RFD 01	(b) Amount deducted under section 51

	(c) Amount collected under section 52
	(d) Refund claim rejected and re-credit through FORM GST PMT 03

B. ELECTRONIC CREDIT LEDGER [Section 49(2), (4) & (5) read with Rule 86, 86A, 86B & 88A along with Circular]

1. Sub-section (2) of section 49 of the CGST Act provides that the self-assessed input tax credit as per return filed by a taxable person shall be credited to its Electronic Credit Ledger.
2. This 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.
3. The Electronic credit ledger may include the following:
 - Transitional credit of Excise and Service tax as CGST Credit and State VAT credit as SGST Credit.
 - ITC on inward supplies (including eligible capital goods) from registered tax payers.
 - ITC available based on distribution from ISD.
 - ITC on input of stock held/ semi-finished goods or finished goods held in stock on the day immediately preceding the date from which the taxpayer became liable to pay tax provided he applies for registration within 30 days from the date of his liability.
 - Permissible ITC on inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day of conversion from composition scheme to regular tax scheme.
 - ITC eligible on payment made on reverse charge basis

The above list is illustrative and not exhaustive viz., credit transfers to a recipient in cases of mergers, amalgamations etc.
4. 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**.
5. Any excess payment or wrong payment of tax has been made by debit to the electronic credit ledger. Post which, refund has been sought by

the registered person, then if such refund is found admissible, it shall only be re-credited to the electronic credit ledger by an order in **FORM GST PMT-03**.

6. Any erroneous refund sanctioned is deposited by the registered person under sub-section (3) of section 54 of the Act, or under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96, along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out. An amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.
7. Blocking of utilization of credit can be done under Rule 86A by Commissioner or authorized officer not below the rank of Assistant Commissioner, if they have reason to believe that the credit has been availed fraudulently or is ineligible. This blocked amount shall not be available for discharge of liability or for claiming refund of any unutilized amount. This blocking may be done after giving reasons in writing. Such restriction shall be removed by the officer on being satisfied that conditions disallowing credit no longer exists or one year has elapsed from such restriction, whichever is earlier.
8. **CONTENT OF THE LEDGER:**

DR.	Electronic Credit Ledger (FORM GST PMT-02)	CR.
(a) The payment of tax.		(a) Claim of input tax credit by filing FORM GSTR-3B as prescribed in section 39.
(b) Refund of accumulated ITC, under section 54, filed in FORM GST RFD-01		(b) Refund claim rejected and re-credit through FORM GST PMT-03
		(c) Input Tax Credit availed through ITC- 01 or ITC-02 or ITC-02A
		(d) Transitional Credit availed

9. **MANNER OF UTILISATION OF ITC AND CROSS UTILIZATION**
 - (1) The amount available in the electronic credit ledger may be utilized for effecting payment towards output tax payable under the Act or Rules. The manner of utilization, conditions and timelines is specifically prescribed.

- (2) **Electronic Credit Ledger** has the following (cross) credit utilization arrangement as per combined reading of section 49(5),49A,49B, Rule 88A and *Circular No. 98/17/2019-GST, dated 23.04.2019*:

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

- (3) As per section 49A, the ITC of IGST has to be utilized completely before ITC of CGST / SGST or UTGST can be utilized for discharge of any tax liability.

Further, section 49B empowered the Government, on the recommendation of the GST Council, to notify the order for utilization of ITC in e-credit ledger, Accordingly, CBIC *vide Notification No. 16/2019 dated 29.03.2019* inserted rule 88A in the CGST Rules.

Rule 88A also allows utilization of ITC of IGST towards the payment of CGST and SGST, or as the case may be, UTGST, **in any order subject to the condition that the entire ITC on account of IGST is completely exhausted first** before the ITC on account of CGST or SGST / UTGST can be utilized.

Prior to rule 88A, as per section 49(5) IGST input tax credit was first utilized against IGST liability and any remaining credit of IGST, if any may be utilized against CGST and then SGST/UTGST in the below given order i.e.,

Credit of:	Allowed for Payment of		
	IGST	CGST	SGST
IGST	✓ (1)	✓ (2)	✓ (3)
CGST	✓ (2)	✓ (1)	
SGST	✓ (2)		✓ (1)

However, with the introduction of section 49A, it becomes abundantly clear that there is only a two-step hierarchy and once credit of IGST is fully adjusted with liability of IGST, then remainder of credit of IGST may be utilized in any order against liability of CGST or liability of SGST.

- (4) With effect from 1.02.2019, provisos to sub-clause (c) and (d) of sub-section 5 of section 49 inserted vide the *CGST (Amendment) Act, 2018* read with *Notification No. 2/2019-C.T., dated 29-1-2019*], ITC on account of SGST/ UTGST shall be utilized towards payment of IGST only where the balance of the ITC on account of CGST is not available for payment of IGST.
- (5) Cross-utilization of credit is available means it can be effected only **in that order**. The important restriction is that the CGST credit cannot be utilized for payment of SGST or UTGST and *vice versa*. One may note the fact that IGST credit is available seamlessly, subject to order of utilization as mentioned *supra*.
- (6) Following illustration on order of utilization of input tax credit amplifying the impact of newly inserted rule 88A of the CGST Rules as stipulated in *Circular No. 98/17/2019-GST, dated 23.04.2019* is as under:

Head	Output Liability	Input tax Credit
Integrated tax	1000	1300
Central tax	300	200
State tax/ Union Territory tax	300	200
Total	1600	1700

Appropriation of tax credits available as above may be as follows:

Option 1:

Input tax Credit on account of	Discharge of output liability on account of Integrated tax	Discharge of output liability on account of Central tax	Discharge of output liability on account of State tax/ Union territory tax	Balance of Input Tax Credit
Integrated tax	1000	200	100	0
<i>Input Tax Credit on account of Integrated tax has been completely exhausted</i>				
Central tax	0	100	-	100
State tax/ Union Territory tax	0	-	200	0
Total	1000	300	300	100

Option 2:

Input tax Credit on account of	Discharge of output liability on account of Integrated tax	Discharge of output liability on account of Central tax	Discharge of output liability on account of State tax/ Union territory tax	Balance of Input Tax Credit
Integrated tax	1000	100	200	0
<i>Input Tax Credit on account of Integrated tax has been completely exhausted</i>				
Central tax	0	200	-	0
State tax/ Union Territory tax	0	-	100	100
Total	1000	300	300	100

- (7) The full utilization of IGST credit by taxpayers facilitates the Government through following;

- (a) Reduction of transactions of inter -settlement between the Centre & States
- (b) Self-utilization of IGST deposited in Consolidated Fund of India through payment route of taxpayer instead of post return calculation

However, if the provisions are not appreciated, it leads to situation wherein taxpayer has to pay SGST in cash while his balance in CGST Credit ledger still lying.

Illustration:

Nature of Tax	Tax liability	ITC available
IGST	100(ip)	200 (ic)
CGST	100 (cp)	50 (cc)
SGST	100 (sp)	50 (sc)

	Tax liability	Option 1		Option 2		
		Paid through ITC	Paid through Cash / Balance Credit	Paid through ITC	Paid through Cash	Balance ITC
IGST	100 (ip)	100 (ic)	Nil	100 (ic)	-	-
CGST	100 (cp)	50 (ic) 50 (cc)	Nil	100 (ic)	-	50 (cc)
SGST	100 (sp)	50 (ic) 50 (sc)	Nil	50 (sc)	50	-

From the above Illustration, we can conclude that option – 1 does not result in any cash flow issue. On the contrary, In Option 2 the registered person pays the SGST Liability in cash and accumulates the ITC under the head CGST. This is because the registered person had not carried out the adjustment as per rule 88A i.e., ITC left after setting off the IGST liability can be utilized in any order.

- (8) Sub-section (6) of section 49 provides that the balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount may be refunded in accordance with the provisions of section 54.
- (9) 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. The said UIN must be used to discharge tax liability.

10. Conditions of use of amount available in electronic credit ledger:

- The Commissioner or an officer authorized by him (not below the rank of an Assistant Commissioner) under rule 86A may, not allow the registered person to utilize ITC for payment of taxes or claim refund, if he has a reason to believe that such ITC in electronic credit ledger has been fraudulently availed or is ineligible. This blocking may be done after giving reasons in writing.
- The ITC in electronic credit ledger can be blocked for any one of the following reasons–
 - ITC availed based on tax invoice or debit note or any other document prescribed under rule 36 –
 - Issued by a supplier who is non-existent or not conducting any business from the registered premises.
 - Without receipt of goods or services or both.
 - Taxes in the document issued by the supplier have not been paid to the government.
 - The registered person availing ITC has been found non-existent or does not conduct any business activity from the registered premises.
 - ITC is availed without any documentary proof.
- The Commissioner or an Officer authorized by him may, upon being satisfied that conditions for blocking the ITC in E-credit ledger as discussed above does not exist, may permit the use of ITC for payment of taxes or file refund claim of accumulated ITC as per section 54.
- The blocking of ITC ceases after one year from date of imposition.

11. Restrictions on use of amount available in electronic credit ledger.

- In order to curb misuse of ITC by the registered person the Central Government with effect from 01.01.2021 introduced rule 86B; which limits the use of ITC available in the electronic credit ledger for discharging the output tax liability. Accordingly, the registered persons cannot use ITC in excess of 99% of output tax liability.
- This rule is applicable to registered persons having taxable value of supply (other than exempt supply and zero-rated supply) in a month more than ` 50 lakhs.

- This rule has a non-obstante clause which means this rule overrides all CGST rules.
- However, the above restriction is not applicable to the following registered persons:
 - If the persons mentioned below have paid more than ` 1 lakh as Income Tax under Income Tax Act, 1961 in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired:
 - The registered person
 - Proprietor, Karta or Managing Director of the registered person
 - Any of two partners or whole-time directors or members of managing committee of Associations or Board of Trustees as the case may be.
 - If the registered person under concern has received a refund of unutilized input tax credit amounting to more than ` 1 lakh in the preceding financial year on account of export under LUT or due to inverted tax structure.
 - If the registered person under concern has discharged his liability towards output tax by electronic cash ledger for an amount in excess of 1% cumulatively of the total output tax liability up to the said month in the current financial year.
 - If the registered person under concern is any of the following:
 - Government department, or
 - a Public sector undertaking, or
 - a Local authority, or
 - a Statutory Body.

It is also provided that Commissioner or any authorised officer may remove the said restriction after such verification and safeguards as he deems fit.

COMMON POINTS FOR ELECTRONIC CASH & CREDIT LEDGER

1. Where a person has claimed refund of any amount from the electronic cash or unutilized amount from electronic credit ledger, the said amount shall be debited to the electronic cash or credit ledger.

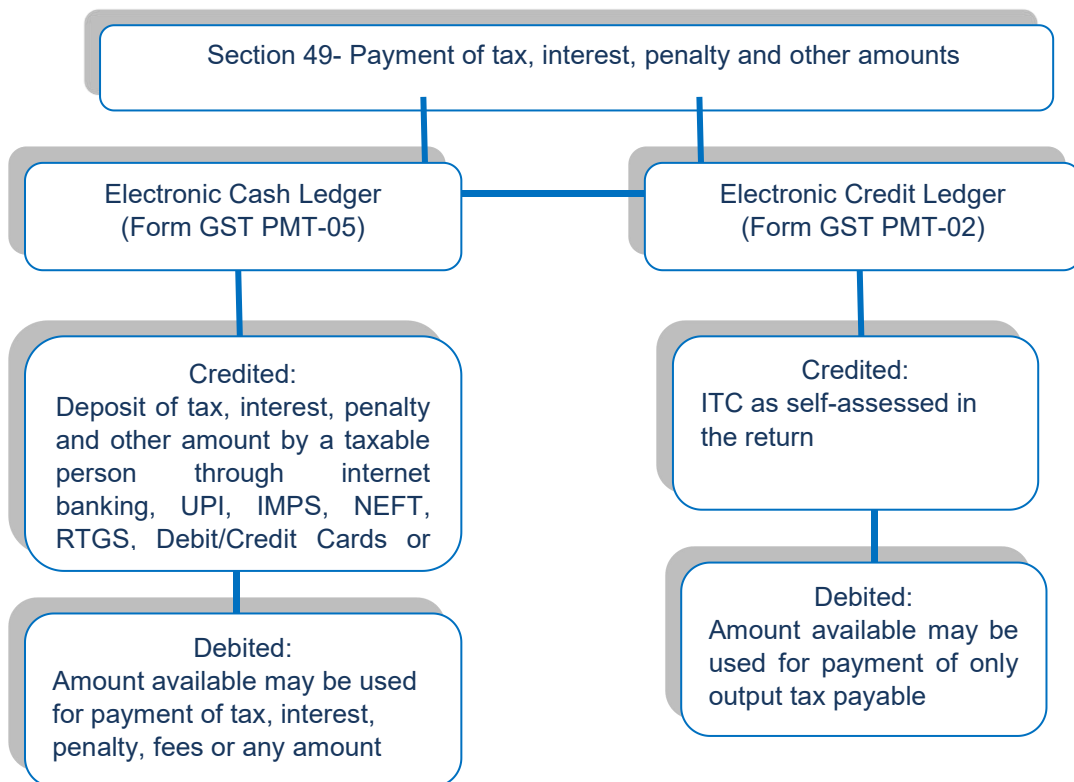
2. If the refund so claimed is rejected, either fully or partly, the amount debited earlier, to the extent of rejection, shall be credited to the electronic cash or credit ledger by the proper officer by an order made in **FORM GST PMT-03**.
3. CBIC vide *Circular no. 174/06/2022-GST dated 06.07.2022* has prescribed the manner of re-credit in electronic credit ledger using Form GST PMT-03A in case where registered person deposits the amount of erroneous refund sanctioned to him.
4. CBIC vide *Circular no. 172/04/2022-GST dated 06.07.2022* has issued clarification on how to utilize the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.
5. A unique reference 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.

C. ELECTRONIC TAX LIABILITY REGISTER [Section 49(7), (8), (9) read with Rule 85]:

1. A **Tax Liability Register** is required to be maintained electronically for all liabilities of a taxable person in **FORM GST PMT-01**. This ledger is auto updated in common portal based on the data received by it from returns filed by the registered person or demand raised by the officer.
2. This ledger shall be debited by the following amounts (liability is created by debiting)
 - the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said taxable person;
 - 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 taxable person;
 - any amount of interest that may accrue from time to time
 - where **FORM DRC-03** is being generated for intimation of payment made voluntarily or made against Show Cause Notice, specifying cause of payment
 - o Voluntary
 - o SCN or
 - o Others

- On generation of **FORM DRC-03** payment reference number will be generated and found in Part - II of Electronic Liability Register.
3. This ledger shall be credited for the following payments (liability is discharged by crediting Electronic Liability Register and debiting Electronic Cash Ledger)
- Tax Deducted at Source under section 51
 - Tax Collected at Source under section 52
 - Reverse Charge on supply of goods or services under sub-section 3 of section 9 of CGST /SGST Act, sub-section 3 of section 5 of IGST Act and sub section 3 of section 7 of UTGST Act
 - Tax on specified supplies from unregistered suppliers under sub section 4 of section 9 of CGST/SGST Act, sub section 4 of section 5 of IGST Act and sub section 4 of section 7 of UTGST Act.

The entire procedure cited *supra* can be pictorially depicted as follows:



4. **Order of discharge of tax**

Sub-Section (8) of section 49 prescribes the chronological order in which the tax liability of a taxable person can be discharged:

1. Self-assessed tax and other dues arising out of returns for previous tax periods must be discharged first.
2. Self-assessed tax and other dues relating to the return of the current tax period.
3. Any other amount payable under the Act/Rules (liability arising out of demand notice or adjudicated proceedings etc.).
5. Presumption that incidence of tax is passed on

Sub-section (9) of section 49 provides that the incidence of tax on goods/services is deemed to have been passed on to the recipient of such goods and /or services when the tax is paid unless the contrary is proved.

49.3 Rule 88C of the CGST Rules, 2017 provides the manner of dealing with difference in liability reported in statement of outward supplies (GSTR-1) and that reported in return (GSTR-3B)

Where tax payable by the registered person for a particular tax period in GSTR-1/IFF exceeds the amount of tax payable reported in GSTR-3B return by such amount and such percentage, as may be recommended by the council, said person shall be intimated of such difference in Part A of Form GST DRC-01B to direct that person either -

- a) to pay such amount along with interest under section 50 through Form GST DRC-03; or
- b) furnish an explanation related to the aforesaid difference, within a period of 7 days.

The registered person upon receipt of such intimation either -

- a) pay the amount of differential tax liability as specified in Part A of FORM GST DRC-01B along with interest through Form GST DRC-03 and furnishes the details thereof in Part B of form DRC-01B on the common portal; or
- b) furnishes an explanation for the differential tax liability that has remain unpaid in Part B of Form DRC-01B

within a period of 7 days.

In following situations, amount shall be recoverable as per the provisions of section 79:

- ❖ Where the amount specified in the intimation is not paid within the specified period and where no explanation is furnished; or
- ❖ Where explanation furnished by the registered person is not found to be acceptable by the proper officer.

The words “such amount and such percentage” used in rule 88C have not been defined yet, however, if we refer to para 8.11.2 of the minutes of 48th GST Council meeting, intimation may be issued if the differential tax liability is more than 20% as well as more than ₹ 25 Lakh.

49.4 Rule 88D of the CGST Rules, 2017 provides the manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return

A new rule 88D has been inserted to provide that where the amount of ITC availed by a registered person in FORM GSTR-3B exceeds the ITC available to such person in accordance with FORM GSTR-2B, by such amount and such percentage, as may be prescribed, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01C on the common portal as well as on his e-mail address, and will be directed to –

- i. pay an amount equal to the excess ITC availed in FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or
- ii. explain reasons for the aforesaid difference in ITC on the common portal within a period of 7 days.

Upon receipt of such intimation, the registered person will have an option to pay, fully or partially, the excess ITC along with interest under section 50 through FORM DRC-03 and furnish the details in Part B of FORM GST DRC-01C, or furnish a reply, incorporating reasons for not paying the excess ITC in Part B of FORM GST DRC-01C.

If the amount specified in the intimation is not paid within the specified period and no explanation or reason is provided or where the explanation or reason provided is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be.

49.5 Issues and Concerns:

- (i) Recipient of notified goods or services who is liable to reverse charge, is required to ensure that tax is not charged on the tax invoice issued by the supplier (marked as payable under RCM) of notified goods or services and all necessary declarations as required under the tax invoice and input tax credit provisions are complied with.
- (ii) A person having multiple registrations is required to ensure that payment of tax is made for the registrations against which the tax liability is due. Any incorrect payment will envisage the correct payment of taxes under the appropriate registration, while such person needs to seek refund from that particular registration under which the said wrong payment is effected. This will impact working capital and obtaining refunds will envisage time and costs.

49.6 FAQs

Q1. What are the three types of Ledgers to be maintained by a taxable person under the GST Law?

Ans. The three types of ledgers to be maintained are: electronic credit ledger, electronic cash ledger and electronic liability register.

Q2. What are the deposit amounts that need to be reflected in the electronic cash ledger?

Ans. Electronic cash ledger shall contain details of every deposit made towards tax, interest, penalty or any other amount (including the tax deducted at source and tax collected at source under section 51 and 52 respectively).

Q3. What is meant by cross-utilization of credit and how is it done in the electronic credit ledger?

Ans. Cross utilization means utilizing credit of IGST against liabilities of CGST/ SGST/ UTGST or credit of CGST / SGST / UTGST against IGST. The amount available in the electronic credit ledger may be used for making payment towards output tax payable under the Act and Rules made thereunder.

Q.4 What are the major and minor heads of credit in the electronic cash ledger?

Ans

Major heads	Minor Heads
--------------------	--------------------

IGST	Tax
CGST	Interest
SGST	Penalty
UTGST	Any other amount
CESS	Fees

Q6. What are the amounts to be reflected in the electronic credit ledger?

Ans. The input tax credit as self-assessed in the details of inward supplies (**FORM GSTR-3B**) of a taxable person shall be reflected in the electronic credit ledger.

Q7. Can direct remittances to the treasury be shown in the electronic credit ledger?

Ans. No, direct remittances to the treasury cannot be shown in the electronic credit ledger.

Q8. What is the order in which tax liability has to be discharged?

Ans. The order in which the liability of a taxable person must be discharged is as under:

1. Self-assessed tax and other dues arising out of returns for previous tax periods must be discharged first.
2. Self-assessed tax and other dues relating to the return of the current tax period.
3. Any other amount payable under the Act/Rules (including liability arising out of demand notice or adjudicated proceedings etc.).

Q9. Whether the amount available in the electronic credit ledger can be used for making payment of any liability under the GST Laws?

Ans. The balance available in the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said Acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

Q10. How and whom to intimate the discrepancies in electronic cash/credit/liability ledger?

Ans. In case any discrepancy noticed in the electronic cash/credit/liability ledger, the registered person shall communicate the same to the officer exercising jurisdiction in the matter, through the common portal in PMT 04.

49.7 MCQs

Q1. Deposits towards tax, penalty, interest, fee or any other amount are credited into of a taxable person:

- (a) Electronic Credit Ledger
- (b) Tax Liability Register
- (c) Electronic Cash Ledger
- (d) None of the above

Ans. (c) Electronic Cash Ledger.

Q2. The Input Tax Credit as self-assessed by a taxable person is credited into the

- (a) Electronic Credit Ledger
- (b) Tax Liability Register
- (c) Electronic Cash Ledger
- (d) None of the above

Ans. (a) Electronic Credit Ledger.

Q3. Cross-utilization of credit of available IGST after utilization towards payment of IGST is done in the following chronological order:

- (a) CGST then SGST/UTGST
- (b) SGST/UTGST then CGST
- (c) CGST, UTGST/SGST in any order
- (d) None of the Above

Ans. (c) CGST, UTGST/SGST in any order.

Q4. Which of the following statements is true?

- (a) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of SGST/UTGST
- (b) ITC of SGST is first utilized for payment of SGST and the balance is utilized for payment of CGST

- (c) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of IGST
- (d) None of the Above

Ans. (c) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of IGST.

Statutory provisions

50. Interest on delayed payment of tax

(1) *Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government, on the recommendation of the Council.*

³³*[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]*

(2) *The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which tax was due to be paid.*

³⁴*[(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.]*

³³ Substituted by The Finance Act, 2021 w.e.f. 1st July 2017, applicable w.e.f. 01.07.2017, notified through Notf No. 9/2022-CT dt. 05.07.2022.

³⁴ Substituted vide The Finance Act, 2022 notified through Notf No. 9/2022-C.T, dated 05-07-2022 - brought into force w.e.f 05-07-2022, applicable w.r.e.f. 1st July, 2017.

³⁵[88B. Manner of calculating interest on delayed payment of tax

- (1) *In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.*
- (2) *In all other cases, where interest is payable in accordance with sub-section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.*
- (3) *In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.*

Explanation. —*For the purposes of this sub-rule, —*

- (1) *input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.*
- (2) *the date of utilisation of such input tax credit shall be taken to be, —*
 - (a) *the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment*

³⁵ Inserted vide Notf No. 14/2022-CT dated. 05.07.2022 w.e.f. 01.07.2017.

of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.]

Related provisions of the Statute

Section or Rule	Description
Section 2(62)	Definition of 'Input Tax'
Section 2(82)	Definition of 'Output Tax'
Section 2(94)	Definition of 'Registered Person'
Section 2(97)	Definition of 'Return'
Section 2(117)	Definition of 'Valid Return'
Section 9	Levy and Collection
Section 16	Eligibility and conditions for taking Input Tax Credit
Section 17	Apportionment of Credit and Blocked Credits
Section 39	Furnishing of Returns
Section 77	Tax Wrongfully Collected and Paid to Central or State Government
Section 19 (IGST)	Tax Wrongfully Collected and Paid to Central or State Government

50.1 Introduction

This section lays down the provisions for payment of interest under the Act for delayed payment of tax.

50.2 Analysis

Section 50 of the CGST Act makes it mandatory for a taxpayer to pay interest on belated payment of tax i.e., when he fails to pay tax (or any part of tax) to the Government's account within the due date/s.

Interest - When Payable

Interest under section 50 of the CGST Act is payable in the following two circumstances:

1. Sub-section (1): Failure to pay tax or any part thereof within the prescribed time

2. Sub-section (3): Wrong availment and utilization of input tax credit

Rate of Interest

The actual rates of interest notified by the Government *vide Notification no. 13/2017-Central Tax dated 28.06.2017* (as amended from time to time through section 116 of Finance Act, 2022) are as follows:

S. No.	CGST Act, 2017 Sections	Section description	Rate of interest
1	50 (1)	Failure to pay tax or part thereof to the Government within period prescribed	18%
2	50(3)	Wrong availment and utilization of input tax credit	18%
3	54(12)	Interest on withheld refund	6%
4	56	Interest on delayed refunds	6%
5	Proviso to 56	Interest on refund arising from order passed by Adjudicating Authority/ Appellate Authority/ Tribunal/ Court and not refunded within 60 days	9%

Manner of Computation of Interest

1. Rule 88B inserted *vide Notification No. 14/2022-CT dated 05.07.2022*, applicable retrospectively with effect from 1st July 2017 prescribes the manner of computation of interest payable under sub-section (1) and (3) of section 50. Interest u/s 50(1) shall be calculated from the due date of payment of tax till the date of payment and interest u/s 50(3) shall be calculated from the date of utilization of such wrongly availed ITC till the date of reversal of such ITC or payment of such tax.
2. Pursuant to section 49, registered person can make payment of tax through electronic cash ledger or electronic credit ledger. Generally, balance in electronic credit ledger is exhausted first then electronic cash ledger is utilized for better working capital.

Besides this, payment of tax as per rule 85(3) be considered only when electronic cash ledger or electronic credit ledger of the registered person is being debited. Mere credit entry in cash ledger or credit ledger will not be tantamount to payment of tax.

It may also be noted that section 39 (7) lays down the last date for remittance, as the last date on which the taxable person is required to furnish such return. Moreover, section 2 (117) lays down that a return shall be considered valid, only if the tax payable as per the return is paid in full.

So, if, in case registered person has insufficient (combined) balance in both the ledgers, partial payment is not allowed as a return is valid only when tax payable as per the return is paid in full and also the GST portal doesn't enable partial payment. Considering this limitation, a *proviso to section 50* was inserted w.e.f. 01.07.2017 *vide The Finance Act, 2021* read with *Notification No. 16/2021- Central Tax, dt.1-06-2021-*. As per the said proviso, interest in cases where tax return has been furnished after the due date in accordance with the provisions of section 39, but before commencement of any proceedings under section 73 or section 74, shall be levied on that portion of the output tax which is being paid by debiting electronic cash ledger.

Hence, when a registered person has paid his taxes through a return specified under section 39 belatedly, interest is applicable only on net taxes paid through electronic cash ledger as per rule 88B of the CGST Rules, 2017.

Rule 88B provides that the interest is payable only on the cash payout when the tax liability is reported in the returns and the said returns is filed belatedly except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period.

Clarification

Circular No. 192/04/2023-GST dated 17.07.2023, with regard to charging of interest under section 50(3) of the CGST Act, 2017 in cases of wrong availment of IGST credit and reversal thereof:

As per section 50(3) of CGST Act, 2017, if the registered person has wrongly availed and utilised the Input Tax Credit (ITC), then he shall be liable to pay interest at the rate not exceeding 24% on the amount of ITC wrongly availed and utilised.

As per explanation provided in sub-rule (3) of rule 88B of CGST Rules, ITC shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of ITC wrongly availed. Further, the extent of such utilisation of ITC shall be such amount by which the balance in electronic credit ledger falls below the amount of

ITC wrongly availed.

Issue 1: In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.

Clarification: The total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together shall be considered –

- for calculation of interest under rule 88B, and
- for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and
- for determining to what extent, balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.

Issue 2: Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Clarification: The ITC in respect of compensation cess on supply of goods and service cannot be utilized for payment of any tax under CGST, SGST and IGST heads and/or reversals of credit under the said heads. Accordingly, credit of compensation cess available in electronic credit ledger shall not be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

ILLUSTRATION – 1:

Mr. Ace Ventura reported his liability in Form GSTR 3B for the following months but filed below returns belatedly by 10 days and wants to pay the interest (if any):

TAX PERIOD	TAX LIABILITY REPORTED - FORM GSTR 3B			E-CREDIT LEDGER									
				CREDIT			DEBIT			BALANCE			
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST	
Opening Bal											45,000	8,000	8,000
APR	70,000	40,000	40,000	35,000	30,000	30,000	80,000	35,000	35,000	-	3,000	3,000	
MAY	30,000	20,000	20,000	25,000	17,000	17,000	25,000	20,000	20,000	-	-	-	
JUN	45,000	50,000	50,000	65,000	25,000	25,000	65,000	25,000	25,000	-	-	-	

The interest computation for the above delay filing of Form GSTR 3B.

→ **Apr**

Let us find out the cash-payout:

TAX HEAD	PAYABLE	PAID THROUGH ITC			CASH PAYOUT
		IGST	CGST	SGST	
IGST	70,000	70,000	-	-	-
CGST	40,000	5,000	35,000		-
SGST	40,000	5,000		35,000	-

The Cash-payout is Zero. Hence no Interest is payable.

→ **May**

Let us find out the cash-payout:

TAX HEAD	PAYABLE	PAID THROUGH ITC			CASH PAYOUT
		IGST	CGST	SGST	
IGST	30,000	25,000	-	-	5,000
CGST	20,000	-	20,000		-
SGST	20,000	-		20,000	-

For the month of May, Mr. Ace Ventura is liable to pay interest under the head IGST only. The interest is to be calculated in the following manner:

$$\text{IGST} = ` 5,000.00 \times 10 / 365 \times 18 / 100 = ` 24.66$$

→ **June**

Let us find out the cash-payout:

TAX HEAD	PAYABLE	PAID THROUGH ITC			CASH PAYOUT
		IGST	CGST	SGST	
IGST	45,000	45,000	-	-	-
CGST	50,000	10,000	25,000		15,000
SGST	50,000	10,000		25,000	15,000

For the month of June, interest is payable only under the head CGST & SGST and the same is to be calculated in the following manner:

$$\text{CGST} = 15,000 \times 10 / 365 \times 18 / 100 = ₹ 74.00$$

$$\text{SGST} = 15,000 \times 10 / 365 \times 18 / 100 = ₹ 74.00$$

ILLUSTRATION – 2:

Mr. Ace Ventura inadvertently missed to report the turnover and pay taxes for the month of September in Form GSTR 3B; However, he wants to pay the same voluntarily.

The interest will be calculated from the due date of filing of the September month's return till the date of payment on the entire pay-out.

3. Sections 73(5) & 73(6) provides that if the tax along with interest has been paid, the adjudicating authority shall not serve any show cause notice.
4. Section 73(8) provides that where a person has been served with show cause notice but has made the payment of tax and interest under section 50 within thirty (30) days of issue of notice, no penalty is payable and all proceedings in respect of that tax amount are deemed to be concluded.
5. On a conjoint reading of sections 50 (1), 73 (5), 73 (6) and 73 (8) of the Act, it is evident that where a person makes a voluntary payment of interest along with belated payment of tax whether admitted on his own or within thirty days from the date of issue of show cause notice, then the proceedings are deemed to be concluded and no penalty shall be payable.

Other Important Points to Note

1. The term 'tax' here means the tax payable under the Act or Rules made thereunder.
2. The phrase 'on his own' used in sub-section (1) of section 50 indicates that such payment of interest should be made voluntarily (i.e.) even without a demand.
3. The interest payable under this section shall be debited to the Electronic Liability Register as per sub-rule 1 of rule 85.
4. Such liability for interest can be settled by adjustment with balance in Electronic Cash Ledger but not with balance in Electronic Credit Ledger.

50.3 Issues and Concerns:

When there is change in the value of input tax credit (common credit) to be reversed to the extent it relates to exempt turnover on the basis of amounts calculated finally at the end of the financial year is liable to interest immediately from first day of subsequent financial year, whereas the Central Excise Act, 1944, Finance Act 1994 read with CENVAT Credit Rules, 2004 allowed time for reversal without interest upto 30th June of the subsequent financial year.

In previous law, amount paid by challan was considered to be a payment of tax and interest is payable till the amount is paid through challan. In GST, interest is to be paid till the tax is debited from electronic cash or electronic credit ledgers. Electronic cash ledger is just an e-wallet where cash can be deposited at any time by creating requisite challans. Amount deposited in electronic cash ledger, can be claimed as refund at any time by following procedure prescribed under GST Act. Hence, as per provisions of section 39(7) read with section 49, any deposit in Electronic Credit Ledger prior to due date of filing GSTR 3B does not amount to discharge of tax liability and interest is payable for delay in filing of returns beyond due date. [*RSB Transmissions (India) Ltd. vs. Union of India*] - W.P.(T) No. 23 of 2022 – Jharkhand HC]

50.4 FAQs

Q1. When is a person liable to pay interest?

Ans. When a person who is liable to pay tax under the provisions of the Act or the respective rules made thereunder, fails to pay the whole/ part of the tax due, to the account of the Government, within the prescribed time, he shall be liable to pay interest.

Q2. How is the interest computed under section 50(1)?

Ans. Interest is computed for the period for which the tax remains unpaid at 18%, i.e., from the date following the day on which tax becomes due to be paid, till the date of payment of tax.

Q3. Is penalty still payable if a person pays the tax and interest as per show cause notice?

Ans. Where the person has made payment of tax and interest under Section 50 within thirty days of issue of the show cause notice, no penalty is payable and all proceedings in respect of that tax amount is deemed to be concluded.

Q4. Is a show cause notice or demand required to determine the liability to pay interest?

Ans. No, there is no requirement of demand from the Department to determine the interest liability. It is the responsibility of the person liable to pay tax to compute and pay the interest 'on his own'. Though this was the general understanding, it has been held in *Mahadeo Construction Co. Vs Union of India (Jharkhand High Court) 2019 (30) G.S.T.L. J54 (Jharkhand) [24-07-2019] dated 21.04.2020 and Union of India vs LC Infra Projects Pvt. Ltd 2021 (44) G.S.T.L. 60*, that even interest recovery can be initiated only after adjudication.

50.5 MCQs

Q1. Interest is payable on: -

- (a) Belated payment of tax
- (b) Wrong availment of input tax credit
- (c) Wrong availment and utilization of input tax credit
- (d) Both (a) and (c)

Ans. (d) Both (a) and (c)

Q2. Interest on tax due is calculated: -

- (a) From the date following the day on which tax becomes due to be paid
- (b) Last day such tax was due to be paid
- (c) No periods specified
- (d) None of the above

Ans. (a) From the date following the day on which tax becomes due to be paid

Statutory provisions

51. Tax Deduction at Source

- (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate, —
- (a) a department or establishment of the Central Government or State Government; or
 - (b) local authority; or
 - (c) Governmental agencies; or
 - (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,
- (hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent from the payment made or credited to the

supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation. —For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

- (2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.
- (3) ³⁶[A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.]
- (4) ~~³⁷[If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five day period until the failure is rectified, subject to a maximum amount of five thousand rupees].~~
- (5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.
- (6) If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.
- (7) The determination of the amount in default under this section shall be

³⁶ Substituted vide The Finance Act, 2020 read with Notf No. 92/2020-C.T., dt. 22.12.2020 w.e.f. 01.01.2021.

³⁷ Omitted vide The Finance Act, 2020 read with Notf No. 92/2020-C.T., dt. 22.12.2020 w.e.f. 01.01.2021, before it was read as, "(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees."

made in the manner specified in section 73 or section 74.

- (8) *The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:*

Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

Extract of the CGST Rules, 2017

66. Form and manner of submission of return by a person required to deduct tax at source

- (1) *Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in FORM GSTR-7 electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.*
- (2) *The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the ³⁸[deductees] ³⁹[suppliers in ~~Part C of FORM GSTR-2A and FORM GSTR-4A~~] on the common portal after ⁴⁰[the due date of] filing of FORM GSTR-7 ⁴¹[for claiming the amount of tax deducted in his electronic cash ledger after validation].*
- (3) *The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in FORM GSTR-7A on the basis of the return furnished under sub-rule (1).*

87. Electronic Cash Ledger

- (9) *Any amount deducted under section 51 or collected under section 52 and claimed ⁴²[in ~~FORM GSTR-02~~] by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger ⁴³[in ~~accordance with the provisions of rule 87~~].*

³⁸ Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019.

³⁹ Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019, w.e.f. 28.6.2019, before it was read as "the due date of"

⁴⁰ Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019, w.e.f. 28.6.2019, before it was read as "the due date of"

⁴¹ Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019.

⁴² Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019.

⁴³ Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019.

Related provisions of the Statute

Section or Rule	Description
Section 2(43)	Definition of 'Electronic Cash Ledger'
Section 2(53)	Definition of 'Government'
Section 2(82)	Definition of 'Output Tax'
Section 2(94)	Definition of 'Registered Person'
Section 2(97)	Definition of 'Return'
Section 2(117)	Definition of 'Valid Return'
Section 49	Payment of tax, interest, penalty and other amounts
Section 39	Furnishing of Returns

51.1 Introduction

With an objective of ensuring smooth rollout of GST, the provisions of Tax Deduction at Source (TDS) (Section 51 of the CGST / SGST Act, 2017) and Tax Collection at Source (Section 52 of the CGST/SGST Act, 2017) were postponed.

This is not out of place to mention that a TDS deductor has to compulsorily register without any threshold limit and whether or not separately registered under the Act. The deductor has the privilege of obtaining registration under GST without having required to obtain PAN. He can obtain registration using his Tax Deduction and Collection Account Number (TAN) issued under the Income Tax Act, 1961.

Moreover, by virtue of *Notification No. 33/2017 – Central Tax dated 15.09.2017* read with *Notification No. 50/2018-C.T., dated 13.09.2018*, section 51 (provisions related to TDS) come into force w.e.f. 01.10.2018 and notifies the following persons under Section 51(1)(d) as liable for TDS:

- (a) an authority or a board or any other body, -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government,
 - with fifty-one percent or more participation by way of equity or control, to carry out any function;
- (b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;
- (c) public sector undertakings:

Reference may be had to *CBIC Circular No. 76/50/2018-GST, dated 31.12.2018* which makes it clear that the 51% condition is applicable to both

limbs of 'authority or board' appearing in notification issued under section 51(1)(d) [under para (a) above].

This section provides for deduction of tax at source in certain circumstances. The section specifically lists out the deductors who are mandated by the Central Government to deduct tax at source and the rate of tax deduction and the procedure for remittance of the tax deducted. The amount of tax deducted is reflected in the Electronic Cash Ledger of the deductee.

51.2 Analysis

The CGST Act *vide* section 2 (53) defines the term 'Government' to mean the Central Government. Section 51(1) *ibid* refers to TDS related mandating by 'Government' (Central/State Government). Such mandating shall be for the following persons -

Department or Establishment of Central Government or State Government
Local Authority.
Government Agencies.
Persons or category of persons notified by the Central Government on recommendation of the Council. (Notified <i>vide Notification No. 33/2017 – Central Tax dated 15.09.2017</i> read with <i>Notification No. 50/2018-C.T., dated 13.09.2018</i>)

1. The above 'persons' are referred to as deductors.
2. The deductors have to deduct tax at the rate of 1% CGST & 1% SGST or 2% IGST from the payment made or credited to the supplier of taxable goods and / or services, notified by the Central Government or State Government on the recommendations of the Council. Deduction is required where the total value of supply under 'a contract' exceeds ` 2.5 lakhs.

Value of supply shall exclude the tax indicated in the invoice.

No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient. This is because sub-rule (9) of rule 87 of the CGST rules provides that payment of TDS shall be made by debiting the electronic cash ledger and crediting the electronic tax liability register. And when supply would be intra supply exigible to Central tax and State tax, transfer of TDS (CGST + SGST of one State say Delhi) to cash ledger of the supplier

(CGST + SGST of other State say Mumbai) will be cumbersome. Therefore, no TDS will be deducted in such case.

3. TDS applies on 'taxable goods or services' supplied and not on 'all taxable supplies'. Please note that 'taxable supplies' is defined in section 2(108) of CGST Act which covers all supplies that are 'leviable' to tax (even if exempt by notification under section 11 of the CGST Act). But, 'taxable goods and services' requires inquiry into whether the goods or services are taxable or exempt. If they are exempt, then TDS will not apply.
4. The amount deducted shall be paid to the Central Government within 10 days after the end of the month in which such deduction is made.

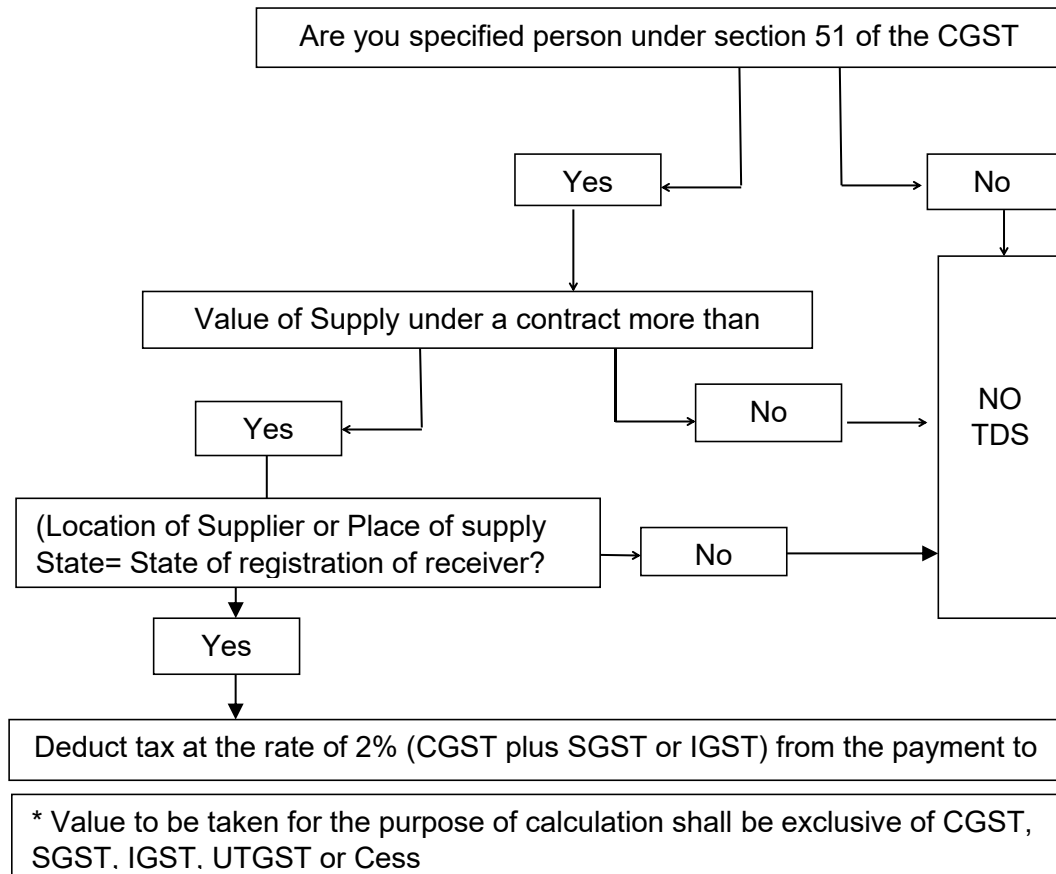
As per rule 66, the TDS certificate in **FORM GSTR-7A shall be made available** to the deductee on the common portal.

The amount need to be accepted by the deductee in common portal only after which the cash ledger will get credited with the amount of tax deducted.

7. Non-remittance by the deductor: If the deductor does not remit the amount deducted as TDS, he is liable to pay penal interest under section 50 in addition to the amount of tax deducted.
8. The amount of tax deducted and reported in the return in **FORM GSTR-7** by the deductor shall reflect in Electronic Cash Ledger of deductee once it is claimed as credit to the Electronic Cash Ledger by the deductee.

This provision enables the Government to cross-check whether the amount deducted by the deductor is correct and that there is no mismatch between the amounts reflected in the Electronic Cash Ledger as reflected in the return filed by deductor. One may draw easy analogy from existing practice in income tax related E-TDS returns filed by deductor and Form 26AS statement available for viewing the TDS remitted in respect of his transactions by deductee.

9. Refund on excess collection: The deductor or the deductee can claim refund of excess deduction or erroneous deduction. The provisions of section 54 relating to refunds would apply in such cases. However, if the amount deducted has been credited to the Electronic Cash Ledger of the deductee, the deductor cannot claim refund (only deductee can claim).



10. The IGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Deduction at Source *mutatis mutandis* (Ref: Section 20 of IGST Act).
11. The UTGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Deduction at Source *mutatis mutandis* (Ref: Section 21 of UTGST Act).
12. IMPORTANT NOTIFICATIONS:
 - *Notification No. 50/2018-CT dated 13.9.2018* (as amended) – TDS provision do not apply:
 - Authorities under the Ministry of Defence, other than the authorities specified in the Annexure-A and their offices (*Notification No. 57/2018 C.T. dated 23.10.2018*) w.e.f. 01.10.2018.
 - When supply is between PSU (Public Sector Undertaking) to another PSU (*Notification No 61/2018 C.T. dated 05.11.2018*)

w.e.f. 01.10.2018.

- When supply is between persons specified in clauses (a) to (d) of section 51(1) of CGST Act, 2017 (*Notification No 73/2018 C.T. dated 31.12.2018*) w.e.f.31.12.2018.

51.3 FAQs

Q1. Who are the 'persons' who can deduct tax at source under Section 51 of the CGST Act?

Ans. The following persons are required to deduct tax at source as per the provisions of Section 51 of the CGST Act:

- (a) A Department or establishment of the Central or State Government- In this regard, *Notification No. 57/2018-C.T., dated 23-10-2018* enlist the authorities of Ministry of Defence to which TDS is applicable.
- (b) Local authority,
- (c) Governmental agencies,
- (d) an authority or a board or any other body -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government, with 51 % or more participation by way of equity or control, to carry out any function;
- (e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860.
- (f) Public sector undertakings:
- (g) Such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council.

Q.2 State the necessary condition which attract TDS provision as per section 51 of the CGST Act?

Ans. The deductors under section 51 are required to deduct tax from the payment made or credited to the supplier of taxable goods and/ or services, notified by the Central Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds ` 2.50 lakhs. Also, no deduction will be made if, the location of

supplier and the place of supply are in a State which is different from the State of registration of the recipient.

Q3. What is the rate of TDS?

Ans. The prescribed rate of tax to be deducted at source is 1% CGST plus 1% SGST or 2% IGST from the payment made or credited to the supplier of taxable goods and / or services.

Q4. What is the time limit for remittance of the deducted tax by the deductor into the credit of the Government?

Ans. The amount deducted shall be paid to the credit of the Government within 10 days from the end of the month in which such deduction is made.

Q5. Can the deductee claim credit of the remittance of TDS amount by the Deductor?

Ans. Yes, the deductee can claim credit of the tax deducted, in his electronic cash ledger.

Q6. Can tax, once deducted, be claimed as a refund? Who can claim refund?

Ans. Yes, it is possible to claim refund arising on account of excess or erroneous deduction, and this would be governed by the provisions of section 54.

Such refund may be claimed either by the deductor or the deductee, but not both. Further, no refund would be available to the deductor once the amount deducted has been credited to the electronic cash ledger of the deductee.

Q7. When is the effective date of applicability of TDS provisions?

Ans. 1st Oct 2018 is the effective date for applicability of TDS provisions.

Q8. Whether TDS is liable to be deducted on supply of goods &/or services from one PSU to another PSU?

Ans. No. TDS is not liable to be deducted by one PSU on another PSU retrospectively from 1st October 2018 as per the *Notification 61/2018 CT, dated 05.11.2018*.

Q9. Whether TDS is liable to be deducted on supply of goods &/or services place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of Section 51 of the CGST Act?

Ans. No. TDS is not liable to be deducted on supply of goods &/or services place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of Section 51 of the CGST Act. In other

words, provisions of TDS will not apply to supply of goods or services or both which takes place between one person to another person under department or establishment of Central or State Government or local authority or Government Agencies or such persons or category of persons notified by GST Council, with effect from 31.12.2018 as per the [Notification No. 73/2018-C.T., dated 31.12.2018].

Q.10 Whether TDS is liable to be deducted on the rate contract where single supply is below INR 2.5 Lacs but during the year cumulative supplies are more than INR 2.5 Lacs.

Ans. No. In case of rate contract, it is for the applicable rates for different supply and not contract per se. In such cases where single supply is not greater than INR 2.5 Lacs no need to deduct TDS.

51.6 MCQs

Q1. The deduction of tax by the Deductor under section 51 of CGST Act is at the rate of:

- (a) 2%
- (b) 3%
- (c) 1%
- (d) None of the above.

Ans. (c) 1%

Q2. The amount of tax deducted by the deductor has to be paid to the credit of the appropriate Government within days after the end of the month in which such deduction is made:

- (a) 20 days
- (b) 10 days
- (c) 15 days
- (d) 5 days

Ans. (b) 10 days

Q3. The deductee can claim credit of the remittance made by the Deductor in his,

- (a) Electronic Credit Ledger
- (b) Tax liability Ledger
- (c) Electronic Cash Ledger
- (d) None of the above.

Ans. (c) Electronic Cash Ledger

Q4. If excess or erroneous deduction has been made by the Deductor and this amount is credited to Electronic Cash Ledger of the Deductee, refund can be claimed by,

- (a) Deductor
- (b) Deductee
- (c) Both Deductor and Deductee
- (d) None of the above

Ans. (b) Deductee

Q5. Tax deduction shall be made if -

- (a) A contract is for an amount exceeds ` 25 lakh
- (b) A supplier supplies goods or services or both exceeding ` 2.5 lakh under a contract
- (c) A recipient receives goods or services or both exceeding ` 2.5 lakh in a year from various contractors
- (d) None of the above

Ans. (b) A supplier supplies goods or services or both exceeding ` 2.5 lakh under a contract

Statutory provisions

52. Collection of tax at Source

(1) *Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, 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 sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during

the said month.

- (2) *The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.*
- (3) *The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.*
- (4) *Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.*

⁴⁴[Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner]

⁴⁵[Explanation. —For the purposes of this sub-section, it is hereby declared that the due date for furnishing the said statement for the months of October, November and December, 2018 shall be the ⁴⁶[7th February, 2019]]

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

⁴⁴ Inserted vide The Finance (No. 2) Act, 2019 read with Notf No. 1/2020-C.T., dt. 01.01.2020 w.e.f. 01.01.2020.

⁴⁵ Inserted vide CGST (Removal of Difficulties) order, 2018, Order No. 04/2018-CT dt. 31.12.2018.

⁴⁶ Substituted for "31st January, 2019" vide Order No.02/2019-Central Tax dated 01.02.2019.

⁴⁷[Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]

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

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the ⁴⁸[thirtieth day of November] following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

- (7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.
- (8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.
- (9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under ⁴⁹[section 37 or section 39], the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

⁴⁷ Inserted vide The Finance (No. 2) Act, 2019 read with Notf No. 1/2020-C.T., dt. 01.01.2020 w.e.f. 01.01.2020.

⁴⁸ Substituted vide The Finance Act, 2022, notified through Notf No. 18/2022 – CT dated 28.09.2022, w.e.f. 1st October, 2022, for “due date for furnishing of statement for the month of September”.

⁴⁹ Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 read with Notf No. 2/2019-C.T. dt. 29-1-2019 - w.e.f. 01.02.2019.

- (10) *The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.*
- (11) *The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.*
- (12) *Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—*
- (a) *supplies of goods or services or both effected through such operator during any period; or*
 - (b) *stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.*
- (13) *Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.*
- (14) *Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.*
- ⁵⁰[(15) *The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement:*
- Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after*

⁵⁰ Inserted by The Finance Act, 2023 dated 31.03.2023, notified through Notf 28/2023-CT dated 31.07.2023, w.e.f. 01.10.2023.

the expiry of the said period of three years from the due date of furnishing the said statement.]

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

Extract of Relevant CGST Rules

60. Form and manner of ascertaining details of inward supplies

(1) *The details of outward supplies furnished by the supplier in **FORM GSTR-1** or using the IFF shall be made available electronically to the concerned registered persons (recipients) in **Part A** of **FORM GSTR-2A**, in **FORM GSTR-4A** and in **FORM GSTR-6A** through the common portal, as the case may be.*

.....

(5) *The details of tax collected at source furnished by an e-commerce operator under section 52 in **FORM GSTR-8** shall be made available to the concerned person in **Part C** of **FORM GSTR 2A** electronically through the common portal.*

67. Form and manner of submission of statement of supplies through an e-commerce operator

(1) *Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in **FORM GSTR-8** electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.*

(2) ⁵¹*[The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers]* ⁵²*[in ~~Part C~~ of ~~FORM GSTR-2A~~]* on the common portal after ⁵³*[the due date of]* filing of **FORM GSTR-8** ⁵⁴*[for claiming the amount of tax collected in*

⁵¹ Substituted vide Notf No. 38/2023- CT dated 04.08.2023, w.e.f. 01.10.2023 before it was read as, "The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers".

⁵² Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019, w.e.f.28.06.2019, before it was read as "in Part C of FORM GSTR-2A"

⁵³ Omitted vide Notf No. 31/2019 – CT dt. 28.06.2019, w.e.f. 28.06.2019, before it was read as "the due date of".

⁵⁴ Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019, w.e.f. 28.06.2019.

his electronic cash ledger after validation].

80. Annual return

- (1) *Every registered person, other than those referred to in the second proviso to section 44, 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 as specified under section 44 electronically in **FORM GSTR-9** on or before the thirty-first day of December following the end of such financial year through the common portal either directly or through a Facilitation Centre notified by the Commissioner:*

Provided that a person paying tax under section 10 shall furnish the annual return in

FORM GSTR-9A.

- ⁵⁵[(1A) *Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021 the said annual return shall be furnished on or before the twenty-eighth day of February, 2022.]*

- (2) *Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in **FORM GSTR - 9B**.*

- (3)

Related provisions of the Statute

Section or Rule	Description
Section 2(45)	Definition of 'Electronic Commerce Operator'
Section 2(82)	Definition of 'Output Tax'
Section 2(94)	Definition of 'Registered Person'
Section 24	Compulsory registration in certain cases
Section 49	Payment of tax, interest, penalty and other amounts
Section 50	Interest on delayed payment of tax
Section 122	Penalty for certain offences

52.1 Introduction

This section provides for collection of tax at source (TCS) in certain circumstances. The section specifically lists out the tax collecting persons

⁵⁵ *Inserted vide Notf No. 40/2021-CT dated 29.12.2021.*

who are mandated by the Central Government to collect tax at source, the rate of tax collection and the procedure for remittance of the tax collected. The amount of tax collected is reflected in the Electronic Cash Ledger of the person from whom tax collected.

It is important to mention here that every electronic commerce operator (“e-commerce operator”) who is required to collect tax at source under section 52 is required to compulsorily register under GST Law. Even the persons who supply goods or services or both, other than supplies specified under section 9(5), through such e-commerce operator have to obtain compulsory registration as per section 24 of the CGST Act.

Provisions which are common under CGST, UTGST and SGST Act have been analyzed herein.

52.2 Analysis

- (i) Every E-Commerce Operator, not being an agent, shall collect TCS at a rate not exceeding 1% of the ‘net value of taxable supplies’ in which he collects consideration of the supply. Where “*net value of taxable supplies*” shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Please note that if there is return of supplies to Suppliers, then the same shall be reduced from the gross value; TCS shall be worked on such net figure only (after such reduction).

However, TCS will be collected by the E-commerce operator at the rate of 0.5% under each of CGST and SGST/UTGST Act and at 1% under IGST Act vide *Notification No.: 52/2018-Central tax dated 20.09.2018* and *02/2018-Integrated Tax dated 20.09.2018*.

It is pertinent to note the following definitions here –

Section 2 (44), –

“electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network;

Section 2 (45), –

“electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

From the above definitions, it can be inferred that **TCS refers to the tax collected by e-commerce operator when supplier supplies taxable**

goods or services or both **through its portal and payment** for that supply is **collected by the e-commerce operator**.

In view of the above, Mr. X, a supplier selling his own products through website hosted by him will not be liable to TDS. Even, in case where Mr. Y a supplier who purchase goods from different vendors and sell them through his website under his own billing, no TDS is applicable.

- (ii) The power to collect TDS by E-commerce operator shall be without prejudice to any other mode of recovery.
- (iii) The amount so collected shall be paid to the Central/State Government respectively within 10 days after the end of the month in which such collection is made.
- (iv) Statements to be submitted by E-Commerce operator: E-Commerce operator shall furnish a monthly statement containing details of outward supplies of goods or services or both made through it, including the supplies returned through it and the amount collected by it in section 52(1), in **FORM GSTR-8** within the 10 days after end of the month in which supplies are made.

The details of TCS furnished by an E-commerce operator under section 52 in **FORM GSTR-8** shall be made available to the supplier in Part C of **FORM GSTR - 2A** electronically through the Common Portal

Section 52 (5) of the CGST Act requires filing of Annual Statement by E-Commerce operator on or before 31st December following the year end (31st March of relevant year).

Please note that the Commissioner is empowered to extend the due date of furnishing the monthly and annual statement by the person collecting TCS, with reason to be recorded in writing. Any such extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

- (v) The amount of tax collected is reflected in Electronic Cash Ledger of supplier since related monthly return is filed by E-Commerce Operator.
- (vi) Any mismatch between the data submitted by the E-Commerce operator in his monthly returns and that of suppliers making supplies through him shall cause due 'mismatch enquiry' from the proper officer; and either party may rectify the erroneous data. If rectification is not carried out by supplier, his offences get confirmed. Short remittance, if any, identified thus will have to be paid by erring supplier (who under reported the turnover) with interest calculated as per Section 50.

The law explicitly stated that the E-Commerce operator after furnishing an annual statement discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest under section 50(1).

- (vii) Any authority, in the rank of Deputy Commissioner or above it can issue a notice – during, or before a proceeding under this Act - to E-Commerce Operator seeking information on –
- A. supplies of goods or services or both effected through such operator during any period; or
 - B. stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

This shall be a notice which needs to be responded within 15 days from the date of receipt by the E Commerce Operator. Failure to submit the required details will cause penalty under section 52 (14) of the Act which may extend to ₹. 25,000.

- (viii) Requirement of mandatory registration waived for persons supplying goods through an ECO, notified through *Notification No. 34/2023 dated 31.07.2023*, w.e.f. 01.10.2023.

Exercising the power under section 23(2) of the CGST Act, 2017, the Central Government has specified the persons making supply of goods through an electronic commerce operator (ECO) who is required to collect tax at source under section 52 of the CGST Act, 2017 and having an aggregate turnover in the preceding and current financial year not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State/Union territory, as the category of persons exempted from obtaining registration, subject to the following conditions:

1. such persons shall not make any inter-state supply of goods;
2. such person shall not make supply of goods through ECO in more than one State or Union Territory;
3. such persons shall be required to have PAN under Income Tax Act, 1947 and will have to declare the same on the portal along with the

address of the place of business and the State or Union territory in which he seeks to make such supply, which shall be subject to validation on the common portal;

4. on successful validation of the details furnished, such person will be granted an enrolment number on the portal. Such persons shall not be granted more than one enrolment number in a State or Union Territory;
 5. no supplies shall be made by the persons through ECO unless he has obtained the enrolment number.
 6. Where such persons are subsequently granted registration under section 25 of the CGST Act, the enrolment number shall cease to be valid from the effective date of registration.
- (ix) Special procedure has been notified through *Notification No. 36/2023 dated 04.08.2023*, w.e.f. 01.10.2023 to be followed by the ECO required to collect tax at source u/s 52 in respect of goods supplied through by a composition taxpayer as follows:
1. It shall not allow any inter-State supply of goods made through it by the said persons;
 2. It shall collect tax at source under section 52(1) in respect of supply of goods made through it by the said persons and pay to the Government as per provisions of 52(3);
 3. It shall furnish the details of supplies of goods made through it by the said persons in Form GSTR-8 electronically on the common portal.
- (x) Special procedure has been notified through *Notification No. 37/2023 dated 04.08.2023*, w.e.f. 01.10.2023 to be followed by the ECO. who is required to collect tax at source u/s 52 of CGST Act, 2017 in respect of supplies of goods through them by unregistered persons, as follows:
1. The electronic commerce operator shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;
 2. It shall not allow any inter-State supply of goods made through it by the said person;
 3. It shall not collect tax at source under section 52(1) in respect of supply of goods made through it by the said person; and

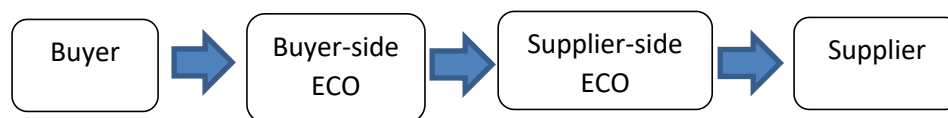
4. It shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Where multiple electronic commerce operators are involved in a single supply of goods through electronic commerce operator platform, “the electronic commerce operator” shall mean the electronic commerce operator who finally releases the payment to the said person for the said supply made by the said person through him.

- (xi) Clarification vide “Circular No. 194/06/2023-GST dated 17.7.2023” on TCS liability under section 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction.

In case of ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO. In this context, clarity has been sought as to which ECO should deduct TCS and make other compliances under section 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per section 2(45) of the CGST Act.

Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?



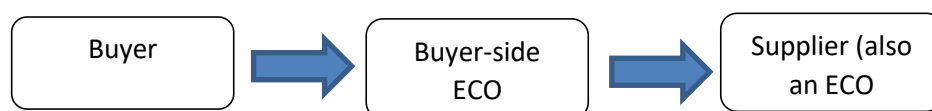
Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances under section 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the

Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Issue 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances under section 52 including collection of TCS?



Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in section 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 of CGST Act and also make other compliances under section 52 of CGST Act.

(xii) PENALTY:

A. In case, the E-commerce operator -

- fails to collect to tax under section 52(1), or
- collects an amount which is less than the amount required to be collected under section 52(1), or
- where he fails to pay to the government the amount collected as tax under section 52(3)

then pursuant to section 122(1)(vi) of the CGST Act, such e-commerce operator shall be liable to pay a penalty of ` 10,000 or

an amount equivalent to the tax not collected or short collected or collected but not paid to the Government whichever is higher.

- B. In terms of section 52(13), where notice served under section 52(12) by an authority not below the rank of Deputy Commissioner is not responded within 15 days from the date of receipt by the E Commerce Operator, will attract under Section 52 (14) of the Act which may extend to ₹. 25,000.
- C. A new sub-section (1B) has been introduced in section 122 by *The Finance Act, 2023*, applicable w.e.f. 01.10.2023. This sub-section imposes a penalty of ₹ 10,000 in case of non-compliance of specified provisions.

“As per section 122(1B), any electronic commerce operator who—

- (i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
- (ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or
- (iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher”.

- (xiii) The UTGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Collection at Source *mutatis mutandis* (Ref: Section 21 of UTGST Act).

The IGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Deduction at Source *mutatis mutandis* (Ref: Section 20 of IGST Act).

52.3 FAQs

- Q1. Who are the ‘persons’ liable to make collection of tax under section 52 of the CGST Act?

Ans. E Commerce operator [as defined in Section 2(45)] is the person liable to collect the tax on net value of taxable supplies by him/her.

Q2. What is Net Value of Taxable Supplies for the purpose of TCS under section 52 of the CGST Act?

Ans. The expression "*net value of taxable supplies*" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the supplier during the said month.

Q3. Which format of monthly return has to be filed by E Commerce Operator?

Ans. E Commerce operator shall use **FORM GSTR 8** to make statement of outward supplies made through him in that particular month.

Q4. Whether an E Commerce operator files any annual statement? What is the format thereof?

Ans. Section 52(5) of the CGST Act requires filing of Annual statement by E Commerce operator on or before 31st December following the year end (31st March of relevant year). **FORM GSTR-9B**, has not been notified yet.

Q5. What is the penalty if an E Commerce operator failed to respond as required in a notice issued by Deputy Commissioner or an officer of higher rank?

Ans. Failure to submit the required details will cause penalty under section 52 (14) of the Act upto ` 25,000. In addition to this, penalty under section 122 of the Act 'shall' also be there (`10,000 or the amount of TCS involved, whichever is higher).

52.4 MCQs

Q1. Tax is to be collected by the E-commerce operator under the CGST Act at the rate of:

- (a) 1%
- (b) 2%
- (c) 0.5%
- (d) A percentage not exceeding 1%.

Ans. (c) 0.5%

Q2. The amount of tax collected by the E Commerce Operator has to be paid to the credit of the appropriate Government within days after the end of the month in which such TCS is made:

- (a) 5 days
- (b) 10 days
- (c) 15 days
- (d) 20 days

Ans. (b) 10 days

Q3. E Commerce operators should file:

- (a) Monthly returns only
- (b) Annual return only
- (c) Quarterly return only
- (d) Monthly Returns as well as Annual Return

Ans. (d) Monthly Returns as well as Annual Return

Q4. A notice to E Commerce operator seeking information can be issued by:

- (a) Superintendent
- (b) Inspector
- (c) Assistant Commissioner
- (d) Deputy Commissioner

Ans. (d) Deputy Commissioner

Q5. E Commerce operator received notice which sought information as per section 52 of the CGST Act but he failed to duly respond to the same. The penalty -

- (a) Shall not be there
- (b) Penalty under section 52 shall be there
- (c) Penalty under section 122 may be there
- (d) Both the penalty u/s 52 as well as 122 shall be there

Ans. (d) Both the penalty u/s 52 as well as 122 shall be there

Statutory provisions**53. Transfer of input tax credit**

On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.

Related provisions of the Statute

Section or Rule	Description
Section 2(53)	Definition of 'Government'
Section 2(62)	Definition of 'Input Tax'
Section 2(82)	Definition of 'Output Tax'
Section 2(94)	Definition of 'Registered Person'
Section 39	Furnishing of returns
Section 49	Payment of tax, interest, penalty and other amounts
Section 17 (IGST)	Apportionment of tax and settlement of funds

53.1 Introduction

This section provides simple but important modus operandi in respect of post CGST/ SGST/UTGST utilisation towards IGST liability.

53.2 Analysis

Under section 49(5),(b),(c) and (d) of the Act, CGST / SGST / UTGST credits can be utilised by a taxpayer on priority basis to respective CGST / SGST / UTGST dues first. Then, in case of CGST/SGST/UTGST, balance, if any, can be used to pay IGST.

As per section 53, if the amount of CGST is utilized for payment of IGST, there shall be reduction in CGST, equal to the credit so utilized and the Central Government shall transfer such amount to IGST account.

Such treatment shall be ensured by the Central Government for UTGST and SGST also in respective cases.

For better clarity, it may please be noted that equivalent provision is there *vide* section 18 of Integrated Goods and Services Tax Act 2017. Accordingly, if the amount of IGST is utilized towards CGST / UTGST liability, there shall be reduction in the amount of IGST equal to the credit so utilised and the Central Government shall transfer such amount to IGST account.

If the amount of IGST is utilized towards SGST liability, there shall be reduction in the amount of IGST equal to the credit so utilised and such amount will be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the respective State Government.

53.3 FAQ

Q1. If CGST is utilised to pay towards dues of IGST how the Central Government shall ensure due credit to IGST?

Ans. There shall be reduction in CGST on such utilisation; the Central Government shall transfer equivalent amount to the credit of IGST account.

Q2. If IGST is utilised to pay towards dues of SGST, how the Central Government shall ensure due credit to State Government?

Ans. The IGST amount utilised towards dues of SGST shall be transferred by the Central Government to the respective State Governments from the IGST Account.

53.4 MCQ

Q1. Section 53 of CGST/SGST Act, 2017 provides for transfer of amount (equivalent to CGST credit utilised) by Central Government to

- (a) CGST A/c
- (b) SGST A/c
- (c) UTGST A/c
- (d) IGST A/c

Ans. (d) IGST A/c

Statutory Provisions

⁵⁶[53A. Transfer of certain amounts

Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union territory Goods and Services Tax Act, the Government shall, transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.]

Section 17A of the IGST Act, 2017**⁵⁷[17A. Transfer of certain amounts**

Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the Government shall transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time, as may be prescribed.]

53A.1 Analysis

Section 53A of the CGST Act, 2017 and section 17A of the IGST Act, 2017, has been inserted with effect from 01.01.2020 to provide, the registered person, for transfer the amount from one head to another head. The type of heads in GST is as follows:

Major Head -	Minor – Head				
CGST	Tax	Interest	Fee	Penalty	Others
SGST					
IGST					
Cess					

The above section provides the following transfers in the electronic cash ledger by using the **FORM GST PMT – 09**

→ from one minor head to another minor head under the same major head.

⁵⁶ Inserted vide *The Finance (No.2) Act, 2019 read with Notf No. 1/2020-C.T., dt. 01-01-2020 - w.e.f. 01.01.2020.*

⁵⁷ Inserted vide *The Finance (No.2) Act, 2019 read with Notf No. 1/2020-I.T., dt. 01-01-2020 - w.e.f. 01.01.2020.*

→ from one minor head to another minor head under the different major heads.

This enables a registered taxpayer to transfer any amount of tax, interest, penalty, etc. that is available in the e-cash ledger, to the appropriate minor head under IGST, CGST and SGST in the e-cash ledger. Hence, if a taxpayer has wrongly paid CGST instead of SGST, he can now rectify the same using **FORM GST PMT- 09** by reallocating the amount from the CGST head to the SGST. This facility has provided the registered person to file the returns without paying the additional taxes in case of wrong payment or excess balance paid earlier. Further, this is an alternative of filing a refund of excess cash balance in e-credit ledger.