

## Chapter 22

# Miscellaneous

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<sup>1</sup> Omitted vide Noff No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022.

<sup>2</sup> Substituted vide Noff No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022 for "It shall be the duty of the Authority".

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### Statutory Provisions

#### 143. Job Work Procedure

- (1) *A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall, —*
- (a) *bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;*
- (b) *supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:*
- Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—*
- (i) *where the job worker is registered under section 25; or*
- (ii) *where the principal is engaged in the supply of such goods as may be notified by the Commissioner.*
- <sup>3</sup>*[Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively]*
- (2) *The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.*
- (3) *Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.*
- (4) *Where the capital goods, other than moulds and dies, jigs and fixtures, or*

<sup>3</sup> Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 through Notf No. 02/2019-CT dt. 31.01.2019.

*tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.*

- (5) *Notwithstanding anything contained in sub-sections (1) and (2), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.*

*Explanation.—For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.*

#### Relevant Provisions of the Statute

Section or Rule (CGST / SGST)	Description
Section 2(19)	Definition of 'Capital Goods'
Section 2(52)	Definition of 'Goods'
Section 2(68)	Definition of 'Job-work'
Section 2(88)	Definition of 'Principal'
Section 2(94)	Definition of 'Registered Person'
Section 19	Taking input tax credit in respect of inputs and capital goods sent for job work
Rule 45	Conditions and restrictions in respect of inputs and capital goods sent to job worker (For discussion, refer chapter 6 on Input Tax Credit)

#### 143.1. Introduction

This section provides for a special procedure to exempt supplies from payment of GST by a Principal to a job worker and return from a job worker to a Principal subject to certain conditions and procedures.

In a business scenario, it may not be possible for an industry to carry out all processes for manufacture of the product within its own premises. In such an eventuality, the manufacturing unit will have to get the work done i.e.,

processing of the raw materials or intermediate product from other businesses. The process performed by a person on the goods belonging to another registered person is commonly understood as Job Work.

**Meaning of job work and job worker:** Section 2(68) of CGST Act, 2017 defines the meaning of the term 'job work'. In terms of the said provision, it means a person undertaking any treatment or processing of goods belonging to another registered person. Any person who executes such job work will be considered as "job worker". As per section 2(68), the job worker may or may not be registered but the Principal is required to be registered. For this reason, where the Principal is unregistered, the job worker will not qualify as such and not be eligible to apply rates of tax applicable to job work.

This definition is much wider than the one provided under Central Excise provisions (*Notification No. 214/86 – CE dated 23<sup>rd</sup> March, 1986*), wherein job-work has been defined in such a manner so as to ensure that the activity of job-work must amount to manufacture. However, the definition of job-work under GST laws reflects the change in basic scheme of taxation relating to job-work. Works such as fabrication, repair, etc which are not related to manufacture also gets included under the term "job work".

It is important to note that in job work, neither does Principal provide '100 per cent' of material required to constitute job work nor is the job-worker permitted to provide '100 per cent' of the material. There must be a balance and it is the key that Principal provides what constitutes the 'core' of the material on which job work is required to be carried out, to constitute job work.

### 143.2. Analysis

#### Definition of Job-work

The definition of job work contains three important phrases, namely:

- **treatment or process** – there is no requirement here that the result of the treatment or process must result in "emergence of a new product having a distinct name, character and use" (manufacture). This implies that whether or not the treatment or process results in manufacture, the treatment or process will always be treated as a supply of services when read along with paragraph 3, schedule II of the CGST Act viz., any treatment or process which is applied to another person's goods is a supply of services. However, irrespective of whether the treatment or process amounts to manufacture – resulting in a distinct new product – the process would amount to job work. Therefore, the services provided by the job-worker will be classified under HSN 9988 and treated as supply of services.

- **goods belonging to another person** – The basic requirement that could be considered, is that, on the one hand this requirement ought not to be understood that 100% of the goods required for the treatment or process must necessarily be provided by the principal and on the other hand it cannot be satisfied where non-essential or ancillary goods alone are provided by the principal and yet attempt to operate under the job work model. A reasonable approach demands that at least one, if not more, of the primary material must be provided by the principal where the intention is to secure the services of – treatment or process – offered by the job worker to be expended on these primary materials of the principal. The transaction would not fail to be a job work, when the job worker adds his own material, whether secondary or ancillary, but in addition to the primary material provided by the principal. And a case, where all goods other than the primary material are provided by the principal, care needs to be taken in making the decision as to whether it qualifies for the facility under section 143 and no one-size-fits-all answer should be attempted in this case.
- **such person being a registered person** – this is very interesting, that unless the principal is himself already registered, the entire transaction will fail to be job work. In other words, job work will be job work only if the principal is registered and if the principal is unregistered then, job work will merely be work. And the classification available for job work under HSN 9988 will not be available and other classification as appropriate to the processed goods will need to be followed.

#### **Sending of inputs or capital goods to job worker**

This provision enables a registered person to send inputs / capital goods under intimation and subject to such conditions as may be prescribed to a job worker without payment of tax. It is clarified vide *Circular No. 38/2018 dated 26.03.2018* as amended by *Circular No. 88/07/2019 dated 01.02.2019* that the details of job-work challans filed in Form GST ITC – 04 will itself serve as an intimation as envisaged under section 143(1). On this basis, it could be inferred that non-declaration of job-work challans mistakenly could be termed as non-intimation and accordingly, the exemption claimed under section 143(1) shall be denied. In such a scenario, the goods sent to job-worker will qualify as supply and the principal would be liable to pay GST along with interest.

A provision has been included vide *CGST (Amendment) Act, 2018* w.e.f. 01.02.2019 for extension of the said time limit to further period of one and two years respectively for inputs/capital goods on sufficient cause being shown with approval of commissioner. Some genuine job workers were facing

problems in situation such as hull construction, fabrication of vessels, etc, where the time period was not sufficient and hence the amendment was brought.

It is further clarified that the principal shall issue the challan in triplicate in terms of rule 45 and rule 55 for sending the goods for job-work and send two copies of the challan with the goods to a job-worker. The goods can be returned by the job-worker along with one challan and the job worker will retain the other. In case goods are sent from one job-worker to another, either the job-worker or the principal may issue a separate challan or alternatively, the original challan issued by the principal can be endorsed. It shall be noted here that the goods if sent in piecemeal, the job-worker shall issue a separate challan for returning the goods or to send it to another job-work.

Rule 55 of CGST Rules provides that transaction of goods sent for job work can be without an invoice, but a proper delivery challan containing specific details must be issued while sending goods to the job worker. Serial number of such delivery challan shall also be provided in Table 13 of GSTR 1.

The Circular referred to above has also clarified that the principal shall issue an invoice on the date on which the time period of one year / three years or the time period as extended by the Commissioner has lapsed and shall declare such invoice in the return filed for such tax period. It is further clarified that the date of sending the goods shall be termed as the date of supply and accordingly, the principal should pay the tax along with interest.

The details of the Delivery Challan shall be as follows:

- (i) date and number of the delivery challan,
- (ii) name, address and GSTIN of the consigner, if registered,
- (iii) name, address and GSTIN or UIN of the consignee, if registered,
- (iv) HSN code and description of goods,
- (v) quantity (provisional, where the exact quantity being supplied is not known),
- (vi) taxable value,
- (vii) tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee,
- (viii) place of supply, in case of inter-State movement, and
- (ix) signature.

The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner: –

- (a) the original copy being marked as ORIGINAL FOR CONSIGNEE;
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- (c) the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.

Where goods are being transported on a delivery challan in lieu of invoice, the principal should declare the details of goods and generate an e-way bill for movement of goods.

### Receipt of inputs or capital goods from the job worker after completion of job work or otherwise

After the processing of goods or otherwise, the goods may be dealt with in any of the following manner by the principal within 1 year/ 3 years or such further period as extended by the commissioner-

- (a) Brought back to any place of business without payment of tax and thereafter supplied,
  - (i) Within India on payment of tax,
  - (ii) For export - with or without payment of tax,
- (b) Supply from the place of business of job worker –
  - (i) Within India on payment of tax,
  - (ii) For export - with or without payment of tax,

### Direct Supply of goods from job worker

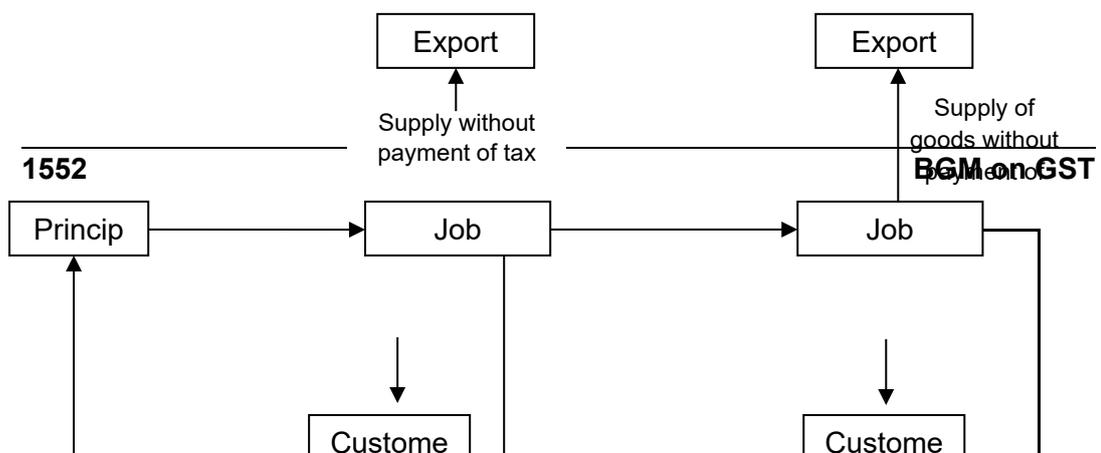
The goods can be supplied directly from the place of business of job worker by the principal only when the principal declares the place of business of the job worker as his additional place of business. However, the exceptions are:

- (i) If the job worker is registered under section 25; or
- (ii) The principal is engaged in the supply of notified goods.

### Responsibility for accountability of Inputs/ Capital Goods

The principal is responsible and accountable for keeping proper accounts of the inputs or capital goods and for all the transactions between him and the job worker.

The above chain can be represented as under:



Supply of inputs/  
capital goods  
without payment

|

Supply of  
inputs/capital goods  
without payment of

Supply of goods on  
payment of tax

Supply of goods on  
payment of tax

**Principal must receive back inputs and capital goods (except moulds and dies, jigs and fixtures or tools) within 1 year and 3 years, respectively.**

### **Inter-State job-work**

Job-work activity can be undertaken in inter-State trade as 'issue' of inputs and capital goods to job worker which is exempt from payment of tax irrespective of whether the job-worker is located within the State or otherwise. Therefore, whether the job worker is located in a different State/UT as that of the Principal does not alter the operation of section 143. One of the additional features is that the Principal is permitted to supply the processed goods directly from the premises of the job worker provided that 'the location of the job worker is included as an additional place of business' of the Principal. Where the principal being registered in one State and the job worker is located in another State, such a principal will not be able to satisfy the above condition to be allowed to make supplies directly from the premises of the job worker. This is due to the fact that the principal is not a registered person in the State where the job worker is located although he may otherwise be registered in his own State. Accordingly, if the principal desires to directly supply processed goods from the premises of the job worker located in a State different from the State where the principal is registered, the principal will not be permitted to avail this facility allowed by section 143. Accordingly, goods sent on job-work to another State can be further supplied after job-work, from the premises of such job-worker only if the job-worker is registered and not otherwise.

For example, if the Principal is registered in Hosur, Tamil Nadu, purchases chassis from a factory in Hosur and sends the same to a job worker in Amritsar, Punjab for carrying out body building works on the chassis to manufacture a bus; and then, if the Principal finds a customer in Jaipur, Rajasthan, it would not be economical to bring the finished bus all the way back to Tamil Nadu (to satisfy the requirement of section 143) and send the bus back to customer in

Rajasthan. For this reason, if the Principal desires to directly supply the finished bus from the job worker's premises in Punjab directly to the customer in Rajasthan, it would not be possible as the Principal cannot include Amritsar in registration obtained in Tamil Nadu, being in two different States. The Principal is under an obligation (at the time of sending the chassis) to bring the bus all the way back by way of completion of job work and send it again by way of supply (sale).

Alternatively, supply of finished bus can be effected from the premises of job-worker (Amritsar) if such job-worker seeks registration and discharges tax on the finished bus. With Principal being located in Tamil Nadu and job-worker being located in Punjab, paragraph 3, schedule I. Care must be taken that direct dispatches from job-worker's premises (on behalf of Principal) involves (i) deemed supply by Principal to job-worker and (ii) deemed supply by job-worker to Buyer. It is important to consider that Principal (in Tamil Nadu) CANNOT make a 'bill from Tamil Nadu' but 'ship from Punjab' invoice. The reason being, tax would be discharged in Tamil Nadu for finished bus moving from premises of job-worker in Punjab to Buyer in Rajasthan.

**Inputs sent to Job Worker not received back within one year or such extended period by the Commissioner.**

As per section 143(3), where the inputs sent for job-work are not received back by the "Principal" after completion of "job-work or otherwise" or are not supplied from the place of business of the job worker as aforesaid within a period of one year of them being sent out or such extended period to a maximum of one more year, it shall be deemed that such inputs had been supplied by the Principal to the job-worker on the day when the said inputs were sent out. Hence, the Principal would be liable to pay GST along with interest from the date inputs were sent out.

As per CGST (Amendment) Act, 2018, this period of one year can be extended up to further period of up to one more year by Commissioner, if taxpayer has shown sufficient reason for doing the same.

**Capital Goods sent to Job Worker not received back within three years or such extended period by the Commissioner**

As per section 143(4), where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job-work are not received back by the "Principal" or are not supplied from the place of business of the job worker as aforesaid within a period of three years of them being sent out or such extended period to a maximum of two years, it shall be deemed that such capital goods had been supplied by the Principal to the job-worker on the day when the said capital goods were sent out. Hence, the Principal would be

liable to pay GST along with interest from the date capital goods were sent out.

In this regard, the Circular referred to above clarifies that the Principal shall issue an invoice on the expiry of one year + one year if extended (inputs) / three years + two years if extended (capital goods) and declare such invoice in the return filed for such month. Since, it is deemed to be a supply effected on the date of sending the goods to the job-worker, the tax shall be paid along with applicable interest.

It is also important to note that the requirement of bringing back the goods sent to the job worker is not applicable on moulds and dies, jigs and fixtures, or tools. Hence, such items may remain with the job worker.

As per CGST (Amendment) Act 2018, this period of three years can be extended up to further period of up to two more years by the Commissioner, if taxpayer has shown sufficient reason for doing the same.

#### **Waste and Scrap generated at Job workers' premises**

As per section 143(5), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax if such job worker is registered, or by the Principal, if the job worker is not registered. Aspects relating to taking input tax credit in respect of inputs/capital goods sent for job-work have been specifically dealt in section 19, which provides that the credit of taxes paid on inputs or capital goods can be taken in the specified manner.

It is important to note that waste and scrap generated DO NOT belong to the job worker. As such, supply of waste and scrap from the premises of job worker is permitted but in the name of the Principal. Waste and scrap DO NOT belong to the job worker and as such, job worker cannot make a 'sale' and confer valid title to the Buyer. It is very common for job workers (and even repair service providers) to sell or retain the waste and scrap. There is a latin maxim *nemo dat quod non habet* which mean "no one can give, what they do not have". It is in the context of sale of goods and transfer of property. One who does not have (valid title) cannot give (valid title) to Buyer. Hence, when a job worker (or repair service provider) claims to sell waste and scrap generated and retain the proceeds, such proceeds will be 'additional consideration' towards job work (or repair services) and be liable to same rate of tax as supply of job work (or repair services).

#### **Amortization of capital goods issued free-of-charge**

Principal wants job worker to process the goods as per their customization and for that purpose, Principal sends certain capital goods viz. Moulds and dies,

jigs and fixtures or tools which are used in the process of Job working having short span of life and bound to be Wiped out during that process. By nature, such goods are regarded as capital goods for Principal but similarly its very rare that such goods remain intact after certain period. Accordingly, even though such goods are issued free of charge to job worker, the same need not be returned back within stipulated time as mentioned in section 143(4).

#### **Eligibility of Input tax credit in the hands of Principal**

Principal have availed input tax credit on procurement of such capital goods but he will amortize value of such goods in his books of over a period of time. It is clarified in *Circular No.38/12/2018 dated 26<sup>th</sup> March 2018* that, in view of the provisions contained in clause (b) of sub-section (2) of section 16 of the CGST Act, the input tax credit would be available to the Principal, irrespective of the fact whether the inputs or capital goods are received by the Principal and then sent to the job worker for processing, etc. or whether they are directly received at the job worker's place of business/premises, without being brought to the premises of the Principal. Since ownership of such goods will remain with Principal, this is not called permanent transfer of business assets and not falls in Schedule-I transaction. Principal can claim ITC on such freely supplied goods.

#### **Inclusion/exclusion of free-issue materials for use in job work**

There are certain instances where Principal wants job worker to use only specific raw material in job work process. Now this arrangement can be two ways, as elaborated below:

##### **a) When such materials are procured by the job worker**

In this case, if responsibility to procure such materials are of Job worker only then Job worker is eligible to claim ITC on procurement of such material used in job work process and GST shall be leviable in Job work charges only since valuation of job work charges already considered cost of such raw material.

But if responsibility to procure such materials are of Principal but job worker will procure such materials on behalf of Principal then together with Job work charges, value of such materials also needs to be added as per valuation provision contained in section 15(2)(b), with applicable ITC on such raw material being available to job worker.

##### **b) When such materials are freely supplied by the Principal to the job worker**

In this case, raw material and consumables are purchased by Principal only

and sent to job worker to be used in job working process. ITC on raw material and consumables are validly availed by Principal. Job worker will raise invoice of only towards job work charges to Principal wherein he is not supposed to include value of such free materials provided by Principal.

### Application of certain provisions of CGST Act, 2017 under IGST Act, 2017

As per section 20 of the IGST Act, the provisions relating to job work would also be applicable to the IGST Act.

Reference may be had to the discussion under section 19 and section 2(68) reading the various 'forms' of job work and the tax implications on 'deemed' supply (in case of non-return of materials). Also, to section 16(1) where 'abnormal wastage' by job worker is discussed to be liable to tax as a deemed supply.

### 143.3 Related provisions

In section 143 there is no specific reference to any other sections but there are other provisions where section 143 has been referred to:

Section / Rule / Form	Description	Remarks
Sub-section (68) of section 2	Definition of 'Job Work'	The job work has been defined to mean undertaking any treatment or process on goods belonging to another registered person.
Section 19	Taking ITC in respect of inputs and capital goods sent for Job work	The condition and procedure have been prescribed.
Section 22 – Explanation (ii)	Registration	Aggregate turnover of the registered job worker does not include the turnover of the Principal.

### Reporting in Annual Return

Deemed supply which are getting covered under section 143(3) and 143(4), is to be reported in Table 16B of GSTR-9. For detailed discussion from Annual return and GST Audit perspective, please refer our publication 'Technical Guide on GST Annual Return'.

**143.4 FAQs**

Q1. Who shall undertake responsibility for keeping proper accounts under this provision?

Ans. The principal would undertake the primary responsibility and accountability of the goods including payment of taxes, if any.

Q2. Can goods be supplied from job worker's place?

Ans. Yes, this provision allows supply of goods from job worker's premises but only on payment of taxes within India and without payment of taxes for export.

Q3. Whether any time period has been prescribed within which inputs have to be returned to Principal?

Ans. Yes, inputs are to be returned to Principal or supplied from the place of business of job worker within one year of their being sent out or further extended period by the commissioner for maximum one year.

Q4. Whether there is any time limit for capital goods also?

Ans. Yes, capital goods, other than moulds and dies, jigs and fixtures, or tools sent for job work, are to be returned to Principal or supplied from the place of business of job worker within three years of their being sent out or further extended period by the commissioner for maximum two years.

Q5. Under what circumstances can the Principal directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business?

Ans. The goods can be supplied directly from the place of business of job worker without declaring it as additional place of business in two circumstances namely where the job worker is a registered taxable person or where the Principal is engaged in supply of such goods as may be notified by the Commissioner.

Q6. Is a job worker required to take registration?

Ans. In general no, however, the job worker would be required to obtain registration, if his aggregate turnover exceeds the prescribed threshold.

Q7. Whether intermediate goods can also be sent for job work?

Ans. Yes. The term inputs, for the purpose of job work, includes intermediate goods arising from any treatment or process carried out on the inputs by the Principal or job worker.

Q8. Should job worker and Principal be in same State or Union territory?

Ans. No, this is not necessary as provisions relating to job work have been adopted in the IGST Act as well as in UTGST Act and therefore job-worker and Principal can be located either in same State or in same Union Territory or in different States or Union Territories.

Q9. As per section 143, Principal has to intimate to the proper officer regarding goods sent for job work without payment of Tax. What is the process to send this intimation?

Ans. Filing of form ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act, 2017.

**143.5 MCQs**

Q1. The job workers are allowed to send such goods to other

- (a) Manufacturers
- (b) Traders
- (c) Job workers
- (d) All of the above

Ans. (c) Job workers

Q2. Who will undertake responsibility and accountability for any contravention under this section?

- (a) Principal
- (b) Manufacturer
- (c) Job worker
- (d) No body

Ans. (a) Principal

Q3. What is the time limit within which inputs should return to Principal?

- (a) One Year
- (b) 180 days
- (c) 270 days
- (d) 2 years

Ans. (a) One Year

Q4. What is the time limit within which capital goods have to be returned to Principal?

- (a) One Years

- (b) Two Years
- (c) Three years
- (d) None of the above

Ans. (c) Three years

Q5. What is the time limit to receive back the tools and dies or jigs and fixtures sent to job worker's place?

- (a) 1 year
- (b) 3 years
- (c) 5 years
- (d) No time limit specified under the GST law

Ans. (d) No time limit specified under the GST law

Q6. Can Principal take input tax credit on the inputs and/or capital goods sent directly to job worker?

- (a) Yes
- (b) No
- (c) Yes, subject to section 143
- (d) ITC on capital goods sent directly to job-worker's premise is not eligible unless the same is received in the premises of the principal

Ans (c) Yes, subject to section 143

Q7. Which section specifies the conditions to be fulfilled for claiming ITC on inputs and/or capital goods sent to job-worker?

- (a) 19
- (b) 55
- (c) 143
- (d) 177

Ans. (a) 19

Q8. Will the inputs and/or capital goods supplied from the job-worker's premises be considered for calculating the aggregate turnover of the job-worker?

- (a) Yes
- (b) No
- (c) Partially true
- (d) None of the above

Ans. (b) No

Q9. Which form is required to be filled by Principal stating details of challans issued for job work?

- (a) ITC-01
- (b) ITC-02
- (c) ITC-03
- (d) ITC-04

Ans. (d) ITC-04

### Statutory provisions

#### **144. Presumption as to documents in certain cases**

*Where any document —*

- (i) *is produced by any person under this Act or any other law for the time being in force; or*
- (ii) *has been seized from the custody or control of any person under this Act or any other law for the time being in force; or*
- (iii) *has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force, and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—*
  - (a) *unless the contrary is proved by person, presume—*
    - (i) *the truth of the contents of such document;*
    - (ii) *that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;*
  - (b) *admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.*

#### **145. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence**

- (1) *Notwithstanding anything contained in any other law for the time being in force, —*
  - (a) *a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or*

<p>(b) a facsimile c© of a document; or</p> <p>(c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or</p> <p>(d) any information stored electronically in any device or media, including any hard copies made of such information,</p> <p>shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.</p> <p>(2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate, —</p> <p>(a) identifying the document containing the statement and describing the manner in which it was produced;</p> <p>(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,</p> <p>shall be evidence of any matter stated in the certificate and for the purposes of this sub section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.</p>
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#### Related provisions of the Statute

Section or Rule	Description
Section 2(41)	Definition of 'Document'
Section 35	Accounts and other records
Section 67	Power of inspection, search and seizure

#### 145.1 Introduction

Both the sections i.e., section 144 dealing with "Presumption as to documents in Certain Cases" and "section 145 dealing with "Admissibility of micro films, facsimile copies of documents and computer printout as documents and evidence" are analysed together.

#### 145.2 Analysis

As per the Webster Dictionary, presumption means "a belief that something is

true even though it has not been proved". Presumption is an inference of a fact drawn from other known facts, unless there is contrary evidence. Matters that need to be proved are those that are disputed. In other words, matters that are not disputed need not be proved. Proof varies in the degree of evidentiary value attached with it to establish existence or absence of any fact. More serious is the matter, more compelling must be the evidence. Contemporaneous documents, events and records score high in evidentiary value due to their generation in the ordinary course of transactions. Special evidence produced needs to first pass the 'test of admissibility' and then pass the 'test of adequacy' of what they stand to evidence. Presumption is 'as to' admissibility of certain documents when secured from specified persons in specified situations. Presumption is not assumption, as to their admissibility.

This presumption is rebuttable, since, any contrary evidence provided by the assessee, negates such presumption and such presumption is not conclusive evidence. The words "shall presume" in the Act suggest that the judge cannot refuse to draw the presumption. Presumption does not mean assumption. Presumption is only a rebuttable assumption. Presumption only means that the authority may proceed expecting the thing required to be presumed to be true. That is, the authority may proceed on the supposition that the thing exists, unless disproved. Evidence produced to the contrary can displace this presumption. But evidence is that which produces a persuasion in the mind about the existence or absence of the thing that it evidences. Evidence produced that is incompatible with the innocence of the circumstances of its generation is not satisfactory. That nothing has not been satisfactorily proved, does not mean that anything has been disproved. Only when the thing has been satisfactorily established not to exist can it be said that it has been disproved. In other words, not approved is the failure to prove and disprove is a success to prove the contrary.

In general, practice the onus of proving relevance and genuineness of documents produced as evidence is on the person producing the said documents. This chapter deals with documents produced as evidence by the prosecution. Further, this section has placed the onus of proving the contrary on the assessee i.e., the assessee has to prove that the documents provided by prosecution are not proper evidence.

Balance of probability is where the existence of a thing is admitted by substandard and circumstantial evidence that leans in favour of likelihood and not beyond reasonable doubt. The degree of proof required under the GST Laws, in matters relating to prosecution is beyond reasonable doubt and not merely the likelihood of offense. However, in matters invoking penalty, balance of probability may be applied.

Plausible explanation is not possible explanation. The reasons attributed for the failure to comply with GST law or for the delay in filing appeal within the time prescribed or any other similar matter, the 'standard of proof' is guided by the nature of wrongdoing being inquired. Plausible is possible coupled with probability in the circumstances of the case. The dismissal of evidence in one proceeding cannot expunge "that evidence" for all proceedings. For example, where income tax assessment has been carried out on the basis of best judgment after the rejection of books of accounts, the same books of accounts can still supply evidence of contemporaneous transaction in a proceeding under GST law.

The term 'document' has been defined under section 2(41) so as to include written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000. Any information stored electronically, or any hard copies made thereof is treated as document.

A certificate by a responsible person in relation to the operation of the computer or the management of such activities is required for identifying the document and describing the manner in which it was produced is required.

### **145.3 Relevant rules**

It may be noted that rule 56 of CGST Rules, mandates to maintain specific records at related place of business as mentioned in the certificate of registration.

### **145.4 MCQs**

Q1. Document includes:

- (a) Written record
- (b) Printed Record
- (c) Electronic
- (d) All of the above

Ans. (d) All of the above

Q2. Presumption is when said document is:

- (a) Produced by any person
- (b) Seized from custody of any person
- (c) Received from any place outside India
- (d) All of the above

Ans. (d) All of the above

Q3. In case of any document

- (a) Presumption is when it may be relied upon unless proved unreliable

- (b) Assumption is when it must be relied upon without opportunity to show its unreliability
- (c) Unreliable is when it is prepared out of unreliable records
- (d) All of the above

Ans. (d) All of the above

Q4. Rebuttable is when the said document is:

- (a) Shown to be unreliable
- (b) Shown to be inconsistencies
- (c) Shown to contain errors
- (d) All of the above

Ans. (d) All of the above

Q5. Reliability is when information contained in said document is:

- (a) Conclusive of existence or non-existence of an essential fact
- (b) Conclusive about existence of a fact which in turn is proof of an essential fact
- (c) Conclusive about some fact for which no other fact exists
- (d) All of the above

Ans. (d) All of the above

Q6. Computerized trial balance is:

- (a) Presumed to be reliable, unless rebutted by taxable person
- (b) Assumed to be reliable
- (c) Fact in itself when certified by taxable person
- (d) Fact in itself when certified by Auditor and taxable person

Ans. (a) Presumed to be reliable, unless rebutted by taxable person

### Statutory Provisions

#### **146. Common Portal**

*The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.*

### Related provisions

Section or Rule	Description
Section 2(26)	Definition of 'Common Portal'

### 146.1. Introduction

This section deals with notification of common portal for various purposes upon recommendation by the GST Council. The Central Government has vide *Notification No. 4/2017-Central Tax dated 19-06-2017* notified [www.gst.gov.in](http://www.gst.gov.in) as the Common Goods and Services tax Electronic portal and [www.ewaybillgst.gov.in](http://www.ewaybillgst.gov.in) as the Common Goods and Services Tax Electronic Portal for furnishing electronic way bill vide *Notification No.09/2018 – Central Tax dated 23-01-2017*.

### 146.2. Analysis

The common portal would facilitate registration, tax payment, filing of returns, computation and settlement of integrated tax, electronic way bill and other prescribed purposes. It is important to note that the extensive data that will reside in the common portal can facilitate preparation of analytical reports in respect of profitability, product-wise supply profile and other information that can form the basis of further investigation. The common portal is not merely a platform or a repository of invoices uploaded by taxpayers.

Nationwide E-way bill system will be driven by common portal [www.ewaybillgst.gov.in](http://www.ewaybillgst.gov.in). This would facilitate generation, cancellation and rejection of E-way bill, access to various reports in E-way bill, creation of various masters and other prescribed purpose.

### 146.3 FAQ

Q1. What are the compliances which can be done only online through GST Portal?

Ans. The Common Goods and Services Tax Electronic Portal can be used for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax and for carrying out such other functions and for such purposes as may be prescribed.

### 146.4 MCQ

Q1. The common portal has been notified based on recommendation of:

- (a) GST Council
- (b) President of India
- (c) Union Finance Minister

(d) Supreme Court

Ans. (a) GST Council

### Statutory provision

#### **147. Deemed Exports**

*The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.*

### Related provisions of the Statute

Section or Rule	Description
Section 2(39)	Definition of 'Deemed exports'
Section 2(52)	Definition of 'Goods'
Section 2(56)	Definition of 'India'
Section 2(72)	Definition of 'Manufacture'

#### **147.1. Introduction**

This section deals with notification of certain supplies of goods as deemed exports upon recommendation by the GST Council.

#### **147.2. Analysis**

The notified goods would be deemed to be exported, if such goods are manufactured in India although they do not leave India and payments are received in Indian rupees or convertible foreign exchange.

This section authorizes the Government to notify transactions which will be declared to be deemed exports. It is clear that 'deemed exports' are NOT exports but placed in a class of its own to be eligible to benefits of NIL GST on procurement subject to conditions to be specified.

#### **147.3 Related provisions**

Section 2(39) of the CGST Act, 2017 defines the term 'deemed exports'. This would be relevant for extending refund benefit under section 54 of the CGST Act.

#### **147.4 Related Rule**

Rule 89 of the CGST Rules is relevant for claiming refund in respect of deemed exports. This rule prescribes forms & procedures for claiming refund in case of supplies made to a special economic zone.

Second proviso to rule 89(1) states that in respect of in respect of supplies regarded as deemed exports, the application may be filed by, -

- (a) the recipient of deemed export supplies; or
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

#### **147.5 Documents required for Refund in case of Deemed Export**

1. Acknowledgment by the jurisdictional officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
2. An undertaking by the recipient of deemed export supplies, that no input tax credit on such supplies has been availed of by him.
3. An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

#### **Reporting in Annual Return**

Deemed export transactions is to be reported in Table-4E of GSTR-9. For detailed discussion from Annual Return and GST Reconciliation perspective, please refer 'Technical Guide on GST Annual Return' and 'Technical Guide on GST Reconciliation Statement'.

#### **147.6 FAQs**

- Q1. Can an exporter get exemption from the payment of GST on the export product?
- Ans An exporter could get exemption from the payment of GST on the final product and claim refund of GST paid on inputs.
- Q2. What are the GST refund options available to the exporters?
- Ans An exporter would be eligible to claim refund under one of the following two options, namely - (a) He may export under bond, without payment of IGST and claim refund of unutilized input tax credit or (b) He may export on payment of IGST and claim refund of IGST paid on goods and services exported. The SEZ developer or SEZ unit receiving zero rated

supply can also claim refund of IGST paid by the firm making supply to SEZ.

Q3. How are exports treated under GST?

Ans All exports under GST law are deemed as inter-State supplies. Exports of goods and services are treated as zero rated supplies. The exporter has the option either to export under bond/Letter of Undertaking without payment of tax and claim refund of ITC or pay IGST by utilizing ITC or in cash at the time of export and claim refund of IGST paid.

### Statutory provision

#### **148. Special Procedure for certain processes**

*The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.*

#### **148.1. Introduction**

This section deals with notification of certain classes of registered persons, who would be required to follow certain special procedures.

#### **148.2. Analysis**

The Government can notify such persons upon recommendation of the GST Council. Such notified persons would be required to follow certain special procedures inter-alia relating to registration, returns, tax payment and administration aspects. In other words, even though there may be a requirement in the CGST Act, by exercise of powers under section 148, the Government can alter the said requirement on matters relating to registration, filing of returns, tax payment and other administrative matters. The powers to vary the general prescription in these areas applies only in respect of categories of registered persons notified here.

It is very interesting that, say, provisions regarding filing of returns can be overruled, in relation to persons notified under 148. The special procedures to be applied does not enjoy *non obstante* powers but considering that such special procedures would only be more favourable may not be questioned unless the 'conditions' and 'safeguards' are prescribed and adhered to.

It is important to note that the power that is not delegated cannot be assumed to be vested with the delegate. Power that is exercised by the Act itself, in

relation to certain persons cannot be permitted to be exercised by any delegate, in relation to certain other persons. And delegation cannot alter the nature of the compliance and any variation, at most, can be limited to matters that do not amount to substantive deviation, that is, require the same compliance but at lesser frequency or extended time for compliance.

In exercise of this power, we find certain measures to have been taken by the Government and similar provisions are simultaneously required to be taken under the respective SGST / UTGST laws so as to be in harmony. And without issuing notifications afresh, *Notification No. 17/2017-UT dated 24<sup>th</sup> Oct, 2017* adopts CGST notifications *mutatis mutandis* in relation to matters of UT. Reference may also be had to the discussion in the context of section 168 where such deviation from standard procedures are permitted.

### **148.3 Analysis of some pertinent Notifications**

#### **14.3.1 Notification No 40/2017 - Central Tax dated 13<sup>th</sup> October, 2017**

##### **148.3.1.1 Class of persons notified**

- Registered Person (other than persons registered under composition scheme) having aggregate turnover of less than Rs. 1.5 crores in the preceding financial year, or
- Registered Person (other than persons registered under composition scheme) whose aggregate turnover in the year of registration is likely to be less than Rs. 1.5 crores

##### **148.3.1.2 Relaxations provided**

- The class of persons specified above will not be required to pay tax on advances received against supply of goods. The time of supply of goods shall 'be the date of issue of invoice or the last date on which the invoice is to be issued as per section 31(1). It is important to note that no special provisions have been notified in respect of time of supply of services and therefore tax would need to be paid on advances received against supply of services –

#### **148.3.2 Notification No. 66/2017- Central Tax dated 15<sup>th</sup> November, 2017**

##### **148.3.2.1 Class of persons notified**

All Registered Persons other than persons registered under composition scheme

##### **148.3.2.2 Relaxations provided**

The class of persons defined above will not be required to pay tax on advances received against supply of goods. The time of supply of goods shall be the date of issue of invoice or the last date on which the invoice is to be issued as per section 31(1). It is important to note that no special provisions have been notified in respect of time of supply of services and therefore tax would need to be paid on advances received against supply of services. The effective date of this provision is 15<sup>th</sup> November, 2017.

Therefore, w.e.f. 15<sup>th</sup> November, 2017, no tax needs to be paid on advances received by registered persons against goods supplied. W.e.f. 13<sup>th</sup> October, 2017 to 15<sup>th</sup> November, 2017, this benefit was available to suppliers having aggregate turnover less than Rs. 1.5 crores only. It must be understood that when a beneficial notification stands superseded it will be subject to certain conditions. For instance, the *Notification No. 66/2017 dated 15.11.2017* provides for such a condition which reads “except as respects things done or omitted to be done before such supersession”.

This notification superseded– the *Notification No 40/2017 - Central Tax dated 13<sup>th</sup> October, 2017*.

**148.3.3. Notification No. 04/2018 dated 25.01.2018:** The notification specifies the time when the registered persons being the land owner and the developer should remit the tax on the supply of service viz., supply of works contract service by developer to the land owner and supply of development rights by the land owner to the developer *inter-se*. The notification specifies that the date when the possession / right in the constructed portion is transferred, would be the date relevant for remittance of GST on such services.

<b>A glimpse of some section 148 related Notifications</b>		
<b>S. No.</b>	<b>Notification/Date</b>	<b>Contents</b>
1.	09/2017 — CT, dt. 13.10.2017	Brings into force sec 148 of the CGST Act w.e.f 01.07.2017
2.	40/2017 — CT, dt. 13.10.2017	Payment of tax at the time of issuance of invoice only (and not at the time of receipt of advance) by registered persons having aggregate turnover less than ` 1.5 crores (other than composition taxpayers); Sec. 12, 14 and 148
3.	57/2017 – CT, dt. 15.11.2017	Prescribes quarterly furnishing of Form GSTR -1 for those taxpayers with aggregate turnover of

		upto Rs. 1.5 crore for the specified periods.
4.	66/2017 — CT, dt. 15.11.2017	Exempts all taxpayers from payment of tax on advances received in case of supply of goods, Sec. 12, 14 and 148
5.	71/2017 — CT, dt 29.12.2017	Extends the due dates for quarterly furnishing of Form GSTR-1 for taxpayers with aggregate turnover of upto INR 1.5 crore for the periods from July, 2017 to March, 2018
6.	03/2018 — CT(R), dt 25.01.2018	Amends Notification No. 13/2017-CT (R) so as to specify services supplied by the Central Government, State Government. Union territory or local authority by way of renting of immovable property to a registered person under CGST Act. to be taxed under Reverse Charge Mechanism (RCM)
7.	17/2018 — CT dt. 28.03.2018	Extends the time limit for filing of forms GSTR-2
8.	31/2018 — CT dt. 06.08.2018	Lays down the special procedure for completing migration of taxpayers who received provisional 1Ds but could not complete the migration process – Persons who did not file the complete Form GST REG 26 of the CGST Rules, 2017 but received only a provisional Identification Number (PID) till the 31.12.2017
9.	33/2018 — CT dt. 10.08.2018	Extends the time limit for filing of Forms GSTR-2
10.	38/2018 — CT, dt. 24.08.2018	Prescribes the dates for quarterly furnishing of Forms GSTR-1 for those taxpayers with aggregate turnover of upto Rs. 1.5 crores for the quarter July, 2018 to September, 2018
11.	43/2018 — CT, dt 10.09.2018	Extends the due date for filing of Form GSTR-1 for taxpayers having aggregate turnover up to Rs. 1.5 crores for the specified periods.
12.	58/2018 — CT, dt. 26.10.2018	Provides for the taxpayers whose registration has been cancelled on or before the 30.09.2018, time to furnish final return in Form GSTR-10 till 31.12.2018
13.	64/2018 — CT,	Extends the due date for filing of form GSTR-1

	dt. 29.11.2018	for taxpayers having aggregate turnover up to Rs 1.5 crores for the quarter from July, 2018 to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh for the specified periods.
14.	67/2018 — Ct, dt. 31.12.2018	Extends the time period specified in Notification No. 31/2018 — CT dated 06.08.2018 for availing the special procedure for completing migration of taxpayers who received provisional IDs but could not complete the migration process.
15.	71/2018 — CT, dt 31.12.2018	Extends the time limit for furnishing the details of outward supplies in Form GSTR-1 for the newly migrated taxpayers for the specified periods.
16.	11/2019-CT, dt 07.03.2019	Prescribes the due dates for furnishing of Form GSTR-1 for those taxpayers with aggregate turnover upto ` 1.5 crores for the months of April, May and June, 2019.
17.	06/2019 — CT(R), dt. 29.03.2019	Notifies certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017-Time of supply of transfer of development rights and upfront amount.
18.	21/2019 — CT, dt. 23.04.2019	Notifies procedure for quarterly tax payment and annual filing of return for taxpayers availing the benefit of Notification No. 02/2019 — CT (Rate), dt. 07.03.2019.
19.	27/2019 — CT, dt. 28.06.2019	Prescribes the due date for furnishing From GSTR-I for registered persons having aggregate turnover of up to 1.5 crore rupees for the months from July 2019 to September, 2019.
20.	30/2019 — CT, dt. 28.06.2019	Provides exemption from furnishing of Annual Return/Reconciliation Statement for suppliers of Online Information Database Access and Retrieval Services (“OIDAR services”) — Amending Rule 80
21	34/2019 — CT, dt. 18.07.2019	Extends the last date for furnishing Form GST CMP-80
22.	35/2019 — CT, dt. 29.7.2019	Extends the last date for furnishing From GST CMP-08 for the quarter April-June 2019 till

		31.08.2019
23.	38/2019 — CT, dt. 31.08.2019	Waives filing of Form ITC-04 for F.Y. 2017-18 & 2018-19
24.	45/2019 – CT, dt. 09.10.2019	Extends the time limit for filing of forms GSTR-3
25.	47/2019 — CT, dt. 09.10.2019	Makes filing of annual return under section 44 (1) of CGST Act for F.Y. 2017-18 and 2018-19 optional for small taxpayers whose aggregate turnover is less than Rs. 2 crores and who have not filed the said return before the due date.
26.	50/2019 — CT, dt. 24.10.2019	Extends the last date for filing of Form GST CMP-08 for the quarter July-September 2019 by four days from 18.10.2019 till 22.10.2019
27.	52/2019 — CT, dt. 14.1.2019	Extends the due date for furnishing Form GSTR-1 for registered persons in Jammu and Kashmir having aggregate turnover of up to 1.5 crore rupees for the quarter July, 2019 to September, 2019.
28.	60/2019 — CT, dt. 26.11.2019	Extends the due date for furnishing of return in Form GSTR-3B for registered persons in Jammu and Kashmir for the months of July, 2019 to September, 2019.
29.	10/2020 — CT, dt. 21.03.2020	Provides special procedure for taxpayers in Dadra and Nagar Haveli and Daman and Diu consequent to merger of the two UTs.
30.	45/2020 — CT, dt. 09.06.2020	Extends the date for transition under GST on account of merger of erstwhile Union Territories of Daman and Diu & Dadar and Nagar Haveli.
31.	59/2020 — CT, dt. 13.07.2020	Extends the due date for filing Form GSTR-4 for financial year 2019-2020 to 13.07.2020.
32.	64/2020 — CT, dt. 31.08.2020	Extends the due date for filing Form GSTR-4 for financial year 2019-2020 to 31.10.2020
33.	73/2020 — CT, dt. 01.10.2020	Notifies a special procedure for taxpayers for issuance of E-Invoices in the period 01.10.2020 – 31.10.2020.
34.	74/2020 — CT, dt. 15.10.2020	Prescribes the due date for furnishing Form GSTR-1 for quarters October, 2020 to December,

		2020 and January, 2021 to March, 2021 for registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year.
35.	77/2020 — CT, dt. 15.10.2020	Makes filing of annual return under section 44(1) of CGST Act for F.Y. 2019-20 optional for small taxpayers whose aggregate turnover is less than Rs. 2 crores and who have not filed the said return before the due date.
36.	85/2020 — CT, dt. 10.11.2020	Notifies special procedure for making payment of 35% as tax liability in first two month.
37.	02/2021-CT, dt. 01.06.2021	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021.
38.	10/2021-CT, dt. 01.05.2021	Seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.05.2021
39.	25/2021-CT, dt. 01.06.2021	25/2021-Central Tax - Seeks to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.07.2021.
40.	18/2021-CT, dt. 01.06.2021	Seeks to provide relief by lowering of interest rate for a specified time for tax periods March, 2021 to May, 2021.

### Statutory provisions

#### **149. Goods and Services Tax Compliance Rating**

- (1) *Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.*
- (2) *The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.*
- (3) *The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.*

#### **149.1 Introduction**

Compliance rating system is one of the new ways of tax administration. This section states that every registered person would be rated based on certain parameters. It also provides that the rating would be published in the public domain.

### 149.2 Analysis

With the aim of increasing governance by publishing information about the extent of compliance by each taxable person, this section provides a compliance rating that varies periodically. The proposed compliance rating system is a unique form of rating the performance of the registered persons. The parameters which would be considered for performance rating would be prescribed / notified.

Among others, the rating of a registered person would be relevant to show reliability of the supplier to pay taxes on time so that recipient of supplies can exercise some caution based on the published compliance rating of suppliers and for selection for scrutiny and other administrative / monitoring purposes.

This section provides as follows:

- Every registered person shall be rated and will be assigned a GST compliance rating score.
- The rating would be based on his record of compliance with the provisions of CGST, IGST and SGST/UTGST. The details of parameters and methodology for rating would be prescribed.
- The compliance rating score will be updated periodically and will be—
  - Intimated to the registered person; and
  - placed in the public domain.

Presently, compliance rating is still to be operationalized.

### Statutory provision

#### **150. Obligation to furnish information return**

*(1) Any person, being—*

- (a) a taxable person; or*
- (b) a local authority or other public body or association; or*
- (c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or*
- (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or*
- (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or*

- (f) a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government; or
- (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
- (h) a Registrar within the meaning of the Companies Act, 2013; or
- (i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
- (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
- (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or
- (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
- (m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934; or
- (n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013; or
- (o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or
- (p) any other person as may be specified, on the recommendations of the Council, by the Government,

who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.

- (2) Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the

*defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.*

- (3) *Where a person who is required to furnish information, return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.*

### 150.1 Introduction

This is an administrative provision. This section requires specified persons to furnish an information return with the prescribed authority.

### 150.2 Analysis

**Specified persons who would be required to furnish the information return:**

<b>Nature of persons who would be required to file the information return would be:</b>	<b>If the said persons are responsible for maintaining:</b>
<ul style="list-style-type: none"> <li>• Taxable Person.</li> <li>• Local Authority, Other Public Body or Association.</li> <li>• Authority responsible for collecting VAT, Sales Tax, State Excise Duty, Central Excise Duty or Customs Duty.</li> <li>• Authority appointed under Income Tax.</li> <li>• Banking Company</li> <li>• State Electricity Board</li> <li>• Registrar or Sub-Registrar of Registration Act, 1908</li> </ul>	<ul style="list-style-type: none"> <li>• Records of registration</li> <li>• Statement of accounts</li> <li>• Periodic returns</li> <li>• Details of payment of tax</li> <li>• Any other details of transaction of goods or services</li> <li>• Transaction relating to bank account</li> <li>• Transaction relating to consumption of electricity</li> <li>• Transaction of purchase</li> <li>• Sales</li> </ul>

<ul style="list-style-type: none"> <li>• Registrar of Companies</li> <li>• Registering authority of Motor Vehicles</li> <li>• Collector</li> <li>• Recognised Stock Exchange</li> <li>• Depository of Shares</li> <li>• Officer of Reserve Bank of India</li> <li>• Goods &amp; Service Tax Network</li> <li>• Person to whom Unique Identity Number (UIN) is granted</li> <li>• Any other specified person on recommendation of the Council</li> </ul>	<ul style="list-style-type: none"> <li>• Exchange of goods or property</li> <li>• Right or interest in a property</li> </ul>
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### 150.3 Related provisions

Statute	Section / Rule / Form	Description
CGST	Section 123	Penalty for failure to furnish Information Return

### 150.4 FAQs

Q1. What type of persons would be required to file the information return?

Ans. Any person who is responsible for maintaining any of the following would be required to file the information return:

- Records of registration
- Statement of accounts
- Periodic returns
- Details of payment of tax
- Any other details of transaction of goods or services
- Transaction relating to bank account
- Transaction relating to consumption of electricity
- Transaction of purchase
- Sales

- Exchange of goods or property
- Right or interest in a property

Q2. Is this return required to be filed by every taxable person?

Ans. No. Only the persons responsible for maintaining any of the above-mentioned records / details would be required to file this return.

### Statutory provision

#### **<sup>4</sup>[151. Power to call for information**

*The Commissioner or an officer authorized by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.]*

### 151.1 Introduction

This section authorises the Commissioner for the purpose of the Act, to collect any statistics relating to any matter that may be required.

### 151.2 Analysis

The substituted provision is very potent in as it authorises not only Commissioner but any officer authorized to carry out the following:

- Any person may be “directed” making it a statutory duty of person so directed and who need not be the taxable person but any person who may be believed to hold such information;
- To furnish information, which is not guided as to the nature and extent of such information that maybe called for from such person;
- In connection with this Act, which may pertain to the investigation against some other person;
- In such time, form and manner, which are not ‘prescribed’ in Rules but

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<sup>4</sup>Substituted vide The Finance Act, 2021 and notified through Notf No. 39/2021-CT dt. 21.12.2021 w.e.f. 01.01.2022 for

"Section 151. Power to collect statistics.-

(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.

(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected."

contained in the 'directions' issued by Commissioner or the Authorized Officer.

Experts express concern at the unfettered latitude allowed to call for information whether or not the person so directed is able to submit the said information in the time, form and manner as directed. This provision is in direct conflict with section 59. And it cannot overlap with the scope of enquiry in section 65 or inquiry in section 67 as it would cause these provisions to be rendered superfluous and the 'checks and balances' in these provisions being bypassed by carrying out the same enquiry / inquiry under section 151. For these reasons, section 151 must occupy the area not covered by section 65 and 67 without violating section 59.

Self-incrimination is not protected in tax laws as held in *Tofan Singh v. State of TN (Cr. Apl No.152/2013)* but here, third parties may be directed to provide incriminating information against taxpayer. Experts caution taxpayers from readily admitting the correctness and relevance of such information secured by tax authorities and included as evidence against the taxpayer. For these reasons, powers under this section 151 must be exercised without falling foul of being a 'roving' enquiry and unless invoked in exceptional cases and with great circumspection, issues can come in for serious consideration in judicial review.

### 151.3 Related provisions

Statute	Section / Rule / Form	Description
CGST	Section 124	Fine for failure to furnish statistics (However, a consequential amendment to this section is still awaited)

### Statutory provision

#### **152. Bar on disclosure of information**

(1) No information <sup>5</sup>[ ] with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring

<sup>5</sup> Omitted 'of any individual return or part thereof' vide *The Finance Act, 2021 notified through Notf No. 39/2021-C.T. dt. 21.12.2021, w.e.f. 01.01.2022.*

*to a particular person and no such information shall be used for the purpose of any proceedings under this Act [without giving an opportunity of being heard to the person concerned]<sup>6</sup>.*

(2) <sup>7</sup>[.]

(3) *Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.*

### 152.1 Introduction

This section discusses about the way in which the information obtained under sections 150 and 151 needs to be handled.

### 152.2 Analysis

— Any information obtained shall not be published so as to enable any particulars to be identified as referring to a particular taxpayer, without the previous consent of the taxpayer or his authorised representative. This consent should be in writing. Further, the information so obtained shall not be used for the purpose of any proceedings under this Act.

— A person who is not engaged in the collection of statistics under this Act or compliance or computerisation for the purpose of Act, shall not be permitted to see or have access to any information or any individual return.

Any person who is engaged in connection with collection of statistics under section 151 or compilation or computerisation wilfully discloses any information or contents of any return under this section otherwise than in execution of his duties shall be punished with imprisonment or fine or both in terms of section 133.

— Imprisonment for a term which may extend to six months or fine which may extend to ₹ 25000 or with both.

<sup>6</sup> Inserted vide *The Finance Act, 2021 notified through Notf No. 39/2021-C.T. dt. 21.12.2021, w.e.f. 1<sup>st</sup> January, 2022.*

<sup>7</sup> Omitted '*Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151' vide The Finance Act, 2021 notified through Notf No. 39/2021-C.T. dt. 21.12.2021, w.e.f. 1<sup>st</sup> January, 2022.*

**152.3 Related provisions**

<b>Statute</b>	<b>Section / Rule / Form</b>	<b>Description</b>
CGST	Section 150	Obligation to furnish information return
CGST	Section 151	Power to call for information
CGST	Section 133	Liability of officers and certain other persons

**Statutory provisions****153. Taking assistance from an expert**

*Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.*

**153.1 Introduction**

This Section enables the Officer not below the rank of an Assistant Commissioner to take assistance of an expert at any stage of scrutiny, inquiry, investigation or any proceedings.

**153.2 Analysis**

This section enables the Officer to take assistance of experts like IT professional, Lawyer, Technocrat, Chartered Accountants etc. considering the nature and complexity of the case and revenue's interest. These experts would assist the Proper Officer in scrutiny, inquiry, investigation or any other proceedings. It is very progressive that the law admits the advantages of taking expert assistance, especially, when current day business has entered complex new domains such as online commerce, gaming, web3, etc., where erroneous tax demands can result in permanently lost revenues.

It is important to note that experts are permitted a small area of authority to express professional opinion on the facts relevant to determine applicability of tax or credits. Experts are not required to provide an opinion about interpretation of GST law but are required to provide their professional opinion about relevant facts, especially, those relating to technical terminology, trade parlance, domain knowledge, etc. This is the thin line that needs to be walked carefully in order to support any tax demand that Proper Officer discharges the statutory function while the expert's assistance is limited to equipping the Proper Officer grasp the contours of the transactions and their understanding in trade.

This expert can provide their assistance to the Proper Officer and not to the

Registered Person. Information and expertise of the Expert is not open for challenge by Registered Person because such information may be accepted and adopted, with or without modifications, 'as if' it were those of the Proper Officer. And it is these 'adopted conclusions', as included in the notice (issued in due course by Proper Officer) which will be open for challenge by Registered Person in adjudication and appellate proceedings.

### 153.3 MCQ

Q1. Use of 'expert assistance' by Proper Officer is

- (a) Mandatory in all proceedings
- (b) Mandatory to be availed only where justified and in certain proceedings
- (c) Optional to be availed but once it is availed, it is mandatory to be relied upon
- (d) Optional to be availed and even where it is availed, it is optional to be relied upon

Ans. (d) Optional to be availed and even where it is availed, it is optional to be relied upon

### Statutory provision

#### **154. Power to take samples**

*The Commissioner or an officer authorised by him may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.*

#### **154.1 Introduction**

This section discusses about authority of the GST officers to draw sample of goods.

#### **154.2 Analysis**

Sample of any goods may be drawn by the Commissioner or any officer who is authorised by him.

The samples may be drawn wherever the officer so deems necessary and should be out of the goods in possession of the taxable person. Care must be taken to differentiate 'test purchase' under section 67(12) with 'samples' under section 154.

Once the samples are drawn, the officer should provide a receipt for the same.

#### **154.3 FAQs**

Q1. For what purposes can samples be taken?

Ans. There is no purpose which is specified in the law. However, if the specified officer deems necessary, a sample of the goods may be drawn.

Q2. Who can take samples?

Ans. The Commissioner or any other person who is authorised by the Commissioner may draw samples out of the goods from the goods in possession of the taxable person.

**Statutory provision****155. Burden of Proof**

*Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.*

**155.1 Introduction**

This provision places the burden on the taxable person to prove his input tax claims.

**155.2 Analysis**

Normally, it is for the person to prove a fact which he asserts.

Following this, under this Section, the onus of correctness and eligibility of the following claim has been vested with the taxable person:

- Eligibility to claim input tax credit: Where the taxable person claims any input tax credit under Chapter V (Input Tax Credit) of the CGST Act.
- Reference may be had to the 'conditions' linked to vesting of input tax credit. Taxpayer is responsible for any input tax credit claimed.
- Doubtful or contentious credits claimed cannot go without responsibility in the form of interest and penalty for erroneous credit claimed as GST is a 'self-assessment' based tax system and taxpayer is liable for all consequences (tax, interest and penalty) for all interpretations followed by taxpayer.
- Taxpayers carry the understanding that input tax credit is a 'vested and indefeasible' right. But that right is linked to 'vesting conditions' in section 16(2) (refer discussion under section 16). And read together with section 155, the burden to prove that all 'vesting conditions' are satisfied, rests on Registered Person and not on tax authorities. The person who would fail, if nothing further was said about it, is the one who bears the burden of proof. If registered person claims input tax credit and does nothing more, tax authorities are only required to 'question the credits' and sit back for Registered Person to bring all the necessary proof pertaining to satisfaction of all 'vesting conditions'. To this end, experts are of the view that section 155 attempts to overturn all decisions that had been held in favour of the taxpayer that ensuring compliance (discharge of tax) by Supplier's is not the responsibility of the Recipient-taxpayer.

**155.3 FAQ**

- Q1. Under what circumstances does the onus of claim by a taxable person lie with him?

Ans. The onus of proving that the taxable person is right in his claims would vest with him, where the taxable person has claimed any input tax credit under Chapter-V (Input Tax Credit) of CGST Act, 2017.

#### 155.4 MCQ

Q1. Which of the following proposition is correct?

- (a) The Act provides for rule of burden of proof in all situations
- (b) The Act places specific burden on the assessee only in one situation
- (c) The burden of proof is always on the assessee
- (d) None of the above

Ans. (b) The Act places specific burden on the assessee only in one situation

#### Statutory provision

##### **156. Persons deemed to be public servants**

*All persons discharging functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.*

#### 156.1. Introduction

This section proclaims that all persons discharging official functions under the CGST Act would be deemed to be public servants within the meaning of section 21 of the IPC.

#### 156.2. Analysis

As the persons discharging official functions are deemed to be public servants, any offences against such persons and offences by such persons would be dealt with in accordance with IPC. By availing the services of officials of other departments or Ministries, all those officials will be able to exercise the authority under GST law. Purpose of this provision is to ensure that *bona fide* actions of tax authorities are not put in jeopardy.

#### 156.3 Related provisions

Section 21 of the IPC defines a public servant. Chapter IX of IPC comprising of sections 166 to 171 deals with offences against and offences by public servants prescribing for punishment including imprisonment. Chapter X deals with contempt's of the lawful authority of public servants – sections 172 to 190 thereof prescribe for punishment including imprisonment.

#### Statutory provisions

**157. Protection of action taken under this Act**

- (1) *No suit, prosecution or other legal proceedings shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.*
- (2) *No suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under this Act for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.*

**157.1 Introduction**

This section protects the GST officers and officers of GST Tribunal from legal proceedings in respect of acts done in good faith.

**157.2 Analysis**

Immunity from any legal or departmental proceedings is provided to the GST officers and officers of the Tribunal for the acts done in good faith under the provisions of this Act. Actions taken in exercise of official functions cannot result in liability devolving on the officers. It is this protection that officers enjoy while exercising authority vested in the law without fear or favour.

**157.3 Related provision**

<b>Statute</b>	<b>Section / Rule / Form</b>	<b>Description</b>	<b>Remarks</b>
CGST	Section 156	Persons deemed as public servants	All officers performing any function under this Act are designated as 'public servants'.
CGST	Section 158	Disclosure of information by a public servant	-

**Statutory provision****158. Disclosure of information by a public servant**

- (1) *All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this*

*Act (other than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.*

- (2) *Notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).*
- (3) *Nothing contained in this section shall apply to the disclosure of, —*
- (a) *any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or*
  - (b) *any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or*
  - (c) *any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or*
  - (d) *any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or*
  - (e) *any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or*
  - (f) *any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or*
  - (g) *any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or*
  - (h) *any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or*
  - (i) *any particulars relevant to any inquiry into a charge of misconduct*

*in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or*

- (j) any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or*
- (k) any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or*
- (l) any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.*

### 158.1 Introduction

This Section lays down the guidelines for non-disclosure of information obtained during the course of any proceeding and the situations when such information can be disclosed.

### 158.2 Analysis

**Non-disclosure:** The following shall be kept confidential and should not be disclosed:

- All details contained in any statement / returns / accounts / documents which are submitted as per the Act.
- All details contained in any evidence given during any proceeding under the Act or in any record of proceedings under the Act.

Note: All details obtained from any evidence during the proceedings before a criminal court need not be confidential.

**Exceptions to non-disclosure:** The following details can be disclosed:

- **Situation 1 – required under other Law:** Statement, return, accounts, documents, evidence, affidavit or deposition, for prosecution under the Indian Penal Code / the Prevention of Corruption Act, 1988 / or any other law in force.
- **Situation 2 – for verification purposes:** Particulars which are to be given to the Central / State Government or to any person discharging his functions under this Act, for the purpose of carrying out the object of the Act.
- **Situation 3 – for service of notice / demand:** If such disclosure is necessary for the service of notice or the recovery of demand.
- **Situation 4 – for Civil Court / Tribunal proceeding:** Particulars to be disclosed to a Civil Court.

Note: The disclosure is in relation to any suit or proceeding. In such proceeding, the Government or any authority under the Act is a party. The disclosure relates to any proceeding as per the Act or under any other law authorising any such authority to exercise such powers.

- **Situation 5 – for Audit:** Particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax levied under the Act.
- **Situation 6 – for inquiry on any GST Officer:** Particulars relevant for any inquiry into the conduct of any GST officer, to any person(s) appointed as an inquiry officer under any relevant law.
- **Situation 7 – to levy or realise tax / duty:** Such facts to an officer of the

Central / State Government as necessary for the purpose of enabling that Government to levy or realise any tax or duty.

- **Situation 8 – to public servant:** Such particulars, if such disclosure is necessary before a public servant or any statutory authority, due to his or its powers under any law.
- **Situation 9 – to conduct inquiry on professionals:** Such particulars as relevant to any inquiry under the Act conducted into a charge of misconduct against a practising advocate / cost accountant / chartered accountant, company secretary / tax practitioner to the authority empowered to take disciplinary action against the members practicing such profession. (i.e. ICAI / ICAI (CWA) / ICSI / Bar Council)
- **Situation 10 – to data entry agency for department:** Disclosures to any agency appointed for the purposes of data entry on any automated system or for operating, upgrading or maintaining any automated system (if such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes)
- **Situation 11 – to Government:** Particulars to an officer of the Central / State Government necessary for any law for the time being in force.
- **Situation 12 – for publication in public interest:** Information relating to any class of taxpayers / transactions for publication, if, in the opinion of the competent authority, it is desirable in the public interest, to publish such information.

### 158.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 156	Deemed as public servants	All officers performing any function under this Act are designated as 'public servants'.
CGST	Section 157	Immunity from legal proceedings	Protection of action taken in good faith by GST officers and officers of Tribunal

### 158.4 FAQs

Q1. Who is responsible for maintaining confidentiality or non-disclosure of information?

Ans. Every GST Officer must maintain confidentiality or non-disclosure of information obtained by him.

Q2. Can the GST officer disclose the information if required under any law?

Ans. GST Officer shall disclose the information if required under Indian Penal Code / Prevention of Corruption Act or any other law.

Q3. Can the GST officer voluntarily disclose information to professional bodies regarding professional misconduct of any professional?

Ans. No. Voluntary disclosure of information is not covered under the above provision. However, if any inquiry is already underway by the relevant professional regulatory body, then the GST officer can disclose information to such authority relating to the professional misconduct.

Q4. Can information be shared for statistical purposes?

Ans. GST officer can share the information to the Central / State Government regarding compilation of statistics dealing with particular class of taxpayers / class of transactions.

Q5. Can information be shared with Civil Courts?

Ans. GST officer can disclose information in any proceeding before Civil Courts only if the Government is also one of the parties involved and such Courts have been empowered with the power to call for such information.

Q6. Can information be shared with First Appellate Authority?

Ans. GST officer cannot share the information with the First Appellate Authority unless it is authorized under the law to be disclosed before them.

### Statutory provision

**<sup>8</sup>[158A. Consent based sharing of information furnished by taxable person**

(1) *Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of sub-section (2), and on the recommendations of the Council, be shared by the common portal with such other systems as*

<sup>8</sup> Inserted vide Finance Act, 2023. Applicable w.e.f. 01.10.2023 through Nof No. 28/2023-CT dt. 31.07.2023.

*may be notified by the Government, in such manner and subject to such conditions as may be prescribed, namely:—*

- (a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;*
  - (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;*
  - (c) such other details as may be prescribed.*
- (2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of—*
- (a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and*
  - (b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient, in such form and manner as may be prescribed*
- (3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.]*

### **158A.1 Introduction**

This section has been introduced to provide the manner and conditions for sharing of taxpayer's information available on the GST portal with other Government systems with the consent of the supplier as well as the recipient. The information may include the details furnished by the registered person in his application for registration (REG-01) or in his returns (GSTR-3B or GSTR-9) or in his statement of outward supplies (GSTR-1), or the details uploaded by him for generation of e-invoice or e-way bill or any other details, as may be provided by rules.

### **158A.2 Analysis**

Vide *Notification No. 33/2023-CT dt. 31<sup>st</sup> July, 2023*, with effect from 1<sup>st</sup> October, 2023, the Central Government, on the recommendations of the Council, has notified "Account Aggregator" as the systems with which information may be shared by the common portal based on consent under

section 158A.

“Account Aggregator” has been defined in the said notification to mean a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India under section 45JA of the Reserve Bank of India Act, 1934 (2 of 1934) and defined as such in the Non-Banking Financial Company -Account Aggregator (Reserve Bank) Directions, 2016.

### Statutory provisions

#### **159. Publication of information in respect of persons in certain cases**

- (1) *If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.*
- (2) *No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.*

*Explanation. —In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.*

#### **159.1 Introduction**

- (i) This provision confers powers on the Competent Authority to publish the names and other details of persons in default, as information to the public.
- (ii) This provision also discusses the persons, whose names can be published, if proceedings relate to a company / firm / association of persons.

#### **159.2 Analysis**

##### **Powers to publish details:**

- (i) The Competent Authority may ensure that the following details are published:
  - Names of any person (and)
  - Other particulars relating to proceedings or prosecutions under the

Act, if related to such person.

- (ii) The decision to publish is based on the opinion of the Competent Authority that it is essential or beneficial in the public interest to do so.
- (iii) As the provision indicates that the Competent Authority “*can decide to publish in such manner as it thinks fit*”, Competent Authority can decide:
  - the category of proceedings / prosecution cases to be published;
  - the category of persons whose details to be published;
  - the extent of particulars to be published;
  - the manner of publishing;
  - the media wherein the information to be published.
- (iv) In addition, the Competent Authority may also decide to publish the following:

Nature of Organisation	Additional details
In case of Firm	Names of partners
In case of Company	Names of directors / Managing Agents / Secretaries & Treasurers / Managers
In case of Association of Persons	Names of the members

*Note: However, the additional details can be published only if the Competent Authority opines that the circumstances of the case justify it.*

- (v) **Exception:** However, publication can be made in relation to imposition of penalty, only when the following conditions are satisfied:
  - The time for presenting an appeal to the First Appellate Authority (u/s 107) has expired and the persons involved, did not present any appeal (OR)
  - The appeal is presented and it is disposed of (against such persons).

### 159.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 107	Time Limit for appeal before First Appellate Authority	Information on the penalty imposed on a person can be published only if the time limit for appeals before First Adjudicating Authority is over.

**159.4 FAQs**

Q1. Should prosecution proceedings alone be published?

Ans. No. Section 159 uses the words “any proceedings or prosecution”. Hence, even a normal adjudication proceeding can be published if the competent authority thinks fit.

Q2. Is there any guideline available for deciding the situations in which information must be published?

Ans. No. As per the section, the Competent Authority may form his own opinion and may decide to publish the name and other particulars in such manner as it thinks fit. It is expected that the Government may frame guidelines on publishing information and manner of such publishing.

Q3. What are the media in which the details must be published?

Ans. Section 159 is silent on such aspect and it gives the power to the competent authority to decide the manner in which it has to be published (*Unless certain guidelines are spelt out by the government*).

Q4. Whether the publishing is to be done only after the adjudication order is passed?

Ans. Sec.159 indicates that the Competent Authority may publish names and other particulars, in relation to any proceeding or prosecution. There is no condition that the order needs to be passed to publish the details.

Q5. Can the names of persons alone be published by the competent authority?

Ans. Section 159 indicates that the names of any person and any other particulars relating to such person, in respect of such proceedings may be given. So, it is imperative to give the other relevant particulars of the proceedings also.

**159.5 MCQs**

Q1. Who can publish the names and particulars?

- (a) Courts
- (b) Appellate Authority
- (c) Any Adjudicating Authority
- (d) Competent Authority

Ans (d) Competent Authority

Q2. Names and particulars relating to prosecutions can be published –

- (a) After Courts Approval
- (b) After expiry of appeal to First Appellate Authority
- (c) At the discretion of the Competent Authority
- (d) Cannot be published at all

Ans. (c) At the discretion of the Competent Authority

Q3. In case of proceedings against the Companies, the details that can be published are-

- (a) Names and Addresses of the Directors
- (b) Only Names of the Directors
- (c) Details of Directors and Auditors
- (d) Photographs of the Directors

Ans. (b) Only Names of the Directors

### Statutory provision

#### **160. Assessment proceedings, etc., not to be invalid on certain grounds**

- (1) *No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.*
- (2) *The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.*

#### **160.1 Introduction**

Very often proceedings under the Act are questioned for their validity even when there are inadvertent errors. This section saves the proceedings from

such challenge when substantive conformity is found but for these errors.

### **160.2 Analysis**

Assessment, re-assessment and other proceedings that are listed in this section will be valid even though there may be:

- Mistake
- Defect or
- Omission

Provided they are in 'substance' and 'effect' in conformity with the intents, purposes and requirements of the Act.

Proceedings listed in this Section are:

- Assessment
- Re-assessment
- Adjudication
- Review
- Revision
- Appeal
- Rectification
- Notice
- Summons
- Other proceedings

Considering the purpose of this section, no proceedings under the Act are excluded from the operation of this section. It is interesting to see how such a determination will be made – whether deficiency in the proceedings was a mistake, defect or omission and that it is in substance and effect in conformity with the Act.

Further, where a notice, order or communication has been:

- Acted upon; or
- Not called into question at the earliest opportunity available,

then the opportunity to call such notice, order or communication into question will not be available in the course of subsequent proceedings. Please note that the deficiency that can be so called into question is limited to – notice, order or communication – and not the documents forming part of the other proceedings listed in sub-section (1). Hence, it is important to note that care needs to be

taken while making preliminary objections on jurisdiction and validity of communication.

It is very important NOT to ignore notices, communication and advisory(ies) from the tax department. For the reason that section 160(2) places an embargo from raising objections if either those objections (as to the validity of service of notice) were taken up belatedly or replies were filed on merits leaving objections (as to the validity of service of notice) unattended.

'Service of notice' is not limited to:

- Service of notice
- Service of VALID notice
- Service of valid notice under VALID section
- Service of valid notice under valid section by VALID Proper Officer
- Services of valid notice under valid section by valid Proper Officer on VALID distinct person.

Keeping in mind that section 169 provides different methods of 'service', it is important NOT to ignore notices, communication and advisory(ies) from the tax department.

Reference may be had to discussion under section 60 to 64 to understand the 'ingredients' for action under the GST law. Further, reference may also be had to notifications issued under section 3 to 6 of the CSGT Act which lays down the authority vested and delegated to each Proper Officer.

Also, note that in terms of section 75(12), which provides that 'undisputed arrears' do not require any further intimation in order to take recovery action under section 79 by issuing garnishee orders in Form DRC-13 to banker or customer or other person who holds monies belonging to taxpayer with undisputed arrears. Making a statement that arrears notified vide notice, communication or advisory are 'disputed' renders such arrears to be 'undisputed' and as to the merits of the dispute will now be subject to the process under respective provisions of CGST Act that will now need to be taken up.

#### 153.4 MCQs

Q1. Mistake, defect or omission, in notice must be overlooked when they are:

- (a) Minor and typographical when "*intents, purposes and requirements*" can easily be understood from the rest of the contents in the said notice.
- (b) Major and substantive when "*intents, purposes and requirements*"

are easily known to the Proper Officer who will explain the said during adjudication and consider it in the Order.

- (c) Minor and typographical as well as major and substantive when “*intents, purposes and requirements*” can easily be understood by any expert in GST law.
- (d) Minor but not limited to typographical errors but also due to inadvertent oversight when “*intents, purposes and requirements*” can easily be understood from references to the statutory provisions and the allegations in the said notice.

Ans. (d) Minor but not limited to typographical errors but also due to inadvertent oversight when “*intents, purposes and requirements*” can easily be understood from references to the statutory provisions and the allegations in the said notice.

Q2. Mistake, defect or omission, that cannot be overlooked and fatal to the notice would be:

- (a) Omission of references to sections giving rise to the cause-of-action but clearly understood from the plain words used to present the allegations
- (b) Omission of reference to sub-section or clause once reference to section is made and the ingredients of the relevant sub-section or clause is unmistakably made from the detailed description used to present the allegations without any overlap or contradiction with other provisions in law and satisfied with the use of prescribed format of forms for said proceedings
- (c) Omission of reference to sub-section or clause and omission of detailed description of allegation or cause-of-action, are such that they intelligible to an expert in GST law or allegations involved attract cause-of-action under two or more provisions in GST law
- (d) Omission of information that taxpayer claims to be difficult to understand

Ans. (b) Omission of reference to sub-section or clause once reference to section is made and the ingredients of the relevant sub-section or clause is unmistakably made from the detailed description used to present the allegations without any overlap or contradiction with other provisions in law and satisfied with the use of prescribed format of forms for said proceedings

Q3. Omission to object to validity of service of notice:

- (a) Cannot be objected in later proceedings
- (b) Causes wastage of efforts (on both sides) if objection are raised in later proceedings
- (c) Tantamount to acquiescence by taxpayer
- (d) All of above.

Ans. (d) All of above

Q4. Calling into question, the 'service of notice' (or order or communication) refers to:

- (a) mode of service
- (b) mode as well as correctness of notice
- (c) mode, correctness and completeness of notice
- (d) mode, correctness, completeness and competence of notice

Ans. (d) mode, correctness, completeness and competence of notice

Q5. Acquiescence by taxpayer:

- (a) brings validity to an otherwise invalid notice (and consequent proceedings)
- (b) bars objection from taxpayer in appeal or revision once invalid notice entertained and replied on merits without any objections as to its validity
- (c) does not prevent this question from being entertained by High Court in judicial review admitted at any stage in the life of such notice (or order) due to authority of High Court to uphold interests of justice
- (d) All of above

Ans. (d) All of above

#### **Statutory provision**

##### ***161. Rectification of errors apparent on the face of record***

*Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and*

*Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:*

*Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:*

*Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:*

*Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.*

### **161.1 Introduction**

While the authority to issue any decision, order, summons, notice, certificate or other document is expected to be free from errors, it is the duty of the authority issuing the same to correct any errors that do not convey the outcome of the process of law resulting in its issuance. This Section provides for an opportunity to make such rectification with some caution and due process being prescribed.

### **161.2 Analysis**

This section begins with caution in stating that:

- no prejudice will be caused to the validity of proceedings listed in Section 161 from the defects that may be present in the documents concerned;
- but overrides all other provisions of the Act that may permit calling into question any deficiency in the documents.

This section provides for rectification of error or apparent mistake by the authority who has issued the document or on being brought to attention by CGST / SGST authority or the affected person. So, there are three ways in which action can be taken under this section. No person is entitled to take advantage of such errors or mistakes.

The action permitted to be taken is to rectify an error or mistake apparent. Errors or mistakes apparent can cause difficulty in executing the directions contained in the document. This may require seeking the authority's intervention to rectify.

The power/jurisdiction to rectify is for any error or mistake which is apparent from record. The error must be self-evident and should not be discoverable by

a long process of reasoning, where there is a possibility on points on which there may conceivably be two opinions. But the limiting aspect is that the power cannot be exercised to amend substantive part of the document concerned.

The error may be-

- (a) factual,
- (b) legal or
- (c) clerical.

All of them are rectifiable once it is shown that they are apparent on face of the record and not within the natural understanding of the authority at the time of issuance of the original document but which has crept in due to inadvertence or by reason other than exercise of judgement. Here, the assessee, on a literal interpretation, cannot bring any document or evidence, not already available on record, to substantiate his claim for rectification. However, it is important to note that 'apparent on face of record' is not one that involves (i) a conclusion that cannot be reached without taking new facts on record during rectification proceedings or (ii) requiring application of mind to existing facts or interpretation already adopted in reaching the conclusion already reached.

The time limit of 3 months is allowed for the affected person or by any officer appointed under this Act or SGST Officer or an UTGST officer to bring to attention any such error or mistake. This time limit does not apply to the very officer who has passed the said order (containing the apparent error) and voluntarily make the necessary rectification. The officer who has passed the decision/ order can make the rectification suo-moto till 6 months from the date of issue of such decision or order i.e., no such rectification is permitted after 6 months from the date of its issuance. This is to ensure that orders can be taken at the face value and proceeded with the further course of action in law. For example, 3 months is the time to file appeal under section 107(1) and 3 months is the time set in section 78 within which no recovery action is to be taken under section 79.

If any such rectification adversely affects any person, it is required that principles of natural justice be followed in these proceedings also. Once an application for rectification has been made, it must conclude in an order. This original order will be substituted by the rectified order. One may note that if the application for rectification is rejected, then the original order stands. Any time limit for preferring an appeal will be counted from the date of the original or rectified order, as the case may be. Time lost in process of rectification can impair the remedy of appeal. Rejection of application for rectification is also an

appealable order but this itself does not vacate the original order. But once the rectification is ordered and a rectification order is passed, then the rectified order will replace the original order. All further appeals on matters arising from the rectified order will be counted from the date of such rectified order.

Rectification of 'apparent' errors on face of record	Decision, Order, Notice, Certification or other document		Clerical or arithmetic error
	3 months from date of order (to request rectification)	6 months (in total, to attend to and complete rectification)	No time limit

### 161.3 Related rules / forms

Rule 142 provides that rectification of the order shall be in Form GST DRC-08.

### 161.4 FAQs

Q1. What errors may be rectified under the provision?

Ans. Only those errors, which are apparent on the face of the record, may be rectified under the provision.

Q2. What is an error apparent on the face of the record?

Ans. An error is apparent on the face of the record if it is evident from the record itself and does not require long drawn-out reasoning.

Q3. What are the types of errors which can be rectified?

Ans. Any error which is apparent on the face of the record, may be rectified. Such error can be a) factual, b) legal or c) clerical.

Q4. Is there a time limit to apply for rectification?

Ans. The time limit is 3 months to make application for rectification and such officer is permitted to consider the application, and if satisfied, proceed to make the rectification not later than further 6 months. And in case of clerical or arithmetic mistakes, the 6 months outer limit is not applicable. Such clerical error must be due to accidental slip or omission.

Q5. Who can seek rectification?

Ans. The authority itself, an officer or the affected person can seek rectification.

Q6. If a proceeding is pending before a higher forum, can rectification be sought for?

Ans. As the provision is applicable notwithstanding other provisions, pendency of proceeding before higher forums is not a bar to seek rectification.

Q7. If there is a material found out which has bearing on the decision whether rectification can be sought?

Ans. No. For that purpose, the error must be apparent on the face of the record. Therefore, outside material cannot be produced to rectify the decision.

Q8. What is the scope of rectification? Whether any part of the order can be rectified?

Ans. The provision expressly states that it cannot amend the substantive part of the decision etc. It also does not include 're-appreciation' of evidence considered once before in the order passed.

Q9. Whether the assessee is to be given notice?

Ans. If there is an adverse effect then principles of natural justice has to be complied with.

#### **161.5 MCQs**

Q1. What errors may be rectified under the provision?

- (a) Only errors which are apparent on the face of the record
- (b) All errors of law and fact
- (c) Only clerical error can be rectified
- (d) Only if the error is by accidental slip or omission

Ans (a) Only errors which are apparent on the face of the record

Q2. What is an error apparent on the face of the record?

- (a) If it can be proved by additional evidence not available at the time of passing the order
- (b) If it is evident from the record itself and does not require long drawn-out reasoning
- (c) If it is error on points of law
- (d) If it is only a clerical or arithmetic error

Ans. (b) If it is evident from the record itself and does not require long drawn-out reasoning

Q3. What is the time limit to apply for rectification?

- (a) Normally 3 months extendable to 6 months in all cases
- (b) 3 months and on sufficient cause shown the delay can be condoned
- (c) Strictly 3 months

- (d) Normally 3 months to seek rectification and further 3 months to carry out rectification, but in case of clerical or arithmetic mistakes, the 6 months outer limit is not applicable.

Ans. (d) Normally 3 months to seek rectification and further 3 months to carry out rectification, but in case of clerical or arithmetic mistakes, the 6 months outer limit is not applicable.

Q4. Who can seek rectification?

- (a) Only the authority itself
- (b) The authority itself, an officer or the affected person
- (c) Only an officer
- (d) Only the affected person

Ans. (b) The authority itself, an officer or the affected person

Q5. If a proceeding is pending before a higher forum can rectification be sought for?

- (a) No
- (b) Yes
- (c) With the permission from the Appellate Authority
- (d) None of the above

Ans. (b) Yes

Q6. What is the scope of rectification? Whether any part of the order can be rectified?

- (a) Once it is proved that there is error apparent, any part of the decision can be rectified.
- (b) Only the part dealing with legal aspect can be rectified.
- (c) Only the part dealing with clerical or arithmetic aspect can be rectified.
- (d) The authority cannot amend the substantive part of the decision etc.

Ans. (a) Once it is proved that there is error apparent, any part of the decision can be rectified.

Q7. Whether principle of natural justice to be followed?

- (a) As it is a quasi-judicial function the authority must give notice and follow principles of natural justice
- (b) As it is only a rectification of apparent error principles of natural justice is not applicable

- (c) If there is an adverse effect then principles of natural justice have to be complied with
- (d) If it relates to assessment principles of natural justice have to be complied with

Ans. (a) As it is a quasi-judicial function the authority must give notice and follow principles of natural justice

### Statutory provisions

#### **162. Bar on jurisdiction of civil courts**

*Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.*

#### **162.1 Introduction**

With the advent of administrative law whereby the departmental machinery has been created to deal with disputes, civil court jurisdiction is restricted. Earlier whenever a new tax liability was created machinery provisions to deal with disputes were also in-built. Otherwise, civil court had a jurisdiction to deal with all disputes of civil nature. Under sections 116 and 117, appeal to High Court and Special leave to the Supreme Court are provided. These are the only instances when this bar to approach Court is not applicable, as it is a statutory appeal and only questions of law could be raised.

#### **162.2 Analysis**

The basic principle is that every dispute of civil nature can be tried by the civil court. Tax being a civil liability, its levy, imposition and collection can be challenged before the Civil Court.

Over a period of time, tribunals were created for trying disputes arising under each legislation without the rigours of Civil Procedure Code to be followed, where non-judicial members preside and persons representing are well versed in the specific domain though not always from the judiciary. In order to avoid duplication, civil court jurisdiction has been barred. The principle is that if a statute creates a new liability or obligation and provides for machinery, then this impliedly bars civil court's jurisdiction. Under GST law, it is expressly barred. This, however, does not bar the writ jurisdiction and appellate jurisdiction of High Courts and Supreme Court.

The clause "any question arising from or relating to anything done or purported to be done under the Act;" makes a strict rule barring even those which are purportedly done under the Act. Except to sit in judgement about the vires of

the law itself, the appellate machinery created by the law can go into any question of fact or law. However, the clause does not bar the Constitutional powers of High Court under Article 226 and 227 or Supreme Court under Article 32 and 136 etc.

Section 117 relates to appeal on substantial question of law to High Court and Section 118 a leave to appeal therefrom to Supreme Court.

### 162.3 Relevant rules

Though the civil courts do not have jurisdiction to deal with any question relating to this Act, however, as per Rule 146 for the purpose of recovery of tax from a defaulter the civil court will have to pass a decree on request by a proper officer.

### 162.4 FAQ

Q1. Why a civil suit cannot be filed against an order passed under the Act?

Ans. Remedies of different nature are provided under the Act. Further, there are constitutional remedies also. Therefore, the Act bars filing of civil suits against any order passed under the Act.

### Statutory provisions

#### 163. Levy of Fee

*Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed.*

#### 163.1 Introduction

This provision empowers the Central Government to collect fees for supplying copy of the orders / documents.

#### 163.2 Analysis

Document or order must be served on the party concerned. But to receive an authentic copy of such document or order, a fee is being prescribed. It is important to note that a new procedure of securing an authenticated copy of the document or order is provided for. This is similar to the procedure prescribed under CPC for receiving documents.

#### 163.3 FAQs

Q1. Should a person pay fees for obtaining copy of Show Cause Notice?

Ans. 'Document' is not defined. Only where 'copy' is required to be obtained, then payment of fee will be required. Show Cause Notices is for department to issue in order to initiate demand proceedings. Certified copy is mandated in rule 108(3) and 110(4), but that is a mandatory in

law to be issued. It must be seen which 'documents' attract this requirement.

Q2. How much fees is to be paid?

Ans. It shall be prescribed by a separate notification.

Q3. Should a person pay fees to obtain the application?

Ans. The person may have to pay fees, if prescribed by the notification.

Q4. Will this provision cover the fees for submission of appeals?

Ans. No. This provision deals only with obtaining copies of pre-existing orders / documents and not filing appeal related documents. For appeals fees, the relevant Sections must be referred to.

Q5. Can a person obtain a copy of an internal document of the department?

Ans. The intention of the provision is to obtain the copy of any order / document, to which a person is normally entitled to. He cannot access the internal communication through this provision. However, such information/document can be obtained under RTI law.

#### 163.4 MCQs

Q1. A person need not pay fees for:

- (a) Primary copy of the Appellate Order
- (b) Show Cause Notice
- (c) Adjudication Order
- (d) All of the above

Ans. (d) All of the above

Q2. Fees must be paid

- (a) Before obtaining the Copy of Order
- (b) After obtaining the Copy of Order

Ans. (a) Before obtaining the Copy of Order

#### Statutory provision

##### **164. Power of Government to make rules**

- (1) *The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.*
- (2) *Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which*

*provisions are to be or may be made by rules.*

- (3) *The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.*
- (4) *Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.*

### **164.1 Introduction**

This is delegation of legislation to the administrative authority, which has become a regular practice and a standard feature of modern legislation. This has to be read with section 165 regarding regulations. While under this section, the Government is given the power to make rules, under section 165 power to make regulations is given to the Board and Commissioner of SGST. There is a general power under sub-section (1) and specific power under sub-section (2) which is also a standard structure.

### **164.2 Analysis**

The reason for the delegation of legislation is that the Legislature cannot take care of all aspects of creating law, due to the enormous responsibility and also, that it is better to leave it to the bureaucracy / officials to fill in the gaps, after laying down general principles.

Two important principles are:

- a) The essential legislative function i.e., laying down the policy, has to be carried out by the legislature and only lesser aspects can be left to the administration.
- b) The legislative policy behind the areas where it is delegated must be known from the legislation itself, so that the administrative authority remains within bounds while making the rules.

It is part of the separation of powers that legislative power is exercised by the legislature and executive only administers it. Delegation requires superintendence of the legislature. Although express supervisory provisions are not contained in this Section, the boundaries of delegation must be identified by the limits set from the words used to describe the topics on which rules (or regulations) are to be notified.

General rule making power is granted to the Central and State Governments. The rule making power is subject to a procedural limitation that it can be made only when there is a recommendation by the Council. Such rule making power also includes power to issue notifications with retrospective effect under the

rules.

General powers to carry into effect the purposes of this Act are provided by vesting the appropriate Government with the rule making power to fill in the gaps with expression “as may be prescribed”. This does not limit the general rule making power to carry out the purposes of the Act.

The legislature has an inherent power to make retrospective laws, but the delegated authority can make retrospective rules but not earlier than the date of commencement of this Chapter XXI.

Finally, in order to ensure the rules are enforceable, breach of the rules is recognized as a cause for imposing penalty not exceeding Rs. 10,000/-. It is interesting that a particular breach while being a breach of the specific rule attracting penalty may also be the breach of the substantive provision of law attracting penalty under sections 73/74 of the Act.

### 164.3 FAQ

Q1. What is the purpose of making rules?

Ans. The principal legislation lays down policy in general. It requires specifics and details for implementation. These are taken care of by the Rules.

### 164.4 MCQ

Q1. Whether the rules can be made with retrospective effect?

- (a) Yes
- (b) No
- (c) Yes, subject to the limitation that it cannot be made beyond the date on which provisions of this Act came into force
- (d) None of the above

Ans. (c) Yes, subject to the limitation that it cannot be made beyond the date on which on provisions of this Act came into force

### Statutory provisions

#### **165. Power to make regulations**

*The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.*

#### **165.1 Introduction**

While topics for rule making are listed under section 164 leaving the domain to

the appropriate Government, topics for making regulation listed under section 165 are reserved for the Board. These are mutually exclusive domains.

### **165.2 Analysis**

The Board is empowered to notify regulations consistent with the objects of the Act. No recommendation of the GST Council is called for in this case.

Specific topics to issue regulations are also provided for though not listed for the time being.

### **Statutory provision**

#### **166. Laying of rules, regulations and notifications**

*Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.*

#### **166.1 Introduction**

This section lays down the general procedure of laying delegated legislations before the Parliament for a prescribed duration.

#### **166.2 Analysis**

- (a) The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government.
- (b) Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament.
- (c) It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

- (d) Before the expiry of the session or successive sessions both Houses may make suitable modifications and would have effect in such modified form.
- (e) However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

**Statutory provision**

**167. Delegation of Powers**

*The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.*

**167.1 Introduction**

This section enables the Competent Authority to delegate the power exercisable by one authority to another.

**167.2 Analysis**

The power conferred on one officer or authority under the Act can be exercised by another authority or officer if directed by the Competent Authority. This direction of the Competent Authority must be notified in the Gazette. Such power can be limited by conditions specified in the notification. Significantly, there is no condition, criterion or circumstance stated for exercising this power by the Competent Authority. It is important to note that upon notification of such direction by the Competent Authority, it does exclude the first authority or officer who was originally delegated from exercising such power.

This is an administrative power to ensure swift response to situations where an authority or officer better placed to carry out the duties (by exercising the power) has not been originally conferred with the power by delegation. In such cases, instead of awaiting the revision in delegation, the delegation is permitted to be redirected at the discretion of the Competent Authority for purposes of the Act.

**167.3 FAQ**

Q1. How does the assessee know whether an officer is properly delegated?

Ans. As the delegation has to be through notification, by referring to the notification it can be ascertained whether the officer is properly delegated or not.

**167.4 MCQs**

Q1. Which of the following statements is correct?

- (a) An officer may delegate his powers to his subordinate
- (b) The delegation can be done by way of an internal memo
- (c) No conditions can be imposed
- (d) The delegation can be done only by a competent authority by way of a notification

Ans. (d) The delegation can be done only by a competent authority by way of a notification

Q2. Who can delegate the powers?

- (a) The officer who is exercising the power
- (b) Appropriate Government
- (c) The Competent Authority
- (d) All of the above

Ans. (c) The Competent Authority

**Statutory provision****168. Power to issue instructions or directions**

- (1) *The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.*
- (2) *The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, <sup>9</sup>[], sub-section (6) of section 39, <sup>10</sup>[<sup>11</sup>] section 44], sub-sections (4) and (5) of section 52], <sup>12</sup>[sub-section (1) of section 143, except the second proviso thereof], <sup>13</sup>[], clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.*

**168.1 Introduction**

This section empowers the Competent Authority to issue orders, instruction or directions to the lower authorities to bring uniformity in the implementation of the Act.

**168.2 Analysis**

There are three aspects to the provision, namely:

- authority issuing the instruction;
- persons whom it binds, and
- its efficacy.

It is the Competent Authority who is empowered to issue the orders, instruction or directions. The purpose is to bring in uniformity in the implementation of the

<sup>9</sup> Omitted 'sub-section (2) of section 38' vide The Finance Act, 2022 notified through Notf No.18/2022-CT dt. 28-09-2022 w.e.f. 01.10.2022.

<sup>10</sup> Inserted vide The Finance Act, 2019 notified through Notf No.01/2020-CT dt.01-01-2020 w.e.f 01.01.2020.

<sup>11</sup> Substituted 'sub-section (1)' vide The Finance Act, 2021 notified through Notf No. 39/2021-CT dt. 21-12-2021 w.e.f. 01.01.2022.

<sup>12</sup> Substituted vide The Finance Act, 2020 notified through Notf No. 49/2020 -C.T., dt. 24-06-2020 w.e.f. 30.06.2020)

<sup>13</sup> Omitted 'sub-section (1) of section 151' vide The Finance Act, 2021 notified through Notf No.39/2021-CT dt. 21-12-2021 w.e.f 01.01.2022.

Act; and it is binding on all GST officers.

Thus, any Circular which is general or administrative in nature is binding on the assessing officer and other officers at basic level. Once the Circular is cited they cannot ignore it and decide the matter independently. The circular or instruction is not binding on the assessee. As regards contrary views regarding binding force of a Circular which is against the legal provisions on the assessee or the Authorities is not expressly addressed in this section. However, officers are not liable for passing orders contrary to law involving interpretation by higher judiciary if it can be shown that such orders are in conformity with orders, instruction or directions issued under this section.

Sub-section (2) of section 168 designates the Commissioner or Joint Secretary posted in the Board for exercising certain powers conferred under specific provisions. Such powers would be exercised with the approval of the Board.

### 168.3 MCQ

Q1. The Competent Authority can issue instruction to the field formation to bring in uniformity in the implementation of this Act, to all officers

- (a) True
- (b) False

Ans (a) True

### Statutory provisions

**<sup>14</sup>[168A. Power of Government to extend time limit in special circumstances**

*(1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.*

*(2) The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act*

*Explanation.- For the purposes of this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act.]*

<sup>14</sup> Inserted by section 7 of The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 published in the Gazette of India, Extraordinary, Part II, Section 1, dated 29<sup>th</sup> September, 2020 - Brought into force w.e.f. 31<sup>st</sup> March, 2020.

**168A.1 Introduction**

This section was inserted to empower vide Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 to empower the Government to extend the time limit, in respect of actions which could not be completed due to force majeure, namely, war, epidemic, flood, drought, etc. or any other calamity caused by nature affecting the implementations of provisions of CGST Act, 2017.

**168A.2 Analysis**

In exercise of the powers conferred by clause (1) of article 123 of the Constitution, Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 was issued on 31<sup>st</sup> March, 2020 by the President of India.

The Ordinance aims to provide relaxation in the provisions of certain Acts and for matters connected therewith or incidental thereto, including extension of time limit, in the taxation and other laws; in view of the spread of pandemic COVID-19.

Thus, Chapter VII to The Taxation And Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 provides for insertion of section 168A to the CGST Act, 2017 providing for the power to the Government to extend the time limit in special circumstances in respect of actions which cannot be completed or complied with due to force majeure including retrospective notifications.

So far, *Notification No. 35/2020 dated 03<sup>rd</sup> April, 2020*, *Notification No. 40/2020 dated 05<sup>th</sup> May, 2020* and *Notification No. 46/2020 dated 09<sup>th</sup> June, 2020* has been issued in exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017.

Further, *Notification No. 13/2022 dated 5<sup>th</sup> July, 2022* has been issued under section 168A of CGST Act prescribing 'exclusion' of the period from 1<sup>st</sup> March 2020 to 28<sup>th</sup> February 2022 for purposes of demand, refund and appeal.

**Statutory provision****169. Service of notice in certain circumstances**

- (1) *Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely: —*
- (a) *by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in*

- connection with the business, or to any adult member of family residing with the taxable person; or*
- (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or*
  - (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or*
  - (d) by making it available on the common portal; or*
  - (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or*
  - (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.*
- (2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).*
- (3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.*

### **169.1 Introduction**

Service of communication is an essential step of any process of law. This section details the mode of service that is considered valid.

### **169.2 Analysis**

- (i) Communication:** Any decision, order, summons, notice or other communication under the Act or the rules. It is important to note that 'service of notice' means that it should reach the Noticee and this objective guides the 'mode' to be selected and the 'mode' must be that which ensures that the Notice reaches the Noticee promptly.

(ii) **Modes of Communication:** The above documents can be served on the assessee in the following modes:

(a) **Mode 1 – Physical Delivery:**

- Giving or tendering it directly; or
- Delivery through a messenger including a courier;
- The documents can be delivered to:
  - (i) The addressee / the taxpayer / to his manager;
  - (ii) The agent duly authorized / an advocate / a tax practitioner (who holds authority to appear in the proceeding on behalf of the taxpayer);
  - (iii) A person regularly employed by him in connection with the business;
  - (iv) Any adult member of family residing with the taxpayer.

(b) **Mode 2 – Regd. Post /speed post or Courier with acknowledgement due:**

It should be sent to intended person or his authorised representative at his last known place of business or residence.

(c) **Mode 3 – Electronic Means:**

Email or notifying on common portal (GSTN).

(d) **Mode 4 – Media:**

Publication in a newspaper (in the locality in which the taxpayer or the person to whom it is issued is known to have resided, carried on business or personally worked for gain)

(e) **Mode 5 – Other Modes:** If above modes fail, then it can be served by

- Affixing it in some conspicuous place at his last known place of business or residence or
- If above mode is not practicable, service of notice can be by affixing a copy on the notice board of the officer or authority issuing such communication.

(iii) **Date of service**

- **Normal Cases:** The above communications shall be treated as served on the date on which it is tendered or published or a copy thereof is affixed (as mentioned above)

- **Registered or Speed Post:** If such communications are sent by registered/ speed post, it shall be treated as received by the addressee at the expiry of the normal period taken by such post in transit (unless the contrary is proved).

**(iv) Choice of 'mode of service'**

- **Registered Person:** the availability of multiple modes of service requires the use of 'most suitable' mode of service considering the facts and circumstances of taxpayer in question. Use of mode that is least likely to reach the Customer does not meet the ends of justice since the purpose of notice is to 'set the law in motion' by informing the taxpayer of the allegations contained in the notice. Use of a mode that is reasonably likely not to reach the taxpayer, based on the facts and circumstances of each taxpayer, shows failure of Proper Officer to 'put at notice' the said taxpayer.
- **Unregistered Person:** the non-availability of official and recognized email id entails obligation on Proper Officer to avoid use of electronic modes of service.

**169.3 Related provisions**

Section 169 relates to all communications issued under the law and hence any communication given under any provision, shall be governed by this provision.

**169.4 FAQs**

Q1. What are the approved modes of communication?

Ans. Physical Delivery, Registered Post, Courier, Email, common portal, publication in newspaper, affixing of notice on place of business or residence of the addressee, notice board of the Authority which has issued notice.

Q2. If post is used but acknowledgment due is not given, is it approved?

Ans. Post with Acknowledgment due is essential to make it valid.

Q3. If mail is sent to an invalid mail ID, is it valid?

Ans. Mail sent to the last known E-mail ID of the Addressee shall be considered valid communication. However, if the addressee is able to prove that such communication is not received by him, it can be invalid.

Q4. Whether notice must be sent to the person intended and to his authorized agent also or any one of them is sufficient?

Ans. The provision provides that if the notice is sent by courier or physical delivery to the person to whom it is intended or his authorized agent, it is

sufficient.

Q5. Whether advertisement in local talks is considered valid service?

Ans. The provision provides that display in the newspaper shall be a valid service of notice. Hence, local talks prevalent in the place where the addressee normally resides or has place of business shall be treated as valid.

### 169.5 MCQs

Q1. Among the following, which method is not approved?

- (a) Post
- (b) Courier
- (c) Email
- (d) Notice to Addressee's Debtor

Ans. (d) Notice to Addressee's Debtor

Q2. Among the following, to whom the notice cannot be served?

- (a) Authorised Agent
- (b) Family Member
- (c) Employee
- (d) Partner

Ans (a) Authorised Agent

Q3. In case of registered post, if acknowledgment is not received within time, what shall be the date of service of notice?

- (a) Reasonable Time
- (b) Not considered as delivered
- (c) 30 days from sending the registered post
- (d) 45 days from sending the registered post

Ans (a) Reasonable Time

### Statutory provision

#### **170. Rounding off of tax, etc.**

*The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount*

*contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.*

### 170.1 Introduction

This provision enables the tax payers and also the departmental authorities to round off the amounts calculated as per the law, if the amounts are in fraction of a rupee.

### 170.2 Analysis

- (i) **Amounts covered:** Tax, interest, penalty, fine or any other sum payable, and refund or any other sum due, under the Act.
- (ii) The above amounts shall be rounded off as under:

If amount contains a part of the rupee	Effect
≥ 50 paise	Must be increased to one rupee
< 50 paise	Part to be ignored

- (iii) The rounding off need not be done for every part of the tax contained in the invoice, whereas consolidated payment to Government has to be rounded off.
- (iv) The above provision is applicable for the assessee, for the department (while issuing show cause notice or passing the order, etc.) and also for the Appellate Authorities.

### 170.3 Related provisions

This provision shall apply to any amount calculated under the other provisions of the Act or Rules.

### 170.4 FAQs

- Q1. If the Show Cause Notice mentions the tax as Rs.102.30 and penalty as Rs.102.30, then what is the amount payable?
- Ans. As per Sec.170, if the paise is less than 50 then that part has to be ignored. Total amount payable is Rs.102 + Rs.102 = Rs.204.
- Q2. Whether the rounding off provision applies to Pre-deposit?
- Ans. Yes, any amount payable under the act is subject to rounding off provisions. Hence, even Pre-Deposit is rounded off as per the above Section.

Q3. If the assessee has raised multiple invoices, then the rounding off is to be made for the consolidated amount of tax or for the tax amount mentioned in each invoice?

Ans. Rounding off must be made for the tax payable under the Act. It applies to each invoice as tax is payable on each invoice. Further, the rounding off must be made for each part of tax (CGST and SGST separately).

### 170.5 MCQs

Q1. If the amount of tax is Rs.2,15,235.50, then the amount shall be rounded off as:

- (a) 2,15,236
- (b) 2,15,235
- (c) 2,15,235.50
- (d) 2,15,240

Ans (a) 2,15,236

Q2. What are the amounts that can be rounded off as per this section?

- (a) Interest
- (b) Tax
- (c) Penalty
- (d) All of the above

Ans. (d) All of the above

Q3. Which of the following shall be rounded off?

- (a) CGST
- (b) SGST
- (c) Both
- (d) None of the above

Ans. (c) Both

### Statutory provision

#### **171. Anti-profiteering measure**

- (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.
- (2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority

constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

(3A) <sup>15</sup>[Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

Explanation.— For the purposes of this section, the expression “profiteered” shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both].

#### Extract of the CGST Rules, 2017

##### <sup>16</sup>~~122. Constitution of the Authority~~

~~The Authority shall consist of,-~~

- ~~(a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and~~
- ~~(b) four Technical Members who are or have been Commissioners of State tax or central tax [for at least one year]<sup>17</sup> or have held an equivalent post under the existing law, to be nominated by the Council.]~~

##### **123. Constitution of the Standing Committee and Screening Committees**

- (1) The Council may constitute a Standing Committee on Anti-profiteering which shall consist of such officers of the State Government and Central Government as may be nominated by it.

<sup>15</sup> Inserted vide The Finance Act, 2019 notified through Notf No.01/2020-CT dt. 01-01-2020 w.e.f 01.01.2020.

<sup>16</sup> Omitted vide Notf No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022.

<sup>17</sup> Inserted vide Notf no. 34/2017 – CT dt. 15.09.2017

- (2) A State level Screening Committee shall be constituted in each State by the State Governments which shall consist of-
- (a) one officer of the State Government, to be nominated by the Commissioner, and
- (b) one officer of the Central Government, to be nominated by the Chief Commissioner.

<sup>18</sup>~~124. Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority~~

~~(1) The Chairman and Members of the Authority shall be appointed by the Central Government on the recommendations of a Selection Committee to be constituted for the purpose by the Council.~~

~~(2) The Chairman shall be paid a monthly salary of Rs.2,25,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay:~~

~~**Provided** that where a retired officer is selected as a Chairman, he shall be paid a monthly salary of Rs.2,25,000 reduced by the amount of pension.~~

~~(3) The Technical Member shall be paid a monthly salary and other allowances and benefits as are admissible to him when holding an equivalent Group 'A' post in the Government of India: **Provided** that where a retired officer is selected as a Technical Member, he shall be paid a monthly salary equal to his last drawn salary reduced by the amount of pension in accordance with the recommendations of the Seventh Pay Commission, as accepted by the Central Government.~~

~~(4) The Chairman shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty five years, whichever is earlier and shall be eligible for reappointment:~~

~~**Provided** that a person shall Not be selected as the Chairman, if he has attained the age of sixty two years.~~

~~**Provided** further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Chairman at any time.~~

~~(5) The Technical Member of the Authority shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty five years, whichever is earlier and shall be eligible for reappointment:~~

~~**Provided** that a person shall not be selected as a Technical Member if he~~

<sup>18</sup> Omitted vide Notf No. 24/2022 - CT dated 23.11.2022 w.e.f. 01.12.2022.

has attained the age of sixty two years.

~~Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Technical Member at any time."~~]

<sup>19</sup>~~[125. Secretary to the Authority~~

~~An officer not below the rank of Additional Commissioner (working in the Directorate General of [Anti-Profiteering]<sup>20</sup>) shall be the Secretary to the Authority.]~~

**126. Power to determine the methodology and procedure**

The Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

**127. <sup>21</sup>[Duties Functions] of the Authority**

<sup>33</sup>~~[It shall be the duty of the Authority,– The authority shall discharge the following functions, namely:-]~~

- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- (iii) to order,
  - (a) reduction in prices;
  - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in

<sup>19</sup> Omitted vide Notf No. 24/2022-CT dt.23.11.2022 w.e.f. 01.12.2022.

<sup>20</sup> Substituted for the word —'Safeguards' vide Notf No. 29/2018-CT dt. 06.07.2018 w.e.f 12.06.2018.

<sup>21</sup> Substituted vide Notf No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022.

section 57;

(c) imposition of penalty as specified in the Act; and

(d) cancellation of registration under the Act.

<sup>22</sup>[(iv) to furnish a performance report to the Council by the tenth <sup>23</sup>[day] of the close of each quarter].

**128. Examination of application by the Standing Committee and Screening Committee**

(1) The Standing Committee shall, within a period of two months from the date of the receipt of a written application, <sup>24</sup>[or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority,] in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

(2) All applications from interested parties on issues of local nature <sup>25</sup>[or those forwarded by the Standing Committee] shall first be examined by the State level Screening Committee and the Screening Committee shall, <sup>26</sup>[within two months from the date of receipt of a written application, or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority,] upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

**129. Initiation and conduct of proceedings**

(1) Where the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate

<sup>22</sup> Inserted vide Notf No. 34/2017 – CT dt 15.09.2017.

<sup>23</sup> Inserted vide Notf No. 14/2018-CT dt. 23.03.2018.

<sup>24</sup> Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019.

<sup>25</sup> Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019

<sup>26</sup> Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019.

reduction in prices, it shall refer the matter to the <sup>27</sup>[Directorate General of Anti-Profiteering] for a detailed investigation.

- (2) The <sup>27</sup>[Directorate General of Anti-Profiteering] shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.
- (3) The <sup>27</sup>[Directorate General of Anti-Profiteering] shall, before initiation of the investigation, issue a notice to the interested parties containing, *inter alia*, information on the following, namely:-
  - (a) the description of the goods or services in respect of which the proceedings have been initiated;
  - (b) summary of the statement of facts on which the allegations are based; and
  - (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.
- (4) The <sup>27</sup>[Directorate General of Anti-Profiteering] may also issue notices to such other persons as deemed fit for a fair enquiry into the matter.
- (5) The <sup>27</sup>[Directorate General of Anti-Profiteering] shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.
- (6) The <sup>27</sup>[Directorate General of Anti-Profiteering] shall complete the investigation within a period of [six]<sup>28</sup> months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing <sup>29</sup>[as may be allowed by the Authority] and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

<sup>27</sup> Substituted for the word "Safeguards" vide Notf No. 29/2018-CT dt. 06.07.2018, w.e.f. 12.06.2018.

<sup>28</sup> Substituted vide Notf No. 31/2019 – CT dt. 28.06.2019 for —'three'

<sup>29</sup> Substituted vide Notf No. 14/2018-CT dt. 23.03.2018 for —'as allowed by the Standing Committee'.

**130. Confidentiality of information**

- (1) Notwithstanding anything contained in sub-rules (3) and (5) of rule 129 and sub-rule (2) of rule 133, the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.
- (2) The <sup>30</sup>[Directorate General of Anti-Profiteering] may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, the said information cannot be summarised, such party may submit to the <sup>30</sup>[Directorate General of Anti-Profiteering] a statement of reasons as to why summarisation is not possible.

**131. Cooperation with other agencies or statutory authorities**

Where the <sup>30</sup>[Directorate General of Anti-Profiteering] deems fit, he may seek opinion of any other agency or statutory authorities in the discharge of his duties.

**132. Power to summon persons to give evidence and produce documents**

- (1) The <sup>31</sup>[Authority,] <sup>30</sup>[Directorate General of Anti-Profiteering], or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).
- (2) Every such inquiry referred to in sub-rule (1) shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

**133. Order of the Authority**

- (1) The Authority shall, within a period of <sup>32</sup>[six] months from the date of the receipt of the report from the <sup>33</sup>[Directorate General of Anti-Profiteering] determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of

<sup>30</sup> Substituted for the word "Safeguards" vide Notf No. 29/2018-CT dt. 06.07.2018, w.e.f. 12.06.2018.

<sup>31</sup> Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019.

<sup>32</sup> Substituted vide Notf No. 31/2019 – CT dt. 28.06.2019 for —"three"

<sup>33</sup> Substituted for the word "Safeguards" vide Notf No. 29/2018-CT dt. 06.07.2018, w.e.f. 12.06.2018.

*commensurate reduction in prices.*

(2) *An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.*

<sup>34</sup>*[(2A) The Authority may seek the clarification, if any, from the Director General of Anti-Profiteering on the report submitted under sub-rule (6) of rule 129 during the process of determination under sub-rule (1)].*

<sup>35</sup>*[(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-*

*(a) reduction in prices;*

*(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;*

*(c) the deposit of an amount equivalent to fifty per cent. of the amount determined under the above clause <sup>36</sup>[along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of deposit of such amount] in the Fund constituted under section 57 and the remaining fifty per cent. of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;*

*(d) imposition of penalty as specified under the Act; and*

*(e) cancellation of registration under the Act.*

*Explanation: For the purpose of this sub-rule, the expression, "concerned State" means the State <sup>37</sup>[or Union Territory] in respect of which the Authority passes an order."*

(4) <sup>38</sup>*[If the report of the <sup>39</sup>[Directorate General of Anti-Profiteering] referred to in sub-rule (6) of rule 129 recommends that there is*

<sup>34</sup> *Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019.*

<sup>35</sup> *Substituted vide Notf No. 26/2018-CT dt. 13.06.2018.*

<sup>36</sup> *Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019.*

<sup>37</sup> *Inserted vide Notf No. 31/2019 – CT dt. 28.06.2019.*

<sup>38</sup> *Inserted vide Notf No. 14/2018-CT dt. 23.03.2018.*

<sup>39</sup> *Substituted for the word —'Safeguards' vide Notf No. 29/2018-CT dt. 06.07.2018.*

contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the <sup>40</sup>[Directorate General of Anti-Profiteering] to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.]

- <sup>41</sup>[(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.
- (b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall *mutatis mutandis* apply to such investigation or enquiry.]

<sup>42</sup>~~[134. Decision to be taken by the majority~~

- ~~(1) A minimum of three members of the Authority shall constitute quorum at its meetings.~~
- ~~(2) If the Members of the Authority differ in their opinion on any point, the point shall be decided according to the opinion of the majority of the members present and voting, and in the event of equality of votes, the Chairman shall have the second or casting vote.]~~

**135. Compliance by the registered person**

Any order passed by the Authority under these rules shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union territory Goods and Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be.

**136. Monitoring of the order**

The Authority may require any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.

<sup>40</sup> Substituted for the word —'Safeguards' vide Notf No. 29/2018-CT dt. 06.07.2018.

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

<sup>42</sup> Omitted vide Notf No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022

**<sup>43</sup>137. [Tenure of Authority**

~~The Authority shall cease to exist after the expiry of five years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.]~~

Explanation.- For the purposes of this Chapter,

- (a) <sup>44</sup>[“Authority” means the National Anti-profiteering Authority constituted under rule 122; “Authority” means the Authority notified under sub-section (2) of section 171 of the Act;]
- (b) “Committee” means the Standing Committee on Anti-profiteering constituted by the Council in terms of sub-rule (1) of rule 123 of these rules;
- (c) “interested party” includes-
- a. suppliers of goods or services under the proceedings; and
  - b. recipients of goods or services under the proceedings;
  - c. <sup>45</sup>[any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices].
- (d) “Screening Committee” means the State level Screening Committee constituted in terms of sub-rule (2) of rule 123 of these rules.

**171.1 Introduction**

The objective of this section is to ensure that with the introduction of GST, taxable persons are not getting excessive profits, but shall pass on the reduction in price to the consumers.

**171.2 Analysis**

The registered person is expected to reduce the price on account of availment of input tax credit or reduction in tax rates. An authority would be notified for this purpose, who would exercise powers and discharge functions in a prescribed manner.

Anti-Profiteering Rules (Rule 122 to Rule 137) as per Chapter-XV of CGST Rules, 2017 as notified by Central Government vide *Notification No. 10/2017-Central Tax dated 28-Jun-17 w.e.f. 1-Jul-17* provides for Powers and Functions of Anti-Profiteering Authority and Compliances of Orders passed by the Authority.

<sup>43</sup> Omitted vide Notf No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022

<sup>44</sup> Substituted vide Notf No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022

<sup>45</sup> Inserted vide Notf No. 14/2018-CT dt. 23.03.2018

On 16<sup>th</sup> November, 2017, the Union Cabinet approved the establishment of the National Anti-Profiteering Authority. This is against the backdrop of reduction in GST rates for various goods and services effective from 15<sup>th</sup> November, 2017 after the 23<sup>rd</sup> GST Council Meeting on 6<sup>th</sup> November, 2017.

The newly established mechanism empowers the affected consumers to apply for relief to the Screening Committee in their State citing that the reduction in rates or increase of input tax credit has not resulted in a commensurate reduction in prices. Upon examination by the State Level Screening Committee, the Screening Committee will forward the application along with its recommendations to the Standing Committee. In case, the incident of profiteering relates to an item of mass impact with 'All India Ramification', the application can directly be made to the Standing Committee. After forming a prima facie view that there is an element of profiteering, the Standing Committee will refer the matter for detailed investigation to the Directorate General of Anti-Profiteering, CBIC which will report the finding to the National Anti-Profiteering Authority. If the authority confirms the necessity to apply the anti-profiteering measure, it can order the business to reduce its prices or return the undue benefit along with interest to the recipient of goods and/or services. If the benefit cannot be passed on to the recipient, it can be ordered to be deposited with the Consumer Welfare Fund. In certain extreme cases, a penalty on the defaulting business entity and even an order for cancellation of GST registration may be issued. Its constitution aims to bolster the confidence of consumers to get the benefit of reduction in GST rates.

**Department of Consumer Affairs allows change in MRP on unsold stock prior to implementation of GST till 30<sup>th</sup> September 2017**

On account of implementation of GST w.e.f. 1<sup>st</sup> July, 2017, there may be instances where the retail sale price of a pre-packaged commodity is required to be changed. In this context, Ministry for Consumer Affairs, Food & Public Distribution has vide *Circular No. WM-10(31)/2017 dt. 4<sup>th</sup> July 2017* allowed the manufacturers or packers or importers of pre-packaged commodities to declare the change in retail sale price (MRP) on the unsold stock manufactured/ packed/ imported prior to 1<sup>st</sup> July, 2017 after inclusion of the increased amount of tax due to GST if any, in addition to the existing retail sale price (MRP), for three months w.e.f. 1<sup>st</sup> July 2017 to 30<sup>th</sup> September, 2017. Declaration of the changed retail sale price (MRP) shall be made by way of stamping or putting sticker or online printing, as the case may be.

It is also clarified that 'for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the same shall not cover the MRP declaration made by the manufacturer or the packer, as the case may be, on the label of the package'.

Use of unexhausted packaging material/wrapper has also been allowed upto 30<sup>th</sup> September, 2017 after making the necessary corrections.

The phrase "*the increased amount of tax due to GST, if any*" means "the effective increase in the tax liability calculated after taking into consideration extra availability of input tax credit under GST (including deemed credit available to the traders under CGST)"

Thus, the declaration of new MRP on unsold stock manufactured/packed/imported prior to 1<sup>st</sup> July 2017 should not be done mechanically but after factoring in and taking into consideration extra availability of input tax credit under GST (including deemed credit available to traders under proviso to sub-section (3) of section 140 of the CGST Act, 2017).

### **171.3 Decisions of National Anti-Profiteering Authority**

An application was filed before the National Anti-profiteering Authority alleging that the reduced rate of tax under GST regime was not passed on to the applicant. The application was preferred on the grounds that rate of tax applicable to motor vehicle in pre-GST regime was 51% which was reduced to 29% in GST regime and such reduced tax rate benefit was not passed on to the applicant. The Authority perusing the details of value and tax charged made an observation that applicable rate of tax in pre-GST regime was 31.254% and not 51% as claimed by the applicant. Accordingly, it was observed that the applicant was only entitled for the tax rate benefit of 2% only which was rightly passed on to the applicant by way of reduction in sale price. As such, it is held that no additional benefit on account of ITC is required to be paid by the respondent and therefore, the application was dismissed as not valid. On these lines, the Authority held that the respondent has not contravened the provisions of Section 171. [*Sh. Dinesh Mohan Bhardwaj vs. M/s Vrandavaneshwree Automotive Private Limited reported in 2018-NAA*]

An application was filed before the National Anti-Profiteering Authority on the grounds that the benefit of reduced rate of tax was not passed on to the consumers of 'India Gate Basmati Rice' since, there is an increase in MRP on the advent of GST which may have led to increase in the margin of the Respondent. The application was examined by the Standing Committee on Anti-Profiteering and was forwarded to the Director General Safeguards (DGSG) for detailed investigations. Upon perusal of the detailed report of the DGSG and the returns filed by the Respondent, it was observed that the GST rate of tax applicable to such product is 5% which was at 0% in pre-GST regime. The input tax credit was available to the Respondent in the range of 2.69% to 3% as a percentage of value of taxable supplies and post implementation of GST the purchase price of paddy is also increased. Upon such observations, the Authority dismissed the application on the grounds that the increase in MRP of the product is attributable to the increase in rate of tax

and increase in purchase price of paddy and is not on account of non-passing of the GST benefit to the consumers. [*Kumar Gandharv vs. KRBL Ltd., reported in 2018 – National Anti-Profiteering Authority*]

Another important concern that was raised was whether this section applies only in respect of 'transition provisions' or will it continue to be applied to transactions initiated in GST regime. While section 171(1) does not appear to limit the scope of anti-profiteering to transition pricing. Although the anti-profiteering authority is intended to operate in respect of transition pricing, experts believe, that although not this authority, power to inquire into profiteering by registered persons is not out-of-bounds by the Proper Officer himself. Care must be taken to address questions about profiteering especially when there is a rate reduction. Reference may be had to decision of Hon'ble SC in CCE, Pune v. *Dai Ichi Karkaria 1999 (112) ELT 353* wherein it was held that cost of production and assessable value (in the context of Central Excise law) have not immediate correlation but, availment of credit or discontinuation of credit has an immediate effect on the cost of production. This principle does not become inapplicable even though GST does not consider 'assessable value' instead it considers 'transaction value'.

**Competition Commission of India empowered to handle Anti-Profiteering cases under the CGST Act [Notification No. 23/2022-CT dt. 23.11.2022]**

Central Government on the recommendations of GST Council has empowered the Competition Commission of India (CCI) established under section 7(1) of the Competition Act, 2002 to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. The above amendment has become effective from 01.12.2022.

**Statutory provisions**

**172. Removal of difficulties**

(1) *If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:*

*Provided that no such order shall be made after the expiry of a period of*

~~three years~~ <sup>46</sup>[five years] from the date of commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

### 172.1 Introduction

The responsibility to implement the legislatures will be of the appropriate Government. In doing this, the Act empowers the appropriate Government with the necessary power to remove any difficulty that may arise.

### 172.2 Analysis

- (i) If the Government identifies that there is a difficulty in implementation of any provision of the GST Legislations, it has powers to issue a general or special order, to carry out anything to remove such difficulty.
- (ii) Such activity of the Government must be consistent with the provisions of the Act and should be necessary or expedient.
- (iii) Maximum time limit for passing such order shall be 3 years from the date of effect of the CGST Act.
- (iv) *Finance Act, 2020* had extended time limit prescribed in section 172 by 'two years', that is, upto 30<sup>th</sup> Jun 2022. It is this extension that has created hope that Government can issue an Order to address as a one-time measure to regularize *bona fide* lapses and save from the burden of forfeiture of credit and interest due to omission or erroneous claim of input tax credit, matching of credit, interest on belated filing of returns and restoration of cancelled registrations.

### 172.3 Related provisions

This is an independent section and would be applicable for implementation of all provisions of the GST Law.

### 172.4 Relevant orders

The Central Government has issued order no. 01/2017-Central Tax under the Central Goods and Services Tax (Removal of Difficulties) Order, 2017 dated 13<sup>th</sup> October, 2017. Through this order it has been clarified that if a person supplies goods and / or services referred to in clause (b) of paragraph 6 of Schedule II (restaurants, outdoor caterers etc.) and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme subject to the

<sup>46</sup> Substituted vide *The Finance Act, 2020 notified through Notf No. 49 /2020-CT. dated 24-6-2020 w.e.f. 30<sup>th</sup> June, 2020*

fulfilment of all other conditions. It is further clarified that in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

**172.5 FAQs**

Q1. Will the powers include the power to notify the effective date for implementation of provisions?

Ans. Yes. All powers regarding implementation of any provision of the GST law is covered.

Q2. Will the powers include bringing changes in any provision of law?

Ans. No. The Government has power only to decide on the practical implementation of law. But it cannot amend the legislation through this section.

Q3. What is the maximum time limit for exercising the powers under section 172?

Ans. The maximum time limit is 5 years from the date of effect of CGST Act.

Q4. Whether the reasons be mentioned in the order?

Ans. The order is issued only when there is a necessity or expediency for it. Specific reasons may not be mentioned in the order.

**172.6 MCQs**

1. Who can issue the Order?

- (a) Central Government
- (b) State Government
- (c) Either
- (d) None

Ans. (a) Central Government

2. Whether Prior approval of the Parliament is necessary?

- (a) Yes
- (b) No

Ans. (b) No

3. What is the maximum period for exercising this power?

- (a) 4 years

- (b) 3 years
- (c) 2 years
- (d) 5 years

Ans. (d) 5 years

### Statutory provisions

#### **173. Amendment of Act 32 of 1994**

*Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.*

### Statutory provision

#### **174. Repeal and Saving**

- (1) *Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.*
- (2) *The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act",) to the extent mentioned in the sub-section (1) or section 173 shall not—*
  - (a) *revive anything not in force or existing at the time of such amendment or repeal; or*
  - (b) *affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or*
  - (c) *affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts*

*Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or*

- (d) *affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against*

*the provisions of the amended Act or repealed Acts; or*

- (e) *affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;*
  - (f) *affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.*
- (3) *The mention of the matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.*

#### **174.1 Introduction**

These provisions indicate the extent of erstwhile indirect tax laws, which would continue upon introduction of CGST Act. It also provides for exceptions as to continuation of certain provisions of the erstwhile laws for the sake of smooth transition. Further certain Acts would be repealed upon introduction of CGST Act.

#### **174.2 Analysis**

- (a) These provisions have to be read along with the Transition provisions in Chapter XX of the CGST Act, 2017.
- (b) It came into force on the date of enactment of the CGST Act i.e., .01-07-2017.
- (c) Whenever an enactment is repealed or substituted by a new enactment, the new enactment should provide for a clause relating to repeal or saving of certain provisions under the old law.
- (d) This would ensure that the rights, powers, liabilities, duties, privileges, obligations etc. created under the old laws are intact and are not affected by the enactment of new law by repealing the old laws.

- (e) Entry 84 of the Union List and Entry 54 of the State List, both forming part of the VII Schedule to the Constitution as amended by the Constitutional (101<sup>st</sup> Amendment) Act 2016 would continue to apply to certain goods.
- (f) For the said purpose, the General Sales Tax/VAT / CST laws and Central Excise Act, 1944 and Central Excise Tariff Act, 1985 would continue to apply – E.g., Certain petroleum products, tobacco products.
- (g) Thus, these laws would operate even after the GST is introduced to the extent they continue to operate in respect of goods that still remain under the earlier laws, as amended by the Taxation Laws Amendment Act, 2017.
- (h) Subject to the above comments the following laws would be repealed, as the taxes are subsumed by GST law:
- *State laws (refer section 173 of State GST Act):*
    - (i) *Entry Tax laws;*
    - (ii) *Entertainment Tax laws;*
    - (iii) *Luxury Tax laws;*
    - (iv) *Value added Tax laws;*
    - (v) *Laws on Advertisement;*
    - (vi) *Laws on lottery, Betting and Gambling;*
    - (vii) *CST Act.*
  - *Central laws:*
    - (i) *Duty of Excise on Medicinal and Toilet Preparation Act;*
    - (ii) *Chapter V of the Finance Act, 1994 (Service Tax law);*
    - (iii) *Central Excise Act, 1944; (except in respect of goods included in entry 84 of the seventh schedule to the constitution)*
    - (iv) *Additional duties of Excise (Goods of Special Importance Act, 1957);*
    - (v) *Additional duties of Excise (Textile and textile products Act, 1978);*
    - (vi) *Additional Custom Duty (CVD);*
    - (vii) *Special Additional Duty of Customs (SAD).*
    - (viii) *Medical & toilet preparations (excise duties) Act, 1955*
    - (ix) *Central excise tariff Act, 1985*

- (i) Please note that 'repeal' is not the same as 'omission'. Section 6 of General Clauses Act, 1897 which is the substantive law on interpretation in such cases. Please note as per Article 367, even Constitutional Amendment Acts are to be interpreted as per General Clauses Act. Now, this section 6, 'saves' all rights, privileges as well as liabilities, punishments and ongoing investigations. There has been much debate whether earlier laws have been suddenly obliterated from the statute book or do they survive. High Courts has issued interim injunction in respect of new audits proposed to be undertaken in respect service tax after the introduction of GST. The jurisprudence applicable here is that 'new investigations' cannot be initiated after repeal of the earlier law. But, investigations already initiated are however, saved by the repeal. Consider an example, that goods in respect of which Cenvat Credit was availed (and utilized or transitioned any unutilized balance) is destroyed by fire after July 2017. In this case, although Cenvat Credit Rules stand repealed, the conditions attached to claim of Cenvat Credit must be satisfied until said goods are used as if there was no such repeal. To the extent credit that was availed which is now defeated (due to fire), that credit is liable to be demanded under the earlier laws and not under section 17(5)(h). Reversing GST (CGST and SGST portions) is not appropriate as credit availed is Cenvat and not GST. And section 17(5)(h) cannot be applicable in respect of any tax other than GST. Reference may be had to section 142(2) which lends the machinery provisions of GST law to be used to recover taxes payable under earlier laws. Hence, it is important to carefully understand the meaning and effect of 'saving' of earlier laws by operation of section 6 of General Clauses Act which can be pressed into service even though there is no express clause in GST law similar to Article 367. The expression 'repeal' takes within itself 'saving' but not if the expression is 'omitted' against any provision or law.
- (j) Similarly, proceedings already initiated under State laws can be continued to the extent 'saved' by the repeal of earlier State laws. It is this authority that permits States from conducting re-assessments which is not a new proceeding but continuation of the assessment already concluded. All assessments are continuation of earlier proceedings. But, prosecution proceedings, proposed but kept in abeyance until final disposal, arising from assessment or re-assessment will be new proceedings and not continuation of earlier proceedings. Care must be taken to identify 'old' or 'new' proceedings under earlier laws that may be initiated in the GST regime. Please also note, where new proceedings are not challenged but acquiesced by the assessee, Courts have not been liberal but allowed revenue to take advantage where assessee (due to lack of understanding of this concept) failed to challenge validity of

new proceedings right at the time of its institution but submitted objections of merits. However, experts believe that acquiescence by assessee cannot legitimize new proceedings initiated subsequently which are not saved by repeal of earlier laws.

- (k) Now, while rights, privileges as well as liabilities, punishments and ongoing investigations, that is not to say that there is unfetter authority for revenue to continue administering earlier laws 'as if' there was no repeal at all. The repeal is with restricted application that the earlier laws would not:
- Revive anything not in force or existing at the time at which the amendment or repeal takes effect. *To illustrate, if a person has not taken credit in the earlier regime due to restrictions on time limit, he does not get a chance to claim it after such time limit is removed due to repeal of ST law.*
  - Affect the previous operation of the amended/repealed Acts or anything duly done or suffered there under. *To illustrate, if a person has duly filed returns under the old regime proceedings to deny ineligible credits or unpaid output taxes can be initiated now but within the period of limitation as applicable under the earlier laws.*
  - Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended/repealed Acts. *To illustrate, a right of appeal, which accrues under the old regime and duly exercised before the CESTAT or Commissioner (Appeals) does not fail due to restricted application of the old laws. Similarly, the mandatory pre-deposit made under section 35F of the Central Excise Act, 1944, to pursue an appeal cannot be claimed as refund after GST is introduced.*
  - Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the amended/repealed Acts. *For example, if a Central Excise case is decided by the Supreme Court after enactment of GST and the party's appeal is rejected then the liabilities can still be enforced even though the CE Act may be repealed or applied in a restricted manner.*
  - Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, adjudication and other legal proceeding or

remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so restricted or not so enacted. *To illustrate, if on the date of enactment of GST law, the matter is under investigation, it can be continued and the SCN can be issued subsequently invoking the earlier provisions.*

- Affect any proceeding including that relating to an appeal, revision, review or reference, instituted before the appointed day under the earlier law and such proceeding shall be continued under the earlier law as if this Act had not come into force and the said law had not been repealed. *To illustrate, all the pending matters before the Commissioner (Appeals), Revisionary Authority, CESTAT, High Court and Supreme Court, would be continued and would not abate due to introduction of GST law.*

#### **Section 6 of The General Clauses Act, 1897**

**Effect of repeal.** *Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—*

- (a) *revive anything not in force or existing at the time at which the repeal takes effect; or*
- (b) *affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
- (c) *affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
- (d) *affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
- (e) *affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.*

#### **174.3 Issues and Concerns**

Can ST audit be taken up now. does it amount to new proceedings being

initiated or continuation of saved actions? As ST audit is a 'new investigation', High Courts have expressed reservation that something that is 'not saved' by section 6 of General Clauses Act can derive authority if ST audits were permitted. Care must be taken to differentiate between continuation of proceedings versus commencement of new proceedings.

**174.4 FAQs**

Q1. Which are the State laws repealed after introduction of GST?

Ans. Entry Tax laws, Entertainment Tax laws and Luxury Tax laws, Value added Tax, laws on Advertisement, laws on lottery, Betting and Gambling, CST Act.

Q2. Which are the Central laws repealed after introduction of GST?

Ans. (i) Duty of Excise on Medicinal and Toilet Preparation Act.

(ii) Chapter V of the Finance Act, 1994 (Service Tax law).

(iii) Central Excise Act;

(iv) Additional duties of Excise (Goods of Special Importance);

(v) Additional duties of Excise (Textile and textile products);

(vi) Additional Custom Duty (CVD);

(vii) Special Additional Duty of Customs(SAD)

(viii) Medical & toilet preparations (excise duties) Act,1955 Central excise tariff Act,1985

Q3. Which are the State laws applied in a restricted manner after introduction of GST?

Ans. General Sales Tax/VAT would continue to apply on certain goods – E.g. certain petroleum products.

Q4. Which are the Central laws not repealed after enactment of GST?

Ans. CST Act, 1956, CE Act, 1944 and CE Tariff Act, 1985, would continue to apply – E.g. Certain petroleum products.

Q5. Central Excise law would apply to which goods after introduction of GST?

Ans. Certain petroleum products and tobacco products.

Q6. Which are the goods or products to which VAT laws would apply even after GST is introduced?

Ans. Entry 84 of the Union List and Entry 54 of the State List, both forming part of the VII Schedule to the Constitution as amended by the Constitution (101<sup>st</sup> Amendment) Act, 2016, would continue to apply to certain goods.

Consequently, VAT laws would continue to that extent.

Q7. After introduction of GST what is the fate of all departmental appeals filed during the pre-GST regime?

Ans. It would continue and would not abate.

Q8. After introduction of GST whether Department can continue to investigate the offences allegedly committed under the old regime?

Ans. Investigation can continue and SCN can be issued later.

Q9. Can the Supreme Court dismiss all indirect tax appeals pending before it on the ground that GST Act has been introduced?

Ans. The appeals already instituted would be heard by the Supreme Court and would not abate or be dismissed.

**174.5 MCQs**

Q1. The \_\_\_\_\_ law is not repealed after enactment of GST.

- (a) Entry Tax law
- (b) VAT law
- (c) Company law
- (d) Central Excise law.

Ans. (c) Company Law

Q2. Central Excise law would continue to apply in respect of goods covered by Entry \_\_\_\_\_ of Union List of VII Schedule to the Constitution.

- (a) 84
- (b) 85
- (c) 54
- (d) 47

Ans. (a) 84

Q3. State sales tax and VAT laws would continue to apply in respect of goods covered by Entry \_\_\_\_\_ of State List of VII Schedule to the Constitution.

- (a) 84
- (b) 85
- (c) 54
- (d) 47

Ans. (c) 54

Q4. After enactment of GST law, all departmental appeals filed in respect of Central Excise and Service Tax would \_\_\_\_\_

- (a) continue
- (b) abate
- (c) fail
- (d) none of the above.

Ans. (a) continue