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13th EDITION

BACKGROUND MATERIAL ON GST

VOLUME II

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

Goods & Service Tax in India is now more than seven and a half years old. During this period, the GST ecosystem has undergone significant transformation, with improvements in compliance, transparency and revenue collection. The digital infrastructure has also been strengthened, leading to better monitoring of tax collections and greater taxpayer adherence. Being a business tax, GST continues to evolve in response to emerging economic needs and stakeholder feedback.

The Institute of Chartered Accountants of India (ICAI) has been at the forefront of this transformation. It has worked diligently to ensure that its members are well-equipped to navigate the intricacies of GST. Through its GST & Indirect taxes Committee, the ICAI plays a significant role in GST knowledge sharing and capacity building. With their in-depth understanding of the GST law, the members of ICAI play a significant role in GST compliance and understanding. The numerous technical publications of the Committee are instrumental in disseminating the updated GST knowledge amongst the various stakeholders.

I am delighted to note that the Committee has revised its flagship publication, Background Material on Goods and Services Tax. The Revised (13th) Edition of the Background Material provides a comprehensive and up-to-date understanding of the provisions of GST law, catering to members, professionals, tax administrators, and stakeholders at every level. This edition of the Background Material is up to date with Notifications and Circulars issued up to 20th January, 2025.

I would like to express my heartfelt gratitude to CA. Sushil Kumar Goyal, Chairman, CA. Rajendra Kumar P, Vice-Chairman and faculties of the GST & Indirect Taxes Committee for their steadfast commitment and diligent efforts in revising and improving this publication. Through their unwavering support and collective contributions, this resource has become truly indispensable.

I am confident that this updated edition will serve as a vital resource for members enabling them to understand GST provisions with precision and ease by blending comprehensive theoretical insights with actionable practical guidance.

CA. Ranjeet Kumar Agarwal
President ICAI

Date: 22.01.2025
Place: New Delhi

Preface

The journey of GST, from conceptualization to implementation, represents a significant milestone in fostering economic integration, reducing barriers to inter-State trade and enhancing transparency in tax administration. It has not only simplified the complex tax structure but also created a more integrated, transparent and efficient tax system that facilitates ease of doing business and promotes economic growth.

Recently, the Government accelerated the efforts to operationalize the Principal Bench with key appointments and established State-level tribunals to address regional disputes. These tribunals are designed to streamline dispute resolution and reduce the burden on higher courts. For Chartered Accountants, the establishment of GSTAT will open new avenues to represent clients effectively in appellate proceedings, leveraging their expertise in GST law and practice.

Since the implementation of GST Law, the GST & Indirect Taxes Committee of ICAI has taken various initiatives to train and educate Chartered Accountants, Government Officials and other stakeholders. The Committee regularly conducts Certificate Courses on GST, webinars, seminars, national conferences, workshops etc. and capacity building programmes for Government Officials.

The 'Background Material on GST' is designed as a comprehensive resource to provide an in-depth understanding of GST provisions, supplemented with examples and judicial precedents to aid in advisory and compliance functions. The strength of this publication lies in its structured approach to unraveling complex legal and procedural concepts. This 13th edition of the Background Material has been updated to include amendments made by the relevant Notifications and Circulars issued up to 20th January, 2025, ensuring that readers have access to the current and updated provisions of GST law.

We extend our sincere gratitude to CA. Ranjeet Kumar Agarwal, President, ICAI and CA. Charanjot Singh Nanda, Vice-President, ICAI for being a guiding force for the initiatives of the Committee. We would like to acknowledge the time and effort of all the faculties who contributed in revising and updating this publication. I strongly acknowledge the invaluable contributions of the Secretariat of the GST & Indirect Taxes Committee, whose unwavering commitment ensured the timely release of this updated publication.

CA. Rajendra Kumar P
Vice-Chairman
GST & Indirect Taxes Committee

CA. Sushil Kumar Goyal
Chairman
GST & Indirect Taxes Committee

Date: 22.01.2025
Place: New Delhi

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Experts who have contributed to the revision of the 13th Edition of the Background Material on GST

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THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017

THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017

Statement of Objects and Reasons:

Earlier, the States effecting inter-State sale of goods were empowered to collect and retain Central Sales Tax (CST) under the Central Sales Tax Act, 1956.

The difficulties faced in the erstwhile Central Sales Tax system are:

(i) The levy is non-vatable i.e., the credit of CST is not available as a set-off in the hands of the purchaser.

(ii) CST directly gets added to the cost of the goods resulting in cascading effect of the taxes on the cost of production of products.

(iii) Creation of tax arbitrage on account of the rate of CST being different from VAT levied on intra-State sale.

(iv) Several businesses are not in a position to procure goods in the course of inter-State trade or commerce after concessional rate of tax against the declaration forms.

To usher in the GST regime, levy of a single tax called Integrated Goods and Services Tax was considered necessary on the supply of goods or services or both taking place in the course of inter-State trade/ commerce. The rate of tax is equal to the sum total of Central Tax (CGST) and State Tax (SGST) or Union Territory Tax (UTGST) though there are some cases where more rationalisation is required in terms of parity of net tax incidence. The new legislation, amongst others, broadly:

(i) Provides for levy of tax on all inter-State supplies of goods or services or both (except alcoholic liquor for human consumption ,and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption at a rate recommended by the GST Council (not exceeding 40%);

(ii) Provides for levy of tax on goods imported into India;

(iii) Provides for levy of tax on import of services on a reverse charge basis;

(iv) Empowers the Central Government to grant exemptions on the recommendation of the GST Council;

(v) Provides for determination of nature of supply (intra-State or inter-State) and place of supply

(vi) Provides for payment of tax by a supplier of Online Information and Database Access or Retrieval Services (OIDAR)

(vii) Enables apportionment of tax and settlement of funds on account of transfer of input tax credit between the Central Government, State Government and Union Territory;

(viii) Provides for application of certain provisions of the Central Goods and Services Tax Act, 2017 to the extent relevant for the purposes of this Act;

(ix) Provides for transitional transactions in relation to import of services.

Chapter 1
Preliminary

1.	**Short title, extent and commencement**
2.	**Definitions**

Statutory Provisions

1.	***Short title, extent and commencement***
(1)	*This Act may be called the Integrated Goods and Services Tax Act, 2017.*
(2)	*It shall extend to the whole of India [1][*****]*
(3)	*It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:* *Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.*

1.	*The Central Goods and Services Tax Act, 2017 has been implemented in the State of Jammu and Kashmir from 8th July 2017 through Constitution (Application to Jammu and Kashmir) Amendment Order, 2017, the Central Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 and the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017.*
2.	*Certain provisions came into force on 22.6.17 and remaining provisions on 1.7.17 as notified by the Central Government and hence appointed day for the CGST Act, IGST Act, UTGST Acts, SGST Acts was 1st July 2017. However, the appointed day for the State of Jammu and Kashmir was 8th July 2017.*
3.	*Words "except the State of Jammu and Kashmir" omitted by the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017, w.e.f. 8.7.2017.*

Section or Rule (CGST / SGST)	Description
Section 2(56)	Definition of 'India' (CGST)
Section 2(22)	Definition of 'Taxable Territory' (IGST)

[1] Omitted by the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017, w.e.f. 08.07.2017. Prior to its omission it was read as "except the State of Jammu and Kashmir".

Title

All Acts enacted by the Parliament since the introduction of the Indian Short Titles Act, 1897 carry a long and a short title. The *long title*, set out at the head of a statute, gives a full description of the general purpose of the Act and broadly covers the scope of the Act.

The *short title*, serves simply as a reference and is considered a statutory nickname to obviate the necessity of referring to the Act under its full and descriptive title. Its object is identification, and not description, of the purpose of the Act.

Extent

Part I of the Constitution of India states: "India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-eight (28) States and eight (8) Union Territories changes introduced by Jammu and Kashmir Reorganization Act, 2019 to take effect from 31.10.2019.

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi (Article 239 AA) and Pondicherry (Article 239A) have been provided with Legislatures with powers and functions as required for their administration.

India is a summation of three categories of territories namely – (i) States (28); (ii) Union Territories with Legislature (3); and (iii) Union Territories without Legislature (5).

State of Jammu and Kashmir enjoys a special status in the Indian Constitution in terms of Article 370 of the Indian Constitution until the coming into force Presidential Order entitled "The Constitution (Application to Jammu and Kashmir) Order, 2019" (C.O. 272) dated 5 Aug 2019 and Jammu and Kashmir Reorganization Act, 2019 from 31.10.2019.

The assembly of J&K had passed the GST bill in the first week of July. Subsequently, the Honourable President of India promulgated two ordinances, namely, the CGST (Extension to Jammu and Kashmir) Ordinance, 2017 and the IGST (Extension to Jammu and Kashmir) Ordinance, 2017 making the CGST/ IGST applicable to the State of Jammu and Kashmir, w.e.f. 08.07.2017, after the promulgation of ordinance, India has adopted GST in its form across the country.

Commencement

Provisions of the IGST Act related to registration etc. came into operation through *Notification No. 1/2017- Integrated Tax dated 19.6.2017*. Further*, Notification No. 3/2017-Integrated Tax dated. 28.06.2017* was issued to make other provisions of the IGST Act applicable w.e.f. 01.07.2017. Effectively, all operation provisions of the IGST Act have become applicable from 1st July 2017.

Similar to extending enforcement of IGST Act, *Notification No. 4/ 2017–Integrated Tax dated 28.06.2017* has been issued to make Integrated Goods and Services Tax Rules, 2017

applicable w.e.f. 22.06.2017. However, IGST Rules, 2017 have been separately notified along with the Central Goods and Services tax Rules, 2017.

Statutory Provisions

2. Definitions

In this Act, unless the context otherwise requires-

(1) "Central Goods and Services Tax Act" means the Central Goods and Services Tax Act, 2017;

It refers to the Act under which tax is levied on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption).

(2) ''central tax" means the tax levied and collected under the Central Goods and Services Tax Act;

Tax levied under the CGST Act is referred to as "Central tax". It refers to the tax charged under the CGST Act on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption). The rate of tax is capped at 20%. The rates for goods have been notified vide *Notification No. 1/2017- Integrated Tax (Rate) dated 28.06.2017* while *Notification No. 8/2017- Integrated Tax (Rate) dated 28.06.2017* covers the rates of services notified.

It is relevant to note that the term 'central tax' under the IGST Act is defined to include tax levied and collected under the CGST Act whereas the term 'central tax' under the CGST Act is defined to mean the central goods and services tax levied under section 9 of the CGST Act. Therefore, the phrase 'central tax' has a wider connotation under the IGST Act as it includes taxes collected in addition to what is levied under CGST Act.

(3) "continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation. —For the purposes of this clause, the term "stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time;

This is relevant to determine the place of supply of passenger transport services.

Continuous journey refers to a journey where:

(a) A single or more than one ticket or invoice is issued at the same time;

(b) Service is provided by one service provider or by an agent on behalf of more than one service providers.

(c) Journey does not involve any stopover at any of the legs of the journey for which one or more separate tickets or invoices are issued ("Stopover" means a place where a passenger disembarks from the conveyance).

The following aspects need to be noted:

- All stopovers will not cause a break in the journey. Only those stopovers for which one or more separate tickets are issued will be relevant. A travel involving Bangalore-Dubai-New York-Dubai-Bangalore on a single ticket with a halt at Dubai (onward and return) will be covered by the definition of continuous journey. However, if the passenger disembarks at Dubai or breaks his journey for a certain period in order to resume it at a later point of time, it will not be considered a continuous journey.
- All the above conditions should be cumulatively satisfied to consider the journey as continuous journey.
- A return journey will be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(4) "customs frontiers of India" means the limits of a customs area as defined in section 2 of the Customs Act, 1962;

The customs frontiers of India include the following:

(a) Customs Port;

(b) Customs Airport;

(c) International Courier Terminal;

(d) Foreign Post Office;

(e) Land Customs Station;

(f) Area in which imported goods or goods meant for export are ordinarily kept before clearance by Customs Authorities

The following aspects need to be noted:

- Bonded Warehouses would now be covered under this definition.
- A person importing goods into the territory of India from an overseas exporter would be liable to pay IGST on such supply of goods.
- Where a transfer of documents of title takes place during import, the question of payment of tax by the importer would not arise since the documents of title would be transferred before the goods cross the customs frontier of India. It has been clarified vide *Circular No. 33/2017-Cus dated 01.08.2017,* that IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, an amendment has been made in clause 7 and 8 of schedule III to consider such activities

to be neither supply of goods nor supply of services. Therefore, IGST shall not be levied.

- Supplies made by an importer after the goods have crossed the customs frontier of India would be liable to CGST, SGST or IGST, depending on the facts of each case.

(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Section or Rule	Description
Section 2(52)	Definition of 'Goods' (CGST)
Section 2(56)	Definition of 'India' (CGST)
Section 7	Inter-State supply (IGST)
Section 11	Place of supply of goods imported into or exported from India
Section 16	Zero rated supply

Export of goods will be treated as 'zero-rated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if the supplies were exempt supplies so long as the eligibility of the input taxes is established. Interestingly, *Circular 45/19/2018-GST dated 30.05.2018* at para 6.2, makes it clear that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax, LUT/bond is not required. In other words, export of articles that are otherwise exempt and even non-GST articles would also be eligible to credit and consequent refund or rebate in respect of zero-rated supplies of such articles without the need of furnishing of LUT or bond. Some experts express concerns over allowing zero-rated benefits to non-GST articles such as alcoholic liquor and 5-petro products (left out of GST) as the words "notwithstanding that such supply may be an exempt supply" appearing in section 16(2) of IGST Act cannot be read 'as if' it reads as "notwithstanding that such exports are of exempt goods". And they support their argument on the following:

- 'exempt supply' is not the same as 'exempt goods'. A supply may be exempt for any reason but must necessarily involve goods that come within the operation of GST law. Articles that are out of GST law cannot be included in the contemplation of any provision within this law;
- zero-rated benefit is allowed of 'credit' and before claiming refund or rebate, the amount must cross the series of hurdles in (i) section 16(1) of the CGST Act then (ii) sections 17(2) and 17(5) of the CGST Act. When these hurdles have blocked credit, it cannot be possible that credit is directly allowed by the words in section 16(2) of the IGST Act; and

- Section 16(2) of IGST Act serves section 16(1) of IGST Act. It is not yet another 'credit granting' provision in GST law. If that is really true, then students of this new law need to learn the "two routes" to claiming input tax credit.

But these questions may be taken up by our Courts. Until then, it is clear from the circular that "all exempt and non-GST articles" will enjoy zero-rated benefits with only one restriction that survives is in section 17(5) of the CGST Act that is made applicable to such exports also.

Following further aspects may also be noted:

- Unlike export of services which requires fulfilment of certain conditions for a supply to qualify as 'export of services' like the nature of currency in which payment is required to be made, location of the exporter etc., export of goods doesn't require fulfilment of any such conditions.
- The movement of goods is alone relevant and not the location of the exporter/ importer. This means that even if an order is received from a person outside India for delivery of goods within India, it will not be considered as export of goods.
- The exporter may utilize such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.
- The exporter will be eligible to claim refund under the following situations:
  - (i) export the goods under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit; or
  - (ii) export the goods upon payment of IGST and claim refund of such tax paid, without of course, charging this IGST to the customer. That is, to claim rebate, pay-without-charging only then will this refund be available.

(6) "export of services" means the supply of any service when, —

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

*(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [2][or in Indian rupees wherever permitted by the Reserve Bank of India"]**;** and*

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

[2] *Inserted vide The Integrated Goods and Services Tax (Amendment) Act, 2018, notified through Notification No. 1/2019-IT dated. 29.01.2019. Applicable w.e.f. 01.02.2019.*

With respect to conditions specified in section 2(6)(v), *Circular No.161/17/2021-GST dated 20.09.2021* has clarified that *a* company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under the Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "*merely establishments of a distinct person in accordance with Explanation 1 in section 8*". Supplies between such companies, therefore, would qualify as 'export of services', subject to fulfillment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

Relevant Provisions of the Statute

Section or Rule	Description
Section 2(52)	Definition of 'Goods' (CGST)
Section 2(56)	Definition of 'India' (CGST)
Section 2(93)	Definition of 'Recipient' (CGST)
Section 2(102)	Definition of 'Service' (CGST)
Section 2(105)	Definition of 'Supplier' (CGST)
Section 2(14)	Definition of 'Location of the recipient of services'
Section 2(15)	Definition of 'Location of the supplier of services'
Section 2(21)	Definition of 'Supply'
Section 7	Inter-State Supply
Section 8	Intra-State Supply
Section 10	Place of supply of goods other than supply of goods imported into or exported from India
Section 12	Place of supply of services where location of supplier and recipient is in India
Section 13	Place of supply of services where location of supplier or location of recipient is outside India
Section 16	Zero rated supply

The concept of export of services is broadly borrowed from the provisions of the erstwhile Service Tax law. But it is remarkably dissimilar to definition of export of goods. It is for this reason the correctly identify whether supply involving goods are treated (by schedule II) as supply of services. If this 'treatment by fiction' is misunderstood that would lead to misapplication of the definition and claiming benefits that are not available or foregoing benefits that could have been availed.

Under the GST regime, the export of services is classified as 'zero-rated supplies.' This means that no tax is payable on these supplies, but the exporter is eligible to claim the corresponding input tax credits. Notably, exporters can avail of input tax credits even if the supplies are exempt, provided the eligibility of the input taxes as input tax credits is established.

The exporter may utilise such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.

The exporter will be eligible to claim refund under the following situations:

(a) He may export the services under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit; or

(b) He may export the services upon payment of IGST and claim refund of such tax paid.

The following aspects need to be noted:

- The requirement under the Service Tax law was that the supplier should be located in the taxable territory i.e., India, excluding Jammu and Kashmir. Under the GST law, the requirement is that the supplier is located in India (which includes Jammu and Kashmir) as GST has been enacted in the State of J&K also.
- Although an overseas establishment of a person located in India is treated as a distinct person for purposes of levy of integrated tax, as regards export of services, this overseas establishment must demonstrate substance in its activities to qualify as recipient of the export of the services from India and establish itself as more than just a mere establishment of the person.
- Establishments will be treated as establishment of distinct persons under the following situations:

Situation	Location of one establishment	Location of the other establishment
I	India	Outside India
II	State or Union Territory	Outside that State or Union Territory
III	State or Union Territory	Other Places of Business independently registered in that State or Union Territory

Therefore, where both the establishments are located in a State/ Union Territory under the same GSTIN, the establishments will not be considered as distinct persons.

Amendment made by IGST (Amendment) Act, 2018- Effective from 01.02.2019

In clause (6), in sub-clause (iv) of section 2(6), after the words "foreign exchange", the words "or in Indian rupees wherever permitted by the Reserve Bank of India" inserted. This amendment is made to consider a service to be exported even if the export proceeds are received in Indian rupees, if the same is permitted by RBI. This has been done mainly to include within export of services, services provided to Nepal and Bhutan wherein payment is received in Indian Currency.

The payment for the exported service must have been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India. For this purpose, a clarification vide *Circular No. 202/14/2023-GST dated 27.10.2023* has been issued regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services. It has been clarified that when the Indian exporters, undertaking export of services are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country opened by AD banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars and without prejudice to the permissions / approvals, if any, required.

(7) "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;

Relevant Provisions of the Statute

Section or Rule	Description
Section 2(85)	Definition of 'Place of Business' (CGST)
Section 2(102)	Definition of 'Services' (CGST)
Section 12	Place of supply of services where location of supplier and recipient is in India
Section 13	Place of supply of services where location of supplier or location of recipient is outside India

Fixed Establishment refers to a place:

(a) Having a sufficient degree of permanence

(b) Having a structure of human and technical resources

(c) Other than the registered place of business

The following aspects need to be noted:

- Not every temporary or interim location of a project site or transit-warehouse will *ipso facto* become a fixed establishment of the taxable person.
- The person should undertake supply of services or should receive and use services for own needs.
- Temporary presence of staff in a place by way of a short visit to a place or so does not also make that place a fixed establishment.

- Liaison Offices meant to undertake liaison activities cannot render services that are commercial in nature, in the garb of rendering liaison services. For e.g.: if a liaison office was to render marketing service to its parent entity outside India, for a customer located in India and the said liaison office staff receive a fee/ commission, then the concept of liaison office stands to test. In such a scenario, the reimbursements received by the liaison office could be subject to tax notwithstanding the fact that the entire transaction can be subjected to valuation as a permanent establishment.

However, in *TAMILNADU ADVANCE RULING AUTHORITY in case of M/s TAKKO HOLDING GMBH (2018 (19) G.S.T.L. 692 (A.A.R. - GST) [27.09.2018]),* the key issue brought before the AAR was whether reimbursement of expenses and salary paid by overseas counterpart to liaison office qualify as supply and thereby necessitates liaison office to obtain GST registration and discharge GST liability. The AAR denied the necessity of obtaining registration as well as payment of GST. The decision was based on the findings that Applicant is neither a 'related persons' nor 'distinct persons' but is acting only as an extension of the German Office. The authorities also noted that Applicant is only working as an employee of foreign entity and thus cannot be treated as a 'supplier' thereof. Experts explain that AAR would have taken into consideration the inherent limitations imposed under FDI guidelines and relevant Master Directions of RBI that 'liaison office' is not permitted to undertake any business-like activities even *qua* its overseas Head Office. Had the applicant been a Branch Office or Project Office, experts explain, that the ruling would have been completely different. Now, please consider what would be the treatment of Head Office in one country and its Permanent Establishment (art. 5 of the dated AA) in another country. When a PE is admitted for tax purposes and demonstrated that such PE is transacting at arm's length with all its AEs (associated enterprises), the same demands harmonious treatment for GST purposes also.

(8) "Goods and Services Tax (Compensation to States) Act" means the Goods and Services Tax (Compensation to States) Act, 2017;

Section or Rule	Description
Section 2(54)-CGST	Definition of "Goods and Services Tax (Compensation to States) Act"

The Goods and Services Tax (Compensation to States) Act (for brevity "Compensation Act") provides for compensation to the States for the loss of revenue arising on account of implementation of GST for a period of 5 years from the said date of implementation. However, as per *Notification No. 01/2022-Compensation Cess*, the period of levy and collection of cess shall be up to 31.03.2026. The cess paid on the supply of goods or services will be available as credit for utilization towards payment of said cess on outward supply of goods and services on which such cess is leviable.

(9) "Government" means the Central Government;

It is interesting to note that this definition seems to have very little to explain but in the context of article 12 of our Constitution, much has been said by Hon'ble Supreme Court. Readers may find decisions in *University of Madras v. Shantha Bai AIR 1954 Mad 67 (SC)* contrasted with *Ujjam Bai v. UoI 1962 AIR 1621 (SC)* very interesting to understand the scope 'State' that would help understand 'Government' as the reference is to 'Sovereign' until it was finally settled in the *Ajay Hasia v. Khalid Mujib Sehravardi & Ors 1981 AIR 487* where the following principles emerged to examine whether the organization is a 'Government Entity', namely:

(a) Equity share capital is held by the Government;

(b) Financial assistance comes entirely from the Government;

(c) Activities undertaken allows monopoly over the domain or sector;

(d) Deep and pervasive control rests with the Government;

(e) Functions of the Government are executed through it as the instrumentality; and

(f) Functions performed by the Government are vested with it.

If the entity enjoys such relationship, then it will be Government Entity. Please also refer to the definition in *para 2(zfa) in Notification No. 12/2017-CT(R) dated 28.06.2017*. There, 90% control is prescribed by way of relaxation to the extent of 10%.

Government Entity would not only vest plenary control and authority with the Government but also its entire 'liquidation estate' (as understood in IBC 2016) would belong to the Consolidated Fund. Further, all employees would be servants of the President of India and their salaries and benefits would be a charge on the Consolidated Fund. Experts advise great caution while examining whether IAAI, University, MCI, BCI, ICAI, ICSI, ICMAI, BCCI, etc are Government or not cannot be answered lightly.

Government Authority and Government Entity are entirely difference. Sovereign functions vested with Boards and Authorities will be sovereign authorities if the functions are listed in XI and XII schedules of the Constitution.

(10) ''import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

Relevant Provisions of the Statute

Section or Rule	Description
Section 2(52)	Definition of 'Goods' (CGST)
Section 2(56)	Definition of 'India' (CGST)
Section 7	Inter-State supply
Section 8	Intra-State supply
Section 11	Place of supply of goods imported into or exported from India

Import of goods into India would be treated as supply of goods in the course of inter-State trade/ commerce and would be liable to integrated tax under this Act.

The following aspects need to be noted:

- The place of supply of goods in case of imports would be the location of the importer. E.g.: If goods are imported at Mumbai port but the importer is at Delhi, the place of supply shall be Delhi;
- The integrated tax would be levied on the value of goods as determined under the Customs law in addition to the custom duties levied on such imports. In other words, levy of Basic Customs Duty (BCD) will continue and the component of Countervailing Duty (CVD) and Special Additional Duty (SAD) will be replaced by Integrated tax;
- The time at which the customs duties are levied on import of goods would also be the time when integrated tax is levied;
- The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability;
- Merchant Trading Transactions i.e., where the supplier of goods will be resident in one foreign country, the buyer of goods will be resident in another foreign country and the merchant will be resident in India, would primarily not come under the ambit of GST since they do not involve entry of goods into India.

  In case of multi-State registration, GSTIN mentioned on the Bill of entry would discharge the IGST on Reverse charge on import of goods even if the port is situated in separate State.

(11) "import of services" means the supply of any service, where––

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

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

(iii) the place of supply of service is in India;

Relevant Provisions of the Statute

Section or Rule	Description
Section 2(56)	Definition of India (CGST)
Section 2(86)	Definition of Place of supply (CGST)
Section 2(93)	Definition of Recipient (CGST)
Section 2(105)	Definition of Supplier (CGST)
Section 2(14)	Definition of Location of the recipient of services (IGST)

Section 2(21)	Definition of Supply (IGST)
Section 7	Inter-State supply (IGST)
Section 16	Zero rated supply

The phrase "import of service" is very broad and covers all such supplies where:

(a) The supplier is located outside India,

(b) The recipient is located in India

(c) Place of supply is in India.

The following aspects need to be noted:

- Supplies, where the supplier and recipient are mere establishments of a person, would also qualify as "import of service".
- The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability;
- Import of service made for a consideration alone would be taxable, whether or not in the course of business. Therefore, import of service for personal consumption for a consideration would qualify as 'supply' and would be liable to Integrated tax. However, the recipient will not be required to obtain a registration for that purpose. However, import of services from related persons or establishments located outside India without consideration also would be liable to integrated tax as per Schedule I of the CGST Act, 2017;
- The threshold limits for registration would not apply and the importer would be required to obtain registration irrespective of his turnover.
- Import of services is included in the definition of 'supply' in section 7(1)(b) of the CGST Act. By this provision, personal imports without being in the course or furtherance of business will also attract levy of GST. Please also refer entry 10(a) *to Notification No. 9/2017-IT.(R) dated 28.06.2017* where 'other than commerce' is exempted from IGST. Therefore, imports by an individual in relation to any purpose other than commerce, industry or any other business or profession is exempted supply under GST.

(12) "integrated tax" means the integrated goods and services tax levied under this Act;

Section or Rule	**Description**
Section 2(52)	Definition of 'Goods' (CGST)
Section 2(102)	Definition of 'Services' (CGST)
Section 7	Inter-State supply

It refers to the tax charged under this Act on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 40%. The rates for goods have been notified vide *Notification No. 1/2017- Integrated Tax (Rate) dated 28.06.2017* while *Notification No. 8/2017- Integrated Tax (Rate) dated 28.06.2017* covers the rates of services notified.

(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

Section or Rule	Description
Section 13	Place of supply of services where location of supplier or location of recipient is outside India
Section 14	Special provision for payment of tax by a supplier of online information and database access or retrieval services

The following aspects need to be noted:

- Definition of intermediary uses the words 'agent' and thereby imports the entire jurisprudence from Indian Contract Act. Agency is constituted (i) by appointment (ii) by holding out and ratification and (iii) by implication;
- Use of the words 'broker or agent or any other person' bring up this question whether there is a common genus of which each of the specific words is a specie. And by use of the *ejusdem generis* rule of interpretation may require that 'any other person' be understood as 'broker' or 'agent'. Guidance for interpretation to be applicable is found in the words 'by whatever name called'. So, 'or any other person' is appended with 'by whatever name called' such that meaning of who 'this person' will be, indifferent to any name that this person is called by. Hence, it appears that *ejusdem generis* will be applicable here;
- Further, 'who arranges or facilitates the supply' does not circumscribe the scope of agent to anything less than what section 182 of Indian Contract Act furnishes. So, intermediary is one who operates under 'delegated authority' that is 'detached from consequences'. In other words, the role of intermediary must be determined or defeated by the jurisprudence available in section 182 and the rest of the definition here is intended to be a differentiator;
- Differentiation is required between an agent who oversteps scope of agency and actually supplies on 'own account'. Such agents by making supplies, either actually or by fiction in para 3 of schedule I, will be saved from the definition of 'intermediary'. Decision of CESTAT in *Go Daddy [2016 (46) S.T.R. 806 (A.A.R.) 04.03.2016]* has been

differentiated in AAR and *Toshniwal Brothers* and this appears to lay down the correct position of law, at least, for the purposes of GST;

- Further, mere use of the word 'agent' does not decide the question of 'intermediary'. Agency must be determined from facts of supply and not usage in trade. Refer *C.B.E. & C. Press Release No. 92/2017 dated 23.8.2017* wherein it is recognized that 'advertisement agent' may undertake advertisement intermediary supplies as (i) agent and collect only a fee for services which attracts GST on such fee or (ii) reseller where the gross value attracts GST with benefit of credit on cost incurred to the Paper. Experts caution against relying on the 'title' just as the definition itself says 'by whatever name called' and requires attention to be paid to the exact 'role' performed;
- Two supplies are generally involved:
  - Supply between the principal and the third party; and
  - Supply of his own service to his principal – generally for a fee or commission;
- An intermediary cannot alter the nature or value of supply, which he facilitates on behalf of his principal;
- The consideration for an intermediary's supply is separately identifiable from the main supply that he is arranging and is in the nature of fee or commission charged by him;
- The place of supply in relation to intermediary services is the location of the service provider. Care must be taken, in cross-border transactions, not to assume they are inter-State supplies in all instances;

(14) "location of the recipient of services" means, —

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient;

The phrase 'location of the recipient of services' is essential to determine the place of supply of service and can be understood in the following 4 sub-clauses:

(a) Services received at a place of business where registration is obtained – Location of such place of business;

(b) Services received at a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources) – Location of such fixed establishment;

(c) Services received at more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;

(d) Services received at a place other than above – Location of the usual place of residence of the recipient (address where the person is legally registered/ constituted in case of recipients other than individuals).

Note: The definition uses the term "place", and not the phrase "State or Union Territory". Therefore, a view may be taken that the location of the recipient of the service could be determined under the residuary clause (i.e., usual place of residence), merely because it is received in a place of business which is neither registered as an additional place of business, nor a fixed establishment, although the place of receipt is in the same State as another place of business which is registered.

E.g., Event management services received in the Mangalore by M/s. ABC Ltd. It has its registered office in Mumbai (having a GST registration) and has a branch office in Bangalore (having a GST registration). ABC Ltd has neither an additional place of business nor a fixed establishment in Mangalore. In such a case, location of the recipient of service is the Mumbai office, and not the Bangalore office, although Bangalore and Mangalore are located in the same State.

Since this definition & many provisions relating to place of supply of services are similar to that under Place of Provision of Service Rules 2012 (POPS), analogy may be drawn from CBEC's Education Guide, which may provide a vision into the departmental understanding of the concepts & by juxtaposing POPS & POS provisions we may draw insightful inferences on varied perplexing issues.

Importantly, the phrase '*usual place of residence'* has not been defined in the GST Law. The term "usual place of residence" has been discussed under para 5.2.8 of the Education Guide issued by CBEC in June 2012:

"The usual place of residence, in case of a body corporate, has been specified as the place where it is incorporated or otherwise legally constituted. The usual place of residence of an individual is the place (Country, State etc) where the individual spends most of his time for the period in question. It is likely to be the place where the individual has set up his home, or where he lives with his family or is in full time employment. Individuals are not treated as belonging in a country if they are short term, transitory visitors (for example if they are visiting as tourists, or to receive medical treatment or for a short-term educational course). An individual cannot have more than one usual place of residence"

The term "most directly concerned with the supply" was discussed and explained in para 5.2.7 of CBEC's Education Guide released in June 2012, which states that: -

This will depend on the facts and supporting documentation, specific to each case. The documentation will include the following:

- the contract(s) between the service provider and receiver;
- where there are no written contracts, any written account (documents, correspondence/e-mail etc.) between parties which sets out in detail their understanding of the oral contract;
- in particular, for suppliers, from which establishment the services are actually provided;
- details of how the business fits into any larger corporate structure;
- the establishment whose staff is actually involved in the execution of the job;
- performance agreements (which may be indicative both of the substance and actual nature of work performed at a particular establishment);

Thus, normally in the case of multiple establishments of a person, it will be the establishment that actually provides, or receives (i.e. uses or consumes), a service that would be treated as 'directly concerned' with the provision of service, notwithstanding the contractual position, or invoicing or payment.

Comments: Indirect Taxes are transaction-based tax. Every transaction has a unique feature, structure & genre. With respect to GST, being a dual tax, registration is state wise & revenue flows to the destination state. Determining Location of Supplier & Recipient, both, becomes crucial to ensure correct taxability & due compliance. The term "most directly concerned with the supply" would generally be agreement-based meaning thereby, the GSTIN which has entered into the contract would be the determinative factor of the location of Supplier/Recipient. For instance, consider a Chartered Accountancy (CA) Firm with offices in Delhi, Ahmedabad, Mumbai, Varanasi, and Coimbatore. If the firm applies for a Bank Audit using the Ahmedabad address, the location of the supplier for this transaction would be Ahmedabad, even if the audit of the Tirupur Bank branch is alloted and executed by the Coimbatore office of the CA Firm. In such scenarios, the Coimbatore branch would cross-charge the Ahmedabad branch for the services rendered.

Fixed Establishment; Sec 2(50) of CGST Act,2017

"fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;

The term "fixed establishment' has been in place in service tax. CBEC Education guide Guidance Note 5.2.6 describes it as: "Temporary presence of staff by way of a short visit at a place cannot be called a fixed establishment. Also, the number of staff at a location is not important. What is relevant is the adequacy of the arrangement (of human and technical resources) to carry out an activity for a consideration, or to receive and use a service supplied. Similarly, it will be important to evaluate the permanence of the arrangement i.e. whether it is capable of executing the task."

Some of the examples of fixed establishment provided in the Education guide are as follows:

1. An overseas business house sets up offices with staff in India to provide services to Indian customers. Its fixed establishment is in India.
2. A company with a business establishment abroad buys a property in India which it leases to a tenant. The property by itself does not create a fixed establishment. If the company sets up an office in India to carry on its business by managing the property, this will create a fixed establishment in India.

Comments: The term assumes significance from the perspective of transactions of Works Contract, Professional Services where the supplier either travels to the place for execution of services or arranges some works force. It would be pertinent to note the usage of the term permanence & structure, both, depicting the intention of the law makers to include only those cases where there is a proper set up for executing the service & the setup is permanent. A visit to the client place for performance of service does not creates a fixed establishment requiring registration. In *T & D Electricals (AAR-KARNATAKA)* It was held that there is no requirement for a separate registration at the site execution of the works contract. Also, this view has also been upheld by Authority of Advance Ruling (AAR, Rajastan) in their Order No. Raj/AAR/2018-19/07 dated 01-07-2018 in the matter of *M/s Jaimin Engineering Pvt Ltd*.

Similarly for transactions of Renting immovable property, the property per se does not constitute place of business or a fixed establishment. Merely arranging house help on need basis is not a permanent structure of human resources rendering the location of immovable property liable for registration. FAQ on Immovable property brought out by CBEC supports the above view.

(15) "location of the supplier of services" means, ––

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

The phrase 'location of the supplier of services' is essential to determine the place of supply of service and can be understood in the following 4 sub-clauses:

(a) Services made from a place of business where registration is obtained – Location of such place of business;

(b) Services made from a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources) – Location of such fixed establishment;

(c) Services made from more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;

(d) Other than the above – Location of the usual place of residence of the supplier (address where the person is legally registered/ constituted in case of recipients other than individuals).

Note: The definition uses the term "place", and not the phrase "State or Union Territory". Therefore, a view may be taken that the location of the provider of the service could be determined under the residuary clause (i.e., usual place of residence), merely because it is provided from a place of business which is neither registered as an additional place of business, nor a fixed establishment, although the place of provision is in the same State as another place of business which is registered.

Where services are provided from more than one establishment i.e., principal place of business and fixed establishment, the location of the establishment with which the service receiver is directly concerned will be considered for the purpose of determining the location of supplier.

Consider if a Chartered Accountant in Kanpur represents Client before the Tribunal in Delhi, location of supplier of services would be Kanpur, UP and not Delhi because location of supplier of services is the place of business and place of business (as per 2(98) of CGST Act) is the place where business is ordinarily carried on. And place of business is the 'seat of management of operations' and not the 'site of execution of duties'.

[3] *[(16) "non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory.*

Explanation.—For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017.

The phrase "non-taxable online recipient", as amended by *The Finance Act, 2023*, has

[3] *Substituted vide The Finance Act, 2023 notified through Notification. No. 28/2023-CT dated. 31.07.2023.- Brought into force w.e.f. 01.10.2023. Prior to its substitution it was read as "non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.*

Explanation*.—For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—*

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

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution;"

simplified this definition by stating that it shall mean an unregistered person receiving OIDAR services in India. Further, the condition that it should not be for business purposes has now been removed.

For the purposes of this definition, a person compulsorily registered under GST law for complying with TDS provisions under section 51, shall also be considered as an unregistered person.

(17)	*"online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply [4][~~essentially automated and involving minimal human intervention and~~] impossible to ensure in the absence of information technology and includes electronic services such as, —*
(i)	*advertising on the internet;*
(ii)	*providing cloud services;*
(iii)	*provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;*
(iv)	*providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;*
(v)	*online supplies of digital content (movies, television shows, music and the like);*
(vi)	*digital data storage; and*
[5][(vii)	*online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods & Services Tax Act, 2017].*

The definition has very wide coverage of activities/ services delivered in the digital economy and is drafted in line with the provisions under the Service Tax laws to include services like e-downloads of games, movies etc., web-hosting services, online supply of on-demand disc space, distance teaching, etc.

Initially Online Information and Database Access or Retrieval (OIDAR) services were defined to encompass online gaming. However, this provision has been amended to exclude online money gaming, as defined in Section 2(80B) of the CGST Act, from the ambit of OIDAR. Consequently, OIDAR services will cover online gaming, excluding online money gaming. Hence delinking online money gaming from the parent activity of Online Gaming is just a step in the direction of giving a special tax treatment to online money gaming as envisaged in the CGST Act, 2017. It is pertinent to highlight that while Online Gaming, categorized under

[4] Omitted "essentially automated and involving minimal human intervention and" vide The Finance Act, 2023 notified through Notification No. 28/2023-CT dated. 31.07.2023- Brought into force w.e.f. 01.10.2023.

[5] Substituted for "(vii) online gaming" vide IGST (Amendment) Act, 2023 dated 18.08.2023, notified through Notification No. 2/2023-IT dated 29.09.2023and applicable w.e.f. 01.10.2023.

OIDAR (Online Information and Database Access or Retrieval Services), is treated as a supply of services, Online Money Gaming, explicitly excluded from OIDAR and classified under Specified Actionable Claims as defined in Section 2(102A) of the CGST Act, is regarded as a supply of goods. This newly articulated framework introduces a notable divergence in the tax treatment of two supplies within the same genre, potentially resulting in significant implications for compliance and taxation.

An indicative list of services that would not be covered under Online Information and Database Access or Retrieval (OIDAR) services are:

- Legal services or financial services advising clients through e-mail

Following aspects need to be noted:

- Supply of Online Information and Database Access or Retrieval (OIDAR) services by a person located in a non-taxable territory (outside India) to a non-taxable online recipient, would be liable to tax in the hands of the supplier;
- The supplier would be responsible for collection and remittance of integrated tax to the Government of India;
- The supplier can take a single registration under the Simplified Registration Scheme (yet to be notified by the Government);
- Alternatively, a person located in India representing the supplier can obtain registration and pay the tax on behalf of the supplier. If the supplier does not have a representative/ physical presence in India, he can appoint a person who will be liable to pay the integrated tax on such transactions by providing the details of the State of consumption;
- Business-to-Business (B2B) transactions w.r.t. OIDAR will be taxable in the hands of the recipient itself under reverse charge mechanism.

(18) "output tax", in relation to a taxable person, means the integrated tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

The output tax i.e., integrated tax chargeable on inter-State taxable supply of goods or services can be summarised as under:

Type of Supply	**Reference**
Supplies between 2 States (or UT with Legislature)	Section 7(1) and 7(3) of the IGST Act
Import of goods or services	Section 7(2) and Section 7(4) of the IGST Act
Supplies to/ by a SEZ developer or unit	Section 7(5)(b) of the IGST Act
Supplies made by a person located in India and where the place of supply is outside India	Section 7(5)(a) of the IGST Act

Following aspects need to be noted:

- While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but have failed to obtain registration.
- The amount covered under this term is the amount of tax that is 'chargeable', and not the amount that is 'charged'. Therefore, in case a person wrongly charges tax, or charges an excess rate of tax, as compared to the applicable tax rate, such excess would not qualify as output tax.
- The taxes payable by recipient of supply, on account of making inward supplies of such categories of supply as are notified for the purpose of reverse chargeability of tax, or making specified inward supplies from unregistered persons, would be out of the scope of 'output tax'.
- The implication of the exclusions mentioned above is that the input tax credit cannot be utilised for making payment of any amount that does not qualify as output tax. Discharge of liability in such cases has to be by way of cash payments (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).
- The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the tax paid on such supplies as output tax in the hands of the supplier.

(19) "Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

It covers two categories of zones as under:

(a) Zones which are existing as on 10.02.2006 i.e., the date when SEZ Act was made effective.

(b) Zones which have been notified under section 3(4) and section 4(1) of the SEZ Act, 2005.

Notifications under section 3(4) are issued when the State Government wants to set up a SEZ and the Notifications under section 4(1) are issued when any other person (except State Government) wants to set-up a SEZ. The notifications issued therein specify the SEZ area.

(20) "Special Economic Zone developer" shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act;

The term "Special Economic Zone developer" covers the following persons:

(a) Person/ State Government who has been granted a letter of approval by the Central Government

(b) Special Economic Zone Authority

(c) Co-developer

Where the State Government/ person wants to set up a SEZ, notifications are required to be issued under section 3(4) and section 4(1) of the SEZ Act, 2005, respectively and after fulfilment of the prescribed conditions and procedures, a letter of approval is granted. Such a person who has been granted a letter of approval is regarded as a developer.

A co-developer is a person who has been granted a letter of approval for providing infrastructure facilities or for carrying out authorized operations in a notified SEZ. The Board of Approval may specify the facility required to be developed by such a co-developer and in such a case, the co-developer will enter into an agreement with the developer for the specified purpose.

Supplies made to SEZ developer/ unit would be regarded as zero-rated supplies.

(21) "supply" shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;

The concept of 'supply' has been discussed in detail in the analysis of 'Supply'.

(22) "taxable territory" means the territory to which the provisions of this Act apply;

It covers the whole of India including the State of Jammu and Kashmir. However, the state of Jammu and Kashmir has been excluded after Jammu and Kashmir Reorganization Act, 2019 comes into effect on 31st Oct 2019.

(23) "zero-rated supply" shall have the meaning assigned to it in section 16;

As per section 16 of the IGST Act, the following taxable supplies of goods and/ or services are considered as 'zero rated supplies':

(a) Export of goods or services or both

(b) Supply of goods or services or both for authorised operations to a SEZ developer or SEZ unit. The term 'for authorised operations' has been inserted vide section 123(a) of the *Finance Act, 2021 dated 28.03.2021* and is brought into force w.e.f. 01.10.2023 through *Notification No. 27/2023-CT dated 31.07.2023*.

Input tax credit can be availed for making zero-rated supplies, even though such zero-rated supplies may be an exempt supply.

A taxable person exporting goods or services would be eligible for refund under the following two options:

- Export under bond/ LUT without payment of integrated tax and claim refund of unutilised input tax credit; or
- Export on payment of integrated tax which can be claimed as refund accordingly.

(24) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

Certain words and expressions like person, supplier, recipient, reverse charge, time of supply, value of supply etc. defined in the CGST/ UTGST/ GST (Compensation to States) laws will have the same meaning for the purpose of IGST law.

(25) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

Chapter 2
Administration

3.	**Appointment of officers**
4.	**Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances**

Statutory Provisions

3. Appointment of officers

The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.

4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances

Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

Relevant Provisions of the Statute

Section or Rule	Description
Section 2(36)	Definition of 'Council' (CGST)
Section 2(80)	Definition of 'Notification' (CGST)
Section 3	Officers under this Act (CGST)
Section 4	Appointment of Officers (CGST)
Section 5	Powers of Officers (CGST)
Section 6	Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances (CGST)
Section 20	Application of provisions of Central Goods and Services Tax Act

3.1/4.1 Introduction

Although CGST and IGST are both taxes of the Union, it is required that lawful authority be vested in certain persons to discharge duties for purposes of Integrated Tax.

3.2/4.2 Analysis

It is for this reason that the board has been empowered to appoint Central tax officers to discharge duties under the IGST Act. Please note that appointment of officers remains with the government but confirmation of responsibility to act as integrated tax officers is left with the Board.

Suitable enabling provisions have also been made, whereby officers of State / UT Tax can be authorised to discharge functions under the IGST Act. Such a provision is necessary in order to maintain uniformity in administration of notified supplies or notified category of taxable persons which are exclusively left under the CGST Act to be administered by officers of State / UT Tax. If appreciable that careful consideration has been given to ensure that there is no duplication of administrative power at the same time sufficient flexibility is enabled to ensure smooth and seamless tax compliance experience for trade and industry in GST regime.

Chapter 3
Levy and Collection of Tax

5.	**Levy and Collection**
6.	**Power to grant exemption from tax**

Statutory provisions

5. Levy and Collection

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption [6][and un denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption], on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods [7][other than the goods as may be notified by the Government on the recommendations of the Council] imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

(2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

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[6] Inserted vide The Finance (No.2) Act 2024, notified through Notification No.17/2024-CT dated 27.09.2024, w.e.f. 01.11.2024

[7] Inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2023 dated. 18.08.2023, notified through Notification. No. 2/2023-IT dated. 29.09.2023- Brought into force w.e.f. 01.10.2023.

(4) *[8][The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.]*

(5) *The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:*

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

5.1 Introduction

The Constitution mandates that no tax shall be levied or collected by a taxing Statute except by authority of law. While no one can be taxed by implication, a person can be subject to tax in terms of the charging section only.

This is the charging provision of the IGST Act. It provides that all inter-State supplies would be liable to IGST at rate recommended by the Council and notified subject to a ceiling rate of 40%. The provision of this section is comparable to the provision under section 9 of the CGST Act and section 7 of the UTGST Act.

The levy is on all goods or services or both except alcoholic liquor for human consumption and un denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption. Further, GST may be levied on supply of petroleum crude, high spirit diesels, motor spirit (petrol), natural gas and aviation turbine fuel with effect from the date notified by the Government on the recommendations of GST Council.

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[8] Substituted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019. Notified through Notification No. 1/2019-IT dated. 29.01.2019. Prior to its substitution it was read as "The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both."

The levy of tax on supply of goods and / or services is in three parts - (i) in the hands of the supplier and (ii) in the hands of the recipient of goods / services under reverse charge mechanism and, (iii) in case of specified services, in the hands of electronic commerce operator.

5.2 Analysis

According to section 2(24) of the Act, any words or expressions used in this Act but not defined should be interpreted as per their meanings in the CGST Act, the UTGST Act, and the GST (Compensation to States) Act.

With specific reference to this section, the following words/ expressions would be relevant-

- Supply
- Inter-State supply
- Goods
- Services
- Taxable person

The meaning to the expression 'inter-State supply' can be understood from section 7 of this Act. However, the meaning of 'supply', 'goods', 'services' and 'taxable person' should be borrowed from the CGST Act. Reference may be made to the CGST Act for an in-depth understanding of such expressions and words.

Levy of tax: Every inter-State supply will be liable to tax, if:

(i) There is a supply either of goods or services or both, even when a supply involves goods or services or both the law provides whether such supply would be classifiable only as goods or services in terms of Schedule II of the Act.

(ii) The supply is an inter-State supply – viz. ordinarily, the location of the supplier and the place of supply are in different States. (Refer section 7 of the IGST Act to understand the meaning of inter-State supply);

(iii) The tax shall be payable by a 'taxable person' as explained in section 2(107) read with section 22 and section 24 of the CGST Act.

Imports: Proviso to section 5(1) makes a very important exception in respect of "goods (other than goods as may be notified by the Government on the recommendations of the Council) imported into India".

Significantly, the imposition of IGST on imported goods is administered by Customs Law provisions, and GST law does not oversee the imposition, collection, time of supply, or valuation in relation to imported goods. Remarkably, the proviso to Section 5(1) provides that

integrated tax on goods imported into India shall be imposed and collected in accordance with the provisions of Customs law. A critical question emerges: does the import of goods need to meet the criteria of supply? This issue is noteworthy since the levy under GST law is based on the concept of supply as delineated under Section 7 of the CGST Act, read together with the relevant schedules. However, neither the definition of import nor the charging provisions under Customs law make any reference to the term supply. Further, section 3(7) of the Customs Tariff Act, 1975, specifies: "Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is chargeable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a similar article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be." The provision creates levy on import of goods without attaching 'supply' criterion.

Thus, the question arises whether the import of goods, without satisfying the elements of supply, can be subjected to IGST as per the proviso to Section 5(1). The response appears to be in the affirmative.

Pursuant to *Notification No. 3/2023 - Integrated Tax dated 29th September 2023*, the Government, acting on the recommendations of the GST Council, has declared that the supply of online money gaming on import shall not fall within the ambit of the proviso to sub-section (1) of Section 5 of the Integrated Goods and Services Tax (IGST) Act, 2017. Instead, such supplies shall be subject to the levy and collection of integrated tax under the substantive provisions of sub-section (1) of Section 5 of the IGST Act.

This amendment clarifies that online money gaming imported into India will attract IGST under the general framework of the IGST Act, 2017, distinguishing it from other imported goods that may otherwise be governed by the proviso to Section 5(1) and the regulatory scope of Customs law. This move ensures a consistent taxation regime for such supplies, aligning them with standard IGST provisions. Import of goods is defined in section 2(10) in a manner identical with the definition under Customs Act in section 2(23). Hence, the important exception made under the proviso is the carve out from the levy under section 5 supplies involving import of goods other than supply of online money gaming and place such transactions under Customs Act and not under IGST Act. In other words, IGST on import of goods *viz.* 'online money gaming' will be liable to IGST under the IGST Act and not under the *Customs Tariff Act* unlike other goods.

Vide Taxation Laws (Amendment) Act, 2017 sweeping changes have been brought about in Customs in the wake of introduction of GST. Amongst others, one significant change is that, in addition to basic customs duty levied under section 12 of Customs Act- section 3 of Customs Tariff Act - sub-section 7 levies IGST on import of goods. It merits to mention here is that sub-section 9 levies compensation cess wherever applicable when the said goods are imported into India.

Going back to the proviso to sub-section 1, the expression 'the point at which import duties are leviable' is very significant. Examination of the 'point of levy' under Customs Act reveals that goods brought into India are liable to customs duties at the time specified in section 15 of the Customs Act 1962. Accordingly, no duties are levied until the bill of entry for home consumption is filed. Imported goods are defined in section 2(25) of Customs Act as:

"imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption*"*

Goods that have been cleared for home consumption will cease to be imported goods. Goods which have entered India but not yet cleared for home consumption will not attract the levy of customs duty until bill of entry for home consumption is filed.

Customs Act permits goods that have entered India to be deposited in a bonded warehouse on filing 'into-bond' bill of entry without payment of duty. Hence, goods that have entered India will not attract liability to IGST until they reach the point – location or time – when bill of entry for home consumption is ready to be filed. In such cases, IGST is to be levied only when ex-bond bill of entry is filed or until date specified in section 15 is reached.

Further, goods imported by SEZ also do not attract liability to IGST as the goods are 'not yet' liable to be assessed to customs duty. Section 53 of the SEZ Act states that:

53(1). A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.

Please note the following aspects:

- Goods deposited in warehouse by filing into-bond bill of entry do not attract liability to any customs duty until the date specified in section 15 is reached or ex-bond bill of entry is filed;
- Goods received by EOU attracts liability to customs duty because *Notification No. 44/2016-Cus. dated 29.07.2016* has delicensed warehouse facility of EOUs which has also been clarified in detail vide circular 35/2016-Cus. dated 29.07.2016;
- *Notification No. 15/2017-Integrated Tax (Rate) dated 30.06.2017* issued granting exemption from IGST on import of goods by a SEZ and this exemption was immediately rescinded vide *Notification No. 17/2017- Integrated Tax (Rate) dated 05.07.2017* as granting such an exemption would have been out of harmony with the concept that goods have 'not yet' reached the 'point' when liability to customs duty is attracted;
- *Circular 33/2017-Cus dated 01.08.2017* regarding high-sea sales states that IGST is applicable but deferred until bill of entry for home consumption is filed. Further, supplies made before the goods are cleared for home consumption has been considered as a Schedule III negative list entry as per the *CGST (Amendment) Act,*

2018 w.e.f. 01.02.2019 by *Notification No.-2/2019-CT dated 29.01.2019*. However, the same has been made effective retrospectively from 01.07.2017 vide *The Finance Act, 2023* dated 31.03.2023, notified through *Notification No. 28/2023 – CT dated 31.07.2023* - Brought into force w.e.f. 01.10.2023. It is also clarified that no refund shall be made of all the tax which has been collected, but which would not have been so collected, had paragraph 7 and 8 of schedule III and explanation 2 thereof, been in force at all material times.

- *Order No. CT/2275/18-C3 dated 26.03.2018* passed by the Authority for Advance Ruling – Kerala clarifies that no tax is applicable on Merchanting trade applying the principles laid down in the aforesaid *Circular No. 33/2017-Cus dated 01.08.2017*. Further, such merchant trade transactions have been covered under Schedule III as per the *CGST (Amendment) Act, 2018*.

  Merchant Trade transactions are those transactions where the trader in one country A, purchases goods from country B and supply the goods to a second buyer in country C, directly, without goods entering country A. Since, goods never cross the Customs frontier of the country of trader in case country A is India then, GST law cannot apply when supply takes place 'outside taxable territory' even though said person (trader) is located in India. GST is tax on supply and not on supplier. It will form part of revenue (turnover) of person (legal entity) but as a 'no supply' transaction. Experts have indicated that since it is not 'exempt supply', such transactions will NOT attract credit reversal. To this end, explanation inserted to section 17(3) vide CGST (Amendment) Act, 2018 may be referred.

- *Circular 03/01/2018-IGST dated 25.05.2018* (superseded circular 46/2017-Cus dated 24.11.2017) stated that on supply of warehoused goods, while being deposited in a custom bonded warehouse on or after the 01.04.2018, in-bond sales will not be liable to IGST until bill of entry for home consumption is filed. This circular i.e., '03' was rescinded from 01.02.2019 since amendment to CGST Act by introduction of para 8 in schedule III.

In view of the foregoing, *proviso* to section 5(1) is of paramount importance which makes way for Customs Tariff Act to take over levy of IGST on imported goods (other than the goods as may be notified by the Government on the recommendations of the Council i.e. supply of online money gaming) leaving IGST under IGST Act inapplicable to imported goods.

And once Customs Tariff Act applies, it attracts the levy of IGST (CTA) not before the bill of entry for home consumption is due to be filed in accordance with the provisions of Customs Act. So, there are two kinds of IGST, namely:

- IGST levied under Customs Tariff Act which we call IGST (CTA); and
- IGST levied under IGST Act which we call IGST (GST).

- Generally, there is no overlap between the two but when there is overlap, one makes way for another. Please see how this overlap is resolved. Now, it becomes important to clearly identify whether imported goods are 'treated' as supply of services under schedule II. Now, customs law makes way for these goods after being subject to basic customs duty applicable to import of goods under Customs law to be subject to IGST. Customs *Notification No. 50/2017-Cus. dated 30.06.2017* has inserted a few entries (see table below) when IGST (CTA) will not be levied if the goods are liable to IGST (GST) under para 1(b) or 5(f) of schedule II. DTA sales by SEZ will not be liable to GST under forward charge as IGST will be paid when DTA-buyer files bill of entry in terms of rule 48(1) of SEZ Rules.

Supply: Refer discussion under section 7 of the CGST Act for a detailed understanding of the expression 'supply'. Additionally, the comments relating to 'composite supply' and 'mixed supply' will equally apply for supplies taxable under IGST Act.

Tax shall be payable by: The tax shall be payable by a 'taxable person' as defined under section 2(107) read with section 22 and section 24 of the CGST Act. Broadly, a taxable person is one who is registered or who is required to be registered under the GST law. Please refer to the discussion under the CGST Act for a thorough understanding of this concept.

Tax payable: Every inter-State supply falling under section 7 of the IGST Act will attract IGST, if it gets covered by section 5. However, all transactions covered within definition of supply in the course of inter-State trade or commerce within the meaning of section 7 does not mean that it is always subject to levy of IGST unless it falls in section 5 i.e., charging section.

Tax on import of goods: This Act provides that IGST shall be levied on import of goods in terms of section 3 of the Customs Tariff Act, 1975. It implies that on such importation of goods, IGST will be payable in addition to the Basic Customs Duty (BCD). The proviso to section 5(1) of the IGST Act also clarifies that the value and point at which IGST would be payable will be determined in accordance with section 12 of the Customs Act, 1962.

Summary table for levy of IGST of CTA or GST law are provided below:

Description	**Import of Goods**		**Import of Services**
Treatment in Schedule II	As Goods	As Services	
Levy under	Customs Tariff Act	IGST Act	
Overlap exemption	NA	IGST (CTA) exempt if IGST (GST) paid under para 1(b) or 5(f) of schedule II *	NA

** Refer entries 547A (from 1 Jul 2017 vide s.99 of Finance Bill 2018 and 65/2017-Cus. dated 8 Jul 2017) and 557A (from 13 Oct 2017 vide 77/2017-Cus.) and 557B (from 14.11.2017 vide 85/2017-Cus.) to 50/2017-Cus. dated 30.06.2017 (also refer para 7 of circular 113/32/2019-GST dated 11.10.2019).*

Rate and value of tax: The rate of tax notified separately, but shall not exceed 40%, and the value of supplies would be as determined under section 15 of the CGST Act.

Taxability of un-denatured extra neutral alcohol (ENA): The taxability of un-denatured extra neutral alcohol (ENA) or rectified spirit used for manufacturing alcoholic liquor for human consumption has been clarified through a series of legislative amendments and judicial pronouncements. The 52nd GST Council Meeting (October 2023) recommended excluding ENA from GST when used for this purpose. This decision was codified in the Finance Act, 2024, amending Section 9 of the CGST Act, effective November 1, 2024. The Finance Bill, 2024 does not specify whether the amendment to exclude ENA from GST will apply only to future transactions or if it will also affect past transactions. To mitigate confusion and potential disputes, there is a pressing need for the government to issue clarifications regarding the intended effect of the amendment.

In the 52nd Council Meeting Minutes Joint Secretary TRU informed that in some States distilleries levied State VAT while in some state GST @18% was levied, this has led to multiple litigation. It was further informed that there is no specific entry for ENA & currently it is taxed under the residuary entry, further there was no Excise Duty on manufacture of ENA used for manufacture of Alcohol. It was recommended, inter alia, to place before Supreme Court that GST Council has no intention to levy GST on ENA for manufacture of alcoholic liquors for human consumption, to make suitable amendment in law to exclude ENA (both grain-based and molasses based) from ambit of GST when supplied for manufacture of alcoholic liquors for human consumption & to notify GST rate of 18% for new tariff item at 8 digit level created for Rectified spirits (ENA) for industrial use (HS 2207 10 12).

The Learned AG has opined that **both Centre & State have rights to levy GST on ENA**. Ld. AG opined that ENA contains 95% alcohol by volume & as such is not fit for consumption. He based his opinion after considering the representations received from various state governments objecting levy of GST on ENA citing judgement Hon'ble Supreme Court in Bihar Distillery Vs Union of India (1997) 2 SCC 727. He referred to the decision in State of UP Vs Modi Distillery (1995) 5 SCC 753 which held that Ethyl Alcohol (95%) was not alcoholic liquor for human consumption, further in Deccan Sugar & Abkari Co. Ltd. Vs Commissioner of Excise, A.P, (1998) 3 SCC 272 the Hon'ble Supreme Court, disagreeing with the decision in Bihar Distillery, referred the matter to larger bench which in (2004) 1 SCC 243 held that States can levy excise duty only on potable liquor for human consumption & rectified spirits do not fall under this category; also in State of Bihar Vs Industrial Corporation, (2003) 11 SCC 465 Hon'ble Supreme Court questioned the viability of decision in Bihar Distillery.

The amendment aims to address dual taxation issues, providing relief to manufacturers reliant on ENA for producing alcoholic beverages. In a pivotal 2024 ruling in State of Uttar Pradesh v. Lalta Prasad Vaish, the Hon'ble Supreme Court overruled its 1990 decision in Synthetics and Chemicals Ltd., affirming that states can regulate and tax industrial alcohol under Entry 8 of the State List. The court emphasized that "intoxicating liquor" includes all alcohol affecting public health, broadening states' authority over industrial alcohol. However, ambiguity remains regarding whether ENA, unfit for direct consumption, qualifies as "alcoholic liquor for human consumption," which could impact its taxation under state VAT or excise laws. While the GST exclusion resolves some disputes, this lack of clarity on ENA's treatment at the state level could lead to further litigation unless addressed by legislative amendments

Applicability in respect of e-commerce operators: Refer discussion under section 9(5) of the CGST Act for an understanding of the applicability of this provision for e-commerce operators.

Reverse charge mechanism: Normally, the supplier of goods and/ or services will be liable to discharge tax on the supplies effected. However, the Central Government is empowered to specify categories of supplies in respect of which the recipient of goods and/ or services will be liable to discharge the tax. *Notification No. 4/2017-Integrated Tax (Rate) dated 28.06.17 amended vide Notification No. 37/2017-Integrated Tax (Rate) dated 13.10.17, Notification No. 45/2017- Integrated Tax (Rate) dated 14.11.17 as further amended from time to time & 10/2017-Integrated Tax (Rate), dated 28.06.17 amended vide Notification No. 22/2017-Integrated Tax (Rate) dated 22.08.2017, Notification No. 34/2017-Integrated Tax (Rate) dated 13.10.17* as further amended from time to time has been issued to notify the goods and services respectively where tax has to be paid by recipient of supply under reverse charge mechanism.

Where the supplier is located in one state and the place of supply is in another state, the recipient is liable to pay IGST showing the correct place of supply. It may be different from the State in which the recipient is registered. Refer detailed discussion on 'place of supply' to identify and report correct State.

Accordingly, all other provisions of this Act and CGST Act, as applicable, will apply to the recipient of such goods and/ or services, as if the recipient is the person liable to pay tax in relation to supply of such goods and/ or services.

After the amendment in Section 5(4) of the IGST Act 2017, the liability of reverse charge on the registered recipient on receiving supplies from unregistered supplier will be applicable only on (a) specified class of registered persons and (b) on specified categories of goods or services or both.

E-commerce: Where any supply of services is effected through e-commerce operator (commonly known as services provided by aggregator), the law provides that the Central / State Government may on recommendation of the Council specify (notify) that the

e-commerce operator will be liable to discharge the tax on such supplies. It is important to note that, in such supplies, the e-commerce operator is neither the actual supplier of service/s nor does he actually receive the services. The actual supplier of services is a third party who provides such service to the customer through e-commerce operator. Instead of levying tax on such actual supplier, the law has imposed levy on e-commerce operator. Therefore, this would be an exception to the imposition of tax as specified in para supra. It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable / relevant to supply of any goods through an e-commerce operator.

It is important to recognize the following aspects about e-commerce operations:

- Every online transaction is not e-commerce. It could be a portal providing information online to carry out the transaction or it could be a online tracking of an offline transaction or it could be a service using internet;
- Supplier offering 'online channel' to sell goods or services in addition to offline stores also does not qualify as e-commerce;
- It does not necessarily require a 'website' or 'app' (application on mobile phones) to constitute e-commerce, any 'digital network' like a easy dial phone number is enough; and
- Digital wallets are not e-commerce. In fact, most e-wallet companies do not have RBI approval but work jointly with Payments banks or (regular) banks to provide a e-wallet experience where technology comes from the enterprise and the cash-custody is with the banking license holder (see list on RBIs website and find names many popular e-wallets missing https://www.rbi.org.in/scripts/publicationsview.aspx?id=12043)

Utmost care is required to come to conclusion that a given enterprise is an 'e-commerce' enterprise. *Notification No. 14/2017-Integrated Tax (Rate) dated 28.06.2017* amended vide *Notification No. 23/2017-Integrated Tax (Rate) dated 22.08.2017 (and as further amended from time to time),* has been issued to provide that in case of the following categories of services, the tax on inter-State supplies shall be paid by the electronic commerce operator:

(i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motorcycle. Vide *Notification No. 17/2021-IT (R) dated. 18.11.2021, Notification No. 14/2017-IT (R) dated. 28.06.2017* has been amended to the effect that services by way of transportation of passengers by an omnibus or any other motor vehicle have also been included therein. Further, vide *Notification No. 19/2023-IT(R) dated. 19.10.2023,* amendment has again been made to the effect that to provide that GST in case of services by way of transportation of passengers provided through Omnibus shall be paid by the ECO except where the supplier supplying such service through the ECO is a Company.

(ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

(iii) services by way of housekeeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

(iv) A new clause has been inserted in the *Notification No. 14/2017-IT(R) dated. 28.06.2017* to include supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises, within the list of services, the tax on which is payable by the electronic commerce operator. Here, specified premises would mean premises providing hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7,500 per unit per day or equivalent.

In case where the e-commerce operator:

(a) Does not have a physical presence then the person who represents the e-commerce operator will be liable to pay tax.

(b) Does not have a physical presence or a representative, then the e-commerce operator is mandatorily required to appoint a person who will be liable to pay tax.

The detailed analysis of Chapter 3 – Levy and Collection of taxes under the Central Goods and Services Tax may also be referred.

5.3 Related provisions of the Statute

Statute	Section	Description
IGST	Section 7	Meaning of 'inter-State supplies'
CGST	Section 9	Levy and collection of CGST/ SGST
CGST	Section 7 read with Schedule I, II and III	Definition of 'supply'
CGST	Section 2(107) read with section 22 and section 24	Meaning of 'taxable person'
CGST	Section 2(17)	Definition of 'Business'

5.4 FAQs

Q1. Will sale of business as a whole be liable to tax?

Ans. Clause (d) of section 2(17) of the CGST Act provides that supply or acquisition of goods including capital goods and services in connection with commencement or closure of business is also included in the term "business". Therefore, the goods element in the sale of business, would be regarded as 'supply'. However, it may be noted here that sale of undertaking as a whole wholly or partly on a going concern basis will be regarded as an exempt supply in terms of the exemption notification.

Q2. Is the reverse charge mechanism applicable only to services?

Ans. No, section 5(3) or 5(4) of the IGST Act and section 9(3) or 9(4) of the CGST Act does not limit reverse charge to services, it applies to goods also. *Notification No. 04/ 2017-Central Tax (Rate), dated 28.06.2017* as amended from time to time has been issued to provide the cases where tax has to be paid by recipient of supply of goods under reverse charge mechanism. This includes the Cashew nuts, not shelled or peeled, Bidi wrapper leaves (tendu), Tobacco leaves, essential oils other than those of citrus fruit namely: - (a) of peppermint (Mentha piperita); (b) of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis, Silk yarn, Supply of lottery, used vehicles, seized and confiscated goods, old and used goods, waste and scrap, raw cotton when supplied by specified suppliers.

Q3. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. As per section 5(4) of the IGST Act, 2017 as amended by The IGST (Amendment) Act, 2018 specified that the tax shall be payable under reverse charge by the specified class of registered persons, in respect of supply of specified categories of goods.

Q4. In respect of exchange, will the transaction be taxable as two different supplies or will it taxable only in the hands of the main supplier?

Ans. Taxable as two different supplies, exchange from point of view of each party will need to be examined if it attracts the requirements of levy of tax.

Q5. In respect of exchange or barter, if one supply is intra-State and another is inter-State, how will the taxes be applicable?

Ans. There are two separate supplies and taxes as applicable (as inter-State and/ or intra-State respectively).

Q6. What are examples of 'disposals' as used in supply?

Ans. Sale of old furniture by a garment manufacturer.

Note: Disposal is where the articles are being cleared up and not necessarily as the main object of the business.

Q7. Will a Bank qualify as a taxable person for sale of hypothecated/ pledged goods (auction)?

Ans. Yes, the nature of business as a bank does not affect tax liability. GST is payable if there is any supply of goods or services even by a bank.

Q8. Will an insurance company be a taxable person for sale of repossessed goods?

Ans. Yes, although not the principal source of income, sale of repossessed goods is key aspect of insurance business.

Q9. Will a "not for profit entity" be liable to tax on any sales effected by it – e.g.: sale of assets received as donation?

Ans. Yes, NPEs do not distribute profit to promoters but that does not exclude from doing activities that conform to definition of business.

Statutory provisions

6. Power to grant exemption from tax

(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an Explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such Explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.— For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

6.1 Introduction

This provision states that the Central Government may grant exemptions for inter-State supply of certain goods and/ or services. Reference may also be made to section 11 of the CGST Act and section 8 of the UTGST Act for a better understanding.

6.2 Analysis

The Central Government will be empowered to grant exemptions from payment of IGST on inter-State supplies, subject to the following conditions:

(i) Exemption should be in public interest

(ii) By way of issue of notification

(iii) On recommendation from the Council

(iv) Absolute/ conditional exemption may be for any goods and/ or services

(v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature

With specific reference to the fourth condition indicated above, it is important to note that the exemption would only be in respect of goods and/ or services, and not specifically for classes of persons.

E.g., An absolute exemption could be granted in respect of supply of fertiliser. A conditional exemption could be supply of fertiliser subject to the condition that no input tax credit has been claimed in respect of inputs and capital goods.

Exemption by way of special order is where the exemption is issued for a specific purpose. E.g., Exemption to imports made for a defence project during the times of emergency.

Mandatory nature of absolute exemptions has been litigated in the past and where tax is paid even though exemption is available, credit becomes admissible. For this reason, absolute exemptions have been made compulsory. As such, credit denial also becomes absolute. No plea of equity or revenue neutrality becomes admissible.

There is generally not much doubt about exemptions – whether absolute or conditional – because the condition associated may be examined at one-time or continuously to be satisfied. Conditional exemptions abate if the associated condition is not complied. Care should be taken not to mistake conditional exemption with absolute exemption having specific applicability.

In terms of sub-section (2), the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order. While this provision is welcome, industry is apprehensive that this could be used without necessary superintendence.

To provide more clarity to the exemption notification or the special order, it is provided that the Government may issue an “Explanation” at any time within a period of one year from the

date of issue of notification or special order. The effect of this "Explanation" would be retrospective, viz., from the effective date of the relevant notification or special order.

The law mandates that when the exemption is absolute (i.e., if whole or part of tax leviable is exempt) the registered person cannot collect taxes in excess of the effective rate.

Exemption under section 11 of the CGST/ SGST Act equally applicable

Any exemption notification or special order issued under section 11 of the CGST Law will apply equally for inter-State supplies, viz., any supply of goods or services or both which are exempt under CGST Law will be exempt even under the IGST Law.

Effective date of the notification or special order

The effective date of the notification or the special order would be the date which is mentioned in the notification or special order. However, if no date is mentioned therein, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette. It follows that such notification/ order shall be made available on the official website of the department of the Central Government.

Exemption under CGST Act	Deemed to exempt under SGST Act
	Deemed to exempt under UTGST Act
Exemption under IGST Act	No auto-application of exemption to CGST-SGST/UTGST

Exemptions issued under IGST Act:

Following exemptions have been issued under IGST Act:

- *Notification No. 07/2017-Integrated Tax (Rate) dated 28.06.2017*: Exemption from IGST supplies by CSD to Unit Run Canteens and supplies by CSD/ Unit Run Canteens to authorised customers under section 6(1).
- *Notification No. 9/2017-Integrated Tax (Rate) dated 28.06.17*: Mega exemption list for supply of service amended vide *Notification No.21/2017 dated 22.08.2017*, *25/2017 dated 21.09.2017, 31/2017 dated 29.09.2017, 33/2017 dated 13.10.2017, and 42/2017 dated 27.10.2017* (as amended from time to time). The exemption notification covers entries where services supplied by supplier of service have been exempted from levy of GST.
- *Notification No. 18/2017-Integrated Tax (Rate) dated 05.07.2017*: IGST exemption to SEZs on import of Services by a unit/ developer in a SEZ for authorised operations.
- *Notification No. 31/2017- Integrated Tax (Rate) dated 29.09.2017*: Exempting supply of services associated with transit cargo to Nepal and Bhutan.
- *Notification No.41/2017 – Integrated Tax (Rate) dated 23.10.2017*: Exempting integrated tax on inter-State supply of taxable goods by a registered supplier to a registered recipient for export in excess of amount calculated at the rate of 0.1%, subject to fulfilment of conditions in the notification. This transaction commonly known

as 'penultimate sale' / sale against 'Form H' under the existing law, was completely exempt from tax on production of Form H.

- *Notification No.42/2017 - Integrated Tax (Rate) dated 27.10.2017*: Exempting supply of service having place of supply in Nepal or Bhutan, against payment in Indian Rupees

The detailed analysis of Chapter 3 – Levy and Collection of taxes under the Central Goods and Services Tax may also be referred.

6.3 Related provisions of the Statute:

Statute	Section	Description
CGST	Section 11	Exemption from payment of CGST/ SGST
UTGST	Section 8	Power to grant exemption from tax

6.4 FAQs

Q1. Can an exemption be granted for inter-State supplies when such an exemption is not granted for intra-State supplies?

Ans. Yes.

Q2. Can the Central Government issue a special order for exemptions that are only meant for transactions liable to IGST?

Ans. Yes.

Q3. Is the State Government empowered to grant exemption by way of a special order for inter-State supplies?

Ans. No. The State Government is not empowered to grant exemptions on any inter-State supplies.

Statutory provisions

[9][6A. Power not to recover Goods and Services Tax not levied or short-levied as a result of general practice.

Notwithstanding anything contained in this Act, if the Government is satisfied that—–

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

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

(i) integrated tax, in cases where according to the said practice, integrated tax

[9] Inserted vide the Finance (No. 2) Act, 2024, notified through Notification No. 17/2024 – CT dated 27.09.2024, w.e.f. 01.11.2024.

was not, or is not being, levied; or

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

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

6A.1 Analysis

Section 6A grants the government the discretionary authority to waive the recovery of integrated tax (IGST) that was either not levied or was levied at a lower rate due to a commonly followed practice. This section recognizes instances where certain tax practices have become widely accepted, even if they do not fully align with the legal requirements.

Clause (a): The government can exercise this power only if it is convinced that a specific practice related to the levy of IGST was or is generally prevalent.

Clause (b): This clause outlines two scenarios:

- Sub-clause (i): If a particular supply of goods or services was legally subject to IGST, but the general practice was to not levy IGST on such supplies, the government can invoke this provision.
- Sub-clause (ii): If the general practice involved levying IGST at a lower rate than what was legally required, this provision also applies.

For example, if a widespread practice in an industry involved not charging IGST on certain supplies, even though IGST was legally required, the government, upon realizing that this practice did not comply with the law, could issue a notification under Section 6A. This notification could specify that IGST not charged in the past, due to this common practice, does not need to be recovered, thereby providing relief from retroactive tax liabilities.

6A.2 Usage of authority under Section 6A till date : -

Technically, the authority granted under above provision has not yet been operationalized through any formal notification. Nevertheless, we can trace the application of this concept in Sec 159 of Finance Act 2023 which reads as

159 (1) which reads as In Schedule III to the Central Goods and Services Tax Act, paragraphs 7 and 8 and the Explanation 2 thereof (as inserted vide section 32 of Act 31 of 2018) shall be deemed to have been inserted therein with effect from the 1st day of July, 2017.

(2) No refund shall be made of all the tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.

Besides this, there have been instances in the past where Sec 6A ideology's indirect application is discernible under the terminology 'as is where is.' This concept lacks express statutory recognition within the GST framework. However, it has been invoked historically to address contentious industry-specific issues, particularly where prevalent practices involved either non-payment of GST or the remittance of GST at reduced rates for certain supplies. Such cases, regularized under the 'as is where is' framework, reflect an implicit adherence to the ideology underpinning Section 6A. These instances were, however, addressed through circulars rather than formal notifications, predating the formal incorporation of this section.

The term 'as is where is' denotes acceptance of past GST liabilities as filed, precluding additional tax demands or refunds. It uniquely applies in Indirect Taxation to regularize liabilities by acknowledging their status quo as of a specified date, such as the issuance of a circular. This framework embodies a sui generis approach wherein the phrase 'as is where is' has been uniquely applied in the realm of GST, showcasing a distinct regularity and breadth of usage.

'As is' signifies GST liabilities in their current state—whether paid or unpaid—without recovery or refund. 'Where is' denotes the procedural stage of liability, such as self-assessment or the point of audit/enquiry, or adjudication or appeal. It is pertinent to note that potential disputes could arise in cases under adjudication or appeal. For example, where the taxpayer has adopted a position of non-payment, while the department or the appellate authority asserts a payment obligation, the critical question becomes: from whose perspective should 'where is' be evaluated? This ambiguity in interpreting 'where is' could become a fertile ground for litigation, particularly if the department construes 'as is where is' to mean that past disputes must be regularized by settling the demands alleged, decided, or ordered as of the date of clarification.

6A.3 Circulars issued & judicial precedent on 'As is Where is': -

The genesis of the phrase 'as is where is' can be traced to Circular No. 177/09/2022-TRU dated 3rd August 2022, which addressed GST payment on the supply of ice cream by parlors. Although the phrase was not explicitly mentioned, its underlying concept was evident. Subsequently, Circular No. 200/12/2023-GST dated 1st August 2023 extended the application of this doctrine to regularize past period issues concerning items such as un-fried or uncooked snack pellets (manufactured via extrusion), fish soluble paste, desiccated coconut, biomass briquettes, imitation zari thread or yarn, raw cotton supplied by agriculturists to cooperatives, areca leaf plates and cups, and goods under HSN heading 9021.

The 53rd GST Council meeting on 22nd June 2024 further solidified the comprehensive application of this phrase. *Circular Nos. 228/22/2024-GST and 229/23/2024-GST*, issued to implement the Council's recommendations, corroborated its usage.

The doctrine also found judicial recognition in the Hon'ble Gujarat High Court's decision in *J.K. Papad Industries vs. Union of India (2024) C/SCA/16172/2021* (Judgment dated 11/09/2024), wherein retrospective tax demands were quashed based on the 'as is where is' principle.

Chapter 4
Determination of Nature of Supply

7.	**Inter-State supply**
8.	**Intra-State supply**
9.	**Supplies in territorial waters**

Statutory provisions

7. Inter-State Supply

(1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in––

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

(3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in––

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

(4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

(5) Supply of goods or services or both, ––

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Related Provisions of the Statute

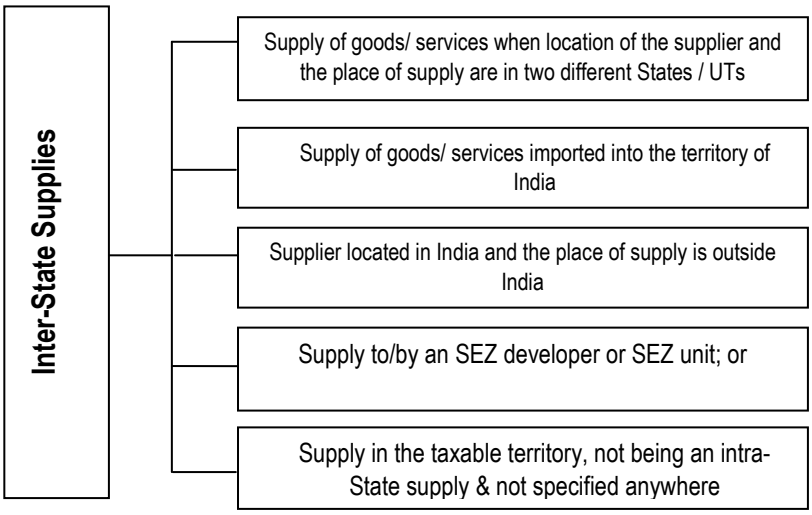
Statute	Section / Rule	Description
IGST	Section 2(4)	Definition of 'customs frontiers of India'
IGST	Section 2(5)	Definition of 'export of goods'
IGST	Section 2(6)	Definition of 'export of services'
IGST	Section 2(10)	Definition of 'import of goods'
IGST	Section 2(11)	Definition of 'import of services'
IGST	Section 2(15)	Definition of 'location of supplier of services'
IGST	Section 2(19)	Definition of 'Special Economic Zone'
IGST	Section 2(20)	Definition of 'Special Economic Zone developer'
CGST	Section 2(56)	Definition of 'India'
CGST	Section 2(103)	Definition of 'State'
CGST	Section 2(114)	Definition of 'Union Territory'
IGST	Section 10	Place of supply of goods other than supply of goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 15	Refund of IGST paid on supply of goods to tourist leaving India
IGST	Section 5	Levy and collection of tax
CGST	Section 9	Levy and collection of tax
CGST	Section 25	Procedure for Registration

7.1 Introduction

Having examined levy and the scope and coverage of supply, the next aspect to determine is the nature of supply so as to identify the right kind of tax applicable in a given case. It is important to note that nature of supply is not a question of fact but the result of application of the law to the fact, which provides us the answer. Concluding the answer about the nature of tax is paramount importance not only for the selection of the right kind of tax but also to recognise the departure of GST from the well understood principles under the erstwhile law.

Nature of supply does not refer to 'place of supply'. The next Chapter deals with place of supply but before getting into place of supply it is important to understand the nature of supply. There are very specific principles laid down that need to be identified from the facts in each transaction in order to determine the nature of supply that is involved. This section provides as to when the supplies of goods and/or services shall be treated as Supply in the course of inter-State trade/commerce.

Section 7(1) and 7(2) of IGST Act, primarily covers two kinds of supplies – Supply of goods within India and supply of goods imported into India respectively and Section 7(3) and 7(4) of IGST Act, covers two kinds of supplies – supply of services within India and import of *services* into India respectively. Certain supplies of goods or services are treated as supplies in the course of inter-State trade or commerce as defined in section 7(5) of the IGST Act.



7.2 Analysis

Inter-State supply of goods

At the outset one may need to bear in mind the treatment extended to the subject matter of supply, that is, whether the supply is of goods or services or both or supply involving goods but treated as supply of services in terms of the fiction specified in Schedule II of CGST Act, 2017. In respect of goods (treated as goods), if the location of the supplier and the place of supply are in two different States or UT or either, then the supply will be in the course of inter-State trade or commerce (amongst others).

We need to pause here and examine the two terms that have been used, namely:

a) Location of supplier – Unlike in the case of services, location of supplier of goods is a term that is not defined in the law. This is not an oversight of the draftsmen but a deliberate intention of the lawmakers to leave it to the facts of each case to determine the 'location of supplier of goods'.

In most of the scenarios, the location of supplier would be the place where the supplier holds the physical possession of such goods in his control. This is in sync with the concept of requirement of state-based registration i.e. the place from where the supply is made as provided in Section 22 of the CGST Act 2017. The location of supplier would generally be the place from where supplies are made and where such goods were held in possession by the company.

For example, if a company, having its branch in both Delhi and Gujarat, is making a supply of material from its Gujarat branch to a customer in Maharashtra, then the location of supplier would be Gujarat without the involvement of Delhi branch altogether.

Having said this, this rule cannot be made universal. Another relevant aspect of determination of the location of supplier of goods is the place from which the contract for such supply of material was executed.

For example, if a company has executed its contract from Delhi to supply goods to a recipient in Maharashtra. However, the said company has instructed its warehouse in Gujarat to deliver such goods to the customer in Maharashtra for better logistics planning. From the customer's perspective in Maharashtra, it would receive invoice from the supplier's address in Delhi because the purchase order / contract had provided such address of the supplier. For this leg of the transaction, the location of supplier would be Delhi i.e. the location at which contracted to supply such goods was entered.

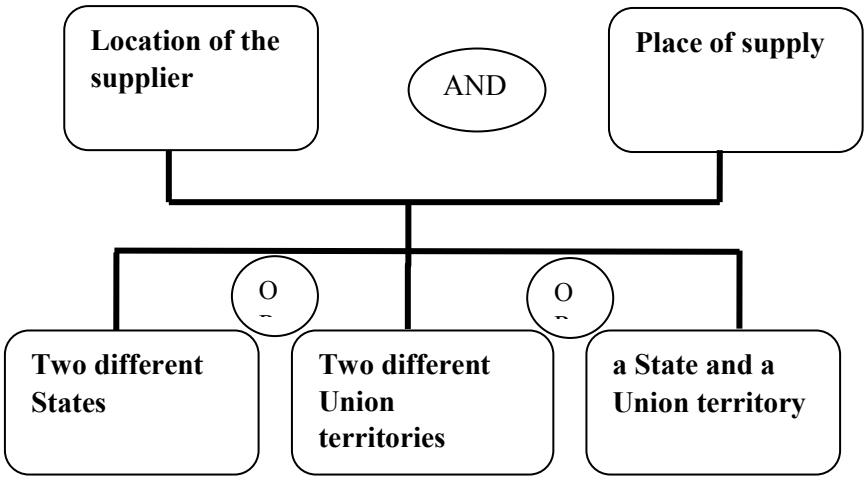
However, it would also entail requirement of raising of invoice for supply of goods from Gujarat to Delhi because the Gujarat branch has delivered the actual goods and the cost of such goods had also been recognized in such Gujarat. Further, the sale consideration has been recognized in the books of Delhi even though there had been no corresponding inward supplies in Delhi. For this leg of the transaction, the location of supplier would be Gujarat i.e. the physical point from which the goods had been dispatched.

This would also ensure that there is no break in the credit chain and smooth passing of ITC between various parties. Further, the illustration would remain the same whether Delhi and Gujarat are considered as two distinct persons or completely different legal persons. Further, a dichotomy also exists between the concept of casual taxable person and goods physically carried for sale on approval basis. The former requires availing temporary registration in a State where a person does not have a fixed place of business. Most commonly, this is used for sale of goods in exhibitions for a temporary time period. On the other hand, *Circular no. 10/10/2017-GST dated 18.10.2017*, clarification was given in a case where the suppliers are registered in a State but have to visit other States other than their State of registration and need to carry the goods for approval. In such case, if the goods are approved, the invoice is issued at the time of supply. It was clarified that all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and attract integrated tax in terms of section 5 of the Integrated Goods and Services Tax Act, 2017. In such case also, the location of supplier is the place where the supplier is registered and not the place where the goods are actually present when they are approved. Even though this is in contradiction with the concept of Casual Taxable person which requires the supplier to register in the State where he is carrying the goods, this clarification was provided for the ease of trade and industry.

Given the changing characteristics for determination of location of supplier of goods in various scenarios, one cannot adopt a singular factor for this purpose. Depending on the nature of such transaction, the location of supplier of goods needs to be comprehended.

b) Place of supply – It appears to be a phrase that is easily understandable but due to the presence of Chapter V (i.e., place of supply of goods or services or both) in this Act demands that the common-sense understanding be disregarded but the meaning ascribed to the phrase 'place of supply' from sections 10 to 14 of this Act be applied. 'Place of supply' is a phrase of legal significance whose meaning is to be determined by examining the respective sections in Chapter V and brought to bear while determining nature of supply. For example, manufacture in Maharashtra and supply to a company in Delhi on Ex-Works basis, its place of supply has to be the location of completion of delivery. And in respect of the new supply from Maharashtra to Madhya Pradesh, the place of supply is where the movement terminates for delivery – Madhya Pradesh.

It is therefore important to identify the ***location of supplier of goods*** and not based on a statutory definition but by inquiring into the facts of a transaction of supply and comparing this with the ***place of supply*** appointed by the statute in Chapter V. Now, if these two are situated in ***different States or UTs or either***, then the nature of supply is declared by section 7 to be in the course of inter-State trade or commerce.



This provision is subject to the provisions of section 10 because any interpretation or application of this section 7 cannot be in derogation of the place of supply dictated by section 10. Section 7 can be correctly interpreted only by identifying the location of supplier of goods as provided above.

With regard to supply of goods that are imported into the territory of India, by legislative override it is declared that if the goods crossed the customs frontiers of India, the supply will always be in the course of inter-State trade or commerce. Reference may be made to the definition of import of goods [section 2(10)] which adverts to the physical movement of goods

into India from a place outside India by the active efforts on the part of any person (who may be situated in India or outside India).

The use of the word 'bringing' in section 2(10) excludes naturally and involuntarily occurring phenomena causing the relocation of goods into India from a place outside India. There may be any number of supplies taking place between persons who are incorporated outside India and persons who are incorporated and even registered in India – they will all be transactions of supply in the course of inter-State trade or commerce – till such time the goods cross the customs frontiers of India.

Import of goods

We need to pause here again and examine two kinds of transactions – those that commence outside the territory of India and are concluded also outside territory of India and those that commence outside India but conclude by entering the territory of India. For example, company in Germany supplies goods from Germany to another company in Sri Lanka – this is not a supply in the course of inter-State trade or commerce because it commences and concludes outside the territory of India. It would be so, even if the goods were supplied by the company in Germany from Germany to a customer incorporated in India if the goods are not 'brought' into India but sold in high seas to yet another company in Singapore. In order for every supply to come within the operation of sub-section 2 to section 7 it requires that the resultant effect of *the* supply must cause the goods to enter the territory of India. This Act does not enjoy extra-territorial jurisdiction and is limited to imposing tax if the goods are imported into the territory of India. In this regard Customs circular issued by the CBEC and an Advance Ruling by the Kerala Authority for Advance Ruling (AAR) is relevant, which is discussed in detail in other chapters. After the CGST Amendment Act 2019 as effective from 01.02.2019, goods sold before the same is cleared for customs clearance i.e., high sea sales, sale of goods when they are in the bonded warehouses before customs clearance etc. will not be treated as a supply under Schedule III read with section 7(2) of the CGST Act 2017.

Further, if goods have been brought into India but have not left the customs frontiers of India, that is, the limits of a customs area, any supplies that are taking place after being brought into India until they cross the customs frontiers of India even though the place of entry into India and the place that comprises the customs frontier may be in the same State will continue to be supply is in the course of inter-State trade or commerce.

For example, goods have been imported from France by a company incorporated and registered in Nasik which have landed at Mumbai port but during their clearance are supplied by the Nasik company to a company in Pune, this supply continues to be in the course of inter-State trade or commerce. Even though the supplier is in Nasik and the recipient is in Pune, since the goods have not yet crossed the customs frontiers of India at the time of supply. This supply comes within the operation of sub-section 2 of section 7. A test that can be applied to determine whether the supply has been concluded before the goods crossed the customs frontiers of India or not crossed the customs frontiers of India is – who has filed a bill of entry in respect of the goods imported as required under the Customs Act. Transactions

taking place before filing of bill of entry are termed as "high sea sale" transactions under common trade practice where the original importer sells the goods to a third person before the goods are entered for customs clearance. This supply is covered within definition of inter-State supply. Provisions of sub-section (12) of section 3 of Customs Tariff Act, 1975 in as much as in respect of imported goods provides that all duties, taxes, cess' etc. shall be collected at the time of importation i.e., when the import declarations are filed before the customs authorities for the customs clearance purposes. High sea sale transactions, though regarded as supply in the course of inter-State trade or commerce, are not subject to levy of IGST as the supply takes place before filing of Bill of entry and IGST in case of importation of goods can be levied at the time of filing of Bill of Entry. Hence, IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas sales contract, details of service charges/ commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In the above example, supply by Nasik company to recipient of Pune is high sea sale transaction and is not subject to levy of IGST. When Pune recipient files bill of entry, IGST has to be paid on the assessable value which shall include the margin charged by Nasik supplier also. In fact, after the CGST (Amendment) Act 2018, all high seas transactions and merchant trading transactions will be covered by Schedule III i.e., activities which are neither supply of goods nor supply of services w.e.f. 01.02.2019.

It has been further clarified vide *The Finance Act, 2023* that para 7, 8 (a) and 8 (b) of Schedule III, shall be applicable retrospectively with effect from 01.07.2017, so as to treat the activities/ transactions mentioned in the said paragraphs as neither supply of goods nor supply of services retrospectively. It has also been clarified that where the tax has already been paid in respect of such transactions/ activities during the period from 01.07.2017 to 31.01.2019, no refund of such tax paid shall be available. These clarifications have been notified through *Notification No. 28/2023-CT dated 31.07.2023* and brought into force w.e.f. 01.10.2023.

55th GST Council Meeting held on 21st December 2024 has proposed to insert clause (aa) in paragraph 8 of Schedule III of the CGST Act, 2017 w.e.f.01.07.2017, to explicitly provide that supply of goods warehoused in a Special Economic Zone (SEZ) or Free Trade Warehousing Zone (FTWZ) to any person before clearance of such goods for exports or to the Domestic Tariff Area, shall be treated neither as supply of goods nor as supply of services.

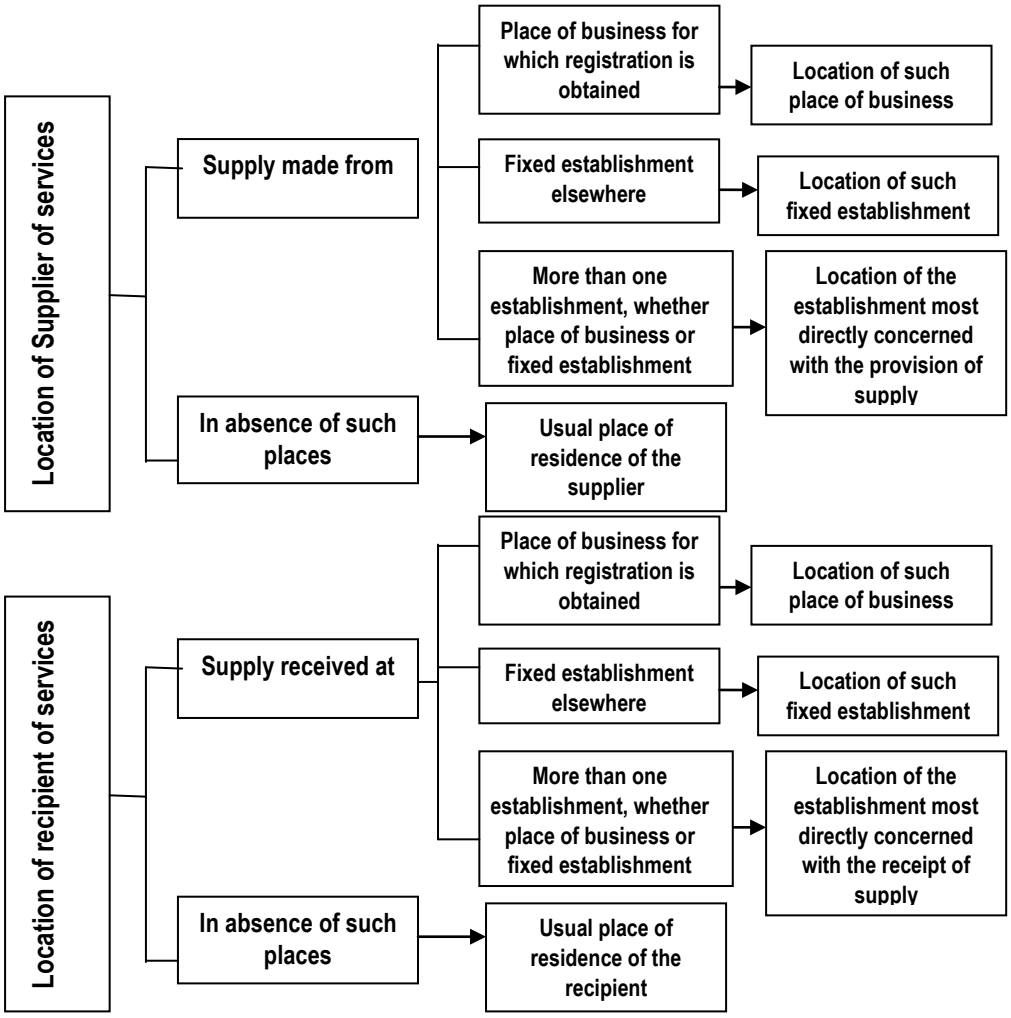
This brings transactions relating to supply of goods warehoused in SEZ/FTWZ at par with the existing provision in GST for transactions in Customs bonded warehouse.

Inter-State supply of services

Continuing with inter-State supply, but in respect of services, it is firstly important to recollect that this provision will apply not only in respect of supply of services but also in respect of

transactions involving goods which are treated as supply of services by the fiction in Schedule II of the CGST Act, 2017. The discussion regarding location of supplier of goods and place of supply of goods will be applicable in the context of services but only to a limited extent for the reason that location of supplier of services has been defined in this Act.

The location of supplier of services and the place of supply of services are in two different States or UTs or either, such as supply of services shall be in the course of inter-State trade or commerce. It is interesting to note that inter-State trade is not simply called 'inter-State trade' but is prefixed with 'in the course of'. This prefix is not without reason, because such prefix is missing in relation to intra-State supply. The significance of 'in the course of' is well explained in the decision of *State of Bihar Vs Telco Ltd. 27 STC 127* at pg. 148 where the Hon'ble Supreme Court has held that it signifies a series of activities that are all inter-related in an unbroken chain of events so intimately linked to each other that all of them are bound together 'in the course of' such an inter-State trade transaction.



Location of supplier of services is defined to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places 'from where' supplies are made being a fixed establishment – a place with sufficient degree of permanence and suitable structure to supply services. And lastly, the usual place of residence of the service provider. It is interesting to note that the location of supplier of services has nothing to do with the business premises 'wherefrom' supply is made.

Special category of inter-State supplies

As per section 2(105) of the CGST Act, 2017, supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. It is further provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims. The following categories of supplies of goods or services or both, are treated as being in the course of inter-State trade or commerce:

(a) when the supplier is located in India and the place of supply is outside India

Here, it is extremely important to note that usage of the 'supplier is located' is not to be equated with 'location of supplier'. The understanding of the term 'location of supplier' has already been provided above. But the deliberate departure in usage of the same set of words in 'supplier located in India' is almost misleading. Supplier is located in India does not refer to location of supplier. Instead, it is a simple question of fact as to where the supplier is located. Please note, that the 'supplier' is none other than the **'one who supplies'** and not his agent or representative or any other person. The question that arises is – what is the GST impact in case the supplier is located outside India and the place of supply is outside India? The Act applies to supplies within the taxable territory and when both – supplier as well as place of supply – being located outside India, the Act does not enjoy any jurisdiction to impose tax even if the recipient is located in India. The destination of consumption being decided by the place of supply provisions and not location of the recipient.

(b) where the supply is 'to' or 'by' an SEZ developer or unit

Here, it is important to note that supply to SEZ (developer or unit) is treated as inter-State supply. Supply 'by' SEZ (developer or unit) will also be treated as inter-State supply. Further, the implication of this provision is also that supply by SEZ's *inter se* – one SEZ unit

(or developer) to another SEZ unit (or developer) – will also be treated as a supply in the course of inter-State trade or commerce.

Let us take a few examples to illustrate the implications from this provision:

- Taxable person (non-SEZ) located in Jaipur supplying goods to a SEZ unit located in Jodhpur is a supply in the course of inter-State trade or commerce.
- SEZ unit in Kolkata supplying services to another SEZ unit in Kolkata is a supply in the course of inter-State trade or commerce.
- Lease of premises by SEZ developer in Chennai to SEZ unit in that same zone in Chennai will be a supply in the course of inter-State trade or commerce.
- Supply by SEZ unit in Kochi to a non-SEZ in Kochi will be a supply in the course of inter-State trade or commerce.
- Disposal of scrap by a SEZ developer in Mumbai to a scrap dealer in Mumbai (outside the zone) is a supply in the course of inter-State trade or commerce.
- Export of goods by a SEZ unit to a customer in Italy is a supply in the course of inter-State trade or commerce.

(c) Any supply not being an intra-State supply

Here, it is to be considered that any supply that falls outside the scope of intra-State supply will not escape GST but would be an inter-State supply by virtue of this residual provision in the Act.

Statutory provisions

8. Intra-State Supply

(1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely: –

(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;

(ii) goods imported into the territory of India till they cross the customs frontiers of India; or

(iii) supplies made to a tourist referred to in section 15.

(2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1 —For the purposes of this Act, where a person has, —

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any other establishment [10][***] registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

Explanation 2 —A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

8.1 Introduction

With the background discussion on inter-State supplies, it would be appropriate to contrast this understanding with a discussion on intra-State supplies.

8.2 Analysis

Intra-State supply of goods

In relation to goods, section 8 of the IGST Act provides that where the 'location of the supplier' and the 'place of supply' are in the same State or same UT, such a supply will be treated as an intra-State supply. Reference may be had with respect to the discussion on location of supplier of goods in the context of Section 7 of the IGST Act which may be relied upon for the purpose of this discussion. This provision too, is made subject to the provisions of Section 10, that is, regarding the place of supply, and the conclusion reached by applying the said provisions is required to be read into this Section for the purpose of determination of intra-State in nature. The two factors – 'location of supplier' and 'place of supply' – must at the conclusion of a supply, be in the same State or UT. And when it is so, the supply would be an intra-State supply of goods.

For example, a company having its regular registration in Uttar Pradesh has taken a causal registration in Odisha. It has purchased certain goods in Odisha and supplying the same to the customer also in Odisha under two separate transactions of supply, both of them will be intra-State supplies.

Therefore, it is important to bear in mind that the place of incorporation of the supplier in any transaction relating to goods is not relevant as the location of the supplier which has been explained earlier as – physical point where the goods are situated under the control of the distinct person, wherever incorporated or registered, ready to be supplied. Not only this, three cases have been discussed in the above chapter wherein the location of supplier of goods

[10] *Omitted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019, notified through Notification No. 1/2019-IT dated. 29.01.2019. Prior to its omission it was read as "being a business vertical".*

may not be the location of supplier (i.e., in-transit sales, sales on approval or return basis wherein the goods are carried from one state to another and sales from the port directly without bringing the same to the registered place of business of the importer).

Further, three exceptions have been carved out in this provision to state that a few supplies are to be treated as inter-state even if the supplier and recipient are in the same state:

(1) supply 'to' or 'by' a SEZ developer or unit;

(2) supply involving goods imported into India but not beyond the customs frontiers;

(3) supply to outbound tourist in terms of Section 15 of the IGST Act.

These three exceptions make it abundantly clear that they have been treated to be an inter-State supply, expressly stated under section 7. This proviso excludes any opportunity to question the probable intra-State nature of the said supply. As discussed in the various examples, even though the movement of goods may be within the same State, due to the deeming fiction imposed in section 7 – these supplies are treated as supplies in the course of inter-State trade or commerce – and cannot be disturbed by section 8. The express exclusion is evidence of a suspect inclusion – with this proviso, there is no question of the intra-State nature of the supplies listed.

Please note that the supplies are not three specific supplies but three classes of supplies. Examples of supply to or by a SEZ developer or unit has already been discussed in detail earlier the same may be referred. Supply involving goods imported into India also been discussed and the same may be referred. For examples, regarding supplied to tourist, kindly refer discussion under section 15.

> 2(15) location of supplier of services means –
>
> (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
> (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
> (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
> (d) in the absence of such places, the location of the usual place of residence of the supplier;

Intra-State supply of services

With regard to supply of service, if the twin factors – location of supplier of services' and 'place of supply of services' – are in the same State or UT, then such supply will be treated as intra-State supply. Location of supplier of services has been defined in the Act to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places and reference may be had to the discussion in respect of inter-State supply of services for the implications of this definition.

To provide some additional illustration, consider audit services being provided by a Chartered Accountant located in Delhi to a company in Delhi. For the purpose of the audit, the Chartered Accountant visits the company's factory located in Noida. Here, although the Chartered Accountant is physically moving to Noida, he is not supplying the audit services from Noida. Here, the transaction will be an intra-State supply from Delhi to Delhi. Please refer to more detailed discussion under section 12.

Further, here too we find caution exercised in expressly excluding supply of services 'to' or 'by' SEZ developer or unit from the scope of intra-State supply of services. The two explanations provided are significant as the concept of distinct persons in Section 25(4) and (5) of the CGST Act is further clarified in stating that the following will also be distinct persons, namely:

- establishment in India and an establishment outside India;
- establishment in a State or UT and an establishment outside that State or UT;
- establishment in a State or UT and any other establishment (registered separately) in the same State or UT.

Note that the term 'establishment' may be interpreted as being similar to 'fixed establishment' which is defined in this Act in identical manner with the definition in section 2(50) of CGST Act. It refers to it being 'a place (other than registered place of business) with sufficient degree of permanence and suitable structure to supply services or to receive and use the services for its own needs'.

Section 2(7) of IGST Act, 2017 - *fixed establishment means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;*

Place of supply concept – goods or services

Location of Supplier	Place of Supply	Whether inter-State/ intra-State
Kerala	Bihar	Inter-State (IGST)
Puducherry	Puducherry	Intra-State (CGST + Puducherry GST)
Daman and Diu	Daman and Diu	Intra-State (CGST + UTGST)
Chandigarh	Punjab	Inter-State (IGST)
Chandigarh	Daman and Diu	Inter-State (IGST)
Goa	Goa	Intra-State (CGST + Goa GST)
Karnataka (SEZ)	Karnataka (non-SEZ)	Inter-State (IGST)

8.3 Issues and concerns

1. By virtue of section 7(5) of the IGST Act, all supplies made by or to SEZ units or developers are treated as inter-State supplies. So to say, a small tea vendor (kirana shop) supplying evening beverages to an SEZ unit, or an inward supply of office stationery from a small stationery supplier, by an SEZ unit, will be regarded as inter-State supplies. In this regard, it is important to note that the GST Law mandates registration, regardless of the turnover, where a supplier is engaged in effecting inter-State taxable supplies. Although the inclusion of such transactions was, perhaps, not the intent of the legislature, it is noted that there is no relaxation provided in this regard, in respect of mandatory registration in respect of supply of goods.

2. Evidently, the law provides for the definition of the phrase 'location of the supplier of services' and turns a blind eye to the phrase 'location of the supplier of goods'. Accordingly, the debate arises as to what constitutes the location of the supplier, in respect of goods. Drawing inference from section 22(1) of the CGST Act, every supplier shall be liable to be registered in the State or UT from where he effects taxable supplies, subject to crossing the aggregate turnover threshold limits. This means that, while a supplier may be registered in one State, and stocks his goods in another State for any reason, shall be required to take a registration in the second State as well, when he effects a supply of such goods from the State. Merely because the supplier has not obtained a registration in the second State does not alter the fact that the supply is in fact, effected from a state other than the State in which he has obtained registration. Therefore, the location of the supplier is regarded as the location of the goods at the time of removal of such goods for supply.

Statutory provisions

9. Supplies in Territorial Waters

Notwithstanding anything contained in this Act, —

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

Related Provisions of the Statute

Statute	Section / Rule	Description
IGST	Section 2(5)	Definition of 'export of goods'
IGST	Section 2(6)	Definition of 'export of services'
IGST	Section 2(10)	Definition of 'import of goods'

IGST	Section 2(11)	Definition of 'import of services'
IGST	Section 2(15)	Definition of 'location of supplier of services'
CGST	Section 2(56)	Definition of 'India'
CGST	Section 2(103)	Definition of 'State'
CGST	Section 2(114)	Definition of 'Union Territory'
IGST	Section 7	Meaning of 'inter-State supplies'
IGST	Section 8	Meaning of 'intra-State supplies'
IGST	Section 10	Place of supply of goods other than supply of goods imported into, or exported from India
IGST	Section 11	Place of supply of goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
IGST	Section 5	Levy and collection of tax
CGST	Section 9	Levy and collection of tax
CGST	Section 25	Procedure for Registration

9.1 Introduction

GST being a destination-based consumption tax (discussed in greater detail in section 10), the supply may at times take place in the territorial waters of India, including cases where a supplier is required to travel into the territorial waters in order to supply goods or services. While the nature of supply in these cases may be inter-State supplies (in terms of section 7(5)(c) of the IGST Act – residuary clause), by virtue of this Section, the law provides a deeming fiction to reinstate the steps to be applied in sections 7 and 8 by artificially specifying the location of 'location of supplier' and the location of 'place of supply'. For this reason, clear provisions are laid down as to where on the land mass of India, the actual location will be linked to. Please note, the statute uses the expression 'deemed to be' which would supply an artificial meaning. Also, this provision does not seek to violate exclusive jurisdiction of the Union on matters of territorial waters but merely establishes a link to the land mass of India to overcome judicial intervention or assumptions by industry.

9.2 Analysis

The provision identifies two facts that have been discussed at length in the context of section 7 and 8, namely:

- Location of supplier of goods or services or both
- Place of supply of goods or services or both

By applying the provisions of sections 10 and 12, if it is established that the 'place of supply' or 'the location of the supplier' is found to be in the territorial waters and not on the land mass, an ambiguity could arise as to where the supplier is required to be registered, or which state the tax on the supply should be apportioned to. To address these situations, the statue lays down, vide this deeming fiction, that such locations – 'supplier' or 'place of supply' – will be the most proximate State or UT.

For example, consider a case where a ship is moored off the coast of Kochi (Kerala) needs a replacement of a crucial part, and such replacement is carried out along with the supply of the part by a Company located in Karnataka for the shipping company from United Kingdom. In this case, the place of supply of the part, being the location of the ship (as determined in terms of Section 10) will create doubt about the applicability of GST. By virtue of the provisions of section 9, it is clear that both the location of the supplier and the place of supply will not be the *territorial waters* but would be Kochi itself. With this doubt having been resolved, it would be an inter-State taxable supply effected by the Company in Karnataka *albeit* to the UK Company, while the State tax would be apportioned to the Kerala Government.

The non-obstante clause at the beginning of this section is important to overcome any alternative interpretations that may be attempted by reading other provisions of the Act.

9.3 Issues and concerns

1. While it is clear that the location on the landmass that is most proximate to the location in the territorial waters will be the deemed location of the supplier / place of supply, as the case may be, it may be noted that the GST Law does not prescribe the methodology for determining the distance between the location in the territorial waters and the landmass. Therefore, the basis adopted for determining the nautical distance computed to determine the territorial waters is to be adopted to determine the distance.
2. There could be an exceptional case wherein the location in the territorial waters (being the location of the supplier / place of supply) is equally proximate from two different States / UTs. Such a scenario has not been addressed in this section and can only be dealt with as and when it is brought to light.

Chapter 5
Place of Supply of Goods or Services or Both

10.	**Place of supply of goods other than supply of goods imported into, or exported from India**
11.	**Place of supply of goods imported into, or exported from India**
12.	**Place of supply of services where location of supplier and recipient is in India**
13.	**Place of supply of services where location of supplier or location of recipient is outside India**
14.	**Special provision for payment of tax by a supplier of online information and database access or retrieval services**
[11][14A.	**Special provision for specified actionable claims supplied by a person located outside taxable territory]**

Statutory provisions

10. Place of supply of goods, other than supply of goods imported into, or exported from India

(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under, ––

(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

(b) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;

(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the

[11] Inserted vide IGST (Amendment) Act, 2023 dated. 18.08.2023, notified through Notification. No. 2/2023-IT dated. 29.09.2023- Brought into force w.e.f. 01.10.2023.

time of the delivery to the recipient;

[12][(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

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

(d) where the goods are assembled, or installed at site, the place of supply shall be the place of such installation or assembly;

(e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

(2) Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

Related Provisions of the Statute

Statute	Section / Rule	Description
CGST	Section 2(56)	Definition of 'India'
CGST	Section 2(93)	Definition of 'Recipient'
CGST	Section 9	Levy and collection of tax
IGST	Section 2(5)	Definition of 'export of goods'
IGST	Section 2(10)	Definition of 'import of goods'
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of inter-State supplies
IGST	Section 8	Meaning of intra-State supplies
IGST	Section 11	Place of supply of goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India

[12] Inserted vide IGST (Amendment) Act, 2023 dated. 18.08.2023, notified through Notification. No. 2/2023-IT dated. 29.09.2023- Brought into force w.e.f. 01.10.2023.

10.1 Introduction

Place of supply is important to determine the kind of tax that is to be charged. When the location of supplier and the place of supply are in two different States, then it will be an inter-State supply and IGST would be chargeable. And when they are in the same State, then it will be an intra-State supply and CGST/ SGST would be chargeable. 'Place of supply' is not a phrase of common understanding, it is a legal term and as in the cases of all legal terms, their common understanding must not be applied but the meaning assigned to them in the law must be followed. Place of supply, similar to time of supply, is that which the legislature has appointed.

Place of supply determines the State or Union Territory to which the SGST portion of the revenue accrues.

The importance of place of supply (POS) is underlined based on the questions as under:

1. Whether one has to charge IGST or CGST+SGST/UTGST?
2. Whether the recipient of goods or services would be able to claim ITC?
3. Whether there is any liability on services received from outside India (import of services)?
4. Whether the supply is export of services and zero rated?
5. Which state would be receiving the revenue from tax charged on any taxable supply?

GST is understood as a 'destination-based consumption tax' but there is no provision that declares this fact. This missing declaration is more than adequately supplied by the principle being embodied in the provisions of 'place of supply'. It is here that we find that the destination principle of GST is captured in most of the cases. However, in certain cases, they have deviated from the destination-based principles by declaring place of supply as 'a state other than the destination state'.

10.2 Analysis

(a) Place of Supply – Supplies within India

Place of supply of goods, where the supplier and the recipient are both located within India, will be determined in accordance with section 10 of the IGST Act. The phrase 'location of supplier of goods' has not been defined in the IGST Act and this is deliberate due to the reason that location of the supplier of goods can be easily tracked. Whereas location of supplier of services has been defined under section 2(15) of the IGST Act. Two very important phrases are relevant, namely:

- Location of supplier – the word 'location' in this phrase refers to the site or premises (geographical point) where the supplier is situated with the goods in his control ready to be supplied or in other words, it is the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. The concept of the location of supplier and its exceptions have been discussed in 'Chapter 4 – Determination of Nature of supply'.

—— Place of supply of goods – this is a legal phrase which the section decides to be the site or premises (geographical point) as its 'place of supply'.

Place of supply in each case is discussed below:

(a) **Where 'supply involves movement'**, the place of supply will be the place where the goods are located at the time at which the movement terminates for delivery to the recipient.

- ✓ The location of the goods is a question of fact to be ascertained by observing the journey that the goods supplied make from their origin from supplier and terminating with recipient.
- ✓ This movement, however, can be by the supplier or by the recipient after having disclosed the destination of their movement or journey.
- ✓ Movement 'terminates for delivery' requires a brief understanding about the manner of concluding delivery. It is easy to determine in a contract for supply where it records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way 'manner and timing' which the recipient dictates. In fact, the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing as compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with to the satisfaction of the recipient.
- ✓ POS in case of Ex-works Contracts- The phrase 'movement of goods terminates for delivery to the recipient' warrants detailed analysis due to the ambiguity it creates for the Trade. A plain reading suggests that the Place of Supply (POS) would align with the place of handing over of goods to the recipient. This poses significant challenges in scenarios where the Registered buyer, located in another state, collects goods at the supplier's factory gate and arranges transportation. The critical question arises: when does the movement of goods terminate for delivery to the recipient?

  Applying the legal maxim '*A verbis legis non est recedendum'* (from the words of the law, there must be no departure), interpreting the sentence as a whole leads to the conclusion that in the given scenario the POS is the location where the movement ends, irrespective of who initiates it, and coincides with location of delivery. This interpretation raises a corollary question: what constitutes the place of delivery? The definition under Section 2(2) of the CGST Act provides clarity, stating that "address of delivery" means the address of the recipient of goods or services (or both) as indicated on the tax invoice issued by a registered person. This would make the scenario clear as irrespective of where delivery is taken (whether Ex Works or CIF)

the POS shall be the address of the registered buyer. Further, Q.6 of the FAQs dated 15th December 2018, released by CBIC, supports this interpretation. A purposive approach to statutory interpretation further suggests treating the location of the registered recipient as the POS, aligning with the legislative intent of ensuring the seamless flow of Input Tax Credit, as outlined in the Statement of Objects and Reasons of the 101st Constitution Amendment Act.

Illustrations:

Section 10(1)(a): Supply involves movement of goods.

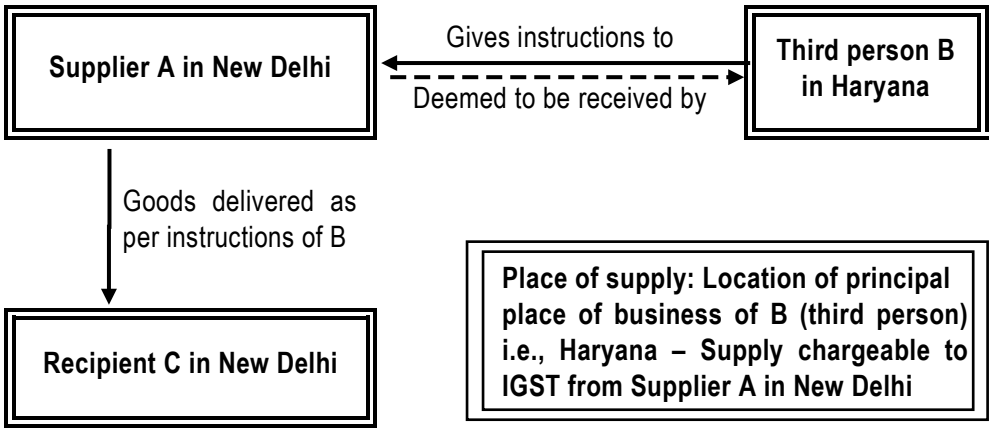
Particulars	Supplier's factory from where goods are removed	Termination of movement for delivery	Place of supply	Tax Payable
Movement of goods by the supplier (goods dispatched by supplier)	Orissa	Assam	Assam	IGST payable from Orissa*
Section 10(1)(a) read with section 2(96)(a) of CGST Act	Orissa	Orissa	Orissa	CGST/ SGST payable from Orissa*
Movement of goods by the recipient (goods collected by recipient)	Kerala	Goa	Goa	IGST payable from Kerala*
Section 10(1)(a) read with section 2(96)(b) of CGST Act	Kerala	Kerala	Kerala	CGST/ SGST payable from Kerala*

*The readers may refer the decision of the Hon'ble Supreme Court in the case of *Indian Oil Corporation vs UOI & others 1981 (SCR) (1)673*. The Hon'ble Supreme Court decided on a matter when one State in India (Uttar Pradesh) levied State Sales Tax and another State (Bihar) levied Central Sales Tax on the same transaction of sale. Hence, the tax payable in the above column may differ based on circumstances, movement of goods, delivery etc. and hence the above answer shall not be taken as final.

(b) **Where goods are delivered by the supplier to the recipient but at the instruction of a third person**, then the place of supply will be the principal place of business of such third person and not of the actual recipient.

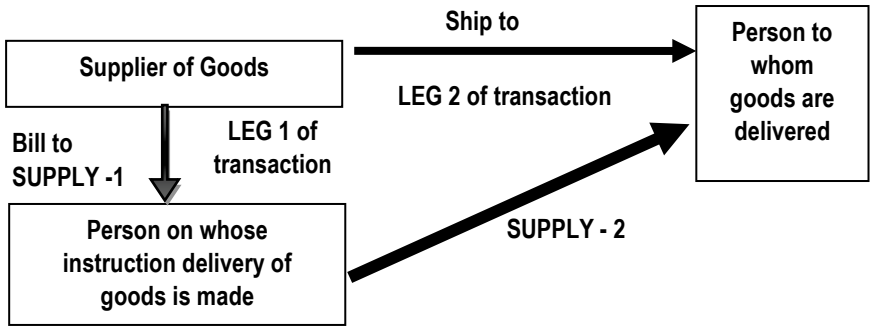
- ✓ It is important to identify the two supplies involved – by supplier to third person and by third person to recipient. This provision deals only with the first limb of supply, that is, supply by supplier to third person.
- ✓ The question that arises is – the locus or authority of the third person to issue instructions to the supplier regarding its delivery. Even though the definition in section 2(93) refers to recipient as the 'payer of the consideration', in this provision, recipient is the one who actually collects the goods. And the third person is the one who enjoys privity with the supplier to be able to direct him to deliver the goods. This is a case of constructive delivery to the third person, therefore, the third person turn out to be the recipient in this case.

  Now, the place of supply will not be dependent on whether the movement of goods is from one State to another (if the supplier and recipient are in two different States) but as declared by the section to be dependent on the principal place of business of such third person (i.e., the person providing instructions to the supplier where the delivery should take place).



Illustrations:

Section 10(1)(b): Supply involves movement of goods, and delivered to a person on the instruction of a third person



Leg 1: Supply from the supplier of goods (Seeta) to the person to whom the goods are delivered (Ram) on the instruction of a third person (Lakshman) – *Place of supply shall be the principal place of business of the person on whose instruction goods are delivered to the receiver of goods, being the principal place of business of Lakshman* [Section 10(1)(b)]:

Case	Location of Supplier - Seeta	Place of delivery of goods - Ram	Principal place of business of Lakshman who instructed delivery to Ram	Place of supply for Seeta	Type of tax payable by Seeta
1	Ahmedabad	Ahmedabad	Amritsar	Amritsar	IGST at Gujarat
2	Ahmedabad	Amritsar	Amritsar	Amritsar	IGST at Gujarat
3	Ahmedabad	Bangalore	Bangalore	Bangalore	IGST at Gujarat
4	Ahmedabad	Chandigarh	Ahmedabad	Ahmedabad	CGST + Gujarat GST at Gujarat

Leg 2: Deemed supply of goods by the person on whose instruction (Lakshman) the goods were delivered by the original supplier (Seeta) to the receiver of goods (Ram) – *Place of supply shall be the location of the goods at the time of delivery to the recipient* [Section 10(1)(a)]:

Case	Location of Supplier – Seeta	Principal place of business of Lakshman who instructed delivery to Ram	Place of delivery of goods - Office of Ram	Place of supply for Lakshman	Type of tax payable by Lakshman
1	Ahmedabad	Amritsar	Ahmedabad	Ahmedabad	IGST at Punjab
2	Ahmedabad	Amritsar	Amritsar	Amritsar	CGST + Punjab GST at Punjab
3	Ahmedabad	Bangalore	Bangalore	Bangalore	CGST + Karnataka GST at Karnataka
4	Ahmedabad	Ahmedabad	Chandigarh	Chandigarh	IGST at Gujarat

Bill to Ship to between distinct Persons:- A situation may arise where an entity having multiple GSTIN under same PAN gives direction to the supplier to raise bill in GSTIN I but deliver goods to GSTIN II. For eg X & Co, Chennai places order on its supplier in Chennai to deliver 1000 pcs of Mobile handset to X & Co, Hyderabad. In this scenario the question to be addressed is whether distinct persons could be considered as separate entities for the Purpose of application of Sec 10(1)(b) or whether this provision would apply only where there are separate legal entities. This question can have far reaching ramifications since if the 1st proposition is denounced then, the transaction involving distinct persons as Bill to Ship to parties would have to be classified under sec 10(1)(a) giving an altogether different answer.

Analysis: While interpreting any provision of a statue, when the question arises as to the meaning of a certain provision in a statue, it is not only legitimate but proper to read the provision in its context. The context here means the statute as a whole, the previous state of law, other statues in pari materia, general scope of the statue & the mischief it was intended to remedy - *UOI v Elphinstone Spinning & Weaving Co. Ltd., 2001(1) JT SC 536*, p.536: AIR 2001 SC 724, p.740 : (2001) 4 SSC 139 (Constitution Bench); Subramanian Swamy v Election Commission of India, AIR 2009 SC 110 para 19 : (2008) 14 SSC 318. Applying this Legislative Rule, when we analyse GST Law as a whole we find that the law has specifically carved out the concept of Distinct Person, under the same PAN, & regarded it as a separate assessable entity different from other entities so much so that the transactions between them with or without consideration are considered as a tax leviable transaction, further each separately registered entity shall have a separate user id login on the Portal maintaining a separate

identity in the eyes of law, the Electronic Credit balance of one entity cannot be transferred & utilised by another, similarly the Electronic Cash Ledger balance can be utilised only after transferring the same by adopting the due procedure in Form GST PMT-09 (Ref: Rule 87(14) of the CGST/SGST Rules, 2017), all assessment, refunds, demands, shall be adjudged independently for each distinct person. These are just a few illustrative instances in the law hinting strongly to the analogy that 2 separate GSTINs under the same PAN are 2 independent assessable entities vis a vis the GST Law. When the law has applied the analogy how can it be interpreted to not exist in a particular provision without any exception being carved out. Applying the legal maxim ex visceribus actus, it can be stated that distinct persons under GST shall be considered as separate entities for all provisions under the GST Law & Bill to Ship to transactions are no exception.

(c) **Where the supply does not involve movement of goods**, the place of supply will be the location of the goods at the time of its delivery to the recipient.

- ✓ It is not a case where there is difficulty in movement of the goods, but a case where the supply contemplates that the goods ought not to move and when their delivery to the recipient will stand complete.
- ✓ For example, a generator that is bolted to the concrete floor in the basement of a building purchased by the tenant and being left behind at the time of terminating the tenancy, the supply of the generator by the tenant to the landlord for an agreed price is a case of 'supply that does not involve movement of the goods'. In such cases, the place of supply will be where the generator stands bolted to the concrete floor and without requiring any movement. The landlord (recipient) confirms satisfactory completion of delivery.

  Another example would be a case where the job worker develops a mould for the production of goods for the principal and retains the mould in his place itself for production of goods. The mould developed by the job worker is sold to the principal but the same is retained by the job worker without causing the movement of mould from job worker premises to principal premises. In this case, the place of supply would be job worker premises.
- ✓ This provision comes into operation only when its applicability is established based on the facts involved in the supply, that is, they do not involve movement.

  Illustrations:

  Section 10(1)(c): Supply does not involve movement of goods

Particulars	Location of supplier	Location of recipient	Location of goods at the time of delivery	Place of supply	Tax Payable
Sale of pre-installed DG Set	Delhi	Bhopal	Bhopal	Bhopal	IGST payable at Delhi
Manufacture of moulds by job-worker (supplier), sold to the Principal, but retained in job worker's premises	Tamil Nadu	Kerala	Tamil Nadu	Tamil Nadu	CGST + Tamil Nadu GST payable at Tamil Nadu

(ca) **Where supply is made to a person other than registered person**, w.e.f. 01.10.2023, the place of supply will be the location as per the address of the said person recorded in the invoice issued in respect of the said supply. If the address of said person is not available on record, then location of supplier will be considered as the place of supply. An explanation is also provided stating that if the name of the State of the said person is recorded in the invoice, then it shall be deemed that the address of the said person is recorded in the invoice. This clause (ca) has been inserted vide *The Integrated Goods & Services Tax (Amendment) Act, 2023 dated 18.08.2023* which has been brought into force w.e.f. 01.10.2023.

The above has been made in order to settle all disputes regarding the applicability of clause (a) or (c) in case of 'off the shelf' purchases particularly when the movement of goods is carried by the customer. Whether the same would be categorized as 'movement of goods by the recipient' or 'no movement of goods' at all was a deterrent for determining the correct place of supply. With the above explanation, the sufficiency of the name of the State recorded in the invoice would be the lone factor for knowing the place of supply in case of B2C transactions.

Circular No.209/3/2024-GST is issued to clarify the matter on the provisions of clause (ca) of Section 10(1) of the Integrated Goods and Service Tax Act, 2017 relating to place of supply of goods to unregistered persons that the place of supply for goods supplied to unregistered persons, particularly in cases where the billing address differs from the delivery address. This scenario often arises in transactions via e-commerce platforms. circular clarifies that when supplying goods to unregistered persons, the place of supply will be the delivery address (if different from the billing address). This ensures proper compliance with GST laws, especially in e-commerce transactions, by focusing on the location where goods are delivered.

Analysis: The newly introduced circular has been criticized as being contrary to the existing provisions governing 'bill to ship to' transactions for supplies made to a registered person. The contention raised is that in such transactions involving a registered recipient, the place of supply (POS) is the "bill to" address, not the "ship to" address. The recent circular purportedly alters this established position for unregistered recipients, thereby creating an apparent contradiction within the law and rendering one clause non-est. However, this argument does not appear to be correct since in a 'bill to ship to' transactions where the original buyer is a registered person, the buyer retains the ability to issue a second invoice to the ultimate consumer, designating their location as the POS. If the POS for the first leg is not the address of the original buyer, it would result in a cascading effect, as the original buyer would be ineligible for Input Tax Credit (ITC) of GST charged by the supplier, since the POS is falling outside the buyer's state. This issue does not arise when the original buyer is unregistered, as the unregistered buyer cannot raise a further invoice to the ultimate consumer. If sec 10(1)(b) is applied, POS would be address of original buyer & not the ultimate customer thereby defeating the principle of Destination based Consumption Tax.

(d) **Where the goods are assembled or installed at site**, the place of supply will be the location of such installation or assembly.

- ✓ It is important to note that assembly or installation as referred to in this clause is not a 'works contract', which has been classified by law as a supply of services (in Paragraph 6(a) of Schedule II to the CGST Act, 2017) – please note that the concept of works contract would arise only in respect of services, for which the place of supply is determined under section 12 and section 13 of the IGST Act, 2017.
- ✓ The supply addressed in this provision refers to only a supply of goods, being a composite supply of goods along with some services, or a mixed supply treated as a supply of goods in terms of sections 2(30), 2(74) and 8 of the CGST Act. In other words, supply from the place of their origin to the site 'for' assembly or installation is subsumed within this provision and merged with the supply to the recipient by virtue of such assembly or installation.
- ✓ This provision appoints the place of supply based on the final act of assembly or installation. There is no requirement to vivisect the entire composite supply of goods (not being works contracts) that is a supply-cum-installation into a supply-plus-installation. If such vivisection were to be done, then in every instance of supply-cum-installation, the supplier will become a 'casual taxable person' in the State where the assembly or installation is required. In other words, when the goods are located in a State (under the control of the supplier which is not registered in that State) and then makes an outward supply directly from where the goods are located, that location becomes the 'place of business' (being the place of

storage of goods) of the supplier, making him a casual taxable person in that State. Since, such vivisection is not required to be done, the condition of casual taxable person would not get attracted. It would remain a composite supply of goods from the location of the supplier.

Illustrations:

Section 10(1) (d): Supply of goods assembled/ installed at site.

Particulars	Location of supplier	Registered office of recipient	Installation / Assembly Site	Place of supply	Tax Payable
Installation of weigh bridge	Delhi	Bhopal	Bhopal	Bhopal	IGST payable from Delhi
Servers supplied and installed at an office	Karnataka	Goa	Karnataka	Karnataka	CGST + Karnataka GST payable from Karnataka
Supply of work-stations	Gujarat	Gujarat	Kerala	Kerala	IGST payable from Gujarat

(e) Where goods are supplied on-board a conveyance, the place of supply will be the location at which the goods are taken on-board.

- ✓ Such transactions also cover two supplies – first being the supply of goods 'to' the operator of the conveyance, and second being the supply of such goods as goods or as services, 'by' the operator to the passenger (or any other person), during the journey 'in' the conveyance.
- ✓ The place of supply covered under this clause is in respect of the second limb, and particularly for the supply of goods by the operator of the conveyance during its journey to the passengers. The supply of goods being food or beverages on board a conveyance would be outside the scope of this clause, given that such supply is treated as a composite supply of services in terms of Paragraph 6(b) of Schedule II to the CGST Act, 2017. *Notification No. 13/ 2018-CT(R), dated 26.07.2018* states that supply of food in train/ platform would be taxable at rate of 5% *pari materia* with restaurant services. This clause would cover supply of goods like sale of merchandise etc. as well as packaged food items which are not served and are classified as goods & not as service under Paragraph 6(b) of Schedule II.
- ✓ As per section 2(34) of the CGST Act, the term 'conveyance' includes a vessel, an aircraft and a vehicle

- ✓ The place of supply in respect of first limb of supply will continue to be determined by other provisions of this Chapter and only the second limb of supply 'on-board the conveyance', being a supply of goods, will be determined by this clause.

Illustration:

Section 10(1)(e): Goods supplied on board a conveyance.

Particulars	Location of supplier	Loading of goods	Passenger boards at	Place of supply	Tax Payable
Supply of merchandise on a flight	Punjab	Punjab	Delhi	Punjab	CGST + Punjab GST payable from Punjab
Sale of Power bank during the journey	Pune	Goa	Hyderabad	Goa	IGST payable from Maharashtra
Sale of sunglasses on a ship	Bangalore	Chennai	Cochin	Chennai	IGST payable from Karnataka

(f) **Residuary provision**: Where none of the foregoing provisions are applicable to determine the place of supply in case of a supply of goods, the Central Government may prescribe rules regarding the manner of its determination. Please ensure that before taking recourse to this residuary provision, it must be demonstrated that the supply is one which cannot be covered by any of the clauses (a) to (e) of section 10(1).

10.3 Issues and concerns

As discussed under clause 10(1)(a) consider a case of delivery ex-factory. In such a case, a question may arise as to whether the supply involves movement of goods. However, considering that clause (a) specifies that the movement may be by the supplier or the recipient or any other person, it can be inferred that even a supply with an ex-factory delivery would be considered to be a supply involving movement of goods. The law does not provide the meaning of the phrase "terminates for delivery". Delivery may be physical, constructive, implied or in any other form. A plain reading of this clause suggests that the delivery is completed ex-factory, and accordingly, ex-factory supplies would always be intra-State supplies (unless the supplier or recipient is an SEZ).

However, on making thorough study of the law, i.e. section 10(1)(a); section 2(2) which defines "address of delivery" as the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both; section 2(3) defines "address on record" as the address of the recipient as available in the records of the supplier; section 2(93) defines "recipient" of supply of goods or services or both; and section 2(96) defines "removal" in relation to goods, suggest that in case

of ex-factory sale or counter-sale, the delivery of goods done by the supplier or taken by the recipient would terminate at the registered place or address on record mentioned in the tax invoice. As such, it can be inferred that if the delivery of goods is taken ex-factory or on counter sale by the recipient such supply would be chargeable to tax based on the address mentioned in the tax invoice.

An alternative view is possible – it may be noted that the delivery for the purpose of the contract law and delivery indicated by this clause may be different. For the purpose of the GST law, a supply is effected on removal of goods for delivery, whereas for contract law, the supply may be understood (in terms of an agreement) to be completed only on acceptance of such goods by the recipient. Similarly, while the risks and rewards pertaining to the goods being supplied may pass at the factory gate, the movement for delivery of such goods may stand terminated only at the premises of the recipient, considering that the movement is undertaken by the recipient for delivery at his own premises. 'Where the movement terminates for delivery to the recipient' should be read very strictly and only refers to the destination at which the movement finally terminates.

Over-the-counter sales are also confused with supply not involving movement. Whether the movement is over long distances or tiny distance from one end of the counter-top to other end, since the enjoyment of the goods supplies is on 'as is where is', this is also a supply that involve movement. Such sales will come within 10(1)(a) and be subject to CGST-SGST unless they are effected under 10(1)(b) then, they will be eligible to levy of IGST where customers from outside the State come and make OTC purchases.

Statutory provisions

11. Place of supply of goods imported into, or exported from India

The place of supply of goods, —

(a) imported into India shall be the location of the importer;

(b) exported from India shall be the location outside India.

Related Provisions of the Statute:

Statute	Section / Rule	Description
CGST	Section 2(56)	Definition of 'India'
IGST	Section 2(5)	Definition of 'export of goods'
IGST	Section 2(10)	Definition of 'import of goods'
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of 'inter-State supplies'
IGST	Section 10	Place of supply of goods other than goods imported into, or exported from India

IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
IGST	Section 16	Zero-rated supplies

11.1 Analysis

Place of Supply – Supplies outside India

Place of supply of goods where the goods are imported into or exported from India will be determined in accordance with section 11 of the IGST Act. Export of goods is defined in section 2(5) of the IGST Act and import of goods is defined in section 2(10) of the IGST Act. With these definitions, which are with reference to the movement of goods and not the location of the supplier or recipient, in this case, the place of supply will be:

> 2(5)-"export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.
>
> 2(10)-"import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

(a) In the case of import of goods, the location of the importer and

(b) In the case of export of goods, the location outside India where the goods are exported.

While payment in convertible foreign exchange is for services including transactions involving goods treated as services, the same is not a criterion for determining whether a supply of goods is an export of goods or import of goods. It is pertinent to note that the Place of Supply (POS) in the case of imports is determined not by the location where goods are imported, but by the location of the importer. For instance, if a registered person from Indore procures goods from the U.K. and the goods are cleared at the Mumbai Port, the POS is Indore, Madhya Pradesh, despite the import occurring at Mumbai Port. This provision ensures that GST revenue is allocated to the state of consumption (the buyer's state). Furthermore, where the buyer is a registered taxpayer, they are eligible to claim Input Tax Credit (ITC) on the GST paid. Transactions of merchanting trade – where the goods are procured from one country and are directly dispatched without their entering into India, will not be a supply in the 'taxable territory' of India. Such transactions will be included for a financial effect in the books of accounts, without invoking the levy provisions under the GST laws. Another form of international supply commonly known as High Sea Sales (known as 'HSS') is also a transaction that transpires outside the taxable territory and accordingly, does not attract the incidence of GST. Re-import of export goods will, however, be liable to GST. It is interesting to note that 'location of supplier or recipient' are not relevant in this section.

'HSS' of imported goods is a term used to denote a transaction whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. Since all transactions entered within the territory of India for sale and purchase of goods is taxable

under GST, there were doubts on the levy of GST on 'HSS'. More so, when such 'HSS' were categorised as inter-State supplies. Accordingly, the Government clarified the position of levy of GST on 'HSS' vide *Circular No. 33/ 2017-Cus dated 01.08.2017* – that IGST on 'HSS' transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. In other words, the buyer of 'HSS' shall be disposing IGST on such imports and as part of Customs. Further, value addition accruing in each such 'HSS' shall form part of the value on which IGST is collected at the time of clearance i.e., buyer shall pay IGST on the final purchase value as per last High Sea transaction envisaging all margins earned by all persons who made 'HSS' of such goods.

The law makers prudently redressed such provision in law and suitably has brought in an amendment (mentioned hereinafter) through insertions in Clause 7 and 8 in Schedule III to consider such activities to be neither supply of goods nor supply of services.

The following Circulars are relevant to note:

Circular No. 46/2017-Cus, dated 24.11.2017 regarding in-bond sales makes it explicitly clear that IGST is not applicable until bill of entry for home consumption is filed.

Circular No. 3/1/2018-IGST, dated 25.05.2018 regarding applicability of Integrated Goods and Services Tax (integrated tax) on goods supplied while being deposited in a customs bonded warehouse – wherein it is clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption.

CGST (Amendment) Act, 2018 dated 29.08.2018 (Earlier effective from 01.02.2019 now made effective retrospectively from 01.07.2017 vide *The Finance Act, 2023* notified through *Notification No. 28/2023-CT dated 31.07.2023* and brought into force w.e.f. 01.10.2023): Schedule III to CGST Act, 2017 to insert following entries, namely-

- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
- Supply of warehoused goods to any person before clearance for home consumption;
- Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Therefore, these transactions will neither be treated as supply of goods nor supply of services.

Please note that imports will be liable to IGST in addition to Basic Customs Duty and exports will be zero-rated with benefit of refund of attributable input tax credit, or refund of tax paid on such exports. Please refer to the Taxation Amendment Act, 2017 for the necessary amendments made to Customs Tariff Act, 1975 and Central Excise Act, 1944 to enable

imposition of BCD+IGST on import of goods liable to tax. Refer detailed discussion under section 5 of IGST Act on these implications.

Illustrations: Place of supply of goods imported into, or exported from India

Section 11(a): Import of goods

Case	Location of supplier	Location of goods before supply	Goods supplied to	Location of recipient	Place of supply
1	Thailand	Thailand	Assam	Assam	Assam
2	China	China	Kashmir	Haryana	Haryana
3	Sri Lanka	Sri Lanka	Kerala	Kerala	Kerala
4	Karnataka	Iran	Dubai	Karnataka	Not an import since the goods is not brought into India.

Section 11(b): Export of goods

Case	Location of supplier	Location of goods	Goods supplied to	Location of recipient	Place of supply
1	Assam	Assam	Thailand	Assam	Thailand
2	Tamil Nadu	Kashmir	China	Texas	China
3	Sri Lanka	Kerala	Sri Lanka	Sri Lanka	Sri Lanka
4	Maharashtra	Dubai	Iran	Iran	Not an export since the goods is not moving from India.

Another aspect to be carefully considered here is 'bill to-ship to' arrangements involving cross-border trade. It is not important as the supply is 'billed to' a person outside India but the supply is 'shipped to' a person outside India. In fact, it is not at all relevant where the billing is done 'to' for the transaction to come within the operation of section 11. Reference may be had to discussion under section 16 regarding 'supply by way of export' which qualifies for zero-rated benefit. It is sufficient to mention here that in the export – goods shipped to a place outside India – would qualify as an export eligible for zero rated benefit for the second leg of transaction. Exports, therefore, are always determined based on their 'ship to' location being a place outside India. Similarly, import of goods also are determined based on the 'ship to' location being the place within India with a journey or originating outside India. However, with the *proviso* to section 5(1) imposing GST is not under the IGST Act but under the Customs Tariff Act, as soon as the goods supplied qualify as import of goods under section 11, they attract the incidence of additional customs duty equivalent to IGST. It is important to note that the similarity in the definition of import of goods and export of goods and the dissimilarity in the treatment of GST in these cases.

Statutory provisions

12. Place of supply of services where location of supplier and recipient is in India

(1) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.

(2) The place of supply of services, except the services specified in sub-sections (3) to (14)-

(a) made to a registered person shall be the location of such person;

(b) made to any person other than a registered person shall be, —

(i) the location of the recipient where the address on record exists; and

(ii) the location of the supplier of services in other cases.

(3) The place of supply of services, —

(a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

(b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or

(c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

(d) any services ancillary to the services referred to in clauses (a), (b) and (c),

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation. —Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

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

(5) The place of supply of services in relation to training and performance appraisal to, —

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location where the services are actually performed.

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

(7) The place of supply of services provided by way of, —

(a) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or

(b) services ancillary to organization of any of the events or services referred to in clause (a), or assigning of sponsorship to such events, —

(i) to a registered person, shall be the location of such person;

(ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

Explanation.––Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of services by way of transportation of goods, including by mail or courier to, —

(a) a registered person, shall be the location of such person;

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

[13][14][***]]

(9) The place of supply of passenger transportation service to, —

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:

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[13] Inserted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 through Notification No. 1/2019-IT dated. 29.01.2019.

[14] Omitted vide the Finance Act, 2023, notified through Notification No. 28/2023-CT dated 31.07.2023- Brought into force w.e.f. 01.10.2023. Prior to its omission it was read as "Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods."

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).

Explanation.––For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

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

(11) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall, —

(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;

(c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, ––

(i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or

(ii) by any person to the final subscriber, be the location where such pre-payment is received or such vouchers are sold;

(d) in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

Explanation.––Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the

respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(12) The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:

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

(13) The place of supply of insurance services shall, —

(a) to a registered person, be the location of such person;

(b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

(14) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Extract of the IGST Rules, 2017

***3**. The proportion of value attributable to different States or Union territories, in the case of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority, under sub-section (14) of section 12 of the Integrated Goods and Services Tax Act, 2017, in the absence of any contract between the supplier of service and recipient of services, shall be determined in the following manner namely:—*

(a) In the case of newspapers and publications, the amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in a State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in such State or Union territory.

Illustration: ABC is a government agency which deals with the all the advertisement and publicity of the Government. It has various wings dealing with various types of publicity. In furtherance thereof, it issues release orders to various agencies and entities. These agencies and entities thereafter provide the service and then issue invoices to ABC indicating the amount to be paid by them. ABC issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (whose head office is in Delhi) for the editions of Delhi, Pune,

Mumbai, Lucknow and Jaipur. The release order will have details of the newspaper like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper. The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan. The amounts payable to the Pune and Mumbai editions would constitute the proportion of value for the State of Maharashtra which is attributable to the dissemination in Maharashtra. Likewise the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF should issue separate State wise and Union territory wise invoices based on the editions.

(b) in the case of printed material like pamphlets, leaflets, diaries, calendars, T shirts etc, the amount payable for the distribution of a specific number of such material in a particular State or Union territory is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of one lakh pamphlets (at a total cost of one lakh rupees) to be distributed in the States of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States i.e., Haryana, Uttar Pradesh and Rajasthan, from the Ministry or 2 department concerned at the time of giving the print order. Let us assume that this breakup is twenty thousand, fifty thousand and thirty thousand respectively. This breakup should be indicated in the print order. The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan. The ratio of this breakup i.e., 2:5:3 will form the basis of value attributable to the dissemination in each of the three States. Separate invoices will have to be issued State wise by GH to ABC indicating the value pertaining to that State i.e., twenty thousand rupees-Haryana, fifty thousand rupees-Uttar Pradesh and thirty thousand rupees-Rajasthan.

(c) (i) in the case of hoardings other than those on trains, the amount payable for the hoardings located in each State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in each such State or Union territory, as the case may be.

Illustration: ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the four metros i.e., Delhi, Mumbai, Chennai and Kolkata. The release order issued by ABC to IJ will have the city wise, location wise breakup of the amount payable for such hoardings. The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the four metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State wise and Union territory

wise by IJ to ABC indicating the value pertaining to that State or Union territory.

(ii) in the case of advertisements placed on trains, the breakup, calculated on the basis of the ratio of the length of the railway track in each State for that train, of the amount payable for such advertisements is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: ABC places an order on KL for advertisements to be placed on a train with regard to the "Janani Suraksha Yojana". The length of a track in a State will vary from train to train. Thus, for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website www.indianrail.gov.in. The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa. The value of the supply in each of these States and Union territory attributable to the dissemination in these States will be in the ratio of the length of the track in each of these States and Union territory. If this ratio works out to say 0.5:0.5: 2:2 :3:3:1 , and the amount to be paid to KL is one lakh twenty thousand rupees, then KL will have to calculate the State wise and Union territory wise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory. In the given example the State wise and Union territory wise breakup works out to Delhi (five thousand rupees), Haryana (five thousand rupees), Uttar Pradesh (twenty thousand rupees), Madhya Pradesh (twenty thousand rupees), Maharashtra (thirty thousand rupees), Karnataka (thirty thousand rupees) and Goa (ten thousand rupees). Separate invoices will have to be issued State wise and Union territory wise by KL to ABC indicating the value pertaining to that State or Union territory.

(d) (i) in the case of advertisements on the back of utility bills of oil and gas companies etc., the amount payable for the advertisements on bills pertaining to consumers having billing addresses in such States or Union territory as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory.

(ii) in the case of advertisements on railway tickets, the breakup, calculated on the basis of the ratio of the number of Railway Stations in each State or Union territory, when applied to the amount payable for such advertisements, shall constitute the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: ABC has issued a release order to MN for display of advertisements relating to the "Ujjwala" scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh. The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in

each State as ascertained from the Railways or from the website www.indianrail.gov.in. Let us assume that this ratio is 713:251 and the total bill is rupees nine thousand six hundred and forty. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to seven thousand one hundred and thirty rupees and two thousand five hundred and ten rupees respectively. Separate invoices will have to be issued State wise by MN to ABC indicating the value pertaining to that State.

(e) in the case of advertisements over radio stations the amount payable to such radio station, which by virtue of its name is part of a State or Union territory, as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be.

Illustration: For an advertisement on 'Pradhan Mantri Ujjwala Yojana', to be broadcasted on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations. The place of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another State. Separate invoices will have to be issued State wise and Union territory wise by MN to ABC based on the value pertaining to each State or Union territory.

(f) in the case of advertisement on television channels, the amount attributable to the value of advertisement service disseminated in a State shall be calculated on the basis of the viewership of such channel in such State, which in turn, shall be calculated in the following manner, namely:—

(i) the channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council;

(ii) the figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter and at the beginning, the figures for the quarter 1st July, 2017 to 30th September, 2017 shall be used for the succeeding quarter 1st October, 2017 to 31st December, 2017;

(iii) where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures;

(iv) the ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Illustration: ABC issues a release order with QR channel for telecasting an advertisement relating to the "Pradhan Mantri Kaushal Vikas Yojana" in the month of November, 2017. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply attributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand, QR has to proceed as under—

I. QR will ascertain the viewership figures for their channel in the last week of September, 2017 from the Broadcast Audience Research Council. Let us assume it is one lakh for Delhi and two lakhs for the region comprising of Uttar Pradesh and Uttarakhand and one lakh for the region comprising of Bihar and Jharkhand;

II. since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into another region, QR will ascertain the population figures for Uttar Pradesh, Uttarakhand, Bihar and Jharkhand from the latest census;

III. by applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand and consequently the ratio of these viewership figures can be calculated. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9: 1. When this ratio is applied to the viewership figures of two lakhs for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to one lakh eighty thousand and twenty thousand respectively;

IV. in a similar manner the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of one lakh for this region, the viewership figure for Bihar and Jharkhand works out to eighty thousand and twenty thousand respectively;

V. the viewership figure for each State works out to Delhi (one lakh), Uttar Pradesh (one lakh eighty thousand), Uttarakhand (twenty thousand), Bihar (eighty thousand) and Jharkhand (twenty thousand). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1 (simplification).

VI. this ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus, if the total amount payable to QR by ABC is twenty lakh rupees, the State wise breakup is five lakh rupees (Delhi), nine lakh rupees (Uttar Pradesh) one lakh rupees (Uttarakhand), four lakh rupees (Bihar) and one lakh rupees (Jharkhand). Separate invoices will have to be issued State wise and

Union territory wise by QR to ABC indicating the value pertaining to that State or Union territory.

(g) in the case of advertisements at cinema halls the amount payable to a cinema hall or screens in a multiplex, in a State or Union territory, as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be.

Illustration: ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the States of Tamil Nadu and Telengana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State wise and Union territory wise by ST to ABC indicating the value pertaining to that State.

(h) in the case of advertisements over internet, [15][the service shall be deemed to have been provided all over India and], the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the internet subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely: —

(i) the internet subscriber figures for a State shall be taken from the figures published in this regard by the Telecom Regulatory Authority of India;

(ii) the figures published for the last quarter of a given financial year shall be used for calculating the number of internet subscribers for the succeeding financial year and at the beginning, the figures for the last quarter of financial year 2016-2017 shall be used for the succeeding financial year 2017-2018;

(iii) where such internet subscriber figures relate to a region comprising of more than one State or Union territory, the subscriber figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures;

(iv) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for this service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Illustration: ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign over certain websites. In order to ascertain the State wise breakup of the value of this

[15] Inserted vide Notification. No. 04/2018-IT dated. 31.12.2018 w.e.f. 01.01.2019.

service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March, 2017, as indicated on their website www.trai.gov.in. These figures show the service area wise internet subscribers. There are twenty two service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas. In order to calculate the State wise breakup, first the State wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.). Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State wise ratio of internet subscribers. Let us assume that this works out to 8: 1 : 2… and so on for Andhra Pradesh, Arunachal Pradesh, Assam….. and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State. Separate invoices will have to be issued State wise and Union territory wise by WX to ABC indicating the value pertaining to that State or Union territory.

(i) in the case of advertisements through short messaging service the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the telecommunication (herein after referred to as telecom) subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely:-

(a) the number of telecom subscribers in a telecom circle shall be ascertained from the figures published by the Telecom Regulatory Authority of India on its website www.trai.gov.in;

(b) the figures published for a given quarter, shall be used for calculating subscribers for the succeeding quarter and at the beginning, the figures for the quarter 1st July, 2017 to 30th September, 2017 shall be used for the succeeding quarter 1st October, 2017 to 31st December, 2017;

(c) where such figures relate to a telecom circle comprising of more than one State, or Union territory, the subscriber figures for that State or Union territory shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures.

***Illustration-1**: In the case of the telecom circle of Assam, the amount attributed to the telecom circle of Assam is the value of advertisement service in Assam.*

***Illustration-2**: The telecom circle of North East covers the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura. The ratio of populations of each of these States in the latest census will have to be determined and this ratio applied to the total number of subscribers for this telecom circle so as to arrive at the State wise figures of telecom subscribers.*

Separate invoices will have to be issued State wise by the service provider to ABC indicating the value pertaining to that State.

Illustration-3*: ABC commissions UV to send short messaging service to voters asking them to exercise their franchise in elections to be held in Maharashtra and Goa. The place of supply of this service is in Maharashtra and Goa. The telecom circle of Maharashtra consists of the area of the State of Maharashtra (excluding the areas covered by Mumbai which forms another 7 circle) and the State of Goa. When calculating the number of subscribers pertaining to Maharashtra and Goa, UV has to—*

I. obtain the subscriber figures for Maharashtra circle and Mumbai circle and add them to obtain a combined figure of subscribers;

II. obtain the figures of the population of Maharashtra and Goa from the latest census and derive the ratio of these two populations;

III. this ratio will then have to be applied to the combined figure of subscribers so as to arrive at the separate figures of subscribers pertaining to Maharashtra and Goa;

IV. the ratio of these subscribers when applied to the amount payable for the short messaging service in Maharashtra circle and Mumbai circle, will give breakup of the amount pertaining to Maharashtra and Goa. Separate invoices will have to be issued State wise by UV to ABC indicating the value pertaining to that State.

Illustration-4*: The telecom circle of Andhra Pradesh consists of the areas of the States of Andhra Pradesh, Telangana and Yanam, an area of the Union territory of Puducherry. The subscribers attributable to Telangana and Yanam will have to be excluded when calculating the subscribers pertaining to Andhra Pradesh.*

(d) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

[16][4. *The supply of services attributable to different States or Union territories, under sub section (3) of section 12 of the Integrated Goods and Services Tax Act, 2017 (hereinafter in these rules referred to as the said Act), in the case of-*

(a) services directly in relation to immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

[16] Inserted vide Notification No. 04/2018-IT dated. 31.12.2018 w.e.f. 01.01.2019.

(b) lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called, and including a houseboat or any other vessel; or

(c) accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

(d) any services ancillary to the services referred to in clauses (a), (b) and (c),where such immovable property or boat or vessel is located in more than one State or Union territory, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case may be, shall be determined in the following manner namely:-

(i) in case of services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called (except cases where such property is a single property located in two or more contiguous States or Union territories or both) and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property;

(ii) in case of all other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in two or more contiguous States or Union territories or both, and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory;

(iii) in case of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, which shall be determined on the basis of a declaration made to the effect by the service provider.

Illustration 1: A hotel chain X charges a consolidated sum of Rs.30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as Rs.20,000/- in the Union territory of Delhi and Rs.10,000/- in the State of Uttar Pradesh.

Illustration 2: There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work

has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

Illustration 3: A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka inasmuch as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.]

[17][5. The supply of services attributable to different States or Union territories, under sub-section (7) of section 12 of the said Act, in the case of-

(a) services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, including supply of services in relation to a conference, fair exhibition, celebration or similar events; or

(b) services ancillary to the organisation of any such events or assigning of sponsorship to such events,

where the services are supplied to a person other than a registered person, the event is held in India in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case may be, shall be determined by application of the generally accepted accounting principles.

Illustration: An event management company E has to organise some promotional events in States S1 and S2 for a recipient R. 3 events are to be organised in S1 and 2 in S2. They charge a consolidated amount of Rs.10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as Rs. 6,00,000/- in S1 and Rs. 4,00,000/- in S2.]

[18][6. The supply of services attributable to different States or Union territories, under sub section (11) of section 12 of the said Act, in the case of supply of services relating to a leased circuit where the leased circuit is installed in more than one State or Union territory

[17] Inserted vide Notification No. 04/2018-IT dated. 31.12.2018, w.e.f. 01.01.2019.

[18] Inserted vide Notification No. 04/2018-IT dated. 31.12.2018, w.e.f. 01.01.2019.

and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely:-

(a) The number of points in a circuit shall be determined in the following manner:

(i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;

(ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;

(b) the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory.

Illustration 1: A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.

Illustration 2: A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

Illustration 3: A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.]

Related Provisions of the Statute

Statute	Section / Rule	Description
CGST	Section 2(2)	Definition of 'address on record'
CGST	Section 2(34)	Definition of 'conveyance'
CGST	Section 2(56)	Definition of 'India'

CGST	Section 2(93)	Definition of 'recipient'
CGST	Section 9	Levy and collection of tax
IGST	Section 2(3)	Definition of 'continuous journey'
IGST	Section 2(6)	Definition of 'export of services'
IGST	Section 2(11)	Definition of 'import of services'
IGST	Section 2(13)	Definition of 'intermediary'
IGST	Section 2(14)	Definition of 'location of the recipient of services'
IGST	Section 2(15)	Definition of 'location of the supplier of services'
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of 'inter-State supplies'
IGST	Section 8	Meaning of 'intra-State supplies'
IGST	Section 10	Place of supply of goods other than goods imported into, or exported from India
IGST	Section 11	Place of supply of goods imported into, or exported from India
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
IGST	Section 14	Special provision for payment of tax by a supplier of OIDAR services

12.1 Important Definitions

(a) Location of recipient of services:

Section 2(14) of the IGST Act, 2017 defines "location of the recipient of services" as:

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient.

(b) Location of the supplier of services:

Section 2(15) of the IGST Act, 2017 defines "location of the supplier of services" as:

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

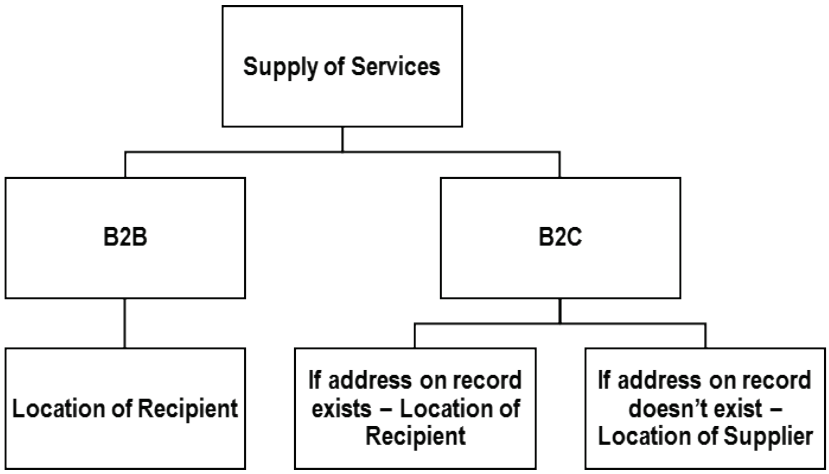
12.2 Analysis

Place of Supply – Supplies within India

Place of supply (known as POS) of services where both the supplier and recipient are located within India will be determined in accordance with section 12 of the IGST Act.

(i) The general provision to determine the place of supply in respect of supply of services will be as follows:

- Services supplied to a recipient who is registered, POS will be the location of such person;
- Services supplied to a recipient who is not registered, POS will be the address on record of such person and where such address is not available, it will be the location of supplier.



Circular No. 242/36/2024-GST dated 31st Dec 2024 clarifies that in respect of supply of online/ digital services, OIDAR services and online money gaming to unregistered recipients, the suppliers are mandatorily required to record the name of the State of the recipient on the tax invoice, irrespective of the value of supply of such services, and to declare place of supply of the said services as the location of the recipient (based on the name of State of the recipient) in their details of outward supplies in FORM GSTR-1/1A (Para 4.5.1). Further it clarifies that in such cases, the name of the State of the recipient so recorded shall be deemed to be the address of recipient available on record and thus, for determining place of supply of the said services, provisions of section 12(2)(b)(i) of IGST Act will be applicable as per which the place of supply shall be the location of the recipient (Para 4.5.2).

Comments: The Circular reinforces the principle of destination as the location of recipient. Further this provision is akin to Place of Supply(POS) for supply to unregistered buyer under sec 10(1)(ca), in fact online money gaming is classified as specified actionable claim & hence goods. This means that for online money gaming provided to unregistered recipients (gamers/players/participants) POS is the state mentioned on Invoice & similarly POS for OIDAR services to unregistered recipients would also be the state mentioned on Invoice.

There could be a scenario where multiple POS in the same invoice to a particular customer because of supply of distinct goods and goods, or services and services, or goods and services may get covered. In such a case, the supplier has to issue separate invoices where each invoice will have only one POS. This method is also supported by the fact that Form GSTR-1 (Details of Outward supply) does not allow one to key in two different POS for the same invoice.

It is crucial to note that under the erstwhile Service tax regime, the scheme of centralised registration was available, by virtue of which, the location of the recipient was always construed to be the registered address in the statutory records. However, under the GST law, a separate registration is required to be obtained in every State/ UT from where a person effects taxable supplies. Accordingly, due caution must be exercised to provide for what is to be the location of the recipient, where the place of supply is determined to be the location of the registered person, under this clause, or any other clauses of section 12/13 of the IGST Act.

(ii) Specific provisions regarding place of supply that will apply in priority over the aforesaid general provision are as follows:

(a) Services directly in relation to immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. The provision lists these services – architects, interior decorators, surveyors, engineers and other related experts or estate agents, grant of rights to use immovable property or carrying out/ coordination of construction work. As can be seen, this list is not

exhaustive and therefore – 'in relation to' – test will continue to be applicable to identify the services that will have the location of the property as its place of supply. *Hon'ble Supreme Court in Doypack Systems Private Limited vs. Union of India [1988 (036) ELT 0201 SC]* interpreted the phrase "in relation to" as a broad and comprehensive term that implies an association or connection with another subject. It was equated to terms like "concerning" and "pertaining to," signifying expansion rather than restriction. While GST law does not explicitly address services related to immovable property, guidance from the service tax regime clarified that such services typically involve leases, rights to use, occupation, or activities performed on the property, emphasizing a broad interpretation.

Also, the location of the supplier or recipient is irrelevant in such cases. Further, there are other services that have proximity to immovable property that are 'by way of' accommodation. Such services too have, as their place of supply, the location of such property. Such property may be a hotel, inn, guest house, homestay, club or campsite including houseboat. The use of such property may be accommodation or for organizing a function such as marriage. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis the services. Services that are ancillary to such services would also be covered by this provision. It is also stated that in case, the location of immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient. *CBEC Guidance Note 5.5.2,* states that there must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property. For example, a legal firm's general opinion with respect to the capital gains tax liability arising from the sale of a commercial property in India is basically advice on taxation legislation in general even though it relates to the subject of an immovable property. Further Para 5.5,4 states that the place of provision of services rule applies only to services which relate directly to specific sites of land or property. In other words, the immovable property must be clearly identifiable to be the one **from where**, or **in respect of which**, a service is being provided. Thus, there needs to be a very close link or association between the service and the immovable property. Needless to say, this rule does not apply if a provision of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.

For example, the services of an architect contracted to design the landscaping of a particular resort hotel in Goa would be land-related. However, if an interior decorator is engaged by a retail chain to design a common decor for all its stores in India, this service would not be land-related. The default rule i.e. Rule 3 will apply in this case.

GST *Circular No. 203/15/2023-dated 27/10/2023* further strengthens the contention that the essence of 'directly in relation to immovable property' shall be that there has to be **direct involvement of the immovable in provision of service whereby the immovable property is deployed like an equipment/machinery in generating the outcome- the provision of the under lying service.** The Circular clarifies;

i. Supply/Sale of Space/Rights to Use: If the vendor supplies/sells space or rights to use space on their hoarding/structure to the advertising company, the place of supply is where the hoarding/structure is located. This is based on Section 12(3)(a) of the IGST Act, which deals with services related to immovable property. (Refer to the first half of the image provided).

ii. Vendor Arranges Display: If the vendor arranges for the display of advertisements on hoardings/billboards (which they may or may not own), and the advertising company doesn't occupy the space, it's considered an advertising service, not a supply of immovable property rights. Therefore, Section 12(3)(a) doesn't apply. Sec 12(2) applies.

Further, the same GST *Circular No. 203/15/2023-dated. 27/10/2023* in the next query on Place of supply of Co-location services related to Hosting and information technology (IT) infrastructure corroborates the above understanding in a composite supply environment where alongside utility of immovable property physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers. Again in such a composite supply set up the underlying principle in determining place of supply relating to immovable property remains the same. **Whether the immovable property use is active or passive is the determinative factor, whereby if the immovable property is merely used for housing & accommodation of the equipments and the dominant component is the functioning of the servers, Place of Supply shall follow the dominant intention and it shall be determined under section 12(2).** However, if the agreement only provides physical space and basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only the place of supply is determined by Section 12(3)(a) of the IGST Act (location of the immovable property). **From the clarification in the circular we can conclude that the use of immovable property in a**

composite supply agreement should be the active and dominant like a Plant in order to qualify for Sec 12(3).

Service by Way of Lodging Accommodation

This provision governs lodging accommodation services rendered by establishments such as hotels, inns, guest houses, home stays, clubs, campsites, or houseboats. A pertinent issue arises when such transactions are facilitated through online platforms. As expressly stated, the applicability of this provision is restricted to cases where the services are directly provided by the enumerated entities. Therefore, in circumstances where the transaction is routed through online portals or agents, the provision may not be applicable.

Illustratively, consider a scenario wherein a Palace Resort in Udaipur, Rajasthan, enters into an agreement with a selling agent located in Delhi. The contractual arrangement operates on a Principal-to-Principal basis, whereby the hotel allocates a specific number of rooms for the agent to sell, and the agreed charges are recovered from the agent irrespective of whether the rooms are actually sold. The question that arises is whether the supply, as invoiced by the hotel to the agent, should be categorized as lodging/accommodation services or as a different class of service. If classified as lodging/accommodation, the Place of Supply (POS) would be Rajasthan. Given that the agent is registered Delhi, Input Tax Credit (ITC) would not be available, thereby creating a tax-inefficient structure as compared to erstwhile Central Excise & Service Tax.

Additional complexity surfaces when the agent subsequently invoices the end customer. This raises the question of whether the service should be regarded as being directly in relation to immovable property and thus falling within the ambit of clause (a), or whether clause (b) should govern. If clause (b) is deemed applicable, the issue emerges that the service provider does not qualify as a hotel, inn, guest house, home stay, club, campsite, or houseboat, even though the underlying service is ultimately rendered by such an entity. Under such circumstances, one could argue that since the supply is not made by the specified class of supplier, the POS ought to be determined in accordance with the general rule. This issue, eventually, could be decided only by judiciary.

Analysis of Section 12(3)(c) and (d)

Section 12(3)(c) of the IGST Act stipulates that the location of the immovable property shall be the place of supply (POS) in cases involving accommodation in any immovable property, boat, or vessel for purposes such as organizing marriages, receptions, official, social, cultural, religious, or business functions, including services provided in connection with such events at the specified property. Clause (d) further extends this to encompass "any services ancillary to the services referred to in clauses (a), (b), and (c)."

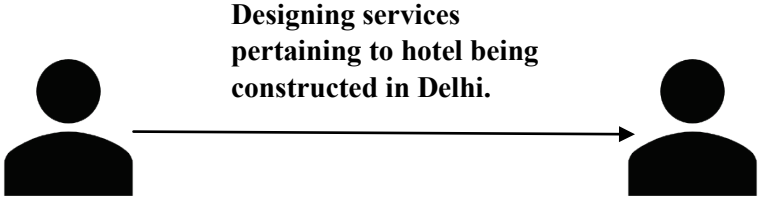
The interpretational issue that arises pertains to the breadth of these provisions and their intended coverage. The inclusion of the phrases "including services provided in relation to such function at such property" and "any services ancillary" suggests that these clauses—absent in the erstwhile Service Tax Place of Provision of Services (POPS) Rules—are intended to broaden the scope of this entry. They may encompass any service provided for the function and any supplementary services connected thereto.

This has led to significant ambiguity, as it potentially intrudes into the domain of POS provisions governing other categories of services. For instance, services such as catering, decoration, drone operations, and similar offerings might fall within the ambit of these clauses. A literal interpretation suggests that the POS for all such services would be the location of the immovable property.

While, grossly, these are personal services, which generally do not raise concerns regarding input tax credit (ITC) eligibility, howbeit, from the supplier's perspective, misclassification of the POS could result in disputes. Such errors could lead to loss of tax revenue for the state where the consumption occurs, potentially triggering litigation and administrative challenges.

Circular No. 48/22/2018-GST, dated 14.06.2018 in the context of services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit has clarified that such service shall be treated as inter-State supply.

Further, goods required in construction activity received as stock before being assigned to any particular site will not be determined by this provision but the general provision. For example, steel purchased in bulk and sent to a central warehouse being deployed to any specific site.



POS would be Delhi as the location of immovable property is Delhi.

Rule 4 of IGST Rules provides that where immovable property or boat or vessel is located in more than one State or and in the absence of any contract or agreement, the value shall be determined in the following manner-

a) in case of services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called (except cases where such

property is a single property located in two or more contiguous States/ UT) and services ancillary to such services, the supply of services shall be treated as made in each of the respective States/ UT, in proportion to the number of nights stayed in such property;

b) in case of all other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in two or more contiguous States/ UT, and services ancillary to such services, the supply of services shall be treated as made in each of the respective States/ UT, in proportion to the area of the immovable property lying in each State/ UT;

c) in case of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, the supply of services shall be treated as made in each of the respective States/ UT, in proportion to the time spent by the boat or vessel in each such State/ UT, which shall be determined on the basis of a declaration made to the effect by the service provider.

*Circular No. 203/15/2023-GST dated 27.10.202*3 has been issued clarifying the place of supply in case of supply of services in respect of advertising sector and co-location services.

A. Place of supply in case of supply of services in respect of advertising sector

(i) Place of supply where there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure:

The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a), the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located.

Hence, place of supply in such case shall be location where such hoarding/ structure is located.

(ii) Place of supply where the vendor himself owns the structure or takes it on rent or rights to use from another person and is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the

hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure.

The said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. The vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of section 12(2) of IGST Act.

B. Place of supply in case of supply of the "co-location services"

Co-location is a data centre facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.

It has been clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services. (S.No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involve providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.

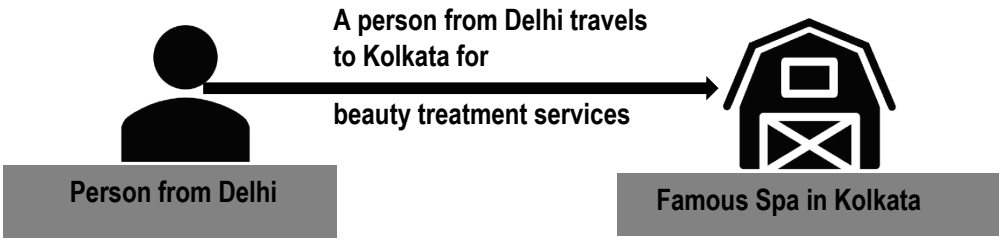
Hence, in such cases, supply of colocation services cannot be considered as the service of renting immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of section 12(3)(a) of the IGST Act but shall be determined by the default provision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

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

(b) In case of services of restaurant and catering, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery will be the location

where these services are actually performed. The services listed in this provision do not carry a common thread so as to allow expanding this list. At the same time, each of these services themselves are a broad description of various specific services that may be performed under that umbrella. Services must be examined very carefully to fall with the scope of this provision. It may be noted that only performance-based services which require physical presence can be considered within this clause.

It is important to understand that POS would not help one in determining the State in which registration is required to be obtained, and it only determines the State in which the supply is consumed, so as to determine the nature of tax applicable on the supply. For understanding registration requirement, one has to determine the same, basis Chapter VI of CGST Act.



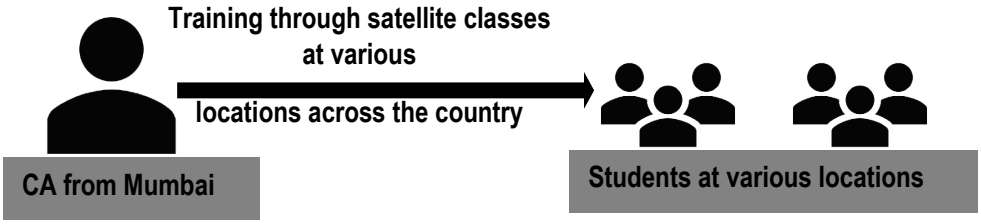
POS would be Kolkata as that is the place where service is performed.

(c) Services of training and performance appraisal supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location where services are actually performed.

An essential issue for consideration is whether the conjunction "and" between training and performance appraisal in the relevant provision must be interpreted strictly as conjunctive or alternatively as disjunctive, i.e., "or." A restrictive interpretation of "and" limits the scope of the provision, necessitating both conditions for applicability. In A.G. v. Beauchamp [(1920) 1 KB 650], the interchangeability of "and" and "or" was recognized if literal interpretation led to absurdity, provided legislative intent supported such substitution. There are contrary decisions on this point of interpreting 'and' & 'or'. Applying these principles and adopting a purposive interpretive approach, it is reasonable to construe "and" as "or," thereby encompassing standalone activities such as training or performance appraisal under this provision. Recipient here being the 'person liable to pay the consideration' is not to be misconstrued to be the 'trainee' or 'person appraised'. E.g.: In case of a corporate training organized by a training institute in Mumbai for a registered corporate client in Bangalore, the consideration is paid by the corporate through the individual participants who would be required to pay a certain delegate fee. Hence, the POS has to be determined on the basis of location of the recipient being the corporate entity and not based on the place where the services are actually performed.

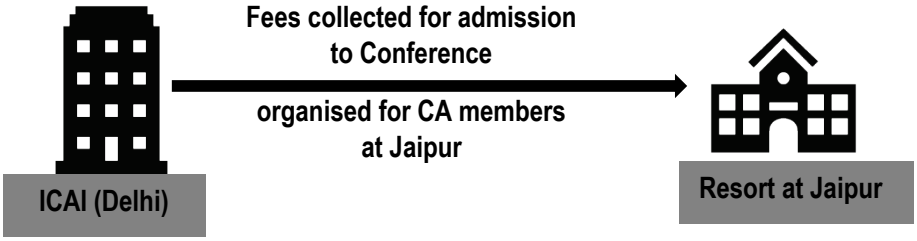
Had the services been provided to unregistered individual participants, the place of supply would have been Mumbai i.e., where the services are actually performed.

With respect to online training & coaching (virtual) there is ambiguity whether general rule under Sec 12(2) would apply or the rule provided under Sec 12(5).



POS would be Mumbai as that is the place where service is performed.

(d) Services of ***admission*** to a venue will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or an amusement park including ancillary services. Services referred to here are only 'admission' and not for organizing the event at the venue. Thereby, event management services would not be covered here but in clause (e) below.



POS would be Jaipur as that is the place where event is actually held.

(e) Services of ***organizing*** an event including ancillary services supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location of the venue itself.

The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment. Services referred to here are 'by way of' organizing the event at the venue. Where the event is organized in a ground or field being an immovable property, the service of securing the location has, as its place of supply, determined by a foregoing provision but the rest of the services of organizing the event alone will fall in this provision.

In this regard CBEC Education Guide Guidance Note clarifies

5.6.3 What is a service ancillary to organization or admission to an event?

Provision of sound engineering for an artistic event is a prerequisite for staging of that event and should be regarded as a service ancillary to its organization. A service of

hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission.

5.6.4 What are event-related services that would be treated as not ancillary to admission to an event?

A service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event.

Comments: As can be inferred from the above clarifications ancillary services would include those services which provide necessary support to the organization of an event. Hence, those services which have a direct linkage and bearing on the organisation of the event shall be classified under this entry whereas those services which are merely incidental and secondary would get classified under respective entries.

Section 12(6) vs. Section 12(7) under GST

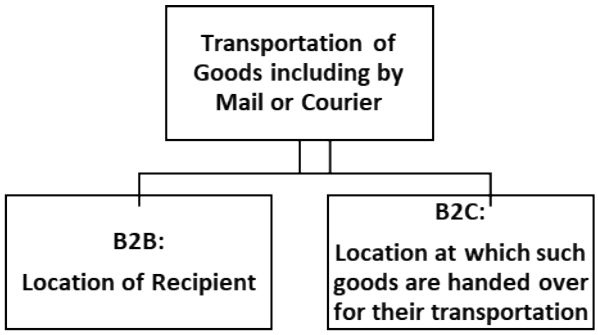
Section 12(6) addresses services related to admission to events, whereas Section 12(7) pertains to services concerning event organization and ancillary services thereto. The scope of Section 12(6) is notably narrower and does not encompass business events such as conferences or seminars, where companies sponsor delegates to attend. This is evident from the exclusion of such events in Section 12(6), contrasting with the inclusion of conference admissions under Section 13(5) for cross-border scenarios.

The distinction reflects the legislative intent to ensure seamless credit flow for registered recipients. Consequently, services like business event admissions may not fall under the exceptions listed in Section 12(6) but instead align with the general rule. A related ambiguity arises regarding the applicability of the explanation in Section 12(7) to both registered and unregistered recipients. Given the legislative silence, the explanation can reasonably be construed as applying solely to unregistered recipients, aligning with the objective of facilitating credit flow for registered entities. Introducing multiple POS for registered persons would contravene this intent, potentially leading to compliance challenges.

Rule 5 of IGST Rules provides that where services of organizing the event are supplied to unregistered person for a consolidated amount charged for supply of such services and the event is held in India in more than one State/ UT, the value of service in such State/ UT shall be determined by application of generally accepted accounting principles.

On a comparison of this provision with the previous provision, the striking difference is that in case of B2B transaction for admission to an event, the POS would be the location of the event whereas services of organizing the event is based on the location of the recipient in case of B2B supplies (i.e., where the recipient is a registered person).

(f) Services of transportation of goods supplied to a registered person will be the location of the recipient being a registered person. When the recipient is not registered, the place of supply will be the location where goods are handed over for such transportation. Transportation of goods may be by any mode including mail or courier.



In order to provide a level playing field to Indian transporters, with effect from 01.02.2019 vide *IGST (Amendment) Act 2018*, a proviso was inserted to provide that where the transportation of goods is to a place outside India and where the location of the supplier and recipient are in India, the place of supply will be the place of destination of goods.

However, services by way of transportation of goods by an aircraft or vessel from customs station of clearance in India to a place outside India was exempt till 30.09.2022.

Hence, w.e.f. 01.10.2022, the logistics company taking goods out of India would always invoice with IGST by showing the place of supply as 'Foreign Country'. The revenue from such supply would not accrue in the favour of the State where the recipient was located. In such cases, the ITC had been called into question by the GST Department. A clarification was issued vide *Circular no. 184/16/2022-GST dated 27.12.2022* that the ITC would be fully available in such cases.

Despite this clarification, the recipient state (i.e., where the exporter is located) would be incurring a loss because it would not receive the revenue from the original supply but still provide ITC benefit to the exporter. To remove this anomaly and confusion regarding ITC availability, the place of supply provisions in relation to domestic transactions where goods are sent outside India, has been omitted vide the *Finance Act, 2023* w.e.f. 01.10.2023. Now, the destination of goods is not relevant where the transportation takes place to a destination outside India.

The place of supply even where the destination of goods is outside India would be as follows for the transportation of goods:

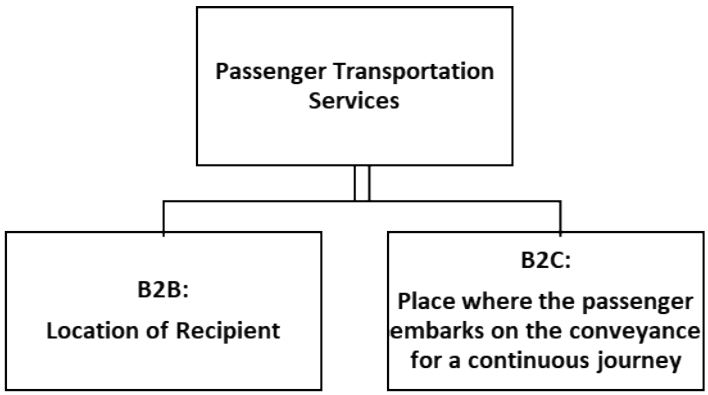
(a) Supply to registered person - Location of the registered person

(b) Supply to unregistered person – Location at which such goods handed over for transport

Comments: This rule would apply to transport by road, rail, air and sea whether locally or outside India provided the supplier and recipient both are in India. Under the erstwhile service tax framework, Rule 10 of the Place of Provision of Services Rules, 2012, established that the place of supply for services related to the transportation of goods outside India was determined by the destination of the goods. However, the GST regime represents a significant policy shift. Under the current framework, the place of supply for such services is designated as the origin of the goods, thereby altering the foundational principle for determining the tax jurisdiction in such cases.

(g) Services of transportation of passenger will be the location of the registered recipient (including where an employee of a registered person travels on business). When the recipient is not a registered person, the place of supply will be the location of embarkation. Please note that a return journey is regarded as a separate journey (even in case of bookings of round-trips).

Where the point of embarkation is unknown (in cases where the right to passage is given for future use) then the place of supply will be determined under the general clause (i.e., Section 12(2) of the IGST Act). This is particularly relevant in case of travel passes enabling multi point travel at the option of the user,



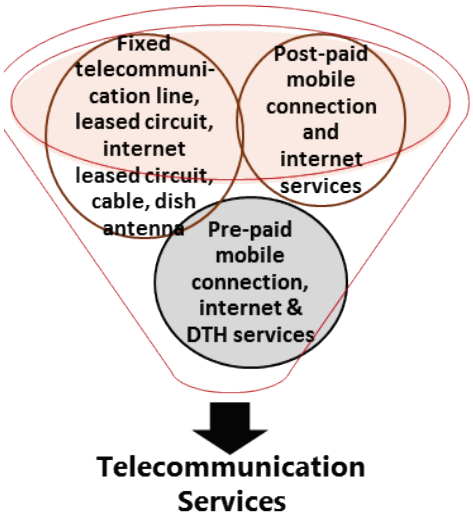
Analysis: A typical scenario is observed in determining the place of supply arises in the context of Travel Bookings on a principal-to-principal (P2P) basis. Now a days Air travel agent books tickets on behalf of passengers with airlines with their Agent id. The agents books these tickets at discounted rates & then sell it at higher rates. The pertinent question here is whether the airline should treat the agent as the recipient of service or the passenger. The POS is determined basis the status of recipient, which in P2P model would be agent for the 1st leg of transaction between Airline & Agent and for the 2nd leg between Agent and passenger would be the passenger.

(h) Services supplied on-board a conveyance, will be the first scheduled point of departure of such conveyance. Irrespective of whether the supplies are B2B or B2C, the POS is determined based on the first scheduled point of departure. Please note that by this logic, it is possible that the place of supply is determined to be a place in the route which has passed crossed even before the passenger availing the service embarks the conveyance. The registered recipient receiving any services on board through its employees/ directors would lose the ITC on the said transaction in case the location of the registered recipient and the first schedule point of departure are in two different States.

Comments: A key issue pertains to whether the supply of packaged items, such as Packaged Juice, Nuts, Chips, Cookies drinking water, constitutes a "supply of goods," while the supply of prepared items, like Maggie, Poha, Noodles,Tea, Coffee, Cold Drinks/juices served in glass, qualifies as a "supply of services." This distinction is crucial as the Place of Supply (POS) differs significantly for goods and services under GST provisions.

For services, the POS is determined as the first scheduled point of departure of the conveyance, regardless of where the food or eatables are consumed onboard. Conversely, for goods, the POS is the location at which the goods are taken onboard. Consequently, the classification of such transactions as either "supply of goods" or "supply of services" assumes critical importance to ensure compliance with the correct POS rules and avoid potential disputes in tax treatment.

(i) Telecommunication services are provided in various forms and the place of supply will depend on the mode of providing the services. Where the services involve an in-situ device installed to enable the service, the place of supply will be the location where such device is installed. This device may be a dish antenna, telephone line, etc. Where the services involve portable device, the place of supply will be the billing address if the same is on post-paid basis. Where it is on pre-paid basis, the place of supply will be the location of any intermediary who facilitates the supply or location where payment is received. Where none of the situations provide an appropriate location, then the place of supply will be the address-on-record of the recipient. If address is not available, then the location of supplier will be the place of supply. If such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.



Rule 6 of IGST Rules provides that where the leased circuit is installed in more than one State/ UT and consolidated amount is charged for supply of such services, the value of services in each such State/ UT shall be determined in proportion to the number of points lying in the State/ UT. The number of points in a circuit shall be determined in the following manner:

(i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;

(ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.

(j) Banking and financial services including stock broking services will be the location of the address-on-record of the recipient. And if address is not available, then the location of supplier will be the place of supply. Example of this are: availing demand draft facilities, money changing services, etc. The services referred in this provision are not services 'by' a banking or financial institution but services 'of' banking and financial services. As such, the service is to be examined and not the service provider. Classification of services to identify the applicability of this provision is an important exercise that is to be undertaken. Similarly, there is no requirement that the recipient is account holder. This is averse to the similar entry in Sec 13(8)(a) which is specific qua supplier & recipient & not nature of service.

Comments: A typical scenario in case of Banking, Telecom & Insurance service may arise where the billing address of a service recipient changes within the billing cycle after services have been rendered for a portion of the period. This situation prompts the question of which billing address should be considered for determining the Place of Supply (POS)—the address at the start of the billing cycle, the address at its conclusion, or whether split invoicing is necessary.

In such cases there may be two tax positions:

1. Consider the address on the date of TOS and determine POS for the entire billing period accordingly.
2. Spliting the bill might be required to accurately reflect the service provided before and after the change in billing address. This would entail issuing one invoice for the period prior to the address change and another for the period thereafter. This approach ensures compliance with GST provisions by aligning the POS with the appropriate billing address for each period, thereby mitigating potential disputes and ensuring proper credit eligibility.

(k) Insurance services supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the address of location of the recipient of service on record of the supplier of services. In no case, the address of the recipient would not be present on record with the recipient.

(l) Advertisement services involving 'dissemination' of the material supplied to the Government or a statutory body will be the location of such dissemination. Where it is identifiable to a specific State, then that would be the place of supply and where it is disseminated over number of States, then a rule of proportion or any other reasonable basis is to be applied.

The proportion of value of advertisement services provided to Government, statutory body or local authority shall be determined in the manner laid down in Rule 3 of IGST Rules, 2017, as follows-

1. Advertisements in newspapers and publications: The amount payable for publishing in all the editions of a newspaper published in a State/ UT shall be the value of advertisement service attributable to such dissemination in each such State/ UT.
2. Printed material like pamphlets, leaflets, diaries, t-shirts and the like: Amount payable for the distribution of specified number of such printed material in a State/ UT shall be the value of service attributable to such dissemination in each such State/ UT.
3. Advertisement on hoardings (other than those on trains): The amount payable for the hoardings located in a State/ UT shall be the value of service attributable to such dissemination in each such State/ UT.
4. Advertisements on trains: Value of advertisement service attributable to each State/ UT shall be calculated in proportion to the length of the railway track in each State/ UT for that train.
5. Advertisements on the back of utility bills: Value of advertisement service attributable to each State/ UT shall be the amount payable for the advertisement on the bills pertaining to consumers having billing addresses in such State/ UT.

6. Advertisements on railway tickets: Value of advertisement service attributable to each State/ UT shall be calculated in proportion to the number of railway stations in such State/ UT.

7. Advertisements on radio stations: Value of advertisement services attributable to each State/ UT shall be the amount payable towards the broadcast made in a State/ UT.

8. Advertisements on television channels: Value of advertisement services attributable to each State/ UT in a month shall be calculated proportionately on the basis of number of channel viewership figures published by Broadcast Audience research council for the last week of the immediately preceding quarter. Where the channel viewership figures relate to a region comprising of more than one State/ UT, viewership figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.

9. Advertisements in cinema halls: Amount payable to cinema halls in a State/ UT, shall be the value of advertisement services attributable to each State/ UT.

10. Advertisements over the internet (the service shall be deemed to have been provided all over India): Value of advertisement services attributable to each State/ UT in a month shall be calculated proportionately on the basis of number of internet subscriber figures published by TRAI for the last quarter of the immediately preceding financial year. Where the internet subscriber figures relate to a region comprising of more than one State/ UT, subscriber figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.

11. Advertisements through SMS: Value of advertisement services attributable to each State/UT in a month shall be calculated proportionately on the basis of number of telecom subscriber figures published by TRAI for the immediately preceding quarter. Where the telecom subscriber figures relate to a telecom circle comprising of more than one State/ UT, subscriber figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.

(m) Considering that place of supply has been so specifically covered in the various provisions discussed, it is to be borne and recollected that identifying the place of supply is for purposes of determining whether it is an inter-State supply or an intra-State supply. After much resistance to let go of the experience from erstwhile tax laws, it would dawn upon each of us to eschew seeking registration in every state where their services constitute a place of supply, but rather rely upon this section to open the doors to choose to effect inter-state supplies from one (or few) State only instead of multi-state registration that may be necessitated under erstwhile tax laws. Another important aspect especially when a recipient is a registered person which comes out on analysis of section 12 is that wherever the POS is based on location of the recipient, the ITC is intact and wherever the POS is not based on location of the recipient but based on

some other criterion as discussed above, then there is high probability of losing out on ITC in the hands of a registered person. Eg: Immovable property related services, admission to an event, services on board an aircraft etc.

Comparison between Service Tax & GST:

It is noteworthy that analogous provisions existed under the erstwhile Service Tax regime through the Place of Provision of Services (POPS) Rules, 2012, promulgated via Notification No. 28/2012-ST, dated 20-06-2012. These rules were primarily formulated with cross-border services in focus, given that Service Tax fell exclusively within the legislative domain of the Parliament. This foundational intent explains the significant alignment between the POPS Rules and Section 13 of the IGST Act, which governs cross-border supplies under GST.

However, Section 12 of the IGST Act, governing domestic service transactions, diverges in its approach. It predominantly establishes the Place of Supply (POS) based on the location of the recipient, as opposed to the place of service consumption (with limited exceptions). This methodology is deliberate, designed to facilitate seamless Input Tax Credit (ITC) transfer, particularly for registered recipients.

Another pivotal distinction lies in the treatment of overlapping provisions. Under POPS Rules, Rule 14 explicitly stipulated that in cases where multiple rules were equally applicable, the rule appearing later in the sequence would prevail. The GST framework, in contrast, omits such a provision, leaving room for interpretative ambiguities that may necessitate judicial clarification.

Statutory provisions

13. Place of supply of services where location of supplier or location of recipient is outside India

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

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely: —

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

[19][Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.]

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

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

(5) The place of supply of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization, shall be the place where the event is actually held.

(6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of the following services shall be the location of the supplier of services, namely: —

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

[19] Substituted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019, notified through Notification No. 1/2019-IT dated. 29.01.2019. Applicable w.e.f. 01.02.2019.

(b) intermediary services;

(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation. —For the purposes of this sub-section, the expression, —

(a) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

(b) "banking company" shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

(c) ''financial institution" shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(d) "non-banking financial company" means, —

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or

(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

*[20][(9) ***]*

(10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

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

(12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation.—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely: —

(a) the location of address presented by the recipient of services through internet is in the taxable territory;

[20] Omitted vide the Finance Act, 2023 notified through Notification. No. 28/2023-CT dated. 31.07.2023, Brought into force w.e.f. 01.10.2023. Prior to its omission it was read as "The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods."

(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;

(c) the billing address of the recipient of services is in the taxable territory;

(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;

(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;

(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;

(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Extract of the IGST Rules, 2017

7. *The supply of services attributable to different States or Union territories, under sub-section (7) of section 13 of the said Act, in the case of services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services, or in the case of services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, shall be taken as being in each of the respective States or Union territories, and the proportion of value attributable to each such State and Union territory in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely:-*

(i) in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed;

(ii) in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;

(iii) in the case of services supplied to individuals, by applying the generally accepted accounting principles.

Illustration-1: A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.

Illustration-2: A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union Territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

Illustration-3: A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

8. *The proportion of value attributable to different States or Union territories, under sub-section (7) of section 13 of the said Act, in the case of supply of services directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 4, mutatis mutandis.*

9. *The proportion of value attributable to different States or Union territories, under sub-section (7) of section 13 of the said Act, in the case of supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are provided in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 5, mutatis mutandis.*

Related Provisions of the Statute:

Statute	Section / Rule	Description
CGST	Section 2(3)	Definition of 'address on record'
CGST	Section 2(34)	Definition of 'conveyance'
CGST	Section 2(56)	Definition of 'India'
CGST	Section 2(93)	Definition of 'recipient'
CGST	Section 9	Levy and collection of tax
IGST	Section 2(3)	Definition of 'continuous journey'
IGST	Section 2(6)	Definition of 'export of services'
IGST	Section 2(11)	Definition of 'import of services'
IGST	Section 2(13)	Definition of 'intermediary'
IGST	Section 2(14)	Definition of 'location of the recipient of services'
IGST	Section 2(15)	Definition of 'location of the supplier of services'
IGST	Section 2(17)	Definition of OIDAR services
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of 'inter-State supplies'
IGST	Section 8	Meaning of 'intra-State supplies'
IGST	Section 10	Place of supply of goods other than goods imported into, or exported from India
IGST	Section 11	Place of supply of goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and location of recipient is in India
IGST	Section 14	Special provision for payment of tax by a supplier of OIDAR services

13.1 Analysis

Place of supply of services where either the supplier or recipient is located outside India will be determined in accordance with section 13 of the IGST Act. In other words, this provision applies for the determination of export of services as well as for import of services.

International supplies involving services are not verifiable similar to goods. GST, in certain cases, treats supplies involving goods as 'supply of services'. In such cases too, this provision will apply for determination of place of supply of their export and import. Given the definition of export of services and import of services and on comparing them to goods, it will be evident that there is really no comparison. Matters such as location of supplier, location of recipient, currency of compensation, etc., assume importance in relation to services including goods that are treated as supply of services. In this background, we may analyse place of supply of services where either one – supplier or recipient – is located outside India.

2(6) "export of services" means the supply of any service when

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by Reserve Bank of India ; and

(v) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8;

2(11) "import of service" means the supply of any service, where

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

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

(iii) the place of supply of service is in India;

Then the place of supply determined by application of this provision may be carried into the definition to determine whether the international supply meets the requirements to be regarded as 'export of services' or 'import of services'. This may be somewhat unnatural but that is the correct approach because location of recipient outside India and payment in foreign currency are tests that the GST law does not appreciate. In this time and age of forex surplus, when two enterprises which are both located within India transacting in foreign currency is not impermissible.

Place of supply of international supplies of services is as follows:

(i) The general provision for determining the place of supply (POS) is that the POS will be the location of the recipient of the services; whereas, it will be the location of the supplier of services if the location of the recipient cannot be known without employing any extraordinary means. 'Recipient' is defined as the 'person liable to pay consideration' in section 2(93) of the CGST Act.

Para 5.3.5 of the CBEC Educational Guide issued in June 2012 throws light on what would be the ordinary course of business; that be "It may be noted that the service provider is not required to make any extraordinary efforts to trace the address of the service receiver. The address should be available in the ordinary course of business."

(ii) It is important to note that this section only determines the POS. Merely because the POS is determined under this clause, the supply cannot be regarded as an export of service or an import of service.

(iii) Specific provisions regarding place of supply that will apply in priority over the general provision will be as follows:

(a) POS of services that are 'in respect of' goods made available 'by' recipient 'to' supplier or persons representing supplier for performance of those services will be the location where the services are actually performed. It is worthwhile to note here that the goods must be made available only by the recipient and not his representative but whereas person to whom it is made available could be supplier or his representative. It is also noteworthy that the services to which this provision is to apply are not expressly listed here and left to an application of 'made available for performance' test to determine its applicability. Services that are supplied by remotely accessing the goods, the place of supply will be the location of the goods.

However, the said provisions will not apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process. This amendment is made vide IGST (Amendment) Act, 2018, dated 29.08.2018 (effective 01.02.2019)

Analysis : A common query in relation to this entry is whether each and every service provided where goods have to be made available shall be covered under this entry for determination of place of supply eg. Warehousing, transportation, loading unloading, processing, repairs, et al. Here an important point to be acknowledged is whether services 'on' the goods made available or services 'for'

The goods available or both are covered. The interpretation that comes out from the perusal of the language of the entry & the intent of the law makers hints that services performed 'upon' the goods fits in the entry.

- *CBIC Circular No. 103/22/2019 GST dated 28.06.2019:*

Issue: What would be the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?

Clarification: Place of supply in case of performance-based services is to be determined as per the provisions contained in section 13(3)(a) of the IGST Act and generally the place of services is where the services are actually performed. But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process

without being put to any use in India, other than that which is required for such repairs or treatment or process. In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in section 13(2) of the IGST Act.

- *CBIC Circular No. 118/37/2019 dated 11thOct'2019:*

Issue: Place of Supply of chip design software R&D services provided by Indian companies to foreign clients by using sample test kits in India.

Clarification: In Para 4.1, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. **Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases**.

- *CBIC Circular No. 203/15/2023-GST dated 27th October,2023:*

Issue: Sub-section (9) of section 13 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") has been omitted vide section 162 of Finance Act, 2023 which will come into effect from 01.10.2023. After the said amendment, doubts have been raised as to whether the place of supply in case of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per sub-section (2) of section 13 of IGST Act or will be determined as per sub-section (3) of section 13 of IGST Act.

Clarification: As per S.No. 1.1 of the said circular, Section 13(9) of IGST Act- the place of supply of services of transportation of goods, other than by way of mail or courier, will be determined by the default rule under section 13(2) of IGST Act and not as performance based services under sub-section (3) of section 13 of IGST Act.

Further as per S.No. 1.2, the Place of Supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act.

In cases where services are supplied at multiple locations, including a location in the taxable territory, POS is location in the taxable territory. Further, rule of proportion is to be applied in case the services are carried out in different States.

Rule 7 of the IGST Rules provides that the value of services in each such State/ UT shall be determined in the following manner, namely:

(i) in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed;

(ii) in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;

(iii) in the case of services supplied to individuals, by applying the generally accepted accounting principles.

(b) Similar to the provisions of section 12(3), the POS in case of services 'directly in relation to' immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. Such property may be a hotel, inn, guest house, home stay, club or campsite excluding houseboat. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis the services.

Analysis:

- A conflict often arises in determining whether services involving immovable property, such as warehousing, should be classified as directly connected to the immovable property itself. Can these services be deemed "in relation to immovable property" solely because immovable property is an incidental element in the service provision?

  Historically, the distinction was addressed under the erstwhile Service Tax regime, particularly Rule 4 of the Place of Provision of Service (POPS) Rules, 2012, which closely parallels Section 13(3) of the IGST Act. The Education Guide under Service Tax para 5.4.1 clarified that storage services pertains to goods rather than immovable property. This interpretation aligns with EU VAT rulings, such as in *Minister Finansow vs. RR Donnelley Global Turnkey Solutions Poland (RRD)*, where the First Chamber Court held that a storage service could fall under immovable property-related provisions (Article 47) only if the service primarily involved granting explicit rights to use a specific immovable property.

  Post-2017 amendments to Article 47 of Council Directive 2006/112/EC explicitly delineate transactions connected to immovable property, clarifying the scope of such services. This distinction underscores that mere incidental involvement of immovable property does not suffice to classify a service as immovable property-related unless it constitutes the core element of the transaction.

- As discussed above a mere linkage with immovable property is not sufficient to classify the POS under sec 13(4). There has to be direct involvemnt of the immovable property in the supply of the underlying service whereby the immovable property is the underlying object for provision of service so much so that without the property the service is implausible as opposed to involvement of the property in a supportive role in the execution/ performance of the service. Similar view is canvassed by *Circular No. 232/26/2024-GST dated 10th Sept 2024* with respect to the issue - Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act? The clarification issued is

  3.3.3 Thus, it is observed that data hosting services are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to data hosting which involves the supply of various services by the data hosting service provider like operating data centre, ensuring uninterrupted power supplies, backup generators, network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for cloud computing service provider to provide cloud computing services to the end users/customer/subscribers.

  3.3.4 Accordingly, it is clarified that in such a scenario, the data hosting services cannot be considered as the services provided directly in relation to immovable property or physical premises and hence, the place of supply of such services cannot be determined under section 13(4) of IGST Act.

- *CBIC Circular No. 103/22/2019 GST dated 28.06.2019:*

Issue: Various services are being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area upto place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc. Whether the place of supply for such services would be determined in terms of the provisions contained in section 12(2) or section 13(2) of the IGST Act, as the case may be, or the same shall be determined in terms of the provisions contained in section 12(3) of the IGST Act?

Clarification: It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in section 12(2) or section 13(2) of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.

In cases where services are supplied at multiple locations, including a location in the taxable territory, POS is location in the taxable territory. The rule of proportion is to be applied in case the services are carried out in different States. Rule 8 of IGST Rules provides that the value of services in each such State/ UT shall be determined by applying the provisions of rule 4 of IGST Rules, mutatis mutandis.

Services required in construction activity which are received before being assigned to any particular site will not be determined by this provision but the general provision. For example, lease of construction equipment sent to a central warehouse before being deployed to any specific site.

(c) In respect of services of admission to a venue, POS will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or a celebration, conference, fair, exhibition or similar events including ancillary services. Services referred to here are admission or organizing the event at the venue. In cases where services are supplied at multiple locations, including a location in the taxable territory, POS is location in the taxable territory. Further, rule of proportion is to be applied in case the services are carried out in different States. Rule 9 of IGST rules provides that the value of services in each such State/ UT shall be determined by applying the provisions of rule 5 of IGST rules, *mutatis mutandis.*

(d) Services in the following three cases deviates from the 'destination' principle and appoints the POS to be the location of the supplier:

- Services by a banking company or a financial institution or NBFC – reference to services 'by' indicate that this specific provision will encompass all activities by such a service provider performed in their capacity as such. *Circular No.220/14/2024-GST dated 26th June,2024* is issued to clarify the matter related to place of supply applicable for custodial services provided by banks to Foreign Portfolio Investors, Custodial Services to FPIs are not treated as services to 'account holders' under Section 13(8)(a) of the IGST Act. Therefore, the place of supply for such custodial services should be determined under the default rule, i.e., Section 13(2) of the IGST Act, where the place of supply is the location of the service recipient.
- Intermediary services – defined in section 2(13) provide for a broad set of activities. It is important to examine whether the role of an intermediary is limited in any manner to marketing (proliferation of information to potential customers), pre-sale (submitting quotations) and post-sale (assisting in delivery, installation and after-sales support).

  Intermediary services have been defined to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the

supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

Analysis of definition: The Service Tax Education Guide clarified intermediaries as facilitators between parties, not providing the main service or supplying goods themselves. Their service value had to be identifiable and distinguishable from the main service. The place of provision was based on the location of the intermediary. The definition of intermediary services under the IGST Act remains substantively unchanged from the earlier service tax provisions.

Hon'ble Delhi High Court in M/S Ernst and Young Limited v. Additional Commissioner W.P.(C) 8600/2022 dated 23/03/2023 is a landmark judgement addressing the classification of intermediary services under the GST framework. Ernst and Young Limited provided business advisory and technical services to foreign clients and sought a refund of unutilized input tax credit (ITC), which the Department denied, treating these services as intermediary services under Section 13(8)(b) of the IGST Act. Hon'ble Delhi High Court examined the definition of "intermediary" under Section 2(13) and clarified that intermediaries are limited to arranging or facilitating the supply of goods or services between two or more parties without being the actual supplier themselves. Since Ernst and Young directly supplied services to their foreign clients without arranging supplies from third parties, they could not be classified as intermediaries. Hon'ble Court emphasized that the definition's concluding exclusion, "does not include a person who supplies such goods or services on his own account," was a key limitation, reinforcing that Ernst and Young's activities did not fall within the intermediary scope. Consequently, the services were treated as exports, making them zero-rated under GST and eligible for an ITC refund. Comments: There is a restricted and specific meaning assigned to the term intermediary. It only cvers the case where the supplier (intermediary) is acting as a facilitator & is himself not involved in the execution of the service. Where the intermediary is stepping into the shoes of the supplier, thereby involved in performing the contract promise, he shall not be an intermediary & Sec 13(2) would apply (unless covered in any other provision specifically).

This judgment rectified the Department's misinterpretation, provided clarity on the scope of intermediary services, and reinforced the principle that direct service provision does not amount to intermediation. There has been a lot of confusion surrounding the concept of Intermediary services specifically cross border. It has a significant implication on Self-

Assessment in either case, where is is received from a foreign supplier – it does not tantamount to import of services triggering RCM liability similarly in case of Indian intermediary, the services provided to foreign counterpart is neither Export of Services. This has been a contentious litigation issue also involving Constitutional challenge.

If any outbound services fall within intermediary, it would amount to place of supply being the location of supplier and CGST / SGST is required to be charged. In case of any inbound services from outside India, the supply would not be taxable at all in India if it falls within intermediary. In this regard *Circular No.159/15/2021 dated 20.09.2021* is issued clarifying scope of Intermediary services. Further, in the case of *Dharmendra M Jani Bombay (HC)*, the final decision of Hon'ble Chief Justice is that the provisions of section 13(8)(b) and section 8(2) of IGST Act are legal, valid and constitutional. The Dharmendra M. Jani v. Union of India case delves into the constitutional validity of Section 13(8)(b) of the IGST Act, which designates the place of supply for intermediary services as the location of the supplier, subjecting such services to GST within India. The petitioner challenged this provision for violating Article 14 of the Constitution. The petitioner argued that the provision discriminates against intermediary services by denying them export status, as export requires the place of supply to be outside India. The Hon'ble Bombay High Court delivered a split verdict, with Justice Ujjal Bhuyan holding the provision unconstitutional for violating the equality principle under Article 14 and Justice Abhay Ahuja upholding its validity based on reasonable classification. The matter was referred to the Chief Justice, who ruled that Section 13(8)(b) is constitutionally valid, asserting that the differential treatment of intermediary services is justified due to their unique role in cross-border trade. Further, it is confined to the operation of IGST Act and cannot be made applicable for levy under CGST Act. Additionally, the Gujarat High Court, in the Material Recycling Association of India v. Union of India, supported the constitutional validity of Section 13(8)(b), further emphasizing the legislative competence under Articles 246A and 269A. Despite these rulings, the provision continues to face criticism for burdening Indian intermediaries with GST, impacting their global competitiveness. This case underscores the complexities of GST's application to intermediary services and the ongoing tension between legal interpretations and international trade practices. *Circular No.232/26/2024-GST* is issued to clarifying the matter related to the place of supply for data hosting services provided by Indian service providers to cloud computing service providers located outside India, and whether these services qualify as exports. Circular confirms that data hosting services

provided by Indian entities to overseas cloud computing service providers are not intermediaries, and their place of supply is outside India when the recipient is located abroad. This classification allows these services to qualify as export of services, granting them the associated export benefits under the IGST Act.

Circular No. 230/24/2024-GST is issued to clarifying the matter in respect of advertising services provided to foreign clients. Indian advertising agencies are not considered intermediaries when they provide full advertising services (designing, media buying, etc.) to foreign clients. They operate on a principal-to-principal basis. The foreign client is considered the recipient of advertising services, not the target audience or any representative in India. The place of supply is determined by the location of the foreign client, which is outside India. Therefore, these services qualify as exports, subject to fulfilling the conditions under the IGST Act. If the Indian agency only facilitates media space purchase for the foreign client (without providing services on its own account), it is considered an intermediary, and the place of supply is India.

- Hiring of transport for a period upto one month – all services attendant to securing such limited duration. This excludes aircraft and vessel other than yacht.

(e) POS of services of transportation of goods will be the destination of the goods, as opposed to the location where they are handed over for transportation as in case of supplies to unregistered persons in section 12(8). Transportation of goods may be by any mode but not mail or courier. This has been amended by *Finance Act, 2023* by omitting section 13(9) w.e.f. 01.10.2023. It has been clarified vide *Circular No. 203/15/2023-GST dated 27.10.2023* that POS of transportation of goods services will be determined as per section 13(2). Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services. E.g.: Currently, A transporter registered in Kolkata may provide transportation service in respect of goods owned by a person in Nepal for delivery to another person in Assam. In such a case, although the service is supplied to a person located outside India, the supply will be a taxable supply and will not be considered to be an export of service. From 01.10.2023, POS of the same transaction will be 'recipient's location' i.e., Nepal and subject to fulfilment of other conditions laid down in section 2(6), it shall be treated as export of service.

Further, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act.

(f) POS of services of transportation of passenger will be the location where the passenger embarks on the conveyance for a continuous journey.

(g) POS of services supplied on-board a conveyance, will be the first scheduled point of departure. Services are to be supplied during the journey. It includes services which are to be wholly or substantially consumed while on board. Any deviation from this condition will result in it getting classified under the general rule.

(h) POS of services of OIDAR (online information and database access or retrieval) services will be location of recipient. Please refer to detailed discussion under section 14 on OIDAR services. Further, such recipient will be deemed to be situated in a taxable territory if any two of the following conditions are fulfilled:

- Address of recipient is in taxable territory;
- Card of recipient that is used to pay for the services is issued in taxable territory;
- Billing address is in taxable territory;
- Internet protocol address in taxable territory;
- Bank account of recipient used to make payment is in the taxable territory;
- Country code of SIM card used by recipient is of taxable territory;
- Fixed land line used by recipient is in taxable territory.

(iv) Where there is any occasion for double taxation or non-taxation, the Central Government is empowered to notify the place of supply with respect to service of any specific description, wherein the place of supply will be the place of effective use and enjoyment of a service.

(v) Remarkably, *Circular 118/37/2019-GST dated 11.10.2019* issued to specify POS in respect of Electronics Semi-conductor and Design Manufacturing (ESDM) services where these services are clarified not to be location-based services. And this circular only provide interpretation that should always be applicable to save the incidence of tax.

(vi) Even more remarkable is that Government has issued a notification under section 13(13) to specify POS in respect of clinical trials. Experts are apprehensive that this notification will not have retrospective effect and any exports reported in respect of clinical trials may be questioned now. The summary of the notifications as under:

S. No.	Notification Nos.	Service	Place of Supply
1	04/2019- Integrated Tax dated 30.09.2019	Supply of research and development services related to pharmaceutical sector by a person located in taxable territory to a person located in the	The place of supply of services shall be the location of the recipient of services

		non-taxable territory	subject to fulfilment of certain conditions
2	02/2020- Integrated Tax dated 26.03.2020 w.e.f. 01.04.2020	Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	The place of supply of services shall be the location of the recipient of service.
3	03/2021- Integrated Tax dated 02.06.2021	Supply of maintenance, repair or overhaul service in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business	The place of supply of services shall be the location of the recipient of service

Statutory provisions

14. Special provision for payment of tax by a supplier of online information and database access or retrieval services

(1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

(b) the intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;

(c) the intermediary involved in the supply does not authorize delivery; and

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

(2) The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

Related Provisions of the Statute

Statute	Section / Rule	Description
CGST	Section 2(79)	Definition of 'non-taxable territory'
CGST	Section 2(93)	Definition of 'recipient'
IGST	Section 2(13)	Definition of 'intermediary'
IGST	Section 2(15)	Definition of 'location of the supplier of services'
IGST	Section 2(16)	Definition of 'non-taxable online recipient'
IGST	Section 2(17)	Definition of 'OIDAR services'
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of 'inter-State supplies'
IGST	Section 8	Meaning of 'intra-State supplies'
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
CGST	Rule 64	Form and manner of submission of return by persons providing OIDAR services and by persons supplying online money gaming from a place outside India to a person in India

14.1 Introduction

This is a new transaction that is brought within the tax net only from 01.12.2016 under Service Tax. The experience was more than encouraging as the amount of tax that has been collected from OIDAR is in a class of its own as regards taxable person and place of supply. Everything discussed until now must be given a go-bye to understand OIDAR more clearly.

14.2 Analysis

Online Information and database access or retrieval (OIDAR) is defined in a specific manner and may be simplified as follows:

2-step definition	Services (and not goods) supplied
	Delivered over continuous internet connectivity
2-step clarification	Involves minimal human intervention *[This condition has been omitted vide Finance Act, 2023 w.e.f. 01.10.2023]*
	Impossible to ensure in absence of information technology

Six illustrations in the definition and some explanation about inclusions and exclusions:

Illustration	Includes	Excludes
Online advertising E.g., Google ad	• Banner ads, pop-up ads, sponsored ads, etc.	• Preparation of content for online display like production, distribution and services of intermediaries • Advertise in newspaper, on posters and on television
Cloud services E.g., Amazon Web services	• Webhosting • Data warehousing	• Software license issued by delivery of key number to remotely download via FTP
E-books, movies, music, software and other intangibles E.g., Gaana.com and Netflix	• Access to content permitted only 'online' even if stored in cache on user-end device but not allowing(official) permanent download	• Downloadable e-books, movies, music, etc. which are available for offline viewing without any mandatory e-check of the user credentials • Content provided through dedicated user-end device for use of content • Supply of physical books, newsletter, newspaper or journals • Booking services or tickets to entertainment events, hotel accommodation or car hire • Educational or professional courses, where the content

		is delivered by a teacher over the internet or electronic network
Online data or information E.g.LinkedIn, Taxindiaonline.com	• Paid websites that provide information • Free sites with valuable information – if not treated as 'supply', ITC will not be available but if treated as 'supply, output tax will apply on like-kind-and-quality or cost-plus basis	• Net banking where banking information is accessed online but merely incidental to offline banking transactions • Electronic commerce • Non-commerce and information portals • C2C portals
Online supply of digital content E.g. Setmax online, YouTube	• TV programs and movies supplied over the internet like monitored by issuing user login / password	• Auditors report sent to client via email. It is merely a form in which the offline service are communicated. Services of auditor is not the email of report issued but the opinion expressed about the financial position of the auditee • Online order processing in respect of offline supply of goods • Services of lawyers and financial consultants who advise clients through email
Data storage E.g. Amazon cloud	• Webservers – shared or dedicated, with/ without support, etc.	• Lease of server with redundancy
Online gaming E.g. Zapak.com	• Live-gaming • Collaborative gaming	• Computer/ mobile games to be used after downloading to user-end device

Thus, every transaction done over the internet is not e-commerce, everything delivered online is not OIDAR. The acid-test is to see 'always on' status of internet connectivity for the continuous supply of the underlying service. Mere use of internet for delivery of services that can otherwise be provided offline through some media like CD, pen-drive, etc. all though less-securely will not be OIDAR. The use of file-transfer-protocol (FTP) for delivery of software

or music or games is only to ensure integrity in the delivery of these high-volume files and the use of internet for FTP does not become OIDAR.

To summarise, the following table depicts the ingredients prescribed in this section:

Supplier	Supplier of Services in non-taxable territory		
Recipient	B2C (non-taxable online recipient – NTOR)	Intermediary@ (deemed to be recipient and re-supplying to NTOR)	B2B# (all others)
Taxpayer	Overseas supplier	Intermediary	Recipient
Tax Payment	Forward Charge (through representative)	Forward Charge (through Intermediary)	Reverse Charge (by B2B Recipient)

@ *issues invoice, authorizes charge for services, responsible to collect payment, authorizes delivery and controls terms and conditions of supply. Else, not an intermediary liable to pay*

B2B may be registered taxable person for any output supply

Note: Non-taxable online recipient means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Vide Finance Bill 2023, to be effective from 1st October, 2023, the definition of "online information and database access or retrieval services" has been amended. After the amendment, the only condition to check for satisfaction of OIDAR is that the supplies are impossible to ensure in absence of IT. Without checking for automation or minimum human intervention, the supplies would be classified as OIDAR if they cannot be supplied without the assistance of information technology. Therefore, the scope of such OIDAR services seems to have been significantly expanded. Whether the scope of OIDAR would now cover every supply which happens over IT (irrespective of the involvement of human intervention) would have to be examined and awaits clarification.

14.3 Issues and concerns

1. The place of supply provisions, in certain cases, is determined to be a place outside the State in which the registered person has obtained registration – such as POS in case of services in relation to immovable property, admission to an event (including educational events), services on board a conveyance (say letting out a laptop on hire during the journey), banking services (where a single bank account is used for various GST registrations across States). In all such cases, the registered person is restricted from availing input tax credits even where the services have been availed in the course or furtherance of business.

2. Section 13(12) provides a deeming fiction whereby the location of the recipient of the OIDAR services is appointed to be in the taxable territory if any two of seven conditions are satisfied. For instance, say the debit card through which payment is made has been issued in Delhi (Condition in clause b), and the IP address is in Bangalore (Condition in clause f), there is no mechanism in place to appoint a single place of supply for the transaction. This could lead to issue as regards the apportionment of tax revenue between States.

3. A supply of OIDAR services by a supplier located in a non-taxable territory to a non-taxable online recipient in India is specifically excluded from a supply on which the recipient is required to discharge taxes on RCM basis. Accordingly, non-taxable online recipients are not required to obtain registration. The recipients being non-taxable persons, may not be in possession of any documents including the invoices issued by the suppliers, since they are not mandated under any law to keep/ maintain such documents. This would make it extremely difficult for the revenue authorities to identify suppliers of OIDAR services located in a non-taxable territory, and even where identified, to track such suppliers.

Statutory provisions

[21][14A. Special provision for specified actionable claims supplied by a person located outside taxable territory.

(1) A supplier of online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017.), not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.

(2) For the purposes of complying with provisions of sub-section (1), the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in sub-section (2) of section 14 of this Act:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

(3) In case of failure to comply with provisions of sub-section (1) or sub-section (2) by the supplier of the online money gaming or a person appointed by such supplier or both,

[21] Inserted vide IGST (Amendment) Act, 2023 dated. 18.08.2023, notified through Notification. No. 2/2023-IT dated. 29.09.2023- Brought into force w.e.f. 01.10.2023.

notwithstanding anything contained in section 69A of the Information Technology Act, 2000 (21 of 2000), any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.]

14A.1 Analysis

Section 14A has been inserted in the IGST Act to provide for the levy of IGST on suppliers situated outside the taxable territory for the supply of online money gaming to the persons located within the taxable territory.

A supplier of online money gaming located in a non-taxable territory shall be liable to pay IGST on the supply of online gaming by him to a person in taxable territory. Such supplier shall obtain a single registration under the Simplified Registration Scheme as referred to in section 14(2). Alternatively, any person located in the taxable territory representing such an overseas supplier in the taxable territory can obtain the registration and pay IGST on behalf of the supplier. If the supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, then he shall appoint a person in the taxable territory for the purpose of paying IGST and such person shall be liable for payment of such tax.

If the supplier or a person appointed by such supplier or both fails to comply with above provisions, then his website shall be liable to be blocked for access by the public. The provisions of blocking the website access to the public on non-compliance with the provisions of GST law would have an over-riding effect on the provisions of section 69A of the Information Technology Act, 2000 which provides scenarios where access to the information on a computer resource can be blocked by the Government for the public. This overriding effect of GST law on such services means that where such supplier does not comply with the provisions of the GST law, access to his website can be restricted for the public even if the same is not liable to be restricted as per the provisions of the Information Technology Act.

Chapter 6
Refund of Integrated Tax to International Tourist

Statutory provisions

15. Refund of integrated tax paid on supply of goods to tourist leaving India

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Explanation.–For the purposes of this section, the term "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

15.1 Introduction

Outbound passengers leaving India accompanied by GST-paid goods received during their stay in India would result in India exporting its taxes and this is sought to be overcome.

15.2 Analysis

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

All outbound passengers carrying goods on which IGST has been paid are entitled to claim refund at the port-of-exit. It is likely that the verification will be simple and refund will be online. It is interesting to note that only 'integrated tax' is eligible for this refund. Also, as per proviso to section 8(1), all supplies to such an outbound tourist will always be treated as inter-State supply. The challenge to supplies-to-tourist's is to identify an outbound tourist and charge IGST instead of CGST/SGST of the State where the goods are delivered. Please note that person seeking such refund must be a 'tourist' – who has entered India for genuine non-immigrant purposes. 'Purpose' of visit to India is key factor to be examined. Nationality, residency for tax purposes, etc. are irrelevant considerations. The provision of this section has not been made applicable as of now. Detailed inclusions and exclusions can be expected in due course but few illustrations may be considered.

Tourist will exclude:

- Person resident in India (not limited to Indian passport holders) who are exiting India for any purpose whether for short duration or long duration or uncertain duration.
- Deputation of Indian resident to overseas diplomatic postings.

- Children born in India to foreign nationals during their stay in India.

Tourist will include the following:

- Crew of an international conveyance entering and exiting India within short duration even though not for purposes of tourism in India
- Foreign diplomatic visitors on official duty in India
- Foreign sports persons visiting India for participating in tournaments or training purposes
- Foreign journalist and camera crew visiting India in connection with their profession
- Foreign artists, musicians and actors visiting India to perform in shows or content production

The Indian government is currently working on implementing a procedure for foreign tourists to obtain GST refunds for their purchases of goods and services in the country.

Why only refund for Goods, not services?

GST is a consumption tax. The goods and/or services which are used (consumed) in India, it is the right of India (state of India) where such consumption took place, to collect tax. The goods which are taken along by a tourist cannot be considered to be consumed in India and it will be eligible for treatment given to export of goods. Thus, goods taken along by the tourist needs to be free from any taxes in India. Refunding IGST to such tourist is a method by which such goods are made free from taxes in India.

Chapter 7
Zero Rated Supply

Statutory provisions

16. Zero Rated Supply

(1) "Zero rated supply" means any of the following supplies of goods or services or both, namely: —

(a) export of goods or services or both; or

(b) supply of goods or services or both [22][for authorized operations] to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

[23][(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non- realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999.) for receipt of foreign exchange remittances, in such manner as may be prescribed.

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[22] Inserted vide the Finance Act, 2021, notified through Notification. No. 27/2023-CT dated. 31.07.2023-Brought into force w.e.f. 01.10.2023

[23] Substituted vide the Finance Act, 2021, notified through Notification. No. 27/2023-CT dated. 31.07.2023-Brought into force w.e.f. 01.10.2023. Prior to its substitution it was read as,

"A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely: ––

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedures as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder."

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid [24][in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder];

(ii) a class of goods or services[25][or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

[26][(5) Notwithstanding anything contained in sub□sections (3) and (4), no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty.".]

Related provisions of the Statute

Section or Rule	Description
Section 2(47)	Definition of 'Exempt Supply' (CGST)
Section 54	Refund of tax (CGST)
Section 2(5)	Definition of 'Export of Goods' (IGST)
Section 2(6)	Definition of 'Export of Services' (IGST)
Section 2(19)	Definition of 'Special Economic Zone' (IGST)
Section 2(20)	Definition of 'Special Economic Zone Developer' (IGST)
Section 2(23)	Definition of 'Zero Rate Supply' (IGST)
Section 7	Inter-State supply

16.1 Introduction

Exports have been the area of focus in all policy initiatives of the Government for more than 30 years. Now with the Make in India initiative, exports continue to enjoy this special treatment because exports should not be burdened with domestic taxes. On the other hand, GST demands that the input-output chain not be broken and exemptions have a tendency to break this chain. Zero-rated supply is the method by which the Government has approached to address all these important considerations.

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[24] Inserted vide the Finance (No. 2) Act, 2024, notified through Notification No. 17/2024 – CT dated 27.09.2024, w.e.f. 01.11.2024.

[25] Substituted vide the Finance (No. 2) Act, 2024, notified through Notification No. 17/2024 – CT dated 27.09.2024, w.e.f. 01.11.2024. Prior to its substitution, it was read as: "which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid".

[26] Inserted vide the Finance (No. 2) Act, 2024, notified through Notification No. 17/2024 – CT dated 27.09.2024, w.e.f. 01.11.2024.

16.2 Analysis

Zero-rated supply does not mean that the goods and services have a tariff rate of '0%' but the recipient to whom the supply is made is entitled to pay '0%' GST to the supplier. In other words, as it has been well discussed in section 17(2) of the CGST Act that input tax credit will not be available in respect of supplies that have a '0%' rate of tax. However, this disqualification does not apply to zero-rated supplies covered by this section. It is interesting to note that section 7(5) (and even proviso to section 8(1)) declares that supplies 'to' or 'by' SEZ developer or unit will be treated as an inter-State supply. So, when two SEZ units or one SEZ developer and another SEZ unit supply goods or services to each other (among themselves within the zone) and the zone being located within the same State or UT, such supplies will always be inter-State supplies. But it is important to note that this – being treated as inter-State supplies always – by itself does not mean that non-SEZ sales by SEZ unit will be liable to IGST in all cases. Please refer to the table below of supplies involving suppliers in the zone that is covered by the provisions of section 7(5) and proviso to section 8(1):

Supply 'by'	**Supply 'to'**
SEZ unit	Outside India
SEZ unit	Another SEZ unit
SEZ developer	SEZ unit
Non-SEZ unit	SEZ unit
SEZ unit	Non-SEZ unit
Non-SEZ unit	SEZ developer
SEZ developer	Non-SEZ unit

Note: Physical locations within the political boundaries of a State are irrelevant.

The intention of government not to burden the export with tax could be achieved either by allowing not to charge tax on the exports of goods/services and claim the refund of input tax credits of taxes paid on inward supplies or by allowing the refund of tax charged on the exports made. Both these alternatives have been enabled in this section. Zero-rated supplies may be undertaken in either of the following ways:

Taxable person to avail input tax credit used in making outward supply of goods or service or both and make zero-rated supply-	
• Without any payment of IGST on such outward supply by executing LUT (Letter of Undertaking) or bond (dispensed off vide *Notification No. 37/2017-Central tax*)	• Make payment of IGST on the outward supply by debiting 'electronic credit ledger' but without collecting this tax from the recipient

• Claim refund of input tax credit used in the outward supply	• After completing the outward supply, claim refund of the IGST so debited (unjust enrichment having been duly satisfied)
Subject to fulfilment of all associated conditions and safeguards that may be prescribed in either case	

- Physical exports are well understood due to the vast experience from Customs Act. Physical exports, as discussed under section 11, are not determined or defined by realization of foreign exchange (unlike export of services). SEZ is defined in section 2(20) to have the meaning from 2(g) of SEZ Act, 2005. Supply of goods by SEZ to non-SEZ area is governed by Customs Act in terms of rule 47 in Chapter V of SEZ Rules, 2006. Accordingly, although the supply is 'treated as inter-State supply of goods' in terms of section 7(5), no tax is to be charged by the SEZ supplier but instead, the non-SEZ recipient is to pay IGST at the time of assessment of the bill of entry filed for such goods in terms of Customs Tariff Act, 1975 duly amended by the Taxation Laws Amendment Act, 2017 wherein section 3 of the Customs Tariff Act, 1975 has been substantially altered to enable imposition of additional customs duties only on goods not subsumed into GST and for the imposition of IGST on goods subsumed into GST by sub-section 7, 8 and 9. However, with respect to supply of services by SEZ to non-SEZ area, though not prohibited, is not expressly dealt with by this Chapter V of SEZ rules as to the taxes/ duties applicable. To draw the relevant inference, one should observe the definition of India as per section 2(56) of CGST Act. It has been defined to mean territory of India as referred to in Article 1 of the Constitution. SEZ units are also covered within above definition of India. As the CGST and IGST Act extend to whole of India, it could be said to be applicable to SEZ unit also and thereby making SEZ unit as falling within definition of taxable territory. If this view is taken, it may very simply be an inter-State supply of services liable to payment of IGST on forward charge basis by the SEZ unit because there is no reference in IGST to borrow the operation of section 53 from SEZ Act. Reverse charge *Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017* covers any services supplied by any person who is located in a non-taxable territory to any person located in the taxable territory under reverse charge mechanism. SEZ unit may be said to be falling within definition of taxable territory and liable to tax under forward charge.

Accordingly, certain examples have been discussed below:

These provisions of zero-rated supplies are introduced in the statute on the basis of the prevalent Central Excise and Service Tax laws. It is widely believed that introduction of this provision will alleviate the difficulty of a supplier who exempts goods or services or both in terms of export competitiveness. This provision also specifically expresses that taxes are not

exported. Care must be exercised that while paying taxes, such taxes are not collected from the recipient of goods or services or both. This would result in unjust enrichment.

The following illustrations may be considered:

Table A – Physical Exports

Zero-rated supply (Physical exports)	**Option A** (without payment of IGST)	**Option B** (with payment of IGST)
ABC from Chennai supplies goods required by PQR in Delhi to effect exports to Germany	• ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue invoice for €15 • PQR to ensure no IGST is charged in the Euro invoice • PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.100/- being maximum amount related to the outward export supply • Such refund to be claimed by filing Form GST RFD-01	• ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue, invoice for €15 • IGST to be charged on tax invoice issued in INR meant only for the purpose of GST. • PQR to debit electronic credit ledger with IGST applicable of Rs.180/- on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods) • PQR to bring proof-of-export and satisfy all other conditions prescribed • Refund of Rs. 180/- to be allowed on automatic processing of shipping bill by Customs once GSTR-3 and EGM is filed (Rule 96 of the CGST Rules to be followed)
XYZ from Delhi supplies services required by PQR in Delhi to effect export of services to USA	• XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax	• XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax

	credit • PQR to issue invoice for $20 • PQR to ensure no IGST is charged in the USD invoice • PQR to bring proof-of-export and satisfy all other conditions prescribed including realisation of consideration in foreign currency • PQR to claim refund of input tax credit of Rs.250 being maximum amount related to the outward export supply by filing refund claim in Form GST RFD-01	credit • PQR to issue invoice for $20 • IGST to be charged on tax invoice issued in INR meant only for the purpose of GST. PQR to debit electronic credit ledger with IGST applicable of Rs. 300/- on the export • PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of IGST paid in respect of export.

Table B – Supply 'to' SEZ

Zero-rated supply (supply 'to' SEZ)	**Option A** (without payment of IGST)	**Option B** (with payment of IGST)
ABC from Hyderabad supplies goods required by PQR in Kolkata for onward supply to XYZ in Kolkata-SEZ (for use in authorized operations)	• ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to supply goods to XYZ (SEZ) for Rs.1,500/- • PQR to ensure no IGST is charged in invoice to XYZ • PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.100 being maximum amount	• ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue invoice to XYZ (SEZ) for Rs.1,500/- • PQR to debit electronic credit ledger with IGST applicable of Rs.270/- (say, 18%) on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods) • PQR to obtain proof-of-admittance from SEZ

	related to the supply to XYZ (SEZ)	officer and satisfy all other conditions prescribed • PQR to claim refund of Rs.270 debited in electronic credit ledger in respect of supply to XYZ (SEZ) • SEZ unit not to avail the credit of IGST paid by PQR [rule 89 (2)] of CGST Rules
XYZ from Surat supplies goods required by PQR in Rajkot for onward supply of services to MNO in Ahmedabad-SEZ (for use in authorized operations)	• XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to supply services to MNO (SEZ) for Rs.2,000/- • PQR to ensure no IGST (even though within same State, it is inter-State supply) is charged in invoice to MNO • PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to rule 89 of Refund rules) • PQR to claim refund of input tax credit of Rs.250/- being maximum amount related to the supply to MNO (SEZ)	• XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to issue invoice to MNO (SEZ) for Rs.2,000/- • PQR to debit electronic credit ledger with IGST applicable of Rs.240/- (say, 12%) on the export • PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to Rule 89 of CGST Rules) • PQR to claim refund of Rs.240/- debited in electronic credit ledger in respect of supply to MNO (SEZ)

Table C – Supply 'by' SEZ

Zero-rated supply	Option A	Option B
Supply between two SEZ units:	(without payment of IGST)	(with payment of IGST)
ABC-SEZ in Indore supplies goods	• Goods or services received by ABC-SEZ	• Goods or services received by ABC-SEZ

manufactured in the zone to PQR-SEZ in Mumbai (for use in authorized operations) Supply by ABC-SEZ to PQR-SEZ is inter-State supply (whether in same State/ UT or in different States/ UTs)	from various suppliers will be as stated in Table B (above) • ABC-SEZ to issue invoice to PQR-SEZ without any IGST • No input tax credit that needs to be availed by PQR-SEZ • ABC-SEZ to obtain proof-of-admittance from SEZ officer with assistance of PQR-SEZ and satisfy all other conditions prescribed. • There is no refund to be claimed either by ABC-SEZ or PQR-SEZ as no IGST has been paid in this chain	from various suppliers will be as stated in Table B (above) • ABC-SEZ to issue invoice to PQR-SEZ. IGST to be charged but not collected from PQR-SEZ. • ABC-SEZ to debit electronic credit ledger with IGST applicable of Rs.240/-. • ABC-SEZ to obtain proof-of-admittance from SEZ officer with assistance of PQR-SEZ and satisfy all other conditions prescribed. • ABC-SEZ to claim refund claim of Rs. 240/- and debit it in electronic credit ledger in respect of supply to PQR (SEZ)
XYZ-SEZ developer in Noida provides lease of premises to MNO-SEZ for its authorized operations. Note: This applies to all supplies by developer to unit – premises lease, premises maintenance and other value added services	• Goods or services received by XYZ-SEZ from various suppliers will be as stated in Table B (above) • XYZ-SEZ to issue invoice to MNO-SEZ without any IGST • No input tax credit that needs to be availed by MNO-SEZ • XYZ-SEZ to obtain proof-of-receipt of service from SEZ officer with assistance of MNO-SEZ and satisfy all other conditions prescribed • There is no refund to be	• Goods or services received by XYZ-SEZ from various suppliers will be as stated in Table B (above) • XYZ-SEZ to issue invoice to MNO-SEZ. IGST to be charged but not collected from MNO-SEZ. • XYZ-SEZ to debit electronic credit ledger with IGST applicable of Rs.400/-. • XYZ-SEZ to obtain proof-of-receipt of service from SEZ officer with assistance of MNO-SEZ and satisfy all other

	claimed either by XYZ-SEZ or MNO-SEZ as no IGST has been paid in this chain	conditions prescribed • ABC-SEZ to claim refund claim of Rs.400/- and debit it in electronic credit ledger in respect of supply to PQR (SEZ)
Supply by SEZ into non-SEZ:		
ABC-SEZ in Gurugram supplies goods to PQR (non-SEZ unit) in Delhi (with necessary non-SEZ supply permission obtained by ABC from SEZ officer) Note: All supplies 'by' SEZ is treated as inter-State supply	• ABC-SEZ to supply goods to PQR • IGST to be collected by ABC-SEZ to PQR • PQR to file bill of entry for import of goods from SEZ to non-SEZ • Bill of entry filed by PQR will be assessed for BCD + IGST • PQR can then claim input tax credit of IGST paid on in bill of entry • PQR to utilize IGST credit	• Nothing to discuss in this option

All refunds are subject to the 'due process' prescribed in section 54 of CGST Act read with Chapter X of CGST Rules including verification of unjust enrichment. Care must be taken not to include the refundable amount in the price charged to overseas customer. This may be checked by looking into:

- If the refundable amount is expensed directly or carried forward as a current asset
- If overseas customer is given credit in any subsequent invoice to the extent of refund
- If the reversal of refundable amount from the credit ledger is charged to P&L or not

Also, all invoices to have a declaration as to –

- Export of goods or services on payment of IGST;
- Export of goods or services without payment of IGST;
- Supplies to a SEZ developer or unit on payment of IGST; or
- Supplies to a SEZ developer or unit without payment of IGST.

Further, all supplies to SEZ developer or unit being zero-rated does not mean that the entire company can enjoy this form of *ab initio* exemption. For example, company incorporated in Delhi may have established a SEZ unit in Jaipur. All goods and services supplied to SEZ in Jaipur will enjoy the *ab initio* exemption but the goods and services supplied to Delhi will be liable to tax. Now, if the incorporated address of the company were also in Jaipur and inside the zone, the company must be cautious to differentiate the supplies that are not related to the authorized operations in the zone but related to the other affairs of the company and instruct the suppliers to charge applicable GST on such non-SEZ supplies. Complete use of this zero-rated exemption will invite recovery action against the SEZ developer or unit. The supplier who supplied as a zero-rated supply is not responsible for this misuse because the SEZ developer or unit would have issued the GSTIN of the zone. Further, in case GST is paid on the non-zone operations of the company and these costs are included in the export billing, there may be some aspects to be taken care of in case post-export refund of this GST paid is sought to be claimed. Please note that all supplies to SEZ developer or unit alone is treated as an inter-State supply but the supply to the company relating to non-SEZ activities will continue to be inter-State or intra-State supply as the case may be. With all information available online through GSTN, misuse is not difficult to identify. Care must be taken to diligently use the provisions of zero-rated supply.

With regard to 'bill to-ship to' transactions, it is important to mention that though the supply may be 'billed to' person located outside India (for exports) or inside zone (for SEZ supplies), where the supplies are 'shipped to' must be clearly identified in order to qualify for the benefit under this section. It is not that 'exports' are zero rated but 'supply by way of export' are zero rated. There is a lot of difference between these two expressions. With the difference between these two expressions having been discussed in the context of sections 11, it is sufficient to mention here that 'supply by way of export' is a subset of 'exports'. And in order to claim benefit of zero rating under this section, it is important to examine an 'export' to meet the requirements of 'supply by way of export'. In other words, both the 'bill to' and 'ship to' locations must be to the destination – outside India (for exports) or inside zone
(for SEZ supplies) – in order to qualify for zero rating benefit. This principle applies equally to supply of goods as well as supply of services for exports.

The above view is best explained through an illustration. Say, a contractor is awarded civil works by a zone-developer and this contractor buys cement from a trader with instructions to deliver the cement directly at site (zone). Now, the supply of cement by trader is 'ship to: zone' but 'bill to: contractor'. Question that arises is, can the cement trader claim zero-rating benefit? The answer is no because the 'bill to' and 'ship to' locations must both be in the zone to satisfy the requirements of section 16 of the IGST Act and rule 89 of the CGST rules.

Even if the goods or service which are either exported or supplied to SEZ unit developer are exempted goods or services, input tax credit is still available for making such zero-rated supplies. The requirement to reverse ITC in relation to exempted supplies is not warranted if it

is zero rated. This can also be inferred from Section 16(2) of the IGST Act 2017 which states that the input tax credit is eligible notwithstanding that such supply is exempted.

Section 16 of the IGST Act 2017 allows a person to claim refund under both the options –

a) Zero rated supply of goods or services without payment of IGST

b) Zero rated supply of goods or services with payment of IGST

However, the Government by notification has the power to specify the class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder or the class of goods or services or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder . Except these, all other zero-rated supplies would have to be made without payment of tax under LUT.

Further no refund of unutilised input tax credit on account of zero-rated supply of goods or of integrated tax paid on account of zero-rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty. (The provision explicitly states that no refund will be allowed for unutilized ITC related to zero-rated supplies if those supplies are subject to export duty. This indicates a clear policy intention from the government to not refund the ITC in such scenarios, likely due to the additional tax burden imposed by export duties.)

Rationale:

- Government levies Export Duties wherever it wishes to discourage Export of certain specified Goods. Allowing Refund of GST ITC or IGST paid on such Export would be contrary to such intent, Hence amendments have been proposed in Sec 54 of CGST Act to disallow Refund of both ITC & IGST paid.
- Similarly Sec 16 of IGST has been suitably amended to make Refund of IGST paid on Exports subject to Sec 54 conditions & safeguards
- In effect, Now Refund of ITC or IGST paid on Exports, both are subject to condition of Non payment of Export Duty

Notification No. 1/2023-Integrated Tax dated 31.07.2023 read with *Notification no. 5/2023-Integrated Tax dated 26.10.2023* have been issued to allow -

- all goods or services (except mentioned below) as class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid. and
- all suppliers to Developer or a unit in Special Economic Zone undertaking authorised operations as the class of persons who may make supply of goods or services

(except mentioned below) on payment of integrated tax and claim refund of the tax so paid.

The list of such categories of goods or services which may be exported without payment of tax under LUT / bond are provided below:

S. No	***Chapter/Heading/Sub-heading/Tariff item***	***Description of Goods***
(1)	*(2)*	*(3)*
1.	2106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube) - bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube) - bearing a brand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name
6.	2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name
12	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco
17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff
19.	2403 99 60	Tobacco extracts and essence bearing a brand name

20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco 'Gutkha'
23.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
24.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name
25.	3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Following essential oils other than those of citrus fruit namely: — (*a*) Of peppermint (Mentha piperita); (*b*) Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex- mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex- mentha citrate), Mentha arvensis

16.3 Procedure for zero-rated supply of goods or services:

16.3.1. Export of goods or services without payment of Integrated Tax

Exporter of goods is eligible to export goods or services without payment of IGST by complying with the following procedure:

(Note: Same procedures have to be followed by SEZ in respect to export of goods without payment of tax.)

A. Furnishing of Letter of undertaking:

i. *Notification No. 37/2017 dated 04.10.2017* of Central Tax provides for the conditions and safeguards for export of goods or services without payment of IGST which supersedes *Notification No.16/2017 dated 04.07.2017* of Central tax.

ii. Conditions and safeguards for issuing letter of undertaking: all registered persons who intend to supply goods or services for export without payment of integrated tax shall be eligible to furnish a Letter of Undertaking in place of a bond except those who have been prosecuted for any offence under the CGST Act, 2017 (12 of 2017) or the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees;

iii. As per *Circular No. 40/14/2018-GST dated 06.04.2018*, the registered person is required to fill and submit Form GST RFD-11 on the common portal. An LUT is deemed to be accepted as soon as an acknowledgement for the same, bearing Application Reference Number (ARN) is generated online. It is further clarified in the aforesaid

Circular that no document needs to be physically submitted to the Jurisdictional office for acceptance of LUT.

iv. Letter of undertaking would be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor.

vi. Existing LUT would be valid for the whole of the financial year in which it is tendered. Therefore, every registered person should apply for fresh LUT at the start of each financial year i.e., 1st of April.

vii. Where the registered person fails to pay the tax due along with interest, as specified under sub-rule (1) of rule 96A of Central Goods and Services Tax Rules, 2017, within the period mentioned in clause (a) or clause (b) of the said sub-rule, the facility of export without payment of integrated tax will be deemed to have been withdrawn and when the amount mentioned in the said sub-rule is paid, the facility of export without payment of integrated tax shall be restored.

viii. Where a supplier wishes to effect zero-rated supplies without payment of IGST, the supplier is required to furnish the LUT in Form GST RFD – 11. In terms of Section 16, the LUT should be filed before effecting the zero-rated supplies in order to claim an exemption from payment of taxes. Rule 96A of the CGST / SGST Rules, 2017 provides that LUT should be furnished prior to effecting export of goods / services. It is inferred that if the LUT is not furnished prior to effecting zero rated supplies, the supplier cannot claim exemption on zero rated supplies. In this regard, the Board has issued *Circular No. 37/11/2018–GST dated 15.03.2018* wherein it is clarified that the substantial benefits of zero-rating supplies should not be denied if it is established that the goods or services have been exported in terms of the relevant provisions.

B. Furnishing of RFD-11

i. Rule 96A of CGST Rules provides that any registered person availing option to export goods or services without payment of IGST has to furnish letter of undertaking prior to commencement of export in Form RFD-11. Format of RFD-11 is provided in CGST Rules 2017.

ii. *Circular 26/2017 of Customs dated 01.07.2017* provides that procedure prescribed under rule 96A needs to be followed for export of goods or services w.e.f. 01.07.2017.

iv. Condition to comply:

   a. In case of goods: good to be exported within 3 months from date of issue of invoice

   b. In case of services: Payment to be received in convertible foreign exchange within 1 year from date of invoice.

v. Bond or LUT has to be furnished along Form GST RFD-11 binding himself that tax along with interest @18% would be liable to paid by him;

a. In case of goods: within 15 days after completion of 3 months on failure to export such goods.

b. In case of services: within 15 days of completion of 1 year if such payment is not received in accordance with point (iv).

C. Tax Invoice:

i. Exporters would be required to raise tax invoice with prescribed particulars mentioning "*Supply meant for export under bond or Letter of Undertaking without payment of integrated tax*".

ii. No tax needs to be charged on the invoice in this case.

iii. Tax invoice may be in addition to other export documents provided to customer.

D. Sealing (in case of goods):

Till mandatory self-sealing is operationalized, sealing of containers shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done.

E. Shipping Bill (in case of goods):

i. Shipping Bill format has been revised by customs to capture GST related details.

ii. Shipping bill to be prepared in Form SB-I.

iii. In case of export of duty free goods shipping bills has to be prepared in Form SB-II.

iv. Shipping bill needs to be issued in 4 copies (Original, Drawback purpose, Department purpose and export promotion)

F. Refunds

Refund of taxes in respect of accumulated input tax credit has to be claimed by following procedure prescribed by section 54 of CGST Act read with Chapter X of CGST Rules, 2017.

- Time limit: 2 years from the relevant date
- Method of filing: Form GST RFD-01 in online portal of GST in format provided in CGST Rules 2017 along with the list of documents and information as provided under Circular no. 125/44/2019-GST dated 18.11.2019.
- Provisional refund: Order for sanctioning 90% of refund claim within 7 days by the proper officer subject to certain conditions.
- Details of Bank Realization Certificate (BRC) or Foreign Inward Remittance Certificate (FIRC) needs to be provided along with details of export invoice while filing Form GST RFD-01

16.3.2. Export of goods or services with payment of Integrated Tax

The procedure to be followed under this option is as follows:

(Note: Same procedures have to be followed by SEZ in respect to export of goods with payment of tax.)

A. Commercial Invoice: Exporter can issue 2 sets of invoices to have a smooth flow of transactions with his foreign customers.

i. Commercial invoice can be issued (along with tax invoice) without showing tax amount.

ii. Points to keep in mind while following practice of issuing commercial invoice along with tax invoice:

- Total value of both the invoices should be equal.
- Every commercial invoice should have a corresponding tax invoice.

B. Tax Invoice:

i. Exporters would be required to raise tax invoice with prescribed particulars mentioning" *Supply meant for export on payment of integrated tax".*

ii. Applicable IGST needs to be disclosed on the invoice in this case.

iii. Tax invoice would be in addition to other export documents provided to customer.

C. Sealing/ Shipping Bill: same as referred above in 16.3.1.

D. Refunds:

a. In case of goods: Rule 96 of CGST Rules provides for the mechanism for refund of tax in case of export of goods with payment of tax.

   i. Shipping bill filed with custom would be considered as application for refund of integrated tax paid on export of goods.

   ii. Refund application shall be valid only when:

      (a) Filing of export manifest/export report by person in charge of the conveyance carrying the export goods.

      (b) Furnishing of valid return in Form GSTR-3 or Form GSTR-3B, whichever is applicable, by the applicant.

   iii. GST and custom portal would be inter-linked in which custom portal would electronically confirm to GST portal about the movement of goods outside India.

   iv. Upon the receipt of the information regarding the furnishing of a valid return Form GSTR-3B, as the case may be from the common portal, the system designated by the Customs shall process the claim for refund and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be

electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

v. Withheld of refund: Refund can be withheld upon receipt of request from Jurisdictional Commissioner or where customs provisions are violated.

vi. The exporter would not be eligible for refund in case of notified goods where refund of integrated tax is provided to Government of Bhutan.

b. In case of services: Refund of taxes in respect of tax paid has to be claimed by following procedure prescribed by section 54 of CGST Act read with Chapter X of CGST Rules.

- Time limit: 2 years from the relevant date
- Method of filing: Form GST RFD-01 in online portal of GST in format provided in CGST Rules 2017 along with the list of documents and information as provided under *Circular No. 125/44/2019-GST dated 18.11.2019*.
- Provisional refund: Order for sanctioning 90% of refund claim within 7 days by the proper officer subject to certain conditions.
- Details of Bank Realization Certificate (BRC) or Foreign Inward Remittance Certificate (FIRC) needs to be provided along with details of export invoice while filing Form GST RFD-01.

Circular No. 226/20/2024-GST (dated 11.07.2024): Refund for Additional IGST Due to Upward Price Revision

- **Refund Filing**: Exporters can now file refund applications for **additional IGST** paid due to upward price revisions post-export in **Form GST RFD-01**. Until a dedicated refund category is developed, claims should be filed under the **"Any other"** category with supporting documentation.
- **Processing of Refund**: Jurisdictional GST officers will process these claims. Data on shipping bills and previously refunded IGST will be shared with officers for verification. The officer will confirm the revised export values, foreign exchange remittances, and payment of additional IGST.
- **Downward Price Revision**: If prices are revised downward after export, the exporter must return the excess IGST refunded, along with interest.
- **Minimum Claim and Time Limit**: Refund claims below ₹1,000 are not permitted. Refund applications must be filed within **2 years** from the relevant date or from the date the new rule came into force.

16.4 Procedure for supplies to SEZ unit/ SEZ developer

Same procedure as referred above in 16.3 can be followed in following cases:

(a) Supply to SEZ without payment of integrated tax

(b) Supply to SEZ with payment of integrated tax.

(Note: Same will be followed in cases the above supplies are made by an SEZ unit or SEZ developer)

16.5 Issues and concerns

1. In terms of section 16 of the IGST Act, 2017 in case of supplies to SEZ developer or SEZ unit / exports in terms of sections 2(5) or 2(6) of the IGST Act, the supplier can either effect supplies on payment of tax, which can subsequently be claimed as a refund. Alternatively, the supplier may effect the supplies without payment of tax under a bond or LUT and is entitled to claim refund of the input tax credit used in effecting such supplies. In this regard, attention is drawn to the fact that the supplier would be disentitled from claiming refund of IGST paid on such supplies effected on payment of IGST (without LUT), if the supplier recovers the amount of tax from the recipients.

2. The time of supply provisions require that tax is remitted on receipt of advances, in respect of supply of services. Consider a case where a supplier of services has received an advance from a recipient located outside India, in respect of services to be exported. In this regard, it is important to understand whether the LUT should be obtained prior to receipt of advance payment for supply of services, or if it would be sufficient for the registered person to obtain the same before effecting the supply. Rule 96A of the CGST / SGST Rules, 2017 specifies that LUT should be furnished prior to export of services. In terms of rule 96A, the LUT in Form GST RFD – 11 should be furnished to undertake to remit the applicable taxes along interest if the consideration in convertible foreign exchange is not received within one year from the date of issue of invoice. Accordingly, it can be discerned that LUT is not required to be furnished where the consideration in convertible foreign exchange is received in advance. Further, attention is drawn to *Circular No. 37/11/2018–GST dated 15.03.2018* wherein it is clarified that the substantial benefits of zero-rating supplies should not be denied if it is established that the goods or services have been exported in terms of the relevant provisions.

3. Any variation in foreign currency subsequent to the date of time of supply in case of imports and export transaction would not be relevant in the determination of value of taxable supply under section 15. The age old CBEC Circular with the subject "Whether rebate-sanctioning authority may re-determine the amount of rebate in certain cases — Instructions regarding" dated 3.2.2000 also highlight this fact. The C.B.E. & C. has then clarified in their *Circular No. 510/06/2000-Cx, dated 03.02.2000* issued from F. No. 209/29/99-Cx-6 that the rebate sanctioning authority is not required to reassess the value for the export and the value assessed by the range officer on ARE-1 at the time of export has to be accepted. Further, this duty is also not affected by the less realization of export proceeds owing to exchange rate fluctuation and the duty and value has to be on the date, time and place of removal and the exchange rate on that date alone would be applicable. In other words, any exchange gain or loss will remain outside the purview of GST law.

16.6 Related Provisions of the Statute:

Statute	Section / Sub-Section	Description	Remark
CGST	17(2)	Apportionment of credit and blocked credits	Restrictions on credit attributable to exempt supplies.
IGST	2(23)	Zero-rated supply	Adopts the provisions of section 16 of IGST Act

Chapter 8
Apportionment of Tax and Settlement of Funds

Statutory Provisions

17. Apportionment of tax and settlement of funds

(1) Out of the integrated tax paid to the Central Government, ––

(a) in respect of inter-State supply of goods or services or both to an unregistered person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;

(b) in respect of inter-State supply of goods or services or both where the registered person is not eligible for input tax credit;

(c) in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;

(d) in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;

(e) in respect of import of goods or services or both where the registered person is not eligible for input tax credit;

(f) in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received,

the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.

(2) The balance amount of integrated tax remaining in the integrated tax account in

respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the, —

(a) State where such supply takes place; and

(b) Central Government where such supply takes place in a Union territory:

Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to, —

(a) each of the States; and

(b) Central Government in relation to Union territories,

in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:

Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

[27]*[(2A) The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council be apportioned at the rate of fifty percent to the Central Government and fifty percent to the State Governments or the Union territories as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections]*

(3) The provisions of sub-sections (1) and (2) relating to apportionment of integrated tax shall, mutatis mutandis, apply to the apportionment of interest, penalty and compounding amount realized in connection with the tax so apportioned.

(4) Where an amount has been apportioned to the Central Government or a State Government under sub-section (1) or sub-section (2) or sub-section (3), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the central tax account or Union territory tax account, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the State tax account of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.

(5) Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be

27 *Inserted vide sec 7 of the Integrated Goods and Services Tax (Amendment) Act, 2018 (No. 32 of 2018) notified through Notification No. 1/2019 – IT dated 29.01.2019, w.e.f. 01.02.2019.*

apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

[28][17A. Transfer of Certain Amounts

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

17.1 Introduction

GST is a destination-based consumption tax – this principle is evident in the place of supply provisions. Therefore, GST is to be paid to the State where the destination or consumption takes place. And registration of each taxpayer in every destination-State is impossible to comply or administer. It is for this reason that IGST is applicable on supplies whose destination is outside the home-State. Therefore, IGST is not actually a tax but an equitable tax revenue transfer mechanism from the State of origin of supply to the State of its destination where revenue rightly belongs. With IGST having been collected as if it were a tax, it now needs to be transferred to the destination-State. This is provided by section 17 and discussed below.

17.2 Analysis

<table>
<tr><th>Inter-State Supply (to)</th><th>IGST Paid (on)</th><th>Quantum of IGST</th><th>Transfer (to)</th></tr>
<tr><td>Unregistered recipient</td><td rowspan="4">IGST paid on inter-State supplies
IGST paid on import of goods or services</td><td rowspan="2">Equivalent Central tax applicable on said supplies in intra-State supply</td><td rowspan="2">Union</td></tr>
<tr><td>Composition taxable person</td></tr>
<tr><td>Registered taxable person not eligible to input tax credit</td><td rowspan="2">Balance amount of IGST</td><td>State, its respective share of inward supplies@</td></tr>
<tr><td>Registered taxable person eligible to input tax credit but does not avail it within period specified</td><td>Union, share of inward supplies to UTs@</td></tr>
</table>

@ If this amount cannot be reliably allocated, then rule-of-proportion – total supplies of that State/UT compared to total inter-State supplies during the financial year.

[28] *Inserted vide the Finance (No. 2) Act, 2019. Notified through Notification No. 1/20250-CT dated 01.01.2020.*

Please note the following further aspects:

- Above formula applies to interest, penalty and compounding amount collected in respect of inter-State supplies
- Any apportioned IGST is found to be refundable, then the same will be recouped from the subsequent transfers
- Time and manner of transfer to States/UTs will be prescribed
- Now the government is providing an option for transfer of balance from electronic cash ledger under one head to the other, it also requires the physical transfer of funds between the governments also. Where CGST is transferred to SGST by any person in the electronic cash ledger, the State Government should compensate the Central Government for the deficit transferred.

Statutory provisions

18. Transfer of input tax credit

(1) On utilization of credit of integrated tax availed under this Act for payment of, —

(a) central tax in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the central tax account in such manner and within such time as may be prescribed;

(b) Union territory tax in accordance with the provisions of section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the Union territory tax account in such manner and within such time as may be prescribed;

(c) State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government in such manner and within such time as may be prescribed.

Explanation —For the purposes of this Chapter, "appropriate State" in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act.

18.1 Introduction

After apportionment of IGST paid, it leaves credit of IGST availed to be accounted for on its utilization. This section addresses the apportionment on utilization of IGST credit.

18.2 Analysis

IGST	Appropriation	Allocation (to)
Credit of IGST paid availed	Utilized to pay CGST	Union – Central tax account
	Utilized to pay SGST	State – State tax account@
	Utilized to pay UTGST	Union – UT tax account@

@ of respective State or UT

Statutory provisions

19. Tax wrongfully collected and paid to Central Government or State Government

(1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

19.1 Introduction

Payment of tax based on erroneous determination of 'nature of supply' is not permitted to be adjusted because of the above appropriation of payments. The remedy lies in refund.

19.2 Analysis

Taxable person who has paid tax in error is entitled to refund by first restoring the discharge of the correct tax due so that the incorrect tax paid reflects on the Common Portal as 'paid in excess' and:

- IGST paid in error will be refunded subject to conditions prescribed.
- IGST payable due to payment of CGST/SGST/UTGST is exempted from payment of interest on IGST due.

The provisions of section 54 of the CGST Act have not been extended to this refund although the conditions to be prescribed would not be too far from the requirements in section 54.

Chapter 9
Miscellaneous

Statutory Provisions

20. Application of provisions of Central Goods and Services Tax Act

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

> *(i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit; (v) registration; (vi) tax invoice, credit and debit notes; (vii) accounts and records; (viii) returns, other than late fee; (ix) payment of tax; (x) tax deduction at source; (xi) collection of tax at source; (xii) assessment; (xiii) refunds; (xiv) audit; (xv) inspection, search, seizure and arrest; (xvi) demands and recovery; (xvii) liability to pay in certain cases; (xviii) advance ruling; (xix) appeals and revision; (xx) presumption as to documents; (xxi) offences and penalties; (xxii) job work; (xxiii) electronic commerce; (xxiv) transitional provisions; and (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,*

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

[29][Provided also that a maximum amount of forty crore rupees shall be payable for each appeal to be filed before the Appellate Authority or the Appellate Tribunal.]

20.1. Introduction

Certain provisions of CGST Act in relation to levy of tax would be applicable to IGST Act also.

20.2. Analysis

The following provisions of CGST Act shall apply to IGST Act:

- scope of supply;
- composite supply and mixed supply;
- time and value of supply;
- input tax credit;
- registration;
- tax invoice, credit and debit notes;
- accounts and records;
- returns, other than late fee;
- payment of tax;
- tax deduction at source;
- collection of tax at source;
- assessment;
- refunds;
- audit;
- inspection, search, seizure and arrest;
- demands and recovery;
- liability to pay in certain cases;

[29] *Substituted vide the Finance (No. 2) Act, 2024, notified through Notification No. 17/2024 – CT dated 27.09.2024, w.e.f. 01.11.2024. Prior to its substitution, it was read as: "Provided also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively."*

— advance ruling;

— appeals and revision;

— presumption as to documents;

— offences and penalties;

— job work;

— electronic commerce;

— transitional provisions; and

— miscellaneous provisions including the provisions relating to the imposition of interest and penalty.

The following exceptions are provided:

(a) In case of TDS (tax deducted at source) the deductor shall deduct tax at the maximum rate of two per cent from the payment made or credited to the supplier.

(b) In case of TCS (tax collected at source), the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies.

(c) The value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.

(d) In cases where the penalty is leviable under the CGST Act and the SGST Act or the UTGST Act, the penalty leviable under this Act shall be the sum total of the said penalties.

(e) The maximum amount of pre-deposit in case of filing of appeal has been prescribed as:

i. ₹ 40 crores in case of Appellate Authority

ii. ₹ 40 crores in case of Appellate Tribunal

20.3 FAQs

Q1. What are the provisions under CGST which would be applicable to IGST also?

Ans. The provisions relating to scope of supply, composite supply and mixed supply, time and value of supply, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, returns, other than late fee, payment of tax, tax deduction at source, collection of tax at source, assessment, refunds, audit, inspection, search, seizure and arrest, demands and recovery, liability to pay in certain cases, advance ruling, appeals and revision, presumption as to documents, offences and penalties, job work, electronic commerce, transitional provisions and miscellaneous provisions

including the provisions relating to the imposition of interest and penalty, shall apply, in relation to the Integrated Tax as they apply in relation to tax under the CGST Act, 2017.

Q2. What is the percentage of tax to be deducted or collected in case of tax deducted at source and tax collected at source?

Ans. The percentage of tax to be deducted by the deductor from the payment made or credit to the supplier is 2% in case of tax deduction at source.

In case of tax collection at source, the operator should collect 2% tax on the net value of taxable supplies.

Q3. What is the rate at which an electronic commerce operator is required to collect tax on inter-State taxable supplies made through its platform by other suppliers?

Ans. An electronic commerce operator, provided it is not acting as an agent, is required to collect tax at a rate of **0.5% (half percent)** on the net value of inter-State taxable supplies made through its platform by other suppliers, where the consideration for such supplies is to be collected by the operator.

[Inserted by the Notification 01/2024-Integrated Tax dated 10/07/2024]

Statutory provisions

21. Import of services made on or after the appointed day

Import of services made on or after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services had been initiated before the appointed day:

Provided that if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under this Act:

Provided further that if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.

Explanation.—For the purposes of this section, a transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.

21.1. Introduction

This provision deals with taxability of import of services made on or after the appointed day.

21.2. Analysis

(a) It provides that import of services made on or after the appointed day shall be liable to tax under the provisions of IGST Act even if the transactions for such import of services had been initiated before the appointed day.

(b) However, if the tax on such import of services had been paid in full under the pre-GST regime, no tax shall be payable on such import under the IGST Act.

(c) That apart if the tax on such import of services had been paid in part under the erstwhile law, the balance amount of tax shall be payable on such import under this Act.

(d) As per the explanation appended to the section a transaction shall be deemed to have been initiated before the appointed day if either the invoice or payment, either in full or in part, has been received or made before the appointed day.

21.3. FAQs

Q1. Whether import of services made after appointed day is liable to tax under this Act?

Ans. Yes. Any import of services made after appointed day is liable to tax under this Act. However, the taxability is subject to the provisos in section 21 of IGST Act.

Q2. What would be the status of import of services, where the tax on the said transaction is paid in full under earlier laws?

Ans. Not liable to tax under this Act. As per the first proviso of section 21 of IGST Act, where the tax on import of services is paid in full under earlier laws, no tax under this Act would be made applicable though such import takes place after the appointed day.

Q3. What would be the status of import of services where the tax on the said transaction is paid in part under earlier laws?

Ans. As per the second proviso to section 21 of IGST Act, where the tax is paid in part for import of services under the earlier laws, only the balance amount of tax would be payable under this Act.

Q4. When would the transaction be deemed to have been initiated before the appointed day?

Ans. Under any of the following circumstances it would be deemed that the transaction is initiated before the appointed day-

(i) Where invoice relating to such supply; or

(ii) Payment, either in full or in part;

has been received or made before the appointed day.

21.4 MCQs

Q1. Where the tax is fully paid under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Tax as per this Act, to be paid again

Ans. (a) No tax payable under this Act

Q2. Where the tax is paid in part under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Balance amount of tax payable on such import of services

Ans. (b) Balance amount of tax payable on such import of services

Statutory provisions

22. Power 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) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

22.1. Introduction

It provides power to the Central Government to make Rules for the purposes of IGST Act upon recommendations by the GST Council.

22.2 Analysis

Power to make rules by the Central Government is discussed hereunder:

— The Central Government may make rules for carrying out the purposes of this Act, by notification on the recommendations of the Council.

— 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.

— The power to make rules shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the appointed day.

— Any rules made may provide for penalty upto Rs.10,000 for contravention thereof.

— "Council" would mean the Goods and Services Tax Council established under Article 279A of the Constitution.

22.3 FAQ

Q1. Who is given the power to make rules under IGST Act?

Ans. The Central Government may, by notification, make rules for carrying out the purposes of this Act on the recommendation of the Council.

22.4 MCQ

Q1. Under section 22, the Central Government has power to make rules on recommendation of whom of the following?

(a) Ministry of Finance

(b) GST Council

(c) CBEC

(d) None of the above

Ans. (b) GST Council

Statutory provisions

23. 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.

23.1. Introduction

This provision refers to the Board's power to make regulations.

23.2. Analysis

To carry out the provisions of the IGST Act, the Board is empowered to make regulations, which would be notified. Such regulations should not be inconsistent with the provisions of the IGST Act and the Rules made thereunder.

Statutory provisions

24. 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.

24.1. Introduction

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

24.2. 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 provisions

25. Removal of Difficulties

(1) If any difficulty arises in giving effect to any provision 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 [30][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.

25.1. Introduction

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

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[30] *Substituted vide the Finance Act, 2020 effective through Notification No. 04/2020-IT dated. 24.07.2020. Applicable w.e.f. 30.06.2020.*

25.2. Analysis

(i) If the Government identifies that there is a difficulty in implementation of any provision of the GST Legislation, 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 5 years from the date of effect of the IGST Act.

25.3. Related provisions of the Statute:

This is an independent section and would be applicable for implementation of the GST law.

25.4. FAQs

Q1. Will the powers include the power to notify the effective date for implementation of particular 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 25?

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

25.5. MCQs

Q1. Whether prior approval of the Parliament is necessary?

(a) Yes

(b) No

Ans. (b) No

Q2. What is the maximum period for exercising this power?

(a) 4 years

(b) 5 years

(c) 2 years

(d) 1 year

Ans. (b) 5 years

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

THE UNION TERRITORY GOODS AND SERVICES TAX ACT, 2017

Statement of Objects and Reasons

The Union Territories (for brevity, "UT") were earlier empowered to levy Sales Tax / VAT on the sale of goods, whereas the Central Government was empowered to levy excise duty and service tax on manufacture of goods and supply of services, respectively. This led to a multiplicity of indirect taxes being levied by various authorities.

The difficulties faced in the erstwhile indirect tax system were:

(i) Rising hidden costs in trade and industry due to multiplicity of taxes at the Central and Union Territory levels

(ii) Lack of uniformity of tax rates and tax structure, compliance procedures across Union Territories

(iii) Cascading of taxes

(iv) Non-availability of cross-utilization of credits i.e., utilization of excise duty and service tax credits against taxes levied by Union Territories and vice-versa.

(v) Credit of taxes levied by one Union Territory or State cannot be set off against taxes levied by other Union Territories or States.

Under the GST regime, Union Territory tax along with related GST legislations replaced the erstwhile taxes while empowering the Central Government to levy Union Territory tax on the supply of goods or services or both taking place within a Union Territory not having a Legislature. The UTGST legislation:

(i) Provides for levy of tax on all intra-State supplies of goods or services or both, except alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit which is used for manufacture of alcoholic liquor for human consumption, at the rates recommended by the GST Council;

(ii) Empowers the Central Government to grant exemptions on the recommendation of the GST Council;

(iii) Enables apportionment of tax and settlement of funds on account of transfer of input tax credit between the Central Government, State Governments and Union Territories;

(iv) Provide for assistance by officers of Police, Railways, Customs, and those engaged in the collection of land revenue, including village officers, and officers of central tax and officers of the State tax to proper officers in the implementation of the proposed Legislation;

(v) Empowers recovery of tax, interest or penalty payable by a person and remaining unpaid;

(vi) Empowers establishing of an Authority for Advance Ruling to enable the taxpayers to seek binding clarity on taxation matters;

(vii) Provides for elaborate transitional provisions for smooth transition of taxpayers to GST regime; and

(viii) Allows application of certain provisions of the CGST Act, 2017 to the extent relevant for the purposes of this Act;

(ix) Empower the Commissioner to issue orders, instructions or directions to the UT tax officers.

Chapter 1
Preliminary

1.	**Short title, extent and commencement**
2.	**Definitions**

Statutory provision

1.	***Short title, extent and commencement***
(1)	*This Act may be called the Union Territory Goods and Services Tax Act, 2017.*
(2)	*It extends to the Union territories of Andaman and Nicobar Islands, Lakshadweep, [1][Dadra and Nagar Haveli and Daman and Diu, Ladakh], Chandigarh and other territory.*
(3)	*It shall come into force on such date as the Central may, by notification in the Official Gazette, appoint:* *Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.*

Title:

All Acts enacted by the Parliament since the introduction of the Indian Short Titles Act, 1897 carry a long and a short title. The *long title*, set out at the head of a statute, gives a fair description of the general purpose of the Act and broadly covers the scope of the Act.

The *short title* serves simply as an ease of reference and is considered a statutory nickname to obviate the necessity of referring to the Act under its full and descriptive title. Its object is identification, and not description, of the purpose of the Act.

Extent:

Part I of the Constitution of India states: "*India, that is Bharat, shall be a Union of States*". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-eight (28) States and eight (3 with Legislature + 5 without Legislature = 8) Union Territories.

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi, Puducherry and Jammu & Kashmir have been provided with Legislatures conferred with powers and functions as required for their administration.

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[1] *Substituted vide The Finance Act, 2020.*

India is a summation of three categories of territories namely – (i) States (28); (ii) Union Territories with Legislature (3); and (iii) Union Territories without Legislature (5).

'State' under the GST law is defined to include a Union Territory with Legislature. Delhi, Puducherry and Jammu & Kashmir though are Union Territories, have a Legislature of their own. Accordingly, for the purpose of GST Laws, the Union Territories of Delhi, Puducherry and Jammu & Kashmir will be regarded as a State and will be governed by the respective SGST laws passed by them, instead of the UTGST law which is passed by the Central Government.

Applicability of GST in JAMMU & KASHMIR and LADAKH:

With effect from 31.10.2019, Jammu & Kashmir and Ladakh have been granted separate Union Territory Status under The Jammu and Kashmir Reorganization Act by the Parliament. As far as GST is concerned, The Jammu and Kashmir Goods & Service Act is applicable to Jammu & Kashmir and UTGST Act is applicable to Ladakh.

Commencement:

The UTGST Act came into operation on the date appointed by the Central Government by means of a notification in the Official Gazette (i.e., 1st July 2017). A provision has been made to notify different dates for commencement of different provisions of the Act.

Statutory provisions

2. Definitions

In this Act, unless the context otherwise requires–

(1) ''appointed day'' means the date on which the provisions of this Act shall come into force.

The provisions of the UTGST Act are implemented with effect from 1st July 2017 with powers vested to notify different dates for effective date of commencement of different provisions of the Act.

(2) ''Commissioner'' means the Commissioner of Union territory tax appointed under section 3;

Every Union Territory is administered by the President through an Administrator appointed by him. The Administrator, in turn, is empowered to appoint Commissioners and other officers for carrying out the purposes of the Act who will be deemed to be 'Proper Officers' for administering the Act.

The officers appointed under the erstwhile central and UT laws will continue to function as officers under the UTGST Act as well.

(3) ''designated authority'' means such authority as may be notified by the Commissioner;

Currently, the term does not find a reference in the Act and will be notified by the Commissioner from time to time.

(4) ''exempt supply'' means supply of any goods or services or both which attracts nil rate of tax or which may be exempt from tax under section 8, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

The meaning of exempt supply is similar to the meaning assigned to it under the CGST law with the exception that supplies that are **partly exempted** from tax under this Act will also be considered as 'exempt supply'. On the contrary, partially exempted supplies under the CGST law would not be considered as 'exempt supplies' under the CGST law. The word "wholly" found in section 2(47) of the CGST Act which is missing from section 2(4) under the UTGST Act in the definition of exempt supply.

Exempt supplies comprise the following 3 types of supplies:

(a) supplies taxable at a 'NIL' rate of tax;

(b) supplies that are wholly or partially exempted from UTGST or IGST, by way of a notification; and

(c) supplies that are not taxable under the Act (petrol, high speed diesel, alcoholic liquor for human consumption etc.)

The following aspects need to be noted:

(a) Zero-rated supplies such as exports would not be treated as supplies taxable at 'NIL' rate of tax;

(b) Input tax credit attributable to exempt supplies will not be available for utilisation/ set-off.

(5) ''existing law'' means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;

This covers all the erstwhile Central and State laws (along with the relevant notifications, orders, and regulations), relating to levy of tax on goods or services like Service Tax law, Central Excise law, State VAT laws, etc. Therefore, laws that do not levy tax or duty on goods or services, such as The Indian Stamp Act, 1899, would not be covered here.

(6) ''Government'' means the Administrator or any authority or officer authorized to act as Administrator by the Central Government;

Every Union Territory is administered by the President through an 'Administrator' appointed by him. Even a Governor of a State can be appointed as the Administrator of an adjoining UT. Such an Administrator will be regarded as 'Government' for the purposes of the UTGST law.

(7) ''output tax'' in relation to a taxable person, means the Union territory tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

The output tax chargeable on taxable supply of goods or services can be summarised as under:

Type of Supply	Output tax	Reference
Supplies within a UT without Legislature	UTGST + CGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act
Supplies between two UT without Legislature	IGST (inter-State supply)	Section 7(1) and 7(3) of the IGST Act
Supplies between a UT without Legislature and a State (including UT with Legislature)	IGST (inter-State supply)	Section 7(1) and 7(3) of the IGST Act

The following aspects need to be noted:

(a) While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the Statute from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.

(b) The amount covered under this term is the tax 'chargeable' under law, and not what is 'charged'. Therefore, some experts believe that in case a person wrongly charges an amount as tax or charges an excess rate of tax as compared to the applicable tax rate, such excess would not qualify as output tax.

(c) Some experts are of the view that taxes payable on reverse charge basis would also be out of the scope of 'output tax'. Since credit of input tax can only be used to pay output tax, the above will have to be discharged by way of cash only (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).

(d) The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the UT tax payable on such supplies as output tax in the hands of the supplier.

(8) "Union territory" means the territory of, —

(i) the Andaman and Nicobar Islands;

(ii) Lakshadweep;

[(iii) Dadra and Nagar Haveli and Daman and Diu;

(iv) Ladakh][2];

(v) Chandigarh; or

(vi) other territory.

[2] *Substituted vide The Finance Act, 2020 dt. 27.03.2020. Earlier it read as "Dadra and Nagar Haveli and Daman and Diu".*

Explanation.—For the purposes of this Act, each of the territories specified in sub-clauses (i) to (vi) shall be considered to be a separate Union territory;

Analysis

By definition, the expression 'other territory' is inclusive of all territories that do not form part of any State (including the UTs of Delhi, Puducherry and Jammu & Kashmir), and excludes the five UTs without Legislature listed under clauses (i) to (v) of the definition.

However, 'State' under the GST law is defined under the CGST Act to include a Union Territory with Legislature. Delhi, Puducherry and Jammu & Kashmir, being UTs with Legislature, will be regarded as 'States' for GST, and will be governed by their respective SGST laws, instead of the UTGST law.

All territories that fall into the ambit of 'other territory' would also form part of the meaning of the term 'Union territory'. The purpose of this inclusion is to ensure that any Indian territory that remains unclaimed by all the States and Union Territories can be brought into the scope of GST. Although there is no specific indication that the extent of the term should be limited to the territory of India, locations outside India cannot be said to fall into the scope of 'other territory' defined above, as it would defeat the purpose of law.

(9) ''Union territory tax'' means the tax levied under this Act;

It refers to the tax charged under this Act on intra-State supply of goods or services or both, in addition to the tax levied under the CGST law. The rate of UT tax is capped at 20% and will be notified by the Central Government based on the recommendation of the GST Council.

(10) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, the State Goods and Services Tax Act, and the Goods and Services Tax (Compensation to States) Act, shall have the same meaning as assigned to them in those Acts.

Certain words and expressions like person, supplier, recipient, intra-state supply, reverse charge, cess, place of supply etc. defined in the CGST/ SGST/ IGST laws will have the same meaning for UTGST law.

Chapter 2
Administration

Statutory provision

3. Officers under this Act

The Administrator may, by notification, appoint Commissioners and such other class of officers as may be required for carrying out the purposes of this Act and such officers shall be deemed to be proper officers for such purposes as may be specified therein:

Provided that the officers appointed under the existing law shall be deemed to be the officers appointed under the provisions of this Act.

4. Authorisation of officers

The Administrator may, by order, authorise any officer to appoint officers of Union territory tax below the rank of Assistant Commissioner of Union territory tax for the administration of this Act.

5. Powers of officers

(1) Subject to such conditions and limitations as the Commissioner may impose, an officer of the Union territory tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of a Union territory tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of a Union territory tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of Union territory tax.

6. Authorisation of officers of Central Tax as proper officer in certain circumstances

(1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1), —

(a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

(b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.

Introduction

Union Territory without a legislature enjoys laws passed by Parliament. The UTGST Act is one where the law is by the Parliament but its administration is left with the Administrator of the Union Territory.

Analysis

Without being bound by the rigours and specificity of executive officers under the CGST Act, the UTGST Act empowers the Administrator to issue a notification appointing one or more Commissioners and such other class of officers as required.

The Administrator is also empowered to authorise an officer to appoint officers of UT tax lower in rank than the Assistant Commissioner as required. Commissioners appointed by the Administrator are empowered to impose conditions and limitations necessary in the discharge of functions by the officers of UT Tax. A superior officer is permitted to discharge the functions and exercise the authority conferred on a subordinate officer. Interestingly, we do not find such flexibility in the CGST Act and the IGST Act. Not only does this Act prescribed the Assuming of power by a superior officer but also permits delegation of vested powers to be exercised by any other officer of UT Tax. Appellate Authorities under this Act are denied the flexibility of such appropriation or delegation of power vested in them.

Continuing with efficiency in tax administration, without causing any prejudice to the UT Tax Act, officers under the CGST Act are authorised to be officers under this Act. This is permitted

only upon the recommendation of the Council and subject to any conditions that may be imposed by the Administrator.

Where officers under this Act initiate any proceedings, said officers shall proceed to pass orders not only in respect of UT Tax but also in respect of Central Tax. Where such conjoined proceedings are underway, the said officers are expected to intimate officers of Central Tax. Similarly, where proceedings initiated by officers in respect of Central tax, the underlying transaction or the taxable base being the same, such officers under the CGST Act, are required to pass orders addressing demands in respect of UT Tax arising from the common underlying transactions. Whichever officer initiates any proceedings will determine the law and forum for exercising lawful jurisdiction in respect of rectification, appeal and revision.

Chapter 3
Levy and Collection of Tax

7.	**Levy and Collection**
8.	**Power to grant exemption from tax**

Statutory provisions

7. Levy and collection

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, [3][and un-denatured extra neutral alcohol or rectified spirit which is used for manufacture of alcoholic liquor, for human consumption] on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding twenty per cent., as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The Union territory tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Central Government on the recommendations of the Council.

(3) The Central Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) [4][The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both].

(5) The Central Government may, on the recommendations of the Council, by notification,

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[3] Inserted vide The Finance (No. 2) Act, 2024 dated 16.08.2024 w.e.f. 01.11.2024.

[4] Substituted vide The Union Territory Goods and Services Tax (Amendment) Act, 2018 read with Notification No. 1/2019 - Union Territory Tax, dt. 29.01.2019 - w.e.f. 01.02.2019

specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and, he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for paying tax and such person shall be liable to pay tax.

7.1. Introduction

a) The Constitution mandates that no tax shall be levied or collected by a taxing Statute except by authority of law. While no one can be taxed by implication, a person can be subject to tax in terms of the charging section only.

b) Section 7 is the charging provision of the UTGST Act. It provides that all intra-State supplies would be liable to UTGST subject to a ceiling rate of 20%. The levy is on all goods or services or both except on the supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit which is used for manufacture of alcoholic liquor, for human consumption. Besides, GST may be levied on the supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel with effect from such date as may be notified by the Central Government after recommendation of the Council. It also provides for the value on which tax shall be paid, the maximum rate of tax applicable on such supplies, the manner of collection of tax by the Government and the person who will be liable to pay such tax. The provision of this section is comparable to the provisions of section 9 of the CGST Act.

c) Under the UTGST law, the levy of tax is as follows:

   (a) In the hands of the supplier - on the supply of goods and / or services (referred to as tax under forward charge mechanism*)*;

   (b) In the hands of the recipient - on receipt of goods and / or services (referred to as tax under reverse charge mechanism*)*

   (c) In the hands of electronic commerce operator - on services specified under section 7(5) supplied by the suppliers through such electronic commerce operator.

(d) Normally, the supplier of goods or services or both are liable to discharge tax on the supplies effected. However, in specific cases (as may be notified), the onus of payment of tax is shifted to the recipient of goods and/or services.

As per section 7(3) of the UTGST Act, the Central Government is empowered to specify categories of supplies in respect of which the recipient of goods or services or both will be liable to discharge the tax.

Accordingly, all other provisions of this Act and the CGST Act, as applicable, will apply to the recipient of such goods or services or both, as if the recipient is the supplier of such goods or services or both – viz., for the limited purpose of such transactions, the recipient would be deemed to be the 'supplier'.

Further, section 7(4) of the UTGST Act provides that when specified category of goods &/ services are supplied by a supplier, who is un-registered person to a receiver, who falls under specified class of registered person, the liability to pay tax on such supplies will be on recipient under reverse charge basis. Thus, specified class of registered person would be required to pay GST on all such specified supplies received by it from un-registered persons. Reverse charge mechanism is applicable on registered recipient of goods/services falling under specified class of registered person receiving such good/services from an un-registered person.

d) Additionally, where any supply of services is effected through e-commerce operators, the law provides that the Central Government may on recommendations of the Council notify specify categories of services the tax on intra-State supplies of which shall be paid by the e-commerce operator. Further, where the e-commerce operator:

(a) does not have a physical presence then the person who represents the e-commerce operator will be liable to pay tax.

(b) does not have a physical presence or a representative, then the e-commerce operator is mandatorily required to appoint a person who will be liable to pay tax.

And all the provisions of the UTGST Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

e) In so far as e-commerce operators are concerned, care must be exercised to determine the nature of business of such operators. Essentially, there are four models of e-commerce business:

(a) Market-place – Under marketplace model, operator provides the infrastructure and tools for transactions, such as payment processing, shipping, and customer service. Sellers compete with each other, and buyers can find a variety of items without having to go to multiple online stores. Examples include, Amazon, ebay, Airbnb, etc. The question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 52.

(b) Fulfilment centre – A fulfilment centre is the location where the seller or a company, hires to outsource their fulfilment, a third-party logistics (3PL) provider, fulfils customer orders placed through an e-commerce store (also known as direct-to-consumer) and/or business-to-retail fulfilment where the seller fulfils wholesale orders to big box retailers. The main function of a fulfilment centre is to manage the seller's inventory, store the inventory, ship orders directly to customers and/or retailers, and assist sellers in managing the entire vital, yet often difficult fulfilment operation. Here, the States have been contesting that this model is one involving 'buy-sell' and accordingly liable to GST. The test here is to establish the fact that the supply is by supplier directly to the end customer and not 'through' the e-commerce operator.

(c) Hybrid (of above 2) – all though not widely prevalent, this is a case where both buy-sell as well as market-place models are employed. It is important for such business to clearly establish which side of the fence they would prefer to fall on so that the respective incidence of tax follows.

(d) Agency – this is employed by few businesses involving supply of industrial inputs. The *modus operandi* is that the principal logs in to the portal and routes the supplies to the end customer. The agreements are so framed that the e-commerce operator becomes responsible for the delivery and collection of payment. This renders the e-commerce operator to constitute an agency. Such arrangements need to be vetted to ensure the inference of agency that emerges if it is not so desired, then the same may be redrafted suitably. Schedule I of the CGST Act states that transactions between principal and agent are deemed to be a supply and liable to tax. This consequence may be borne in mind even by e-commerce businesses.

7.2 Analysis

The discussion of Levy under section 9 of the CGST Act made in this book may be referred for detailed analysis.

Levy of tax: Every intra-State supply will be liable to tax, if:

(a) Supply should involve goods or services or both viz., wholly goods or wholly services or both viz.,

Even where a supply involves both, goods and services, the law provides that such supplies would be classifiable either as, wholly goods or wholly services. The reference to be made to Schedule II of the CGST Act which provides for this classification.

(b) The supply is an intra-State supply – viz., ordinarily, the location of the supplier and the place of supply is in same Union Territory. (Refer Section 8 of the IGST Act to understand the meaning of intra-State supply);

(c) The tax shall be payable by a 'taxable person' as explained in the definition section 2(107) and explained in sections 22 & 24 of CGST Act.

Tax shall be payable by a 'taxable person': The tax shall be payable by a 'taxable person' i.e., person/ separate establishments of persons registered or liable to be registered under sections 22 and 24 of the CGST Act.

Rate and value of tax: The rate of tax will be as specified in the notification that would be issued in this regard, subject to a maximum of 20%. The rates would be determined based on the recommendation of the Council and the rate of tax so notified will apply on the value of supplies as determined under section 15 of the CGST Act.

Supply:

Refer discussion under Chapter III of the CGST Act for a detailed understanding of the expression 'supply'. Additionally, the provisions relating to 'composite supply' and 'mixed supply' and 'reverse charge' will equally apply for supplies taxable under the UTGST Act.

Transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST. However, under the GST law, it would be taxable as a supply. Further, free supplies were liable to excise duty, while under the GST laws, free supplies require reversal of input tax credit.

7.3 Related provisions

Statute	Section	Description
CGST	Section 7 read with Schedule I, II and III	Definition of 'supply'
CGST	Section 2(17)	Definition of 'business'
CGST	Section 2(107)	Meaning of 'taxable person'
CGST	Section 2(31)	Meaning of 'consideration'
IGST	Section 8	Meaning of intra-State supplies
UTGST	Section 7	Levy and collection of UTGST

7.4 FAQs

Q1. Is the reverse charge mechanism applicable only to services?

Ans. No. Reverse charge applies to supplies of goods as well as services.

Q2. What will be the implications in case of purchase of specified categories of goods (specified by Government) from unregistered person?

Ans. The receiver of goods would be liable to pay tax under reverse charge.

7.5 MCQs

Q1. As per section 7, which of the following would attract levy of UTGST?

(a) Inter-State supplies

(b) Intra-State supplies

(c) Any of the above

(d) None of the above

Ans. (b) Intra-State supplies

Q2. Who can notify a supply to be taxed under reverse charge basis?

(a) Board

(b) Central Government, on the recommendations of the Council

(c) GST Council

(d) None of the above

Ans. (b) Central Government, on the recommendations of the Council

Statutory provisions

8. Power to grant exemption from tax

(1) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Central Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(4) Any notification issued by the Central Government under sub-section (1) of section 11 or order issued under sub-section (2) of the said section of the Central Goods and Services Tax Act shall be deemed to be a notification or an order issued under this Act.

Explanation - For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, more than the effective rate, on such supply of goods or services or both.

8.1 Introduction

This section states that the Central Government may grant exemptions for intra-State supply of goods and / or services within a Union Territory. Reference may also be made to section 11 of the CGST Act and section 6 of the IGST Act for a detailed analysis.

8.2 Analysis

The Central Government will be empowered to grant exemptions from payment of UTGST on intra-State supplies within Union Territory, subject to the following conditions:

(i) Exemption should be in public interest

(ii) By way of issue of notification

(iii) On the recommendation from the Council

(iv) Absolute / conditional exemption may be for any goods and / or services

(v) Exemption by way of special order for a particular case/ cases (and not notification) may be granted by citing the circumstances which are of exceptional nature.

- With specific reference to the fourth condition indicated above, it is important to note that the exemption would only be in respect of goods and / or services, and not specifically for class of persons.
- It is to be noted that in cases where goods and/or services are exempt absolutely, no input tax credit can be claimed.
- Mandatory nature of absolute exemptions has been litigated in the past and where tax is paid even though exemption is available, credit becomes admissible. For this reason, even inadvertence in not availing such absolute exemptions are made inexcusable. As such, credit denial also becomes absolute. No plea of equity or revenue neutrality becomes admissible.
- There is generally not much doubt about exemptions – whether absolute or conditional – because the condition associated may be examined at one-time or continuously to be satisfied. Conditional exemptions abate if the associated condition is not complied. Care should be taken not to mistake conditional exemption with absolute exemption having specific applicability.
- There is a view that in case of conditional exemptions, it could operate as an optional exemption such that the taxable person may pay higher rate of tax (so that there would be no requirement for input tax credit reversals). However, an

absolute exemption is required to be followed mandatorily. The other view is that exemptions would not be optional and would be mandatory and the associated conditions are also mandatorily to be satisfied.

- In terms of sub-section (2) of section 8 of the UTGST Act, the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order. While this provision is welcome, trade and industry are apprehensive that this could be used without adequate superintendence.
- To provide more clarity to the exemption notification or the special order, it is provided that the Government may issue an "Explanation" at any time within a period of 1 year from the date of notification or special order. The effect of this "Explanation" would be retrospective, viz., from the effective date of the relevant notification or special order.
- The law makes it clear that when the exemption is absolute (i.e., if whole or part of tax leviable is exempt) the registered person cannot collect taxes more than the effective rate.

Exemption under section 11 of the CGST/SGST Act equally applicable

Any exemption notification or special order issued under section 11 of the CGST Law will apply equally for intra-UT supplies, viz., any supply of goods or services or both which are exempt under CGST Law will be exempt even under the UTGST Law.

Effective date of the notification or special order

The effective date of the notification or the special order would be the date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette. It follows that such notification/ order shall be made available on the official website of the Department of the Central Government.

8.3 Related provisions

Statute	Section	Description
CGST	Section 11	Power to grant exemption from tax (Exemption from payment of CGST)
IGST	Section 6	Power to grant exemption from tax (Exemption from payment of IGST)
UTGST	Section 8	Power to grant exemption from tax

Chapters of UTGST Act covered under CGST Act / IGST Act

Sl. No.	Chapter No. / Heading – UTGST	Sections No. – UTGST	Description
1	IV – Payment of tax	9	Payment of tax
		10	Transfer of input tax credit
2	V – Inspection, Search, Seizure and Arrest	11	Officers required to assist proper officers
3	VI – Demands and Recovery	12	Tax wrongfully collected and paid to the Central Government or UT Government
		13	Recovery of tax
4	VII – Advance Ruling	14	Definitions
		15	Constitution of Authority for Advance Ruling
		16	Constitution of Appellate Authority for Advance Ruling
5	VIII – Transitional Provisions	17	Migration of existing tax payers
		18	Transitional arrangements for input tax credit
		19	Transitional provisions relating to job work
		20	Miscellaneous transition provisions
6	IX- Miscellaneous	21	Application of provisions of CGST Act
		22	Power to make rules
		23	General power to make regulations
		24	Laying of rules, regulations and notifications
		25	Power to issue instructions or directions
		26	Removal of difficulties

- The sections cited *supra* other than the provisions relating to Chapter IX - Miscellaneous are discussed in the relevant sections of CGST / IGST laws wherever deemed fit.
- Provisions of Chapter IX - Miscellaneous other than section 21 of the UTGST Act are similar to the provisions as discussed in the context of IGST Act. There is an additional provision (section 25 under the UTGST Act), which deals with Commissioner's power to issue instructions or directions, which is similar to section 168 of the CGST Act. Readers are requested to refer to the said provisions in this context.
- Section 20 of the UTGST Act *inter-alia* provides that subject to the provisions of the UTGST Act and the rules made thereunder, the provisions of the CGST Act, relating to following shall, *mutatis mutandis* apply.

The discussions on the following provisions have been provided in the CGST Act in the relevant chapters/sections:

(*i*)	scope of supply;
(*ii*)	composition levy;
(*iii*)	composite supply and mixed supply;
(*iv*)	time and value of supply;
(*v*)	input tax credit;
(*vi*)	registration;
(*vii*)	tax invoice, credit and debit notes;
(*viii*)	accounts and records;
(*ix*)	returns;
(*x*)	payment of tax;
(*xi*)	tax deduction at source;
(*xii*)	collection of tax at source;
(*xiii*)	assessment;
(*xiv*)	refunds;
(*xv*)	audit;
(*xvi*)	inspection, search, seizure and arrest;
(*xvii*)	demands and recovery;
(*xviii*)	liability to pay in certain cases;
(*xix*)	advance ruling;

(*xx*)	appeals and revision;
(*xxi*)	presumption as to documents;
(*xxii*)	offences and penalties;
(*xxiii*)	job work;
(*xxiv*)	electronic commerce;
(*xxv*)	settlement of funds;
(*xxvi*)	transitional provisions; and
(*xxvii*)	miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

It is important to note that the UTGST Act is legislated by the Central Government and the corresponding rules would also be legislated under its authority.

Note:

The following rules are common to all UTGST Acts i.e., Lakshadweep, Andaman & Nicobar, Dadra & Nagar Haveli and Daman & Diu, Chandigarh and Ladakh.

Rule 1: Short title and Commencement.

(1) These rules may be called the Union Territory Goods and Services Tax (Andaman and Nicobar Islands) Rules, 2017.

(2) They shall come into force with effect from the 1st day of July, 2017.

Rule 2: Adaptation of Central Goods and Services Tax Rules, 2017.

(1) The Central Goods and Services Tax Rules, 2017, in respect of scope of supply, composition levy, composite supply and mixed supply, time and value of supply, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, returns, payment of tax, tax deduction at source, collection of tax at source, assessment, refunds, audit, inspection, search, seizure and arrest, demands and recovery, liability to pay in certain cases, advance ruling, appeals and revision, presumption as to documents, offences and penalties, job work, electronic commerce, settlement of funds, transitional provisions, and miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall, mutatis mutandis, apply except the following rules:-

Rules	**Particulars**
Rule 90 (4) of CGST Rules 2017	Acknowledgement
Second proviso to Rule 117 (1) of CGST Rules 2017	Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed.
Rule 119 of CGST Rules 2017	Declaration of stock held by a principal and job-worker

(a) **Analysis of the Amendment to the Rules: For Amendment of Rule 90(4) of the CGST Rules 2017 for the purpose application of UTGST Rules**

Rule 90 (4) of the CGST Rules 2017 earlier read as under:

"(4) Where deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Services Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3)".

The amended rule shall read as under:

"(4) Where deficiencies have been communicated in FORM GST RFD-03 under the Central Goods and Services Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).";

The aforesaid rules have been amended to the extent of for the words *State Goods and Services Tax Rules, 2017* shall be read as *Central Goods and Services Tax Rules, 2017* in line with the CGST Rules.

(b) **Amendment to Rule 117 of the CGST Rules 2017 for the purpose of application of UTGST Rules**

(i) The second proviso to rule 117(1) of the UTGST Rules, 2017 *inter-alia* provides obligation to file details of Transitional claim in respect of Forms received and pending with regards to declarations in Form C or Form F and certificates in Form E, Form H or Form I as specified in Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

(ii) Further, in terms of rule 117(4) of the CGST Rules 2017, a registered person who was not registered under the existing law shall be eligible to avail credit. However, this provision has not been made applicable under the UTGST Rules.

(c) **For Amendment to the Rule 119 of CGST Rules 2017 for the purpose of application of UTGST Rules**

Rule 119 of UTGST Rules 2017 provides that the declaration of stock held by principal and agent shall be within 90 days of the appointed day (w.e.f. 01.07.2017) submitted electronically in Form GST TRAN-1. Section 142(14) is not traceable to the CGST Act, 2017, as a corollary one may have to fall back on the SGST Legislation.

Other rules of UTGST shall be same as of the CGST Rules, 2017

Explanation:- For the purposes of these rules, it is hereby clarified that all references to section 140 of the CGST Act, 2017, shall be construed to refer to section 18 of the UTGST Act, 2017.

Statutory provisions

[5] ***[8A. Power not to recover Goods and Services Tax not levied or short-levied as a result of general practice.***

Notwithstanding anything contained in this Act, if the Government is satisfied that––

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

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

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

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

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

NOTE – *For Analysis, readers may refer to the analysis under section 11A of the CGST Act, 2017.*

[5] *Inserted vide the Finance (No. 2) Act, 2024 dated 16.08.2024 w,e,f, 01.11.2024.*

GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017

GOODS AND SERVICES TAX (COMPENSATION TO STATES) ACT, 2017

The Goods and Services Tax (Compensation to States) Act, 2017 ("**the GST Compensation Act**") provides a mechanism to compensate the States on account of loss of revenue which may arise due to implementation of the Goods and Services Tax read together with the Constitutional (One Hundred and First Amendment) Act, 2016, for a period of 5 years.

This Act, *inter-alia* provides:

(a) That the base year during the transition period shall be reckoned as the financial year 2015-16 for the purpose of calculating compensation amount payable to the States;

(b) That the revenue proposed to be compensated would consist of revenues from all taxes that stands subsumed into the GST law, as audited by the Comptroller and Auditor General of India;

(c) For reckoning the growth rate of revenue subsumed for a State at 14% per annum;

(d) That the compensation will be released bi-monthly based on the provisional numbers furnished by the Central Accounting Authorities and the final adjustment to be done after the accounts are subjected to audit by CAG;

(e) That the revenue foregone on account of grant of exemption in the special categories State (Article 279A), be counted for the purpose of determining revenue for the base year 2015-16;

(f) That the revenue of States directly devolved to Mandi / Municipalities would be considered as revenue subsumed;

(g) Levy of a cess over and above the GST on certain notified goods to compensate States for 5 years on account of revenue loss suffered by them;

(h) That the proceeds of the cess will be utilised to compensate States that warrant payment of compensation;

(i) That 50% of the amount remaining unutilised in the fund at the end of the fifth year will be transferred to the Centre and the balance 50% would be distributed amongst the State and Union Territories in the ratio of total revenues from SGST / UTGST of the fifth year;

(j) That 50% of the amount remaining unutilised in the fund, at any point of time in any financial year during the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance 50% shall be distributed amongst the States in the ratio of their base year revenue.

Relevant provisions of the GST Compensation Act warranting attention are reproduced below:

2. Definitions:

(c) "cess" means the goods and services tax compensation cess levied under section 8;

(g) "input tax" in relation to a taxable person, means:

(i) the cess charged on any supply of goods or services or both to him;

(ii) the cess charged on import of goods, and includes the cess payable on reverse charge basis;

(p) "taxable supply'' means a supply of goods or services or both which is chargeable to the cess under this Act;

8. Levy and Collection of Cess

(1) There shall be levied a cess on such intra-State supplies of goods or services or both, as provided for in section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in section 5 of the Integrated Goods and Services Tax Act, and collected in such manner as may be prescribed, on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the provisions of the Central Goods and Services Tax Act is brought into force, for a period of five years or for such period as may be prescribed on the recommendations of the Council :*

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Services Tax Act.

**This 5 years period has been further extended by Notification 1/2022-Compensation for a further period up to 31st March 2026 by introduction of Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022.*

(2) The cess shall be levied on such supplies of goods and services as are specified in column 2 of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set-forth in the corresponding entry in column 4 of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazette, specify.

Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under Section 15 of the Central Goods and Services Tax Act for intra-State and inter-State supplies of goods or services or both.

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975(51 of 1975), at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 (52 of 1962), on a value determined under the Customs Tariff Act, 1975.

*[1][**Section 8A. Power not to recover cess not levied or short-levied as a result of general practice.***

Notwithstanding anything contained in this Act, if the Government is satisfied that–

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

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

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

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

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

9. Returns, Payments and Refunds

(1) Every taxable person registered making a taxable supply of goods or services or both, shall –

(a) Pay the amount of cess as payable under this Act in such manner;

(b) Furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and

(c) Apply for refunds of such cess paid in such form, as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Services Tax Act and the rules made thereafter, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of Central Tax on such supplies under the said Act or the rules made thereunder.

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[1] Inserted vide the Finance (No. 2) Act, 2024, notified through Notification No. 17/2024 – CT dated 27.09.2024, w.e.f. 01.11.2024.

10. Crediting proceeds of Cess to Fund

(1) The proceeds of the cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.

(2) All amounts payable to the States under section 7 shall be paid out of the Fund.

(3) Fifty per cent. of the amount remaining unutilised in the Fund at the end of the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their total revenues from the State tax or the Union territory goods and services tax, as the case may be, in the last year of the transition period.

[2][(3A) Notwithstanding anything contained in sub-section (3), fifty per cent. of such amount, as may be recommended by the Council, which remains unutilised in the Fund, at any point of time in any financial year during the transition period shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance fifty per cent. shall be distributed amongst the States in the ratio of their base year revenue determined in accordance with the provisions of section 5:

Provided that in case of shortfall in the amount collected in the Fund against the requirement of compensation to be released under section 7 for any two months' period, fifty per cent. of the same, but not exceeding the total amount transferred to the Centre and the States as recommended by the Council, shall be recovered from the Centre and the balance fifty per cent. from the States in the ratio of their base year revenue determined in accordance with the provisions of section 5.]

(4) The accounts relating to Fund shall be audited by the Comptroller and Auditor General of India or any person appointed by him at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government to the Comptroller and Auditor-General of India.

(5) The accounts of the Fund, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of Parliament

[2] Inserted vide The Goods and Services Tax (Compensation to States) Amendment Bill, 2018 read with Notification No. 1/2019 – Goods and Services Tax Compensation dated 29.01.2019 - w.e.f. 01.02.2019.

11. Other Provisions Relating to Cess

(1) The provisions of the Central Goods and Services Tax Act and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of Central Tax on such intra-State supplies under the said Act or the rules made thereunder.

(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of Integrated Goods Tax on such inter-State supplies under the said Act or the rules made thereunder.

Provided that the input tax credit in respect of cess on supply of goods and services leviable under Section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said Section.

12. Power to make rules.

(1) The Central Government shall, on the recommendations of the Council, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the conditions which were included in the total base year revenue of the States, referred to in sub-clause (g) of clause (4) of article 279A of the Constitution, under sub-section (3) of section 5;

(b) the conditions subject to which any part of revenues not credited in the Consolidated Fund of the respective State shall be included in the total base year revenue of the State, under sub-section (6) of section 5;

(c) the manner of refund of compensation by the States to the Central Government under sub-section (6) of section 7;

(d) the manner of levy and collection of cess and the period of its imposition under sub-section (1) of section 8;

(e) the manner and forms for payment of cess, furnishing of returns and refund of cess under sub-section (1) of section 9; and

(f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

13. Laying of rules before the Parliament

Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, 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 both Houses agree that the rule should not be made, the rule 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.

14. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, on the recommendations of the Council, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of [3][five years] from the commencement of this Act.

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

Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022[4]

Short title and commencement.-

1. (1) These rules may be called the Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022.

(2) They shall come into force with effect from the 1st day of July, 2022.

Period for levy and collection of Cess.-

2. The period for levy and collection of cess under sub-section (1) of section 8 of the Goods and Services Tax (Compensation to States) Act, 2017 shall be up to the 31st March, 2026.

[3]*Substituted vide Finance Act, 2020 dated 27-03-2020. Before it was read as "three years".*
[4] *Inserted vide Notification. No. 01/2022-Compensation Cess dt. 24.06.2022.*

Salient features of the GST Compensation Act:

I. Levy of cess:

- GST Compensation Cess (under section 8 of the Act) will be levied on all intra-State and inter-State supplies of goods or services or both, including import of goods.
- The cess shall be levied on supplies based on value, quantity or such rate not exceeding the rate stipulated in Schedule of the GST Compensation Act. The extract of this Schedule is as under:

S. No.	***Description of supply of goods or services***	***Tariff item, heading, sub-heading, Chapter, or supply of goods or services, as the case may be***	***The maximum rate at which goods and services tax compensation cess may be collected***
(1)	*(2)*	*(3)*	*(4)*
1.	*Pan Masala.*	*2106 90 20*	*135% ad valorem.*
2.	*Tobacco and manufactured tobacco substitutes, including tobacco products.*	*24*	*Rs. 4170 per 1000 sticks or 290% ad valorem or a combination thereof, but not exceeding Rs. 4170 per 1000 sticks plus 290 % ad valorem*
3.	*Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite, whether or not agglomerated, excluding jet, peat (including peat litter), whether or not agglomerated.*	*2701, 2702 or 2703*	*Rs. 400 per tonne.*
4.	*Aerated waters.*	*2202 10 10*	*15% ad valorem.*

4A	*Motor vehicles for the transport of not more than 13 persons, including the driver.*	*8702 10, 8702 20, 8702 30 or 8702 90*	*25 % ad valorem.*
5.	*Motor cars and other motor vehicles principally designed for the transport of persons (other than motor vehicles for the transport of ten or more persons, including the driver), including station wagons and racing cars.*	*8703*	*25 % ad valorem.*
6.	*Any other supplies.*		*15 % ad valorem.*

- It may be noted that the actual rates of cess are provided vide *Notification No.1/2017-Compensation Cess (Rate) dated 28.06.2017*.

- The Cess would not be leviable on supplies made by a person who has opted for Composition levy.
- Those supplies that are liable to tax with reference to their value (i.e., all supplies except coal, briquettes and similar solid fuels), are to be determined based on the valuation provisions under section 15 of the CGST Act.
- The cess levied under this Act would be payable over and above the CGST, SGST/UTGST and IGST tax leviable on. Cess would be levied on whole value exclusive of GST i.e., for Transaction value as per section 15 is Rs. 100 and GST Rate is 18% then Cess would be levied on Rs. 100 Calculation would be Rs. 100+18% GST+ % Compensation Cess (as specified).
- The cess on goods imported into India
  - shall be levied and collected as per section 3 of the Customs Tariff Act, 1975,
  - at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962,
  - on a value determined under the Customs Tariff Act, 1975.
- **Dealer of second-hand goods:** The levy of Cess has been exempted on intra-State procurement of second-hand goods from an un-registered supplier when purchased by a registered person dealing in buying and selling of second-hand goods and who pays

the Cess on the margin basis of computation envisaged under rule 32(5) of the CGST Rules.

- **Old and used Motor Vehicles**: With effect from 13.10.2017, the Central Government reduced the rate of Cess to 65% which is otherwise payable on supply of motor vehicles which are purchased or leased before July 1, 2017 subject to the condition that such supplier has not availed input tax credit of Central Excise Duty or VAT or any other taxes paid thereon.

  With effect from 25.01.2018, as a further relief measure, the Central Government has prescribed 'NIL' rate of Cess on supply of all old and used motor vehicles on which supplier has not availed CENVAT or VAT credit under the earlier regime or input tax credit in GST regime.

  The scope and applicability of the notifications issued in respect of old and used motor vehicles (MV), can be better understood by a comparative analysis as summarised below:

Particulars	***Notification No. 7/2017– Compensation Cess (Rate) dated 13.10.2017***	***Notification No. 1/2018 Compensation Cess (Rate) dated 25.01.2018***
Scope	a. MV purchased and leased prior to July 1, 2017 which are continued to be leased in GST regime b. MV purchased prior to July 1, 2017 and supplied in GST regime	All old and used MVs Note: 1. Not applicable on lease transactions. 2. Can be purchased either before or after July 1, 2017
Rate of Cess	65% of Cess payable	NIL
Condition	Input tax credit (ITC) of Central Excise duty, VAT or any other taxes paid is not taken	ITC not taken in GST regime or CENVAT credit or VAT credit not availed in earlier regime

- **Concessional rate of compensation cess in case of Merchant Export**

  Notification No. 01/2025-Compensation Cess (Rate) dated 16.01.2025, has been issued regarding the concessional rate of compensation cess for the supply of taxable goods intended for export under the GST framework. This notification provides that intra-state and inter-state supplies of goods meant for export will be subject to a reduced compensation cess of 0.1%, significantly lowering the cost burden for exporters. Issued under the authority of the CGST Act, IGST Act, and GST (Compensation to States) Act, and based on the recommendations of the GST Council

The exemption is subject to fulfilment of the following conditions, namely: -

(i) The registered supplier shall supply the goods to the registered recipient on a tax invoice;

(ii) The registered recipient shall export the said goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier;

(iii) The registered recipient shall indicate the Goods and Services Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;

(iv) The registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce;

(v) The registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;

(vi) The registered recipient shall move the said goods from place of registered supplier –

  (a) directly to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported; or

  (b) directly to a registered warehouse from where the said goods shall be move to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported;

(vii) If the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Deport, Airport or Land Customs Station from where they shall be exported;

(viii) In case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

(ix) When goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

- **Refund of Cess upon Export:**

  The exporter will be eligible to claim refund of Cess paid under the Act on export of goods on the similar lines as refund of IGST paid on exports. Further, Cess will not be charged on goods exported by an exporter under bond / LUT and refund of input tax credit of Cess relating to goods exported will be available on similar lines as refund of input taxes in relation to zero-rated supplies.

  As per *Notification No. 3/2019 – Compensation Cess (Rate) dated 30.09.2019* for Tobacco and manufactured tobacco substitutes, no refund of unutilised input tax credit of compensation cess shall be allowed, where the credit has accumulated on account of rate of compensation cess on inputs being higher than the rate of compensation cess on the output supplies of such goods (other than nil rated or fully exempt supplies). Therefore, in case of inverted duty structure no refund is allowed.

Section 8A. Power not to recover cess not levied or short-levied as a result of general practice.

The Finance (No. 2) Act, 2024, has introduced Section 8A to the Goods and Services Tax (Compensation to States) Act, 2017, granting the government discretionary authority to waive the recovery of cess that was either not levied or was levied at a lower rate due to a commonly followed practice. This section acknowledges instances where certain practices were, or are, prevalent regarding the levy of cess and have become widely accepted, even if they do not fully align with legal requirements.

NOTE – *For details, readers may refer to the analysis under section 11A of the CGST Act, 2017.*

II. Determination of Base Year Revenue:

- The Compensation amount to be paid in any year during the transition period is to be computed taking the base year as 2015-16 only.
- The provisions of section 5(1) of the said Act lists the taxes imposed by State / Union that stand subsumed into the GST while the proviso to Section 5(1) lists out the taxes that shall not be included for calculation of base year revenue. The revenue collected by the States on account of the said taxed detailed in Section 5(1) of the Act alone would be considered for the determination of Base Year Revenue;
- The revenue collected would always be reckoned as 'net of refunds';
- The transition period will be the period of 5 years from the date when the respective SGST Acts commence.

  Projected Revenue for any year in a State can be calculated by applying the growth rate over the base year revenue of that State. For instance, if the base year revenue for

2015-16 for a concerned State calculated as per Section 5 is INR 10,000, then the projected revenue for FY 2017-18 shall be as follows:

Revenue for FY 2017-18= $(10000*(1+0.14)^2)$

where,

(a) 14% p.a. is the projected nominal growth rate u/s 3 of the GST (Compensation to States) Act, 2017.

(b) Future value is calculated using the time value of money formula i.e. $FV= PV*(1+r)^n$.

(c) base year has been considered as 2015-16 (Section 4 of the GST (Compensation to States) Act, 2017.

III. Input Tax Credit and returns:

- Input tax credit on inward supplies liable to cess can be utilized only for payment of cess on outward supplies liable to cess under the Act.
- A taxable person effecting supplies chargeable to cess is required to file returns along with the returns prescribed under the CGST Act.

IV. General

All provisions of the CGST Act and the IGST Act and the rules made thereunder, including input tax credit, assessment, appeals, offences, penalties, interest, non-levy and short levy will apply in relation to the levy and collection of cess on intra-State and inter-State supply, respectively.

***The Finance Act, 2023 has* amended the Schedule to the Goods and Services Tax (Compensation to States) Act, 2017. The maximum rate at which GST Compensation Cess may be collected for items such as pan masala, tobacco and manufactured tobacco substitutes, including tobacco products have been revised and linked with retail sale price. Accordingly, a new explanation defining the scope of 'retail sale price' was proposed to be inserted therein.**

Amendments to the Schedule to the GST (Compensation to States) Act, 2017 brought into force from 1st April, 2023

Amendments made in the Schedule to the Goods and Services Tax (Compensation to States) Act, 2017 by section 163 of the Finance Act, 2023 have been brought into force w.e.f. 01.04.2023 vide *Notification No. 01/2023-Compensation Cess dt. 31.03.2023.* The Schedule has been amended to revise the maximum rate at which GST Compensation Cess shall be collected for items such as pan masala, tobacco and manufactured tobacco substitutes,

including tobacco products and to link the same with retail sale price. A new explanation defining the scope of 'retail sale price' has also been inserted therein.

Further, *Notification No. 01/2017-Compensation Cess (Rate) dt. 28.06.2017* which specifies the rate of GST Compensation Cess on goods has been amended vide *Notification No.2/ 2023-Compensation Cess (Rate) dt. 31.03.2023.*

NOTE ON STATE GST LAWS & RULES

In the scheme of overall implementation of GST, the Parliament enacted Central GST Act, Integrated GST Act, Union Territory GST Act (which is a single law enacted by the Parliament in respect of all the 5 Union Territories without legislature). Ladakh will also be included along with Union territories without legislature and when it comes to State GST Acts, each of the State legislatures are to enact their respective State GST enactments and frame Rules thereunder.

The GST law shall have two components: one levied by the Centre (referred to as Central GST or CGST) and the other levied by the States (referred to as State GST or SGST). Rates for Central GST and State GST would be approved appropriately, reflecting revenue considerations and acceptability.

As discussed in this background material in detail, on intra-State supply of goods or services, two levies would stand attracted, i.e.,

i) Central GST and State GST in case of States and Union Territories with legislature (Delhi, Puducherry and Jammu and Kashmir);

ii) Central GST and Union Territory GST in case of Union Territories (5 Union Territories).

When the same transaction attracts two taxes, both the enactments should operate simultaneously. In that direction, the GST Council provided to all the States, a version of State GST law for enactment in the respective States. It is needless to say that all the States have more or less followed the CGST Act to enact their State level GST laws. In respect of certain goods which still attract Value Added Taxes / Central Sales tax in respect of a transaction of sale, some States have still retained certain powers through the “repeal and savings provision” in the State Level GST enactments.

The CGST and the SGST would be applicable to all transactions for intra-State supply of goods and services made for consideration except the exempted goods and services.

Cross utilization of ITC both in case of inputs and capital goods between CGST and SGST is not permitted.

The Centre and the States would have concurrent jurisdiction for the entire value chain and for all taxpayers on the basis of thresholds for goods and services prescribed for the States and the Centre.

All the States have passed their respective State GST Act whether through an ordinance or through the respective legislatures. On a perusal of the same, it can be seen that almost all the provisions are identical to the provisions of the Central GST Act with suitable modifications as to State GST.

For example,

1. XYZ Ltd is a dealer in Kalka who sold goods to ABC Ltd in Chennai worth Rs. 15,000. The GST rate is 18% inclusive of the CGST rate of 9% and SGST rate of 9%. In such a case,

the dealer collects Rs. 2700 of which Rs. 1350 will go to the Central Government and Rs. 1350 will be deposited to the Haryana Government.

2. ABC Ltd, a manufacturer in Tamil Nadu, supplies goods to XYZ Ltd, a dealer in Tamil Nadu. Goods worth Rs 5,00,000 are supplied by ABC Ltd after adding GST @ 18%. Since it is an intra-State supply, GST gets deposited to both Central and State Governments. But the total GST amounting to Rs 90,000 gets deposited equally into separate heads. This means Rs 45,000 gets deposited into the CGST account and the other Rs 45,000 gets deposited into the SGST part.
3. XYZ Ltd, a manufacturer in Rajasthan, manufactures and supplies goods to BCD Ltd., a dealer in Punjab. Goods worth Rs 2,00,000 are supplied by XYZ Ltd after adding GST @ 18%. As it is a type of inter-State supply, GST gets deposited only to the Central Government. Therefore, the entire GST of Rs 36,000 gets deposited into the CGST head only.

In this background material:

The rules are considered and discussed at appropriate places / sections / chapters. These rules are issued under the delegated legislation by the Central Government in so far as the CGST, IGST and UTGST laws are concerned whereas it is issued by the respective State Government when it comes to SGST law.

Special Category States under GST include:

1. Manipur
2. Mizoram
3. Nagaland
4. Tripura

With the effect of Finance Act 2018, from 1st February 2018, the states of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand shall no more be included in the expression “special category state”.

Aggregate Turnover Limit for Registration as per CGST Act:

Section 22 of the CGST Act provides that every supplier shall be liable to be registered under this Act, in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover [refer 2(6) of the CGST Act] in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

W.e.f. 01.4.2019, if any person who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed forty lakh rupees is exempt from obtaining registration. In case of special category states, the limit in such case is twenty lakh rupees.

One can proceed based on the assumption that in the normal course the State GST Laws would be *pari materia* with the CGST Laws / Rules framed thereunder.

Exemption Notification applicability to State:

It is important to note that section 11 of each State GST law provides that every exemption notification issued by Central Government will automatically be applicable to SGST Law. However, if any exemption notification issued by a State with due approval of GST Council, the same may not apply to CGST Act.

THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

Chapter 13
Assessment

Sections	Rules
59. Self-assessment	98. Provisional Assessment
60. Provisional assessment	99. Scrutiny of returns
61. Scrutiny of returns	100. Assessment in certain cases
62. Assessment of non-filers of returns	
63. Assessment of unregistered persons	
64. Summary assessment in certain special cases	

Statutory Provisions

59. Self-assessment

Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

Related provisions of the Statute

Section or Rule	Description
Section 2(11)	Definition of 'Assessment'
Section 2(94)	Definition of 'Registered Person'
Section 2(97)	Definition of 'Return'
Section 39	Furnishing of returns
Chapter VIII of the CGST Rules, 2017	Returns

59.1 Introduction

In terms of section 2(11) of the Act, *"assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment.* It is important to note that there is no provision permitting a Proper Officer to re-assess the tax liability of taxable person. The provisions of the law permit a registered person to rectify any incorrect particulars furnished in the returns. In terms of section 39(9), if a registered person discovers any omission or incorrect particulars furnished in a return, he is required to rectify such omission or incorrect particulars in the return to be furnished for the tax period during which such omission or incorrect particulars

are noticed (on payment of due interest), unless the same is as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, or such rectification is time barred (i.e., after 30th November following the end of the financial year, or the actual date of furnishing of relevant Annual Return, whichever is earlier).

It is normally understood that an assessment is conducted by a Proper Officer. In terms of section 2(91) of the CGST Act, 2017, a "Proper Officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner.

The CGST Act contemplates the following types of Assessments:

- Self-assessment (Section 59)
- Provisional Assessment (Section 60)
- Scrutiny of returns filed by registered taxable persons (Section 61)
- Assessment of non-filers of returns (Section 62)
- Assessment of unregistered persons (Section 63)
- Summary Assessment in certain special cases (Section 64)

(i) Self-assessment in terms of Section 59 refers to the assessment made by registered person himself / itself while all other assessments are undertaken by tax authorities.

(ii) Provisional Assessment under Section 60 is an assessment undertaken at the instance of the registered person. Provisional Assessment is followed by a final Assessment.

(iii) Scrutiny under section 61 is a form of re-assessment (since the self-assessment is made by the registered person himself / itself). A scrutiny of returns conducted by the Proper Officer who checks for the correctness of the returns filed and intimates the registered person of any discrepancies noticed.

(iv) Assessment of non-filers under section 62 and Assessment of un-registered person under section 63 are in the nature of 'best judgement' assessments.

(v) Summary Assessment under Section 64 is a form of protective assessment based on information gathered from the tax authorities in a particular case.

59.2 Analysis

Self-assessment means an assessment by the registered person himself and not an assessment conducted or carried out by the Proper Officer. The GST regime continues to promote the scheme of self-assessment. Hence, every registered person would be required to assess his tax dues in accordance with the provisions of GST Act and report the basis of calculation of tax dues to the tax administrators, by filing periodic tax returns.

Tax which is self-assessed consists of self-determination of (i) supply not excluded by schedule III (ii) taxability of supply not covering alcohol (alcoholic liquor for home consumption and and [1][un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption]), 5-petro product or securities (iii) classification – goods or services (iv) exemption (v) liability on taxable person on forward charge and not on recipient on reverse charge basis (vi) valuation with inclusions and exclusions (vii) admissibility of input tax credit and (viii) determination of 'net tax' liability. This liability stands 'disclosed' in statement filed under section 37 in Form GSTR-1 and liability disclosed is 'discharge' in returns filed under section 39 in Form GSTR-3B. In a self-assessment tax system, the determination of liability may be carried out privately in the invoice issued under section 31. For this reason, experts hold the view that the invoice (tax invoice or bill of supply) is the self-determination document prepared by the registered person in terms of the authority conferred by section 59.

The provisions of the law permit a registered person to rectify any incorrect particulars furnished in the returns. In terms of section 39(9), if a registered person discovers any omission or incorrect particulars furnished in a return, he is required to rectify such omission or incorrect particulars in the return to be furnished for the tax period during which such omission or incorrect particulars are noticed (on payment of due interest), unless the same is as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, or such rectification is time barred (i.e., before 30th of November following the end of the financial year to which such details pertains or the actual date of furnishing of relevant Annual Returns, whichever is earlier). Further, Para 4 of *Circular No. 26/2017-GST dated 29.12.2017*, clarifies that in case of summary returns like Form GSTR-3B, where there are no separate tables for reflecting tax effects of amendments for past periods, the figures pertaining to the current month can be adjusted for past month amendments. These provisions exhort the concept of self-assessment.

It is important to note that 'self-assessment' does not confer authority of an assessing officer (called Proper Officer) on the taxpayer. A taxpayer must exercise this liberty to assess tax liability voluntarily with the perils of interest and penalty for any miscalculations or misinterpretations without usurping the role of proper officer.

For e.g., if tax is charged in excess to a customer and the same has been reported in Form GSTR 1 and paid in Form GSTR 3B, whether taxpayer on realizing the error, is required to file a refund claim under section 54 or free to adjust the excess with any other dues. And if the tax is correctly charged to customer but error is in Form GSTR 1 and Form GSTR 3B, whether taxpayer is still liable to file refund under section 54 or does section 59 permit taxpayer to *suo-moto* adjust the excess by reducing any other tax payable.

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[1] *Inserted vide The Finance (No. 2) Act, 2024, notified through Notification No. 17/2024-CT dated 27.09.2024 w.e.f. 01.11.2024.*

Experts are of the view that taxpayer must submit to the jurisdiction of proper officer to examine and sanction refund in case the tax charged to customer is in excess by filing a refund application and limit *suo moto* rectification only in respect of errors of reporting noted in Form GSTR 1 and/or Form 3B but not in tax invoice issued to customer.

The point therefore is about the 'limits' to this authority of self-assessment cannot be lost sight of while complying with GST. Self-assessment does not mean 'unsupervised self-administration'.

59.3 Related provisions of the Statute

Particulars	Rule	Form
Self-Assessment by Regular Assessee and Casual Taxable Person under section 39(1)	61/ 61A	Form GSTR 3B
Self-Assessment by Composition Dealer under section 39(2)	62	Form GSTR 4
Self-Assessment by Non-Resident Taxable Person under section 39(5)	63	Form GSTR 5
Self-Assessment of OIDAR provided by person located outside India to non-taxable person in India under section 39(1) and persons supplying online money gaming from a place outside India to a person in India	64	Form GSTR 5A
Self-Assessment by ISD under section 39(4)	65	Form GSTR 6
Self-Assessment of Tax Deducted at Source under section 39(3)	66	Form GSTR 7
Self-Assessment of Tax Collected at Source under section 52(4)	67	Form GSTR 8
Self-Assessment for purpose of Refund by persons having UIN under section 39(1)	82	Form GSTR 11

59.4 Issues and Concerns

In respect of discharge of any additional tax liability that may arise on account of any re-working or re-computation etc., (for example - Reversal of input tax credit on account of obtaining completion certificate required under any law for the time being in force by a builder in the construction sector), the proportionate input tax credit ought to be reversed (in this example, in case of unsold flats).

Reference may be had to section 75(12) where 'undisputed arrears' permits recovery action by tax authorities without affording an opportunity to be heard. Finance Act, 2021 has inserted an explanation to section 75(12) which essentially permits direct access to recovery provisions in section 79 when there is a liability 'disclosed' in GSTR-1 which is not 'discharged' in GSTR-3B, even without issuing a show cause notice. There have been several decisions of High Courts striking down recovery action without issuing notices such as *Refex Industries Ltd. v. ACCE 2020 (74) GSTL 274 (Mad.) and UoI v. LC Infra Projects Pvt. Ltd. 2020 (81) GSTR 281*

(Kar). In spite of these decisions, *Finance Act, 2021* has made this amendment empowering tax administration. Revenue's perspective shared by experts is that when tax is self-assessed and disclosed in GSTR-1 but not discharged in GSTR-3B, there remains no further reason to give yet another opportunity (notice) to explain why amount of self-assessed liability that Registered Person has voluntarily disclosed in Form GSTR-1 should not be recovered if rectification is not carried out within 3 months (as required by section 78 before taking any recovery action under section 79) but left undischarged in Form GSTR-3B. Clearly, undischarged self-assessed and voluntarily disclosed liability is an 'undisputed arrear' and not a 'disputed arrear' to attract the requirement to issue a notice. This new amendment is yet to reach the Courts and stand the test of law. And if the Court grant their seal of approval, experts caution that there would be aggressive tax administration and registered persons must exercise great caution in filing GSTR-1 and not only in filing Form GSTR-3B. To err is human, but to leave errors unrectified by more than 3 months attracts the wrath of this new amendment.

59.5 FAQ

Q1. Who is the person responsible to make self-assessment of taxes payable under the Act?

Ans. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.

Statutory Provisions

60. Provisional Assessment

(1) Subject to the provision of sub-section (2),where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

(2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

(3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-Section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

(4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under sub-section (7) of section 39 or the rules made thereunder, at the rate specified under sub-Section (1) of Section 50, from the first day after the due date of payment of tax in respect of the said supply of goods or services or both till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

(5) Where the registered person is entitled to a refund consequent to the order of final assessment under sub-Section (3), subject to the provisions of sub-Section (8) of Section 54, interest shall be paid on such refund as provided in Section 56.

Extract of the CGST Rules, 2017

98. Provisional Assessment

(1) Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of sub-section (1) of section 60 shall furnish an application along with the documents in support of his request, electronically in FORM GST ASMT-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) The proper officer may, on receipt of the application under sub-rule (1), issue a notice in FORM GST ASMT-02 requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in FORM GST ASMT – 03, and may appear in person before the said officer if he so desires.

(3) The proper officer shall issue an order in FORM GST ASMT-04 allowing the payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security to be furnished not exceeding twenty-five per cent of the amount covered under the bond.

(4) The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3):

Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the Act and the rules made thereunder.

Explanation. - For the purposes of this rule, the expression "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.

(5) The proper officer shall issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment under sub-section (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.

(6) The applicant may file an application in FORM GST ASMT- 08 for the release of the security furnished under sub-rule (4) after issue of the order under sub-rule (5).

(7) The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in FORM GST ASMT–09within a period of seven working days from the date of the receipt of the application under sub-rule (6).

Related provisions of the Statute

Section or Rule	Description
Section 2(11)	Definition of 'Assessment'
Section 39	Furnishing of returns
Section 50	Interest on delayed payment of tax
Section 54	Refund of Tax
Section 56	Interest on delayed refunds

60.1 Introduction

Provisional assessment can be resorted to in the following situations:

(i) At the outset, "unable to determine" does not mean "difficult". Inability can arise due to unavailability of facts relevant for determination of tax liability. For e.g. if rate of tax was dependent on 'percentage of copper content', then unless this fact (percentage of copper content) is determined by a laboratory, neither taxpayer nor tax administration can arrive at the applicable rate of tax. This is just one example and there are others. Provisional assessment cannot be treated to be a substitute for Advance Ruling.

(ii) It would be abdication of self-assessment responsibility by taxpayers to 'claim' inability to determine tax liability and remarkably place that responsibility before the proper officer. Except for facts, inability to determine tax liability on account of interpretation of law does not come within the operation of section 60.

60.2 Analysis

The facility of provisional assessment is available only in cases of valuation and determination of rate of tax. The provisions of this section cannot be extended for any other purpose or subject matter. For example, there may be uncertainty about the kind of tax (IGST or CGST-SGST) applicable, time of supply, supplies to be treated as "supply of goods" or "supply of services", determination of mixed or composite supply is a rate dispute, admissibility of ITC, quantum of reversal of ITC, whether a particular action is supply or not. In the aforesaid kind or classes of cases, recourse is not available to provisional assessment.

Procedure

(i) In terms of rule 98(1), the process of provisional assessment commences on furnishing of an application by the registered person along with the necessary supporting documents in Form GST ASMT-01, electronically through the common portal. The provisional assessment cannot be resorted to by the Proper Officer on *suo-motu* basis.

(ii) The Proper Officer will thereafter issue a notice in Form GST ASMT-02. As per ASMT-2, reply is required to be given within 15 days to the registered person and if required seek additional information or documents. At this stage the proceedings are deemed to have commenced and the applicant is required to file his objections / make submissions in Form GST ASMT – 03. The registered person can also appear in person and be heard provided he makes a specific request for a personal hearing.

(iii) On due consideration of the reply so filed, and after providing a reasonable opportunity of being heard, the Proper Officer must issue an order in FORM GST ASMT – 04, by allowing payment of tax on provisional basis, indicating the value or rate or both on the basis of which assessment is allowed on a provisional basis The Proper Officer, in the normal course, cannot pass an order rejecting the application of provisional assessment. Since section 60(1) employs the term 'shall' pass order 'allowing' payment of tax provisionally. The word "shall" in this circumstance cannot be construed as "may".

(iv) The order so passed should also indicate the amount for which bond has to be executed in Form GST ASMT – 05 by the applicant. The security has to be furnished in the form of bank guarantee not exceeding 25% of the bond 'amount' which shall include IGST, CGST, SGST or UTGST and cess (if any) payable in respect of the transaction. A bond furnished to the Proper Officer under State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of Central Goods and Services Tax Act and the rules made thereunder.

If the bond and security prescribed in ASMT-05 is not provided within the period specified in notice, the provisional assessment permitted in ASMT-04 shall lapse.

Finalization of provisional assessment

Once the above process is complete the Proper Officer by issue of a notice in **Form GST ASMT-06**, will call for information and records required for finalization of assessment. On conclusion of the due process of hearing, a final assessment order shall be passed by the Proper Officer in **Form GST ASMT-07**, specifying the amount payable or refundable to the registered person within a period of 6 months from the date of communication of provisional assessment order. However, on sufficient cause being shown and for reasons to be recorded in writing, this period can be extended by Joint / Additional Commissioner or by the Commissioner for such further period as mentioned below:

Additional / Joint Commissioner	Maximum of 6 months
Commissioner	Maximum of 4 years

It may be noted that, in the statement of outward supply to be furnished by a registered person under section 37(1) i.e., in Form GSTR-1, the invoices in respect of which tax is paid under provisional assessment are required to be mentioned.

Further, CBIC vide *Circular 122/41/2019-GST dated 05.11.2019* as amended by *Circular 128/47/2019-GST dated 23.12.2019* clarified the implementation of the electronic generation of Document Identification Number (DIN) for all communications sent by its offices to taxpayers. Therefore, no communication of provisional assessment order is made without a computer- generated Document Identification Number, on or after 08.11.2019.

Interest liability

If the amount of tax determined to be payable under final assessment order, is more than the tax which is already paid along with the return filed in terms of section 39, the registered person shall be liable to pay interest on the shortfall, at the rates specified in section 50(1) of the Act [i.e., @18%], from the first day after due date of payment of tax in respect of the said goods and/or services or both, till the date of actual payment, irrespective of whether such shortfall is paid before or after the issuance of order for final assessment[2]. Likewise, when the registered person is entitled to refund consequent upon the order for final assessment, interest shall be paid on such refund at the rates specified in proviso to section 56 @ 9% because refund is arising out of order of adjudicating authority. The interest on refund shall run from 61st date from the date of receipt of application for refund till the date of refund.

As such, the registered person must avail this opportunity of provisional assessment after much thought and careful consideration. Any claim for refund of taxes paid in excess under this section would be processed in accordance with section 54 (refund provision) and is subject to the concept of 'unjust enrichment' under section 54(8)(e). Hence, if where the

[2] *To overcome the decision of Ceat Limited V. CCE, 2015 (317) ELT 192 (Bom), maintained by the Supreme Court in Commissioner V. Ceat Ltd., 2016 (342) ELT A181 (SC).*

registered person has not borne the incidence of tax and has passed on the burden to some other person, then instead of granting refund to the applicant, it shall be credited to consumer welfare fund. Except for authorizing refund, this section does not by itself sanction refund. The application for refund is required to be made within 2 years from the relevant date defined in clause (f) of Explanation 2 to section 54 i.e., within 2 years from the date of adjustment of tax after the final assessment.

Release of security consequent to finalization

On conclusion of the final assessment order, the applicant can file an application under Rule 98(6) in **FORM GST ASMT- 08** for release of security furnished. On receipt of such application, the Proper Officer ought to release the security furnished, after ensuring that the payment of the amount specified in the final assessment order and issue an order in **FORM GST ASMT–09.** This order has to be issued within a period of 7 working days from the date of receipt of the application for release of security.

Rejection of Application

If taxpayer's application seeking provisional assessment fails to establish the 'facts affecting' the determination of tax liability, then Proper Officer is welcome to reject the application. In all other cases, since the taxpayer is imperilled by interest liability, Proper Officer would not reject the application.

60.3 Issues and Concerns

The provisional assessment provides a discretionary power to Joint Commissioner or Additional commissioner and Commissioner to extend the proceedings or pass the order or decree upto 6 months or 4 years respectively. If for any reasons, the time limit stands extended till the 4th year, the registered person shall have to pay interest from the due date of original return filed under section 39(7) of the CGST Act, inspite of the taxable person paying tax as per provisional order passed by Proper Officer.

60.4 FAQs

Q1. When is a taxable person permitted to pay tax on a provisional basis?

Ans. Tax payments can be made on a provisional basis only when a Proper Officer passes an order permitting the same. For this purpose, the registered person has to make a written request to the Proper Officer, giving reasons for payment of tax on a provisional basis. The reasons for this purpose may be a case where the registered person is unable to determine the value of goods and/ or services or determine the applicable tax rate, etc. Further, the registered person may also be required to execute a bond in the prescribed form, and with such surety or security as the Proper Officer may deem fit.

Q2. What is the latest time by which final assessment is required to be made?

Ans. It is the responsibility of the Proper Officer to pass the final assessment order after taking into account such information as may be required for finalizing the assessment,

within six months from the date of the communication of the order for provisional assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the timelines may be extended by the Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding 4 years as he may deem fit.

60.5 MCQs

Q1. Where the tax liability as per the final assessment is higher than tax paid, at the time of filing of return under section 39, the registered person shall_____.

(a) not be liable to interest, provided he proves that his actions were *bona fide*

(b) be liable to pay interest from due date till the date of actual payment

(c) be liable to pay interest from date of the final assessment till the date of actual payment

(d) be liable to pay interest from due date till the date of the final assessment

Ans. (b) be liable to pay interest from due date till the date of actual payment

Q2. Provisional assessment under the GST law is permitted

(a) At the instance of the taxable person

(b) At the instance of the tax authorities on a best judgment basis in absence of adequate details or response from registered person

(c) Either of (a) and (b)

(d) Available only to certain notified persons

Ans. (a) At the instance of the taxable person

Q3. On the grounds of sufficient reasons being provided by Proper Officer, the time period for passing final assessment order can be extended by Joint/ Additional Commissioner for further period of not exceeding

(a) 2 months

(b) 4 months

(c) 6 months

(d) No time limit.

Ans. (c) 6 months

Q4. On the grounds of sufficient reasons being provided by Proper Officer, the time period for passing final assessment order can be extended by Commissioner for further period of

(a) 2 months

(b) 4 years

(c) 6 months

(d) No time limit.

Ans. (b) 4 years

Statutory Provisions

61. Scrutiny of Returns

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the taxable person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under Section 65 or Section 66 or Section 67, or proceed to determine the tax and other dues under Section 73 or Section 74 [3][or section 74A]..

Extract of the CGST Rules, 2017

99. Scrutiny of returns

(1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

(2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT- 11 to the proper officer.

[3] Inserted vide The Finance (No. 2) Act, 2024, notified through Notification No. 17/2024-CT dt. 27.09.2024 w.e.f. 01.11.2024.

(3)	*Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.*

Related provisions of the Statute

Section or Rule	Description
Section 2(97)	Definition of Return
Chapter IX of the CGST Act	Returns
Section 65	Audit by tax authorities
Section 66	Special audit
Section 67	Power of inspection, search and seizure
Section 73	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts
Section 74	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts
Section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards

61.1 Introduction

Section 61 deals with the powers vested in the Proper Officer to scrutinize the returns filed by registered persons with a view to verify the correctness of the return. In legal parlance, it is considered to be a pre-adjudication process.

61.2 Analysis

At the outset, it is important to recognize that email or text messages cannot be sent to taxpayers if a query arises in the mind of the Proper Officer with respect to the returns filed. It has been noted that such informal communication has been sent and even responded by taxpayers. Scrutiny of returns requires the following ingredients:

- Returns – identify which is a 'return' in respect of which scrutiny is being carried out. Return is defined in section 2(97) which does not refer to any specific section but states 'any' return 'prescribed or otherwise required to be furnished'. This requires careful

consideration as there is room to gloss over this important document. Any of the "GSTR" series of documents will be a 'return' to which scrutiny provisions will apply. Experts are of the view that once GSTR 9 or 9A has been filed, no further scrutiny of the underlying returns (say, GSTR 1/3B) can be taken up for scrutiny as the information may, as it was filed or altered and now reported in GSTR 9/9A. Scrutinizing documents that are no longer current (GSTR 1/3B) or already rectified in another return filed later in time (GSTR 9/9A) may be an exercise in futility;

- Proper Officer – only the Proper Officer under whose jurisdiction taxpayer is registered and filing returns is authorized to scrutinize returns. Any cross-empowered officer may collect or access the returns but is not vested with authority under section 61 to scrutinize. Such Officer may even scrutinize but take action under other provisions and not under section 61. Reference may be had to the detailed discussion regarding listing of jurisdiction and powers conferred under section 3 to 6 of CGST Act along with relevant notifications and related Circulars;
- Discrepancy – is an inconsistency or inaccuracy which is a very important requirement to invoke section 61 that the Proper Officer must 'discover' from within the returns itself. Section 61 does not permit investigation into new things not emerging from the returns as there are other provisions with checks and balances to undertake investigation. It is very clear provision 'conferring jurisdiction' by this expression 'discrepancy'. Discrepancy is not a doubt or confusion about what might have been the transactions carried out by taxpayer. Discrepancy is a 'lack of compatibility' arising from within the returns and not from any external source of additional information. Any inquiry without this jurisdiction makes the entire proceedings void. Where a notice is issued under section 61, care must be taken to identify whether the issue involved can pass must be of being a 'discrepancy'. While self-assessment has been stated NOT to be 'unsupervised self-administration' system, at the same time, self-assessment does not empower wide-ranging assessment in the name of scrutiny. The scope is large but not unlimited scope that Proper Officer is permitted to carry out in the name of scrutiny under section 61. Responding to notice under section 61 does not amount to admission of wrong doing.
- Resolution – taxpayer may take three routes (a) admission and rectification or explanation (b) non-admission and (c) Admission but inaction by Taxpayer. Based on this, further steps to be taken by Proper Officer are prescribed. Proper Officer cannot routinely call for books and records of taxpayer. Proper Officer is welcome to then invoke sections 65 or 66 to audit the books of taxpayer, but those sections have other pre-requisites (which are discussed later). Carrying out inspection is not permissible without prior permission from JC, there's a special ingredient of 'reason to believe' to involve given in section 67 (discussed later). Most important aspect is that proper officer CANNOT carry out any assessment under section 61. Care must be taken to object to

any attempt at carrying out assessment where tax liability is being determined on an apprehension based on the discrepancy. Discrepancy must conclude and be resolved in one of the three ways listed in the section. There can be no 'order of demand' arising out of section 61 itself. Yes, scrutiny can give rise to a show cause notice under section 73 or 74, if pertaining to the period upto FY 2023-24 or section 74A if pertaining to FY 2024-25 onwards which will be adjudicated on its own merits but the proceedings under section 61 will conclude.

Now, to reiterate the process permitted under section 61, when a return furnished by a registered person is selected for scrutiny, the Proper Officer scrutinizes the same with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, under rule 99(1), informing him of such discrepancy and seeking his explanation thereto. The proper officer shall quantify the amount of tax, interest and any other amount payable in relation to such discrepancy, wherever possible.

An explanation shall be furnished by the registered person, in reply to the aforesaid notice, within a maximum period of 30 days from the date of service of the notice or such further period as may be permitted by the Proper Officer.

The registered person may accept the discrepancy mentioned in the notice issued under rule 99(1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same OR furnish an explanation for the discrepancy in FORM GST ASMT- 11 to the Proper Officer.

Where the explanation furnished by the registered person or the information submitted under Rule 99(2) is found to be acceptable, the Proper Officer shall inform the registered period in FORM GST ASMT-12.

In case, explanation is not furnished OR explanation furnished is not satisfactory OR after accepting discrepancies, the registered person fails to take corrective measures, in his return for the month in which the discrepancy is accepted by him, the Proper Officer, may, take recourse to any of the following provisions:

- Initiate departmental audit as per section 65 of the Act; or
- Initiate Special Audit as per section 66 of the Act;
- Initiate inspection, search and seizure as per section 67 of the Act;
- Issue show cause notice under section 73, 74, 74A of the CGST Act.

The first stage in return scrutiny denotes a *prima facie* scrutiny, in order to ascertain whether the information furnished by the assessee in returns is prima facie valid and not internally inconsistent or inadequate. The second stage appears to be a detailed assessment calling for records and determination of tax liability under sections 73 to 75.

While doing so, the proper officer is entitled to exercise the powers vested in him under section 67 of the Act, which deals with power of inspection, search and seizure.

From the language employed in section 67, it appears that these powers are required to be exercised not in routine manner, but only under circumstances when there is reasonable belief regarding suppression or intention to evade tax.

It's important to note that section 61(3) empathetically provides that in case the explanation given by the taxpayer in response to discrepancies informed by the Proper Officer, if found acceptable, the registered person shall be informed accordingly in FORM GST ASMT-12 and no further action shall be taken in this regard.

Taking pointers from Annual Returns, following is an illustrative list of what may or may not constitute a 'discrepancy' to be taken up for scrutiny under section 61:

Likely to be a 'discrepancy'	Unlikely to be a 'discrepancy'
Tariff notification prescribing credit restriction or credit ban, but credit found to be taken in returns	Whether turnover reported as 'exports' has been billed in foreign currency or not
'Net Tax' payable being 'negative' throughout the year indicative of missing value addition or possibly investments in capital goods when inverted rate structure known not to exist	EWB known to be generated for inward supply of motor vehicles, but no credit found to be disallowed or reversed as ineligible
Taxpayer eligible to deemed value under rule 32 found to be paying tax at 18%	Balance sheet containing 'amounts received from clients' but tax not found to be paid against 'receipt voucher'
GSTR 2A showing inward supplies at 3% rate of tax but no outward supplies appearing at 3% rate of tax	Balance sheet showing 'other service income' but no turnover reported under chapter 99
Tax paid via DRC 03 for 2017-18 utilizing credit	Tax paid via DRC 03 for 2019-20 relating RCM under 9(4) for the year 2018-19
Taxpayer operating SEZ unit found to have paid IGST and claimed input tax credit without availing tax-free inward supplies	Company operating SEZ unit found to claim all inward supplies 9(3) or 9(4) for 2017-18 to qualify as 'zero-rated'
Taxpayer involved in non-seasonal trading business filed 'nil' returns for 6 months of the year	Taxpayer involved in trading of goods found to have paid 'nil' tax under 9(3) at 5% towards GTA services likely to have been availed

Turnover in GSTR 1 and GSTR 3B mismatch or credit in GSTR 2A and GSTR 3B mismatch	Taxpayer reported to have received notices from creditors under IBC, 2016 but no credit reversals reported under rule 37
Sale of scrap reported by taxpayer (authorized service center or electronics dealer) without any inward supplies under 9(4) for 2017-18	EWB raised for outward movement of goods by taxpayer with outward supplies only under chapter 99
Regular amendments in outward supplies but no payment found towards 'interest'	'Nil' EWB generated throughout the year

Caution is advised that the above instances are meant to be a general guide to help readers differentiate when questions arise 'from the returns' itself and be eligible to be treated as a discrepancy and scrutinized under section 61 and when questions, though valid, cannot be taken up for scrutiny under section 61. Also, these instances do not represent to be based on any circulars or Court decisions but prepared based on understanding of underlying issues for various contributors.

CBIC has prescribed standard operating procedure (SOP) for scrutiny of returns for FY 2017-18 and FY 2018-19 vide *Instruction No. 02/2022-GST dated 22.03.2022*.

CBIC has prescribed standard operating procedure (SOP) for scrutiny of returns for FY 2019-20 onwards vide *Instruction No. 02/2023-GST dated 26.05.2023*.

61.3 Issues and Concerns

While filing the returns, the registered person should ensure that the value of exempted supplies as well as non-taxable supplies, if any, made by him is properly disclosed or else the same may be considered as suppression of information and a notice under section 73 or 74 or 74A would stand issued or the proper officer can take recourse for conducting an audit or special audit, as the case may be.

In view of procedures under earlier tax regime, tax authorities are known to make routing verification in the name of scrutiny under section 61 by calling for 'books and records' and entertaining 'personal hearing' to examine the correctness of returns filed. It is for registered person to cite the embargo in section 160(2) and refrain from (i) entertaining such proceedings and (ii) to question the validity of such proceedings at the earliest opportunity. By responding to the requests, registered persons stand to forfeit their right to lawful action under the lawful provisions of law.

61.4 FAQs

Q1. Describe the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy in the return.

Ans. In case, satisfactory explanation is not obtained or after accepting discrepancies, registered person fails to take corrective measures, in his return for the month in which

the discrepancy is accepted by him, the Proper Officer may take recourse to any of the following provisions:

(a) Conduct audit at the place of business of registered person in a manner provided in section 65 of the Act, or;

(b) Direct such registered person by notice in writing to provide his records including audited books of account examined and audited by a Chartered Accountant or Cost Accountant under section 66 of the Act or;

(c) Undertake procedures of inspection, search and seizure under section 67 of the Act; and

(d) Issue notice under sections 73 or 74 or 74A of the Act.

Q2. What does section 61 deal with?

Ans. Section 61 deals with scrutiny of returns filed by registered persons to verify the correctness of such returns.

Q3. What is the proper officer required to do, if the information obtained from assessee under section 61 is found satisfactory?

Ans. In case, the explanation is found acceptable, the registered person shall be informed accordingly in Form GST ASMT-12 and no further action shall be taken in this regard.

61.5 MCQs

Q1. Where the tax authorities notice a discrepancy in the details during the scrutiny of returns, the registered person:

(a) would be liable for interest if he is unable to prove that the discrepancy did not arise on his account and it was a fault of another person

(b) is required to provide satisfactory/ acceptable explanation for the same within 30 days or any extended timelines as may be permitted

(c) must prepare documents to cover up the discrepancy.

(d) Both (a) and (b)

Ans. (b) is required to provide satisfactory/ acceptable explanation for the same within 30 days or any extended timelines as may be permitted

Q2. If the information obtained from taxable person is not found satisfactory by the Proper Officer, he can pass assessment order under section 61 raising demand of disputed tax.

(a) True

(b) False

Ans. (b) False

Q3. What is the time limit after which action under section 61 cannot be taken?

(a) 30 days from filing of return or such further period as may be decided by Proper Officer.

(b) No time Limit

(c) Time limit mentioned in section 73 or 74 or 74A of the Act.

(d) None of the above

Ans. (c) Time limit mentioned in section 73 or 74 or 74A of the Act.

Q.4 What is the time limit, within which the registered person should take corrective measures after accepting the discrepancies communicated to him by Proper Officer?

(a) reasonable time

(b) 30 days from the date of communication of discrepancy.

(c) 30 days from date of acceptance of the discrepancy

(d) date of filing of return for the month in which the discrepancy is accepted

Ans. (d) date of filing of return for the month in which the discrepancy is accepted.

Statutory Provisions

62. Assessment of non-filers of returns

(1) Notwithstanding anything to the contrary contained in section 73 or section 74 [4][section 74A],where a registered taxable person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual returns for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within [5][sixty days] of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for the payment of late fee under section 47 shall continue.

[6][Provided that where the registered person fails to furnish a valid return within sixty

[4] Inserted vide The Finance (No. 2) Act, 2024, notified through Notification No. 17/2024-CT dt. 27.09.2024 w.e.f. 01.11.2024.

[5] Substituted vide The Finance Act, 2023 notified through Notification No. 28/2023-CT dt. 31.07.2023 w.e.f. 01.10.2023 for 'thirty days'.

[6] Inserted vide The Finance Act, 2023, notified through Notification No. 28/2023-CT dt. 31.07.2023 w.e.f. 01.10.2023.

days of the service of the assessment order under sub-section (I), he may furnish the same within a further period of sixty days on payment of an additional late fee of one hundred rupees for each day of delay 'beyond sixty days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under sub-section (1) of section 50 or to pay late fee under section 47 shall continue]

Extract of the CGST Rules, 2017

[7]***[100. Assessment in certain cases***

(1) The order of assessment made under sub-section (1) of section 62 shall be issued in FORM GST ASMT-13 and a summary thereof shall be uploaded electronically in FORM GST DRC-07.

*(2) **

*(3) * ……*

*(4) * ……*

*(5) *……..]*

***Referred to in the relevant section*

Related provisions of the Statute

Section or Rule	Description
Section 2(97)	Definition of 'Return'
Section 2(11)	Definition of 'Assessment'
Section 39	Furnishing of returns
Section 44	Annual return
Section 45	Final return
Section 47	Levy of late fee.
Section 50	Interest on delayed payment of tax.
Section 73	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit

[7] *Substituted vide Notification No. 16/2019-CT dt. 29.03.2019 w.e.f. 01.04.2019.*

	wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.
Section 74	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.
Section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards

62.1 Introduction

This section commences with a *non obstante* clause, meaning that whenever the provisions of section 73 or 74 or 74A apply, the provisions of section 62 of the Act cannot be invoked. However, the provisions of section 62 can be invoked only in case of registered taxable persons who have failed to file returns, as required, under section 39 or as the case may be, or final return on cancellation of registration under section 45 of the Act. Issuance of notice under section 46 operates as a pre-condition for initiating proceedings under section 62 of the Act. However, section 62 cannot be invoked for non-filing of GSTR-1 or GSTR-9.

62.2 Analysis of Provisions

Non-compliance with the notice issued under section 46 paves the way for initiating the proceedings under this section. So, a notice under section 46 is inescapable and compulsory for any action under section 62 to be taken up. Please note that with the applicability of 'service by email' and 'service on portal' are permitted in GST, it is imperative to look out for any such notice being sent to registered email or posted on portal. If the assessee fails to furnish the return within 15 days of issue of notice under section 46 then the proper officer may assess the tax liability in accordance with the provisions of rule 100 i.e., to the best of his judgment, taking into account all the relevant material available on record, and issue an assessment order. This is also known as 'best judgment assessment'. It can be completed without giving notice of hearing to the assessee. However, best judgment assessment should be made on the basis of material available or material gathered by proper officer.

Please note that only returns under sections 39 and 45 are covered by section 62. Annual Returns filed under section 44 cannot be treated under section 62. Non-filing of Annual Returns will attract penalty and hence there can be no 'best judgement assessment' on this basis. It is important to question any order under section 62 as to 'how was jurisdiction acquired' for such a proceeding. In other words, non-filing of GSTR 3B and GSTR 10 (final return) will attract best judgement assessment. Failure to file GSTR 1 does not attract section 62 as GSTR-1 is not a return, rather a statement.

Order under section 62 must be issued within a period of five years from the date specified under section 44 for furnishing Annual Returns for the financial year to which the tax not paid

relates. Section 44(1) states that due date for furnishing the Annual Returns is on or before 31st December following the end of financial year to which such Annual Returns pertains. However, extension of the due date for furnishing the Annual Returns may be considered.

Non-issuance of notice under section 46 closes the door for invoking section 62 although other provisions are available to recover the tax dues. If, however, a registered person furnishes a 'valid return' within 60 days of the service of assessment order, the said assessment order shall be 'deemed to be withdrawn'. 'Valid return' is defined in section 2(117) to mean a return filed under section 39(1) of the Act on which self-assessed tax has been paid in full. Valid return may not (or does not necessarily imply to) be perfect in all respects and is, therefore, not barred from containing (inadvertent) errors. In other words, presence of such errors does not render the return 'defective' and become non-existent in the eyes of law. Erroneous return is also a valid return. Errors may be of omission or commission. Experts advise that care must be taken to file such valid return free of errors and after order passed under section 62 being vacated, proper officer would take up proceedings based on such valid returns under section 61.

Amnesty Scheme for deemed withdrawal of assessment orders issued under section 62 of the CGST Act notified through *Notification No. 06/2023 CT dated 31.03.2023.*

The assessment order under section 62(1) of the CGST Act issued on or before 28.02.2023 in respect of the registered person who had failed to furnish a valid return within a period of 30 days of the service of such assessment order, was deemed to be withdrawn, if such registered person furnished the said return on or before 30.06.2023 along with interest due under section 50(1) and late fee payable under section 47. The above benefit was available irrespective of whether or not an appeal has been filed against such assessment order under section 107 or whether the appeal, if any, filed against the said assessment order been decided.

Further vide *Notification No. 24/2023 CT dated 17.07.2023,* the date for deemed withdrawal of assessment order issued under section 62 was extended to 31.08.2023. This notification was deemed to come into force with effect from 30.06.2023.

Section 62 starts with the words '*notwithstanding anything contrary to section 73 or section 74 or section 74A*'. Sections 73, 74, 74A mandate the issue of SCN and providing opportunity of being heard before passing order for demanding tax. Further, tax can be demanded for the period as prescribed in section 74/74A, if the existence of omissions and commissions, as mentioned under section 74/74A, are proved. The pre-condition of issuing SCN, providing opportunity of being heard for demanding tax for the period prescribed under section 74/74A in the presence of omissions and commissions listed under section 74/74A is sought to be overcome by the non-obstante clause under section 62. The assessment under section 62 however, can be made only upto 5 years from the due date of furnishing of Annual Returns under section 44. Consequence of late fee under section 47 and interest under section 50 will both be applicable in cases of conclusion of best judgement assessment made under this Section, even if the assessment order under section 62 is withdrawn.

Proviso to section 62 has been inserted vide Finance Act, 2023 as notified by *Notification No. 28/2023-CT dt. 31.07.2023*, w.e.f. 01.10.2023, that where registered person fails to furnish a valid return within sixty days of service of assessment order, he may furnish the same within further period of sixty days with payment of additional late of one hundred rupees for each day of delay in furnishing valid return beyond the sixty days of serving of assessment order & in case the registered person furnishes the valid return within the extended period, the said assessment order shall be deemed to have been withdrawn, but liability to pay interest under sub-section(1) of section 50 or late fee under section 47 shall continue.

Best Judgement Assessment:

'Best judgement assessment' must not be 'worst' judgement assessment, that is, the determination of tax liability cannot be outlandish estimation of turnover based on some arbitrary growth rate oblivious of the nature of business activities and prevalent market conditions. Some experts are of the view that where turnover projection is made based on turnover of previous months, there is nothing in section 62 to indicate that corresponding credits, also on estimate basis, should not be included in arriving at liability on 'best' judgement basis. Best judgement assessment must not be worst judgement and determine high turnover ignoring seasonal downward variations and even benefit of estimate of credits available on proportionate basis. There is nothing in the law to support the view that 'tax liability' to be determined on best judgement basis should be 'gross liability' and not 'net tax liability'. For this reason, when outward supply that may not be existing, is being taxed on 'best judgement' basis with the information that has become available, credit that is not claimed is not barred from being allowed in arriving at 'tax liability'. Instructions in *Circular No. 129/48/2019-GST dated 24.12.2019* states that for the purpose of assessment of tax liability under section 62, the proper officer may take into account the details of outward supplies available in the statement furnished under section 37 (**FORM GSTR-1**), details of supplies auto populated in **FORM GSTR-2A**, information available from e-way bills, or any other information available from any other source, including from inspection under section 71. Courts will have final say in the matter and when one has failed to file returns, it is scarce that such a taxpayer can find favour of Courts in the manner of arriving at best tax liability.

Another important aspect is in case an order of best judgement is passed under section 62, the registered person is required to furnish valid returns within 60 days of the service of assessment order. In case the registered person furnishes the return within 60 days, then the assessment order shall be deemed to be withdrawn. Where the registered person fails to furnish valid return within 60 days of the service of the assessment order, he may furnish the same within a further period of 60 days on payment of additional late fee of Rs. 100 per day for each day beyond 60 days of the service of assessment order. In case, returns are not filed within the period as prescribed above, the order becomes final and even if returns are filed subsequently, the order CANNOT be withdrawn. The only remedy will be to file such returns and also prefer appeal under section 107.

As section 107 prescribes, maximum 3 months to file appeal before First Appellate Authority which has a further time limit of 1 month to condone explainable delay in filing appeal. Now, if after date of order under section 62, a time of more than 8 months (60 days to file returns after order PLUS additional 60 days PLUS 3 months to file appeal PLUS 1 month of delay in filing appeal that may be condoned) has passed, then the demand arising from this best judgement order will be final and payable. And this will be recoverable even if in fact there were no real taxable supplies made during the relevant tax period. Care must be taken to monitor email or portal service of orders under section 62 so as to avoid such irreversible demands due to lapse of time to redress.

An order passed under this section shall be communicated to the registered person in **FORM GST ASMT 13 + DRC 7.** Since DRC-7 will also be issued, best judgement assessment under section 62 proceeds on the understanding that the demand made in order in ASMT-13 will lead to recovery of tax assessed. It is for this reason, that if a valid return is not filed within 60 days or additional 60 days to vacate this order, to set aside this demand will be to file appeal under section 107 is the only remedy.

62.3 Issues and Concerns

The consequence of non-filing of returns may lead to adverse GST compliance rating which will have an impact on the matters such as claiming of refund. Registered persons who are non-filers of returns will always be under the scanner of the authorities for every activity carried out by such registered person. Further, it also affects the vendor relationship due to non-compliance of the provisions of the GST laws. A non-filer would not have filed his periodic returns and therefore the Annual returns in Form GSTR- 9 and Reconciliation Statement in Form GSTR- 9C would not be possible. However, if they have filed returns for part of the year then Annual returns could be filed considering such filed returns and based on his books of accounts.

62.4 FAQs

Q1. Whether the proper officer is required to give any notice to taxable person before completing assessment under section 62?

Ans. The assessment under section 62 can be initiated only after the service of notice under section 46 i.e., notice to return defaulters.

Q2. If a registered person files a return after receipt of notice under section 46 but fails to make the payment disclosed by him in the return, can assessment order under section 62 be passed in this case?

Ans. An assessment order under section 62 is deemed to have been withdrawn if the registered person furnishes a valid return (including payment of taxes).

62.5 MCQs

Q1. The proper officer can complete assessment under section 62 without issuing any notice to the registered taxable person before passing assessment order.

(a) True

(b) False

Ans. (b) False

Q2. What is the time limit for issuing order under section 62?

(a) 9 months from the end of financial year.

(b) 3 years for cases covered under section 73 or 5 years for cases covered under section 74

(c) 5 years for cases covered under section 73 or 3 years for cases covered under section 74

(d) 5 years from the due date of filing Annual Returns.

Ans. (d) 5 years from the due date of filing Annual Returns

Q3. The assessment order under section 62 shall be deemed to be cancelled:

(a) Where the registered person furnishes a valid return within 60 days of the service of the assessment order or within additional period of 60 days subject to payment of additional late fees as prescribed under section 62.

(b) Where the registered person furnishes a valid return within 90 days of the service of the assessment order.

(c) Assessment order under section 46 cannot be cancelled.

(d) Where assessee intimates to the proper officer that he has filed the valid return.

Ans. (a) Where the registered person furnishes a valid return within 60 days of the service of the assessment order or within additional period of 60 days subject to payment of additional late fees as prescribed under section 62.

Q4. After serving of notice under section 46, the proper officer is not required to give notice of hearing to the registered tax person before passing assessment order.

(a) True

(b) False

Ans. (a) True.

Statutory Provisions

63. Assessment of unregistered persons

Notwithstanding anything to the contrary contained in section 73 or section 74 [8][or section 74A], where a taxable person fails to obtain registration even though liable to do so, or whose registration has been cancelled under sub section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual returns for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

Rule 100. Assessment in certain cases

(1) *****

(2) The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in FORM GST DRC-01, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT-15 and summary thereof shall be uploaded electronically in FORM GST DRC-07.

(3) *

(4) *

(5) *

******Referred to in relevant section*

Related provisions of the Statute

Section or Rule	Description
Section 2(11)	Definition of 'Assessment'
Section 22	Person liable for Registration
Section 24	Compulsory Registration

[8] *Inserted vide The Finance (No. 2) Act, 2024, notified through Notification No. 17/2024-CT dt. 27.09.2024 w.e.f. 01.11.2024.*

Section 29	Cancellation or suspension of Registration
Section 44	Annual Return
Section 73	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts
Section 74	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts
Section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards
Rule 100	Assessment in certain cases

63.1 Introduction

This section commences with a *non obstante* clause, meaning whenever the provisions of sections 73 or 74 or 74A applies, the provisions of section 63 of the Act cannot be invoked. This section is applicable to unregistered persons i.e., persons who are liable to obtain registration under section 22 and have failed to obtain registration, will come within scope of this section. This provision also covers cases where registration was cancelled under section 29(2). Section 29(2) of the Act covers 5 instances where registration may be cancelled by Proper Officer:

(a) A person who contravenes the provisions of this Act or Rules made thereunder; or

(b) A composition person who fails to furnish returns for a financial year beyond 3 months from the due date of furnishing the said return; or

(c) A person other than composition person who fails to furnish returns for 6 consecutive months or 2 tax periods in case of quarterly returns; or

(d) A person who has sought voluntary registration but has failed to commence business within 6 months from the date of registration; or

(e) Where registration has been obtained by way of fraud, willful-misstatement or suppression of facts.

63.2 Analysis

This is a remarkable provision where even when a taxable person is 'unregistered', proper office is vested with jurisdiction to not only identify taxable transactions but also pass an order of assessment on best judgement basis and fasten an enforceable demand. This section too

begins with the phrase "Notwithstanding anything to the contrary contained in section 73 or section 74 or section 74A". It therefore permits assessment under section 63 to be carried out independent of section 73, section 74 and section 74A, however, procedures contained in section 73 or 74 or 74A to the extent they are not inconsistent such as 73(5) or 74(5) or 74A(8)(i) or 74A(9)(i) are to be followed while completing this assessment. As in the case of section 62, this section 63 too contains a period of limitation of 5 years from due date applicable for filing Annual Returns for the financial year to which unpaid tax relates.

It is interesting to note the following ingredients for this section 63 to be attracted:

- Taxable person – is the one in respect of whom this procedure may be adopted. As a result, all ingredients to establish a person to constitute 'taxable person' as per section 2(107) must be satisfied. In the absence of SCN, Proper Officer appears to come under great scrutiny for invoking this jurisdiction. All aspects that the proper officer admitted at the time of invoking these provisions will need to stand scrutiny. But that would be the proceedings by way of response to the notice granting opportunity under section 63 (not section 73 or 74 or 74A) or in further appellate proceedings;
- Fails to obtain registration – is a positive act on the part of such taxable person. 'Fail' is not the same as 'omits' to obtain registration. Clearly, being conscious of the requirement to obtain registration will be required and as such come in for examination. While no 'intent' needs to be established for such failure but clearly it cannot be supported merely on account of an inference about taxability or bona fide view on non-taxability of a transaction or judicial interpretation;
- Registration cancelled but liable to pay tax – here, reference is provided to cancellation under section 29(2). The entire section 29(2) is where 'cancellation' is done by proper officer. It is not taxable person's responsibility if Proper Officer decides to cancel registration (in the five circumstances listed) and then proceeds to invoke jurisdiction under section 63 to pass a best judgement order. It is a wonder that on one hand Proper Officer will cancel registration under section 29(2) and then proceed to fasten a demand on taxable person by an assessment order under section 63 without issuing an SCN. Experts view that the use of this section will come in for severe judicial scrutiny for failure to retain the registration and issue SCN on all grounds that would afford taxable person to not only defend the continuation of registration but also suspected tax liabilities. It would be appropriate for the proper officer 'suspend' registration under rule 21A (2) instead of cancelling the registration.

Please refer discussion on 'best judgement assessment' under section 62.

For assessment under this section, notice has to be issued as per rule 100(2) in **FORM GST ASMT-14 + DRC 1** by the Proper Officer. The notice would contain the reasons / grounds on which the assessment is proposed to be made on best judgment basis. The registered person is allowed a time period of 15 days to furnish his reply, if any. After considering the said explanation, the order has to be passed **in FORM GST ASMT- 15 + DRC 7.**

Special attention is to be paid to the appended forms in DRC -1 with the order which contains the detailed grounds on which the said best judgement assessment would be passed and then DRC 7 would accompany final demand (see rule 100(2) for details).

Registration ousts jurisdiction to invoke section 63. Taxpayer who has obtained registration is often found to be directed to submit information and records pertaining to period prior to date of registration and initiate proceedings under section 63. There is no authority in section 63 for the proper officer to secure 'taxpayer's involvement' in investigation. Information must be secured independently, say, from data available under section 150 or 151 or otherwise obtained, that points to the existence of liability of such unregistered person.

Key aspect to note here is that such unregistered person should have 'failed' to obtain registration. As such, once registration is obtained use of best judgement method permitted in case of unregistered persons cannot be applied against registered persons even for the period prior to their date of registration.

Section 63 permits 'use of estimates' in carrying out 'best judgement' assessment. Use of estimates is when no other method is possible and burden falls on taxpayer to overturn the presumptions made in this method. Once taxable person is registered, such methodologies are unwelcome. Use of estimate is permissible when there is a 'failure' by taxable person. Failure is not to be equated with determination of non-taxability. The expression 'fails' is found in several places but some important ones are listed below:

Section	Description
Second proviso to section 16(2)	Failure to pay the value of invoice including tax to the supplier as a post-condition to reverse input tax credit already claimed by the Recipient
Section 25(8)	Failure (of taxable person) to obtain registration even though liable to register
Section 35(6)	Failure (of registered person) to account for goods or services providing jurisdiction to proper officer to demand tax 'as if' actually supplied to that extent
Section 46	Failure (of registered person) to file returns where there is a statutory obligation to file returns under section 39, 44 or 45 voluntarily
Section 47	Failure (of registered person) to furnish details under section 37, 39, 45 or 52 within the due date
Section 50	Failure (of taxable person) to discharge liability existing in law
Section 51(6)	Failure (of registered person) to deposit amount deducted
Section 52(14)	Failure (of registered person) to furnish information in notice issued
Section 61(3)	Failure (of registered person) to take corrective action (as determined by PO). But corrective action taken bars POs jurisdiction to initiate action

Section 62	Failure (of registered person) to file returns in spite of notice under section 46
Section 63	Failure (of unregistered person) to obtain registration
Section 79(1)(c)(iii)	Failure (of addressee of garnishee order) by not remitting to the Government, amounts belonging to taxpayer (stated to be in default)
Section 122(1)(iii)	Failure (of taxable person) to pay tax which is collected
Section 132(1)(d)	Failure (of taxable person) to pay tax which is collected

'Fails' in these provisions enjoins ingredients where (i) obligation or duty exists (ii) actions (or inactions) contrary to such obligation. It appears that 'deliberateness' is a necessary ingredient to support 'failure'. In the instance of section 51(6) or 52(14), ingredient of 'deliberateness' is writ large but inadvertent non-payment or non-response, do not appear to be placed on any different footing so, every kind of non-payment or non-response, appear to attract the consequences in those provisions. In the instance of section 61(3), taxpayer may entertain a view that no tax is payable (in respect of the discrepancy pointed out by the proper officer) and there is no 'deliberate' non-payment of tax in such cases, yet proper officer's dissatisfaction (due to deviation from expected or suggested corrective action) procures jurisdiction to initiate further action. In the instance of section 79, to impute added ingredient of 'deliberateness' would implicate the addressee (of garnishee order) with some greater mischief and this is no way for Revenue to prove making this mode of recovery ineffective.

But 'deliberateness' is necessary in the instance of section 122(1)(iii) otherwise delay by more than prescribed period would attract punitive action. The same goes for (iv), (v), (vi), (xi), (xvi) and (xvii). Evasion requires gains to accrue to alleged offender. Absence of gains is incompatible with allegation of evasion. Absence of gains is compatible with bona fide interpretation of non-taxability of said transaction. Indirect or consequent benefits accruing to alleged offender is difficult to disprove. And in the instance of section 132, failure is coupled with deliberateness and mischief.

On the basis of the above examination, it appears that there is nothing to indicate necessity of 'deliberateness' to support 'failure' on all cases to attract the consequences in these instances. Failure could arise out of misinterpretation or neglect. Proper Officer needs to only show non-compliance to attract the consequence in respective instances. In the instance of *second proviso* to section 16(2) persons contracting contrary to law are liable to the consequences of denial of credit, when the agreed terms of credit for supply are more than 180 days. As to whether it is proper for the law to interfere in matters of private contract is for Courts to decide but as regards the ingredients in law are concerned, non-payment within 180 days attracts interest (and reversal of credit).

It is important to note that the 'failure' in section 62 is the failure 'to obtain registration'. And once registered, there is no failure that can be taken cognizance of. If past failure (for the years prior to registration) are open for Proper Officer to act upon under section 63, the provisions of section 63 will be 'retroactive' in granting jurisdiction. Persons presently registered cannot be exposed to 'best judgement' action when they have already come under the administrative oversight of the law by securing registration.

NOTE: 'Retrospective' alters the law that previously existed and authorizes steps to be taken prospectively and give new consequences to old and completed actions, subject to limitation. 'Retroactive' is to take steps prospectively of anterior facts. Retroactive destroys vested rights from the date of its coming into force.

To allow proper officer to take action against registered persons prior to their date of registration would be presumption that their non-registration was deliberate failure with intent to evade tax. When proper officer has power under section 25(8) to grant registration (and then collect necessary documents), the use of best judgement determination of liability without granting registration is to inflict the burden far greater than necessary. If registration were granted under section 25(8), taxpayer would be entitled to credit under section 18(1) on stocks-on-hand. Registered persons may well have taxable turnover but falling below threshold. No presumption of mischief can be associated with non-registration of persons engaged in business.

63.3 Issues and Concerns

The application of the aforesaid section is a discretionary power vested in the officer when it comes to his notice that a person although liable to registered has not obtained registration. The powers vested in the section 63 can be invoked only when the Proper Officer is in possession of information that is material for initiating the proceedings.

An unregistered person does not qualify as a registered person under section 2(94) of the CGST Act, 2017, hence Annual Returns and audit is not applicable for him.

Judicial Review:

Any procedure that side-steps the 'rule of law' in the form of issuing a SCN is always open for judicial review for (a) illegality, (b) irrationality, (c) procedural impropriety and (d) proportionality. Judicial review is a remedy in public law where HC or SC will interfere when failure of a public authority in discharging its duties takes place. Civilized society must declare its 'law' and implement those laws with 'certainty'. Uncertainty of both the law and procedure, – are the hallmarks of a society where there's absence of 'rule of law' (which is also referred as 'due process'). Concept of 'rule of law' is well guarded in Article 21 of our Constitution.

It is important to invoke Court intervention when reason for judicial review (four causes stated above) have occurred and this must be brought to Court's attention. When the proper officer, who is to follow the 'rule of law' is found to violate these four grounds, then Courts are not reluctant to issue 'writ' or a direction. High Court which has powers of judicial review will not

go into appreciating evidence or verification of claims, etc. It will only issue writ to the public authority and:

(a) command public authority to (i) do what it ought to do or (ii) abstain from doing what it is attempting to do;

(b) censure public authority carrying role of administrative tribunal (i) not to steer from vested jurisdiction (ii) deviate from following natural justice (iii) supervise and oversee discharge of that role and (iv) avoid manifest error in law or procedure;

(c) prohibit proceedings before public authority that are not yet concluded that would result in illegality (any of four causes types listed earlier) if the said proceedings were permitted to continue;

(d) question 'authority' of the public authority right at the threshold when any proceedings are commenced.

A rough test laid down in *SL Hegde v. MB Tirumale AIR 1960 SC 137* where it does not take prolonged arguments to bring it (cause for intervention by SC or HC) to the surface, the Court will resort to the power of judicial review High Courts will reject petitions if it is not found to be maintainable on grounds such as (a) petitioner lacking any locus to approach Court (b) availability of alternate remedy (c) mere apprehension of any violation without any real basis and (d) inordinate delay in approaching the Court. High Courts have power not only to protect any instance of violation of fundamental rights but also craft a remedy that threatens to be an affront to the 'rule of law' that is committed in the Constitution.

63.4 FAQs

Q1. What is the time limit for passing order under section 63?

Ans. The Proper Officer has to pass an assessment order under section 63 within a period of five years from the due date for filing the Annual Returns for the financial year to which such tax unpaid relates to.

Q2. Can an assessment order be passed without affording an opportunity of being heard to the person liable to be registered?

Ans. No, an assessment order cannot be passed without giving him an opportunity of being heard.

63.5 MCQs

Q1. What is the time limit for passing an order under section 63?

(a) 5 years from the due date for filing of the Annual Returns for the financial year to which tax not paid relates

(b) 5 years from the end of financial year in which tax not paid relates to

(c) No time limit

Ans. (a) 5 years from the due date for filing of the Annual Returns for the year to which tax not paid relates

Q2. No notice is required to be given before passing assessment order under section 63?

(a) True

(b) False

Ans. (b) False

Q3. Section 63 deals with

(a) Assessment of taxable persons who have failed to file the returns.

(b) Assessment of registered taxable person who have filed returns as per the law.

(c) Assessment of unregistered taxable persons.

(d) Assessment of any taxable person, whether registered or unregistered.

Ans. (c) Assessment of unregistered taxable persons

Statutory Provisions

64. Summary assessment in certain special cases

(1) The Proper Officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional/Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

(2) On any application made by the taxable person within thirty days from the date of receipt of order passed under sub-Section (1) or on his own motion, if the Additional or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in Section 73 or section 74 [9][or section 74A].

[9] *Inserted vide The Finance (No. 2) Act, 2024, notified through Notification No. 17/2024-CT dt. 27.09.2024 w.e.f. 01.11.2024.*

Rule 100. Assessment in certain cases

(1) .....

(2) .....

(3) The order of assessment under sub-section (1) of section 64 shall be issued in FORM GST ASMT-16 and a summary of the order shall be uploaded electronically in FORM GST DRC-07.

(4) The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the assessment order in FORM GST ASMT–17.

(5) The order of withdrawal or, as the case may be, rejection of the application under subsection (2) of section 64 shall be issued in FORM GST ASMT-18.

Related provisions of the Statute

Section or Rule	Description
Section 73	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts
Section 74	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts
Section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards
Rule 100	Assessment in certain cases

64.1 Introduction

The word "summary assessment" is generally used in a tax legislation to denote 'fast track assessment' based on return filed by the assessee. It allows the Tax Officer to make *prima facie* adjustments based on errors or factors based on the available information without an occasion for calling for further information from an assessee or inspecting his records. In the GST Act, it is used to denote those assessments which are completed ex-parte and on priority basis when there is reason to believe that there will be loss of tax revenue, if such assessment is delayed. This provision is only the first step in invoking the machinery provided to enforce recovery of dues from potential defaulters, and this requires an assessment of the tax liability. Such amounts are commonly known as protective assessments which in a sense protects Government revenue. This section pre-supposes the fact that the proper officer must be in possession of sufficient grounds to believe that any delay will adversely affect revenue.

64.2 Analysis

The summary assessment can be undertaken in case the following conditions are satisfied:

- The proper officer must have evidence that there may be a tax liability. It is this ingredient that furnishes jurisdiction for the proper officer to invoke section 64. Experts hold the view that the 'evidence' is not merely 'reason to believe' but something more. And if it were merely reason to believe, then that would not have been open for examination in further proceedings. Since it refers to something more by the words 'evidence' that supports Proper Officer's expectation of plausible tax liability, then such evidentiary material can be called in for examination in further proceedings. Proper Officer's apprehension that there may be tax payable is not sufficient to vest with necessary jurisdiction; and
- The proper officer has obtained prior permission of Additional / Joint Commissioner to assess the tax liability summarily. The Proper Officer must have sufficient ground to believe that any delay in passing assessment order would result in loss of revenue. Now, steps proposed by the Proper Officer requires be fettered with some checks. Checks on the exercise of this authority are ensured by permission from ADC/JC who would appreciate the quality of such evidence and then grant permission. Once ADC/JC has granted permission, proper officer may proceed to pass the assessment order. Examination of the evidence after summary assessment order has been passed would only help in establishing impropriety of the entire proceedings in judicial review.

Summary assessment under this section of the CGST Act can therefore be construed in some sense as a 'protective assessment' carried out in special circumstances, where there are sufficient grounds to believe that taxable person will fail to make payment of any tax, penalty or interest, if the assessment is not completed immediately. Such failure to pay tax, interest or penalty must be due to reasons attributable to the taxpayer (ex: insolvency, instances of defaulting, absconding etc). Hence, summary assessment under this section is not a substitute for assessment that are nearing the time limitation prescribed for issue of SCN. Further, mere possibility of non-payment cannot be a ground for resorting to summary assessment, unless there are factors indicating that such non-payment pertains to admitted or undisputed tax liability. As per the provision of rule 100(3), the summary assessment order should be in **FORM GST ASMT-16 + DRC 7.**

This section appears to overlap with section 62 and 63. However, please note:

- Persons who have obtained registration but have failed to file returns will come within the operation of section 62; and
- Persons who are liable to obtain registration but have failed to seek registration or whose registration has been cancelled under section 29(2) will attract section 63.

Section 64, however, requires the ingredients discussed earlier to exist in order for summary assessment to be undertaken. Please note that along with summary assessment order, a

demand order in DRC-7 is also to be passed for proceedings with recovery unless further appeal is filed under section 107 to stay the demand.

The section allows the person who is assessed and is served with the order so passed, to come forward and make an application in accordance with rule 100(4) in **FORM GST ASMT–17** to the Additional / Joint Commissioner, who will examine the same and if the Additional/ Joint Commissioner is satisfied, the summary assessment order may be withdrawn. As regards the contents of this application, it may be understood that the applicant may attempt to challenge the facts or reasons for the belief about risk of revenue loss and further accept to be available to respond, if proceedings under section 73/74/74A were to be undertaken. Besides, the Additional / Joint Commissioner may, on his own motion, withdraw such order and follow the procedure laid down in section 73 or section 74 or as the case may be section 74A for determination of taxes not paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised if he considers that such order is erroneous.

From the above, it appears that every summary assessment order so withdrawn under sub-section (2), may be followed by a notice under section 73 or as the case may be section 74 of the Act.

On receipt of application, the proper officer has to pass the order of withdrawal or, rejection of the application in accordance with rule 100(5) in **FORM GST ASMT-18**.

Many times, summary assessments are undertaken in circumstances, when a taxable person to whom liability pertains is not ascertainable. In such cases, the law provides that, if the liability pertains to supply of goods, then person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and amount due on completion of summary assessment. There is no deeming provision when unpaid tax liability relates to supply of services.

Within 30 days from passing of such summary assessment order, based on application to ADC/JC by taxable person, such order may be withdrawn. Please note that this provision in section 64(2), the main aspect is the 'time limit' of 30 days provided to make this application. An order passed under 64(2) is an appealable order to be carried before First Appellate Authority under section 107.

Summary assessment is NOT the same as best judgement assessment. Summary assessment must be based on qualitative data and records far superior than in the case of best judgement assessment. Experts opine that determination of tax liability in this case would not be able to allow credits as proper officer may not be in a position to ensure conditions of section 16(2) are satisfied. However, while arriving at tax liability, credit availed cannot be glossed over and must be adjusted to arrive at final net tax liability. Experts hold the view that the meaning of the expression 'tax liability', all sister provisions from 61 to 64 will be highly debated in Courts in the days to come.

64.3 Issues and Concerns

The law provides for treating the person in charge of goods as the "taxable person" in cases where the person liable to pay tax cannot be ascertained. This provision will require the transporter to take due care to ensure that his position in terms of compliance with the law will not be compromised, while several transporters may themselves be unaware of the provisions of the law.

Awaiting disposal of application in ASMT-17, taxpayers can miss time limit in section 107(1). And if the application were to be rejected in ASMT-18 and the time to appeal is passed, taxpayer will be left without any remedy and liability determined will be final and payable.

64.4 FAQ

Q1. When can Summary Assessment be initiated?

Ans. Summary Assessments can be initiated by a Proper Officer on seeking permission from the Additional Commissioner / Joint Commissioner and proving that the taxable person is liable to pay tax.

64.5 MCQ

Q1. What is the time period within which a person can apply to the Additional/ Joint Commissioner for withdrawal of such order under this Section?

(a) 30 days

(b) 45 days

(c) 60 days

(d) No time limit.

Ans. (a) 30 days

Chapter 14
Audit

Sections	Rules
65. Audit by tax authorities	101. Audit
66. Special audit	102. Special Audit

Statutory provisions

65. Audit by tax authorities

(1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) The officers referred to in sub-Section (1) may conduct audit at the place of business of the registered person or in their office.

(3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) The audit under sub-Section (1) shall be completed within a period of three months from the date of commencement of audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation. - For the purposes of this sub-section, the expression 'commencement of audit' shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

(5) During the course of audit, the authorised officer may require the registered person,

(i) to afford him the necessary facility to verify the books of account or other documents as he may require;

(ii) to furnish such information as he may require and render assistance for timely completion of audit.

(6) On conclusion of audit, the proper officer, shall within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Where the audit conducted under sub-Section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or 74 [1][or section 74]

Extract of the CGST Rules, 2017

101. Audit

1) The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year [2][or part thereof] or multiples thereof.

2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.

3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.

Related provisions of the Statute

Section or Rule	***Description***
Section 2(13)	Definition of the term Audit
Section 73	Determination of tax, pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful- misstatement or suppression of facts.

[1] *Inserted vide The Finance (No. 2) Act, 2024, notified through Notification No. 17/2024-CT dt. 27.09.2024 w.e.f. 01.11.2024.*

[2] Inserted vide *Notification No. 74/2018 – CT dated 31.12.2018*

Section 74	Determination of tax, pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
Section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.

65.1 Introduction

(a) Audit of records of taxpayers is the bed rock for the proper functioning of a self-assessment-based tax system. This provision provides for audit of the business transactions of any registered person. It is an important tool in the tax administration to ensure compliance of law and prevent revenue leakage.

(b) In terms of section 2(13) of the CGST Act, 2017, *"audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder.*

(c) The following two types of audits are envisaged under the GST laws:

(i) The first type of audit is to be done by the Commissioner or any officer authorised by him in terms of section 65 of the CGST Act, 2017 read with section 20(xiv) of the IGST Act, 2017 and section 21(xv) of UTGST Act, 2017.

(ii) The second type of audit is called the Special Audit and is to be conducted under the mandate of Section 66 of CGST Act, 2017 read with rule 102 of CGST Rules, 2017.

65.2 Analysis

This is probably for the first time in the history of an indirect tax statute that the term audit has been defined. Audit means examination of records, returns and other documents maintained or furnished by registered person. Hence, audit cannot be conducted in case of un-registered person even if he was required to be registered. In the process of Audit records, returns and other documents to be examined, may be maintained or furnished under this Act or Rules or any other law for the time being in force.

In audit, examination is done to verify the correctness of;

1. Turnover declared by the Supplier,
2. Taxes Paid by the Supplier,

3. Refund claimed by the Supplier
4. Input Tax credit availed by the Supplier, and
5. Classification of Goods or Service by the Supplier.
6. In audit, examination is also done to assess the compliance with the provisions of this Act or rules.

This chapter discusses about section 65 and section 66.

(a) Section 65 authorizes conduct of audit by the Commissioner or any other officer authorized by him of the transactions of the registered persons only. The Commissioner may issue a general order or a specific order, to authorize officers to conduct such audit. As per rule 101(1), the period of audit under section 65(1) shall be a financial year (or part thereof) or multiples thereof. Normally, such issues could have been dealt with by way of issue of office orders or circular instructions. It is important to note that the said order of Commissioner must be specific to the auditee and the tax period selected for audit. Absence, error and deficiency in such orders abort any preparatory step taken by the audit officer and preparation to respond taken by the auditee.

The audit will be conducted at the place of business of the registered person or office of tax authorities. Intimation of audit is to be issued to the registered person at least 15 working days in advance in accordance with rule 101(2) in Form GST ADT-01 and the audit is to be completed within 3 months from the date of commencement of audit, which may be extended by the Commissioner, where required, by a further period not exceeding 6 months.

<table>
<tr><td colspan="3">Commencement of Audit =</td></tr>
<tr><td>Date on which records and other documents called for by tax authorities are made available by Registered Person</td><td>OR</td><td>Actual institution of audit at the place of business</td></tr>
<tr><td colspan="3">whichever is later</td></tr>
</table>

(b) The Commissioner needs to record reasons in writing for grant of any such extension.

(c) During the course of audit, the authorized officer may require the registered person to afford him the necessary facility to verify the books of account and also to furnish the required information and render assistance for timely completion of the audit.

(d) As per rule 101(4), Proper Officer may inform discrepancies noticed during audit to registered person. Registered Person shall reply to discrepancies. Proper Officer shall finalize findings only after due consideration of reply. This process ensures transparency and fairness by allowing the auditee to respond to discrepancies identified during the audit before the finalization of the audit report by the tax department.

(e) Some of the best practices to be adopted for GST audit among others could be:

The evaluation of the internal control *vis-a-vis* GST would indicate the area to be focused. This could be done by verifying:

- The Statutory Audit Report which has specific disclosure in regard to maintenance of record, stock and fixed assets.
- The Information System Audit Report and the Internal Audit Report.
- Internal Control Questionnaire designed for GST compliance-
  - (i) The use of generalised audit software to aid the GST audit would ensure modern practice of risk-based audit are adopted.
  - (ii) The reconciliation of the books of account or reports from the ERP's with the return is imperative.
  - (iii) The review of the detailed trial balance for detecting any incomes being set off with expenses.
  - (iv) Review of purchases/ expenses to examine applicability of reverse charge applicable to goods/ services. The foreign exchange outgo reconciliation would also be necessary for identifying the liability of import of services.
  - (v) Quantitative reconciliation of stock transfer within the State or for supplies to job workers under exemption.
  - (vi) Ratio analysis could provide vital clues on areas of non-compliance.

(f) On audit completion, information is required to be provided to the registered person including the findings during the audit as per section 65(6) read with rule 101(5) in FORM GST ADT-02 within thirty days. In cases where tax liability is identified during the audit or input tax credit wrongly availed or utilized by the auditee, proper officer may initiate action under section 73 or 74 or 74A. Audit cannot conclude automatically resulting in a demand. Independent application of mind is necessary for a valid demand to be raised.

(g) It is important to identify that audit under section 65 can commence in a routine manner although 100 per cent audit of given taxpayer or all taxpayers in same industry would not be feasible. Unlike scope and limits to powers under section 61 to 64, scope and coverage under section 65 can extend from scrutiny all the way to investigation. New discoveries may be made but cannot make 'spot recovery'. Show cause notice under section 73 or 74 or 74A or 76 is a must for any demand to be raised against the taxpayer.

65.4 FAQs

Q1. Whether audit is mandatory in case of every registered person?

Ans. No; it is not mandatory. It will be applicable only in cases where the appropriate authorities authorize the same by issue of general/ specific order.

Q2. Whether any prior intimation is required before conducting the audit?

Ans. Yes; prior intimation is required and the taxable person should be informed at least 15 days prior to conduct of audit in FORM GST ADT-01.

Q3. What is the period within which the audit is to be completed?

Ans. The audit is required to be completed within 3 months from the date of commencement of audit or within the extended period, which can be extended further upto 6 months in cases where the Commissioner is satisfied for reasons to be recorded in writing that the audit cannot be completed in 3 months.

Q4. What is meant by commencement of audit?

Ans. It means the date on which the records and documents requisitioned by the tax authorities are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

Q5. What are the obligations of the taxable person when he receives the notice of audit?

Ans. The taxable person should afford necessary facility/ information/ assistance/ documents for smooth conduct of audit and its timely completion.

Q6. What would be the action by the Proper Officer upon conclusion of the audit?

Ans. The Proper Office must within 30 days inform the auditee about audit findings, reasons for findings and his rights and obligations in respect of such findings.

Q7. A notice for audit was served to M/s. ABC Ltd. on 20.05.2024. Required information was given by M/s. ABC Ltd. on 25.08.2024. The audit officers visited the place of business on 26.09.2024. What is the last date within which the audit is to be completed?

Ans. It will be 3 months from 26.09.2024, viz., 26.12.2024 or within an extended period which can be done by Commissioner *further maximum upto 6 months* by recording the reasons in writing.

Statutory provisions

66. Special Audit

(1) If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he

may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

(2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

(3) The provision of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provision of this Act or any other law for the time being in force.

(4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

(5) The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

(6) Where the special audit conducted under sub-Section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or 74 [3][or section 74A].

Extract of the CGST Rules, 2017

102. Special Audit.

1) Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in FORM GST ADT-03 to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction.

2) *On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.*

[3] *Inserted vide The Finance (No. 2) Act, 2024, notified through Notification No. 17/2024-CT dt. 27.09.2024 w.e.f. 01.11.2024*

Related provisions of the Statute

Section or Rule	Description
Section 65	Audit by tax authorities
Section 73	Determination of tax, pertaining to the period upto Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts.
Section 74	Determination of tax, pertaining to the period upto Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts.
Section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.

66.1 Introduction

Availing the services of experts is an age-old practice and a due process of law. These experts have done yeoman service to the process of delivering justice. One such facility extended by the Act is in section 66 where an officer not below the rank of an Assistant Commissioner, duly approved, may avail the services of a Chartered Accountant or Cost Accountant to conduct a detailed examination of specific areas of operations of a registered person. Similar provisions exist under the Income Tax Law as well.

66.2 Analysis

(a) Availing the services of the expert be it a Chartered Accountant or Cost Accountant is permitted by this section only when the officer (considering the nature & complexity of the business and in the interest of revenue) is of the opinion that:

- Value has not been correctly declared; or
- Credit availed is not within the normal limits.

It would be interesting to know how these 'subjective' conclusions will be drawn and how the proper officers determine what is the normal limit of input credit availed.

(b) An Assistant Commissioner who nurses an opinion on the above two aspects, after commencement and before completion of any scrutiny, enquiry, investigation or any other proceedings under the Act, may direct a registered person to get his books of accounts audited by an expert. Such direction is to be issued in accordance with the provision of rule 102(1) in FORM GST ADT-03.

(c) The Assistant Commissioner needs to obtain prior permission of the Commissioner to issue such direction to the taxable person.

(d) Identifying that the expert is not left to be appointed by the registered person whose audit is to be conducted but the expert is to be nominated by the Commissioner.

(e) The Chartered Accountant or the Cost Accountant so appointed shall submit the audit report, mentioning the specified particulars therein, within a period of 90 days, to the Assistant Commissioner in accordance with provision of rule 102(2) FORM GST ADT-04**.**

(f) In the event of an application to the Assistant Commissioner by Chartered Accountant or the Cost Accountant or the registered person seeking an extension, or for any material or sufficient reason, the due date of submission of audit report may be extended by another 90 days.

(g) Section 66(3) states that special audit may be initiated notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force. While the report in respect of the special audit under this section is to be submitted directly to the Assistant Commissioner, the registered person is to be provided an opportunity of being heard in respect of any material gathered in the special audit which is proposed to be used in any proceedings under this Act. This provision does not appear to clearly state whether the registered person is entitled to receive a copy of the entire audit report or only extracts or merely inferences from the audit. However, the observance of the principles of natural justice in the proceedings arising from this audit would not fail the taxable person on this aspect.

(h) The remuneration to the expert is to be determined and paid by the Commissioner whose decision will be final.

(i) As in the case of audit under section 65, no demand of tax, even *ad interim*, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure under section 73 or 74 or 74A as the case may be is to be followed.

66.4 FAQs

Q1. Who can serve the notice for special audit?

Ans. An officer not below the rank of an Assistant Commissioner with prior approval of the Commissioner may serve notice for special audit, having regard to the nature and complexity of the case and the interest of revenue.

Q2. Under what circumstances, notice for special audit shall be issued?

Ans. If the Proper Officer (not below the rank of Assistant Commissioner) is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, a special audit may be ordered.

Q3. Who will conduct the special audit?

Ans. A Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner may undertake the audit.

Q4. What is the time limit to submit the audit report?

Ans. The auditor will have to submit the report within 90 days or the further extended period of 90 days.

Q5. Who will bear the cost of special audit?

Ans. The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

Q6. What action the tax authorities may take after the special audit?

Ans. Based on the findings/ observations of the special audit, action can be initiated under section 73 or 74 or 74A, as the case may be, of the CGST Act.

Chapter 15
Inspection, Search, Seizure and Arrest

Sections	Rules
67. Power of inspection, search and seizure	138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill
68. Inspection of goods in movement	138A. Documents and devices to be carried by a person-in-charge of a conveyance
69. Power to arrest	138B. Verification of documents and conveyances
70. Power to summon persons to give evidence and produce documents	138C. Inspection and verification of goods
71. Access to business premises	138D. Facility for uploading information regarding detention of vehicle
72. Officers to assist proper officers	138E. Restriction on furnishing of information in Part-A of Form GST EWB-01
	138F. Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof
	139. Inspection, search and seizure
	140. Bond and security for release of seized goods
	141. Procedure in respect of seized goods

Statutory Provisions

67. Power of inspection, search and seizure

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that –

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents, books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorized under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorized officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorized by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

Extract of the CGST Rules, 2017

139. Inspection, Search and Seizure

(1) Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in FORM GST INS-01 authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.

(2) Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorised officer shall make an order of seizure in FORM GST INS-02.

(3) The proper officer or an authorised officer may entrust upon the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer.

(4) Where it is not practicable to seize any such goods, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in FORM GST INS-03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(5) The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, inter alia, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.

140. Bond and security for release of seized goods

(1) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

Explanation.- For the purposes of the rules under the provisions of this Chapter, the "applicable tax" shall include central tax and State tax or central tax and the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017).

(2) In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.

141. Procedure in respect of seized goods

(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.

(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the [1][proper officer] may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

FORM	Rules	Description
GST INS-01	139(1)	Authorisation for inspection or search or Seizure
GST INS-02	139(2)	Order of seizure
GST INS-03	139(4)	Order of prohibition
GST INS-04	140(1)	Bond and security for release of seized goods
GST INS-05	141(1)	Order of release of goods/ things of perishable or hazardous nature

Related provisions of the Statute

Section or Rule	Description
Section 2(107)	Definition of 'Taxable person'
Section 16	Eligibility and conditions for taking input tax credit
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
Section 130	Confiscation of goods or conveyances and levy of penalty
Section 31	Tax invoice
Section 35	Accounts and records

[1]Substituted vide Notification No. 16/2020 – CT Dated 23-03-2020. Earlier it read as "Commissioner".

67.1 Analysis

(i) Inspection: A proper officer *not below* the rank of Joint Commissioner, may issue an authorisation (in Form GST INS-01) to any other sub-ordinate officer to carry out an inspection of any places of business, if such proper officer 'has reasons to believe' that:

(a) the taxable person:

(i) has suppressed any transaction of supply of goods or services or both; or

(ii) has suppressed information relating to stock in hand; or

(iii) has claimed input tax credit in excess of his entitlement; or

(iv) has contravened any of the provisions of the GST law, to evade taxes;

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place:

(i) is keeping goods which have escaped payment of tax; or

(ii) has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under the GST law.

(ii) Understanding of Reasons to Believe: The phrase 'reasons to believe' has been interpreted by various courts distinguishing it from 'reason to suspect'.

In the case of *Crompton Greaves Ltd. vs. State of Gujarat, [2000] 120 STC 510*, the High Court observed that, *"these words suggest that belief must be that of honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumor.*

The powers under the present section are wide but not plenary; the words of the section are 'reason to believe' and not 'reason to suspect'." The word "believe" is a much stronger word than "suspect". Although these reasons cannot be called into question to prevent an inspection but later during adjudication, any "palpable absence" of reasons to believe can be brought out to challenge the correctness of inspection. However, experts hold the view that inspection can be non-specific and general investigation may lead to findings that were not the 'reasons to believe' at the start of this exercise.

Analyzing section 67(2) of the CGST Act, the High Court of Delhi in a recent judgment of *R.J. Trading Co. vs. Commissioner of CGST, Delhi North & Ors., W.P. (C) No. 4847/ 2021* has held that the belief of the concerned authority should be based on an actionable material actually perused. However, in absence of a clue that 'any' goods of the petitioner or 'any' documents or books or things would be useful, for formation of a reason to believe, the very trigger for conducting the search and seizure was held as flawed and unsustainable.

(iii) **Search and seizure:** A proper officer *not below* the rank of Joint Commissioner, may issue an authorisation (in Form GST INS-01) to any other officer subordinate to him (or himself) to search and seize any goods / documents / books / things which in his opinion would be useful for / relevant to proceedings under the GST Law, when he has reason to believe that any goods liable to confiscation are secreted in any place. Also, it is pertinent to note that The *High Court of Madhya Pradesh in Kanishka Matta vs. Union of India [WP No. 8204 of 2020]* has held that the word 'things' also includes money. However, Apex Court in State of *Kerala v. Shabu George [SLP 27670/2023]* has affirmed the High Court decision in WA/514/2023 holding that 'money' cannot be seized in search proceedings under section 67(2).

Important points to note in respect of search and seizure:

(a) The order of seizure shall be made in Form GST INS-02.

(b) The owner or custodian of the goods may be entrusted upon the custody of such goods or things for safe upkeep.

(c) Where it is not practicable to seize such goods, an order of prohibition (In Form GST INS-03) may be served on the person / custodian of the goods that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of the officer.

(d) Seizure of the accounts, registers or documents produced before proper officer- If proper officer has reasons to believe that any person has evaded or is attempting to evade the taxes, the officer may seize the accounts, registers or documents of the said person produced before him on recording the reasons in writing and granting a receipt of such seizure to such person. In this regard, it may be noted that the seized accounts / registers / documents can be retained for any period in respect of any proceedings for prosecution.

(iv) The following are important to note in respect of goods or documents or books or things which have been seized by the officer:

(a) Retention: The said officer:

(i) shall retain the documents or books or things so seized so long as may be necessary for their examination and for any inquiry or proceedings under this Act i.e., relied upon documents (RUD)

(ii) However, shall return the documents, books or things seized or produced by a taxable or any other person on which no reliance has been placed for issuing notice, within a period of 30 days from the date of issue of notice.

(b) Power to Seal/Break upon (where access is denied): If the officer authorised to conduct search and seizure is denied access to any premises, almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, then he shall have the power to:

- seal or break open the door of any premises; or
- break open any almirah, electronic devices, box, receptacle.

(c) Inventory of seized goods etc.-The officer seizing the goods, documents, books or things shall prepare an inventory of such items containing, *inter alia*, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.

(d) Copies or extract of seized documents:

(a) The person from whose custody, documents are seized is entitled to:

(i) make copies or

(ii) take extract of such documents

in the presence of an authorized officer at such place and time as may be indicated by such officer.

(b) However, copies or extracts may be denied if the officer believes that such an act will prejudicially affect the investigation

(e) Provisional release of Seized Goods: The goods so seized shall be released on a provisional basis, upon:

(a) execution of Bond in **Form GST INS -04** for the value of the goods and

(b) furnishing of security in the form of Bank Guarantee equal to the amount of applicable tax (incl. SGST / UTGST / IGST / Cess) + interest + penalty

or on payment of applicable tax, interest and penalty payable, as the case may be.

Once the goods are provisionally released and where the person fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the liabilities in respect of such goods.

An important point to note here is that provisional release of goods has to be mandatorily taken by the concerned person within one month of executing the bond. In case of failure to do so, the proper officer has the power to dispose off the said goods as per *Notification No. 27/2018-Central Tax dated 13.06.2018* [Sl. No. 17 of the Schedule appended to such notification]

(f) Release of perishable or hazardous goods or things: Where the goods or things seized are of perishable or hazardous nature, and if the taxable person:

- pays an amount equivalent to the market price of such goods or things; or
- the amount of tax, interest and penalty that is or may become payable by the taxable person,

whichever is lower, such goods or things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.

Where the taxable person fails to pay the above amount, the [2]**[**proper officer**]** may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

(g) Return of Seized Goods: If no notice has been issued within 6 months (or an extended period of another 6 months by the proper officer, on the basis of sufficient grounds), the seized goods/exhibits ought to be returned to the person from whom the goods were seized.

(h) Disposal of seized goods: The Government may, by way of a notification, specify the goods or class of goods which are to be disposed of by the proper officer as soon as the same have been seized where:

(a) the goods are of perishable nature; or

(b) the goods are of hazardous nature; or

(c) the goods would depreciate in value with the passage of time; or

(d) there are constraints of storage space; or

(e) any other relevant considerations as may be prescribed.

The Proper Officer shall also maintain an inventory of the said specified goods in the prescribed manner,

The CBIC, vide its *Notification No 27/2018-Central Tax dated 13.06.2018* has specified 17 categories of goods / class of goods in this regard. The said schedule of goods / class of goods is as under:

1. Salt and hygroscopic substances
2. Raw (wet and salted) hides and skins
3. Newspapers and periodicals
4. Menthol, Camphor, Saffron
5. Re-fills for ball-point pens
6. Lighter fuel, including lighters with gas, not having arrangement for refilling
7. Cells, batteries and rechargeable batteries
8. Petroleum Products

[2] *Substituted vide Notification No. 16/2020 – CT Dated 23-03-2020.Earlier, it read as "Commissioner".*

9. Dangerous drugs and psychotropic substances
10. Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
11. Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
12. Fireworks
13. Red Sander
14. Sandalwood
15. All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
16. All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.
17. Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under sub-section (6) of section 67 of the said Act, but provisional release has not been taken by the concerned person within a period of one month from the date of execution of the bond for provisional release.

(i) Applicability of Code of Criminal Procedure, 1973: The provisions of Code of Criminal Procedure, 1973 relating to search and seizure shall be applicable to the GST Laws and in section 165(5) of the code of criminal procedure, the word 'Magistrate' should be read as 'Commissioner'.

CBIC has reiterated the guidelines regarding procedure to be followed during search operations vide *Instruction No. 01/2020-21/GST - Investigation dated 02.02.2021*

Following are the some of the relevant guidelines to be adhered by the department while carrying out search proceedings:

(a) Search should be carried out with proper search authorization issued by Competent Authority, who shall record valid and justifiable reasons in the file.

(b) Following Instructions related to generation of Document Identification Number (DIN) by the officer authorizing the search.

(c) The premises shall be searched only on the authority of a valid search warrant

(d) A lady officer shall form part of a search conducted at residence

(e) Search to be conducted in the presence of two or more individual witnesses

(f) A Panchnama containing truthful account of the search with the list of documents/ goods/ things recovered should be made

(g) In sensitive premises, videography of the search proceeding may also be done

(h) Appropriate COVID-19 pandemic protocol as provided by the government should be followed.

CBIC issued guidelines for CGST Field Formations in maintaining Ease of doing Business while engaging in Investigation with regular taxpayers vide *Instruction No. 01/2023-24/GST - Investigation dated 30.03.2024*

Following are the some of the relevant guidelines to be adhered by the department while carrying out search proceedings:

(a) Each investigation must be initiated only after the approval of the (Pr.) Commissioner, except in the following situations where the prior written approval of the zonal (Pr.) Chief Commissioner shall be required, if investigation is to be initiated and action to be taken in a case falling under any of the following four categories, namely case involving –

  (i) matters of interpretation seeking to levy tax/ duty on any sector/ commodity/ service for the first time, whether in Central Excise or GST; or

  (ii) big industrial house and major multinational corporations; or

  (iii) sensitive matters or matters with national implications; or

  (iv) matters which are already before GST Council

(b) Initiation of inquiry already by another investigation agency / State Department / DGGI must be ascertained to obtain approval in such cases

(c) Letter with vague expressions like officer is making enquiry in connection with "GST enquiry" or "evasion of GST" must not be made

(d) Information already available under Portal should not be called for under summons

(e) Information filled in formats or proforma should not be called for by Summon letters

(f) Apart from the above, other procedural guidelines including uploading the statement and time-line for conclusion of investigation are also given in the said instruction.

F.No. DGGI/17/2023-INV-O/o Pr DG-DGGI-HQ-DELHI-Part(1)/ Dated 08.02.2024

In DGGI Annual Conference, held in Goa on 28th and 29th November, 2023, it was decided to also have an operating procedure for investigation that keeps in view ease of doing business (EODB), especially with regular taxpayers. Now the Board vide letter F.No. GST/INV/DGGI Annual Conference/20/2023-24/170 dated 08.02.2024 issued by Commissioner (GST-Investigation), CBIC, have approved the following consolidated guidelines for conducting investigation by DGGI units in certain cases.

1. The officers of DGGI across the country at its Headquarter, the 26 Zonal Units (ZU) and 40 Regional Units (RU) have all-India jurisdiction for the purposes of their role in the compliance management framework of Goods and Services tax (GST) and Central Excise. Under GST, investigation may be made by DGGI or jurisdictional CGST formations or the States. In GST, a person is to register in each respective State where he is making supply and as a result, may have multiple GSTINs on the same PAN.

2. The above eco-system presents the need to nurture uniformity and optimum resource use, and at the same time keep the balance of ease of doing business in enforcement activities, which has also been deliberated in the DGGI Annual Conference in November, 2023. Keeping relevant aspects in view, the guidelines issued from file No. DGGI/17-2023-Inv-0/o Pr-DG-DGGI-HQ-Delhi-Part (1) dated 18.09.2023 (as amended on 08.12.2023) are superseded by these wider guidelines that are, henceforth, to be followed in the DGGI while engaging in investigation, subject to legal provisions or instructions issued in this behalf.

   Initiation of investigation and follow-up

3. While DGGI officers have all India jurisdiction, the following operating procedures shall be followed in initiation or conduct of investigations —

   (a) The nature of investigation being taken up by DGGI should not take up a role not assigned in DGGI charter. ZU shall avoid taking up such functions, under provisions of law/rules, that more appropriately fall in the purview of return scrutiny or audit, etc.

   (b) The Pr. ADG/ADG of a ZU shall be responsible for approving, developing any intelligence, conducting search and completing the investigation in a case and the relevant subsequent action, including in the RUs etc.

   (c) A ZU shall normally not initiate investigation related to an aspect leading to tax demand notice on a taxpayer/GSTIN located outside jurisdiction allocated to it in geographical terms. Forwarding any information or intelligence which pertains to another ZU, that may have been generated /collected /received /recorded by a ZU, to the concerned jurisdictional ZU for implementation is encouraged as a good practice to be adopted.

   (d) In the situation under GST framework, a taxpayer/an entity may be registered in more than one State. Where a ZU has, on a particular issue, initiated investigation against a taxpayer within its own jurisdiction, the investigation on the same issue with respect to registrations (GSTINs) of the same taxpayer (single PAN) in other State(s) can be conducted without seeking approval for inter-ZU investigation.

However, especially in the matter of record-based investigations, the convenience of such taxpayer/entity in terms of location of its head/registered office or accounting office etc. should be considered, and therefore, as and when necessary or relevant, and at the earliest, one of the ZUs may be designated for conducting such investigation by the DG (or Pr. DG if more than one SNU is involved).

(e) In the case of record-based investigations, only a ZU which has the entity registered in its geographical jurisdiction is to initiate the investigation.

(f) Each investigation must be initiated only after approval of Pr. ADG/ADG of ZU, except in following situations where prior approval of higher officer, shall be required –

(I) Prior written approval of the DG of SNU if investigation is to be initiated and action to be taken in a case falling under the following four categories, namely case involving (i) matters of interpretation seeking to levy tax/ duty on any sector/ commodity/ service for the first time, whether in Central Excise or GST; or (ii) big industrial house and major multinational corporations; or (iii) sensitive matters or matters with national implications; or (iv) matters which are already before GST Council. Moreover, for cases of the category (iii) or (iv), before any precipitative action is taken in investigation, the respective DG SNU shall necessarily bring the matter to the notice of the Pr. DG.

In all of above category of cases, the concerned Zonal Head should collect details regarding the prevalent trade practices and nature of transactions carried out from the stakeholders. The implications / impact of such matter should be studied so as to have adequate justification for initiating investigation and taking action.

(II) Initiating investigation related to an aspect leading to tax demand notice on a taxpayer/GSTIN located outside jurisdiction allocated to a ZU. In such cases, the ZU seeking such approval is required to make a proposal (with adequate justification of its reasoned circumstances) to/via its DG, SNU. If the matter is in the jurisdiction of the SNU in which such ZU is located, the approval shall be accorded by the concerned DG, SNU. If it is outside jurisdiction of the said SNU, approval shall be of the Pr. DG.

With respect to taxable person / entities falling within National Capital Region (NCR), the Zonal Units at Delhi, Gurugram and Meerut shall have concurrent jurisdiction, in addition their respective geographical jurisdiction. Similarly, Chandigarh Zonal Unit may initiate inquiry or investigation in Mohali and Panchkula Districts, in addition to its own geographical jurisdiction. In such cases, the permission from DG SNU may

not be necessary solely for the purposes of para 3 (f) (II) above. However, such concurrent jurisdiction must be exercised only at the Zonal Unit level.

(g) A ZU can continue to undertake follow-up action in an ongoing investigation in jurisdictions of other ZUs without referring the matter to the DG or Pr. DG. The situation described in sub-para(h) is not to be treated as follow-up action in an ongoing investigation.

(h1) Situations have been noticed where, while chasing ITC chains in the course of various on-going inquiries, a Zonal Unit identifies an established business/GST taxpayer as being the potential end-availer of ITC in relation to a particular set of short-listed fake invoices or suppliers. Normally, the end-availer of ITC is not the taxpayer/assessee with respect to whom inquiry was initiated in the first instance. Usually, the circumstance is that an on-going/previous/existing inquiry with respect to certain GSTIN(s) is providing reason to institute a fresh inquiry with respect to that end-availer of ITC.

(h2) In view of this, and the Board's Circular No. 171/03/2022-GST dated 06.07.2022 which requires that only the end/final ITC availer (not the intermediaries) is to be issued the show cause notice for the demand of GST amount, the norm to be followed is that the Zonal Unit which identifies (such end-availer of ITC) shall pass on the relevant intelligence/information along with all the supporting material to the jurisdictional SNU/ZU of such end-availer of ITC for purposes of inquiry/investigation and further necessary action.

(h3) Only in exceptional cases, where circumstances so warrant and there is a reasoned compelling necessity, the concerned ZU may, with prior approval of its DG SNU, institute such fresh inquiry with the said end-availer of ITC located outside its own jurisdiction. In case of the end-availer of the ITC falling outside the geographical jurisdiction of that SNU, such approval shall also be intimated by this DG to the Pr. DG.

(j) Hierarchy of Officers under GST

- Under CGST Act

Principal Chief Commissioners of Central Tax (CT) or Principal Directors General of CT
Chief Commissioners of Central Tax or Directors General of Central Tax
Principal Commissioners of CT or Principal Additional Directors General of Central Tax
Commissioners of CT or Additional Directors General of CT
Additional Commissioners of CT or Additional Directors of CT

Joint Commissioners of CT or Joint Directors of CT
Deputy Commissioners of CT or Deputy Directors of CT
Assistant Commissioners of CT or Assistant Directors of CT
Such other class of officers as may be appointed for the purposes of CGST Act

- Under SGST Act

Commissioners of State tax
Special Commissioners of State tax
Additional Commissioners of State tax
Joint Commissioners of State tax,
Deputy Commissioners of State tax,
Assistant Commissioners of State tax, and
Such other class of officers as state government may deem fit

(k) Deposit of Tax during the course of Search, Inspection or Investigation:

Instruction No. 01/2022-23 [GST - Investigation] dated 25.05.2022 **(relevant extract)**

1. During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial or full GST liability arising out of the issue pointed out by the department during the course of such search, inspection or investigation by furnishing DRC-03. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability through DRC-03 have alleged use of force and coercion by the officers for making 'recovery' during the course of search or inspection or investigation. Some of the taxpayers have also approached Hon'ble High Courts in this regard.
2. The matter has been examined. Board has felt the necessity to clarify the legal position of voluntary payment of taxes for ensur'ing correct application of law and to protect the interest of the taxpayers. It is observed that under CGST Act, 2017 a taxpayer has an option to deposit the tax voluntarily by way of submitting DRC-03 on GST portal. Such voluntary payments are initiated only by the taxpayer by logging into the GST portal using its login id and password. Voluntary payment of tax before issuance of show cause notice is permissible in terms of provisions of Section 73(5) and Section 74 (5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the

burden of interest under Section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under Section 73 or Section 74, as the case may be.

3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.

4. Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/ short payment of taxes before or at any stage of such proceedings. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

(l) Surprise Check: The Commissioner or an officer authorized by him can further authorize any other person to purchase any goods and / or services from the business premises of any taxable person in order to check the manner of issuance of tax invoices / bills of supply and the taxable person or any person in charge of the business premises shall:

(a) refund the tax paid thereon when the goods so purchased are returned (no time limit prescribed in this regard) after cancelling the tax invoice or any bills of supply issued earlier in this regard.

The Proper Officer can:

Inspect: any place of business of the taxable person who has evaded the tax or is attempting to evade the tax or of the transporter who transported such tax evading goods or godown/warehouse operator in which such tax evading goods or accounts relating thereto have been stored

Search & seize: the goods or any documents or books or things which are liable for confiscation and which will be instrumental in the proceedings under this act during the enquiry period.

Seal or Break: open the door of any premises, storage, electronic devices, box or receptacle where goods, books of accounts etc. are suspected to be concealed when access to the same is denied to the said officer.

Please consider the comparative understanding of seizure and confiscation (in terms of section 130) to appreciate the areas of similarity and difference:

Criteria	Seizure (section 67)	Confiscation (section 130)
Applicability	Any goods, documents, books or things	Only offending goods
Manner	Actual custody or constructive custody	Actual custody
Authority	Held in trust, no change of ownership	Held in trust, no change of ownership unless adjudication completed
Duration of holding	Until required for examination / inquiry / proceedings. If no notice issued, 6 months (and a further period of 6 months if extended by proper officer)	Until issue of notice for adjudication and opportunity to pay penalty-in-lieu of confiscation
Conclusion	Return articles that are not 'offending articles'	Title to pass and vest with Central Government as per order of adjudication

67.2. Issues and concerns:

1. While the law provides for seizure of goods liable to confiscation, documents, books and things. The law does not impose the proper officer to explain to the person from whom the same are seized, as to what were the reasons for doing so. This may cause undue hardship to the taxable persons.

2. It may be noted that the provision for checking of issuance of tax invoice / bill of supply merely provides for return of goods, and the question of return or cancellation of service does not arise. Therefore, the tax paid on any services received for test-checks cannot be refunded and shall be a cost to the Revenue.

67.3. FAQs

Q1. Under what circumstances there can be inspection, search or seizure operations?

Ans. Initiation of action under this section is when the proper officer not below rank of Joint Commissioner '**has reasons to believe**' that

(a) the taxable person has suppressed any transaction of supply of goods or services or stock in hand or claimed excess input tax credit or has contravened any of the statutory provisions to evade payment under GST law.

(b) any person engaged in the business of transportation of goods or an owner or operator of a warehouse or godown or any other place is keeping goods which have escaped tax payment or has kept his accounts or goods in a manner likely to cause tax evasion.

Q2. What is the meaning of the phrase 'reason to believe'?

Ans. The phrase 'reason to believe' has been interpreted by various courts distinguishing it from 'reason to suspect'. In the case of *Crompton Greaves Ltd. vs. State of Gujarat, [2000] 120 STC 510,* the High Court observed that, *"these words suggest that belief must be that of honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumor. The powers under the present section are wide but not plenary; the words of the section are 'reason to believe' and not 'reason to suspect'."*

Q3. Whether goods so seized can be released on a provisional basis?

Ans. The goods so seized can be released on provisional basis upon execution of a bond for the value of the goods and furnishing of a security in the form of bank guarantee equivalent to the amount of applicable tax, interest and penalty payable or upon payment of applicable tax, interest and penalty payable as the case may be.

Q4. How long can the goods as well as other documents, books and things that are relied upon for issuance of notice can be retained by the proper officer?

Ans. The goods seized can be retained up to a maximum period of 6 months (and additional 6 months in the case of sufficient cause) of the seizure, in case a notice is not issued.

Documents, Books and other Things – No specific time period. Can be retained as long as may be necessary for their examination and for any inquiry or proceedings

Goods: To be retained until provisionally released by the concerned person by furnishing proper bond and security.

Q5. What goods / class of goods can be disposed off by the proper officer, having regard to the perishable or hazardous nature of any goods, etc.?

Ans. The list of goods / class of goods as specified in *Notification No. 27/2018-Central Tax dated 13.06.2018.*

67.4. MCQs

Q1. Initiation of action under this section is by proper officer not below the rank of _____

(a) Superintendent

(b) Inspector

(c) Joint Commissioner

(d) Commissioner

Ans. (c) Joint Commissioner

Q2. In how many days, the officer shall return the seized goods / documents which are not relied upon while issuing notice?

(a) 15 days

(b) 30 days

(c) 60 days

(d) 90 days

Ans. (b) 30 days

Statutory provisions

68. Inspection of goods in movement

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

Extracts of the CGST Rules, 2017

[3][138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided further that where the goods to be transported are supplied through an e-commerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-

[3]*Substituted vide Notification No.12/2018-CT dated 07-03-2018.*

way bill shall be generated by the said person irrespective of the value of the consignment.

[4][Explanation 1. – For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, Notification No. 56/2018-Central Tax dated the 23rd October, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1056 (E) dated the 23rd October, 2018 as amended from time to time].

Explanation 2.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the Central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01.

(2A) Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B of FORM GST EWB-01:

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter

[4] Substituted vide Notification No. 74/2018 – CT dated 31-12-2018.

may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

[5][Provided also that an unregistered person required to generate e-way bill in FORM GST EWB-01 in terms of the fourth proviso to sub-rule (1) or an unregistered person opting to generate eway bill in Form GST EWB-01, on the common portal, shall submit the details electronically on the common portal in FORM GST ENR- 03 either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details so furnished, a unique enrolment number shall be generated and communicated to the said person.]

Explanation 1. – For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2. - The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

(4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A of the FORM GST EWB-01, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in Part B of FORM GST EWB-01:

Provided that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill.

(5A) The consignor or the recipient, who has furnished the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another

[5] Inserted vide Notification No. 12/2024 – CT dated 10.07.2024 w.e.f. date yet to be notified.

registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment:

Provided that after the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 maybe generated by him on the said common portal prior to the movement of goods.

(7) Where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within twenty-four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of Part B of FORM GST EWB-01.

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:-

Table

S.No.	***Distance***	***Validity period***
(1)	***(2)***	***(3)***
1.	*Upto [6][200 km].*	*One day in cases other than Over Dimensional Cargo [7][or multimodal shipment in which at least one leg involves transport by ship]*
2.	*For every [8][200 km.] or part thereof thereafter*	*One additional day in cases other than Over Dimensional Cargo [9][or multimodal shipment in which at least one leg involves transport by ship]*
3.	*Upto 20 km*	*One day in case of Over Dimensional Cargo [10][or multimodal shipment in which at least one leg involves transport by ship]*
4.	*For every 20 km. or part thereof thereafter*	*One additional day in case of Over Dimensional Cargo [11][or multimodal shipment in which at least one leg involves transport by ship]*

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

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[6] Substituted vide Notification No. 94/2020 - CT Dated 22-12-2020 w.e.f. 01-01-2021, before it was read as "100 km."
[7] Inserted vide Notification No. 31/2019 – CT Dated 28-06-2019
[8] Substituted vide Notification No. 94/2020 - CT Dated 22-12-2020 w.e.f. 01-01-2021, before it was read as "100 km."
[9] Inserted vide Notification No. 31/2019 – CT Dated 28-06-2019
[10] Inserted vide Notification No. 31/2019 – CT Dated 28-06-2019
[11] Inserted vide Notification No. 31/2019 – CT Dated 28-06-2019

Provided further that where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B of FORM GST EWB-01, if required.

[12][Provided also that the validity of the e-way bill may be extended within eight hours from the time of its expiry.]

Explanation 1.—For the purposes of this rule, the "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Explanation 2.— For the purposes of this rule, the expression "Over Dimensional Cargo" shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).

(11) The details of the e-way bill generated under this rule shall be made available to the-

(a) supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter; or

(b) recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter,

on the common portal, and the supplier or the recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

(13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory.

(14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—

(a) where the goods being transported are specified in Annexure;

[12] Inserted vide Notification No. 31/2019 – CT Dated 28-06-2019

(b) where the goods are being transported by a non-motorised conveyance;

(c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory;

(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017- Central tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 674 (E) dated the 28th June, 2017 as amended from time to time;

(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;

(g) where the supply of goods being transported is treated as no supply under Schedule III of the Act;

(h) where the goods are being transported—

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal;

(i) where the goods being transported are transit cargo from or to Nepal or Bhutan;

(j) where the goods being transported are exempt from tax under Notification No. 7/2017-Central Tax (Rate), dated 28th June 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 679(E)dated the 28th June, 2017 as amended from time to time and Notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1181(E) dated the 21st September, 2017 as amended from time to time;

(k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;

(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;

(m) where empty cargo containers are being transported; and

(n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.

[13][(o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.]

Explanation. The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

ANNEXURE

[(See rule 138 (14)]

S. No.	***Description of Goods***
(1)	***(2)***
1.	*Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers*
2.	*Kerosene oil sold under PDS*
3.	*Postal baggage transported by Department of Posts*
4.	*Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)*
5.	*Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) [excepting Imitation Jewellery (7117)][14]*
6.	*Currency*
7.	*Used personal and household effects*
8.	*Coral, unworked (0508) and worked coral (9601)*

[13] Inserted vide Notification No. 26/2018 – CT Dated 13-06-2018.
[14] Inserted vide Notification No. 26/2022-CT Dated 26.12.2022.

[15][138A. Documents and devices to be carried by a person-in-charge of a conveyance

(1) The person in charge of a conveyance shall carry—

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel:

[16][Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01].

[(2) In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.][17]

(3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

(5) Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill

(a) tax invoice or bill of supply or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply."]

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[15] Substituted vide Notification No.12/2018 -CT Dated 07-03-2018.
[16] Inserted vide Notification No. 39/2018 – CT Dated 04-09-2018.
[17] Substituted vide Notification N. 72/2020 - CT Dated 30-09-2020

[18][138B. Verification of documents and conveyances

(1) The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods.

(2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.

(3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.]

[19][138C. Inspection and verification of goods

(1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within twenty four hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within three days of such inspection.

[20][Provided that where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of FORM EWB-03, for a further period not exceeding three days.

Explanation. - The period of twenty four hours or, as the case may be, three days shall be counted from the midnight of the date on which the vehicle was intercepted].

(2) Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently.

[21][138D. Facility for uploading information regarding detention of vehicle

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in FORM GST EWB-04 on the common portal.]

[18] Substituted vide Notification No.12/2018 – Dated. 07-03-2018
[19] Substituted vide Notification No.12/2018 - Dated 07-03-2018
[20] Inserted vide Notification No. 28/2018 – CT Dated 19-06-2018
[21] Substituted vide Notification No.12/2018 -CT Dated 07-03-2018

[Explanation. - For the purposes of this Chapter, the expressions 'transported by railways', 'transportation of goods by railway', 'transport of goods by rail' and 'movement of goods by rail' does Not include cases where leasing of parcel space by Railways takes place."][22]

[23]***[138E. Restriction on furnishing of information in PART A of FORM GST EWB-01.***-

Notwithstanding anything contained in sub-rule (1) of rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01— [in respect of any outward movement of goods of a registered person, who, —][24]

a. *being a person paying tax under section 10* [25]*[or availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019–Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 189, dated the 7th March, 2019], has not furnished the [statement in FORM GST CMP-08]*[26] *for two consecutive [quarters]*[27]*; or*

b. *being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of [two tax periods]*[28]*:*

c. *[being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be.]*[29]

d. *[being a person, whose registration has been suspended under the provisions of sub-rule (1) or sub-rule (2) or sub-rule (2A) of rule 21A.]*[30]

Provided that the Commissioner may, [on receipt of an application from a registered person in FORM GST EWB-05,][31] *on sufficient cause being shown and for reasons to be recorded in writing, by order* [32]*[in FORM GST EWB-06], allow furnishing of the said information in PART A of FORM GST EWB 01, subject to such conditions and restrictions as may be specified by him:*

Provided further that no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB-01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

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22 Inserted vide Notification No. 14/2018-C.T., Dated 23.03.2018, w.e.f. 01.04.2018.
23 Inserted (w.e.f. 21.11.2019 vide Notification No. 36/2019-C.T., Dated 20.08.2019) by Notification No. 74/2018-C.T., Dated 31.12.2018.
24 Substituted vide Notification No.15/2021 -CT Dated 18-05-2021
25 Inserted vide Notification No. 31/2019-CT Dated 28.06.2019
26 Substituted vide Notification No. 31/2019 – CT Dated 28.06.2019 for "returns".
27 Substituted vide Notification No. 31/2019 – CT Dated 28.06.2019 for "tax periods".
28 Substituted vide Notification No. 94/2020 –CT Dated 22-12-2020 for "two months".
29 Inserted vide Notification No. 75/2019 – CT Dated 26-12-2019 w.e.f. 11.01.2020
30 Inserted vide Notification No. 94/2020 – CT Dated 22.12.2020
31 Inserted vide Notification No. 33/2019-CT Dated 18.07.2019
32 Inserted vide Notification No. 33/2019 – CT Dated 18.07.2019

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

[Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period February, 2020 to August, 2020.][33]

["Provided also that the said restriction shall not apply during the period from the 1st day of May, 2021 till the 18th day of August, 2021, in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period March, 2021 to May, 2021."];[34]

Explanation: – For the purposes of this rule, the expression "Commissioner" shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b)]

[35][138F Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof

(1) Where-

(a) a Commissioner of State tax or Union territory tax mandates furnishing of information regarding intra-State movement of goods specified against serial numbers 4 and 5 in the Annexure appended to sub-rule (14) of rule 138, in accordance with sub-rule (1) of rule 138F of the State or Union territory Goods and Services Tax Rules, and

(b) the consignment value of such goods exceeds such amount, not below rupees two lakhs, as may be notified by the Commissioner of State tax or Union territory tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorised by him,

notwithstanding anything contained in Rule 138, every registered person who causes intra-State movement of such goods, -

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an un-registered person,

shall, before the commencement of such movement within that State or Union territory,

[33] Inserted vide Notification No. 79/2020 – CT Dated 15.10.2020

34 Inserted vide Notification No. 32/2021 – CT Dated 29.08.2021 w.e.f. 01.05.2021.

[35] Inserted vide Notification No. 38/2023- CT Dated 04.08.2023

furnish information relating to such goods electronically, as specified in Part A of FORM GST EWB-01, against which a unique number shall be generated:

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(2) The information as specified in PART B of FORM GST EWB-01 shall not be required to be furnished in respect of movement of goods referred to in the sub-rule (1) and after furnishing information in Part-A of FORM GST EWB-01 as specified in sub-rule (1), the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal.

(3) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1.

(4) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-waybill, the e-way bill may be cancelled, electronically on the common portal, within twenty-four hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(5) Notwithstanding anything contained in this rule, no e-way bill is required to be generated-

(a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(b) where the goods are being transported-

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal.

(6) The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, mutatis mutandis, apply to an e-way bill generated under this rule.

Explanation.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said

consignment and also includes the central tax, State tax or Union territory tax charged in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.]

Other Updates available on the EWB portal:

1. Representations have been received from various trade bodies stating that they are not able to generate EWB for movement of those goods where their principal supply is classifiable as a service, since there is no provision for generating E-way Bill by entering SAC (Service Accounting Code-Chapter 99) alone on the E- way bill portal.

2. To overcome this issue, the taxpayers are advised as below:

a) Rule 138 of CGST Rules, 2017, inter alia, states "Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees…." Thus, E way bill is required to be generated for the movement of Goods.

b) Therefore, in cases where the principal supply is purely a supply of service and involving no movement of goods, the e-way bill is not required to be generated.

c) However, in cases where along with the principal supply of service, movement of some goods is also involved, e-way bill may be generated. Such situations may arise in cases of supply of services like printing services, works contract services, catering services, pandal or shamiana services, etc. In such cases, e-way bill may be generated by entering the details of HSN code of the goods, along with SAC (Service Accounting Code) of services involved.

2. 2-Factor Authentication for e-Way Bill and e-Invoice System

To enhance the security of e-Way Bill/e-Invoice System, National Informatics Centre (NIC) has introduced 2- Factor Authentication for logging in to e-Way Bill/e-Invoice system i.e., in addition to username and password, OTP will also be authenticated for login. Such authentication has been made mandatory for taxpayers with AATO Rs 20 Crore and above from 20th November 2023. Users are supposed to register for 2FA and also create sub-users. The OTP can be received through SMS, On 'Sandes' app or NIC-GST Shield' app.

3. Reporting of 4/6 digit HSN in e-Waybill from 1st February 2024.

As per the *Notification No. 78/2020 –Central Tax, dated 15th October, 2020*, it is necessary to provide at least 6 digit HSN code for all the B2B and Export transactions by the taxpayers whose Annual Aggregate Turnover (AATO) is more than Rs. 5 Crores. The taxpayers, with AATO less than Rs. 5 Crores, need to provide at least 4 digit HSN code.

The taxpayers are advised to make necessary changes in their systems and enter
4 / 6 digit HSN codes while generating the e-way bills through web and API systems from 1st Feb. 2024.

Related provisions of the Statute

Section or Rule	Description
Section 31	Tax invoice
Rules 46 – 55A	Form and manner of documents prescribed in Section 31
Section 15	Value of supply
Section 2(68)	Definition of 'Job Work'
Section 2(52)	Definition of 'Goods'
Section 2(67)	Definition of 'Inward Supply'
Section 2(45)	Definition of 'E-Commerce Operator'
Section 7	Supply
Section 10 (IGST)	Place of supply of goods other than goods imported into or exported from India

68.1. Introduction

Section 68 of CGST Act stipulates that the person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount shall carry with him prescribed documents and devices (invoice or bill of supply or delivery challan, as the case may be, also bill of entry in case of import of goods) which shall be validated in the prescribed manner. If such conveyance is intercepted by the proper officer at any place, the person in charge of the conveyance shall be liable to produce the documents and devices for verification and also allow the inspection of goods.

Rules 138 to 138E of the CGST Rules lay down, in detail, the provisions relating to e-way bills. As per the said provisions, in case of transportation of goods by road, an e-way bill is required to be generated before the commencement of movement of the consignment. In case of transportation of goods by road, person in charge of a conveyance shall also carry a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

When there is any document-deficiency, then consequences laid out in section 129 will immediately follow which provides for detention, seizure and release of goods and conveyances in transit. Section 130 provides for the confiscation of goods or conveyances and imposition of penalty.

The following notes provide some information to help in better understanding about **Procedural and Practical Aspects of E-Way Bill under GST** and provide a walk-through the various steps involved in preparation, issuance and use of e-way bills.

68.2. Analysis

(i) Applicability

E-way Bill ("EWB") is not required for all transactions undertaken by a taxable person. It is required only for those transactions **which involve movement of goods**. Every registered person (supplier or recipient) who causes movement of goods of consignment value exceeding **fifty thousand rupees** (States may have different limits for intra-state movement) is required to generate e-way bill electronically before commencement of such movement. Such movement of goods may be:

- in relation to a supply; or
- for reasons other than supply; or
- due to inward supply from an unregistered person.

Some transactions though involving movement of goods are deemed to be a supply of services such as leasing of goods, or supply of food & beverages, etc. and hence will require EWB.

EWB prescribed under CGST Act will apply to all inter-State movement of goods and those prescribed under SGST Acts will apply to intra-State movement of goods.

Furnishing of information in EWB:

E-way bill (EWB) shall be in **two parts- Part A and Part B.** Information relating to the relevant goods is required to be furnished in Part A of FORM GST EWB-01 along with such other information as may be required on the common portal. After furnishing of such information, a unique number is generated on the said portal. This number remains valid for a period of **fifteen days** for updating Part B of FORM GST EWB-01.

The information in Part A can be furnished by the:

- **registered person** (supplier or the recipient); or
- **transporter**, on an authorization received from the registered person; or
- by an **e-commerce operator** or courier agency on an authorization from the consignor where the goods to be transported are supplied through them.

Bar on EWB Facility for Return-default

No person shall be allowed to furnish information in Part-A of FORM GST EWB-01 in respect of any outward movement of goods of a registered person where composition taxable person or those [36][availing the benefit of *Notification No. 02/2019– CT (Rate), Dated 7.3.2019*] fails to furnish the statement in **FORM GST CMP-08** for two (2) consecutive quarters and a regular taxable person fails to file returns for two (2)

[36] *Inserted vide Notification No. 31/2019 – CT Dated 28-06-2019 w.e.f. 28.6.2019.*

consecutive tax periods[37] or statement of outward supplies for any two months or quarters, as the case may be[38], (Rule 138E). It is relevant to note that generation of EWB will be barred for defaulting supplier's GSTIN only and not on recipient or transporter. Please note that bar on EWB facility will not follow any procedure of giving notice and conducting a hearing. After EWB facility is barred, an application in **FORM GST EWB-05** may be made by the registered person requesting to allow this facility and order permitting/rejection the application would be issued by the Commissioner in **FORM GST EWB-06** following a procedure of personal hearing.

EWB is generated after furnishing the details of conveyance in PART B of EWB-01 and a unique EWB number (EBN) is made available to the supplier, recipient and the transporter on the common portal.

Generation of EWB by whom:

When goods are transported by	**Generation of EWB by**
Road:	
By a registered person as a consignor or the recipient of supply as the consignee in own conveyance or a hired one or a public conveyance	the registered person as a consignor or the recipient of supply as the consignee
By a transporter	the transporter on the basis of information relating to such transporter furnished by the registered person in Part A of FORM GST EWB-01
The registered person or, the transporter may, at his option, generate and carry the EWB even if the value of the consignment is less than fifty thousand rupees.	
Railways or by air or vessel [39]*Explanation to Rule 138D. - For the purposes of this Chapter, the expressions 'transported by railways', 'transportation of goods by railways', 'transport of goods by rail' and 'movement of goods by rail' does not include cases where leasing of parcel space by Railways takes place.*	the registered person, being the supplier or the recipient, either before or after the commencement of movement. However, where the goods are transported by railways, the railways shall not deliver the goods unless EWB is produced at the time of delivery.

[37] *Substituted vide Notification No. 94/2020 – CT Dated 22-12-2020 for "months".*
[38] *Inserted vide Notification No. 75/2019 – CT Dated 26-12-2019 w.e.f. 11-01-2020.*
[39] *Inserted vide Notification No. 14/2018 – Dated 23-03-2018 w.e.f. 01.04.2018.*

By an unregistered person either in his own conveyance or a hired one or through a transporter	the unregistered person or the transporter. However, according to Explanation 1 to Rule 138(3), where the goods are supplied by an unregistered supplier to a registered recipient, the movement shall be said to be caused by such recipient (i.e., registered person) if the recipient is known at the time of commencement of the movement of goods.

When details of conveyance in Part B is not required to be furnished:

Where the goods are transported for a distance of up to 50 kms within the State or Union territory:

- from the place of business of the consignor to the place of business of the transporter for further transportation;
- from the place of business of the transporter finally to the place of business of the consignee

The EWB shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements as mentioned above- Explanation 2 to Rule 138(3).

(ii) Transport

Transport or movement of goods must be distinguished from 'delivery' of goods. Transport and delivery seem synonymous, but they are not. Movement or journey is a part of transportation, and it can be said that transportation has commenced as soon as the Consignor hands over the goods with clear and irrevocable instructions to a Carrier to put them on its journey to a specified destination and hand them over to a specified (or altered) Consignee (or his order). At this point, the actual journey or movement has not even begun but transportation has already begun. After the journey commences, it can be interrupted or be continuous, but transportation continues to remain in-progress. Likewise, journey may end but transportation would still be in progress. Now, transportation will conclude only when the instructions of the Consignor have been satisfactorily discharged by the Carrier on handing over the goods to the Consignee (or his order). EWB is required 'before' commencement of transportation regardless of commencement of journey. Delivery is that legal responsibility where title is transferred, as section 10(1) (a) *inter alia* provides that, *"movement terminates for delivery….."*. Delivery assumes legal significance which must carefully be observed in each transaction.

(iii) Place of Delivery

Form GST EWB 01 requires 'place of delivery' to be specified. Please note that this term is not to be misconstrued to be 'place of supply'. EWB is intended to create contemporaneous trail of physical movement of the goods. It is not meant to address the legalistic concept of 'place of supply' which can vastly differ from 'place of delivery'. Though physical movement of the goods may be from one location to another, in the eyes of law, 'place of supply' could very well be the location of the recipient. So, it is not conceivable for EWB to require information about 'place of supply' but very simply, the 'place of delivery' or 'destination of journey'. In fact, it can be seen that, when GSTIN of recipient is incorporated, the place of delivery will auto-populate.

One who effects supply is the Supplier and Consignor is one who causes movement of the goods. Very often Supplier and Consignor may be the same person, but not always. Supplier may be the mind behind the supply but warehouse keeper could still be the Consignor. Similarly, recipient is defined in section 2(93) to be the one who pays consideration, but such person may not always be a Consignee.

(iv) Consignment Value

Transaction Value is understood from section 15, whereas the value referred to in the EWB provisions happens to be 'consignment value' – i.e., where the consignment value exceeds the threshold limit, an EWB becomes mandatory. This 'consignment value' is computed so as to be the transaction value plus applicable GST but excluding the value of any exempt supplies (in case of a tax-invoice-cum-bill-of-supply). It must be noted that EWB itself requires both these values to be specified – transaction value as well as GST amount. In this regard, it is relevant to note that the consignment value must contain the measure of value of section 15 in all cases. This means, supplies where the consideration is in non-monetary terms, would also require the issuance of EWB. Please refer to the discussions in Chapter 4A of this BGM to better understand the valuation principles in respect of supplies not having a consideration in wholly monetary terms. For example, equipment costing Rs.100 lacs moved inter-State under a monthly lease of Rs. 5 lacs would require an EWB to be carried along. In such case, it is suggested that to curb practical difficulties during the transit, a challan for value of goods of Rs. 100 lacs be prepared and the same value be declared in EWB.

In the following cases, an EWB shall be required to be issued regardless of the consignment value:

- ✓ Where goods are sent by a principal located in one State / UT to a job worker located in any other State / UT – the e-way bill shall be generated either by the principal or the registered job worker [third proviso to Rule 138(1) of the CGST Rules];
- ✓ Where handicraft goods are transported from one State / UT to another by a person who has been exempted from the requirement of obtaining registration under Section 24(i) and (ii) [fourth proviso to Rule 138 (1) of the CGST Rules].

(v) Non-EWB Goods

No EWB is required to be generated in respect of exempt goods and specific cases covered under Rule 138(14). It may be noted that movement of goods exempted under *Notification No. 2/2017- Central Tax (Rate) dated June 28.2017* (as amended time to time) except de-oiled cake do not require EWB pursuant to Rule 138(14)(e) of CGST Rules. Moreover, movement of goods notified under Clause (d) of Rule 138(14) of State/UT GST Rules will also be excluded under the Central GST Rules. This also acknowledges that State/UT GST Rules are stand-alone on the requirements of EWB in respect of intra-State movement and the Central GST Rules are limited only in respect of inter-State movement. EWB is not even required when there is a supply without any movement of goods (see section 10(1)(c) of the IGST Act, 2017).

For example, where goods move from a DTA unit to SEZ unit or vice-versa located in the same State, there will be no requirement to generate an e-way bill, if the same has been exempted by the particular State under rule 138(14)(d) of the CGST Rules.- *Circular No. 47/21/2018-GST dated 28.06.2018.*

Such exclusion from EWB is allowed to all kinds of goods, if the value is up to Rs.50,000 or the threshold prescribed (refer "Threshold - State EWB" heading in this Chapter) in the case of intra-State Supplies.

Care should be taken not to misapply the threshold limit prescribed by States for use of EWB to inter-State movement. This discretion enjoyed by States in prescribing exceptions (to the CGST Rules) is limited to movement **within** the respective State.

Summary of 'no EWB'

NO EWB REQUIRED		Short Notes
(a)	where the goods being transported are specified in Annexure	**8-items listed in Annexure**
(b)	where the goods are being transported by a non-motorised conveyance	**Non-motorized conveyance**
(c)	where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs	**Port-to-Port transfers** (for customs clearance)
(d)	in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory	**State-list of EWB exemption**

(e)	where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to *Notification No. 2/2017- Central tax (Rate) dated the 28th June, 2017*	**Goods exempt from GST also exempt from EWB**
(f)	where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel	**6-items of non-taxable goods**
(g)	where the supply of goods being transported is treated as no supply under Schedule III of the Act	**Schedule III items**
(h)	where the goods are being transported— (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or (ii) under customs supervision or under customs seal	**Transport under Customs control**
(i)	where the goods being transported are transit cargo from or to Nepal or Bhutan	**Transit cargo (Nepal/Bhutan)**
(j)	where the goods being transported are exempt from tax under *Notification No. 7/2017-Central Tax (Rate), dated 28th June 2017* and *Notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017*	**Transport between CSD Canteens and Nuclear Power Corporation**
(k)	any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee	**Transport under MOD control/formation**
(l)	where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail	**Rail-transport 'by' Government or LA**
(m)	where empty cargo containers are being transported	**Empty cargo containers**
(n)	where the goods are being transported upto a distance of twenty kilometres from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of	**Weighment and back** (upto 20 kms)

	goods is accompanied by a delivery challan issued in accordance with rule 55.	
(o)	where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply	**Empty LPG cylinders** (other than supply)

(vi) Intra-State movement of gold or precious stones

Special dispensation under rule 138(14) applicable to the following items:

1. Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal
2. Jewellery, goldsmiths' and silversmiths' wares and other articles [excepting Imitation Jewellery]

notified by the Commissioner of State tax or Union territory tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorised by him that a consignment value exceeding Rs. 2 lakhs will not be applicable and EWB will be required before commencement of such movement. This requirement is notified through *Notification No. 38/2023-CT dated 04.08.2023 w.e.f. 04.08.2023.*

(vii) EWBs effect on Place of Supply

Inter-State movement or inter-State supply are two distinct terms to be recognized. By the fiction in section 7 of IGST Act, several transactions are considered to be inter-State supplies but, for the limited purposes of EWB, their actual movement alone determines whether it is inter-State movement (attracting Central EWB) or intra-State movement (attracting State/UT EWB). Here, we may notice that various States/UTs have synchronized their movement to ensure ease of movement whether inter-State or intra-State. EWB is required whether the movement of goods is pursuant to supply or not and pursuant to supply of goods or of services or inward supply from an unregistered person.

- ✓ **Illustration 1:** Goods imported from China arrive at Mumbai port. These goods are transported from Mumbai port to factory in Pune. This is an inter-State supply from China to Pune, but it is an intra-State movement from Mumbai to Pune – Requirement of EWB to be determined under the State GST Law.
- ✓ **Illustration 2:** Goods are sold from Lucknow by a Supplier to Customer in Delhi with instructions for these goods to be delivered to job-worker in Noida. This is an inter-State supply from Lucknow to Delhi but an intra-State movement within UP – Requirement of EWB to be determined under the State GST Law.
- ✓ **Illustration 3:** Generator installed in basement of building being sold to Landlord on termination of lease agreement. EWB will NOT BE REQUIRED as there is 'no movement' in this supply.

- ✓ **Illustration 4:** Contractor carrying portable crane to customer site, both located in same State, as part of the works to be undertaken will require EWB as the movement of crane even though movement (on its own or in any another motorized conveyance) is not for making supply of crane itself but for supply of services using such crane.
- ✓ **Illustration 5:** Laptop carried by an employee of a Company in Delhi, having no other branches, to client-location in Bangalore on business. This movement is not supply but is incidental to 'services of employee to employer' under Schedule III. EWB will NOT BE REQUIRED for this movement. Contract-staff carrying company-laptop not excluded from EWB requirement.
- ✓ **Illustration 6:** Empty LPG cylinders transported from dealership to bottling plant of Oil Company, is 'excluded' from the requirements of EWB. Thus, EWB will NOT BE REQUIRED for this movement. But EWB will be required for movement of cylinders supplied by fabricator to an oil company.

(viii) Portal Registration

Registration on www.ewaybillgst.gov.in (*Notification No. 9/2018-CT dated 23.01.2018*) is not to be understood as a registration under section 22 of the CGST Act. It may also be noted that a registration under section 22 does not automatically create a registration on this portal. Persons who are already registered under section 22 are also required to register on this portal. Registration on the portal merely refers to creation of user login for use of the features on this portal.

Even a transporter who is not registered under section 22 is allowed to register on this portal for the limited purposes of updating information in Part B of EWB (called as 'enrolment'). Such transporters are issued TRANSIN registration. Considering that TRANSIN is required only for purposes of updating EWB information, a Consignor or Consignee are also permitted to obtain TRANSIN.

It is advisable for every GSTIN-holder to obtain an enrolment with a TRANSIN ID. This will help in modifying information in Part B of the EWB if and when required, to obtain extension of validity in case of *bona fide* delay, and most importantly, reporting detention.

(ix) Reasons for Transportation

Reasons for transportation must be one of the following:

Supply | Export or Import | Job Work | SKD or CKD | Recipient not known |

Line Sales | Sales Return | Exhibition or fairs | for own use | others

One must exercise caution while selecting the appropriate reason, since this information is expected to be **linked** with the returns filed by the registered person in order to correctly differentiate a mere movement of goods from a supply thereof, as it

creates a contemporaneous **trail of the movement**. Use of EWB limits any possibility of fictitious transactions being recorded or included after lapse of time.

(x) Person Responsible

Person causing movement is required to prepare EWB. As a corollary, one who prepared EWB could be implied to be the one who caused movement of the goods. Considering the ingredients applicable in each clause under 10(1) to determine '*place of supply*', it is important that EWB generation is **not causally undertaken**. One must be mindful of the effect it could have on the place of supply declared. If EWB is wrongly prepared or prepared by a wrong distinct person, this may **adversely impact** the person who is going to report the supply or the nature of the supply in the GST returns.

(xi) 'Bill-to-Ship-to' (BTST/B2S2) Transactions

Although bill-to-ship-to transactions could sometimes result in twin-supply transactions, they require a single EWB since the movement is singular. In the e-way bill form, there are two portions under the 'TO' section.

- ✓ in the left-hand-side: 'Billing To' GSTIN and trade name should be entered; and
- ✓ in the right-hand-side: 'Ship to' address of the destination of the movement should be entered.
- ✓ the other details as per invoice should be entered.

In case ship-to State is different from the bill-to State, the tax components are entered as per the details of the bill-to person (bill-to State), i.e., if the bill-to location is inter-State for the supplier, IGST is entered and if the bill-to person is located in the same State as the supplier, SGST and CGST are entered irrespective of the place of delivery (whether within the State or outside the State).

In a typical "bill-to-ship-to" model of supply, three persons are involved in the transaction, namely:

- 'A' is the person who has ordered 'B' to send goods directly to 'C'.
- 'B' is the person who is sending goods directly to 'C' on instructions of 'A'.
- 'C' is the recipient of goods.

In this complete scenario, two supplies are involved and accordingly two tax invoices are required to be issued:

- Invoice -1, which would be issued by 'B' to 'A'.
- Invoice -2 which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017 either 'A' or 'B' can generate the e-Way Bill, but it may be noted that only one e-Way Bill is required to be generated as per the following procedure:

[Case -1: Where e-Way Bill is generated by 'B', the following fields shall be filled in Part A of GST FORM EWB-01][40]:

1.	Bill From:	In this field details of 'B' are supposed to be filled.
2.	Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
3.	Bill To:	In this field, details of 'A' are supposed to be filled.
4.	Ship to:	In this field, address of 'C' is supposed to be filled.
5.	Invoice Details:	Details of Invoice-1 are supposed to be filled

[Case -2: Where e-Way Bill is generated by 'A', the following fields shall be filled in Part A of GST FORM EWB-01] [40]:

1.	Bill From:	In this field details of 'A' are supposed to be filled.
2.	Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
3.	Bill To:	In this field details of 'C' are supposed to be filled.
4.	Ship to:	In this field address of 'C' is supposed to be filled.
5.	Invoice Details:	Details of Invoice-2 are supposed to be filled

Illustration 7: Goods supplied from Baroda to intermediate in Chennai but directly delivered to Kolkata. EWB to be generated 'before' commencement of movement with 'bill to Chennai' and 'ship to Kolkata' with the GSTIN of original supplier (Baroda) and intermediate (Chennai).

Illustration 8: Car sold by Dealer in Bangalore to Bank in Mumbai but delivered to Lessee in Bangalore. EWB to be issued 'before' commencement of movement with 'bill to Mumbai' and 'ship to Bangalore'.

Illustration 9: Water cans supplied by Dealer in Road no.1 to Caterer registered in Road no.2 and delivered to central Kitchen in Road no.10 and then carried to marriage hall in Road no.12. EWB to be issued 'before' commencement of movement with 'bill to Road no.2' and 'ship to Road no.10'. Since there is an interval of time after delivery of water cans from Dealer to central Kitchen, this is not a transaction that is inter-linked in two movements. Subsequent movement of entire catering articles involves another EWB independent of the earlier EWB.

[40] *https://pib.gov.in/Pressreleaseshare.aspx?PRID=1529945*

(xii) 'Bill from-Ship from' (BFSF) Transactions

Such a situation arises where the supplier prepares the bill from his business premises to the consignee, but moves the consignment from some other premises to the consignee, based on business requirements. In alignment with procedure specified in the preceding paragraph, the system provides a mechanism for this situation as well. In the e-way bill form, there are two portions under 'FROM' section:

- ✓ In the left-hand-side: 'Bill From' supplier's GSTIN and trade name should be entered; and
- ✓ In the right-hand-side: 'Dispatch From', address of the dispatching place should be entered.
- ✓ The other details should be entered as per the invoice.

(xiii) EWB to impact Classification (BTST-BFSF)

Use of EWB can impact the classification of the goods in-transit supplies. Although it may seem like a rule that since the goods procured from the original Supplier and resupplied on back-to-back basis, the classification (and hence rate of tax) should remain the same. It is true but with some exceptions, namely:

- ➢ Goods procured from various Suppliers and delivered to end Customer's site for undertaking supply of services involving goods such as leasing, works contract, etc. Without questioning the nature of supply – inter-State or intra-State – carefully consider the impact on the classification of the goods. Classification of the outward supply by the intermediate Supplier to end Customer need not mirror the classification of the original Supplier. Clearly, nothing has been done as yet by the intermediate Supplier on the goods to discharge his supply obligations but the EWB must carry the correct HSN. The intermediate Supplier may supply the goods on a back-to-back basis but they may not issue invoice on back-to-back basis as milestone-based invoice may be required as per contract. So, care should be taken not to 'copy' the HSN applied by the original Supplier even though the supply to end Customer is in-transit, whether undertaken as BTST or BFSF.

  Illustration 10: Cement (HSN 2523) supplied by Dealer is billed to Contractor but delivered to Customer's site on 'in-transit' basis, Contractor's EWB must follow HSN 9954 along with HSN 2523 and not HSN 2523 alone.

- ➢ Goods procured from original Supplier and delivered to end Customer's site which is not a supply or has already been subject to tax such as publishing, contract manufacturing, job-work, warranty fulfilment, etc.

  Illustration 11: In case of printed books being sent by Publisher to Dealer, the HSN code to be applied will be HSN 9989 along with relevant HSN under Chapter 49 and not HSN 49 alone that is applicable to printed books (relevant kind).

It is important to bear in mind that in BTST or BFSF transactions, the details in EWB may not be the same as the Tax Invoice for the supply, if any. EWB is for 'movement' and Tax Invoice is for 'supply'. Movement of goods is recognized in the EWB itself to be 'other than supply'. Hence, exact mirroring of the EWB and the Tax Invoice is not always possible. Classification too is not static and can undergo change as the other aspects in EWB.

(xiv) EWB Formula

EWBs follow a time-distance-acceptance based formula. EWB has a validity period linked to the distance the goods have to travel and finally acceptance by the Recipient. Unless accepted / rejected within 72 hours, the EWB is deemed to be accepted. An EWB can only be cancelled within 24 hours of generation (unless the carriage has been intercepted / the goods delivered, prior to such time). Thus, EWB introduces a sense of urgency in the process of movement and promptly recording the transactions.

This requires better preparation and organizing information required to be input in EWBs so that when it is time to carry out movement of goods, the information is correct, complete and free of errors. Booking sales in the last few days of the month may not be easy unless supported by a timely dispatch of goods along with EWB.

(xv) Watch 'portal' continuously

One needs to watch portal continuously and 'accept' or 'reject' an EWB. If not, every EWB uploaded with GSTIN, will be 'deemed as accepted'. Considering that EWBs become 'valid' from the time Part-B is entered, they will appear as soon as EBN is generated with just Part-A information. Monitoring portal regularly is important. Creation of sub-users for this purpose may be beneficial based on projects or SBUs where single GSTIN is used in a State. In order to monitor, POs issued must be available on-hand to be able to 'reject' any unknown or unrecognized EWBs. It is important to bear in mind those Service-POs involving goods will also reflect on the portal against said GSTIN and must not be rejected as it would interrupt transportation. EWB process now assumes great significance, particularly service contracts involving goods.

(xvi) Reporting Detention

Detention of goods is required to be reported by TRANSIN-holder if detention exceeds thirty (30) minutes in **GST EWB 04.** This will report the detention to the superior officer who will need to resolve the reasons for detention.

The consequences are provided in section 129 as follows:

- notice (followed by order) of detention
- opportunity to pay penalty as prescribed in each case (section 129(1) limits)
- furnishing security is involved in case of detention

Payment of penalty is **treated as 'conclusion'** of the underlying proceedings. As such, care should be taken not to pay penalty in haste as it implies admission of wrong doing. These sweeping penalty provisions take away discretion and do not allow elaborate opportunity to prove *bona-fide*. Absence of prescribed documents implies wrong doing attracting the prescribed penalties to their full extent. Transporter needs to be equipped with sufficient pre-checks about the documentation and availability of EWB or ability to furnish bond and security to prevent detention and continue transportation.

Identifying transporter with this knowledge and understanding is strongly recommended. Earlier suggestion for Supplier or Recipient with GSTIN to additionally obtain TRANSIN or transporter id will facilitate in meeting and addressing detention issues if the transporter is unable to explain the facts. Although the powers of detention show severity, Government assures that it will be used sparingly and in sectors where there is rampant violation. Care must be taken to make an overall sensitive assessment of products / sectors involved and adopt suitable measures so as to remain free from detention concerns.

No confiscation in case of minor typographical mistakes

It has been clarified vide *Circular No. 64/38/2018-GST dated 14.09.2018* that in case a consignment of goods is accompanied by an invoice or any other specified document and also an e-way bill- proceedings under section 129 of the CGST Act **may not be initiated**, *inter alia*, in the following situations:

(a) spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;

(b) error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

(c) error in the address of the consignee to the extent that the locality and other details of the consignee are correct;

(d) error in one or two digits of the document number mentioned in the e-way bill;

(e) error in 4 or 6 digits level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct; and

(f) error in **one or two digits**/characters of the **vehicle number**.

In case of the above situations, penalty to the tune of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in **FORM GST DRC-07** for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been

invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis.

(xvii) Effective Date – Central EWB

Central GST Rules address only inter-State movement (not necessarily inter-State supply). EWB system was implemented **with effect from 1st April, 2018** in case of inter-state movement. It is to be noted that EWBs must be in harmony with the tax charged in respect of the supply involved. In case of an in-transit supply, it has been clarified that one (1) EWB will suffice for the entire movement involved, though the goods may take a different (and direct) route to the final destination. Imports also require EWB but by the Consignee who causes the movement of goods from the port to the final location. Exports will require EWB up to the port but where Recipient is an 'unregistered person'.

(xviii) Effective Date – State EWB

States/Union Territories have notified EWB requirements for intra State movement as under:

Threshold Limit for EWB in case of Intra State Supply	State(s)	Union Territories
Consignment Value Above Rs. 1,00,000	West Bengal[41], Tamil Nadu, Delhi, Bihar, Maharashtra	-
Consignment Value Above Rs. 50,000	Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Manipur, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Sikkim, Telangana, Uttarakhand, Uttar Pradesh, Puducherry and Jammu & Kashmir	Lakshadweep, Andaman and Nicobar Islands, Dadra and Nagar Haveli and Daman Diu, Chandigarh, , Ladakh

However, **inter-State movement** must follow the **threshold of Rs. 50,000** prescribed

[41]*Withdrawal of enhanced limit vide Notification No. 2/2023-CT dated 10.11.2023 w.e.f. 01.12.2023 has been suspended vide Notification 3/2023-CT/GST dated 18.12.2023 w.e.f. 01.12.2023.*

under the CGST Act and registered persons in any State where a relaxation is granted cannot rely on the State threshold for inter-state movement.

(xix) Transfer of goods from one conveyance to another:

In such cases, the consignor or the recipient, who has provided information in Part A or the transporter shall, before such transfer and further movement of goods, update the details of conveyance on common portal in Part B.

(xx) Assignment of E-Way bill number EBN:

The consignor or the recipient, who has furnished the information in Part A or the transporter, may assign the EBN to another registered or enrolled transporter for updating the information in Part B for further movement of the consignment. However, after the details of the conveyance have been updated by the transporter in Part B, the consignor or recipient, as the case may be, who has furnished the information in Part A shall not be allowed to assign the EBN to another transporter.

(xxi) Transportation of multiple consignments in one conveyance:

In such cases, the transporter may, prior to the movement of goods, generate a consolidated EWB in **FORM GST EWB-02**, indicating the serial number of EWBs generated in respect of each such consignment electronically on the common portal.

(xxii) Making available information furnished in EWB:

The information furnished in Part A shall be made available to the registered supplier on the common portal. He may utilize the same for furnishing the details in FORM GSTR-1.

When the information has been furnished by an unregistered supplier or an unregistered recipient in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.

(xxiii) Validity of EWB:

The validity of an EWB or a consolidated EWB depends upon the distance the goods have to be transported within the country from the relevant date.

Validity period of EWB is one day upto 200 km and one additional day for every 200 km or part thereof thereafter. In case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship], the limit is 20 km instead of 200 km.

The EWB generated under rule 138 of the CGST rule or of the SGST/UTGST Rules of any State or Union territory shall be valid in every State and Union territory.

"Relevant date" shall mean the date on which the EWB has been generated and the period of validity shall be counted from the time at which the EWB has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of EWB.

The expression **"Over Dimensional Cargo"** shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).

(xxiv) Extension of validity period:

- The Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an EWB for certain categories of goods as may be specified therein.
- Where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the EWB, the transporter may extend the validity period after updating the details in Part B, if required.
- The validity of the EWB may be extended within eight hours from the time of its expiry.

E-way bill in case of storing of goods in godown of transporter- Clarification vide *Circular No. 61/35/2018 dated 04.09.2018* (relevant paras)

Para 3: *As per rule 138 of the CGST Rules, EWB is a document which is required for the movement of goods from the supplier's place of business to the recipient taxpayer's place of business. Therefore, the goods in movement including when they are stored in the transporter's godown (even if the godown is located in the recipient taxpayer's city/town) prior to delivery shall always be accompanied by a valid e-way bill.*

Para 4: *Further, section 2(85) of the CGST Act defines the* ***"place of business"*** *to include "a place from where the business is ordinarily carried out, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both". An* ***additional place of business*** *is the place of business from where taxpayer carries out business related activities within the State, in addition to the principal place of business.*

Para 5: *Thus, in case the consignee/ recipient taxpayer stores his goods in godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer' additional place of business). Hence, e-way bill validity in such cases will not be required to be extended.*

Para 6: *Further, whenever the goods are transported from the transporters' godown, which has been declared as the additional place of business of the recipient taxpayer,*

to any other premises of the recipient taxpayer then, the relevant provisions of the e-way bill rules shall apply. Hence, whenever the goods move from the transporter's godown (i.e., recipient taxpayer's additional place of business) to the recipient taxpayer's any other place of business, a valid e-way bill shall be required, as per the extant State-specific e-way bill rules.

Carrying of documents and devices by person in charge of a conveyance- Section 68(1) read with Rule 138 and 138A

The person in charge of the conveyance carrying goods of consignment value **exceeding Rs. 50,000/-** shall carry—

(a) the invoice or bill of supply or delivery challan, as the case may be;

(b) a copy of the EWB in physical form or the EBN in electronic form or mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance in such manner as may be notified by the Commissioner. As per *Circular No. 41/15/2018 Dated 13/04.2018*, an E-way bill number (EBN) may be available with the person in charge of the conveyance in the form of a printout, SMS or it may be written on an invoice. All these forms of having an e-way bill are valid. However, this requirement of EWB is not applicable in case of movement of goods by rail or by air or vessel.

(c) [42][in case of imported goods, a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A].

Notwithstanding anything contained in clause (b) above, where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the EWB:

(a) tax invoice or bill of supply or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply.

In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.

Where the registered person uploads the invoice as stated above, the information in **Part A of FORM GST EWB-01** shall be auto-populated by the common portal on the basis of the information furnished in **FORM GST INV-1.**

[42] *Inserted vide Notification No. 39/2018 – CT Dated 04-09-2018*

The Commissioner may, by notification, require a class of transporters to obtain a unique RFID and get the said device embedded on to the conveyance and map the EWB to the said RFID prior to the movement of goods.

Validation of documents- Section 68(2)

The details of documents required to be carried by the person in charge of conveyance shall be validated in the prescribed manner.

Interception and verification- Section 68(3) read with Rule 138B, 138C and *Circular No. 41/15/2018-GST Dated 13.04.2018*

The Jurisdictional Commissioner or an officer empowered by him in this behalf shall, by an order, designate officer/officers as the proper officer/officers to conduct interception and inspection of conveyances and goods in the jurisdictional area specified in such order. Such an authorisation shall include verification of EWB in physical or electronic form for all inter-State and intra-State movement of goods. As per *Circular No. 3/3/2017– GST Dated 05.07.2017*, officers designed as 'Inspector' have been assigned such powers by the Board.

Where any conveyance is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents and devices stated above for verification**,** and the said person shall be liable to produce the same and also allow the inspection of goods. The proper officer shall verify such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further. Wherever a facility exists to verify the EWB electronically, the same shall be so verified, either by logging on to http://mis.ewaybillgst.gov.in or the Mobile App or through SMS by sending **EWBVER <EWB_NO>** to the mobile number **77382 99899** (For example, EWBVER 120100231897).

The Commissioner shall get RFID readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the EWB has been mapped with the said device.

Physical verification of conveyances- Rule 138B(3)

The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf.

However, on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

Inspection and verification of goods- Rule 138C

Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall

record a statement of the person in charge of the conveyance in **FORM GST MOV-01.** In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in **FORM GST MOV-02**, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods.

The proper officer shall, within twenty four hours of the aforementioned issuance of **FORM GST MOV-02,** prepare a summary report in **Part A of FORM GST EWB-03** and upload the same on the common portal.

Within a period of three days from the date of issue of the order in **FORM GST MOV-02**, the proper officer shall conclude the inspection proceedings, either by himself or through any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in **FORM GST MOV-03** from the Commissioner or an officer authorized by him, for extension of time by another three days and a copy of the order of extension shall be served on the person in charge of the conveyance. The period of twenty-four hours/three days shall be counted from the midnight of the date on which the vehicle was intercepted.

On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in **FORM GST MOV-04** and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in **Part B** of **FORM GST EWB-03** within three days of such physical verification/inspection.

Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in **FORM GST MOV-05** and allow the conveyance to move further. Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an order of detention in **FORM GST MOV-06** and a notice in **FORM GST MOV-07** in accordance with the provisions of section 129 (3) of the CGST Act**,** specifying the penalty payable. The said notice shall be served on the person in charge of the conveyance. For a detailed discussion on detention, seizure and release of goods and conveyance in transit under section 129 and confiscation of goods or conveyances under section 130, please refer the relevant chapters.

It has been clarified by way of an illustration in *Circular No. 49/23/2018 Dated 21.06.2018* that only such goods/conveyances shall be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made thereunder.

Further, CBIC vide *Circular No. 122/41/2019-GST dated 5th November, 2019* clarified the implementation of the electronic generation of Document Identification Number

(DIN) for all communications sent by its offices to taxpayers. Therefore, no inspection notices or order shall be made without a computer- generated **Document Identification Number** duly quoted prominently in the body of such communication, on or after 8th November, 2019.

Illustration: Where a conveyance carrying twenty-five consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of twenty consignments, but is unable to produce the same with respect to the remaining five consignments, detention/confiscation can be made only with respect to the five consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer.

Where EWB and Invoice or Delivery challan is found to be (a) missing or (b) incomplete or (c) inaccurate or (d) patently erroneous, then 'detention-seizure-release' are the prescribed steps on the condition that [200% of tax as penalty is paid (2% of value in case of exempted goods with a minimum of Rs.25,000 is prescribed), where the owner comes forward. Where the owner does not come forward, then 50% of value of goods or 200% of tax payable on such goods, whichever is higher, is to be collected (5% of value or Rs. 25000, whichever is less, in case of exempted goods)]. Where security is furnished to the extent of amount to be deposited (as above), the goods are required to be released.

An order is required to be passed directing the amount and tax (CGST-SGST or IGST) to be deposited. Please note that the amount so paid (as above) are deemed to be final (section 129(5)) but it is important to note that such payment can be made 'under protest' though there is no express provision to do so. No collection of amounts can be made without recourse of review or appeal. Issue that arises is whether officer intercepting the conveyance is authorized to make a detailed 'assessment' of the tax applicable? If not, will not the determination made be inaccurate and even arbitrary as it would not be as per provisions dealing with determination of tax. It would be trite in law to consider that the amount determined is a deposit and subject to review and appeal where the aggrieved party is free to go into all aspects of detention but after securing release of the detained goods. Care must be taken to ensure completeness of the documentation during transit. Larger the dealer, greater the responsibility and lesser the tolerance for compliance failure which may be contrary to popular belief that minor errors are expected in large scale operations.

No further physical verification of goods

Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or Union territory or in any other State or Union territory, no further physical verification of the said conveyance shall be carried out again in the State or Union territory, unless a specific information relating to evasion of tax is made available subsequently. It has been clarified vide *Circular No.*

49/23/2018 Dated 21.06.2018 that since requisite forms are not available on the common portal currently, the hard copies of the notices/orders issued in the specified FORMS by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/ registered person to another tax authority as and when required.

(xxv) Conclusion

EWBs contain information in two parts and **Part B** is required to render the EWB '*complete*'. All movement of goods, unless specifically exempted will need to be accompanied by EWB:

a) Whether inter-State or intra-State

b) Whether by way of supply or not

There is time-distance formula for issuance and acceptance. Unless cancelled, EWB generated will be admitted as valid and create a trail for further reporting and verification by tax authorities. EWB complete in both Parts is required. It is to be appreciated that very limited information is required in EWB and once EWB is reported on the portal, an ERN is generated. Transporter is required to provide ERN to the authorities for inspection. Invoice or delivery challan generated need not be carried by the transporter in physical form. Interception during the-transit is based on very limited 'touch points' like Invoice or DC and EWB. Very limited discretion is allowed for entering into detailed inquiry. Familiarity with this high-tech system will take some time. EWBs are expected to bring transparency and reliability for stakeholders.

- E-way bill user manual (updated upto 21.07.2021) has been issued by National Informatics Centre New Delhi, detailing out the manner in which e-way bill shall be generated and used for movement of goods (source: https://docs.ewaybillgst.gov.in/documents/usermanual_ewb.pdf)
- Vide *Circular No. 41/15/2018 – GST dated 13.04.2018*, the Board has clarified and also prescribed the procedure to be followed for inspection and detention of goods during their movement. It is also to be noted that the circular also details out the forms and its formats to be used for the purpose of inspection and detention.

68.3. Issues and Concerns:

1. There is no provision for amendment of particulars in the EWB. It is believed that such a facility has not been provided so as to ensure that EWBs are not mis-utilised. Where any incorrect details have been furnished in the EWB, only two options are available: (i) Request the consignee to reject the EWB (within 72 hours / before delivery); or (ii) Cancel the EWB within 24 hours / before delivery / before interception by an officer; and generate a new EWB with the correct details. If such EWB cannot be rejected / cancelled within the said timelines, nothing can be done. It is therefore suggested that

the person generating the EWB should keep a record of all the discrepancies, in order to furnish the reconciliation if and when sought by the proper officer. Where such records are not maintained, it may be possible for the proper officer to treat the difference as a supply effected without issuance of invoice or treat the difference as a non-compliance with Rule 138 related to the EWB provisions.

2. In the case of *Rajeev Traders [2022 (66) GSTL 15 (Kar.)],* the Hon'ble Karnataka High Court observed that *"As stated above, the goods were accompanied by a tax invoice, which indicated payment of tax but an E-way bill had not been generated. Thus, the proper officer* ***could have only imposed a penalty of ten thousand rupees or the amount equivalent to the tax evaded****… Thus, if the proper officer, had reason to believe that the applicable tax has not been paid either by mistake or by reason of fraud, such as undervaluation of the goods, it would be open for him to initiate proceedings under Section 73 and Section 74 of the Act. The proper officer, at the time of detention of the goods, cannot obviously convert the power to detain the goods and proceed to exercise of his power to confiscate, especially, when the proper officer has been conferred the power to determine the tax in a specified manner under Sections 73 and 74 of the Act. In other words, the proper officer cannot transform the detention proceedings into a confiscatory proceeding.*"

Statutory Provisions

69. Power to arrest

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of the central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973(2 of 1974)—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Related Provisions of the Statute

Section or Rule	Description
Section 132	Punishment for certain offences

69.1. Introduction

This section deals with power of arrest when one commits any of the offences which is punishable under clause (i) or (ii) of sub-section (1), or under sub-section (2) of section 132 of the CGST Act.

69.2. Analysis

The Commissioner is vested with the power to authorise, by an order, any Officer of the central tax to arrest a person, where he has reasons to believe that such person has fulfilled the conditions as specified in section 132 (1) and (2):

A. Offence under Section 132:

(1) [43] [Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences], namely:-

(a) Supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) Issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) [Avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill][44]

(d) Collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due.

B. Punishment under Section 132(1)(i) or (ii) or section 132(2) as follows:

1. Under section 132(1) – In cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken:

— Exceeds Rs. 500 Lakhs: the offender shall be punishable with imprisonment for a term which may extend to 5 years alongwith fine - section 132(1)(i); or

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[43] *Substituted vide Finance Act, 2020 dated 27-03-2020 through Notification No. 92/2022-CT Dated 22.12.2020. Earlier it read as: "Whoever commits any of the following offences". Brought into force w.e.f. 01.01.2021.*

[44] *Substituted vide Finance Act, 2020 dated 27-03-2020 through Notification No. 92/2022-CT Dated 22.12.2020. Earlier it read as: "(c) avails input tax credit using such invoice or bill referred to in clause(b);" Brought into force w.e.f. 01.01.2021.*

— Exceeds Rs 250 Lakhs but does not exceed Rs 500 Lakhs: the offender shall be punishable with imprisonment for a term which may extend to 3 years alongwith fine - section 132(1)(ii); OR

— Under section 132(2) – where any person convicted under section 132 is again convicted, then the offender shall be punishable with imprisonment for a term which may extend to 5 years alongwith fine for every subsequent conviction.

If an offence involves an amount exceeding Rs. 500 lakhs and as such punishable for a term which may extend to 5 years along with fine under section 132(1)(i), then such an offence shall be cognizable and non-bailable under section 132(5). The officer arresting such person is required to inform him of the grounds of arrest and produce him before the Magistrate within 24 hours. All other offences under GST law shall be non-cognizable and bailable under section 132(4). In case of such offences, subject to the provisions of the Code of Criminal Procedure, 1973, the arrested person shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate. The Assistant/Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station.

All arrests should be made as per the provisions of Code of Criminal Procedure, 1973. Please note that relief of section 24 to 30 of Evidence Act may be availed in respect of statements made by the accused.

Recently, the Apex Court in the case of *Siddharth vs State of UP [2022 (64) GSTL 34 (SC)]* observed as below:

- *"We may note that personal liberty is an important aspect of our constitutional mandate.*
- *The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond.*
- *Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. [Joginder Kumar v. State of U.P. & Ors. - (1994) 4 SCC 260].*
- *If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout co-operated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."*

CBIC vide instruction No. 02/2022-23 [GST Investigation] dated 17.08.2022, issued guidelines for the arrest and bail in relation to offences punishable under the CGST Act, 2017. These are as follows:-

The Supreme Court of India's judgment emphasizes the need for careful exercise of the arrest power in criminal cases. The power to arrest under the CGST Act, 2017, should not be exercised routinely but based on credible evidence and clear suspicion. Factors such as the necessity of arrest for investigation, risk of tampering with evidence, or influencing witnesses must be considered. Arrest should not be made in cases of technical legal disputes but rather in cases of deliberate tax evasion or fraud. The procedure mandates that the arresting officer comply with the Code of Criminal Procedure and specific requirements for the arrest memo, medical examination, and post-arrest formalities. Bail conditions should be reasonable and not excessive. Regular reporting to higher authorities and maintaining accurate records is necessary for transparency. The guidelines aim to balance the need for effective investigation with the protection of personal liberty.

CBIC vide *Instruction No. 01/2025- [GST] dated 13.01.2025* has issued guidelines for arrest and bail in relation to offences punishable under The CGST Act, 2017 (Amendment to *Instruction No. 02/2022-23 GST (Investigation) dated 17.8.2022*)
The same is reproduced as follows: -

1. **Amendment in Grounds of Arrest**: Instruction No. 02/2022-23 is amended following the Delhi High Court judgment in *Kshitij Ghildiyal vs. DG GST Intelligence* (16.12.2024), highlighting that the **grounds of arrest** must be communicated in writing to the arrested person. This amendment incorporates the distinction between "reasons for arrest" (general) and "grounds for arrest" (personal details explaining necessity for arrest), as per the Supreme Court's ruling in *Prabir Purkayastha vs. State* (15.05.2024).
2. **Updated Arrest Procedure**: Guidelines now mandates that the **grounds of arrest** be provided in writing as an annexure to the arrest memo, with the arrested person's acknowledgment.
3. **Reference to Judicial Precedents**: The amendments are grounded in the judicial decisions, ensuring transparency and protecting the rights of the arrested person, aligning with the principles outlined by the Supreme Court in related cases from 2023-2024.
4. **Impact on Procedure**: These changes ensure clarity on the specifics of the arrest process and reinforce the necessity of providing arrest grounds to facilitate proper defense and bail requests.

Guidelines for launching of Prosecution under CGST Act

CBIC vide Instruction No. 04/2022-23 [GST Investigation] dated 01.09.2022, issued guidelines launching of Prosecution under CGST Act, 2017. These are as follows:-

1. Prosecution Framework and Sanctioning Guidelines

   The document defines prosecution as the legal proceedings initiated for formal

charges under Section 132 of the CGST Act, 2017. It emphasizes that the decision to prosecute must be evidence-driven, adhering to a higher standard of proof than adjudication proceedings. Factors such as the gravity of the offence, quantum of tax evasion, or fraudulent activities must be carefully weighed. Importantly, it discourages prosecution for cases of technical errors or interpretative disputes and underscores that the directors or responsible officials of companies should only face prosecution if their involvement in tax evasion is established.

2. Procedural Aspects and Timelines

   Prosecution should ideally be initiated promptly after adjudication, or in serious cases, even before the completion of adjudication. The Supreme Court's observations in Radheshyam Kejriwal's case are pivotal here, highlighting that criminal prosecution and adjudication can proceed independently. Cases involving arrests under Section 69 require expedited filing of prosecution complaints, typically within 60 days. Specific formats and procedural protocols, including detailed investigation reports, are mandated to ensure consistency and thoroughness.

3. Monetary Thresholds and Exceptions

   The document sets a monetary limit for prosecution, generally applicable to cases involving tax evasion or fraudulent activities exceeding ₹500 lakh. However, exceptions are carved out for habitual offenders or cases involving arrests, emphasizing the importance of addressing systemic abuse of ITC and tax fraud. This distinction helps streamline efforts towards prosecuting significant offenders while avoiding undue focus on minor breaches.

4. Oversight, Monitoring, and Withdrawal Mechanisms

   A structured mechanism for sanctioning prosecution is detailed, with multiple layers of oversight to ensure fairness. Prosecution work is to be monitored regularly by senior officials to maintain progress. The guidelines also provide procedures for withdrawing prosecution, especially in cases where adjudication outcomes exonerate the accused on merits. Such provisions aim to prevent misuse of prosecution powers and ensure alignment with judicial principles.

5. Broader Compliance and Training Initiatives

   The document also underscores the importance of proper record management, timely filing, and the need for training officers involved in prosecution activities. It calls for the National Academy of Customs, Indirect Taxes, and Narcotics (NACIN) to organize targeted courses to improve investigative and prosecutorial capabilities. Regular inspections and reviews by performance management directorates further reinforce adherence to the guidelines, ensuring a robust and accountable prosecution framework. Overall, these guidelines aim to balance the need for

stringent action against significant tax frauds with fairness and procedural integrity, reflecting a mature approach to enforcement under the CGST Act.

The format of the Annexure-I and II can be found in the Instruction.

69.3. Issues and Concerns

1. While the law provides a threshold limit exceeding which the offence would be considered to be an offence by which a person may be arrested, the law does not specify any time-period in respect of the same. Therefore, consider a case where the Commissioner has reasons to believe that a person has failed to issue tax invoices in respect of supplies effected during a period of 3 years, wherein the tax evaded exceeds Rs. 250 lakhs. Even in such a case, it appears that the proper officer has the powers to arrest such person.
2. There is no indication as to whether the reference is made to a taxable person / registered person (GSTIN) / or any person in the language employed in Section 132(1) that specifies the offences, being "*whoever commits any of the following offences, namely…*".
3. It is pertinent to note that the onus to prove that the allegations for arrest, levelled by the Commissioner or any officer authorised by him, is false and baseless is totally on the accused person. The officer merely needs to have a reason to believe. For instance: the officer may allege that the taxable person has availed Input Tax Credit fraudulently on the basis of an invoice without actual supply of goods (that is without actually receiving the goods). Here, a mere statement / record showing GRN details may not suffice and actual movement of goods and vehicles may be required to be justified by the accused by way of toll receipts and camera footage at the factory gate for instance in order to establish that there was no evasion.

69.4. FAQs

Q1. Power of arrest could be exercised by whom?

Ans. The Commissioner can authorise (by an order) any officer to arrest a person, who has committed specified offences. The Commissioner should have reasons to believe that such person has committed the specified offences.

Q2. Who can be arrested?

Ans. The person committing an offence (tax evasion) as specified in –

Section 132(1) clause (i) tax evasion above Rs. 500 Lakhs attracting imprisonment for a term extending upto 5 years and fine, or clause (ii) tax evasion above Rs. 250 Lakhs but up to Rs. 500 lakhs, attracting imprisonment extending up to 3 years and fine for an offence under Section 132(1) (a) to (d), or offence under section 132(2) [repeated offence – second and subsequent offence attracting imprisonment extending up to 5 years with fine] can be arrested by authorised officer.

Q3. What is the procedure to be followed for arrest?

Ans. (i) The person arrested should be informed about the grounds of arrest and be produced before the Magistrate within 24 hours in case of cognizable and non-bailable offences.

(ii) In case of non-cognizable and bailable offences, the Assistant/ Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station subject to the provisions of Code of Criminal Procedure, 1973.

(iii) All arrests should be made as per the provisions of Code of Criminal Procedure, 1973.

69.5. MCQ

Q1. All arrests should be made as per the provisions of _____

(a) Code of Criminal Procedure, 1973

(b) Civil Procedure Code

(c) Foreign Exchange Management Act

(d) Bharatiya Nyaya Sanhita

Ans. (a) Code of Criminal Procedure, 1973

Statutory Provisions

70. Power to summon persons to give evidence and produce documents

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

[45][(1A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.]

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 229 and section 267 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) .

70.1. Introduction

This provision deals with exercise of powers to issue summons for giving evidence and for production of documents or any other thing.

[45] Inserted vide the Finance (No. 2) Act, 2024, notified through Notification No. 17/2024 – CT dated 27.09.2024, w.e.f. 01.11.2024.

70.2. Analysis

In any inquiry which proper officer is making for any of the purposes of this Act, he shall have the power to summon:

- any person, whose attendance is considered necessary
- either to give evidence or to produce a document or any other thing
- in any inquiry in the same manner
- as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908

Amendment made in Finance Act, 2024, effective from 01.11.2024:

Persons summoned shall attend either in person or through by an authorised representative, as directed by the Officer and shall state the truth during examination or make statements or produce such documents and other things as may be directed. Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceeding" within the meaning of section 229 and section 267 of the Bharatiya Nyaya Sanhita, 2023.

It would be helpful to read and be familiar with the exact nature of responsibility of acceptance of service of summons and of making statements in response to a summon. Reference may be had to relevant chapters of Bharatiya Nyaya Sanhita, 2023. At the same time, Article 20(3) of our Constitution prohibits a person being made to witness against himself. Therefore, avoidance of service of summons is unlawful but abstinence from making statements is not. Understanding the legality of these matters will assume significance in attending to such matters of inquiry before a judicial officer.

The Apex Court in the case of *Siddharth vs State of UP [2022 (64) GSTL 34 (SC)]* observed that "*If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout co-operated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."*

Scope of the word "summon" under section 70 is for "any inquiry". Authorised Officer is not empowered under Section 70 to retain the documents for which summon were issued. It has been held in *T.T.V Dinkaran v. Enforcement Officer, 1995 (80) E.L.T. 745* that where summon did not mention the nature of investigation therein, it will be valid since mentioning the details about investigation may alert the person concerned to manipulate his record.

It may be helpful to read sections 24 to 30 of Indian Evidence Act, 1872 and note the jurisprudence available in this manner of gathering evidence. Person making the statement needs to establish that such statement was made under certain circumstances and that it is NOT to be relied upon in further proceedings. Statements made that are considered NOT reliable by the person making it, must lead evidence to support the assertion. It is permissible to presume statements are reliable unless withdrawn at the earliest opportunity in the remainder of the proceedings. Statements recorded under section 70 alone cannot form reliable evidence to support demand for tax in a show cause notice.

Further, it is pertinent to mention that the Supreme Court in a recent judgment of *Paramvir Singh Saini v. Baljit Singh & Ors., AIR 2021 SC 64* has directed that CCTV cameras should be installed at the premises of all the investigation authorities and also where interrogation takes place, to safeguard human rights of the person making the statement.

In a particular case *[Rohit Sakhuja 2017 (349) ELT 204 (SC)],* the Apex Court *observed that "However, as far as these writ petitions are concerned, we allow the same and direct that the petitioner's advocate should be allowed to be present during the interrogation of the petitioner's but he should be made to sit at a distance* ***within visible range****, but* ***beyond hearing range*** *and the advocate must be prepared to be present whenever the petitioner is called upon to attend such interrogation."*

Experts also hold the view that since Proper Officer will NOT file a Police Report (also called 'charge sheet') under 173 of Cr.PC but only a complaint under section 190(1)(a) of Cr.PC, the proceedings WILL NOT enjoy the benefit of section 24 to 30 of Evidence Act, 1872. Reference may be had to *Illias v. Collector of Customs, AIR 1970 SC 1065* contrasted with *Ramesh Chandra Mehta v. State of WB, AIR 1970 SC 940*.

After recording statement, the person making the statement cannot be implicated as it is contrary to the Constitutional guarantee in Article 20(3) without the possibility being made known him. Reference may be had to applicability of Cr.PC in the absence of procedure on conducting trial in *Adani Enterprises Ltd. & Ors. v. UoI & Ors., 2019-TIOL-2408-HC-MUM-CUS*.

The GST-Investigation wing has issued guidelines on issuance of summons under section 70 through *Instruction No. 03/2022-23 Dated 17.08.2022.*

70.3. FAQ

Q1. Who can issue summons and for what purpose?

Ans. The proper officer under this Act can issue summon to any person whose attendance is considered necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of the GST Law.

Statutory Provisions

71. Access to business premises

(1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013;

(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act,1961; and

(vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

Related provisions of the Statute:

Section or Rule	Description
Section 67	Power of inspection, search and seizure
Rule 139	Inspection, search and seizure
Section 66	Special audit
Section 35	Accounts and records
Section 36	Period of retention of accounts
Section 144	Presumption as to documents in certain cases

71.1 Introduction

This provision empowers any officer authorised by the officer not below the rank of Joint Commissioner to have access to any place of business of a registered person to inspect books of account, documents, computers, computer programmes, computer software and such other things as may be required, and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

71.2 Analysis

To access the business premises, the officer should be authorized by the proper officer not below the rank of Joint Commissioner. Experts are apprehensive of far-reaching

consequences of this section which is potentially capable of misuse. Strong understanding of the legal remedies available will equip in attending to these inspections.

Such an authorized officer shall have access to any place of business of registered person to inspect:

- books of account
- documents
- computers
- computer programs
- computer software (whether installed in a computer or otherwise)
- and such other things as he may require and which may be available at such place.

The object is to carry out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. It is important to note that section 71 is by itself not independent of other provisions in the law authorizing any proceeding. And the authorization required in section 71 being left without any rule and forms for this purpose, is itself a machinery provision to aid and assist Proper Officer or Auditor to access books and records. Proceeding under section 67 does not contain any provision to access books and records but provisions in section 67(1) contain provision for Proper Officer to grant authorization to conduct inspection of premises and, read with section 71, such Authorized Officer will also be empowered to inspect books and records. As such, there is no authority in law to inspect business premises and inspect books and records solely under section 71 independent of other substantive provisions such as 65, 66 or 67. Also, when the substantive provisions of section 61 do not permit access to books and records, Proper Officer cannot avail authority in section 71 in conjunction with section 61.

The person in charge of the premises should make available the following:

1. records prepared or maintained by the registered person and declared to proper officer;
2. trial balance or its equivalent;
3. audited financial statements, wherever required;
4. cost audit report, if any;
5. income tax audit report, if any; and
6. other relevant records.

The documents/records should be made available within 15 working days, or such extended period as may be allowed.

The documents/records can be called for by the authorised officer or audit party under section 65 or Chartered Accountant or Cost Accountant nominated by the department under section 66.

71.3 FAQs

Q1. What are the documents or records that a person in charge of a place of business shall make available in terms of provisions of section 71?

Ans. The person in charge of a place of business shall, on demand, make available:

- records prepared or maintained by the registered person and declared to proper officer;
- trial balance or its equivalent;
- audited financial statements wherever required;
- cost audit report, if any;
- income tax audit report, if any
- other relevant records

Q2. Who are the persons empowered to call for documents/records for audit, verification, checks and scrutiny?

Ans. Authorised officer or the audit party under section 65 or a Chartered Accountant or a Cost Accountant nominated u/s 66 by the department for conducting the audit are the persons empowered to call for documents/records for audit, verification, checks and scrutiny.

71.4 MCQs

Q1. The documents called for should be provided within _____

(a) 20 working days

(b) 15 working days

(c) 60 days

(d) 30 days

Ans. (b) 15 working days

Q2. Who is liable to furnish information to empowered officers?

(a) Director

(b) Accountant

(c) CEO

(d) Person in charge of Place of Business

Ans. (d) Person in charge of Place of Business

Q3. What empowered officers can do with the information furnished to them?

(a) Audit

(b) Scrutiny

(c) Verification and Checks

(d) All of the above

Ans. (d) All of the Above

Statutory Provisions

72. Officers to assist Proper Officers

(1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.

(2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

72.1. Introduction

The provision requires all officers of Police, Railways, Customs and those officers engaged in the collection of land revenue including village officers, officers of state and union territory tax to assist the proper officers in the implementation of this Act.

72.2. Analysis

Below mentioned officers are empowered and required when called upon, to assist the proper officer in execution of this Act:

- All officers of
  - Police
  - Railways
  - Customs
- Officer of State & Union Territory tax
- Officers engaged in the collection of land revenue including village officers

The Government may even issue notification empowering and requiring any other class of officer to assist the proper officers, if required by the Commissioner.

72.3. FAQs

Q1. Which officers are under an obligation to assist the CGST officers in the implementation of the Act?

Ans. All officers of Police, Railway, Custom, State/Central officer engaged in collection of

GST and Land Revenue, Village officers, are empowered and are required to assist the proper officers to carry out the provisions of the Act.

Q2. Can the Commissioner call upon any other officer for assistance?

Ans. In terms of section 72(2) of the Act, the Government may issue notification empowering or requiring any other class of officer to assist the proper officers under this Act, if required by the Commissioner.

72.4. MCQs

Q1. The _____ officer is empowered to assist the proper officer.

(a) Registrar of Companies

(b) Health

(c) CBI

(d) Railway

Ans. (d) Railway

Q2. _____ Officer is not empowered to assist the proper officer u/s 72(1) of the Act.

(a) Police

(b) Custom

(c) State Excise

(d) Railway

Ans. (c) State Excise

Chapter 16
Demands and Recovery

Sections	Rules
73. Determination of tax *pertaining to the period up to Financial Year 2023-24* not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts	142. Notice and order for demand of amounts payable under the Act
74. Determination of tax *pertaining to the period up to Financial Year 2023-24* not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts	142A. Procedure for recovery of dues under existing laws
74A. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards	142B. Intimation of certain amounts liable to be recovered under section 79 of the Act
75. General provisions relating to determination of tax	143. Recovery by deduction from any money owed
76. Tax collected but not paid to Government	144. Recovery by sale of goods under the control of proper officer
77. Tax wrongfully collected and paid to Central Government or State Government	145. Recovery from a third person
78. Initiation of recovery proceedings	146. Recovery through execution of a decree, etc.
79. Recovery of tax	147. Recovery by sale of movable or immovable property
80. Payment of tax and other amount in instalments	148. Prohibition against bidding or purchase by officer
81. Transfer of property to be void in certain cases	149. Prohibition against sale on holidays
	150. Assistance by police
	151. Attachment of debts and shares, etc.
	152. Attachment of property in custody of courts or Public Officer
	153. Attachment of interest in partnership
	154. Disposal of proceeds of sale of goods and movable or immovable property
	155. Recovery through land revenue authority
	156. Recovery through court
	157. Recovery from surety
	158. Payment of tax and other amounts in instalments

82. Tax to be first charge on property	159. Provisional attachment of property
83. Provisional attachment to protect revenue in certain cases	160. Recovery from company in liquidation
84. Continuation and validation of certain recovery proceedings	161. Continuation of certain recovery proceedings

Statutory Provisions

73. Determination of tax [1][pertaining to the period up to Financial Year 2023-24] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

[1] *Inserted vide Finance (No.2) Act, 2024, notified through Notification. No.17/2024 CT-dated 27.09.2024. Applicable w.e.f. 01.11.2024.*

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.[2]

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

[3][(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.]

Extract of the CGST Rules, 2017

*[4]**[142. Notice and order for demand of amounts payable under the Act.** -*

(1) The proper officer shall serve, along with the

(a) notice issued under section 52 or section 73 or section 74 [5][or section 74A] or section 76 or section 122 or section 123 or section 124 or section 125 or section

[2] Also refer to Notification No. 13/2022 -CT dated 05.07.2022.

[3] Inserted vide the Finance (No.2) Act, 2024 notified through Notification. No.17/2024 CT-dated 27.09.2024, w.e.f. 01.11.2024.

[4] Substituted vide Notification No. 16/2019- CT dated 29.03.2019, w.e.f. 01.04.2019.

[5] Inserted vide Notification. No. 20/2024 CT-dt. 08.10.2024 w.e.f. 01.11.2024.

127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74 [6][or sub-section (3) of section 74A], a summary thereof electronically in FORM GST DRC-02,

specifying therein the details of the amount payable.

[7][(1A) The [8][proper officer may], before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74 [9][or sub-section (3) of section 74A], as the case may be, [10][] communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.]

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 [11][or clause (i) of sub-section (8) of section 74A, as the case may be, or tax, interest and penalty in accordance with the provisions of subsection (5) of section 74 or clause (i) of sub-section (9) of section 74A], or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act [12][whether on his own ascertainment or, as communicated by the proper officer under sub rule (1A),] [13][he shall inform the proper officer of such payment in FORM GST DRC-03 and an acknowledgement, in FORM GST DRC– 04 shall be made available to the person through the common portal electronically.]

[14][(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A [15][and thereafter the proper officer may issue an intimation in Part-C of FORM GST DRC-

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6 Inserted vide Notification. No. 20/2024 CT-dt. 08.10.2024 w.e.f. 01.11.2024.

7 Inserted vide Notification No. 49/2019 - CT dated 09.10.2019.

8 Substituted vide Notification No. 79/2020 – CT dt. 15.10.2020. Prior to its substitution, it read as "proper officer shall".

9 Inserted vide Notification. No. 20/2024 CT-dt. 08.10.2024 w.e.f. 01.11.2024.

10 Substituted vide Notification No 79/2020-CT dt. 15.10.2020 for "shall communicate".

11 Substituted vide Notification. No. 20/2024 CT-dt. 08.10.2024 w.e.f. 01.11.2024 before it was read as " or, as the case may be, tax, interest and penalty in accordance with the provisions of subsection (5) of section 74".

12 Inserted vide Notification No. 49/2019 - CT dated 09.10.2019.

13 Substituted vide Notification. No.12/2024-CT dt.10.07.2024. Prior to its substitution it read as "he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC–04."

14 Inserted vide Notification No. 49/2019 - CT dated 09.10.2019.

15 Inserted vide Notification No. 12/2024-CT dt. 10.07.2024.

01A, accepting the payment or the submissions or both, as the case may be, made by the said person.]]

[16][(2B) Where an amount of tax, interest, penalty or any other amount payable by a person under section 52 or section 73 or section 74 [17][or section 74A] or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, has been paid by the said person through an intimation in FORM GST DRC-03 under sub-rule (2), instead of crediting the said amount in the electronic liability register in FORM GST PMT –01 against the debit entry created for the said demand, the said person may file an application in FORM GST DRC-03A electronically on the common portal, and the amount so paid and intimated through FORM GST DRC-03 shall be credited in Electronic Liability Register in FORM GST PMT –01 against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC-03:

Provided that where an order in FORM GST DRC-05 has been issued in terms of sub-rule (3) concluding the proceedings, in respect of the payment of an amount in FORM GST DRC-03, an application in FORM GST DRC-03A cannot be filed by the said person in respect of the said payment.]

(3) [18][Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or under clause (ii) of sub-section (8) of section 74A, as the case may be, or tax, interest and penalty under sub-section (8) of section 74 or under clause (ii) of sub-section (9) of section 74A, as the case may be, within the period specified therein, or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under subsection (3) of that Section but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an intimation in FORM GST DRC-05 concluding the proceedings in respect of the said notice.]

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[16] *Inserted vide Notification No. 12/2024-CT dt. 10.07.2024.*

[17] *Inserted vide Notification. No. 20/2024 – CT dt. 08.10.2024 w.e.f. 01.11.2024.*

[18] *Substituted vide Notification. No. 20/2024 CT. dt. 08.10.2024 w.e.f. 01.11.2024. Prior to its substitution, it read as 'Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under sub-section (3) of section 129 but before the issuance of order under the said sub-section (3)], he shall intimate the proper officer of such payment in FORM GST DRC-03 and the [18][proper officer shall issue an intimation] in FORM GST DRC-05 concluding the proceedings in respect of the said notice.'*

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 [19][or sub-section (6) of section 74A] or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06.

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 [20][or section 74A] or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of [21][tax, interest and penalty, as the case may be, payable by the person concerned].

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.]

Related Provisions of the Statute

Section or Rule	Description
Section 75	General provisions relating to determination of tax
Section 50	Interest on delayed payment of tax

73.1. Introduction

1. Section 73 deals with determination of tax and its demand under certain circumstances such as:

   - Tax not paid; or
   - Tax short paid; or
   - Input tax credit wrongly availed; or
   - Input tax credit wrongly utilized; or
   - Tax erroneously refunded.

   This section specifically covers determination of such taxes under circumstances of cases **not involving fraud, wilful misstatement or suppression of facts.**

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[19] *Inserted vide Notification. No. 20/2024 CT-dated 08.10.2024 w.e.f. 01.11.2024.*

[20] *Inserted vide Notification. No. 20/2024 CT-dated 08.10.2024 w.e.f. 01.11.2024.*

[21] *Substituted vide Notification No. 40/2021 – CT dt. 29.12.2021 w.e.f. 01.01.2022. Prior to its substitution, it read as "tax, interest and penalty payable by the person chargeable with tax".*

2. Section 73 also applies for demand of interest payable which is not paid or partly paid or interest erroneously refunded. Here, tax authorities would issue notice under section 73 and (i) demand tax applicable on the transaction along with interest and applicable penalty (ii) record the fact of payment discharged only to the extent of tax due (iii) appropriate the tax already deposited and (iv) require payment of outstanding interest and applicable penalty. Issuing a notice is an essential requirement to demand any payment (tax or interest or penalty) while adhering to principles of natural justice.

73.2. Analysis

Section 73 makes it abundantly clear that in GST there is no such thing called "SPOT recovery" as was practiced under earlier tax regime. There is no question of any determination of liability bypassing section 73. And there is no question of taxpayer accepting such determination without a valid notice and the attendant safeguards provided in section 75 (discussed later).

The provisions of section 73 can be invoked where it appears to the Proper Officer that a situation involving payment of tax (stated in para 1(b) infra) has arisen in cases other than fraud, wilful misstatement or suppression of facts.

1. The provision provides for –
   (a) Service of notice by the Proper Officer;
   (b) Notice shall be served on the person who is chargeable with tax, who has –
      — Not paid or short paid the tax;
      — Wrongly availed or utilized input tax credit;
      — Received the erroneous refund;
   (c) Such amounts as mentioned above shall be required to be determined along with the applicable interest as per section 50 and penalty leviable under the provisions of this Act or the rules made thereunder.
   (d) The notice has to be issued at least three months prior to the time limit of three years for issuance of order.
   (e) The proper office shall along with the notice provide a summary in **Form GST DRC-01** specifying therein the details of the amount payable.
2. **Where no notice is required to be issued for 'periodical demand':** Subsequent to issue of a notice under section 73(1) to a person, where the Proper Officer finds similar issues for any period, the Proper Officer may, instead of issuing a detailed notice for such period, serve a statement containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such subsequent period not covered in the earlier notice so issued under section 73(1). Service of such statement shall be deemed to be service of notice as per section 73(1) on the condition

that the grounds relied upon are the same as those mentioned in the earlier notice issued for previous period. The proper office shall, along with the statement, provide a summary in **Form GST DRC-02**, specifying therein the details of the amount payable. Care should be taken NOT to regard such 'statement of demand' as being inferior or different from a show cause notice ("**SCN**") issued under section 73(1) [similarly under section 74(1))].

3. **Voluntary payment of tax and interest before issue of notice/statement:** Voluntary payment of tax and interest as per section 50 before issue of notice/statement can be done either:

   - As per own ascertainment of such tax and interest or;
   - As per the ascertainment of tax and interest by the Proper Officer;

   in accordance with the provisions of the Act and the same shall be intimated to the Proper Officer in **FORM GST DRC-03** and the Proper Officer shall issue an acknowledgement, accepting the payment made, in **FORM GST DRC–04.** Thereafter, the Proper Officer shall not serve any notice / statement to the extent of such payment. In such situations, there can be no further proceedings with regard to tax and penalty so paid. Payment under **FORM GST DRC-03** would be a response to departmental communication in **FORM GST DRC–01A** so as to comply with the opportunity afforded to taxpayer under section 73(5) (similarly under 74(5)).

4. When the amount paid as per the ascertainment of the assessee falls short, the Proper Officer shall issue a notice for the amount of shortfall.

5. In situations where the assessee makes the payment of tax along with interest within 30 days of issuance of Notice / Statement and intimates the Proper Officer of such payment in **FORM GST DRC-03,** the Proper Officer shall issue an intimation in **FORM GST DRC-05** concluding the proceedings in respect of the said notice and subsequently no penalty shall be payable. Therefore, until 30 days from the date of issue of SCN, no adjudication order can be passed and haste in posting of hearings can be adjourned on this ground.

   Pre-notice resolution of dispute: Based on pre-notice consultations (not expressly called so), Proper Officer is permitted to issue a demand in **FORM GST DRC–01A** which the taxable person may accept and avail the relief available under section 73(5) or 74(5). Care must be taken not to consider this as an indirect form of 'spot recovery'. Taxable person must take care NOT to suddenly become anxious and admit tax liability and must be well advised to avail this remedy. With the amendment to rule 142 (*vide 49/2019-CT dated 9 Oct 2019*), it is mandatory for taxpayer to (i) be issued 'intimation' to avail nil or reduced penalty under section 73(5) and 74(5), respectively and (ii) where the same is rejected or accepted, partially or fully, then 'summary of show cause notice' in **FORM GST DRC-01** may be issued. It may be noted that in *Amadeus*

India Pvt. Ltd.v. Pr.Comm 2019 (25) GSTL 486 (Del.), where for failure to comply with a similar pre-notice consultation procedure (issued under Master *Circular. 1053/2/2017-CX, dated 10.03.2017*) the impugned SCN itself was set aside and parties relegated to pre-notice stage of the proceedings, proceed with such consultations and then, if still remaining unresolved, to proceed with SCN.

The above mandatory requirement has been done away by amendment to Rule 142 (1A) by *Notification 79/2020–CT*, wherein

a. for the words "proper officer shall", the words "proper officer may" has been substituted

b. for the words "shall communicate", the word "communicate" has been substituted

With the mandate now removed in the rules, it is now discretionary on the Proper Officer to tread this path of 'optional process' of law that is laid down.

6. In situations where the person files a reply or representation, the Proper Officer after considering the representation, shall issue an order in **FORM GST DRC-06**, consisting of the amount of tax, interest and penalty (i.e., tax + interest + penalty). The amount of penalty shall be higher of 10% of tax or ₹ 10,000/-. A summary of such order shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. Such a summary of order in **FORM GST DRC-07** shall be treated as a notice for recovery.

7. Where a rectification of the order has been passed or where an order uploaded in the system has been withdrawn, a summary of the rectification or withdrawal order is to be uploaded electronically by the Proper Officer in **FORM GST DRC-08**.

8. It must be noted that the Proper Officer is required to pass an order within a period of 3 years from the:

- due date for filing of Annual return for the year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates; or
- date of erroneous refund.

The following table summarises the time limit for issuance of Notice and Order:

Particulars	Time limit for issuing SCN	Time limit for issuing order (Sec 73(10))
Cases **not** involving fraud, wilful misstatement or suppression of facts	At least 3 months prior to the time limit specified under section 73(10) for issuance of an order.	3 years from the due date for furnishing annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or 3 years from the date of erroneous refund.

9. **Extension of time limit for issuing adjudication order under section 73 for specific financial years** vide *Notification No. 09/2023-CT dt. 31.03.2023* read with *Notification No. 56/2023 –CT dt. 28.12.2023.*

The time limit under section 73(10) for issuing the order under section 73(9) was extended in the following manner through *Notification No. 09/2023 –CT dt. 31.03.2023*:

Financial Year	**Due date of filing Annual return**	**Time period for issuing order u/s 73(10)**	**Extended time period for issuing order u/s 73(10)**
2017-18	05.02.2020 / 07.02.2020	Up to 05.02.2023 / 07.02.2023	Up to 31.12.2023
2018-19	31.12.2020	Up to 31.12.2023	Up to 31.03.2024
2019-20	31.03.2021	Up to 31.3.2024	Up to 30.06.2024

The above notification has been amended to further extend the time limit vide *Notification No. 56/2023 –CT dated 28.12.2023* as follows:

Financial Year	**Time period for issuing order u/s 73(10) – (As per *Notification No. 09/2023 - CT dated 31.03.2023*)**	**Extended time period for issuing order u/s 73(10)**
2018-19	Up to 31.03.2024	Up to 30.04.2024
2019-20	Up to 30.06.2024	Up to 31.08.2024

10. When all other opportunities granted, such as acceptance of liability before issue of SCN by pre-notice consultations under rule 142(1A) and acceptance of liability within 30 days after issue of SCN, Proper Officer will be liable to pass a 'speaking order'. Care must be taken to examine all aspects of natural justice and adherence to due process of law are satisfied in passing such adjudication order, such as (not exhaustive):

- Opportunity granted to be heard which is adequate and reasonable which includes granting adjournments, for genuine reasons, where requested or necessitated;
- Grounds raised in SCN are recorded and dealt with during the proceedings. SCN must be the culmination of investigation or inquiry by tax authorities. Incomplete investigation or inquiry leading to assumptions in SCN about tax default is fatal to the proceedings. Investigation or inquiry cannot be continued after SCN is issued. Taxpayer is well within statutory rights to question the incompleteness of the investigation and leave the adjudicating authority to find within the SCN sufficient evidence to fasten tax demand;

- Relevant facts and applicable provisions of law including judicial authorities (case laws) are considered. Relevant facts are facts which impact the allegations. Onus to prove the allegations lies on the tax authorities making such allegation. Under VAT laws it was common for allegations to be made and taxpayer carried the burden to disprove those allegation;
- Points and submission of both sides are recorded and discussed. Taxpayers are NOT liable to furnish facts to displace the allegations. Taxpayer merely needs to (i) accept or deny allegation (ii) assail (or attack and question) the evidence adduced to satisfy burden that lies on the tax authorities to prove allegations. Evidence may be produced by the taxpayer, in reply to SCN, by way of rebuttal even if there is a presumption in the law about *mens rea*. Presumption is not assumption (refer discussion under section 144) and all presumption are to be understood as 'rebuttable presumption' only;
- Clear findings are reached based on the above without adopting new grounds that were not originally raised in the SCN (see discussion under section 75(7) below). Howsoever compelling 'new grounds' may be, adjudicating authority is barred from travelling beyond the four corners of the SCN even if the SCN contains errors of omission or commission which may be fatal to the proceedings;
- Final decision is reached based on the said findings by an 'order' which is to be complied with or appealed against.

Proper officer: As per *Circular No. 3/3/2017-GST dated 05.07.2017*, the Superintendent of Central Tax is assigned to discharge powers under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 73 of the CGST Act. In other words, all officers up to the rank of Additional/Joint Commissioner of Central Tax are assigned as the Proper Officer for issuance of show cause notices and orders under this section. Further, they are also assigned powers under the IGST Act as well, as per section 3 read with section 20 of the IGST Act.

11. Penalty is always determined to be 10 per cent of tax stipulated in adjudication order due to the relief from further litigation, that such relaxation is permitted under 73(11). Further, where any self-assessed tax remains to be paid or where any amount collected 'as tax' is lying unpaid, penalty of 10% of tax or Rs.10.000/- is also prescribed under section 73(11). Please refer to various other aspects such as notice under section 76 without any time limit and mandatory penalty under that section in the detailed discussion under section 76.

12. Monetary limits have been prescribed *vide Circular No. 31/05/2018-GST dated 09.02.2018* for officers of different designations to function as the Proper Officers in relation to issue of show cause notices and orders under Sections 73 and 74:

Designation of Officer	Monetary limit of the amount of CGST (including cess) for issuance of show cause notices and orders u/s 73 and 74 of CGST	Monetary limit of the amount of IGST (including cess) for issuance of show cause notices and orders u/s 73 and 74 of CGST Act made applicable to IGST	Monetary limit of the amount of CGST and IGST (including cess) for issuance of show cause notices and orders u/s 73 and 74 of CGST Act made applicable to IGST
Superintendent	Up to Rs.10 lakhs	Up to Rs.20 lakhs	Up to Rs.20 lakhs
Deputy or Assistant Commissioner	Above Rs.10 lakhs up to Rs.1 crore	Above Rs.20 lakhs up to Rs.2 crore	Above Rs. 20 lakhs up to Rs.2 crore
Additional or Joint Commissioner	Above Rs.1 Crore	Above Rs.2 Crore	Above Rs.2 Crore

CBIC issued *2/2022-GST (Instruction) dt. 22.03.2022* focusing on SOP for scrutiny of returns for FYs 2017-18 and 2018-19.

Above *Circular 31/05/2022 - GST dt. 09.02.2018* on Proper officer under sections 73 and 74 of the CSGT Act, 2017 and under the IGST Act, 2017 has been amended vide *Circular No. 169/01/2022-GST dt. 12.03.2022* — Power to Additional Commissioners/ Joint Commissioner of Central Tax of specified Central Tax Commissionerate with All India Jurisdiction for adjudication of SCNs issued by DGGI.

Serving of the summary of notice in FORM GST DRC-01 and uploading of summary of order in FORM GST DRC-07 electronically on the portal by the Proper Officer *[Instruction No. 04/2023-GST dt. 23.11.2023]*

As per the said Instruction, non-issuance of the summary of such notices/ orders electronically on the portal is in clear violation of the explicit provisions of CGST Rules. Further, to keep track of the proceedings and consequential action in respect of recovery, appeal etc, subsequent to issuance of notices/ orders, the proper officers have been directed:

- to serve summary of the notice required to be issued under sections 52, 73, 74, 122, 123, 124, 125, 127, 129 and 130 of the CGST Act, 2017 in Form DRC-01 as required under rule 142(1), electronically on the common portal, and
- to issue summary of the orders required to be issued in sections 52, 62, 63, 64, 73, 74, 75, 76, 122, 123, 124, 125, 127, 129 and 130 of the CGST Act, 2017 in Form DRC-07 as prescribed under rule 142(5), electronically on the common portal.

Summary of Penalty implications

If tax, interest and penalty (as indicated in the table below) are paid, then all the proceedings in that respect shall stand concluded:

Pay tax plus interest	Amount of penalty
Before issuance of SCN notice	No penalty
Within 30 days after the issuance of SCN	No penalty
In any other case	10% of the tax or ₹ 10,000 whichever is higher.

13. Section 73 is applicable only for periods up to Financial year 2023-24. Section 74A has been introduced from financial year 2024-25 onwards which contains the similar provisions of section 73. The penalty specific provisions are contained in section 74A (5)(i) and section 74A (8) of CGST Act, 2017. A comparison between section 73 and section 74A from Penalty perspective is given below;

Pay tax plus interest (Section 73)	Pay tax plus interest (Section 74A(5)(i))	Amount of penalty
Before issuance of SCN notice	Before issuance of SCN notice	No penalty
Within 30 days after the issuance of SCN	Within 60 days after the issuance of SCN	No penalty
In any other case	In any other case	10% of the tax or ₹ 10,000 whichever is higher.

14. Voluntary payment of tax or interest shall be made in DRC-03. Due to situations which have arisen in the past, a new form DRC-03A has been introduced. The purpose of this form DRC-03A is to link the payments made in DRC-03 with any liability raised in Electronic Liability register.

The above linking has become necessary due to growing cases of tax or interest being paid in DRC-03 but for the same liability of tax or interest demand orders are passed creating liability in Electronic Liability register. Such linking of DRC-03 with liability created in form GST PMT-01 is possible only when DRC-05 (acknowledgement of voluntary payment) has not been issued against the DRC-03 by the proper officer concluding the proceedings.

Circular No. 224/18/2024 GST dated 11.07.2024 has been issued in this regard, the relevant paragraphs of the Circular is given below for reference;

7.1 It has also been noticed that some taxpayers have already paid amounts that were intended to have been paid towards a demand, through FORM GST DRC 03. Attention is invited to notification No. 12/2024 CT dated 10.07.2024, vide which sub rule (2B) of Rule 142 and FORM GST DRC 03A has been inserted in Central Goods and Services Rules, 2017 (hereinafter referred to as 'CGST Rules), providing for a mechanism for cases where the person liable to pay tax, interest and penalty under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act has made payment of such tax, interest and penalty, inadvertently through FORM GST DRC 03 under sub rule (2) of Rule 142. In such cases, the said person can file an application in FORM GST DRC 03A, electronically on the common portal, and the amount so paid and intimated through the FORM GST DRC 03 shall be adjusted as if the said payment was made towards the said demand on the date of such intimation through FORM GST DRC 03.

7.2 Accordingly, in cases where the concerned taxpayer has paid an amount that was intended to have been paid towards a particular demand through FORM GST DRC 03, has submitted an application in FORM GST DRC 03A on the common portal, the amount so paid and intimated through the FORM GST DRC 03 will be considered as if the payment was made towards the said demand on the date of such intimation through FORM GST DRC 03. The amount so paid shall also be liable to be adjusted towards the amount required to be paid as pre deposit under Section 107 and Section 112 of the CGST Act, if and when the taxpayer files an appeal against the said demand, before the appellate authority or the appellate tribunal, as mentioned in para 4 above, and the remaining amount of confirmed demand as per the order of the adjudicating authority or the appellate authority, as the case may be, will stand stayed as per provisions of sub section (6) of section 107 and sub section (9) of section 112 of CGST Act. However, if the taxpayer does not file appeal within the timelines prescribed in Section 107 and Section 112 of the CGST Act, as the case may be, read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law.

7.3 In this regard, it is to be mentioned that the application in FORM GST DRC 03A for adjustment of demand liability against the payment through FORM GST DRC 03 cannot be made in cases where against the payment made through the said FORM GST DRC 03, proceedings have already been concluded by issuance of an order in FORM GST DRC 05 as per the Rule 142(3) of CGST Rules, 2017

8.1 Currently, the above mentioned functionality for filing of an application in FORM GST DRC 03A, is not available on the common portal. Therefore, till the time such functionality is made available on the common portal, in respect of cases where an amount of pre deposit has been inadvertently paid through FORM GST DRC 03 instead of making the said payment through Electronic Liability Ledger II against the demand

created in the said ledger, the concerned taxpayer may intimate the proper officer about the same, and on such intimation, the proper officer may not insist on recovery for the remaining amount payable by the concerned taxpayer, till the time the said functionality of FORM GST DRC 03A is made available on the portal.

8.2 Once the functionality of FORM GST DRC 03A is made available on the portal, the concerned taxpayer may file an application in FORM GST DRC 03A, on the common portal, at the earliest, as mentioned in para 7.1 above and on doing so, the amount paid vide FORM GST DRC 03 may be adjusted against the pre deposit under section 107 or section 112 of the CGST Act, as the case may be, as detailed in para 7.2 above. However, in case the taxpayer fails to file an application in FORM GST DRC 03A on the common portal, the proper officer may proceed to recover the amount payable as per provisions of section 78 and section 79 of CGST Act.

Currently this functionality has been enabled in the portal and taxpayers shall use the same as and when required.

73.3. MCQ

1. The officer can issue the order under section 73 with a maximum demand up to?
   (a) Amount of tax + interest + penalty 10% of tax
   (b) Amount of tax + interest + penalty equal to 10% of tax or ₹ 10,000/- whichever is higher
   (c) ₹ 10,000/-
   (d) Tax + interest + 25% penalty

Ans. (b) Amount of tax + interest + penalty equal to 10% of tax or Rs.10,000/- whichever is higher

Statutory Provisions

74. Determination of tax [22][pertaining to the period up to Financial Year 2023-24] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid

[22] *Inserted vide The Finance (No.2) Act, 2024 notified through Notification. No.17/2024 CT-dt. 27.09.2024 w.e.f. 01.11.2024.*

or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

[23][(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.]

Explanation 1.— For the purposes of section 73 and this section, —

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 [~~129 and 130~~][24] are deemed to be concluded.

[25][Explanation 2.—Omitted]

Related Provisions of the Statute

Section or Rule	Description
Section 73	Determination of tax pertaining to the period up to Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts
Section 75	General provisions relating to determination of tax
Section 50	Interest on delayed payment of tax
Section 122	Penalty for certain offences
Section 125	General penalty

[23] Inserted vide The Finance (No.2) Act, 2024, notified through Notification. No.17/2024 CT-dt. 27.09.2024, w.e.f. 01.11.2024.

[24] Substituted vide The Finance Act, 2021 through Notification No. 39/2021-CT dt. 21.12.2021. Applicable w.e.f. 01.01.2022.

[25] Omitted vide The Finance (No.2) Act, 2024 notified through Notification. No.17/2024 CT-dt. 27.09.2024, w.e.f. 01.11.2024. Prior to omission, it read as "For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the Proper Officer."

Section 129	Detention, seizure and release of goods and conveyances in transit
Section 130	Confiscation of goods or conveyances and levy of penalty
Section 132	Punishment for certain offences
Rule 142	Notice and order for demand of amounts payable under the Act

74.1. Introduction

Where the reasons for not being identified earlier are attributable to certain 'special circumstances', notice must still be issued under section 74 in order to demand tax. In other words, even in such special circumstances, "SPOT recovery" is not sanctioned in law. The section covers certain situations for demand of taxes in cases of fraud, or any kind of wilful misstatement or suppression of facts with an intent to evade payment of tax.

1. Whenever the tax is
   - not paid or
   - short paid or
   - credit wrongly availed or
   - credit wrongly utilized or
   - erroneously refunded

   in 'special circumstances' with an "intent to evade tax" by way of
   - Fraud;
   - Wilful misstatement;
   - Suppression of facts;

   the Proper Officer shall issue a notice for such amount along with interest as per section 50 and penalty equivalent to the amount of tax specified in notice. The Proper Officer shall along with the Notice provide a summary in **Form GST DRC-01** specifying therein the details of the amount payable.
2. This section covers the time limit within which the Proper Officer shall issue the Notice and Order for the determination/ recovery of tax defaulted by the person. Section 74 also applies for demand of interest payable which is not paid or partly paid or interest erroneously refunded. Interest is an automatic incidence that does not involve any explanation or arguments except to the extent of accuracy in computation. Please note, Karnataka High Court has decided in the case of *UoI & Ors v. LC Infra Projects Pvt Ltd 2020 (81) GSTR 281 (Kar)* that SCN is required before making demand of interest under section 50 in view of principles of natural justice. Unless demand for interest is 'disputed' and remaining unpaid, interest on self-assessed or other admitted tax liability would be an 'undisputed arrear'. Please refer to discussions under section 75(12) about

such undisputed arrears coming within the operation of automatic recovery of dues under section 79.

3. Fraud is normally understood as deceit with an intent to obtain an unjust advantage, while suppression has been defined by way of explanation 2 to section 74. Willful misstatement usually covers a case of deceit but generally with the connivance of another. The situations cited *supra* normally come to light only on an inquiry. A fraud generally comes to light on its detection. Thus, this section broadly covers detection and response while no provisions are traceable to prevention mechanism.

4. Care must be taken that *vide* explanation 2 to section 74, the word 'suppression' has been given a very special meaning. As per this meaning, normal understanding of suppression has been left behind such that a variety of actions or inactions can be regarded as suppression to invoke extended period of limitation.

74.2. Analysis

1. **No notice is required to be issued for 'periodical demand':** Similar to the provisions of section 73 explained earlier, this section also provides that a statement containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised be issued, shall be issued for such periods other than those covered in the Notice under section 74(1) on the person chargeable with tax, along with a summary in **FORM GST DRC-02**. This is issued in place of a detailed notice for the period other than the ones covered in the Notice issued as per section 74(1). Further, service of such statement shall be deemed to be service of Notice under section 73(1), subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under section 74(1) are the same as those mentioned in the earlier notice.

2. The Proper Officer shall not serve any Notice on the assessee in case of voluntary payment of tax and interest along with penalty @ 15% of tax either

   - As per the own ascertainment of the tax or;
   - As per the ascertainment of the Proper Officer;

   In both the above situations the person charged with tax shall intimate the same to the Proper Officer in FORM GST DRC-03 and Proper Officer will provide acknowledgment in FORM GST DRC-04 and no Notice shall be served in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

   In case, there exists some shortfall between the amount paid by assessee on his own ascertainment and the actual amount liable to be paid, the Proper Office shall issue a Notice for the tax that remains unpaid.

3. Where the person makes the payment of tax and interest along with penalty equal to 25 % of tax within 30 days of issuance of Notice / Statement and intimates the Proper Officer of such payment in FORM GST DRC-03, the Proper Officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

4. If the person makes any representation or files a reply, the Proper Officer shall issue an order after considering the representation / reply in FORM GST DRC-06, and the amount determined shall comprise of tax along with interest and penalty as stated above. A summary of such order shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. Such summary of order in FORM GST DRC-07 shall be treated as a notice for recovery.

5. Where the assessee makes the payment of tax and interest along with penalty @ 50 % of tax within 30 days of communication of the order, then in such cases it shall be deemed that all the proceedings have been concluded.

6. The Proper Officer shall pass an order within a period of 5 years from the

   - due date for filing of annual return for the year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates
   - date of erroneous refund

   The time limit for issuance of Notice and Order is summarized in the following table:

Particulars	**Time limit for issuing SCN**	**Time limit for issuing order. [Sec 74(10)]**
Cases involving fraud, wilful misstatement or suppression of facts to evade tax	At least 6 months prior to the time limit specified under Section 74(10) for issuance of order.	5 years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or 5 years from the date of erroneous refund.

7. The term “suppression” is specifically explained to mean:

   - non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under the Act or the rules made thereunder, or
   - failure to furnish any information on being asked for, in writing, by the Proper Officer

8. Proper Officer: As per *Circular No. 31/05/2018-GST dated 09.02.2018*, the Superintendent of Central Tax is assigned to discharge powers under sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of section 74 of the CGST Act. In other words, all officers up to the rank of Additional/Joint Commissioner of Central Tax are assigned as the Proper Officer for issuance of show cause notices and orders under this section. Further, they are also assigned under the IGST Act as well, as per section 3 read with section 20 of the IGST Act. Please refer earlier discussion under section 73 regarding some aspects relating to the manner in which proceedings should be conducted to pass adjudication orders.

   Monetary limits have been also being *prescribed vide Circular No. 31/05/2018-GST dated 09.02.2018* for officers of different designations to function as the Proper Officers in relation to issue of show cause notices and orders under section 74. Refer Para 10 of our analysis of section 73.

   Circular No. 169/01/2022-GST, dated 12.03.2022 (amending *Circular No. 31/05/2018-GST dated 09.02.2018)*

   Vide *Notification No. 2/2022-CT dated 11.03.2022*, para 3A has been inserted in the *Notification No. 2/2017-CT dated 19.06.2017*, to empower Additional Commissioners of Central Tax/Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the Directorate General of Goods and Services Tax Intelligence.

9. After adjudication order is passed, taxpayer may pay 50% of the penalty demanded in such adjudication order within 30 days of communication of the order and enjoy rebate of the remainder of the penalty. Tax and interest as demanded must be fully paid as a condition of this relaxation under section 74(11).

   Summary of Penalty implications:

   If tax, interest and penalty as indicated in the table below, are paid, it is provided that further proceedings should not be continued to that extent.

Payment of Tax, Interest and Penalty	Amount of Penalty
Before issuance of show cause notice	15% of the tax amount
Within 30 days after the issuance of SCN	25% of the tax amount
Within 30 days from the communication of order	50% of the tax amount
In any other case	100% of the amount equal to tax

10. Section 74 is applicable only for periods up to financial year 2023-24. Section 74A has been introduced from financial year 2024-25 onwards which contains the similar provisions of Section 73. The penalty specific provisions are contained in Section 74A

(5) (i) and Section 74A (9) of CGST Act, 2017. A comparison between Section 74 and Section 74A from Penalty perspective is given below;

Payment of Tax, Interest and Penalty (Section 74)	Payment of Tax, Interest and Penalty (Section 74A(5)(ii))	Amount of Penalty
Before issuance of show cause notice	Before issuance of show cause notice	15% of the tax amount
Within 30 days after the issuance of SCN	Within 60 days after the issuance of SCN	25% of the tax amount
Within 30 days from the communication of order	Within 60 days from the communication of order	50% of the tax amount
In any other case	In any other case	100% of the amount equal to tax

11. **Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or willful misstatement or suppression of facts to evade tax.** ***[Instruction No. 05/2023-GST dt. 13.12.2023]***

Subsequent to the judgment of the Hon'ble Supreme Court's dated 19.05.2022 in the case of *CC, CE and ST, Bangalore (Adj.) etc Vs. Northern Operating Systems Private Limited (NOS)*, proceedings were initiated for the alleged evasion of GST on the issue of secondment under section 74(1) of the CGST Act, 2017. It was held in the said case that the secondment of employees by the overseas group company to NOS was a taxable service of 'manpower supply' and Service Tax was applicable on the same. It is noted that secondment as a practice is not restricted to Service Tax and the issue of taxability on secondment shall arise in GST also. However, there may be multiple types of arrangements in relation to secondment of employees of overseas group company in the Indian entity. In each arrangement, the tax implications may be different, depending upon the specific nature of the contract and other terms and conditions attached to it. Therefore, the decision of the Hon'ble Supreme Court in the NOS judgment should not be applied mechanically in all the cases.

The instruction has been issued to inform that section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or willful misstatement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or willful misstatement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice.

74.3. Issues and Concerns under sections 73 and 74

(i) Where a statement is issued by the Proper Officer against which the assessee remits applicable taxes along with interest and penalty at 25%. Subsequently, it is held that the statement cannot be deemed to be a notice as it does not have the same grounds as the previous notice. Can the assessee apply for refund of the additional 10% penalty that was paid on grounds that payment prior to issue of notice attracts only 15% penalty?

(ii) Rule 142(1A) has been introduced for issuing **FORM GST DRC-01A** to undertake process of 'pre-notice consultations' It is important to engage in such consultations by marking all communication as 'without prejudice' as there may be some misleading promises alluded to without expressly granting assurance that SCN will not be issued. Experts caution that such consultations should not be entertained, if taxpayer is not freely admitting liability and there is no ambiguity around the nature of tax demand. Rejection of this opportunity does not imply that, any adversarial approach is being followed for the taxpayer and full extent of relief based on merits of the case will be available in adjudication and appellate proceedings. This provision is mainly to take away discretion in the hands of Proper Officer regarding the penalty to be imposed.

(iii) On comparison of section 73(11) with section 122(1)(iii) and (iv) one finds that while penalty under section 73(9) is applicable if self-assessed tax or any amount collected as tax is not paid within 30 days from the due date for payment of such tax, section 122 penalty will be applicable if such tax or amount is not paid within 3 months from the due date for payment.

As a number of cases have come to notice of the Board where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as "fake invoices"), in order to enable the recipients of such invoices to avail and utilize input tax credit (hereinafter referred to as "ITC") fraudulently, a clarification on various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices has been issued by CBIC vide *Circular No. 171/03/2022-GST dt. 06.07.2022.*

Statutory Provisions

[26]***[74A Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards-***

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,

[26] *Inserted vide The Finance (No.2) Act, 2024, notified through Notification. No.17/2024 CT-dt. 27.09.2024, w.e.f. 01.11.2024.*

he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder:

Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is less than one thousand rupees.

(2) The proper officer shall issue the notice under sub-section (1) within forty-two months from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty-two months from the date of erroneous refund.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,– – (i) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax due from such person or ten thousand rupees, whichever is higher; (ii) for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person.

(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(7) The proper officer shall issue the order under sub-section (6) within twelve months from the date of issuance of notice specified in sub-section (2): Provided that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.

(8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, may,— (i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder; (ii) pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, may,— (i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder; (ii) pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded; (iii) pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.

(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of sub-section (5) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024-25 onwards.

Explanation 1.––For the purposes of this section,––

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Explanation 2.––For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.]

74A.1 Analysis:

1. Section 73 or 74 is applicable only for periods up to financial year 2023-24. Section 74A has been introduced from financial year 2024-25 onwards which contains the similar provisions of Section 73 and 74.
2. While the substantive provisions of Section 73 or 74 are contained in Section 74A, the only areas of difference are
   - Penalty
   - Time limit for issue of Notice / Order
3. The penalty specific provisions are contained in section 74A (5) (i) & (ii) and section 74A (8) & (9) of CGST Act, 2017. A comparison between sections 73 or 74 and section 74A from Penalty perspective has already been discussed in 73.2 & 74.2.
4. The time limits envisaged in section 74A, which unlike the erstwhile provisions of Section 73 or 74, are the same for wilful misstatement or fraud or other than wilful misstatement or fraud cases. Summary of Time limits are given below

Notice under Section 74A (1) (Section 74A (2))	Within 42 months from • the due date of furnishing Annual Return in case of tax not paid, short paid or input tax credit wrongly availed or utilised or • the date of erroneous refund
Order under Section 74A (6) (Section 74A (7))	Within 12 months from the date of above Notice Wherever approved by Commissioner or officer Authorised by Commissioner, 6 months extension may be given over and above 12 months to pass the order

Statutory Provisions

75. General provisions relating to determination of tax

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74 [27][or sub-sections (2) and (7) of section 74A], as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the Proper Officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

[28][(2A) Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under clause (ii) of sub-section (5) of section 74A is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, under clause (i) of sub-section (5) of section 74A.]

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess

[27] *Inserted vide The Finance (No.2) Act, 2024, notified through Notification. No.17/2024 CT-dt. 27.09.2024, w.e.f. 01.11.2024.*

[28] *Inserted vide The Finance (No.2) Act, 2024, notified through Notification. No.17/2024 CT-dt. 27.09.2024, w.e.f. 01.11.2024.*

of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) [29][The adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period specified in sub-section (10) of section 73 or in sub-section (10) of section 74 or in sub-section (7) of section 74A.]

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 [30][or sub-section (7) of section 74A] where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74 [31][or section 74A], where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

[32][Explanation.-For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished

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[29] Substituted vide The Finance (No.2) Act, 2024, notified through Notification. No.17/2024 – CT dt. 27.09.2024, w.e.f. 01.11.2024. Prior to its substitution, it read as, "The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74."

[30] Inserted vide The Finance (No.2) Act, 2024, notified through Notification. No.17/2024 - CT dt. 27.09.2024, w.e.f. 01.11.2024.

[31] Inserted vide The Finance (No.2) Act, 2024, notified through Notification. No.17/2024 – CT dt. 27.09.2024, w.e.f. 01.11.2024.

[32] Inserted vide The Finance Act, 2021 through Notification No. 39/2021-C.T. dt. 21.12.2021 applicable w.e.f. 01.01.2022.

under section 37, but not included in the return furnished under section 39.]

(13) Where any penalty is imposed under section 73 or section 74 [33][or section 74A], no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

[34][Rule 142B. Intimation of certain amounts liable to be recovered under section 79 of the Act.-

(1) Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D, directing the person in default to pay the said amount, along with applicable interest, or, as the case may the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01.

(2) The intimation referred to in sub-rule (1) shall be treated as the notice for recovery.

(3) Where any amount of tax or interest specified in the intimation referred to in sub-rule (1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.]

Related Provisions of the Statute

Section or Rule	Description
Section 73	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts
Section 74	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts
Section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards

[33] *Inserted vide The Finance (No.2) Act, 2024, notified through Notification. No.17/2024 - CT dt. 27.09.2024, w.e.f. 01.11.2024.*

[34] *Inserted vide Notification No. 38/2023- CT dt.04.08.2023.*

Section 79	Recovery of tax
Section 21	Manner of recovery of credit distributed in excess
Section 61	Scrutiny of returns
Section 62	Assessment of non-filers of returns
Section 83	Provisional attachment to protect revenue in certain cases
Rule 88C	Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return
Rule 88D	Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return

75.1. Analysis

These provisions are general provisions for taxpayer's safeguard in determination of tax and are applicable irrespective of whether the notice invokes the extended period or not.

1. If an order of court or Appellate Tribunal stays the service of notice or issuance of order then, the period of such stay will get excluded from the period of issuance of order i.e., 3 years or 5 years as the case may be.
2. When a notice has been issued considering the case to be for fraud or for wilful–representation or for suppression of facts, and whereas the charges of fraud, wilful misstatement and suppression of facts were not sustainable or not established by an order of Appellate Authority or Appellate Tribunal, then in such case the officer shall determine the tax as if the notice is issued for the normal period of 3 years.
3. An order required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a Court, shall be issued within two years from the date of communication of the said direction. Compared with the bar on 'power of remand' in section 107(11), it is forthcoming that Appellate Authority will not enter into verification of documents or sanction of refund, after reaching a finding on merits and passing Orders.
4. Opportunity of personal hearing has to be granted when requested for in writing by the person chargeable with tax or where any adverse decision is proposed to be taken against the person.
5. Personal hearing can be adjourned for reasons to be recorded in writing, when sufficient cause is shown by the person chargeable with tax. However, such adjournment can be granted for a maximum of 3 times. It should be noted that a departmental SCN which specifies three consecutive dates for personal hearing (failing which an *ex-parte* order is passed) will not be held to be valid as this is against the principles of natural justice.

6. The "relevant facts" and "basis" of the decision shall be set out in the order, which means a Speaking Order needs to be passed. It important to note that the "grounds" on which allegations were made cannot be deviated from and the "Order" must support the demand on the same grounds and not introduce new grounds or cure deficiencies in grounds present in SCN. Failure of adjudication on this aspect alone may be sufficient to get favourable order in appellate proceedings. Drafting of SCN has now attained more importance. This provision when read together with section 160(2), provides an important clue as to the 'preliminary objections' that need to be raised while replying to SCN.

7. The amount of tax along with interest and penalty should not exceed the amount mentioned in the notice and the grounds shall not go beyond what is mentioned in the notice.

8. When the decision of Tribunal/ Court/ Appellate Authority modifies the amount of tax, correspondingly interest and penalty shall also be modified to that extent by the Proper Officer.

9. Interest shall be payable in all cases whether specifically mentioned or not. This provision indicates that were 'penalty' is OMITTED from the SCN, even if applicable, the adjudicating authority cannot confirm demand for penalty by furnishing the obvious deficiency in SCN. This is evident in the fact that Legislature has thoughtfully only saved omission of 'interest' from Order and not 'interest and penalty'.

10. If the order is not issued within the time limits as prescribed in sub-section (10) of section 73 or (10) of section 74, i.e., 5 years in case of fraud, wilful-misstatement or suppression and 3 years in any other case, the adjudication proceedings shall be deemed to be concluded. Reference may be taken from the decision in case of *Ramlal and Ors v. Rewa Coalfields Ltd AIR 1962 SC 361,* wherein Hon'ble Supreme Court has recognized that lapse of time to pass such orders (lapse of limitation) creates a vested right to the taxpayer that should not be easily disturbed. And with a specific embargo, it is well accepted that where SCN is issued 'after' 33 months (or 54 months) or adjudication orders are passed 'after' 36 months (or 60 months), the entire proceedings would fail. For the remainder of the period, fresh SCN is required and curing this deficiency or adjudicating for 'adjusted shorter period' is NOT permissible. This is well established administrative law principle. Refer discussion under section 6 of the CGST Act regarding 'administrative discipline' and related circulars to be referred on this administrative law principle.

11. An issue on which Appellate Authority or Appellate Tribunal or High Court has given its decision which is prejudicial to the interest of the revenue and an appeal to the Appellate Tribunal or High Court or Supreme Court against such decision is pending, then the period spent between the two dates of decision shall be excluded in computing

the period of 3 years or 5 years respectively, for issue of order. It is important to note that the 'exclusion period' due to pendency of an issue is NOT limited to case of the same taxpayer but of ANY OTHER taxpayer. This is a clear measure to protect interest of revenue provided 'proceedings under section 73 or 74 are initiated'. This is also referred to as 'call book' cases. Reference may be had to the circulars issued under earlier laws and GST regarding 'administrative discipline' where administration of 'call book' cases is discussed. This discussion may be found under section 6 of the CGST Act.

12. Any amount of self-assessed tax or interest payable, whether wholly or in part in accordance with a return furnished under section 39 shall be recovered under the provisions of section 79. It is important to understand what would constitute 'undisputed arrears'. While self-assessed tax is an undisputed arrear, interest being an automatic levy, unpaid interest on self-assessed tax would also be an undisputed arrear.

13. It is also provided that when the penalty is imposed under sections 73 and 74 or section 74A, no penalties shall be imposed under any other provisions of this Act for the same act or omission.

14. In order to clarify regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of section 73, specially in cases where time limit for issuance of order as per sub-section (10) of section 73 has already been over and also, to clarify the doubts regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of section 73, *Circular No. 185/17/2022-GST dt. 27.12.2022* has been issued by CBIC with regard to applicability of provisions of section 75(2) of CGST Act, 2017 and its effect on limitation.

15. Rule 88C is in respect of admitted liability in GSTR-1 that remains undischarged in GSTR-3B for that tax period. It is prescribed that taxpayer will be informed in FORM GST DRC-1B – Part A about the 'admitted liability' which may either be explained suitably in FORM GST DRC-1B – Part B or rule 88C(3) authorizes Proper Officer to proceed with recovery under section 79. Rule 142B prescribes yet another intimation of liability that is to be recovered for want of dissatisfactory response or non-response to earlier intimation in Form GST DRC-1D.

16. It is interesting to note that options for response by taxpayer in Form GST DRC-1B – Part B contains following alternates:

    a) Excess liability paid in earlier tax periods in FORM GSTR-3B

    b) Some transactions of earlier tax period which could not be declared in the FORM GSTR-1/IFF of the said tax period but in respect of which tax has already been paid in FORM GSTR-3B of the said tax period and which have now been declared in FORM GSTR-1/IFF of the tax period under consideration

c) FORM GSTR-1/IFF filed with incorrect details and will be amended in next tax period (including typographical errors, wrong tax rates, etc.)

d) Mistake in reporting of advances received and adjusted against invoices

e) Any other reasons

The above indicates that (i) not every data mismatch automatically admits undischarged arrears and (ii) possibility that GSTR-3B is correct and GSTR-1 is incorrect is admitted by Government too. *Instruction 1/2022-23 GST dated 07.01.2022* clearly specifies in para 4 that there may be bona fide reasons for mismatch between GSTR-1 and GSTR-3B. This rule 88C comes into effect from 26.12.2022 but direct recovery action under rule 142B comes into effect from 04.08.2023.

17. Notice under rule 88D on the other hand, is another system generated notice due to mismatch between data in GSTR-2B with GSTR-3B. But the key point of distinction with rule 88C is that unlike unresolve mismatch intimation in rule 88D(3) only empowers Proper Officer to issue a notice of demand and does not empower taking recovery action under section 79.

18. Rule 88D requires where credit claimed in GSTR-3B is greater than credit appearing in GSTR-2B, even when rule 37A requires mandatory reversal of unmatched credits, taxpayer is intimated in Form GST DRC-1C – Part A about such mismatch. Taxpayer is required to respond in Form GST DRC-1C – Part B whether such mismatch results in any admitted liability or some explanation against the presumption of liability can be offered. In view of the mandate to restrict claim of input tax credit from Aug 2022 to balances appearing in GSTR2B, any excess claim of credit that is either dissatisfactory explained or remains un-responded, presumption of wrong-doing is raised against taxpayer.

19. It is interesting to note that options for response by taxpayer in Form GST DRC-1C – Part B contains following alternatives:

a) Input tax credit not availed in earlier tax period(s) due to non-receipt of inward supplies of goods or services in the said tax period (including in case of receipt of goods in instalments);

b) Input tax credit not availed in earlier tax period(s) inadvertently or due to mistake or omission;

c) ITC availed in respect of import of goods, which is not reflected in FORM GSTR-2B;

d) ITC availed in respect of inward supplies from SEZ, which are not reflected in FORM GSTR-2B;

e) Excess reversal of ITC in previous tax periods which is being reclaimed in the current tax period;

f) Recredit of ITC on payment made to supplier, in respect of ITC reversed as per rule 37 in earlier tax period;

g) Recredit of ITC on filing of return by the supplier, in respect of ITC reversed as per rule 37A in earlier tax period;

h) Form GSTR-3B filed with incorrect details and will be amended in next tax period (including typographical errors, wrong tax rates, etc.);

i) Any other reasons.

The above indicates that (i) not every data mismatch automatically admits undischarged arrears and (ii) possibility that GSTR-3B is correct and GSTR-2B is incorrect is admitted by Government too. This rule comes into effect from 04.08.2023. Care must be taken that choice of response implicitly contains admission of wrongdoing. And without clearly denying the underlying allegation, taxpayer will be prejudiced if the response selected admits default.

75.2 Issues & Concerns

a) Without rule 142B (notified only on 04.08.2023), is action under rule 88C (notified on 26.12.2022) deferred?

b) Without rule 88C/142B, is action under explanation to section 75(12) (notified from 01.01.2022) remain suspended?

Notice by Appellate Authority - Provisos to Section 107(11)

While it is uncommon for Appellate Authority to issue a 'show cause notice', the express language in the two provisos to section 107(11) make it clear that Appellate Authority is permitted to issue a 'supplementary' show cause notice. And the order of Appellate Authority in respect of such supplementary notice is subject to statutory limitation and the consequent safeguard in section 75(10). Further, reference to rule 109C reiterates that show cause notice can be issued under section 107(11).

Analysis

First proviso – contains authority to 'enhance' any fee, fine or penalty that was imposed in adjudication. Now it is important to note that section 107(11) itself permits Appellate Authority only to "pass such orders confirming, modifying or annulling" and there is no express authority for Appellate Authority for "enhancing" which exists in section 108(1). However, the unequivocal language in this proviso cannot be rendered otiose.

- Instance when such enhancement may be harmonized would be where Proper Officer has confirmed penalty less than that the statutory minimum prescribed, say, in section 73(9) or in 75(8). And when, for other reasons, taxpayer carries the order of Proper Officer in appeal, Appellate Authority is empowered to "enhance" the penalty.
- However, such harmonization is hardly possible in case of fee – which is levied under section 47 – as no notice under section 73 or 74 could possibly be issued to demand

such fee. There would not be any occasion when an appeal involving such fee would come for consideration by Appellate Authority.

And fine must only refer to redemption fine under section 130(2) which, when carried in appeal, having already been examined and imposed by Proper Officer based on facts of the case, taxpayer cannot be worse-off at the end of appeal than at the start. And appeal is not an exercise to re-appreciate material on record when once such material have been appreciated by a competent officer and a conclusion reached based on the facts and the law. Appeal is not yet another opportunity to re-do adjudication by an officer of higher rank. Not even when the quantum of redemption fine is suspiciously liberal and yet somehow the matter is carried in appeal by taxpayer, no such enhancement would be possible. For these instances, revisionary proceedings under section 108(1) are available to Revenue. But when the appeal is carried by Revenue seeking enhancement of redemption fine imposed, this proviso is not pressed into service.

Second proviso – is capable of correcting computational errors and not substitute with a fresh notice. Where tax is demanded but applicable cess is omitted in adjudication. For e.g., where tax is demanded under one classification, it cannot be replaced with a different classification, for the vice that this would be a fresh notice. Appellate Authority is excluded from definition of Adjudicating Authority in section 2(4).

Interestingly, the expression in this proviso is not "enhance" but apparently unhindered when it refers to "any tax or credit". Care must taken not to read this proviso as authorizing Appellate Authority to issue an altogether new notice. Safeguard is found in the fact that such liability must be based on "opinion" formed by Appellate Authority. No such opinion can be formed by calling for new records and material but formed from the material already available on record being the 'relied upon documents' in notice and additional material introduced during adjudication. If no such "opinion" can be formed without calling for new records and material, then Appellate Authority must limit the scope of fact-finding during appeal to the grounds agitated against order of adjudication.

Issues and Concerns

1. Whether Appellate Authority can call for books of accounts for enquiring into new demands that may have been omitted in pre-notice stages such as scrutiny of returns, audit or investigation?
2. Whether books submitted by taxpayer can authorize expansion of scope of appellate proceedings into new demands that are not forming part of original proceedings?

75.3 FAQs

Q1. Who has the power to issue a notice/ order?

Ans. "Proper officer" as defined under section 2(91) of the Act and assigned vide *Circular No. 3/3/2017-GST dated 05.07.2017* read with *Circular No.31/05/2018-GST dated 09.02.2018* as amended vide *Circular No. 169/01/2022-GST dated 12.03.2022* to exercise powers under sections 73 and 74 can issue notices and orders under the said sections.

Q2. When can proceedings be initiated under sections 73/74?

Ans. The proceedings can be initiated pertaining to period upto FY 2023-24 when there is

- Short payment of tax
- Non-payment of tax
- Wrong input credit availed
- Wrong input credit utilized
- Erroneous refund

Q3. Is notice for a period of 5 years valid even if charge of suppression, fraud and wilful misstatement are not sustained?

Ans. No, when the allegations of fraud, suppression or wilful misstatement are not established, the notice issued under section 74 would get covered under section 73 and 3 years' time limit would be applicable for date of issue of order.

Q4. What is the condition for giving a repeat notice under section 73(3) for a different period?

Ans. The condition is that the grounds relied upon should be same as in the notice issued previously. In such cases, it is not essential to issue a detailed notice. It would suffice, if a statement giving the statement of alleged amounts is issued.

Q5. Whether there is any time limit to issue notice is applicable?

Ans. The time limit to issue notice is at least 3 months/ 6 months prior to the last day to pass the order i.e., 3 years or 5 years from the due date for furnishing annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within 3 years or 5 years from the date of erroneous refund.

Q6. Is interest applicable in all cases, even if not specifically mentioned?

Ans. Yes, interest is applicable whenever the tax is payable whether or not it is specifically mentioned.

Q7. Can the assessee pay tax after the issue of notice and before an order? What is the benefit from such voluntary payments under different cases?

Ans. Yes. The assessee is given the benefit to pay the tax after issue of notice and before issuance of order as follows:

In cases other than fraud, misstatement and suppression	
When the assessee pays the amount payable after the issue of notice but within 30 days from the issue of SCN	Tax + interest to be paid in full and complete waiver of penalty
In cases of fraud, misstatement and suppression	
When the assessee pays the amount payable after the issue of notice but within 30 days from the issue of SCN	Tax and+ interest to be paid in full+ along with penalty @ 25% of tax

75.4 MCQs

Q1. What is the time limit for issue of order in case of fraud, wilful-misstatement or suppression?

(a) 30 months

(b) 18 months

(c) 5 years

(d) 3 years

Ans. (c) 5 years

Q2. What is the time limit for issue of order in case of other than fraud, wilful-misstatement or suppression?

(a) 30 months

(b) 18 months

(c) 5 years

(d) 3 years

Ans. (d) 3 years

Q3. The maximum number of times the hearing can be adjourned?

(a) 1

(b) 3

(c) 5

(d) None

Ans. (b) 3

Statutory provisions

76. Tax collected but not paid to Government

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The Proper Officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The Proper Officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

Statutory Provisions of the Statute:

Section or Rule	Description
Section 50	Interest on delayed payment of tax
Section 54	Refund of tax
Section 33	Amount of tax to be indicated in tax invoice and other documents
Rule 142	Notice and order for demand of amounts payable under the Act

76.1 Introduction

This provision deals with payment of any amount collected as tax but not remitted to the Central/State Government or Union Territory. This section requires him to make the payment forthwith regardless of whether the related supplies are taxable or not.

76.2 Analysis

(i) This section makes it obligatory on every person who has collected from any other person any amount representing "tax under this Act", to pay the said amount to the credit of the Central or State Government regardless of whether the supplies in respect of which the amount was collected are taxable or not.

(ii) Please note that there is NO TIME LIMIT, also called 'period of limitation' for issue of notice under this section unlike under section 73 or 74. Take the example, sale of MRP goods where the MRP includes output tax carrying the 'maximum price' for sale in retail. Experts hold the view that MRP actually contains output tax and when goods are sold 'at MRP', it would be hit by this section. Experts who hold this view caution unregistered persons, composition taxpayers and taxpayers making exempt supplies to steer clear of selling MRP goods. It appears they need to sell 'below MRP' excluding output tax but after including input credit lost (refer below for effect of collecting 'credit lost'). Refer discussions under section 32 for a conjoint reading and understanding on this topic.

(iii) Before effecting recovery, the Proper Officer has to serve a notice along with a summary in **FORM GST DRC-01**, on to any person who has collected any amount representing as tax requiring to show cause as to why –

- the said amount should not be paid by him to the Government;
- penalty equivalent to such amount specified in the notice should not be imposed on him.

(iv) The person is permitted to make representation in **FORM GST DRC-06,** against the notice served on him. The person ought to be given an opportunity of being heard where a request is made by such person in writing.

(v) After considering such representation made by the person, the Proper Officer shall determine the amount due from the person and pass an order within one year from the

date of issue of notice. Where the service of notice is stayed by order of the Court or Appellate Tribunal, the period covered by the stay shall stand excluded for the purpose of computing the time limit.

Further, a summary of such order shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(vi) The Proper Officer must pass a Speaking Order.

(vii) Upon such determination, the person has to pay such amount determined.

(viii) Interest at the rate specified under section 50 shall be paid on the amount collected as representing tax (either paid voluntarily or on determination by the Proper Officer). Interest shall be calculated from the date of collection of amount till the date of deposit of amount.

(ix) The amount paid by such person to the credit of the Central Government or a State Government shall be adjusted against the tax payable by the person.

(x) If any surplus is left after adjustment against the tax liability, it will be

- Credited to consumer welfare fund; or
- Refunded to the person who has borne the incidence of such amount.

(xi) The person claiming such refund shall follow the conditions and procedure contained in section 54 of the CGST Act.

(xii) There appears to be no time limit to commence proceedings under this section. Experts hold the view that principle of *res judicata* demands that when there is no time limit prescribed in the law a reasonable time limit must be applied and nothing is more reasonable that the maximum time limit of 5 years in section 74.

It is important to note that in the context of Central Excise, where input credit was to be reversed on account of Customer being entitled to exemption from payment of duties, the Larger Bench of the Hon'ble Tribunal held in *Unison Metals Ltd. v. CCE, Ahd-I [(2006) 204 ELT 323 (LB-Tri.)]*, that recovery of 'Cenvat Loss' would not attract the mischief of section 11D as it was not 'duty of excise' collected liable to be paid to the Government. GST too denies credit under section 17(2) of CGST Act where supplies made are exempt. Please note that rate *Notification 11/2017-CT(R) dt. 27.06.2017* prescribing reduced rate of tax with condition of non-availment of input tax credit as well as exemption *Notification No 12/2017-CT(R) dt. 27.06.2017* prescribing exemption up to certain value limit or in certain circumstances, both are enjoined with a 'condition' of reversal of credit as read under explanation 4(iv)(b) along with section 17(2) of the CGST Act.

It is noted in demands relating to fake invoices, output tax is left undisputed but allegation is made that inward supplies are fictitious and demand for reversal of such credit made, unless

the inward supplies are admitted to be for own consumption and not inventory for manufacture and sale or resale. It is important for Revenue to (i) demand output tax under section 76 in respect of fictious outward supplies (ii) appropriate output tax already discharged and (iii) demand reversal of input tax credit for being fictitious. It would be a striking contradiction that inward supplies alone are alleged to be fictitious while implicitly admitting that outward supplies are genuine.

76.3 FAQs

Q1. What is the interest rate applicable on delayed payment of amount collected representing it as tax?

Ans. According to section 50, the rate of interest cannot exceed 18%. The rate of interest has been specified @ 18% per annum by *Notification No. 13/2017 – CT dt. 28.06.2017.*

Q2. How is the amount of surplus left after adjustment with tax payable dealt with?

Ans. Where any surplus is left after the adjustment against the tax payable, the amount of such surplus shall either be credited to the Consumer Welfare Fund or, as the case may be, refunded to the person who has borne the incidence of such amount.

Q3. What is the procedure to be followed by the person on receipt of determination of demand of tax collected but not deposited with the Central or a State Government from the Proper Officer?

Ans. The person will be given an opportunity of being heard and after that if any demand arises, then tax, interest and penalty has to be paid accordingly.

76.4 MCQs

Q1. Any amount of tax collected shall be deposited to the credit of the Central or a State Government,

(a) Only when the supplies are taxable

(b) Regardless of whether the supplies in respect of which such amount was collected are taxable or not.

(c) Only when the supplies are not taxable

(d) None of the above.

Ans. (b) Regardless of whether the supplies in respect of which such amount was collected are taxable or not.

Q2. Within how many years should the proper office issue an order from the date of notice?

(a) 1 year

(b) 2 years

(c) 3 years

(d) 4 years

Ans. (a) 1 year

Statutory Provisions

77. Tax wrongfully collected and paid to Central Government or State Government

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

Related Provisions of the Statute

Section or Rule	Description
Section 54	Refund of tax

77.1 Introduction

This provision deals with a situation when CGST/SGST or CGST/UTGST is paid on any inter-State supply. Further also it covers interest implication in a situation where IGST is paid on transaction of intra-State supply.

77.2 Analysis

(i) This provision deals with a situation where a taxable person wrongly pays CGST/SGST or CGST/UTGST on the transaction treating it as intra-State supply, but which is subsequently held to be inter-State supply. Upon payment of IGST on such transaction, the CGST/SGST or CGST/UTGST will to be refunded. The refund of such CGST/SGST or CGST/UTGST would be granted subject to such conditions as may be prescribed in this regard.

Further, interest is not required to be paid on the IGST payable in terms of section 19 (2) of the IGST Act

(ii) If a taxable person wrongly pays IGST by treating a supply as inter-State supply, which is subsequently held to be intra-State supply, interest is not required to be paid on the CGST/SGST or CGST/UTGST payable. The refund of such IGST would be granted

subject to such conditions as may be prescribed in this regard in terms of section 19(1) of the IGST Act.

Please note that jurisdiction to demand for CGST (and SGST) is contained in section 77(1) whereas jurisdiction to demand IGST is contained in section 19(1) of IGST Act. And relief from payment of interest on CGST-SGST is allowed under section 77(2) whereas relief from payment of interest on IGST is allowed under section 19(2) of IGST Act.

Reference could be made to the following decision of the Kerala High Court decision with regard to section 77:

Saji S, Proprietor, Adithya and Ambadi Traders [(2018) 19 G.S.T.L. 385 (Ker.)]

Issue:

Petitioner, a registered dealer, had purchased goods from Chennai. While transporting the goods to Kerala, the same were detained while in transit by the Assistant State Tax Officer. Based on the demand made, the consignor paid tax and penalty, but the remittance was made under the head 'SGST' - Since the remittance should have been made under the head IGST, the authorities refused to release the goods and hence this writ petition.

Held:

Section 77 of the CGST Act, 2017 provides for the refund of the tax paid mistakenly under one head instead of another; however, rule 4 of the GST Refund Rules speaks of adjustment - Where the amount of refund is completely adjusted against any outstanding demand under the Act, an order giving details of the adjustment is to be issued in Part A of Form GST RFD-07 - Under these circumstances, the High Court does not find any difficulty for the respondent officials to allow the petitioner's request and get the amount transferred from the head 'SGST' to 'IGST' . It is inequitable for the authorities to let the petitioner suffer on the count that such transfer may take some time. Second respondent directed to release the goods forthwith along with the vehicle and then, ensure that the tax and penalty which already stood remitted under the 'SGST' is transferred to the head 'IGST'. Petition was accordingly disposed by the High Court.

Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act vide *Circular No. 162/18/2021-GST dt. 25.09.2021*

(i) Interpretation of the term "subsequently held"

The term "subsequently held" given in section 77 of CGST Act and section 19 of IGST Act covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding.

(ii) The relevant date for claiming refund under section 77 of the CGST Act, 2017/ section 19 of the IGST Act, 2017

Through the insertion of sub-rule (1A) in rule 89 vide aforementioned *Notification No. 35/2021-CT dt. 24.09.2021*, it has been clarified that the refund under section 77 of CGST Act/ section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of *Notification No.35/2021-CT dt. 24.09.2021*, the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e., from 24.09.2021.

Application of sub-rule (1A) of rule 89 read with section 77 of the CGST Act / section 19 of the IGST Act has been explained through various illustrations in the Circular.

77.3 FAQs

Q1. What is the remedy available when tax is paid wrongly as CGST/SGST and subsequently the supply is considered as inter-State supply attracting IGST?

Ans. Refund can be claimed by the taxable person who has paid CGST/SGST or CGST/UTGST on payment of IGST subject to such conditions as may be prescribed.

Q2. Is interest payable on CGST/SGST or CGST/UTGST, when IGST was wrongly paid on the transaction of intra-State supply?

Ans. When IGST was wrongly paid on intra-State supply, it is not required to pay any interest on the amount so paid when CGST/SGST or CGST/UTGST becomes payable.

77.4 MCQs

Q1. Which section deals with tax wrongly collected and deposited with Central or State Government?

(a) Section 57

(b) Section 58

(c) Section 77

(d) Section 79

Ans. (c) Section 77

Q2. If CGST/SGST is wrongly remitted instead of IGST, the tax payer can_____

(a) seek refund

(b) adjust against future liability

(c) take re-credit

(d) file a civil suit for recovery

Ans. (a) seek refund

Statutory provisions

78. Initiation of recovery proceedings

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

Related Provisions of the Statute

Section or Rule	Description
Section 79	Recovery of tax
Section 84	Continuation and validation of certain recovery proceedings

78.1. Introduction

This provision empowers the Proper Officer to collect any amount which is payable by a taxable person in pursuance of an order passed under the Act.

78.2 Analysis

(a) This section enables initiation of proceedings for recovery of the amount from a taxable person.

(b) The amount shall be paid by taxable person within a period of 3 months of the service of order, failing which the Proper Officer shall initiate the recovery proceedings. Note that time to file appeal under section 107 is 3 months and in harmony with that time limit, recovery action is kept in abeyance until that time is passed. Although additional time to file appeal (1 month before Appellate Authority and 3 months before Appellate Tribunal) is permitted. Recovery action need not be kept in abeyance until additional time is passed. Additional time is available not as a right but a remedy if sufficient cause is shown. Care must be taken to avoid delay in filing appeal, so that recovery action is not initiated.

(c) If it is in the interest of Revenue, the Proper Officer after recording the reasons in writing, may initiate the recovery proceedings even before the completion of the said period of 3 months. However, this section empowers the Proper Officer in the interest of revenue (after recording the reasons) to initiate recovery proceedings even before the expiry of 3 months period.

78.3 FAQs

Q1. When is the amount payable by a taxable person in pursuance of order passed under this Act?

Ans. In the normal course, any amount payable by a taxable person in pursuance of an order passed under the Act shall be paid by such person within 3 months from the date of service of such order.

Q2. When can the Proper Officer require a taxable person to make payment of the amount specified in the order, within such shorter period as may be specified by him?

Ans. When the Proper Officer considers it necessary in the interest of Revenue, he may, after recording reasons in writing, ask the said taxable person to make the payment within such short period as may be specified by him.

78.4 MCQs

Q1. In which of the following cases, recovery proceedings be initiated?

(a) To recover any amount payable by a taxable person in pursuance of an order passed under the Act

(b) To recover any input tax credit availed by taxable person

(c) None of the above

(d) All of the above

Ans. (a) To recover any amount payable by a taxable person in pursuance of an order passed under the Act.

Q2. The time limit for payment of any amount payable by a taxable person in pursuance of an order passed under the Act-

(a) 6 months

(b) 3 months

(c) 1 year

(d) 2 years

Ans. (b) 3 months.

Q3. The Proper Officer can require a taxable person to make payment within such shorter period as may be specified-

(a) It is necessary in the interest of revenue

(b) When amount payable exceeds ₹ 10 Lakhs

(c) Both of the above

(d) None of the above

Ans. (a) It is necessary in the interest of revenue

Statutory Provisions

79. Recovery of Tax

(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely: —

(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;

(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;

(c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

(d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument

may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

[35][Explanation.—For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.]

Extract of the CGST Rules, 2017

[36][142A. Procedure for recovery of dues under existing laws.

(1) *A summary of order issued under any of the existing laws creating demand of tax, interest, penalty, fee or any other dues which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall, unless recovered under that law, be recovered under the Act and may be uploaded in FORM GST DRC-07A electronically on the common portal for recovery under the Act and the demand of the order shall be posted in Part II of Electronic Liability Register in FORM GST PMT-01.*

(2) Where the demand of an order uploaded under sub-rule (1) is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in FORM GST DRC-08A and Part II of Electronic Liability Register in FORM GST PMT-01 shall be updated accordingly.]

[35] Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 read with Notification No. 02/2019 - CT dt. 29.01.2019 w.e.f. 01.02.2019.

[36] Inserted vide Notification No. 60/2018 - CT dt. 30.10.2018.

[37][142B. Intimation of certain amounts liable to be recovered under section 79 of the Act

(1) Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D, directing the person in default to pay the said amount, along with applicable interest, or, as the case may the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in ***FORM GST PMT-01.***

(2) The intimation referred to in sub-rule (1) shall be treated as the notice for recovery.

*(3) Where any amount of tax or interest specified in the intimation referred to in sub-rule (1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.****]***

143. Recovery by deduction from any money owed.

Where any amount payable by a person (hereafter referred to in this rule as the "defaulter") to the Government under any of the provisions of the Act or the rules made thereunder is not paid, the proper officer may require, in FORM GST DRC-09, a specified officer to deduct the amount from any money owing to such defaulter in accordance with the provisions of clause (a) of sub-section (1) of section 79.

Explanation.- For the purposes of this rule, "specified officer" shall mean any officer of the Central Government or a State Government or the Government of a Union territory or a local authority, or of a Board or Corporation or a company owned or controlled, wholly or partly, by the Central Government or a State Government or the Government of a Union territory or a local authority.

144. Recovery by sale of goods under the control of proper officer.

(1) Where any amount due from a defaulter is to be recovered by selling goods belonging to such person in accordance with the provisions of clause (b) of sub-section (1) of section 79, the proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.

(2) The said goods shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC-10 clearly indicating the goods to be sold and the purpose of sale.

[37] Inserted vide Notification No. 38/2023 - CT dt. 04.08.2023.

(3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

(4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in FORM GST DRC-12.

(6) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (2), the proper officer shall cancel the process of auction and release the goods.

(7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

[38][144A. Recovery of penalty by sale of goods or conveyance detained or seized in transit

(1) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) of section 129 within fifteen days from the date of receipt of the copy of the order passed under sub-section (3) of the said section 129, the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance.

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(2) The said goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC-10 clearly indicating the goods or conveyance to be sold and the purpose of sale.

Provided that where the person transporting said goods or the owner of such goods

[38] Inserted vide Notification. No. 40/2021-CT dt. 29.12.2021. Applicable w.e.f. 01.01.2022.

pays the amount of penalty under sub-section (1) of section 129, including any expenses incurred in safe custody and handling of such goods or conveyance, after the time period mentioned in sub-rule (1) but before the issuance of notice under this sub-rule, the proper officer shall cancel the process of auction and release such goods or conveyance.

(3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2).

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of auction.

The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of auction.

(6) On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in FORM GST DRC-12.

(7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

(8) Where an appeal has been filed by the person under the provisions of sub-section (1) read with sub-section (6) of section 107, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed.

*Provided that this sub-rule shall not be applicable in respect of goods of perishable or hazardous nature.**]***

145. Recovery from a third person.

(1) The proper officer may serve upon a person referred to in clause (c) of sub-section (1) of section 79 (hereafter referred to in this rule as "the third person"), a notice in FORM GST DRC-13 directing him to deposit the amount specified in the notice.

(2) Where the third person makes the payment of the amount specified in the notice issued under sub-rule (1), the proper officer shall issue a certificate in FORM GST DRC-14 to the third person clearly indicating the details of the liability so discharged.

146. Recovery through execution of a decree, etc.

Where any amount is payable to the defaulter in the execution of a decree of a civil court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request in FORM GST DRC- 15 to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

147. Recovery by sale of movable or immovable property.

(1) The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale in FORM GST DRC- 16 prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due:

Provided that the attachment of any property in a debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any Court, shall be attached in the manner provided in rule 151.

(2) The proper officer shall send a copy of the order of attachment or distraint to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the proper officer to that effect.

(3) Where the property subject to the attachment or distraint under sub-rule (1) is-

a) an immovable property, the order of attachment or distraint shall be affixed on the said property and shall remain affixed till the confirmation of sale;

b) a movable property, the proper officer shall seize the said property in accordance with the provisions of chapter XIV of the Act and the custody of the said property shall either be taken by the proper officer himself or an officer authorised by him.

(4) The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in FORM GST DRC- 17 clearly indicating the property to be sold and the purpose of sale.

(5) Notwithstanding anything contained in the provision of this Chapter, where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, instead of selling it by public auction, sell such instrument or a share through a broker and the said broker shall deposit to the Government so much of the proceeds of such

sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.

(6) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders or, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(7) The last day for the submission of the bid or the date of the auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (4):

Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.

(8) Where any claim is preferred or any objection is raised with regard to the attachment or distraint of any property on the ground that such property is not liable to such attachment or distraint, the proper officer shall investigate the claim or objection and may postpone the sale for such time as he may deem fit.

(9) The person making the claim or objection must adduce evidence to show that on the date of the order issued under sub-rule (1) he had some interest in, or was in possession of, the property in question under attachment or distraint.

(10) Where, upon investigation, the proper officer is satisfied that, for the reason stated in the claim or objection, such property was not, on the said date, in the possession of the defaulter or of any other person on his behalf or that, being in the possession of the defaulter on the said date, it was in his possession, not on his own account or as his own property, but on account of or in trust for any other person, or partly on his own account and partly on account of some other person, the proper officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or distraint.

(11) Where the proper officer is satisfied that the property was, on the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the proper officer shall reject the claim and proceed with the process of sale through auction.

(12) The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of such notice and after the said payment is made, he shall issue a certificate in FORM GST DRC12 specifying the details of the property, date of transfer, the details of the bidder and the amount paid and upon issuance of such certificate, the rights, title and interest in the property shall be deemed to be transferred to such bidder:

Provided that where the highest bid is made by more than one person and one of them is a co-owner of the property, he shall be deemed to be the successful bidder.

(13) Any amount, including stamp duty, tax or fee payable in respect of the transfer of the property specified in sub-rule (12), shall be paid to the Government by the person to whom the title in such property is transferred.

(14) Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (4), the proper officer shall cancel the process of auction and release the goods.

(15) The proper officer shall cancel the process and proceed for re-auction where no bid is received, or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

148. Prohibition against bidding or purchase by officer.

No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

149. Prohibition against sale on holidays.

No sale under the rules under the provision of this chapter shall take place on a Sunday or other general holidays recognized by the Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.

150. Assistance by police.

The proper officer may seek such assistance from the officer in-charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall depute sufficient number of police officers for providing such assistance.

151. Attachment of debts and shares, etc.

(1) A debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any court shall be attached by a written order in FORM GST DRC-16 prohibiting. -

a) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;

b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, and another copy shall be sent, in the case of debt, to the debtor, and in

the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.

(3) A debtor, prohibited under clause (a) of sub-rule (1), may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

152. Attachment of property in custody of courts or Public Officer.

Where the property to be attached is in the custody of any court or Public Officer, the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

153. Attachment of interest in partnership

(1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the proper officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing, and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

154. Disposal of proceeds of sale of goods and movable or immovable property

(1) [39][The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under sub-section (3) of section 129 shall,

(a) first, be appropriated against the administrative cost of the recovery process;

(b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under sub-section (3) of section 129, as the case may be;

(c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and

(d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered

[39] Substituted vide Notification. No. 40/2021-CT dt. 29.12.2021. Applicable w.e.f. 01.01.2022.

under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;

(2) where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.]

155. Recovery through land revenue authority

Where an amount is to be recovered in accordance with the provisions of clause (e) of sub-section (1) of section 79, the proper officer shall send a certificate to the Collector or Deputy Commissioner of the district or any other officer authorised in this behalf in FORM GST DRC-18 to recover from the person concerned, the amount specified in the certificate as if it were an arrear of land revenue.

156. Recovery through court.

Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in accordance with the provisions of clause (f) of sub-section (1) of section 79 in FORM GST DRC- 19 to recover from the person concerned, the amount specified thereunder as if it were a fine imposed by him.

157. Recovery from surety

Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

160. Recovery from company in liquidation

Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in FORM GST DRC -24.

79.1 Introduction

Section 79 empowers departmental officers to collect/recover any amount that is payable under GST Act. Section 79 provide manner in which recovery proceedings can be carried out.

79.2 Analysis

(i) When **any amount** that is payable by any person *(hereinafter referred to as **defaulter**)* to Government is not paid, the officer can adopt one or more of the methods set out in section 79 for recovery of amounts payable. The methods are :

(a) Deduction out of any money owing to defaulter:

— There should be some money which is being owed by the Government to defaulter;

- The amount payable can be deducted out of the said amount due to defaulter;
- The deduction can be done by the Proper Officer himself or he may ask any other specified officer to do so.
- The Proper Officer shall specify the amount so deducted in **FORM GST DRC-09** as prescribed in rule 143 of the CGST Rules.

(b) By detaining and selling the goods belonging to defaulter:

- There should be goods which are under the control of the Proper Officer or other specified officer;
- Such goods should belong to the person who is liable to pay any amount.
- The goods may be detained and sold by the Proper Officer or such other specified officer on request by the Proper Officer;
- Out of the realisation, the amount payable by defaulter shall be recovered.
- As per rule 144 of the CGST Rules, the goods shall be sold through a process of auction including e-auction, for which a notice shall be issued in FORM GST DRC-10 clearly indicating the goods to be sold and the purpose of sale. The last day for submission of bid or the date of auction shall not be earlier than 15 days from the date of issue of the above notice. However, if the goods are perishable or hazardous in nature or the expenses of storing them is likely to exceed the value of such goods, then Proper Officer may sell them forthwith.
- The Proper Officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of 15 days from the date of auction. On payment of the full bid amount, the possession of the said goods shall be transferred to the successful bidder and Proper Officer shall issue a certificate in FORM GST DRC-12.
- Where the defaulter pays the amount under recovery, including any expenses incurred on process of recovery, before the issue of notice issued in **FORM GST DRC-10** (Notice of Auction), then the Proper Officer shall cancel the process of auction and release the goods.

(c) Recovery from any other person who owes money to defaulter.

- This applies when any other person -
  - owes money to defaulter;
  - is likely to become due to pay money to the defaulter;
  - holds money for or on account of the defaulter;
  - may subsequently hold money for or on account of the defaulter.

- In such cases the Proper Officer may issue notice in writing in **FORM GST DRC-13** to such other person to pay to the credit of the Government –
  - forthwith
    - upon the money becoming due or
    - being held, or
  - at or within the time specified in the notice not being before the money becomes due or is held.
- The amount directed to be paid in the notice shall be –
  - where the amount due/held by such other person is more than amount due by the defaulter – to the extent of amount due by the defaulter;
  - where the amount due/held by such other person is equal to or less than amount due by defaulter – whole of money due/held.
- Such other person to whom such notice is issued is bound to comply with the same.
- In cases, where such notice is issued to a post office, banking company or an insurer, they are required to comply with the same without insisting on production of any passbook, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like, though that might be the normal practice.
- If such person to whom such notice is issued, fails to comply, he shall be treated as defaulter to the extent of the amount mentioned in the notice and all other consequences under the law shall follow.
- Where the third person makes the payment of the amount specified in the notice in **FORM GST DRC-13**, then the Proper Officer shall issue a certificate in **FORM GST DRC-14** to the third person clearly indicating the details of the liability so discharged.
- The notice so issued may be amended or revoked or time may be extended for making any payment;
- The payment made by such other person in accordance with the notice issued, shall be deemed to have made the payment on behalf of such defaulter and the amount credited to the government shall be deemed to constitute the discharge of liability of such defaulter to the extent of the payment made. Consequently, no civil suit or other proceedings could be filed or initiated by the defaulter on the notice, who has complied with this provision.

- Instead of crediting the amount to the Government, if such person makes the payment to defaulter, then such other person shall be personally liable to the Government to the extent of the amount due by the defaulter or amount discharged to the defaulter, whichever is lower.
- However, such person shall not be personally liable, if he proves to the officer issuing the notice that
  - the money demanded or any part thereof was not due to the person in default or
  - at the time of service of the notice he did not hold any money for or on account of the person in default,
  - the money was not demanded from him; or
  - any part of the money demanded is not likely to become due to such other person or
  - any part of the money will not likely be held for or on account of such person.

(d) Collection by detention of any movable or immovable property.

- The Proper Officer in accordance with the rule 147 of the CGST Rules framed for this purpose, may *inter-alia*
  - prepare a list of movable and immovable property belonging to the defaulter,
  - estimate their value as per the prevalent market price and
  - issue an order of attachment or distrain and a notice for sale in FORM GST DRC-16 prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due.
  - The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in FORM GST DRC- 17 clearly indicating the property to be sold and the purpose of sale. And Proper Officer shall issue notice in FORM GST DRC- 11 to successful bidder for payment within 15 days of such notice. Thereafter on payment, the Proper Officer shall issue Certificate in FORM GST DRC- 12.
- Such detention of any movable or immovable property belonging to defaulter will be done till the amount payable is paid.
- If any part of the amount payable or cost of distress or keeping the property is not paid within 30 days from such distress, the Proper Officer

may sell the property and with the proceeds he may adjust towards:

- amount payable;
- costs including the cost of sale remaining unpaid;

— After such adjustment, the remaining surplus shall be returned to the defaulter.

(e) Recovery through District Collector:

— Proper officer may prepare a certificate signed by him specifying the amount due from the defaulter.

— Such certificate will be sent to the Collector of the District or Deputy Commissioner or any other officer authorised in this behalf (DC) in FORM GST DRC-18 in which the defaulter.

- owns any property; or
- resides; or
- carries on his business.

— The DC on receipt of such certificate shall proceed to recover from such defaulter the amount specified in the certificate as if such amount is arrears of land revenue.

(f) Recovery through Magistrate\Court:

— This provision has overriding effect over Code of Criminal Procedure;

— In this case, the Proper Officer may file an application in FORM GST DRC- 19 to the appropriate Magistrate as per section 79(1)(f);

— The Magistrate to whom application is made shall proceed to recover from the defaulter, the amount specified in the application as if it is fine imposed by such Magistrate.

(ii) Under the Act, rules or regulations there would be requirement to execute bond or other instruments. If such bond/instrument provides that the amount becoming due shall be recovered in terms of section 79(1), then the recovery shall be effected as discussed above, irrespective of whether other mode of recovery exists or not.

(iii) Further, it is also provided that, if either SGST Officer/ UTGST Officer while recovering SGST/UTGST arrears may also recover any amount due from the defaulter, the amount due by him under CGST Act as if it is SGST/UTGST and later pass it on to the Central Government.

(iv) Similar provision also exists in SGST/UTGST Act for recovery of any amount due under SGST Act/UTGST Act to be recovered by CGST officers while recovering arrears of CGST as though the amount due was CGST and later pass it on to the concerned State Government/Union Territory.

(v) It is also provided that in case where the SGST officer/UTGST officer also collects CGST in the course of collection of SGST/UTGST or *vice versa,* where the amount recovered is not fully covering both the liabilities, the amount collected has to be apportioned between Centre and State/Union Territory in the same proportion of the amounts due.

(vi) *Recovery through execution of a decree, etc.*- Where any amount is payable to the defaulter in the execution of a decree of a civil court for the payment of money or for sale in the enforcement of a mortgage or charge, the Proper Officer shall send a request in **FORM GST DRC- 15** to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908, execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

(vii) *Recovery from surety*- Where any person has become surety for the amount due by the defaulter, he may be proceeded as if he is the defaulter.

(viii) *Recovery from Company under liquidation*- Where the company is under liquidation, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in **FORM GST DRC-24**.

(ix) A new *rule 144A (Recovery of penalty by sale of goods or conveyance detained or seized in transit)* has been inserted with effect from 01.01.2022. The rule lays down that that where the person transporting any goods or the owner of such goods fails to pay the amount of penalty section 129(1) within fifteen days from the date of receipt of the copy of the order passed under section 129(3), the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance.

If the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer. The said goods or conveyance shall be sold through a process of auction, including e-auction.

(x) Rule 154 (Disposal of proceeds of sale of goods or conveyance and movable or immovable property) has been substituted with effect from the 01.01.2022 to provide that such proceeds shall now be appropriated against the amount to be recovered or to the payment of the penalty payable section 129(3), as the case may be, after being appropriated against administrative cost of the recovery process. Further, balance amount, if any, instead of paying directly to the defaulter, shall now be credited to the electronic cash ledger of the owner of the goods or conveyance in case the person is registered or else shall be credited to his bank account. However, where the balance of sale proceeds cannot be so paid within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.

79.3 FAQs

Q1. What are the methods of recovery as prescribed in section 79 read with the CGST Rules?

Ans. — Deduction out of any money owing to defaulter.

— By detaining and selling the goods belonging to defaulter.

— Recovery from any other person who owes money to defaulter.

— Collection by detention of any movable or immovable property.

— Recovery through District Collector.

— Recovery through Magistrate

— Recovery through execution of a decree, etc.

— Recovery from surety

— Recovery from company in liquidation

— Various attachments can be done like- Attachment of interest in partnership; Attachment of property in custody of courts or Public Officer, Attachment of debts and shares, etc.

Q2. Can the authorities use more than one of the methods for the recovery proceedings?

Ans. Yes, they can use one or more methods at the option and choice of the Proper Officer.

Q3. Officer, in the course of tax recovery, recovered ₹ 2 Crore whereas, the amount due were ₹ 2 Crores of CGST and ₹ 3 Crore of SGST/UTGST, to which account, the amount recovered would be allocated?

Ans. 2 Crores recovered will be allocated between Centre and State/Union Territory in the proportion of 2:3.

79.4 MCQs

Q1. Recovery of amount payable by a defaulter can be made from _____

(a) customer

(b) bank

(c) post office

(d) all the above.

Ans. (d) all the above.

Q2. Recovery of amount payable by a defaulter can be made _____

(a) after determination of liability under section 73 or 74

(b) even before issue of notice under section 73 or 74

(c) any time

(d) at the discretion of the Proper Officer.

Ans. (a) after determination of liability under section 73 or 74

Q3. The Proper Officer may cause the sale of distressed property after-

(a) 30 days

(b) 60 days

(c) 90 days

(d) 120 days

Ans. (a) 30 days

Statutory Provisions

80. Payment of tax and other amount in instalments

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty-four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

Extract of the CGST Rules, 2017

158. Payment of tax and other amounts in instalments

(1) On an application filed electronically by a taxable person, in FORM GST DRC- 20, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments in accordance with the provisions of section 80, the Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.

(2) Upon consideration of the request of the taxable person and the report of the jurisdictional officer, the Commissioner may issue an order in FORM GST DRC- 21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly instalments, not exceeding twenty-four, as he may deem fit.

(3) The facility referred to in sub-rule (2) shall not be allowed where-

(a) the taxable person has already defaulted on the payment of any amount under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017, for which the recovery process is on;

(b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017;

(c) the amount for which instalment facility is sought is less than twenty–five thousand rupees.

Related Provisions of the Statute

Section or Rule	Description
Section 50	Interest on delayed payment of tax

80.1 Introduction

This section permits a taxable person to make payment of an amount due on instalment basis, other than the amount due as per self-assessed return. The term 'instalments' in general parlance would mean equated periodical payments (money due) spread over an agreed period of time. This provision happens to be a beneficial piece of law to the taxpayers to pay the demand in instalments along with interest.

80.2 Analysis

(i) This section empowers the Commissioner to grant permission only to the taxable person to make payment of any amount due on instalment basis, on an application filed electronically in **FORM GST DRC-20 (**Refer rule 158).

The Commissioner after considering the request by the taxable person (in **FORM GST DRC-20**) and report of the jurisdictional office, may issue an order in **FORM GST DRC-21**, allowing the taxable person to either extend the time or allow payment of any amount due under the Act on instalment basis.

(ii) This section applies to amounts due other than the self-assessed liability shown in any return.

(iii) The instalment period shall not exceed 24 months.

(iv) The taxable person shall also be liable to pay prescribed interest on the amount due from the first day such tax was due to be payable till the date tax is paid.

(v) If default occurs in payment of any one instalment the taxable person would be required to pay the whole outstanding balance payable on such date of default itself without further notice.

80.3 FAQs

Q1. Whether application is to be made to pay the amount due in instalments?

Ans. Yes, an application should be made by a taxable person to the Commissioner stating the reasons for his/her request to make payment through instalments. (in **FORM GST DRC-20**)

Q2. Can an unregistered person be covered under the said provisions?

Ans. A taxable person is covered by the provision. Section 2(107) defines taxable person as "a person who is registered or liable to be registered under Section 22 or Section 24". Hence, unregistered person cannot opt the benefit of this provision.

Q3. From which date does the interest liability arise?

Ans. The interest is liable to be paid from the date on which the said amount of tax became due to be paid till the actual payment of tax i.e., last instalment.

Q4. 'A' requested the Commissioner to provide the benefit to pay ₹ 5,00,000/- under instalments. The Commissioner directs 'A' to make the payment in five monthly instalments. How to pay the interest?

Ans. It is assumed that the actual date on which the tax was required to be paid as 06.01.2019. Benefit of instalment was granted by Commissioner on 12.01.2020 to be paid w.e.f. 02.01.2020 onwards over 5 instalments.

Payment date	**Interest to be paid as per section 50 – No of days**	**Amount on which interest to be paid**
1st Instalment – 02.01.2020	06.01.2019 to 01.01.2020 = 361 days	₹ 1,00,000/-
2nd Instalment – 02.02.2020	06.01.2019 to 01.02.2020 = 392 days	₹ 1,00,000/-
3rd Instalment – 02.03.2020	06.01.2019 to 01.03.2020 = 421 days	₹ 1,00,000/-
4th Instalment - 02.04.2020	06.01.2019 to 01.04.2020 = 452 days	₹ 1,00,000/-
5th Instalment – 02.5.2020	06.01.2019 to 01.05.2020 = 432 days	₹ 1,00,000/-

Q5. What will happen if the taxable person fails to pay any one instalment on its due date?

Ans. In such a case, the entire outstanding balance payable as on the said due date shall forthwith become due and payable without any further notice and be liable for recovery.

80.4 MCQs

Q1. The following amounts due cannot be paid through instalments,

(a) Self-assessed tax shown in return

(b) Arrears of tax

(c) Short paid tax for which notice has been issued

(d) Concealed liability

Ans. (a) Self-assessed tax shown in return

Q2. Maximum number of instalments permissible under section 80

(a) 36

(b) 12

(c) 48

(d) 24

Ans. (d) 24

Q3. Which officer/s has the power to grant permission for payment of tax through instalment?

(a) Commissioner

(b) Assistant Commissioner

(c) Chief Commissioner

(d) both (a) and (b)

Ans. (a) Commissioner

Statutory Provisions

81. Transfer of property to be void in certain cases

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

81.1 Introduction

This provision protects the Government revenue by avoiding transfer of property by a taxable person to another person. This would prevent any attempt to defraud the revenue by alienating the properties.

81.2 Analysis

(i) The said provision would be applicable only when any tax has become due.

(ii) The following acts done by a person, in favour of any another person, after the tax becomes due, would be void

Situations / cases – Void	Situations / cases –Valid
• Creates a charge on; or • Parts with the property • Belonging to him; or • In his possession By way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties.	Made for adequate consideration and • without notice of the pendency of proceeding • Without notice of such tax or other sum payable by the said person, • With previous permission of the Proper Officer.

(iii) The transfer will be void, when it is or was with an intention of defrauding the Government revenue. Please note that there is no 'time limit' for the look-back period to question transactions. As such, proving intent to defraud appears quite onerous and hardly feasible to prove satisfactorily to reach actual reversal and recovery of tax by reversal of transfers.

(iv) Intention to defraud Revenue is not an impression Proper Officer can reach lightly. To reach such a conclusion, there must be (i) imminent liability that is undischarged (ii) except for this asset that is proposed to be transferred, there is no other source of funds to discharge this liability (iii) after transfer (or charge) of this asset, proceeds do not reside with taxable person to discharge tax and other obligations (iv) no other ostensible reasons forthcoming for undertaking proposed transfer of assets. In fact, any application for 'permission' of Proper Officer must revolve around these factors to be allowed.

(v) There is no compulsion that every transfer (or charge) must be made only after 'permission' of Proper Officer is secured. Had that been the objective, the requirement for permission would not reside in the *proviso* but would have been in the main section and read as *"no transfer or charge of assets will be valid unless previous permission of Proper Officer is granted"* (or any equivalent). And when a transfer is made (which is possible) without such prior permission, a suspicion could arise if the above factors are

palpable. But no presumption in favour of Revenue – as to the intention of taxpayer in making this transfer (or charge) was to defraud Revenue – could be made. It is misplaced enthusiasm of buyers to make this permission a 'condition precedent'. But then, no one can be blamed for being too cautious, even if it is not justified.

(vi) To 'void' a transaction is 'without remedy' in law because it does not arise out of a 'decision or order' to be appealable under section 107. It is a declaration that the *"charge or transfer will be void"* in this provision. But the need for 'application of mind' to reach such a conclusion and the factors indicated above to support this conclusion requires Revenue to interrupt a concluded transfer by filing a complaint in Court to pass a 'declaration decree' or by attachment of property by the Collector of the district. Voiding a concluded transfer is not based on Proper Officer's opinion as to the underlying motive. Proper Officer authorized to issue prior permission, to protect buyer who enters into the transfer without knowledge of these factors. But a transfer that is concluded with such an intention cannot still prejudice any buyer who acted without knowledge of extant liability and for good consideration. In the absence of any liability or existence of sources to discharge such liability or proper flow of consideration to taxable person (to meet any such liability) or liability pending in appeal admitted, will also not prejudice the buyer. This declaration decree will arise only when recovery action is initiated in Court under section 79(1)(f). Remedy available to Proper Officer under section 79(1)(d) will not be available in case of properties already transferred even when such transfer was without securing the permission prescribed.

Illustrations:

1. Mr. Defrauder was served with a notice of demand for ₹ 20 Lakhs on 10.06.2020. He filed a reply for the said notice on 20.06.2020, stating that he was unable to deposit tax dues as he was financially stressed. On 15.06.2020, Mr. Defrauder transferred all the property worth ₹ 35 Lakhs under his name to the name of his wife for a consideration of ₹ 10,000/-. Is this act of Mr. Defrauder valid?

Ans. As per section 81, the said transfer would be void and the property worth ₹ 35 Lakhs would be considered still to be in the hands of Mr. Defrauder.

2. In the above illustration, if transfer of property was for a consideration of ₹ 42 Lakhs to Mr. X who is unaware of the pending proceedings of Mr. Defrauder. The transfer took place on 15.06.2020. Is the act of Mr. Defrauder valid?

Ans. In this case, the transaction would be a valid act, since the transfer was made for adequate consideration and also without notice of the pendency of proceeding.

3. On Mr. Perfect, notice was issued on 10.06.2020. However, the same was received by Mr. Perfect on 20.06.2020. Meanwhile the property of Mr. Perfect was sold to Mr. Perfectionist for ₹ 35 Crore. Is the sale void or valid?

Ans. The sale is valid since on the date of sale there was no pending proceeding on Mr. Perfect.

81.3 Comparative review

This provision is new to Indirect Tax law. It is a concept borrowed from the Income-Tax law to safeguard the revenue. According to the Income Tax (IT) Act, certain transfers can be considered void without a tax-clearance certificate (Section 281B). "This can be transfer of immovable property, that is, sale or mortgage of housing property, any gift, or exchange,"

81.4 FAQ

Q1. When the transaction in property is void as per section 81?

Ans. During the pendency of proceeding under GST Act, if the taxable person transfers the property of his to another person with an intent of defrauding the Government revenue, then such transfer would be considered as void.

81.5 MCQs

Q1. What all modes of transfers are covered under section 81?

(a) Sale

(b) Exchange

(c) Mortgage

(d) All of the above

Ans. (d) All of the above

Q2. When the transfer of property would be considered as void?

(a) Transaction is done to defraud the Govt. revenue

(b) Transaction is done without intention to defraud the Govt. revenue

(c) Any of the above

Ans. (a) Transaction is done to defraud the Govt. revenue

Statutory Provisions

82. Tax to be first charge on property

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

82.1 Introduction

Other than as provided under Insolvency and Bankruptcy Code, 2016, this provision shall have an overriding effect over the other provisions contained in any law for the time being in force. This provision provides that if any dues are payable by a taxable person or any other person to the Government, then it would have first charge on the property of such taxable or other person.

82.2 Analysis

(i) The provisions of this section would apply to a taxable person or any other person who is liable to pay tax, interest or penalty to Government.

(ii) Any liability to be paid to the Government would be given priority in the matter of effecting recovery by placing a first charge on the property of the taxable person or any other person.

(iii) This provision also covers any other person since there are other provisions in the Act, which provide for creating a liability or recovery from a person other than the taxable person like a legal representative, member of partitioned HUF etc.

(iv) It would make it interesting if, read of section 53 of IBC where a 'waterfall' provision lists Government dues way below several others. So, reference may be had to IBC which will prevail over GST law. However, it is interesting that Apex Court in *STO v. Rainbow Papers Ltd. CA 1661/2020 (SC)* has overturned this position to allow statutory dues to be in priority. It is respectfully submitted that reference to section 85 and 87 of CGST Act has not been made in this decision where the determination of liability is permitted even after the transfer. Further clarity in the GST context is required to establish the applicability of this decision in respect of liability (i) determined, undisputed and lying undischarged prior to date of transfer (ii) determined but disputed as on date of transfer and (iii) determined after date of transfer.

82.3 FAQs

Q1. When can the charge on property of taxable person be created?

Ans. The charge can be created only when taxable person or any other person is liable to pay tax or interest or penalty to Government.

Q2. Are unregistered persons covered under the said provision?

Ans. The section refers to both taxable person and any other person, on whose property first charge could be created. Hence, all persons as defined under section 2(84) of the CGST Act would be covered, whether he is a taxable person or not.

82.4 MCQs

Q1. What liabilities can be recovered under this section?

(a) Interest

(b) Tax

(c) Penalty

(d) All of the above

Ans. (d) All of the above

Q2. Mr. Richie Poor has the following properties. Which of the below would be treated as attracting first charge?

(a) Richie Nilaya, a mansion in the name of Mr. Richie

(b) Mrs. Richie's fixed deposit

(c) Richie's neighbour, Mrs. Y's Jewellery

(d) None of the above

Ans. (a) Richie Nilaya, a mansion in the name of Mr. Richie

Statutory Provisions

83. Provisional attachment to protect revenue in certain cases

(1) *[40][Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.]*

(2) *Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).*

Extract of the CGST Rules, 2017

159. Provisional attachment of property

(1) *Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached.*

(2) *The Commissioner shall send a copy of the order of attachment [41][in GST DRC-22] to the concerned Revenue Authority or Transport Authority or any such Authority to*

[40] Substituted vide The Finance Act, 2021 through Notification No. 39/2021-CT. dt. 21.12.2021. Applicable w.e.f. 01.01.2022. Prior to its substitution, it read as " Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed."

[41] Inserted vide Notification No 40/2021-CT dt. 29.12.2021 w.e.f. 01.01.2022.

place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect [42][or on expiry of a period of one year from the date of issuance of order under sub-rule (1), whichever is earlier], [43][and a copy of such order shall also be sent to the person whose property is being attached under section 83]

(3) Where the property attached is of perishable or hazardous nature, [44][and if the person whose property has been attached] pays an amount equivalent to the market price of such property or the amount that is or may become payable [45][by such person], whichever is lower, then such property shall be released forthwith, by an order in FORM GST DRC-23, on proof of payment.

(4) Where [46][such person] fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by [28][~~the taxable~~ such person].

(5) Any person whose property is attached may [47][file an objection in Form GST DRC 22A] to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC-23.

(6) *The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in FORM GST DRC- 23.*

83.1 Introduction

This section confers power to provisionally attach the property of the taxable person or any person specified in sub-section (1A) of section 122 in certain situations to protect the interest of the Government.

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[42] *Inserted vide Notification No. 52/2023 – CT dt. 26.10.2023.*

[43] *Inserted vide Notification No. 40/2021 – CT dt. 29.12.2021 w.e.f. 01.01.2022.*

[44] *Substituted vide Notification No 40/2021-CT dt. 29.12.2021 w.e.f. 01.01.2022. Prior to its substitution, it read as " and if the taxable person".*

[45] *Substituted vide Notification No 40/2021-CT dt. 29.12.2021 w.e.f. 01.01.2022. Prior to its substitution, it read as " by the taxable person".*

[46] *Substituted vide Notification No 40/2021-CT dt. 29.12.2021 w.e.f. 01.01.2022. Prior to its substitution, it read as " the taxable person".*

[47] *Substituted vide Notification No 40/2021-CT dt. 29.12.2021 w.e.f. 01.01.2022. Prior to its substitution, it read as " within seven days of the attachment under sub-rule (1), file an objection."*

83.2 Analysis

As per the amended sub-section (1) of section 83 (vide the *Finance Act, 2021*), applicable from 01.01.2022:

(i) This section applies 'after initiation of' any proceedings under:

  (a) Chapter XII, covering sections 59 to 64 – Assessment.

  (b) Chapter XIV, covering sections 67 to 72 – Inspection, Search, Seizure and Arrest.

  (c) Chapter XV, covering sections 73 to 84 – Demands and Recovery.

(ii) The provisional attachment of property of taxable person shall be executed by the Commissioner. Provisional attachment 'during pendency' and 'after initiation of', any proceedings do not alter the power to attach property prior to any proceedings but only after clear steps have been taken to invoke the powers under the respective sections (or Chapters) of the law as referred. 'Initiation' is when steps are taken to 'set the law in motion' as defined by the ingredients in the respective provisions of law. Once proceedings are 'initiated', the said proceedings are 'pending', and these powers become invokable.

(iii) Note that provisional attachment under section 83 can be 'during investigation' whereas recovery under section 79 only after 'final demand' arises out of any order. Provisional attachment is not the same as confiscation. Confiscation results in property being taken over and vesting with the Government. Provisional attachment will leave the property where it is but only the freedom of taxpayer to access and use it is prohibited by this Order of attachment.

(iv) The only condition is that the Commissioner should be of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to provisionally attach the property. The Commissioner may also seize bank accounts of such persons, if it is in the interest of revenue.

(v) Attachment of property belonging to taxable person alone is permitted to be attached. But the amended provision permits attachment of property belong to (i) taxable person and (ii) person who is the mind behind the offences as identified in section 122(1A) of the CGST Act, are permitted to be covered by this amended provision.

(vi) Such provisional attachment would be valid for one year from the date of the order made by the Commissioner in FORM GST DRC-22 & copy of order shall also be sent to the person whose property is being attached under section 83. Provisional attachment of property (being any movable or immovable property) is not the same as confiscation of property (in offending articles) under section 130.

(vii) Where the property attached is of perishable or hazardous nature, and if the person whose property is attached pays an amount equivalent to the market price of such property or the amount that is or may become payable by such person, whichever is lower, then such property shall be released forthwith, by an order in **FORM GST DRC-23**, on proof of payment. Further, where such person fails to pay the aforesaid amount, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the such person.

(viii) Any person whose property is attached may, file an objection in Form GST DRC-22A to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in **FORM GST DRC-23**. Taxpayers must attempt to alleviate the risks perceived by Commissioner to invoke these exceptional powers. Taxpayer's application to present (i) undertaking to discharge liability when a lawful demand is made (ii) ability of taxpayer to meet future obligations (iii) liability is not free from doubt about underlying interpretation of facts or of law (iv) all other returns and compliances up to date by taxpayer (v) no other delinquency detected and (vi) no risk of light and any perception to be redressed by offering surety or suitable security. When these factors are presented, it would be herculean task to reject application as the decision to reject is subject to 'judicial review' of the reasons for dissatisfaction with explanation offered by taxpayer. Plead for lenience (without addressing these factors) would be an unhelpful approach in such application.

The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in **FORM GST DRC- 23.** After all, provisional attachment only places a lien on the said property and it will continue to remain in lawful possession of taxable person and available for use and enjoyment. Only bar would be alienation for one (1) year or until attachment is vacated, whichever is earlier.

(ix) Forms GST DRC-10 and GST DRC-22 have been substituted with new Forms with effect from 01.01.2022.

(x) Form GST DRC-11 (Notice to successful bidder)- rule 144A has been included in addition to existing rules 144(5) and 147(12). Further, the word conveyance has also been included in addition to goods with effect from 01.01.2022 implying that now the possession of the goods as well as conveyance shall be transferred to the successful bidder after making full payment of the bid amount. Similar changes have also been made in FORM GST DRC-12 (Sale Certificate).

(xi) In Form GST DRC-11 (Restoration of provisionally attached property / bank account under section 83), the words 'Regional Transport Authority/Other Relevant Authority'

have been added in addition to existing 'Immovable property registering authority', with effect from 01.01.2022.

(xii) A new table has been inserted under clause (a) of entry no. 15 in FORM APL-01 with effect from 01.01.2022.

83.3 A new Form GST DRC-22A (Application for filing objection against provisional attachment of property) has been introduced with effect from 01.01.2022 under rule 159(5).

83.4 FAQs

Q1. Provisional attachment shall be applicable to which proceedings?

Ans. Provisional attachment shall be applicable for the following pending proceedings of a taxable person:

1. Assessment of non-filers of returns.
2. Assessment of unregistered persons.
3. Summary assessment in certain special cases.
4. Inspection, search and seizure.
5. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts.
6. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts.

Q2. What is the condition for provisionally attaching the property of a taxable person?

Ans. The Commissioner should be of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to do so.

Q3. Why attachment should be done, before conclusion of proceedings?

Ans. Attachment to be done before conclusion of proceedings, if Commissioner is of the opinion that there is risk of recovery and to protect interest of revenue.

83.5 MCQs

Q1. Till what period does the order passed for provisional attachment is valid?

(a) Infinite period
(b) One year
(c) Ten years
(d) till the end of such proceedings

Ans. (b) One year

Q2. Who is the competent authority for passing an order for provisional attachment?

(a) The Deputy Commissioner

(b) The GST Council

(c) The Commissioner

(d) The Assistant Commissioner

Ans. (c) The Commissioner

Q3. Attachment can be done under section 83:

(a) Before completion of proceedings.

(b) After completion of proceedings.

(c) After 3 attempts to recover dues.

(d) Only if there is risk of delinquency in payment of dues.

Ans. (a) Before completion of proceedings.

Statutory Provision

84. Continuation and validation of certain recovery proceedings

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then -

(a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal, revision or in other proceedings–

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii) any recovery proceedings initiated on the basis of the demand served upon

him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Extract of the CGST Rules, 2017

161. Continuation of certain recovery proceedings.

The [48][intimation or notice] for the reduction or enhancement of any demand under section 84 shall be issued in FORM GST DRC- 25.

Related Provisions of the Statute:

Section or Rule	Description
Section 79	Recovery of tax

84.1 Introduction

This section deals with continuation of proceedings, where a notice is already served for recovery of Government dues upon a taxable person or any other person and upon any appeal, revision application or other proceeding there is reduction or enhancement of such Government dues.

84.2 Analysis

(i) The section refers to –

- any notice of demand in respect of Government dues (tax, interest or any other amount payable) served on taxable person or any other person; and
- any appeal or revision application is filed or other proceedings are initiated in respect of such Government dues.

Further–

(a) such Government dues may be enhanced; or

(b) reduced in such appeal, revision or in other proceedings

The intimation or notice for such reduction or enhancement of any demand under section 84 shall be issued in **FORM GST DRC- 25.**

(ii) In such cases, the Commissioner shall –

- Serve another notice on the taxable person or any other person, in respect of the enhanced amount.

[48] *Substituted vide Notification No. 26/2022-CT dt. 26.12.2022. Prior to its substitution, it read as "order".*

- If notice of demand is already served on taxable person or any other person before such appeal, revision or any other proceedings, then recovery of enhanced amount would be continued from the stage at which the initial proceedings stood. There is no need to issue a fresh notice of demand to the extent already covered by earlier notice.
- In case the Government dues are reduced in such appeal, revision or in other proceedings – the Commissioner
  - Is not required to serve fresh notice of demand upon the taxable person;
  - Shall intimate such reduction to taxable person and also to appropriate Authority with whom recovery proceedings are pending;

  Any recovery proceedings initiated prior to the disposal of such appeal, revision application or other proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Where departmental appeal is filed and allowed resulting in enhancement of demand, fresh notice will not be required. Where revisionary proceedings are initiated and demand is made, fresh notice will required. But where additional demand is being made, arising from appeal or revisionary proceedings, taxpayer cannot be prejudiced by NOT being 'put at notice'.

Section 84 aligns with *second proviso* to section 107(11). This only goes to demonstrate the unalienable nature of 'due process' for making any demand, even if it is attendant to an issue already demanded to some extent.

Where the demand is reduced in appeal or revisionary proceedings, fresh notice will NOT be required. For example, if notice issued under section 74 is determined to lack the special circumstances needed to support demand under section 74, demand will be recomputed under section 73 consequent to relief admissible under section 75(2) read with 84(1)(b).

Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016 - *Circular No. 187/19/2022-GST dt. 27.12.2022*

As per *Circular No.134/04/2020-GST dated 23.03.2020,* no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

In order to clarify the modalities for implementation of the order of the adjudicating authority under Insolvency and Bankruptcy Code, 2016 as well under the existing laws and the treatment of such statutory dues under CGST Act and existing laws, after finalization of the proceedings under IBC, the following has been elucidated:

(i) As per section 84 of the CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

(ii) The word 'other proceedings' is not defined in the CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in section 84 of CGST Act.

(iii) Rule 161 of CGST Rules, 2017 prescribes FORM GST DRC-25 for issuing intimation for such reduction of demand specified under section 84 of CGST Act. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

84.3 FAQs

Q1. How should the recovery proceedings of enhanced demand under an appeal, revision of application or other proceedings to be continued?

Ans. In case of enhanced demand consequent to appeal, revision of application or other proceedings, then

- the Commissioner is required to issue fresh notice of demand only for enhance demand.
- If already recovery proceedings of Govt. dues are covered by the notice of demand served on taxable person before disposal of appeal, revision of application or other proceedings, then the enhanced demand would be merged with the first recovery proceedings.

Q2. Under what circumstances issue of fresh notice is not necessary?

Ans. When a notice is already served for recovery on taxable person or any other person, before disposal of appeal, revision application or other proceedings, then issue of fresh notice is not required to the extent of amount covered in the notice in case of increase in demand and when there is reduction also there is no need to issue fresh notice.

Q3. What will the fate of the recovery proceedings initiated, prior to disposal of such appeal, revision or other proceedings, where Government dues are enhanced/ reduced?

Ans. ***Where such Government dues are enhanced*** *:*

Any recovery proceedings initiated prior to disposal of such appeal, revision or other proceedings may be continued in respect of the Government dues covered by the notice of demand served to him earlier from the stage at which it stood immediately prior to such disposal.

Where such Government dues are reduced:

Any recovery proceedings initiated prior to disposal of such appeal, revision or other proceedings may be continued in relation to the reduced amount from the stage at which it stood immediately prior to such disposal.

84.4 MCQs

Q1. When shall Commissioner issue a fresh notice to recover the Government dues?

(a) Demand amount is enhanced

(b) Demand amount is reduced

(c) Both (a) and (b)

Ans. (a) Demand amount is enhanced

Q2. When Commissioner is not required to serve fresh notice to recover the Government dues:

(a) Demand amount is reduced

(b) Already proceedings of recovery of Government dues are covered by the notice of demand served before disposal of appeal, revision of application or other proceedings

(c) Demand amount is enhanced

(d) Both (a) and (b)

(e) Both (b) and (c)

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

Q3. Who can issue notice for enhanced demand by appeal, revision of application or other proceedings:

(a) Commissioner (or any delegate)

(b) Assistant Commissioner

(c) Joint Commissioner

(d) Any of above

Ans. (a) Commissioner (or any delegate)

Chapter 17
Liability to Pay in Certain Cases

Sections		Rules	
85.	Liability in case of transfer of business	19.	Amendment of registration
86.	Liability of agent and principal	20.	Application for cancellation of registration
87.	Liability in case of amalgamation or merger of Companies	22.	Cancellation of registration
88.	Liability in case of company in liquidation	41.	Transfer of credit on sale, merger, amalgamation, lease or transfer of business
89.	Liability of directors of private company	41A.	Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory.
90.	Liability of partners of a firm to pay tax	160.	Recovery from company in liquidation
91.	Liability of guardians, trustees, etc.		
92.	Liability of Court of Wards etc.,		
93.	Special provisions regarding liability to pay tax, interest or penalty in certain cases		
94.	Liability in other cases		

Statutory Provisions

85. Liability in case of Transfer of Business

(1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Where the transferee of a business referred to in subsection (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

Extract of the CGST Rules, 2017

19. Amendment of registration

(1) Where there is any change in any of the particulars furnished in the application for registration in FORM GST REG-01 or FORM GST REG-07 or FORM GST REG-09 or FORM GST REG-10 or for Unique Identity Number in FORM GST-REG-13,either at the time of obtaining registration or Unique Identity Number or as amended from time to time, the registered person shall, within a period of fifteen days of such change, submit an application, duly signed or verified through electronic verification code, electronically in FORM GST REG-14, along with the documents relating to such change at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that –

(a) where the change relates to,-

(i) legal name of business;

(ii) address of the principal place of business or any additional place(s) of business; or

(iii) addition, deletion or retirement of partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for the day to day affairs of the business,-

which does not warrant cancellation of registration under section 29, the proper officer shall, after due verification, approve the amendment within a period of fifteen working days from the date of the receipt of the application in FORM GST REG-14 and issue an order in FORM GST REG-15 electronically and such amendment shall take effect from the date of the occurrence of the event warranting such amendment;

(b) the change relating to sub-clause (i) and sub-clause (iii) of clause (a) in any State or Union territory shall be applicable for all registrations of the registered person obtained under the provisions of this Chapter on the same Permanent Account Number;

(c) where the change relates to any particulars other than those specified in clause (a), the certificate of registration shall stand amended upon submission of the application in FORM GST REG- 14 on the common portal;

(d) where a change in the constitution of any business results in the change of the Permanent Account Number of a registered person, the said person shall apply for fresh registration in FORM GST REG-01:

Provided further that any change in the mobile number or e-mail address of the authorised signatory submitted under this rule, as amended from time to time, shall

be carried out only after online verification through the common portal in the manner provided under [1] [sub-rule (2) of rule 8]

(1A) [2] [Notwithstanding anything contained in sub-rule (1), any particular of the application for registration shall not stand amended with effect from a date earlier than the date of submission of the application in FORM GST REG-14 on the common portal except with the order of the Commissioner for reasons to be recorded in writing and subject to such conditions as the Commissioner may, in the said order, specify].

(2) Where the proper officer is of the opinion that the amendment sought under sub-rule (1) is either not warranted or the documents furnished therewith are incomplete or incorrect, he may, within a period of fifteen working days from the date of the receipt of the application in FORM GST REG-14, serve a notice in FORM GST REG-03, requiring the registered person to show cause, within a period of seven working days of the service of the said notice, as to why the application submitted under sub-rule (1) shall not be rejected.

(3) The registered person shall furnish a reply to the notice to show cause, issued under sub-rule (2), in FORM GST REG-04, within a period of seven working days from the date of the service of the said notice.

(4) Where the reply furnished under sub-rule (3) is found to be not satisfactory or where no reply is furnished in response to the notice issued under sub-rule (2) within the period prescribed in sub-rule (3), the proper officer shall reject the application submitted under sub-rule (1) and pass an order in FORM GST REG -05.

(5) If the proper officer fails to take any action,-

(a) within a period of fifteen working days from the date of submission of the application, or

(b) within a period of seven working days from the date of the receipt of the reply to the notice to show cause under sub-rule (3),

the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

41. Transfer of credit on sale, merger, amalgamation, lease, or transfer of a business.–

(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the

[1] *Substituted vide Notification No. 7/2017-CT dated 27.06.2017 for —"the said rule"*
[2] *Inserted vide Notification No. 75/2017-CT dated 29.12.2017*

details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

[3]*[Explanation:- For the purpose of this sub-rule, it is hereby clarified that the value of assets means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.]*

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC- 02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

Related provisions of the Statute

Section or Rule	Description
Section 2(17)	Definition of 'Business'
Section 2(107)	Definition of 'Taxable Person'
Section 7	Meaning and scope of supply
Section 9	Levy and collection
Schedule II	Clause 4(c) of Schedule II (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person
Section 18	Availability of credit in certain circumstances
Section 28	Amendment of registration

[3] *Inserted vide Notification No. 16/2019-CT dated 29.03.2019*

85.1 Introduction

This section deals with tax liability that may arise in case of transfer of business under certain circumstances. It deals with the following situations:

- Liability arising before the transfer of business as a whole or in part; and
- Liability arising post transfer of business as a whole or in part.
- Such liability may arise on account of sale, gift, lease, leave and license, hire or in any other manner.

85.2 Analysis

(i) Liability arising prior to transfer:

- The provision applies when a taxable person who is liable to pay tax transfers his business either wholly or in part, which could be by way of:
  - Sale
  - Gift
  - Lease
  - Leave and license
  - Hire or
  - In any other manner
- The following cases are dealt with separately in this chapter and not covered under this section:
  - Amalgamation / merger -Section 87
  - Liquidation – Section 88
  - In case of death of proprietor – Section 93

Tax liability: Both transferor and transferee will be jointly and severally liable for payment of taxes, interest or penalty due upto the time of transfer of business (wholly or partly).

The joint and several liability will remain fastened even if such amounts were determined and become due after the transfer of business.

Interestingly, even liability to pay penalty, which is quasi-criminal in nature, is sought to be fastened on the transferee, although transferee would not have been responsible for the non-payment of tax, interest or penalty liability by the transferor prior to transfer of such business. Care must be taken to include 'indemnity' from transferor in case of any such liabilities arising in future. It may be noted that only 'payment' of dues (tax, interest and penalty) is joint-and-several with transferee but the process will only be against transferor.

It is interesting to note that the liability would be determined against the transferor only, however, if it is not recovered from the transferor, the same would be recovered from the transferee. There is no escape provided by the act against the transferee even if the transferee has purchased the business in a bona-fide manner with no notice of any liability against the transferor. Also, it is pertinent to note that this provision is for recovery and thus, the transferee has no right to contest the liability which has been fastened against the transferor. However, liability in case of transferor also would be subject to the limitation period as applicable in case of transferee. It is pertinent to note that the provision does not provide for subrogation of rights to contest the demand so determined for recovery from the transferee. The only right which transferee has would be recovery of such paid taxes from the transferor.

(ii) Liability arising post transfer

It is the 'recovery' of liability in respect of tax, interest and / or penalty which may be determined subsequent to transfer (by follow of process against transferor) and which relates to the period will be the liability of the transferee of business.

As the liability to pay these dues belongs to the 'business' carried on by Person A (PAN XYZ123XYZ), when the business is carried on albeit by Person B (PAN PQR456PQR), the encumbrance is not 'personal' liability of Person A but 'Taxable Person A'. Hence, it can be recovered from 'Taxable Person B' who is now carrying on the business, even though he has obtained a new GST number in order to continue operation of such transferred business.

In case, the transferee is already an existing taxable person, he needs to apply for amendment of his registration certificate within the prescribed time incorporating the changes as to the acquisition of the business (whole or part).

(iii) Going concern transfer

Sale of business as a 'going concern' [commonly called, lock-stock-barrel basis] is not taxable as per paragraph 4(c), schedule II of the CGST Act read with entry no. 2 to exemption *Notification no. 12/2017- Central Tax (Rate) dated 28th June, 2017*.One may refer to rule 41 that permits the transferor to upload GST ITC 02 on the common portal for effecting a smooth transfer of all unutilised credits pursuant to a transfer as a 'going concern', without any condition of correlation with underlying inputs and / or capital goods.

This provision is not new and is an added measure of responsibility that transferee of business needs to be mindful of to ensure that unpaid liabilities (determined or not, subject to limitation under section 73, 74 or 76) cannot be forfeited on account of sale of business. However, where 'sale of business' is effected by 'sale of assets', transferee carries no liability under GST law as all dues will remain with the 'Taxable Person A'. All recovery provisions against Taxable Person A will not travel to transferee as the

business is left behind with Taxable Person A and only assets (on payment of applicable GST) has been transferred to Taxable Person B.

(iv) Types of transfer

This provision does not limit the type of transfer to merger or amalgamation but 'any' form of transfer where the resultant is 'transfer of business' as a going concern. In fact, the types listed covers permanent or temporary transfer of business but on a going concern basis. It is possible for all arrangements and compromises even for limited duration to come within the operation of this remedial provision for recovery of dues.

85.3 Issues and Concerns

(i) In case of transfer of business by whatever method i.e., sale, lease, gift, license etc., the law does not indicate as to what should be the life of capital goods that is to be reckoned in the hands of transferee, for the purpose of GST laws, would it be five years, as reduced by number of years for which such asset was put to use by the transferor or would it be an additional five years from the date of transfer or would it be as per the actual remaining life of the asset on the basis of actuarial valuation as on the date of such transfer. The GST law is silent on this issue. But the very nature of 'going concern' is the recognition of continuity of use of capital goods. Rules 43 and 44 would need to be complied without restarting the period of use applicable in these cases;

(ii) The person taking over the business of another person should, in the normal course as a matter of due diligence, make sure that all the tax liabilities due under GST (CGST & SGST / IGST) laws in relation to transactions made before the date of transfer is fully discharged with applicable interest due, if any. Further, such transferee shall also ensure that there is no pending proceeding(s) against him under the said Act, to ensure that the transition process is smooth. It must be noted that the GST law casts the burden of paying tax, interest, penalty or any other amount on the transferee jointly with the transferor of business, though such amounts could relate to a period, prior to the date of transfer.

85.4 FAQs

Q1. In case of transfer of business, who is liable to pay tax in respect of business transactions prior to such transfer?

Ans. Both the transferor and transferee of business (either wholly or partly) are jointly and severally liable to pay tax.

Q2. Whether such liability as mentioned above is applicable only for tax?

Ans. Such liability is applicable to interest and penalty also in addition to tax.

Q3. What are the types of business transfers covered in section 85?

Ans. Following types of business transfers are covered in the subject provision:

(a) Sale;

(b) Gift;

(c) Lease;

(d) Leave and license;

(e) Hire; or

(f) In any other manner

Q4. To what extent the transferor of business is liable to pay tax / interest / penalties?

Ans. The transferor of business is jointly and severally liable to pay tax / interest / penalties arisen along with the transferee (whether determined prior to transfer or post transfer) upto the date of transfer of business.

Q5. Who is liable to pay tax in respect of supplies made after the date of transfer of business?

Ans. The transferee of business is liable to pay tax after the date of transfer of business.

Q6. If the transferee carries on an existing business, what are the actions to be taken on transfer?

Ans. The transferee is required to make amendments in his registration certificate to give effect to the business transfer.

85.5 MCQs

Q1. Transfer of business includes …….

(a) Sale

(b) Lease

(c) Leave & License

(d) All of the above

Ans. (d) All of the above

Q2. Who is liable to pay the tax in case of transactions prior to the date of transfer of business?

(a) Transferor

(b) Transferee

(c) Both jointly and severally

(d) jointly

Ans. (c) Both jointly and severally

Statutory Provision

86. Liability of Agent and Principal

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

Related provisions of the Statute

Section or Rule	Description
Section 2(5)	Definition of 'Agent'
Section 7	Meaning and scope of supply
Section 9	Levy and collection
Schedule I	Activities to be treated as supply even if made without consideration – Entry no. 3 of the said schedule

86.1 Introduction

This section directly casts the liability on a principal, in addition to the liability of the agent who effects the supply of taxable goods on behalf of principal or procures taxable goods on behalf of his principal.

86.2 Analysis

Under the GST law, in cases where –

— Taxable Goods are supplied by agent on behalf of principal; or

— Taxable Goods are procured by agent on behalf of principal.

the agent is primarily liable for tax. However, by virtue of this provision, both agent and principal, will be jointly and severally made liable to pay for tax payable on such supplies.

It is important to note that transactions between a Principal and Agent involving 'handling' of goods is regarded as a supply *inter se* vide paragraph 3 of schedule I of CGST Act, 2017. But, in terms of this section, 'joint and several' liability is being fastened on the person, who is not covered by the said fiction (as regards supply). This section is meant to provide recourse to the Government against either of them or not necessarily only upon default by the principal obligor. The Government is free to recover dues from either of them or both (up to the total dues only) without having to exhaust its remedies against the one who was principally liable (principal obligor) and then only proceed against the other. Please note that there is no compulsion that the Government should have exhausted its remedies against the principal to proceed against the Agent, that is the effect of joint-and-several. Once Agent pays, remedy of subrogation (refer section 92 of Transfer of Property Act and section 69 of Indian Contract

Act) will be available to the Agent to stand in the shoes of a creditor and recover under a civil suit, dues that were owed by the principal.

It is important to note that the section is applicable to supply of goods only and not on agents who provides or received services on behalf of Principal. Secondly, it is limited to those cases where such agent undertakes supply or receipt of taxable goods on behalf of the principal. The section is so carefully worded so as to extend the liability on the agent even in respect of all goods which are received from the transferor so as to cover situations like goods lost, stolen, destroyed, or for that matter are not available post such receipt in hands of the agent. The agent shall not be liable for any other liability of the principal under the GST statutes including in respect of any goods which are not received from them. The liability of the agent shall only start on the receipt of goods which he receives on behalf of the principal and shall be limited only in respect of such goods. No other liability of the principal other than in respect of goods received by the agent on behalf of Principal can be fastened on Agent and vice versa. In case of default by the Agent, the law extends such liability on the principal. In case of Principal not registered in the state in which agent is located, the liability still remains as the law does not provide for liability depending upon the registration of the principal but extends an unconditional liability in such cases.

86.3 Issues and Concerns

Liability of the principal who effects supplies through an agent or a principal who receives supplies through an agent, does not end as soon as he (principal) pays tax on the supply made by him to agent for further supply; instead the liability in the hands of the principal continues till the time a further supply is made by agent - say to the final customer (B2B or B2C) and tax is duly discharged by agent on the said supply. This in effect means, that the principal needs to keep a track of compliance by an agent apart from the compliance requirements to be followed by him under the said law, which is an added burden in the hands of principal.

86.4 FAQ

Q1. Whether the principal is also liable for tax payable on the goods supplied by the Agent?

Ans. Yes, the principal will also be jointly and severally liable to pay tax on such supplies, along with the agent.

86.5 MCQs

Q1. Agent and Principal, both are liable to pay tax on supply or receipt of …….

(a) Taxable Goods only

(b) Services only

(c) Goods along with service

(d) None of the above

Ans. (a) Taxable Goods only

Q2. Agent and Principal are liable to pay tax …….

(a) Jointly

(b) Separately

(c) Both jointly and severally

(d) Jointly or Separately

Ans. (c) Both jointly and severally

Statutory Provisions

87. Liability in case of amalgamation or merger of companies

(1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to tax accordingly.

(2) Notwithstanding anything contained in the said order, for all purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled, with effect from the date of the said order.

Extract of the CGST Rules, 2017

19. Amendment of registration

(1) Where there is any change in any of the particulars furnished in the application for registration in FORM GST REG-01 or FORM GST REG-07 or FORM GST REG-09 or FORM GST REG-10 or for Unique Identity Number in FORM GST-REG-13, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, the registered person shall, within a period of fifteen days of such change, submit an application, duly signed or verified through electronic verification code, electronically in FORM GST REG-14, along with the documents relating to such change at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that –

(a) where the change relates to,-

(i) legal name of business;

(ii) address of the principal place of business or any additional place(s) of business; or

(iii) addition, deletion or retirement of partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for the day to day affairs of the business,-

which does not warrant cancellation of registration under section 29, the proper officer shall, after due verification, approve the amendment within a period of fifteen working days from the date of the receipt of the application in FORM GST REG-14 and issue an order in FORM GST REG-15 electronically and such amendment shall take effect from the date of the occurrence of the event warranting such amendment;

(b) the change relating to sub-clause (i) and sub-clause (iii) of clause (a) in any State or Union territory shall be applicable for all registrations of the registered person obtained under the provisions of this Chapter on the same Permanent Account Number;

(c) where the change relates to any particulars other than those specified in clause (a), the certificate of registration shall stand amended upon submission of the application in FORM GST REG- 14 on the common portal;

(d) where a change in the constitution of any business results *in the change of the Permanent Account Number of a registered person, the said person shall apply for fresh registration in FORM GST REG-01:*

Provided further that any change in the mobile number or e-mail address of the authorised signatory submitted under this rule, as amended from time to time, shall be carried out only after online verification through the common portal in the manner provided under [4] [sub-rule (2) of rule 8]

[5][(1A) Notwithstanding anything contained in sub-rule (1), any particular of the application for registration shall not stand amended with effect from a date earlier than the date of submission of the application in FORM GST REG-14 on the common portal except with the order of the Commissioner for reasons to be recorded in writing and subject to such conditions as the Commissioner may, in the said order, specify.]

(2) Where the proper officer is of the opinion that the amendment sought under sub-rule

[4] Substituted vide Notification No. 7/2017-CT dated 27.06.2017 for —"the said rule"

[5] Inserted vide Notification No. 75/2017-CT dated 29.12.2017

(1) is either not warranted or the documents furnished therewith are incomplete or incorrect, he may, within a period of fifteen working days from the date of the receipt of the application in FORM GST REG-14, serve a notice in FORM GST REG-03, requiring the registered person to show cause, within a period of seven working days of the service of the said notice, as to why the application submitted under sub-rule (1) shall not be rejected.

(3) The registered person shall furnish a reply to the notice to show cause, issued under sub-rule (2), in FORM GST REG-04, within a period of seven working days from the date of the service of the said notice.

(4) Where the reply furnished under sub-rule (3) is found to be not satisfactory or where no reply is furnished in response to the notice issued under sub-rule (2) within the period prescribed in sub-rule (3), the proper officer shall reject the application submitted under sub-rule (1) and pass an order in FORM GST REG -05.

(5) If the proper officer fails to take any action,-

(a) within a period of fifteen working days from the date of submission of the application, or

(b) within a period of seven working days from the date of the receipt of the reply to the notice to show cause under sub-rule (3),

the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

20. Application for cancellation of registration.

A registered person, other than a person to whom a registration has been granted under rule 12 or a person to whom a Unique Identity Number has been granted under rule 17, seeking cancellation of his registration under sub-section (1) of section 29 shall electronically submit an application in FORM GST REG-16, including therein the details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock on the date from which the cancellation of registration is sought, liability thereon, the details of the payment, if any, made against such liability and may furnish, along with the application, relevant documents in support thereof, at the common portal within a period of thirty days of the occurrence of the event warranting the cancellation, either directly or through a Facilitation Centre notified by the Commissioner:

[6] ~~*[Provided that no application for the cancellation of registration shall be considered in case of a taxable person, who has registered voluntarily, before the expiry of a period of one year from the effective date of registration.]*~~

[6] *Omitted vide Notification No. 03/2018-CT dated 23.01.2018*

22. Cancellation of registration.

(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

(2) The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM REG–18 within the period specified in the said sub-rule.

(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted ~~[sub-rule (1) of[7]]~~ under rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1) or under sub-rule (21A[8]), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.

(4) Where the reply furnished under sub-rule (2), [or in response to the notice issued under sub-rule (2A) of rule 21A][9] is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG –20:

[10][Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.]

(5) The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

41. Transfer of credit on sale, merger, amalgamation, lease or transfer of a business.

(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation,

[7] Omitted vide Notf No. 7/2017-CT dt. 27.06.2017

8 Inserted by the Central Goods and Services Tax (Fourteenth Amendment) Rules, 2020, w.e.f. 22-12-2020 vide Notf No. 94/2020-CT dt. 22.12.2020

9 Inserted by the Central Goods and Services Tax (Fourteenth Amendment) Rules, 2020, w.e.f. 22-12-2020 vide Notf No. 94/2020-CT dt. 22.12.2020

[10] Inserted vide Notf no. 39/2018-CT dt. 04.09.2018

lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

[11][Explanation:- For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.]

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation lease or transfer of business has been done with a specific provision for the transfer of liabilities.

(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC- 02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

[41A. Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory.

(1) A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner:

Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

Explanation - For the purposes of this sub-rule, it is hereby clarified that the value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.

(2) The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such

[11] Inserted vide Notification No. 16/2019-CT dt. 29.03.2019

acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.][12]

Related provisions of the Statute:

Section or Rule	Description
Section 2(17)	Definition of Business
Section 2(107)	Definition of Taxable Person
Section 7	Meaning and scope of supply
Section 9	Levy and collection
Section 18	Availability of credit in certain circumstances
Section 28	Amendment of registration
Section 29	Cancellation of registration

87.1 Introduction

This section deals with the tax liability on certain transactions between the effective date and date of order of Tribunal/Court in case of amalgamation or merger of companies.

87.2 Analysis

(i) In cases of amalgamation or merger of two or more companies by virtue of an order passed by Tribunal/Court/otherwise, the following two crucial dates are relevant, -

- Date from / on which the amalgamation/merger is effective;
- Date of the order pursuant to which the amalgamation/merger takes place.

(ii) Normally, by virtue of the said order, the transactions of supply of goods and/or services inter-se between the companies merged/amalgamated, between two dates, would get nullified as they would become one entity from the effective date (and not from the date of the order).

(iii) However, for the purposes of GST, by virtue of this provision, such transactions would continue to be treated as supply by one entity and receipt by the other, viz., all the provisions of this law would equally apply as if the amalgamation or merger had not taken place and both the entities continue as two different taxable persons. Till the date of order of amalgamation/ merger, those companies shall be treated as distinct companies and should discharge their respective tax liabilities.

(iv) Thus, this provision would eclipse the order and legal effect of the Court/ Tribunal for the limited purposes of GST law. As such, it will NOT be unusual to find that

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

transactions will be reported in the financials of transferee entity after giving effect to the Order but the same transactions (during the intervening period) will remain in the books (and GST returns) of the transferor and WITHOUT unwinding the same. This is a departure from the practice in all other tax laws in such instances.

(v) It provides that wherever necessary, the registration certificates of the said companies would stand cancelled with effect from the date of the said order.

Please refer to the facility provided by rule 41 for transfer of unutilized input tax credit lying in electronic credit ledger of the transferor.

It is interesting that the words 'amalgamation or merger' is used without reference to various innovations in the field of corporate compromises and arrangements. Experts are of the view that all arrangements where order of NCLT is passed may come within the operation of this provision and the absence of specific terms like demerger or reverse-demerger or spin-off which are different forms of such corporate compromises and arrangements and which operate on the same principle of amalgamations or merger must be allowed where there is an interval of time between date of order and date its effective date.

With the multiple registration within the same State being permitted, credit is permitted to be transferred and reallocated between each such registration by filing Form ITC-02A. This credit will be allocated in the ratio of assets of each registration held.

87.3 Issues and Concerns

As the treatment under the Companies Act, 2013 read with relevant rules thereto and GST law are different for a period commencing from effective date of order of merger till the date of issue of order, both the merged company and the resultant company will have to keep track of transactions effected between each other during the above said period and maintain relevant reconciliations for the purpose of both the laws, if the same is not done, it would lead to unnecessary complications and avoidable litigations.

87.4 MCQ

Q1. When two or more companies are amalgamated, the liability to pay tax on supplies between them during the period of effective date of amalgamation order and date of issue of amalgamation order would be on -

(a) Transferee;

(b) Respective companies;

(c) Any one of the companies;

(d) None of the above.

Ans. (b) Respective Companies.

Statutory Provisions

88. Liability in case of company in liquidation

(1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereinafter referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Extract of the CGST Rules, 2017

160. Recovery from Company in liquidation. –

Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in FORM GST DRC -24.

Related provisions of the Statute:

Section or Rule	Description
Section 2(17)	Definition of Business
Section 2(107)	Definition of Taxable Person
Section 2(84)	Definition of Person
Section 7	Meaning and scope of supply
Section 9	Levy and collection
Section 82	Tax to be first charge on property
Section 137	Offences by Companies

88.1 Introduction

This section deals with the tax and other dues of a company in case it is wound up or liquidated. This section has to be read with rule 160 of CGST Rules, 2017.

88.2 Analysis

(i) Every person appointed as receiver/ liquidator needs to give intimation of his appointment to the Commissioner within 30 days of his appointment.

(ii) Within 3 months from the date of such intimation, the Commissioner, after making necessary enquiry or calling of information, will notify the liquidator to set apart a sum of money that would be sufficient to discharge, in his opinion, the amount of tax, interest and penalty payable by the company.

(iii) When a private company is not able to clear its dues, then every person who was the director at any time during the period, for which tax is due, would be liable jointly and severally to pay the dues.

(iv) However, if any director proves to the satisfaction of the Commissioner that such non-recovery is not due to his gross neglect, misfeasance or breach of duty, the liability would not arise in the hands of such director.

(v) Rule 160 of CGST Rules, 2017 states that where a company is under liquidation, as specified u/s 88 of the CGST Act, then the Commissioner shall notify the liquidator for recovery of any amount representing tax, interest, penalty or any amount due under the Act.

(vi) As per rule 160, the intimation must be sent in Form GST DRC – 24 to the Liquidator. This intimation must contain the following details:

  (a) Name of the company being liquidated.

  (b) The GSTIN of the company being liquidated.

  (c) Date of the letter

  (d) Period for which demand is being made.

  (e) Demand Order No.

  (f) Reference to Liquidator's letter intimating liquidation of the company.

  (g) The actual amount or likely amount, the company owes to State/ Central Government in terms of tax, interest, penalty, other dues and total arrears thereof.

(vii) Rule 160 employs the term 'notify' the liquidator, while Form GST DRC – 24 'directs' the liquidator to make sufficient provision for discharge of current and anticipated liabilities before final winding up of the company.

88.3 Issues and Concerns

It appears that the GST law is directing the liquidator to set aside / make sufficient provision for the tax which is 'due or is likely to be due' under the Act, recoverable from company under liquidation. However, section 326 of The Companies Act, 2013 provides for preferential payments to be made first towards workmen's dues and debts due to secured creditors and only thereafter, follow the sequence as prescribed in section 327 of The Companies Act, 2013 which covers dues to Government in form of taxes, cesses and rates etc. Therefore, directing a liquidator to make provision for the amount of tax, interest, penalty and any other amount due / is liable to become due, would be ultra vires the Companies Act, 2013 read with Insolvency Bankruptcy Code, 2016. However, had a reference to section 82 of CGST Act, 2017 been made in this section, it would have been clear that dues are recoverable and a first charge on property of the person can be made, to recover the dues under this Act, only after fulfilling the preferential provisions as per the Companies Act, 2013 read with the Insolvency and Bankruptcy Code, 2016. Corporate Insolvency Resolution Professionals need to take note of this responsibility after the introduction of IBC.

The liability of tax in case of a private company for any period before or during the course of winding up, has been extended upon the person(s) who was director of such company at any time during the period for which the tax was due. Such directors have been made jointly and severally liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. It is pertinent to mention that the director is responsible for the period during which he was holding the position as a director. This liability under this provision has not been extended on other officers of the Company including CEO, CFO etc. There is no absolute bar against a lawsuit or legal proceedings continuing concurrently with the liquidation proceedings, however, on intimation by Official liquidator, the Commissioner needs to determine such liability within three months. It is however, important to note that such liability should be determined once. No liability which is not determined before liquidation cannot be determined thereafter as the provision does not provide for determination of such liability in hands of any directors and post liquidation, any proceedings undertaken against such liquidated company shall be *non est*. Government has issued *Circular No. 187/19/2022-GST dt. 27.12.2022* providing clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016 (IBC). The circular provides that proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in section 84 of the CGST Act.

88.4 MCQs

Q1. Intimation regarding appointment of liquidator should be given to the Commissioner within 30 days of

(a) Liquidation

(b) Cancellation of registration

(c) Appointment of Liquidator

(d) Order of Court

Ans. (c) Appointment of Liquidator

Q2. Commissioner will notify the amount of liability within how many days of intimation

(a) 3 months

(b) 30 days

(c) 60 days

(d) 6 months

Ans. (a) 3 months

Q3. When would a director not be liable to pay the tax dues,

(a) Liquidator refuses to pay.

(b) Auditor refuses to pay.

(c) If the non-recovery is not due to gross neglect of the director

(d) None of the above

Ans. (c) If the non-recovery is not due to gross neglect of the director

Statutory Provisions

89. Liability of directors of private company

(1) Notwithstanding anything contained in the Companies Act, 2013 (18 of 2013), where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during

which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

Related provisions of the Statute

Section or Rule	Description
Section 2(107)	Definition of Taxable Person
Section 2(84)	Definition of Person
Section 7	Meaning and scope of supply
Section 9	Levy and collection
Section 82	Tax to be first charge on property
Section 137	Offences by Companies

89.1 Introduction

This section deals with recovery of tax dues, interest or penalty from the directors of a private company, where the private company has not discharged any of its tax, penalty or interest liability towards the supply of goods or services or both.

89.2 Analysis

(i) If the tax, interest or penalty were not paid by a private company in relation to any supply of goods and / or services for any period, then every Director of such private company during such period will be liable to pay such dues. The period of liability and person holding office of director in such private limited company should coincide to fasten such liability on the director. For eg., Mr. X was a director in Company ABEC Private Limited for the period from 1.1.2021 to 31.12.2021. The Company has unpaid liability for the period from 1.7.2017 to 31.12.2017. Mr. X cannot be made liable to pay such dues. Further, even in cases where a person was a director during the period for which demand arises, the liability of the Director will be relaxed when, he proves that such non-recovery of dues is not because of his gross negligence, misfeasance or breach of duty in relation to the affairs of the company.

(ii) However, when a private company is converted to a public company, then no such recovery of old dues can be made from the person(s) who were directors of the private limited company before such conversion.

(iii) Moreover, an exception has been carved out for the above provision i.e., (ii) above – viz., this is not applicable to personal penalty which can be imposed on such director.

89.3 MCQs

Q1. When a private company is converted into public company, the liability of director of private company before conversion is……

(a) Tax only

(b) Tax and Interest

(c) Tax, Interest or Penalties

(d) None of the above

Ans. (d) None of the above

Q2. Who is liable to pay the tax in case tax, interest or penalty can't be recovered from the private company?

(a) Additional director

(b) Whole time Director

(c) Managing Director

(d) All of the above

Ans. (d) All of the above

Statutory Provisions

90. Liability of partners of firm to pay tax

Notwithstanding any contract to the contrary and any other law for time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall jointly and severally, be liable for such payment:

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

Related provisions of the Statute

Section or Rule	Description
Section 94	Liability in other cases

90.1 Introduction

This section deals with the liability of a partner of a firm to pay any tax, interest or penalty that was otherwise payable by the firm.

90.2 Analysis

(i) Where a partnership firm is liable to pay any tax, interest or penalty, all the partners of such firm will be jointly and severally liable to pay all such amounts.

(ii) If any of the partners retire, then such partner or the firm shall intimate the Commissioner by a notice in writing within one month from the date of retirement. In such cases, the retiring partner shall be liable to pay tax, interest and penalty, if any, upto the date of his retirement (whether determined or not prior to retirement). Thus, if the retiring partner intimates to the Commissioner within one month of his retirement, he shall be liable for any GST liability only upto his date of retirement. For e.g., Mr. X retires from Partnership M/s Together Trades on 31.12.2022. If he intimates to commissioner on or before 31.1.2023, his liability towards the GST liability of firm can only be extended upto 31.12.2022.

(iii) However, where no such intimation is given by the partner to the Commissioner within 1 month from retirement date, the liability of such retired partner will continue till the date on which the intimation is received by the Commissioner.

(iv) The provision will be equally applicable for LLPs.

> Every partner who retires from a partnership firm should file an intimation to the jurisdictional Commissioner giving the details of his retirement – viz., the name of the firm, registration number of the firm and the date of his / her retirement. If the firm is operating in more than one States, such intimation should be filed in all such States.

90.3 FAQs

Q1. Whether the retiring partner is liable to pay tax?

Ans. Retiring partner shall be liable to pay tax, interest and penalty, if any upto the date of his retirement (whether determined or not prior to retirement).

Q2. What are the precautions to be taken by the retiring partner?

Ans. Retiring partner shall intimate the Commissioner by a notice in writing of his retirement within one month from the date of his retirement.

Q3. Whether partner or firm is liable to intimate to the Commissioner regarding his retirement?

Ans. Either the retiring partner or the firm shall intimate the Commissioner by a notice in writing of retirement of a partner.

Q4. What is the time limit for the firm or partner to give intimation of retirement of partner?

Ans. The time limit to intimate retirement is within one month from the date of retirement to ensure that the liability is not fastened post-retirement date.

Q5. What are the consequences of non-intimation?

Ans. The liability of the retiring partner continues till the date of receipt of intimation by the Commissioner.

90.4 MCQs

Q1. Retiring partner should intimate the retirement to

(a) Department

(b) Government

(c) Commissioner

(d) All of the above

Ans. (c) Commissioner

Q2. Intimation of retirement as partner, has to be given to the Commissioner within……..

(a) 1 month from the date of retirement

(b) 60 days from the date of retirement

(c) 90 days from the date of retirement

(d) 45 days from the date of retirement

Ans. (a) 1 month from the date of retirement

Q3. If the intimation is delayed to the Commissioner, then the retiring partner is liable to pay tax dues till:

(a) the date of intimation received by the Commissioner

(b) the date of acceptance of intimation by the Department

(c) the date of retirement

(d) the date of show cause notice

Ans. (a) the date of intimation received by the Commissioner

Statutory Provisions

91. Liability of guardians, trustees etc.

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on

behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

91.1 Introduction

This section enables collection of tax, interest or penalty from the guardians, trustees or agents of a minor or any other incapacitated person in respect of the business carried on for them.

91.2 Analysis

(a) In respect of business carried on, on behalf of, or for the benefit of a minor or incapacitated person (by the following persons who carry on such business), then such person will be liable to pay tax, interest or penalty:

- Guardian; or
- Trustee; or
- Agent;

(b) The tax, interest, penalty or any other dues which such minor or incompetent person will be liable to, are the amounts which are recoverable from the minor or any such incapacitated person and which are levied, assessed in the hands of guardian, trustee or agent. It is important to note that such person should be in the position of guardian, trustee or agent when such business is undertaken.

(c) The dues are recoverable from the guardian, trustee or agent in respect of business of the minor or other incapacitated person by treating them as major or capacitated person, who is conducting the business for himself.

(d) The deeming fiction is required to overcome the general principle of law, which operates in favour of a minor or incapacitated person to plead minority or incapacity in respect of dues or claims, particularly penal liability.

(e) Interestingly the expression 'incapacitated person' is not defined in the Act. It should refer only to a person who is a person of unsound mind or one who is terminally ill.

91.3 FAQs

Q1. Who is liable for tax dues etc., in case of a business of minor or incapacitated person?

Ans. The Guardian, or the Trustee; or the Agent, as the case may be, who is conducting the business on behalf and for the benefit of minor or incapacitated person.

Q2. Whether the minor for whom the business is carried out by Guardian can escape liability on the ground of minority of the beneficiary?

Ans. The minor is deemed to be a major for the purposes of collection of any tax/interest/penalties arising out of the business carried out for him. Hence, the general principle of law has no application, and the Guardian, Trustee or Agent cannot escape such liability.

91.4 MCQs

Q1. In case of business carried on by minor or other incapacitated person through Guardian / Agent who is liable to pay tax?

(a) Guardian/Agent

(b) Friend

(c) Business Partner

(d) None

Ans. (a) Guardian/Agent

Q2. The dues recoverable under this section includes

(a) Only Interest

(b) Any dues which are recoverable under this Act

(c) Only tax

(d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

Statutory Provisions

92. Liability of Courts of Wards, etc.

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager, in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

92.1 Introduction

This section empowers collection of tax, interest or penalty from Administrator General, Official Trustee or any receiver or manager, who controls the estate or any portion thereof in respect of the taxable person who owns a business and whose estate is being controlled.

92.2 Analysis

In respect of any tax, interest or penalty relating to a business of the taxable person whose estate or part thereof is under the control of the following persons, the said persons will be liable to pay dues under this Act, as if they were themselves conducting the business as taxable person/s:

(i) Administrator general or

(ii) Official trustee or

(iii) Any receiver or manager or

(iv) Including any person, whatever be his designation, who in fact actually manages the business.

Illustration. Mr. ABC is appointed as manager of Mr. X, to manage the estate of Mr. X, who owns a garment business. Mr. X is liable to pay Rs. 20, 00,000/- of CGST, interest and penalty to the Government. The department can recover such dues from Mr. ABC who is managing the estates of Mr. X., by invoking this provision.

92.3 Issues and Concerns

The provisions relating to registration or any other provisions of this Act, does not provide for reference of court of wards by whatever name called such as, Administrative General, the Official Trustee, or any receiver or manager who is controlling the estate or part of the estate of a registered person. It is not clear, whether the assessee himself has to intimate in writing to the jurisdictional officer about court of wards who is conducting business in his behalf and get such court of ward registered in the records of jurisdictional officer.

92.4 FAQ

Q1. Who is liable to pay tax dues if the estate of a taxable person is controlled by Court of Wards?

Ans. The dues are recoverable from the Court of Wards, as if he is conducting the business for himself.

92.5 MCQs

Q1. If the estate or any portion of the estate of a taxable person is under the control of the Court of Wards, Administrative General etc., the tax due from such taxable person is liable to be paid by -

(a) Court of Wards.

(b) Taxable Person

(c) Legal representative of taxable person

(d) None of the above

Ans. (a) Court of Wards

Q2. The Court of Wards, Administrative General, etc must be appointed by-

(a) Supreme Court

(b) High Court

(c) Any court

(d) None of the above

Ans. (c) Any Court

Q3. The dues recoverable under this section includes

(a) Only Interest

(b) Any dues which are recoverable under this Act

(c) Only tax

(d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

Statutory Provisions

93. Special Provisions regarding liability to pay tax, interest or penalty in certain cases.

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then-

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

(2) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act upto the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

(3) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

(4) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act,-

(a) is the guardian of a ward on whose behalf the business is carried on by the guardian, or

(b) is a trustee who carries on the business under a trust for a beneficiary.

then if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

93.1 Introduction

Section 93 of GST Act is subject to Insolvency and Bankruptcy Code, 2016. The objects clause of Insolvency and Bankruptcy Code inter-alia is to provide that it has been enacted amongst other things to 'alter the order of priority of payment of Government dues'.

Section 53 of Insolvency and Bankruptcy Code, 2016 which provides for distribution of assets of a company starts with a non-obstante clause against 'any law' enacted by Central or State Government. As per section 53 of IBC, the Government dues stand fifth in the order of priority as follows:

(a) Insolvency Resolution process costs and liquidation costs paid in full

(b) Workmen's dues for 24 months preceding liquidation commencement date and debts owed to a secured creditor

(c) Wages and unpaid dues owed to employees for 12 months preceding liquidation commencement date

(d) Financial debts owed to unsecured creditors

(e) Amounts due to Central Government and the State Government, including amount to be received on account of Consolidated Fund of India and Consolidated Fund of State, in respect of whole or part of two years preceding liquidation commencement date'

(f) any remaining debts and dues

(g) preference shareholders, if any

(h) equity shareholders or partners, as the case may be

GST is received by Central and State Governments in the Consolidated Fund of India and Consolidated Fund of State respectively.

As per section 74 of the CGST Act, 2017, tax, interest, penalty can be demanded for a period of five years from the relevant date. However, section 82 of the CGST Act, 2017 states that any amount payable by a taxable person or any other person on account of tax, interest or penalty shall be a first charge on the property of such taxable person or other person, subject to Insolvency and Bankruptcy Code, 2016. Hon'ble Supreme Court in the matter of *State Tax Officer (1) vs Rainbow Papers Limited, 2022 SCC Online SC 1162* has held that State is a secured creditor under state VAT Act (Gujarat in present case). The State tax Act provided that any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer, or as the case maybe, such person.

93.2 Analysis

Death of a person (Individual)

(i) If a person (an individual) who is liable to pay tax dies: -

  (a) In case of continuation of business: the legal representative or the any other person who carries on the business after his death is liable to pay tax, interest, penalty or any other due which is due from the deceased person; or

  (b) In case of discontinuation of business before or after his death: the legal representative is liable to pay the tax, interest, penalty or any other dues to the government, from and to the extent of the estate of the deceased.

(ii) The legal representative or any other person as the case may be is liable to pay the tax, interest or penalty whether-

  (a) It has been determined before his death but has remained unpaid or

  (b) It has been determined after his death[13]

[13] *This is to overcome the Supreme Court decision in Shabina Abraham Vs CCE, 2015 (322) ELT 372 (SC).*

Partition of HUF or AOP

In case of a HUF or AOP property is partitioned between the member or group of members then the liability to pay tax, interest or penalty

— Is on each member or group of members (jointly and severally) who got a portion in that property.

— The member or the group of members is/are liable only upto the time of partition whether such

- Tax, interest and penalty has been determined before partition but has remained unpaid or
- is determined after such partition

Dissolution of firm

In case the firm is dissolved-

— Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty.

— The person who was a partner is liable to pay tax even if it is

- determined before dissolution but not paid or
- determined after dissolution.

— The provision applicable for partnership firm would equally apply for LLP as well.

Termination of Guardianship or Trusteeship

In case the guardian is carrying on the business on behalf of a ward or the trustee who carries the business under the trust on behalf of beneficiary, then on the termination of guardianship or trusteeship,

— The ward or the beneficiary is liable to pay tax, interest or penalty upto the time of such termination.

— The ward or the beneficiary is liable to pay tax, interest or penalty

- determined before the termination of guardianship or trusteeship but not paid or
- determined after such termination

The above provisions are applicable to extent that there is no contrary provision in Insolvency and Bankruptcy Code, 2016. Reference to discussion under para 4 of schedule II would also be relevant in the context of continuity of business and liability to discharge arrears.

93.3 FAQs

Q1. Can a legal representative be made liable for tax dues payable by a deceased person?

Ans. Yes. Legal representative is made liable for the tax dues of the deceased person even if it is determined after death.

Q2. To what extent tax dues of the deceased person could be recoverable from the legal representative?

Ans. (a) In case of continuation of business, the legal representative or any other person who carries on the business after his death is liable to pay tax, interest, penalty or any other due which is due from the deceased person; or

(b) In case of discontinuation of business before or after his death, the legal representative is liable to pay the tax, interest, penalty or any other dues to the government. The liability of the legal representative in case of discontinued business is only to the extent of property or estate received from such deceased person.

Q3. In case of partition of HUF or AOP, what would be the extent of liability of members of the HUF/AOP?

Ans. The member or the group of members is/are liable only upto the time of partition.

Q4. In case of dissolution of a firm, upto which date, the partners would be responsible to pay the tax dues?

Ans. Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty.

93.4 MCQs

Q1. Who is liable to pay tax if the business of an individual is discontinued before his death-

(a) Board of Directors or Manager

(b) Any member of his person who is willing to pay

(c) Legal representative of taxable person

(d) Employee

Ans. (c) Legal representative of taxable person

Q2. The legal representative or any other person of an individual who is dead is liable to pay tax, only if -

(a) The business has been carried on by the legal representative

(b) The business has been carried by the legal representative or any other person

(c) The business has been carried by any other person

(d) None of the above.

Ans. (b) The business has been carried on by the legal representative or any other person

Q3. The dues recoverable under this section includes-

(a) Only Interest

(b) Any dues which are recoverable under this Act

(c) Only tax

(d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

Q4. As per this section, the member or group of members of HUF or AOP is/are liable to pay tax on taxable supplies -

(a) Even after its partition

(b) Upto the time of partition

(c) Both (a) and (b)

(d) None of the above

Ans. (b) Upto the time of partition

Statutory Provisions

94. Liability in other cases

(1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business-

(a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

(b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest and penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable

person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or, to partition.

Explanation - For the purpose of this chapter,

(a) a "limited liability partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008) shall also be considered as a firm.

(b) "court" means the District Court, High Court or Supreme Court.

Related provisions of the Statute

Section or Rule	Description
Section 90	Liability of partners of firm to pay tax

94.1 Introduction

This section discusses the liability of partners of firm or members of AOP or HUF on discontinuation of business.

94.2 Analysis

(i) In case of discontinuance of business, the firm or AOP or HUF, the liability of the firm/AOP/HUF shall be determined (upto the date of discontinuance) as if no such discontinuance had taken place.

(ii) Every partner of such firm or member of such AOP or HUF at the time of discontinuance shall be jointly and severally liable for payment of tax, interest and penalty imposed.

(iii) In case of change in the constitution of the firm or association, the partners and members who existed before reconstitution shall be liable jointly and severally to pay tax, interest or penalty for any period upto the date of reconstitution. This will operate even if the retirement was intimated to the commissioner in terms of section 90.

(iv) Discontinuance includes dissolution of firm or association and partition in case of HUF.

(v) This provision, the way it applies to a partnership firm will apply to an LLP as well.

94.3 FAQs

Q1. In case of discontinuance of business of a firm or AOP or HUF, who would be liable to pay the tax and other dues?

Ans. Every partner of the firm or member of the AOP or HUF at the time of discontinuance shall be jointly and severally liable.

Q2. In case of discontinuance of partnership business to what extent a partner would be liable?

Ans. Every person who was a partner at the time of discontinuance is jointly and severally liable for liability of the discontinued firm towards tax, interest or penalty.

Q3. In case of reconstitution of partnership firm how and to what extent the partner liability is determined?

Ans. Without prejudice to the provisions of section 90, all the partners of the firm prior to the date of reconstitution and after the date of reconstitution shall jointly and severally, be liable to pay tax, interest or penalty due from firm which is reconstituted, for any period before its reconstitution.

94.4 MCQs

Q1. In case of discontinuance of HUF business, the liability would arise till the date of

(a) Discontinuance

(b) Court verdict

(c) As mutually agreed upon by the HUF members

(d) Determination of liability by the Department.

Ans. (a) Discontinuance

Q2. The expression 'firm' would include a _____

(a) Company

(b) LLP

(c) HUF

(d) AOP

Ans. (b) LLP

Chapter 18
Advance Ruling

Sections	Rules
95. Definitions	103. Qualification and appointment of members of the Authority for Advance Ruling
96. Authority for Advance Ruling*	104. Form and manner of application to the Authority for Advance Ruling
97. Application for Advance Ruling	105. Certification of copies of advance rulings pronounced by the Authority
98. Procedure on receipt of application	106. Form and manner of appeal to the Appellate Authority for Advance Ruling
99. Appellate Authority for Advance Ruling**	107. Certification of copies of the advance rulings pronounced by the Appellate Authority
100. Appeal to Appellate Authority	107A. Manual filing and processing
101. Orders of Appellate Authority	
101A. Constitution of National Appellate Authority for Advance Ruling	
101B. Appeal to National Appellate Authority	
101C. Order of National Appellate Authority	
102. Rectification of advance ruling	
103. Applicability of advance ruling	
104. Advance ruling to be void in certain circumstances	
105. Powers of Authority, Appellate Authority and National Appellate Authority	
106. Procedure of Authority, Appellate Authority and National Appellate Authority	
*Section 96 of the State GST Acts	
**Section 99 of the State GST Acts	

Statutory provisions

95. Definitions

In this Chapter, unless the context otherwise requires -

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority [1][or the National Appellate Authority] to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 [2][or of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

(b) "Appellate Authority" means the Appellate Authority for Advance Ruling referred to in section 99;

(c) "applicant" means any person registered or desirous of obtaining registration under this Act;

(d) "application" means an application made to the Authority under sub-section (1) of section 97;

(e) "Authority" means the Authority for Advance Ruling, referred to in section 96;

(f) [3]["National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A].

Related Provisions of the Statute

Section or Rule	Description
Section 2(84)	Definition of 'Person'
Section 97(2)	Questions on which advance ruling can be sought
Section 100	Appeal to the Appellate Authority
Section 101B	Appeal to National Appellate Authority

95.1 Introduction

The GST regime follows the self-assessment basis of taxation wherein the onus is put on the taxpayer to comply with the provisions of the law. Thus, the government has to ensure that there is clarity and certainty in the laws and the implementation of the law is not marred by multiple interpretations. Thus, the mechanism of advance ruling provides the required certainty to the taxpayer by guiding the taxpayers on how the law would apply to them. The implementation of the advance ruling mechanism was first done in India under the Income Tax Act, 1961 and thus laid the foundation for this mechanism in our country.

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[1] *Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.*

[2] *Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.*

[3] *Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.*

The provisions of advance ruling under GST are contained in Chapter XVII in the GST law spanning from section 95 to section 106. Section 95 defines the expressions 'Advance Ruling', 'Applicant', 'Application', 'Authority', 'Appellate Authority' and 'National Appellate Authority', for the purpose of this chapter. The meanings of said words assigned by the definitions have to be applied unless the context otherwise requires.

95.2 Analysis

(i) The expression 'Advance Ruling' means a decision given by the Authority for Advance Ruling (AAR, in short), the Appellate Authority for Advance Ruling (AAAR, in short) and the National Appellate Authority for Advance Ruling (NAAAR, in short) on the questions raised by the Applicant in respect of matters specified in section 97(2) or section 100(1) or section 101C (section 101C is yet to be notified) in relation to the supplies of goods and/or services undertaken by the applicant.

(ii) Such matters or questions could be in relation to supply of goods and/or supply of services being undertaken or proposed to be undertaken by the applicant. The phrase 'being undertaken' is a present continuous tense which refers to supply which is underway. The scope of the advance ruling has been widened by including even questions/clarification pertaining to the activities which are being undertaken by the applicant. However, clarifications pertaining to supplies which have already been completed cannot be sought before the advance ruling authorities.

(iii) In *Re: Chep India Pvt. Ltd., 2022 (62) G.S.T.L. 225 (A.A.R.-GST-T.N.),* the Authority for Advance Ruling denied to answer the questions of the applicant on the ground that even though the questions were covered under Section 97(2) of the CGST Act, the applicant had failed to establish that the questions in fact related to 'Proposed' transactions to be undertaken by them as required under Section 95(a) of the CGST Act as they could not establish that the supply to the concerned persons would be made by the applicant.

(iv) The word "Applicant" refers to any person already registered or one who desires to get registered under the Act. It is not mandatory to have a regular registration at the time of making an application for advance ruling. Hence, the unregistered person can register temporarily on the GST portal by obtaining a Temporary Reference Number (TRN) with basic details like PAN, address, e-mail id, mobile number and bank account details. The unregistered person can apply manually for an advance ruling quoting this TRN.

(v) One can make an application to the Authority under section 97(1) stating the question on which he seeks Advance ruling in relation to the supply of goods/services undertaken or proposed to be undertaken by the applicant. It is to be noted that the question shall be in relation to the outward supplies undertaken/ proposed to be undertaken by the applicant only. The applicant cannot raise questions pertaining to any inward supplies received except on the issues of Input Tax Credit on such inward supplies.

(vi) In *Re: Pico2Femto Semiconductor Services Pvt. Ltd*., *2023 (73) G.S.T.L. 281 (A.A.R.-GST-Kar.)*, the Authority for Advance Ruling denied answering a question about entitlement of input tax credit by the recipient as it was beyond the jurisdiction of the Advance Ruling Authority under Section 95 (a) of the CGST Act.

(vii) In Re: *M/s. EFC Logistics India Pvt. Ltd., 2024 (6) (A.A.R. – Odisha),* the Applicant intends to enter into an agreement with another GTA Service provider who supplies vehicle on rent inclusive of fuel, tool, salary of driver, and other ancillary expense related to vehicle, to the Applicant. The Odisha AAR, in *Order No. 08/ODISHA-AAR/2023-24* held that as per section 95(a), advance ruling is the decision provided by authority or appellate authority in relation to the supply of goods or services being undertaken or proposed to be undertaken by the Applicant. In the instant case, the service of renting of vehicle is not undertaken by the Applicant therefore, no ruling can be made.

(viii) In *Re: Ajit Babubhai Jariwala, 2023 (73) G.S.T.L. 550 (A.A.R.-GST-Guj.),* the Authority for Advance Ruling denied to answer questions sought by an applicant on behalf of his sub-contractor on ground that the applicant was not the supplier of the service in the case wherein the supply was provided by the sub-contractor.

(ix) Thus, an applicant can seek Advance ruling if the following conditions are fulfilled:

  (a) The applicant is either registered under the GST law or is desirous of obtaining registration.

  (b) The matter or question pertains to any issue specified in sub-section (2) of section 97, in relation to any transaction involving the supply of goods or services or both.

  (c) Such a transaction is being undertaken or is proposed to be undertaken by the applicant only. It is important to note that, no advance ruling can be sought on transactions already undertaken in the past.

(x) The word "Authority" refers to the AAR constituted under section 96 of the CGST Act in each State or Union territory.

(xi) The expression "Appellate Authority" refers to the Appellate Authority for Advance Ruling constituted under section 99 in each State or Union territory. Therefore, every State/Union Territory will have its own AAAR.

(xii) The expression "National Appellate Authority" means the National Appellate Authority for Advance ruling referred to in section 101A.

95.3 FAQs

Q1. Can Advance ruling be given orally?

Ans. No. Advance ruling cannot be given orally in view of sections 98(6) and 98(7).

Q2. Can advance ruling be applied after supply of goods and/or services?

Ans. No, as per section 95(a) of the Act, application can be made for advance ruling in relation to the supply of goods and / or services being undertaken by the applicant but not for a supply which has already been effected.

Q3. Who can make an application to AAR?

Ans. An application for Advance ruling can be made by any person defined in section 2(84), either registered or is desirous of obtaining a registration under the GST Law.

Q4. Advance rulings are binding on whom? Can it be binding on the Department?

Ans. Advance rulings given by the AAR is binding on :

a) the applicant in respect of any matter referred to in section 97(2) for Advance ruling.

b) On the concerned officer or the jurisdictional officer in respect of the applicant.

Statutory Provisions

96. Authority for Advance ruling

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Extract of Delhi/ Tamil Nadu - SGST Act, 2017:

***96.* Constitution of Authority for Advance Ruling**

(1) The Government shall, by notification, constitute an Authority to be known as the Delhi/ the Tamil Nadu Authority for Advance Ruling:

Provided that the Government may, on the recommendation of the Council, notify any Authority located in another State to act as the Authority for the State.

(2) The Authority shall consist of-

(i) one member from amongst the officers of Central tax; and

(ii) one member from amongst the officers of State tax,

to be appointed by the Central Government and the State Government respectively.

(3) The qualifications, the method of appointment of the members and the terms and conditions of their services shall be such as may be prescribed.

Extract of the CGST Rules, 2017

103. Qualification and appointment of members of the Authority for Advance Ruling.

[4][The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.]

Related Provisions of the Statute

Section or Rule	Description
Section 95 of CGST Act	Definitions
Rule 103 of CGST Rules	Qualification and appointment of members of the Authority for Advance Ruling

96.1 Introduction

The AAR constituted under the provisions of a State GST Act or UTGST Act shall be deemed to be the AAR in respect of that State or Union territory.

96.2 Analysis

The AAR shall be located in each State/Union Territory constituted under the provisions of SGST Act/ UTGST Act. As per the corresponding section 96 of the respective State GST Acts read with rule 103 of the State GST Rules, the Government shall appoint officers not below the rank of Joint Commissioner as member of the AAR.

The AAR of each State/UT shall consist of one member from amongst the officers of Central tax who will be appointed by the Central Government and one member from amongst the officers of State tax who will be appointed by the State Government. The qualifications, method of appointment of the members and the terms and conditions of their services shall be as may be prescribed.

As per section 96 of the State GST Acts, the State Government may, on the recommendation of the Council, notify any Authority located in another State to act as the Authority for Advance Ruling for the State. Thus, the law allows the Government to notify an AAR of one State/UT to act as AAR of another State/UT also.

It is important to note that the members of the AAR are appointed from among the executive Government officers in tax department, be it the CGST representative or the SGST representative. These officers who decide upon matters relating to taxability of a transaction, liability of the assessee, registration requirements and other matters stated in section 97(2) 'are themselves a creation of the system'. Such is the nature of the constitution of the AAR or AAAR that the very same officers who have interpreted the law in favour of tax collections will

[4] *Substituted w.e.f. 01.07.2017 vide Notification No. 22/2017- CT dated 17.08.2017.*

now sit in judgement on matters of levy, taxability and liability. Hence, before applying for an advance ruling, the applicant must appreciate the fact that the members of the AAR or AAAR cannot question the vires of the provisions of the GST law.

In *JVS Foods Private Limited v. Union of India, 2020 (37) G.S.T.L. J77 (Raj.),* the Rajasthan High Court had issued notice in a petition wherein the constitutional validity of Section 96 of CGST Act and Rule 103 of CGST Rules has been challenged on the ground that the authorities having power of Civil Court are required to have a member from judicial background.

96.3 FAQ

Q1. Where are the office of AAR situated?

Ans. The offices of the AARs are situated in each State/UT. Albeit, some of them are not yet functional due to absence of appointment by the respective Government.

Statutory Provisions

97. Application for advance ruling

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act shall be in respect of,-

(a) classification of any goods or services or both;

(b) applicability of a notification issued under the provisions of this Act;

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Extract of the CGST Rules, 2017

104. Form and manner of application to the Authority for Advance Ruling.

*(1) An application for obtaining an advance ruling under sub-section (1) of section 97 shall be made on the common portal in **FORM GST ARA-01** and shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49.*

(2) The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26.

[5]***[107A. Manual filing and processing.***

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.]

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 98	Procedure on receipt of application
Section 100	Appeal to Appellate Authority
Section 49	Payment of tax, interest, penalty and other amounts
Rule 26	Method of authentication

97.1 Introduction

This section specifies the matters in respect of which an Advance ruling can be sought and prescribes the form and manner in which an application for Advance ruling may be filed. No advance ruling can be sought on matters other than the areas specified in section 97(2).

97.2 Analysis

(i) An applicant who seeks an Advance ruling should make an application online in the prescribed **Form GST ARA-01** together with a fee of Rs. 5,000/- CGST and Rs. 5,000/- SGST stating the question on which such a ruling is sought. The amount of fee shall be deposited in accordance with section 49. It is to be noted that the fee of Rs. 5,000/- CGST and Rs.5,000/- SGST shall not be refunded in any case.

(ii) The application and all the relevant documents accompanying such application should be digitally signed through Digital Signature Certificate (DSC) or e-signature as specified in Rule 26.

(iii) It is advised that the questions or issues in respect of which an advance ruling is sought be simple, direct and specific. The facts brought out in the application should be

[5] *Inserted vide Notification No. 55/2017-CT dated. 15.11.2017.*

germane and pertinent to the issue at hand. Facts which do not necessarily concern the issue at hand should not be mentioned in the application as this might attract unnecessary attention which would not be relevant to the question raised in the application. Although an AAR cannot extend its scope by ruling on matters or issues not sought, it is still advisable that an applicant exercise restraint and caution while placing facts in the application.

(iv) The question raised is limited to the following:

a) Classification of any goods or services or both;

b) Applicability of notification issued under the GST law.

c) Determining the time and value of supply of goods or services or both;

d) Admissibility of input tax credit of tax paid or deemed to have been paid;

e) Determination of liability to pay tax on any goods or services or both;

f) Requirement for registration by an applicant;

g) Whether any particular thing done by the applicant amounts to or results in supply of goods or services or both.

Thus, it is apparent from this section that the Authority will not admit questions or matters which fall outside the purview of the issues stated above. The Advance ruling application will be rejected if the question raised in the application is not covered within the purview of section 97(2) without getting into the merits of the case. It is important to note that an appeal cannot be filed before AAAR against such a rejection as the same is not appealable under section 100 as section 100(1) clearly provides that if the applicant concerned is aggrieved by any Advance ruling pronounced under section 98(4) of the Act, then only the appeal would lie before the AAAR. The applicant can only challenge such rejection by way of judicial review in writ proceedings.

(v) It is interesting to observe that matters relating to determination of "place of supply" are conspicuous by their absence. Place of supply poses a conflict between States as binding ruling in one State (on place of supply) yielding revenue to that State may deny revenue to another State which may be involved in the supply transaction. But place of supply as 'incidental' to other questions like taxability of the supply or zero-rated nature of the supply, are not beyond the scope of matters to be decided by the Authority. This emanates from the fact that the ruling given by the AAR and AAAR will be applicable only within the jurisdiction of the concerned State or Union Territory and not beyond. The Kerala High Court had decided on whether the determination of the issue of place of supply can be the subject matter of advance ruling in the case of *Sutherland Mortgage Services [2020 - Kerala High Court]*. The Hon'ble Court had held that –

"23. In the instant case, it is true that the issue relating to determination of place supply as aforestated is not expressly enumerated in any of the clauses as per clauses (a) to (g) of Sec. 97(2) of the CGST Act, but there cannot be any two arguments that the said issue relating to determination of place of supply, which is one of the crucial issues to be determined as to whether or not it fulfills the definition of place of service, would also come within the ambit of the larger of issue of "determination of liability to pay tax on any goods or services or both" as envisaged in clause (e) of Sec. 97(2) of the CGST Act. The Advance Ruling *Authority has proceeded on a tangent and has missed the said crucial aspect of the matter and has taken a very hyper technical view that it does not have jurisdiction for the simple reason that the said issue is not expressly enumerated in Sec. 97(2) of the Act. This Court has no hesitation to hold that the said view taken by the* Advance Ruling *Authority is legally wrong and faulty and therefore the matter requires interdiction in judicial review in the instant writ proceedings. In that view of the matter, it is ordered that the abovesaid view taken by the* Advance Ruling *Authority is legally wrong and faulty and is liable to be quashed and accordingly declared and ordered.*

However, the AAR in other States in many instances have rejected applications where the subject matter of the application involved determining the 'place of supply'.

(vi) In *Re: Myntra Designs Pvt. Ltd., 2023 (69) G.S.T.L. 197 (App. A.A.R.-GST-Kar.*), the Appellate Authority for Advance Ruling followed the judgment in the case of *Sutherland Mortgage Services (supra)* and observed that the Advance Ruling Authority has jurisdiction to pass a ruling on the issue of place of supply where the determination of place of supply is linked with the liability to pay tax.

(vii) Also, no Advance ruling can be sought on matters such as those relating to -

a) Transitional credits specified in Chapter XX of the CGST Act

b) E-way bill requirements

c) Anti-Profiteering issues

d) Restraining officers from initiating an action/proceeding under the Act

e) Refunds

(viii) In *Re: United Planters Association of Southern India, 2023 (74) G.S.T.L. 110 (A.A.R.-GST-T.N.),* the Authority for Advance Ruling denied answering questions seeking interpretation of GST law with respect to doctrine of mutuality and relationship of applicant association with its members, by stating that interpretation of law was beyond the scope of Section 97(2) of the CGST Act.

(ix) In *Re: Sivanthi Joe Coirs, 2022 (62) G.S.T.L. 363 (A.A.R.-GST-T.N.),* the Authority for Advance Ruling denied answering a question relating to refund of tax. The Applicant had pleaded that the question was admissible as it pertained to applicability of a notification by which the CGST Rules were amended.

(x) Manual filing of an Application for Advance Ruling*:* Although rules 104 and 106 specify filing of an application on the common portal, Rule 107A was introduced to allow manual filing of the same. Accordingly, *Circular No. 25/25/2017-GST dated 21.12.2017* was issued detailing the procedures for manual filing of an application for advance ruling till such time the advance ruling module is made available on the common portal. It is to be noted that though the application shall be filed manually, the fee is required to be deposited online in terms of section 49 of the CGST Act. The applicant is required to download and take a print of the challan and file the application duly signed by the authorised person with the Authority/Appellate Authority for Advance Ruling. The circular allowing manual filing of applications for Advance ruling shall be effective only till such time online module is made available on the common portal. The GST portal provides the advance ruling application functionality. However, authorities in many States require hard copy submission of the application and supporting documents post filing of the appeal online.

97.3 FAQs

Q1. Should the applicant submit individual applications for Advance ruling on various issues?

Ans. No. The applicant can choose to consolidate all the issues in one application for advance ruling. There is no bar in the law that not more than one question can be raised in a single application.

Q2. Should the applicant make an application for Advance ruling under CGST Act, SGST Act and IGST Act separately?

Ans. No. The applicant can file one consolidated application seeking an Advance ruling on all matters irrespective of the GST legislation to which the issue pertains to, before the Advance ruling authority in their State.

Statutory provisions

98. Procedure on receipt of application

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an

applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

Extract of the CGST Rules, 2017

105. Certification of copies of advance rulings pronounced by the Authority.

A copy of the advance ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Ruling.

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 101	Orders of Appellate Authority
Section 116	Appearance by authorised representative
Rule 107A	Manual filing and processing

98.1 Introduction

This section sets out the procedure to be followed by the AAR on receipt of an application for advance ruling by an applicant.

98.2 Analysis

Receipt of Application

(i) On receipt of an application in **Form GST ARA-01**, the AAR shall forward a copy to the concerned officer and, if necessary, direct him to furnish the relevant records. Note that concerned officer is liable to provide 'interpretation' of the tax treatment applicable to the questions raised in the application. AAR is not bound to choose between the two interpretations (of applicant and of concerned officer) but conduct its own inquiry to reach a finding and pass its ruling.

(ii) Such records should be returned as soon as possible to the concerned officer. No specific time limit has been set out for submission of the said records to the AAR.

(iii) The AAR may either accept or reject the application (if found non-maintainable) after considering the application, examining the records, hearing the applicant and the concerned officer or their authorised representatives. However, no application shall be rejected without giving the applicant an opportunity of being heard.

(iv) Any application for Advance ruling involving questions already pending or decided in any proceedings in the case of that applicant under any of the provisions of this Act shall not be admitted. A declaration is required to be made by the applicant at the time of filing the application to this extent. The provision does not define the term 'proceedings' nor does it mention any judicial forum before which the matter, if pending, then advance ruling application shall be rejected. Hence, this is an important point to take note of before embarking upon filing an Advance ruling application. Care should be taken to collect this information from clients in order to avoid rejections after filing. Point to be noted is that the concerned departmental officers of the applicant shall disclose the fact to the AAR in case of any initiation of proceedings against the applicant. Many applications have been rejected by AARs of different States where the question raised was pertaining to eligibility of ITC on inward supplies for construction of immovable property which is to be let out on rent. In the case of *Vikram Traders [2020 (3) TMI 893-Authority for Advance Ruling, Karnataka]*, the application was rejected on the ground that the matter was pending at that time before the Hon'ble Supreme Court in the case of *M/s. Safari Retreats Private Limited and Another Vs. Chief Commissioner of Central Goods & Service Tax & Others [2019 (5) TMI 1278 - Orissa High Court]* and therefore the application was rejected as the matter is subjudice. This rejection is not legally tenable as the provision states that the matter shall be pending/decided in any proceedings in the case of the applicant only. Thus, it is important to note that issues pending or decided in a proceeding in respect of another person will not disentitle the applicant from seeking an Advance ruling on the same issue.

(v) In *Re: Srico Projects Pvt. Ltd., 2023 (74) G.S.T.L. 108 (A.A.R.-GST-Telangana),* the Authority for Advance Ruling declared certain orders *void ab initio* as the applicant had suppressed the fact that the questions raised by the applicant were already under investigation by the DGGI in contravention of Section 98 of the CGST Act.

(vi) In Re: *Tamil Nadu Medical Council., [2024 (A.A.R.-TN)],* the Authority for Advance Ruling rejected an application for advance ruling filed on 30.12.2022 under the first proviso to Section 98(2) of the CGST/TNGST Acts, 2017, as proceedings on the same issue were already pending. Summons issued by DGGI before the application date (30.11.2022 and 20.12.2022) initiated proceedings related to the matter. The authority for advance ruling held that the term 'proceedings' under the CGST Act included investigations and inquiries preceding a show-cause notice.

(vii) In Re: *M/s. Srinivas Plywoods [2024 (A.A.R. – Kar)],* the Authority rejected the application under Section 98(2) of the CGST Act, 2017, on the grounds that the question regarding RCM on freight inward was inadmissible due to ongoing audit proceedings, and the question on setting off input and output tax is outside the jurisdiction of the Authority.

(viii) In Re: *Aks Expo Chem Pvt. Ltd., [2024 195 (A.A.R. – West Bengal)],* the Authority rejected the application under Section 98(2) of the CGST Act, 2017, on the grounds that the applicant had selected clause (b) of sub-section (2) of Section 97 but failed to reference a relevant notification as required. Hence, the Authority held that the question raised is outside the purview of Section 97(2) of the CGST Act, 2017.

(ix) Where the application is finally rejected, the reasons for such rejection shall be stated in the order.

(x) A copy of every order admitting or rejecting the application made shall be sent to the applicant and to the concerned officer.

Pronouncement of Advance Ruling

Where the application is admitted, the AAR shall proceed as follows:

— Examine such further material as may be placed before it by the applicant or obtained by the AAR.

— Provide opportunity of being heard to the applicant or his authorized representative as well as to the concerned officer or his authorized representative.

— Pronounce its Advance ruling in writing on the question(s) specified in the application within 90 days from the date of receipt of application. However, the currently the advance rulings are being pronounced beyond a period of 90 days. In the case of *Vaishanavi Splendour Homeowners Welfare Association (Order No. KAR/AAAR-10//2019-20 dated 21.10.2020) [2020] 114 taxmann.com 200 (AAAR-KARNATAKA)]*, the advance ruling was pronounced after a period of 90 days. The Karnataka AAAR held that the even though the ruling is pronounced after the stipulated time, it does not render the ruling null or void or unsustainable. An order passed without jurisdiction can be considered as null or void. However, an order suffering from illegality or irregularity cannot be termed inexecutable.

Reference to Appellate Authority

(i) Where the members of the AAR differ on any question on which the Advance ruling is sought, they shall state the point(s) of difference and refer it to AAAR for final decision. The time period within which a reference can be made to the AAAR is not prescribed in the Act. There is no fee that is required to be paid to the Appellate Authority in this case.

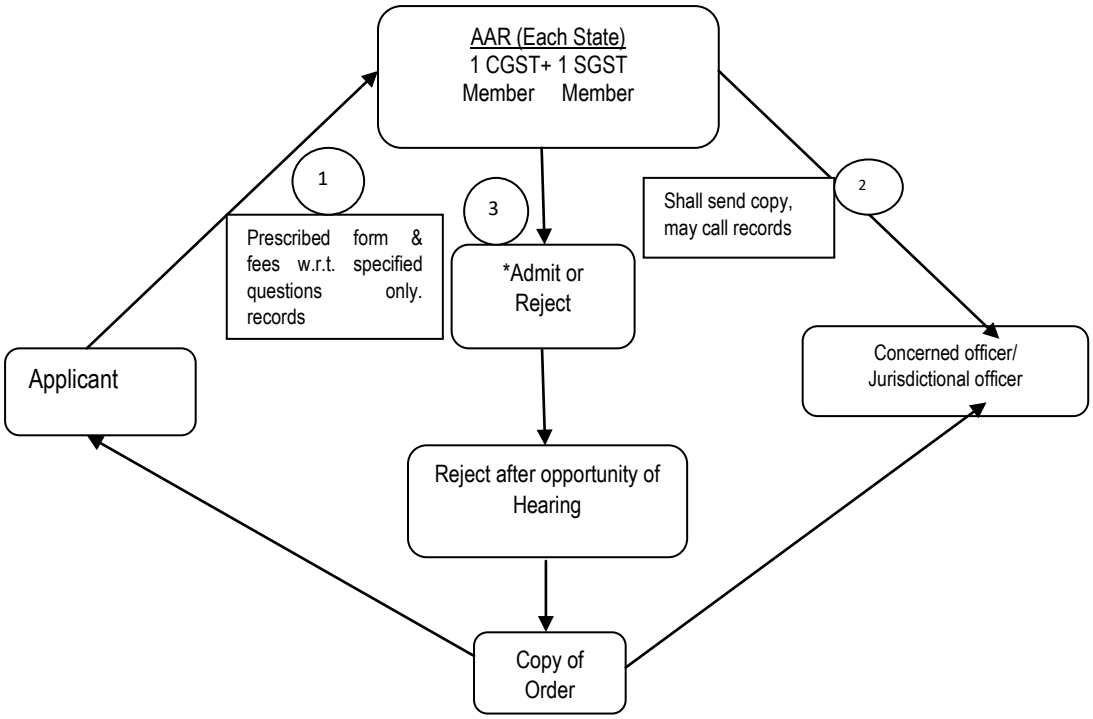
(ii) AAAR to whom a reference is made is required to pronounce the ruling within ninety days of such reference.

Communication of Advance Ruling pronounced.

A copy of the advance ruling pronounced by the concerned AAR, duly signed by the members and certified, shall be sent to the applicant, concerned officer and jurisdictional officer after pronouncement. A copy of the Advance ruling shall be certified to be a true copy of its original by any member of the AAR.

The analysis of above provision in a pictorial form is summarised as follows:

Application for Advance ruling – Section 98 & 97



* Not to admit if already decided or pending under any provisions of the Act or questions not covered within scope of section 97(2).

98.3 FAQs

Q1. When can the AAR reject the application for advance ruling?

Ans. AAR shall not admit the application where the issue raised is already pending OR decided in any proceedings in the case of an applicant under any of the provisions of this Act OR is not in relation to the issues prescribed under section 97(2) of the CGST Act.

Q2. Can an application be rejected without providing the applicant an opportunity of being heard?

Ans. No. Before rejecting the application, the AAR is bound to provide the applicant with an opportunity of being heard.

Q3. Is it necessary to specify reasons for rejecting an application in the order of the AAR?

Ans. Yes. Where the application is rejected, reasons for such rejection shall be given in the order.

Q4. When should a reference be made to AAAR?

Ans. A reference shall be made to AAAR stating the point of differences, when the members of the Authority differ on any question on which advance ruling is sought.

Q5. Can an appeal be filed against applications rejected by the AAR?

Ans. As per section 100(1), an appeal can be filed against an advance ruling pronounced under section 98(4) only. Rejection of application is done under section 98(2) and hence an appeal cannot be filed against applications that are rejected.

98.4 MCQs

Q1. On receipt of an application for Advance ruling, AAR shall:

(a) fix a date of hearing

(b) forward a copy of the same to concerned officers

(c) None of the above

(d) Both (a) and (b)

Ans. (b) forward a copy of the same to concerned officers.

Q2. AAR shall refuse to admit the application if the issue raised in the application is already pending in the applicant's own case before:

(a) the Appellate Authority

(b) the Appellate Tribunal

(c) any Court

(d) All the above

Ans. (d) All the above

Q3. The AAR shall pronounce its advance ruling:

(a) Without examining further materials placed before it by the applicant

(b) After examining further materials placed before it by the applicant

(c) Without providing the applicant or his AR any opportunity of being heard

(d) After providing the applicant or his AR any opportunity of being heard

(e) (b) & (d) both

Ans. (e) (b) & (d) both

Q4. The AAR should pronounce the ruling within:

(a) 30 days from the date of receipt of application

(b) 90 days from the date of receipt of application

(c) 60 days from the date of receipt of application

(d) 45 days. from the date of receipt of application

Ans. (b) 90 days from the date of receipt of application

Q5. A copy of the Advance Ruling signed and certified by the members shall be sent to:

(a) Applicant

(b) Concerned officer

(c) Jurisdictional officer

(d) All the above

Ans. (d) All the above

Statutory provisions

99. Appellate Authority for Advance Ruling

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

Extract of Delhi/ Tamil Nadu -SGST Act, 2017

99. Constitution of Appellate Authority for Advance Ruling

The Government shall, by notification, constitute an Authority to be known as Delhi /the Tamil Nadu Appellate Authority for Advance Ruling for Goods and Services Tax for hearing

appeals against the advance ruling pronounced by the Advance Ruling Authority consisting of –

(i) the Chief Commissioner of Central tax as designated by the Board; and

(ii) the Commissioner of State tax:

Provided that the Government may, on the recommendations of the Council, notify any Appellate Authority located in another State or Union territory to act as the Appellate Authority for the State.

Related Provisions of the Statute

Section or Rule	Description
Section 95 of SGST Act	Definitions
Section 99 of SGST Act	Constitution of Appellate Authority for Advance Ruling

99.1 Introduction

The Appellate Authority for Advance Ruling shall be constituted in each State/UT. The State Government may, on the recommendations of the Council, notify any Appellate Authority located in another State or Union territory to act as AAAR for the State.

99.2 Analysis

AAAR constituted in each State/UT shall be deemed to be AAAR in respect of that State/UT which will entertain appeals against any advance ruling that is passed by the AAR of that State/UT. However, similar to section 96 in respect of AAR, a State Government may, on the recommendations of the Council, notify any Appellate Authority located in another State/UT to act as AAAR for the State.

AAAR shall consist of members representing the Central GST and the State GST. The Chief Commissioner of Central tax as designated by the Board and the Commissioner of State tax shall constitute AAAR of a State.

Statutory provisions

100. Appeal to Appellate Authority

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

Extract of the CGST Rules, 2017

106. Form and manner of appeal to the Appellate Authority for Advance Ruling.

*(1) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by an applicant on the common portal in **FORM GST ARA-02** and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.*

*(2) An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by the concerned officer or the jurisdictional officer referred to in section 100 on the common portal in **FORM GST ARA-03** and no fee shall be payable by the said officer for filing the appeal.*

(3) The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all the relevant documents accompanying such appeal shall be signed, -

(a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and

(b) in the case of an applicant, in the manner specified in rule 26.

*[6]**[107A. Manual filing and processing.***

*Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.**]***

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 97	Application for Advance Ruling

[6] *Inserted vide Notification No. 55/2017-CT dated 15.11.2017*

Section 99	Appellate Authority for Advance Ruling
Section 49	Payment of tax, interest, penalty and other amounts
Rule 26	Method of authentication

100.1 Introduction

This section deals with the procedure to be followed for filing of an appeal before the AAAR against the ruling of the Authority under section 98(4).

100.2 Analysis

(i) An appeal can be filed by the concerned officer or jurisdictional officer or the applicant, who is aggrieved by the ruling.

(ii) Application may also be referred by AAR (when they are not in agreement *inter se*) to seek resolution by AAAR.

(iii) The appeal should be filed within 30 days from the date of receipt of the ruling. This period can be further extended for another 30 days, if there is sufficient cause for not filing the appeal within the first 30 days.

(iv) In *Indian Institute of Corporate Affairs v. Delhi Appellate Authority for Advance Ruling, 2023 (74) G.S.T.L. 293 (Del.),* the High Court of Delhi dismissed a writ petition on the basis that the Petitioner had not filed the appeal within 30 days from the date when they became aware of the constitution of the Appellate Authority. Further, proviso to Section 100(2) of the CGST Act only allowed for extension of time to file appeal by 30 days. Accordingly, since appeal was filed beyond a delay of 60 days, the Appellate Authority did not have the power to entertain appeal.

(v) The appeal shall be filed by the aggrieved applicant in **Form GST ARA-02** along with a fee of Rs. 10,000/- to be paid under the CGST Act and Rs. 10,000/- under the respective SGST Act. The payment has to be made online by debiting the electronic cash ledger only.

(vi) An appeal preferred by the concerned officer or the jurisdictional officer shall be in the prescribed **Form GST ARA-03** without any fee and shall be signed by an officer authorized in writing by such officer.

(vii) The procedure for manual filing has been detailed in *Circular No. 25/25/2017-GST dated 21.12.2017*.

100.3 FAQs

Q1. Who can file an appeal before AAAR?

Ans. The concerned officer or jurisdictional officer or the applicant may file an appeal before AAAR, if he is aggrieved by the Advance ruling pronounced by the Authority under section 98(4).

Q2. What is the time limit for filing an appeal before AAAR?

Ans. The time limit for filing an appeal before AAAR is 30 days from the date of communication of the Advance ruling to the aggrieved party. This time can be further extended by another 30 days if sufficient cause is shown for not filing the appeal within the first 30 days.

Statutory provisions

101. Orders of Appellate Authority

(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer/the jurisdictional officer and to the Authority after such pronouncement.

Extract of the CGST Rules, 2017

107. Certification of copies of the advance rulings pronounced by the Appellate Authority.

A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to-

(a) the applicant and the appellant;

(b) the concerned officer of central tax and State or Union territory tax;

(c) the jurisdictional officer of central tax and State or Union territory tax; and

(d) the Authority,

in accordance with the provisions of sub-section (4) of section 101 of the Act.

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 97	Application for Advance Ruling
Section 99	Appellate Authority for Advance Ruling
Section 49	Payment of tax, interest, penalty and other amounts
Rule 26	Method of authentication

101.1 Introduction

This section prescribes the procedure to be followed by AAAR where an appeal has been preferred against an advance ruling pronounced by the AAR under section 98(4) or a reference has been made to it by the AAR under section 98(5).

101.2 Analysis

(i) AAAR must afford a reasonable opportunity of being heard to the parties before passing the order in which it may choose to either:

  (a) Confirm the Advance Ruling passed by the AAR;

  (b) Modify the Advance Ruling appealed against; or

  (c) Pass such orders as it may deem fit.

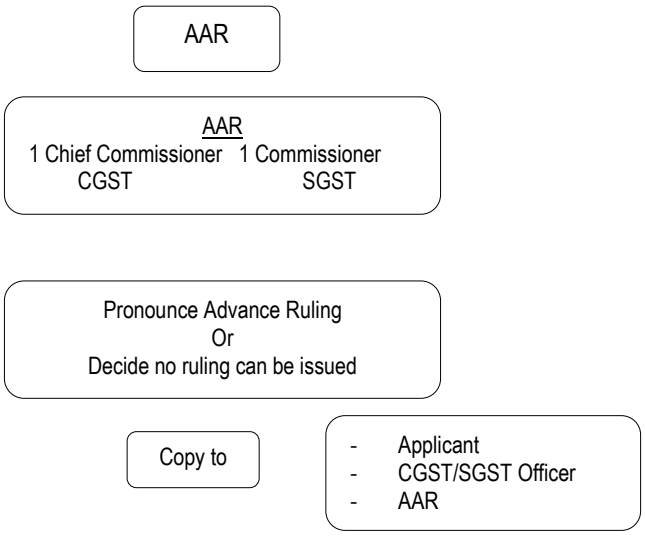
(ii) The order should be passed within 90 days from the date of filing appeal or date of reference by the AAR.

(iii) If there is a difference of opinion between members of the AAAR on the question covered under the appeal, then it would be considered that no Advance ruling can be issued in respect of that matter on which no consensus was reached by the members. Thus, all matters or questions for which an Advance ruling has been sought will not be deemed to be matters against which no Advance ruling can be passed if AAAR has reached a consensus on other matters or questions raised therein.

(iv) When there is a difference in opinion between the members of the AAAR, then the provision states that no ruling will be pronounced by them. However, the appellant can file an appeal before the NAAAR as per section 101B.

(v) In *Re: Amneal Pharmaceuticals Pvt. Ltd., 2022 (67) G.S.T.L. 483 (App. A.A.R.- GST-Guj.),* the Appellate Authority for Advance Ruling did not pass any ruling in terms of Section 101(3) of the CGST Act since the members of the appellate authority differed in their opinions with respect to leviebility of GST on payment of notice pay by employee to employer in lieu of notice period. Similarly, in *Re: Unique Aqua Systems, 2022 (56) G.S.T.L. 201 (App. A.A.R.-GST-T.N.*), no ruling was issued under Section 101(3) of the CGST Act because of the divergence of opinion between both the members.

Appellate Authority for Advance Ruling – Sections 100 and 101



101.3 Issues and Concerns

(i) Is AAAR empowered to only decide on such matters contained in the advance ruling against which the appellant is aggrieved or can the AAAR review the entire impugned advance ruling against which an appeal has been preferred?

(ii) Where the advance ruling has been issued by the AAR under section 98(4) and the same has been the subject matter of an appeal before AAAR, what is the status of the original ruling during the interim period until the appeal has reached finality? Would the appellants and other parties to the Advance ruling be obliged to conform to the advance ruling during the interim period?

101.4 FAQs

Q1. What is the time limit for passing of an order by AAAR?

Ans. The time limit for passing of an order by AAAR is 90 days from the date of filing of appeal.

Q2. Under what circumstances will it be deemed that no advance ruling can be issued in respect of the question covered under the appeal?

Ans. Where the members of AAAR differ on any point or points of the question referred to them in appeal under section 101(3), then it shall be deemed that no advance ruling can be issued in respect of the question covered under the appeal.

Q3. Can the ruling by AAAR be challenged in a higher Court of law?

Ans. The CGST/SGST Act clearly states that the advance ruling shall be binding on the applicant in respect of any matter on which the advance ruling has been sought and as such it does not provide for any appeal against the ruling(s) of AAAR. Thus, no further

appeals lie and the ruling shall be binding on the applicant as well as the jurisdictional officer in respect of applicant. However, Writ Jurisdiction may lie before the Hon'ble High Court or the Supreme Court.

Statutory Provision

[7][101A. Constitution of National Appellate Authority for Advance Ruling.

(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B.

(2) The National Appellate Authority shall consist of—

(i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;

(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.

(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

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[7] *Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.*

(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

(6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.

(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.

(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.

(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12).

(14) Subject to the provisions of Article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.]

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 101B	Appeal to National Appellate Authority
Section 101C	Order of National Appellate Authority
Rule 107A	Manual filing and processing

101A.1 Introduction

This section provides for Constitution of NAAAR. Each State has separate Appellate Authority which pronounces advance ruling sought by the applicants. Many rulings of different States have contradictory ruling due to which a necessity of a Central Appellate Authority was felt. This authority is constituted for addressing the conflicting decisions of different Appellate Authorities. However, these provisions have not yet been notified.

101A.2 Analysis

Constitution of NAAAR

The NAAAR shall consist of—

(i) The President, who has been a Judge of the Supreme Court or is or has been the Chief

Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

(ii) A Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least 15 years of service in Group A;

(iii) A Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least 3 years of experience in the administration of an existing law or the SGST Act or in the field of finance and taxation.

Appointment

- The President of the NAAAR shall be appointed by the Government after consultation with the Chief Justice of India or his nominee.
- The Technical Member (Centre) and Technical Member (State) of the NAAAR shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.
- No appointment of the Members of the NAAAR shall be invalid merely by the reason of any vacancy or defect in the Constitution of the Selection Committee.
- Before appointing any person as the President or Members of the NAAAR, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

Salary and Allowances

The salary, allowances and other terms and conditions of service of the President and the Members of the NAAAR shall be such as may be prescribed.

Tenure

The President of the NAAAR shall hold office for a term of 3 years from the date on which he enters upon his office, or until he attains the age of 70 years, whichever is earlier and shall also be eligible for reappointment.

The Technical Member (Centre) or Technical Member (State) of the NAAAR shall hold office for a term of 5 years from the date on which he enters upon his office, or until he attains the age of 65 years, whichever is earlier and shall also be eligible for reappointment.

Resignation

The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office. Provided that the President or Member shall continue to

hold office until the expiry of 3 months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

Removal

The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

However, the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

Further, the President and Technical Members of the NAAAR shall not be removed from their office except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

Restrictions

Subject to the provisions of Article 220 of the Constitution, the President or Members of the NAAAR, on ceasing to hold their office, shall not be eligible to appear, act or plead before the NAAAR where he was the President or, as the case may be, a Member.

101A.3 FAQs

Q1. Who shall constitute the NAAAR?

Ans. (i) The President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than 5 years;

(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least 15 years of service in Group A;

(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least 3 years of experience in the administration of an existing law or the SGST Act or in the field of finance and taxation.

AAR shall not admit the application where the issue raised is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act or is not in relation to the issues prescribed under section 97(2) of the CGST Act.

Q2. Who shall appoint the President and the members of the NAAAR?

Ans. The President of the NAAAR shall be appointed by the Government after consultation with the Chief Justice of India or his nominee.

The Technical Member (Centre) and Technical Member (State) of the NAAAR shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

Q3. What is the tenure of holding office by the President and the Member of the NAAAR?

Ans. The President of the NAAAR shall hold office for a term of 3 years from the date on which he enters upon his office, or until he attains the age of 70 years, whichever is earlier and shall also be eligible for reappointment.

The Technical Member (Centre) or Technical Member (State) of the NAAAR shall hold office for a term of 5 years from the date on which he enters upon his office, or until he attains the age of 65 years, whichever is earlier and shall also be eligible for reappointment.

Q4. When can the President and the Member of the NAAAR be removed from holding office?

Ans. The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

However, the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

Further, such removal shall not take place, except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

101A.4 MCQs

Q1. The President of the NAAAR shall be:

(a) Judge of the High Court

(b) Judge of the Supreme Court

(c) Chief Justice of India

(d) Retired Judge of High Court

Ans. (b) Judge of the Supreme Court

Q2. The Members of the NAAAR shall hold office for a term of:

(a) five years from the date on which he enters upon his office

(b) seven years from the date on which he enters upon his office

(c) four years from the date on which he enters upon his office

(d) one year from the date on which he enters upon his office

Ans. (a) five years from the date on which he enters upon his office

Q3. The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who:

(a) has been convicted for a period of continuous seven years.

(b) Is medically unfit.

(c) has been adjudged an insolvent

(d) All of the above

Ans. (c) has been adjudged an insolvent

Statutory Provision

[8][101B. Appeal to National Appellate Authority

(1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such Advance Ruling, may prefer an appeal to National Appellate Authority:

Provided that the officer shall be from the States in which such Advance Rulings have been given.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers:

Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:

Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.

Explanation. — For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.]

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 101A	Constitution of National Appellate Authority for Advance Ruling
Section 101C	Order of National Appellate Authority
Rule 107A	Manual filing and processing

[8] *Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.*

101B.1 Introduction

This section prescribes the procedure to be followed where in respect of the questions referred to sub-section (2) of section 97, two or more conflicting Advance rulings are given by Appellate Authorities of two or more States or Union Territories or both under sub section (1) or sub-section (3) of section 101, any officer authorised by Commissioner or Applicant, may prefer an appeal to NAAAR. Hence, for larger part of the rulings obtained, the decision of the AAAR is final and binding as only conflicting rulings can be appealed against by the taxpayer who has received such rulings.

101B.2 Analysis

(i) Where questions referred to in sub-section (2) of section 97 conflicting advance ruling are given by the Appellate Authorities of two or more States or Union Territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by Commissioner or Applicant being distinct person, may prefer an appeal to NAAAR. The officer mentioned above shall be from the respective States in which such advance ruling has been sought. It is to be noted that only an applicant, being a distinct person (section 25) who is aggrieved by the ruling can prefer an appeal before the NAAAR. E.g.: Head office in Chennai has received a ruling from Tamil Nadu AAAR and the branch office in Bengaluru has received a contradictory ruling from the Karnataka AAAR. The appeal can be preferred only by such persons as the Head office and Branch office in different States of the same entity are considered as distinct persons under the GST law.

(ii) The appeal shall be filed within 30 days from the date on which the ruling sought to be appealed against is communicated to the applicants and concerned officers. The officer authorised by the Commissioner can file an appeal within a period of 90 days from the date of communication.

(iii) The above period can be further extended for another 30 days, if there is sufficient cause for not filing the appeal within the first 30/90 days.

(iv) The appeal above shall be filed in such form, accompanied by such fee and verified in such manner as may be prescribed.

(v) Currently, NAAAR is not yet appointed to take office and discharge functions. Pending the same, judicial review is the alternate remedy where conflict discussed in section 101A arises adverse to Applicant.

101B.3 FAQs

Q1. When can an appeal be preferred to NAAAR?

Ans. In case, conflicting rulings are given by the Appellate Authorities of two or more States or Union Territories or both under section 101(1) or (3), any office authorised by the Commissioner or an Applicant, being distinct person aggrieved by such advance rulings, may prefer an appeal to NAAAR.

Q2. What is the time period for filing appeal by the applicant?

Ans. Appeal shall be filed within 30 days from the date on which the ruling sought to be appealed against is communicated to the applicant, concerned officers and jurisdictional officers.

101B.4 MCQ

Q1. What is the time limit for filing appeal for officer authorised by the Commissioner?

(a) 30 days from the date of the order

(b) 90 days from the date of the order

(c) 90 days from the date of communication of the order

(d) None of the above

Ans. 90 days from the date of communication of the order

Statutory provision

[9][101C. Order of National Appellate Authority

(1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.

(2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.

(3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.

(4) A copy of the Advance Ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.]

[9] *Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.*

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 101A	Constitution of National Appellate Authority for Advance Ruling
Section 101B	Appeal to National Appellate Authority
Rule 107A	Manual filing and processing

101C.1 Introduction

This section pertains to the orders by NAAAR.

101C.2 Analysis

(i) The NAAAR must afford a reasonable opportunity of being heard to the parties before passing the order in which it may choose to either:

  (a) Confirm the Advance Ruling passed by the AAAR;

  (b) Modify the Advance Ruling appealed against;

  (c) Pass such orders as it may deem fit.

(ii) The NAAAR has to consider the viewpoints of the Principal Commissioners/ Commissioners of Central tax and all the State tax/ Union Territory before pronouncing a ruling on these appeals. Thus, an arduous task has been placed on the NAAAR of hearing all the officials of the Department as well as the applicant in order to pronounce a ruling.

(iii) If the members of NAAAR differ in opinion at any point it shall be decided according to the opinion of the majority.

(iv) The order should be passed within 90 days from the date of filing appeal under section 101B.

(v) The order should be duly signed by the members of the National Appellate Authority and certified in such manner as may be prescribed. It is interesting to see the overriding effect being allowed by Parliament in respect of the conflicting rulings (by AAR or even AAAR covered) of any State.

101C.3 MCQs

1. What if, the members of NAAAR differ in opinion on any point, then it shall be decided?

  (a) as per opinion of majority

  (b) as per opinion of president

  (c) No opinion shall be given

(d) None of the above

Ans. (a) as per opinion of majority

2. When shall the order of NAAAR be passed?

(a) 90 days from filing appeal

(b) 120 days from filing appeal

(c) 60 days from filing appeal

(d) None of the above

Ans. (a) 90 days from filing appeal

Statutory provisions

102. Rectification of advance ruling

The Authority or the Appellate Authority [10][or the National Appellate Authority] may amend any order passed by it under section 98 or section 101 [11][or section 101C, respectively*] so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority [10][or the National Appellate Authority] on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant ~~or the appellant~~ [12][appellant, the Authority or the Appellate Authority] within a period of six months from the date of the order:*

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 98	Procedure on receipt of application
Section 101	Orders of Appellate Authority

102.1 Introduction

This section deals with the rectification of an error in the advance ruling, which is apparent on the face of the record, the time limit within which it may be rectified and the procedures to be followed in respect of the same.

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[10] Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.

[11] Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.

[12] Substituted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.

102.2 Analysis

The rectification may be made by the AAR, AAAR or NAAAR within six months from the date of the order and shall not result in a substantial amendment to the order being rectified. It is not clear from the language of section 102, as to whether the error has to be noticed within six months or the amendment has to be made within six months. The rectification shall not arise on account of any interpretational issues or change in views and opinions of the members of the AAR, AAAR and NAAAR.

In the proviso to this section, it is mentioned that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

The AAR, AAAR or NAAAR may amend the order to rectify any mistake apparent from records, if such mistake:

(a) Is noticed by it on its own accord, or

(b) Is brought to its notice by the concerned or the jurisdictional officer or the applicant or the appellant the AAR or the AAAR.

102.3 FAQs

Q1. When can an advance ruling order be rectified?

Ans. An advance ruling may be amended by the AAR or the AAAR or the NAAAR as the case may be, with a view to rectify any mistake apparent from the record, which:

(a) is noticed by the AAR, AAAR or NAAAR on its own accord, or

(b) is brought to its notice by the concerned officer or the jurisdictional officer or the applicant or the appellant or the AAR or the AAAR.

Q2. Under what circumstances is a notice required to be issued to the applicant or appellant, as the case may be, before rectification of an advance ruling order?

Ans. Before rectification of an advance ruling order, a notice is required to be issued to the applicant or appellant, as the case may be, to provide him a reasonable opportunity of being heard, if such rectification has the effect of:

(i) enhancing the tax liability or

(ii) reducing the amount of admissible input tax credit.

102.4 MCQs

Q1. Rectification of order can be done under the following circumstances:

(a) to do justice

(b) when there is mistake apparent on record

(c) if it is in the interest of revenue

(d) none of the above.

Ans. (b) when there is mistake apparent on record.

Q2. What is the time limit to rectify the order?

(a) Three months from the date of the order

(b) Six months from the date of the order

(c) Six months from the date of communication of the order

(d) None of the above

Ans. (b) Six months from the date of the order

Statutory Provisions

103. Applicability of advance ruling

(1) The advance ruling pronounced by the Authority or, the Appellate Authority under this Chapter shall be binding only -

(a) on the applicant who had sought it in respect of any matter referred to in sub section (2) of section 97 for advance ruling;

(b) on the concerned officer or jurisdictional officer in respect of the applicant.

[13][(1A) The Advance Ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—

(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961);

(b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961(43 of 1961).]

(2) The advance ruling referred to in sub-section (1) [14][and sub-section (1A)] shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Related Provisions of the Statute:

Section or Rule	Description
Section 95	Definitions
Section 97	Application for advance ruling

[13] Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.

[14] Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.

103.1 Introduction

This provision specifies the persons to whom the advance ruling will apply and the period for which the advance ruling shall stay in effect. Considering the fact that the ruling is binding and no recourse is available against the decision of the AAAR, implications of the ruling should be carefully taken into consideration.

103.2 Analysis

(i) The advance ruling pronounced by the Authority under this chapter shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. It is important to note the advance ruling is GSTIN specific. That is to say, the advance ruling obtained by an applicant would not be applicable to other distinct persons of such applicant. As such, it may be advisable to make the application for advance ruling by a distinct person, other than the distinct person who is desirous of undertaking such activity because the person making the application shall be bound by the advance ruling and not the other distinct person. However, advance ruling pronounced by NAAAR shall be binding on all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.

(ii) As the AAR and the AAAR have been instituted under the respective State / Union Territory Act and not the Central Act, the ruling given by the AAR and AAAR will be applicable only within the jurisdiction of the concerned State or Union Territory. Thus, an advance ruling in case of an applicant in Kerala cannot be made applicable to another division of the same company located in Karnataka. This has the potential to create a difficult situation where the jurisdictional officer of the division located in Karnataka may choose not to abide by the Advance Ruling issued by the Kerala AAR to another division of the same company in Karnataka. Similarly, a situation may also arise wherein the AAR in different States may conclude differently in respect of the same issue. Since the advance ruling is binding on the concerned officer or the jurisdictional officer only in respect of the applicant, there is no assurance that the same officers may apply the interpretation flowing from the jurisdictional AAR in the same or different manner with respect to another registered person in the State. But there is no reason to be anxious as the aim of tax administration is ensure stability in the law and not create instability by deliberately misapplying interpretations on AARs.

(iii) Therefore, an applicant/appellant does not have an option but to abide by the advance ruling that he had applied for.

(iv) The advance ruling shall be binding on the said person/authority unless there is a change in law or facts or circumstances, on the basis of which the advance ruling has been pronounced. When any change occurs in such laws, facts or circumstances, the advance ruling shall no longer remain binding on such person.

(v) Although an advance ruling may not be binding on persons other than the applicant or the appellant, it does throw light on the manner in which the law is being understood

and interpreted. Other assessees should carefully draw inferences from the advance rulings.

(vi) In *Re: Madhya Pradesh Power Generating Company Ltd., 2022 (60) G.S.T.L. 257 (A.A.R.-GST-M.P.),* the Authority for Advance Ruling observed that the precedential value of an Advance Ruling is NIL. It was observed that an Advance Ruling may have persuasive value but cannot be a binding precedent on account of its limited applicability by virtue of Section 103 of the CGST Act.

(vii) The above provision which seeks to bind only the applicant to the advance ruling could be misused by which applications for advance rulings are filed through a proxy carrying on business with the same/similar business model or issues. This helps the taxpayer gauge the interpretation of the revenue officers without having to be bound by the ruling.

(viii) Key to securing accurate ruling, is to present the facts accurately and ask the right questions. The understanding about the business seems to cloud taxpayer's mind so much that facts required to be appreciated by Authority are inaccurately presented. Care must be taken to avoid incomplete or inaccurate facts. Questions must be simply put instead of circuitous case study approach with 'if-then' alternatives.

(ix) Thus, it is important for an applicant to carefully consider before seeking an Advance Ruling however attractive a compelling the taxpayer's interpretation may seem to be. Given that section 103 states that an advance ruling shall have a binding effect on the applicant and the officers in respect of the applicant, the applicant should analyse the impact of an adverse ruling.

103.3 Issues and Concerns

(i) An advance ruling would be in effect only till such time that the law, facts of the case or circumstances on which the original advance ruling was based, remains unchanged. One has to consider if circulars issued by the CBIC subsequent to an advance ruling can be considered to be a change in law, as may be contended by the proper officers. Circulars do not have any legal authority and are binding only on the Department as such issue of circulars cannot be termed as change in law. Further, it also remains to be analyzed, if the judgements of the High Court/ Supreme Court passed after receiving a ruling from the AAR/AAAR which are contrary to the rulings obtained can be considered as a 'change in law' and thus the applicant is not bound to follow the ruling.

(ii) Care should be taken while implementing the decision of the AAR/AAAR/NAAAR. If the law, facts and circumstances have been the same since the inception of the GST law, then there is a probability that demands can be raised for the past periods for applying the law differently in the past. In other words, the advance ruling decisions are considered to be retrospectively applicable and not prospectively. E.g.: An AR was filed seeking clarification on the tax rate applicable to a particular supply of goods. These

goods have been supplied in the past too, say @ 12%. The tax rate decided by the AAR is 18%. The applicant runs the risk of facing demand for the period prior to making the application since the product and the provisions of the law were the same for the past periods too. Hence, it is important to weigh this risk of litigation for the past periods before filing an application for advance ruling.

103.4 FAQs

Q1. Is the advance ruling pronounced by the AAR or the AAAR binding on other assessee?

Ans. The advance ruling pronounced by the AAR or the AAAR shall be binding only -

(a) on the applicant who had sought it in respect of any matter referred to section 97(2);

(b) on the concerned officer or jurisdictional officer in respect of the applicant.

Q2. Are the tax authorities bound by the advance ruling?

Ans. Only the jurisdictional officer/concerned officer, in respect of applicant who has sought advance ruling, are bound by the advance ruling.

Statutory provisions

104. Advance Ruling to be void in certain circumstances

(1) Where the Authority or the Appellate Authority [15][or the National Appellate Authority] finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 [16][or under section 101C] has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation. - The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74] [17][or sub-sections (2) and (7) of Section 74A].

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

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[15] Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.

[16] Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.

[17] Inserted vide Section 140 of the Finance (No. 2) Act, 2024 dated 16.08.2024 w.e.f. 01.11.2024.

Related Provisions of the Statute

Section or Rule	Description
Section 98	Procedure on receipt of application
Section 101	Orders of Appellate Authority
Section 73	Determination of tax, pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts
Section 74	Determination of tax, pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts
Section 74A	Determination of not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward

104.1 Introduction

It states the circumstances under which the ruling would be considered as void *ab initio* and the resultant impact.

104.2 Analysis

(i) Where the Authorities (AAR, AAAR or NAAAR, as the case may be) subsequently discover that an Advance ruling has been obtained by the applicant or appellant fraudulently or by way of suppression of material facts or misrepresentation of facts, the Authorities are empowered to declare such a ruling to be void *ab initio*.

(ii) The above would result in all the provisions of the Act becoming applicable to the applicant as if such advance ruling had never been made.

(iii) However, no such order can be passed by the AAR, AAAR and NAAAR without giving the applicant/ the appellant an opportunity of being heard. A copy of such order, once passed, shall be sent to the applicant, appellant, AAR, AAAR, NAAAR and the concerned/ jurisdictional officer.

(iv) The period beginning with the date of advance ruling and ending with the date of order declaring the advance ruling to be void *ab initio* shall be excluded in computing the period for issuance of show-cause notice and adjudication order under sub-section (2) and (10) of both Sections 73 and 74.

(v) In *Re: Srico Projects Pvt. Ltd., 2023 (74) G.S.T.L. 108 (A.A.R.-GST-Telangana),* the Authority for Advance Ruling declared certain orders *void ab initio* as the applicant had suppressed the fact that the questions raised by the applicant were already under investigation by the DGGI in contravention of Section 98(2) of the CGST Act.

(vi) In *Re: J.K. Food Industries, 2022 (57) G.S.T.L. 407 (Appl. A.A.R.-GST-Guj.), the* Appellate Authority for Advance Ruling declared an order passed by Advance Ruling Authority as *void ab initio* on the ground that the applicant had suppressed material facts which made them ineligible under Section 98 (2) of the CGST Act.

(vii) In Re: *I-Tech Plast India Pvt. Ltd., 2024 (A.A.R. – Guj.)* the Authority has declared the application as void under Section 104 and rejected the same under Section 98(2) of the CGST Act, 2017, on the ground that the applicant suppressed material facts and failed to disclose ongoing proceedings initiated by DGGI prior to filing the advance ruling application.

Sections 73(2) and 73(10) specify the time limit within which a show cause notice and adjudication order respectively, may be issued in a case where the tax is not paid, short paid, erroneously refunded or ITC has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax.

Similarly, sections 74(2) and 74(10) specifies the time limit within which a show cause notice and adjudication order respectively, may be issued in a case where the tax is not paid, short paid, erroneously refunded or ITC has been wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

Time limit for issuance of show cause notice and adjudication order from FY 24-25 onwards is specified under sub-section (2) and (7) of Section 74A respectively. This section was inserted vide Section 140 of Finance (No. 2) Act, 2024 dated 16.08.2024 w.e.f. 01.11.2024.

The period of limitation for raising a demand for recovery under section 73(10) and section 74(10) has been pegged at 3 years and 5 years respectively from the date of furnishing the annual return for the financial year in respect of which a demand is being raised or from the date of erroneous refund.

Similarly, section 74A(7) specifies that the adjudicating order shall be issued within 12 months from the date specified in 74A(2).

Under section 74A(2), the time limit for issuance of show cause notice shall be forty-two months from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty-two months from the date of erroneous refund.

The said period of 3 years under section 73(10), 5 years under section 74(10) and 12 months under section 74A(7) (54 months including the time for issuance of SCN) shall be extended by the period equivalent to the period beginning with the date of advance ruling and ending with the date of order declaring the advance ruling to be void *ab initio,* to enable the officer to issue a show cause notice or adjudication order.

What this section seeks to do is to provide the proper officers an additional time period to recover such amount from the applicant/appellant as would have been payable by him had he not sought the Advance ruling fraudulently. This Section puts great responsibility on the applicant to ensure that all necessary material facts are disclosed in the application so as to provide a true and correct picture of the business/transaction being undertaken. If the ruling has been obtained by suppressing material facts, then the other audit and investigation proceedings can be initiated against the applicant.

104.3 Issues and Concerns

(i) One should consider if this section can be made applicable to render an advance ruling to be void *ab initio* in bona fide cases where the applicant/appellant himself was not aware of certain facts at the time of seeking the advance ruling.

(ii) Would the advance ruling also be declared to be void *ab initio* where an applicant on subsequent realisation of having genuinely erred in placing the facts before the AAR, AAAR or NAAAR, voluntarily brings it to the notice of the AAR or AAAR or NAAAR? Or would it be more appropriate for an applicant to seek another advance ruling based on current facts that have subsequently come to his notice?

(iii) Where the applicant/appellant has raised multiple issues to be decided by way of an advance ruling and it was subsequently discovered by the Authorities that there was suppression of fact in respect of one particular issue, can the advance ruling be held to be valid in respect of the other issues raised therein not involving any suppression of fact?

104.4 FAQs

Q1. Can the advance ruling be declared to be void without hearing?

Ans. No. An advance ruling cannot be declared to be void unless an opportunity of being heard has been given.

Q2. Under what circumstances advance ruling can be declared as void?

Ans. The AAR or AAAR or NAAAR may declare an advance ruling to be void *ab initio* if the applicant or the appellant, as the case may be, has obtained it by fraud, suppression of material facts or misrepresentation of facts.

Statutory provisions

105. [18][Powers of Authority, Appellate Authority and National Appellate Authority]

(1) The Authority or the Appellate Authority [19][or the National Appellate Authority] shall, for the purpose of exercising its powers regarding—

[18] Substituted vide The Finance (No. 2) Act, 2019 for "Powers of Authority and Appellate Authority." This amendment shall be effective from a date to be notified.

[19] Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.

(a) discovery and inspection;

(b) enforcing the attendance of any person and examining him on oath;

(c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.

(2) The Authority or the Appellate Authority [20][or the National Appellate Authority] shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority [21][or the National Appellate Authority] shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

Related Provisions of the Statute:

Section or Rule	Description
Section 195 of the Code of Criminal Procedure, 1973 ("CrPC")	Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.
Chapter XXVI of the CrPC	Provisions as to Offences affecting the Administration of Justice
Section 193 of the Indian Penal Code, 1860 ("IPC")	Punishment for false evidence
Section 228 of the IPC	Intentional insult or interruption to public servant sitting in judicial proceeding
Section 196 of the IPC	Using evidence known to be false

105.1 Introduction

The provision specifies the powers conferred on the AAR, AAAR and NAAAR in the discharge of its functions.

105.2 Analysis

(i) The Authorities have all such powers of a Civil Court as set out under the Code of Civil Procedure, 1908 for the purpose of discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records.

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[20] *Inserted vide Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.*

[21] *Inserted vide The Finance (No. 2) Act, 2019. Applicable w.e.f. date yet to be notified.*

The Authorities are deemed to be a Civil Court for the purposes of section 195, except for the purposes of Chapter XXVI of the CrPC. The CrPC is a code to regulate the provisions relating to criminal procedure. Section 195 of CrPC bars any Court from taking cognizance of offences relating to contempt of the lawful authority of public servants, except on a complaint in writing of the public servant concerned or of some other public servant to which he is administratively subordinate. The object of the said section is to "protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds". Section 195 CrPC provides the mandatory prerequisites, before Court can take cognizance of the offences specified therein. The procedure to be followed in such cases, where the Court desires to initiate prosecution in respect of the offence(s) committed during, or in relation to, a proceeding before itself, is provided under section 340 of CrPC. The definition of 'Court' given in section 195 has been applied to section 340 under Chapter XXVI of the CrPC. Thus, the advance ruling authorities will not be considered as a 'Court' for the provisions of Chapter XXVI.

(ii) Every proceeding before the Authorities shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the IPC. This implies that even though the members of the AAR, AAAR and NAAAR may not be persons of judicial background, the proceedings before the three advance ruling authorities are considered as if the proceedings are held before a Judge.

105.3 FAQs

Q1. What are the powers vested with the AAR or AAAR or NAAAR?

Ans. The AAR or AAAR or NAAAR shall have all the powers of a Civil Court to exercise the following powers:

(i) discovery and inspection;

(ii) enforcing attendance of any person and examining him on oath;

(iii) issuing commissions and compelling production of books of accounts and other records.

Q2. What is the nature of proceedings conducted by the AAR, AAAR and NAAAR under this chapter?

Ans. The nature of proceeding conducted by AAR, AAAR and NAAAR shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the IPC.

105.4 MCQs

Q1. The AAR/AAAR/NAAAR shall be deemed to be a _____ under the code of Civil Procedure, 1908:

(a) High Court

(b) Supreme Court

(c) Economic Offences Court

(d) Civil Court

Ans. (d) Civil Court

Q2. The proceedings under this chapter shall be deemed to be:

(a) Quasi-judicial proceedings

(b) Judicial proceedings

(c) Administration proceedings

(d) Special proceedings

Ans. (b) Judicial proceedings

Statutory provisions

106. [22][Procedure of Authority, Appellate Authority and National Appellate Authority]

The Authority or the Appellate Authority [23][or the National Appellate Authority] shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

106.1 Introduction

It seeks to empower the AAR, AAAR and NAAAR to regulate its own procedure.

106.2 Analysis

The Authorities shall have the power to regulate their own procedure.

106.3 Issues and Concerns

Various States have constituted the Advance Ruling Authority and are issuing the advance ruling on various issues under the GST Law. There is no provision that the advance ruling pronounced in one State is applicable to all the States and Union Territories. There is possibility of difference of advance ruling by different States and accordingly it will be applicable to respective States only. Alternatively, just as the rulings of the NAAAR are binding on the persons registered under the same PAN, the decisions of one AAR can be made binding on all the persons registered under the same PAN.

NOTE – *Readers may note that the provisions related to National Appellate Authority for Advance Ruling (NAAAR) discussed in the Chapter are yet to come into force.*

[22] *Substituted vide The Finance (No. 2) Act, 2019 for "Procedure of Authority and Appellate Authority." Applicable w.e.f. date yet to be notified.*

[23] *Inserted vide The Finance (No. 2) Act, 2019 (23 of 2019). Applicable w.e.f. date yet to be notified.*

Chapter 19
Appeals and Revision

Sections	Rules
107. Appeals to Appellate Authority	108. Appeal to the Appellate Authority
108. Powers of Revisional Authority	109. Application to the Appellate Authority
109. Constitution of Appellate Tribunal and Benches thereof	109A. Appointment of Appellate Authority
110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.	109B. Notice to person and order of revisional authority in case of revision
111. Procedure before Appellate Tribunal	109C. Withdrawal of Appeal
112. Appeals to Appellate Tribunal	110. Appeal to the Appellate Tribunal
113. Orders of Appellate Tribunal	111. Application to the Appellate Tribunal
114. Financial and administrative powers of President	112. Production of additional evidence before the Appellate Authority or the Appellate Tribunal
115. Interest on refund of amount paid for admission of appeal	113. Order of Appellate Authority or Appellate Tribunal
116. Appearance by authorised representative	114. Appeal to the High Court
117. Appeal to High Court	115. Demand confirmed by the Court
118. Appeal to Supreme Court	116. Disqualification for misconduct of an authorised representative
119. Sums due to be paid notwithstanding appeal, etc.	
120. Appeal not to be filed in certain cases	
121. Non-appealable decisions and orders	

Statutory Provisions

107. Appeals to Appellate Authority

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such appellate authority as may be prescribed

within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union Territory Tax, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act, or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any Officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1) unless the appellant has paid –

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order [1][subject to a maximum of [2][twenty crore rupees], in relation to which the appeal has been filed.

[3][Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.]

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[1] Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 through Notification No. 02/2019-CT dated 31.01.2019.

[2] Substituted vide the Finance (No.2) Act, 2024. Notified through Notification No. 17/2024-CT dated 27.09.2024. Applicable w.e.f. 01.11.2024. Prior to its substitution, it read as: "twenty-five".

[3] Inserted vide The Finance Act, 2021 w.e.f. 01.01.2022, through Notification No. 39/2021-C.T., dated 21.12.2021.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order.

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 [4][or section 74A].

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

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[4] Inserted vide the Finance (No.2) Act, 2024. Notified through Notification No. 17/2024-CT dated 27.09.2024. Applicable w.e.f. 01.11.2024.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State Tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118, be final and binding on the parties.

Extract of the CGST Rules, 2017

108. Appeal to the Appellate Authority

(*1*) *An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, [5][electronically] and a provisional acknowledgement shall be issued to the appellant immediately.*

[6] [Provided that an appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, only if-

(i) the Commissioner has so notified, or

(ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately.]

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed in the manner specified in rule 26.

(3) [7][Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

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[5] *Substituted vide Notification No. 38/2023- CT dated 04.08.2023 for "either electronically or otherwise as may be notified by the Commissioner".*

[6] *Inserted vide Notification No. 38/2023- CT dated 04.08.2023.*

[7] *Substituted vide Notification No. 26/2022-CT dated 26.12.2022.*

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.]

Explanation.– For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

[8][109. Application to the Appellate Authority

(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be filed in FORM GST APL-03, along with the relevant documents [9][electronically] and a provisional acknowledgment shall be issued to the appellant immediately.

[10][Provided that an appeal to the Appellate Authority may be filed manually in FORM GST APL-03, along with the relevant documents, only if-

(i) the Commissioner has so notified, or

(ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately.]

(2) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal under sub-rule (1):

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.]

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[8] Substituted vide Notification No. 26/2022-CT dated 26.12.2022.

[9] Substituted vide Notification No. 38/2023- CT dated 04.08.2023 for, "either electronically or otherwise as may be notified by the Commissioner."

[10] Inserted vide Notification No. 38/2023- CT dated 04.08.2023.

[11]***[109A. Appointment of Appellate Authority***

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to -

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) [12][any officer not below the rank of Joint Commissioner (Appeals)] where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent, within three months from the date on which the said decision or order is communicated to such person.

(2) An officer directed under sub-section (2) of section 107 to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –

(a) he Commissioner (Appeals); where such decision or order is passed by the Additional or Joint Commissioner;

(b) [13][any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or the Superintendent, within six months from the date of communication of the said decision or order].

112. Production of additional evidence before the Appellate Authority or the Appellate Tribunal.

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely: -

(a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before

[11] Inserted vide Notification No. 55/2017-CT dated 15.11.2017..

[12] Substituted for "the Additional Commissioner (Appeals)" vide Notification No. 60/2018 – CT dated 30.10.2018.

[13] Substituted for "the Additional Commissioner (Appeals)" vide Notification No. 60/2018 - CT dated 30.10.2018.

the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1)

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

Related provisions of the Statute

Section or Rule	Description
Section 2(4)	Definition of 'Adjudicating Authority'
Section 2(8)	Definition of 'Appellate Authority'
Section 2(24)	Definition of 'Commissioner'
Section 73	Recovery of tax for reasons other than fraud or any wilful-misstatement or suppression of facts.
Section 74	Recovery of tax for reasons of fraud or any wilful-misstatement or suppression of facts.
Rule 108(1) and 108(2)	Forms to be filed for Appeal
Rule 26	Method of Authentication
Rule 108(3)	Time limit for submitting a copy/decision/order

107.1 Introduction

(a) This section pertains to appeals to the Appellate Authority by any person who is aggrieved against any decision or order passed by the Adjudicating Authority.

(b) Adjudicating Authority means any Authority appointed or authorized to pass any order or decision under this Act but does not include CBIC, Revisional Authority, Advance Ruling Authority, Appellate Authority for Advance Ruling, National Appellate Authority for Advance Rulings, the Appellate Authority, the Appellate Tribunal and Anti-profiteering Authority. (Section 2(4))

(c) Appellate Authority means an authority appointed or authorised to hear appeals as referred to in section 107.

(d) This section also provides for appeal by the tax authorities against a decision or order passed by Adjudicating Authority.

107.2 Analysis

(i) An assessee, aggrieved by any decision or order passed by adjudicating authority may prefer an appeal within a period of 3 months from the date of communication of decision or order in **Form GST APL-01,** along with relevant documents electronically (can be filed manually only if notified by the Commissioner or the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal) against which a provisional acknowledgement will be issued immediately. The grounds of appeal and form of verification must be duly signed as specified in rule 26. Where the decision or the order appealed against is uploaded on the common portal at time of filing appeal, acknowledgement in APL-02 shall be issued and date of issue of provisional acknowledgment shall be considered as the date of filing of appeal. In case, the decision or the order appealed against is not uploaded on the common portal, the Appellant shall submit a self-certified copy of the decision or order before the Appellate Authority within 7 days of filing the appeal. Thereafter, a final acknowledgement indicating the appeal number shall be issued in Form **GST APL-02** by the said authority. In such a situation, the appeal shall be deemed to be filed on the date of issue of provisional acknowledgement. In case the said self-certified copy is submitted after a period of 7 days, the date of filing of appeal shall be the date of submission of such copy. The appeal shall be considered as filed only when the final acknowledgement, indicating the appeal number is issued.

(ii) In *Yash Kothari Public Charitable Trust v. State of U.P., 2023 (72) G.S.T.L. 307 (All.),* the Hon'ble High Court of Allahabad held that taxing authorities could not stop any assessee from claiming his statutory right provided under the CGST Act in the garb of technicality. The Court also observed that the CGST Act had granted right to every person, who was aggrieved by an order passed by the Adjudicating Authority to approach the appellate forum as envisaged under section 107. The act of the tax authorities in not entertaining the appeal offline was an act of stopping the assessee from getting his right adjudicated as provided under the Act.

(iii) Alternatively, the Commissioner of Central / State or any Union territory can, with a view to satisfy himself about the legality or propriety of any order or decision passed by an

Adjudicating Authority, direct a subordinate officer to file an application before the Appellate Authority within 6 months from the date of communication of decision or order in Form **GST APL-03,** along with relevant documents electronically against which a provisional acknowledgement will be issued immediately. An appeal to the Appellate Authority may be filed manually in Form **GST APL-03**, along with relevant documents only if the Commissioner has so notified, or the same could not be filed electronically due to non-availability of the order appealed against on the common portal. In such cases, a provisional acknowledgement shall be issued to appellant immediately. Where the decision or the order appealed against is uploaded on the common portal at time of filing appeal, acknowledgement in APL-02 shall be issued and date of issue of provisional acknowledgment shall be considered as the date of filing of appeal. In case, the decision or the order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the decision or order before the Appellate Authority within 7 days of filing the appeal. Thereafter, a final acknowledgement indicating the appeal number shall be issued in Form **GST APL-02** by the said authority. In such a situation, the appeal shall be deemed to be filed on the date of issue of provisional acknowledgement. In case the said self-certified copy is submitted after a period of 7 days, the date of filing of appeal shall be the date of submission of such copy. The appeal shall be considered as filed only when the final acknowledgement, indicating the appeal number is issued. Hence where certified copy is not submitted within 7 days, the date of submission of the same shall be the date of filing of appeal.

(iv) In *PKV Agencies v. Appellate Dy. Commissioner (GST) Appeals, Vellor, 2023 (73) G.S.T.L. 71 (Mad.),* the Hon'ble High Court of Madras followed another division bench judgment of Hon'ble Madras High Court in *Atlas PVC Pipes Ltd. v. State of Odisha, 2022 (65) G.S.T.L. 45 (Ori.)* to hold that in case of default in submitting certified copy of the impugned order in compliance with Rule 108 (3) of the CGST Rules, the merit of the matter in appeal should not be sacrificed and the non-submission of certified copy should be treated as mere technical defect.

(v) The Appellate Authority shall treat the application filed by authorized officer as if such authorized officer is appellant and the provisions of the Act relating to appeal will be applicable to such application.

(vi) The Appellate Authority in either of the above cases is empowered to condone the delay up to a period of 1 month.

(vii) In *Jose Joseph v Assistant Commissioner of Central Tax and Central Excise, Alappuzha, Additional Commissioner (Appeals), Kochi, (2022) [W.P.(C) Nos. 8960, 8966, 8977 & 9052 of 2021, (Kerala High Court)]*, the Court held that when the Department admittedly failed to upload the order in the original, assessee cannot be mulcted with the responsibility of preferring appeals within the time limit. The statute's

deadline for submitting an appeal is part of the same process that occurs when an order is uploaded in its original form. When the only mode of appeal permitted by the Rules is electronic, the three-month period begins only when the Taxpayer has had the opportunity to file the appeal electronically. Even if he had gotten a hard copy of the order in the meantime, the Taxpayer could not be penalised for waiting for it to be uploaded to the web portal. As a result, the assessee was entitled to get its appeals treated as timely filed. The petition was allowed to proceed.

(viii) The Appeal has to be filed before the following authorities:

- Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner; and
- Any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent

(ix) Appeal has to be filed in prescribed form and manner along with payment of:

- Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and
- Pre-deposit of sum equal to 10% of remaining amount of tax in dispute (subject to a maximum of twenty crore rupees (effective from 01.11.2024) (Prior amendment the limit was subjected to maximum of twenty five crore rupees).
- Pre-deposit of sum equal to 25% of the penalty as determined under section 129(3) (i.e., detention, seizure and release of goods and conveyances in transit)

(x) In *Jyoti Construction v. Deputy Commissioner of CT & GST, Barbil Circle 2021 [W.P.(C) NOS.23508, 23511, 23513, 23514 AND 23521 OF 2021]*, a division bench of the Hon'ble Orissa High Court held that pre-deposit cannot be paid using balance of ITC in the electronic credit ledger. On the other hand, Hon'ble Bombay High Court in the case of *Oasis Realty Vs. Union of India and Others, MANU/MH/3458/2022*, held that pre-deposit can be done using balance of ITC available in electronic credit ledger.

(xi) On payment of above amount, the recovery proceedings for balance amount are deemed to be stayed.

(xii) The Appellate Authority shall give an opportunity to the appellant of being heard.

(xiii) Maximum 3 adjournments shall be granted to a party on showing reasonable cause that is to be recorded in writing.

(xiv) Appellate Authority may allow any additional grounds not specified in the grounds of appeal on being satisfied that the omission was not wilful or unreasonable.

(xv) Appellate Authority has to pass the order confirming, modifying or annulling the decision or order appealed against, but shall not remand the case back to the adjudicating Authority. This power of remand was a major reason of dispute in the erstwhile regime but now the same is settled.

(xvi) Opportunity of being heard to be granted in case of order for enhancing fees or penalty or fine in lieu of confiscation of goods or reducing amount of refund/input tax credit after issuing show cause notice.

(xvii) The appellate Authority has power to issue show cause notice in case it is of the opinion that any tax has not been paid or short paid or erroneously refunded or input tax credit is wrongly availed or utilised.

(xviii) Appellate Authority has to hear and decide the appeal, wherever possible, within a period of 1 year from the date of filing.

(xix) Where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(xx) Appellate Authority to communicate the copy of order to the appellant, the respondent, the adjudicating authority, Jurisdictional Commissioner of CGST, SGST and UTGST or an authority designated in their behalf.

(xxi) The order passed under this section shall be final and binding on the parties subject to provisions of section 108 (Powers of Revisional Authority) or section 113 (Orders of Appellate Tribunal) or section 117 (Appeal to High Court).

(xxii) The Appellate Authority shall, along with its order under sub-section (11) of section 107 of the Act, issue a summary of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed. The Jurisdictional officer shall issue a statement in Form APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

Statutory Provisions

108. Powers of Revisional Authority

(1) Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) The Revisional Authority shall not exercise any power under sub-section (1), if. -

(a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or

(b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or

(c) the order has already been taken for revision under this section at any earlier stage; or

(d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.

(4) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a Court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).

(6) For the purposes of this section, the term, -

(i) 'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority.

(ii) 'decision' shall include intimation given by any officer lower in rank than the Revisional Authority.

Extract of the CGST Rules, 2017

[14][109B. Notice to person and order of revisional authority in case of revision

(1) Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in FORM GST RVN-01 and shall give him a reasonable opportunity of being heard.

(2) The Revisional Authority shall, along with its order under sub-section (1) of section 108, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed].

[15][109C. Withdrawal of Appeal. -

*The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in **FORM GST APL-01** or **FORM GST APL-03**, file an application for withdrawal of the said appeal by filing an application in **FORM GST APL-01/03W**:*

***Provided** that where the final acknowledgment in **FORM GST APL-02** has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such application:*

***Provided** further that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107, as the case may be].*

Related provisions of the Statute

Section or Rule	Description
Section 2(99)	Definition of 'Revisional Authority'
Section 121	Non-appealable decisions and orders
Section 107	Appeals to Appellate Authority
Section 112	Appeals to Appellate Tribunal
Section 117	Appeal to High Court
Section 118	Appeal to Supreme Court

108.1 Introduction

This section pertains to revisionary powers of Revisional Authority.

[14] *Inserted vide Notification No. 74/2018-CT dated 31.12.2018.*
[15] *Inserted vide Notification No. 26/2022 - CT dated 26.12.2022.*

108.2 Analysis

(i) The Revisional Authority means an authority appointed or authorised for revision of decision or orders as referred to in this section.

(ii) The Revisional Authority is empowered to examine any proceedings and stay the operation of any decision or order, if he considers that such decision or order passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue or illegal or improper or has not taken into account certain material facts.

(iii) After giving the concerned person an opportunity of being heard and making further necessary inquiry, the Revisional Authority may pass an order within 3 years of passing of the said order sought to be revised including enhancing or modifying or annulling the said decision or order.

(iv) The Revisional Authority shall not exercise such revisionary powers if

(a) appeal is filed against the order to –

— Appellate Authority u/s.107

— Appellate Tribunal u/s.112

— High Court u/s.117

— Supreme Court u/s.118

(b) period of 6 months as specified in section 107(2) has not expired or more than 3 years have expired after passing the decision or order.

(c) the order has already been taken under this section for revision at any earlier stage.

(d) revisionary order has already been passed once.

(v) However, the Revisional Authority may pass an order on any point which has not been raised & decided in an appeal either before the Appellate Authority, Appellate Tribunal, High Court or Supreme Court.

(vi) The Revisional Authority must pass the order within 1 year from the date of order passed in such appeal or within 3 years from the date of such passing the decision or order sought to be revised, whichever is later.

(vii) The order passed under this section shall be final and binding on the parties subject to provisions of section 113 (Orders of Appellate Tribunal) or section 117 (Appeal to High Court) or section 118 (Appeal to Supreme Court).

(viii) The time span between the date of decision of the Appellate Tribunal and the date of decision of the High Court or the date of decision of the High Court and the date of decision of Supreme Court should be excluded in computing the period of limitation of three years. Even the period of stay order is excluded in computing the period of limitation of three years. Refer discussion on administrative law where executive officer

is NOT to interfere with quasi-judicial officer's orders but that seems to be given a pass in section 108.

Statutory Provisions

109. Constitution of the Appellate Tribunal and Benches thereof

(1) *[16][The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority [17][or for conducting an examination or adjudicating the cases referred to in sub-section (2) of section 171, if so notified under the said section].*

(2) *The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches constituted under sub-section (3) and sub-section (4).*

(3) *The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi which shall consist of the President, a Judicial Member, a Technical Member (Centre) and a Technical Member (State).*

(4) *On the request of the State, the Government may, by notification, constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council, which shall consist of two Judicial Members, a Technical Member (Centre) and a Technical Member (State).*

(5) *The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:*

Provided that the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.

[18][Provided further that the matters referred to in subsection (2) of section 171 shall be examined or adjudicated only by the Principal Bench:

Provided also that the Government may, on the recommendations of the Council, notify other cases or class of cases which shall be heard only by the Principal Bench].

(6) *[19][Subject to the provisions of sub- section (5), the President] shall, from time to time,*

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[16] Substituted vide the Finance Act, 2023 dated 31.03.2023. Applicable w.e.f. 01.08.2023 through Notification, No. 28/2023-CT dated 31.07.2023.

[17] Inserted vide the Finance (No.2) Act, 2024. Notified through Notification No. 17/2024-CT dated 27.09.2024.

[18] Inserted vide the Finance (No.2) Act, 2024. Notified through Notification No. 17/2024-CT dated 27.09.2024.

[19] Substituted vide the Finance (No.2) Act, 2024. Notified through Notification No. 17/2024-CT dated 27.09.2024. Prior to its substitution, it was read as: "The President".

by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.

(7) The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.

(8) Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed fifty lakh rupees and which does not involve any question of law may, with the approval of the President, and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member.

(9) If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,—

(a) where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;

(b) where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,

and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

(10) The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench:

Provided that a Technical Member (State) of a State Bench may be transferred to a State Bench only of the same State in which he was originally appointed, in consultation with the State Government.

(11) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal].

Related provisions of the Statute

Section or Rule	Description
Section 2(9)	Definition of 'Appellate Tribunal'
Section 2(36)	Definition of 'Council'

109.1 Introduction

This section pertains to constitution of GST Appellate Tribunal.

109.2 Analysis

(a) Based on the recommendation of the Council and by notification, the Central Government shall establish Goods & Service Tax Appellate Tribunal (GSTAT) for hearing appeals against the orders passed by the Appellate Authority or Revisional Authority.

(b) The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercisable by the Principal Bench and State Benches,

(c) The Principal Bench shall be situated at New Delhi which shall consist of the President, a judicial member, a Technical Member (Centre) and a Technical Member (State).

(d) On request of the State and recommendation of the Council, the Government by notification shall constitute number of State benches at such places with such jurisdiction which shall consist of two judicial members, a Technical Member (Centre) and a Technical Member (State).

(e) The Principal Bench and the State Bench shall hear the appeals against the order passed by Appellate Authority or Revisional Authority. However, where issue involved is related to place of supply, such appeal shall hear by Principal Bench only Furthermore, matters referred to in subsection (2) of Section 171 shall be examined or adjudicated solely by the Principal Bench.

(f) The jurisdiction of the two constituents of the GST Tribunal differs, namely:

- If the place of supply is one of the issues in dispute, the Principal Bench of the Tribunal will have jurisdiction to hear the appeal.
- If the dispute is on an issue other than the place of supply, the State Benches will have jurisdiction to hear the appeal.

(g) The President shall from time to time by general or by special order distribute the business of Appellate Tribunal and transfer cases between benches.

(h) The senior most judicial member within the State Benches shall act as vice president for such State Benches and shall exercise such powers as may be prescribed as given to the President of the Principal Bench, however, for all other purposes shall be considered as a member only.

(i) Any appeal (which does not involve any question of law) involving tax, input tax credit, fine, fee or penalty determined in any order appealed against, not exceeding ₹ 50Lakhs, may be heard by single member bench, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council and in all other cases shall be heard by one judicial member and one technical member together.

(j) Where after hearing the case, the members differ in opinion on any point(s), the President shall refer such case for hearing:

(i) where such appeal was heard by members of State Bench, to another member of State Bench within State and where no other Bench available in the State, to member of State Bench in other State

(ii) where such appeal was heard by members of Principal Bench, to another member of the Principal Bench and where no other member is available in Principal Bench, to member of any State Bench,

and such point(s) shall be decided as per the majority of opinion including the opinion of members who originally heard the case.

(k) For administrative efficiency, the Government may with consultation of President transfer member from one Bench to another Bench. Provided that Technical Member (State) of a State Bench may be transferred to same State Bench only.

(l) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely only on the ground of the existence of any vacancy or defect in the constitution of Appellate Tribunal.

Note: Vide the substituted section 109 of the CGST Act, 2017, the Government has removed the provision for constitution of Area Benches and provides that on the request of the State, it shall constitute such number of State Benches at such places and with jurisdiction as may be recommended by the Council. Hence, on 14th September 2023, the Government notified 31 Benches of GST Appellate Tribunal. The list of the benches is provided below:

Sr. No.	State Name	No. Of Benches	Location
(1)	(2)	(3)	(4)
1.	Andhra Pradesh	1	Vishakhapatnam and Vijayawada
2.	Bihar	1	Patna
3.	Chhattisgarh	1	Raipur and Bilaspur
4.	Delhi	1	Delhi
5.	Gujarat	2	Ahmedabad, Surat and Rajkot
6.	Dadra and Nagar Haveli and Daman and Diu		
7.	Haryana	1	Gurugram and Hissar
8.	Himachal Pradesh	1	Shimla
9.	Jammu and Kashmir	1	Jammu and Srinagar

Sr. No.	State Name	No. Of Benches	Location
10.	Ladakh		
11.	Jharkhand	1	Ranchi
12.	Karnataka	2	Bengaluru
13.	Kerala	1	Ernakulum and Trivandrum
14.	Lakshadweep		
15.	Madhya Pradesh	1	Bhopal
16.	Goa	3	Mumbai, Pune, Thane, Nagpur, Aurangabad and Panji
17.	Maharashtra		
18.	Odisha	1	Cuttack
19.	Punjab	1	Chandigarh and Jalandhar
20.	Chandigarh		
21.	Rajasthan	2	Jaipur and Jodhpur
22.	Tamil Nadu	2	Chennai, Madurai, Coimbatore and Puducherry
23.	Puducherry		
24.	Telangana	1	Hyderabad
25.	Uttar Pradesh	3	Lucknow, Varanasi, Ghaziabad, Agra and Prayagraj
26.	Uttarakhand	1	Dehradun
27.	Andaman and Nicobar Islands	2	Kolkata
28.	Sikkim		
29.	West Bengal		
30.	Arunachal Pradesh	1	Guwahati Aizawl (Circuit) Agartala (Circuit) Kohima (Circuit)
31.	Assam		
32.	Manipur		
33.	Meghalaya		
34.	Mizoram		
35.	Nagaland		
36.	Tripura		

Statutory provisions

110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.

(1) *[20][A person shall not be qualified for appointment as—*

(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court;

(b) a Judicial Member, unless he—

(i) has been a Judge of the High Court; or

(ii) has, for a combined period of ten years, been a District Judge or an Additional District Judge;

(iii) [21][has been an advocate for ten years with substantial experience in litigation in matters relating to indirect taxes in the Appellate Tribunal, Customs, Excise and Service Tax Appellate Tribunal, State Value Added Tax Tribunal, by whatever name called, High Court or Supreme Court;]

(c) a Technical Member (Centre), unless he is or has been a member of the Indian Revenue (Customs and Indirect Taxes) Service, Group A, or of the All India Service with at least three years of experience in the administration of an existing law or goods and services tax in the Central Government, and has completed at least twenty-five years of service in Group A;

(d) a Technical Member (State), unless he is or has been an officer of the State Government or an officer of All India Service, not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank, not lower than that of the First Appellate Authority, as may be notified by the concerned State Government, on the recommendations of the Council and has completed twenty-five years of service in Group A, or equivalent, with at least three years of experience in the administration of an existing law or the goods and services tax or in the field of finance and taxation in the State Government:

Provided that the State Government may, on the recommendations of the Council, by notification, relax the requirement of completion of twenty-five years of service in Group A, or equivalent, in respect of officers of such State where no person has completed twenty-five years of service in Group A, or equivalent, but has completed twenty-five years of service in the Government, subject to such conditions, and till such period, as may be specified in the notification.

[22][Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as the President or Member.]

(2) *The President, Judicial Member, Technical Member (Centre) and Technical Member (State) shall be appointed or re-appointed by the Government on the recommendations of a Search-cum-Selection Committee constituted under sub-section (4):*

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[20] Substituted vide the Finance Act, 2023 dated 31.03.2023. Applicable w.e.f. 01.08.2023 through Notification No 28/2023-CT dated 31.07.2023.

[21] Inserted vide the CGST (Second Amendment) Act, 2023, w.e.f. 28.12.2023.

[22] Inserted vide the CGST (Second Amendment) Act, 2023, w.e.f. 28.12.2023.

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the Judicial Member or, in his absence, the senior-most Technical Member of the Principal Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the Judicial Member or, in his absence, the senior-most Technical Member of the Principal Bench, shall discharge the functions of the President until the date on which the President resumes his duties.

(3) While making selection for Technical Member (State) of a State Bench, first preference shall be given to officers who have worked in the State Government of the State to which the jurisdiction of the Bench extends.

(4) (a) The Search-cum-Selection Committee for Technical Member (State) of a State Bench shall consist of the following members, namely:—

(i) the Chief Justice of the High Court in whose jurisdiction the State Bench is located, to be the Chairperson of the Committee;

(ii) the senior-most Judicial Member in the State, and where no Judicial Member is available, a retired Judge of the High Court in whose jurisdiction the State Bench is located, as may be nominated by the Chief Justice of such High Court;

(iii) Chief Secretary of the State in which the State Bench is located;

(iv) One Additional Chief Secretary or Principal Secretary or Secretary of the State in which the State Bench is located, as may be nominated by such State Government, not in-charge of the Department responsible for administration of State tax; and

(v) Additional Chief Secretary or Principal Secretary or Secretary of the Department responsible for administration of State tax, of the State in which the State Bench is located — Member Secretary; and

(b) the Search-cum-Selection Committee for all other cases shall consist of the following members, namely:—

(i) the Chief Justice of India or a Judge of Supreme Court nominated by him, to be the Chairperson of the Committee;

(ii) Secretary of the Central Government nominated by the Cabinet Secretary — Member;

(iii) Chief Secretary of a State to be nominated by the Council — Member;

(iv) one Member, who—

(A) in case of appointment of a President of a Tribunal, shall be the outgoing President of the Tribunal; or

(B) in case of appointment of a Member of a Tribunal, shall be the sitting President of the Tribunal; or

(C) in case of the President of the Tribunal seeking re-appointment or where the outgoing President is unavailable or the removal of the President is being considered, shall be a retired Judge of the Supreme Court or a retired

Chief Justice of a High Court nominated by the Chief Justice of India; and

(v) Secretary of the Department of Revenue in the Ministry of Finance of the Central Government — Member Secretary.

(5) The Chairperson shall have the casting vote and the Member Secretary shall not have a vote.

(6) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Committee shall recommend a panel of two names for appointment or re-appointment to the post of the President or a Member, as the case may be.

(7) No appointment or re-appointment of the Members of the Appellate Tribunal shall be invalid merely by reason of any vacancy or defect in the constitution of the Search-cum-Selection Committee.

(8) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the salary of the President and the Members of the Appellate Tribunal shall be such as may be prescribed and their allowances and other terms and conditions of service shall be the same as applicable to Central Government officers carrying the same pay:

Provided that neither the salary and allowances nor other terms and conditions of service of the President of Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment:

Provided further that, if the President or Member takes a house on rent, he may be reimbursed a house rent higher than the house rent allowance as are admissible to a Central Government officer holding the post carrying the same pay, subject to such limitations and conditions as may be prescribed.

(9) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the President of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of [23][seventy years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years subject to the age-limit specified above.]

(10) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Judicial Member, Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of [24][sixty-seven years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years subject to the age-limit specified above.]

(11) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

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[23] *Substituted vide the CGST (Second Amendment) Act, 2023, w.e.f. 28.12.2023. Prior to Substitution, it was read as: sixty-seven years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.*

[24] Substituted vide the CGST (Second Amendment) Act, 2023, w.e.f. 28.12.2023. Prior to substitution, it was read as: sixty-five years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(12) The Government may, on the recommendations of the Search-cum-Selection Committee, remove from the office President or a Member, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(13) The Government, on the recommendations of the Search-cum-Selection Committee, may suspend from office, the President or a Judicial or Technical Member in respect of whom proceedings for removal have been initiated under sub-section (12).

(14) Subject to the provisions of article 220 of the Constitution, the President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the Principal Bench or the State Bench in which he was the President or, as the case may be, a Member].

110.1 Comments

This section deals with appointment of the President / Members of the Appellate Tribunal, their qualifications, methodology of appointment, service conditions etc.

CGST (Second Amendment) Act, 2023 has introduced amendment to extend the upper limit for re-appointment of President to 70 years and Members to 67 years. The Amendment Act also inserted sub-clause (iii) in section 110(1)(b) to make an advocate with ten years of substantial experience in litigation matters relating to indirect taxes in the Appellate Tribunal as eligible to be a Judicial Member.

Statutory provisions

111. Procedure before Appellate Tribunal

(1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

(2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely: —

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it ex parte;

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed.

(3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction, —

(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

111.1 Introduction

This section deals with the procedure to be followed by Appellate Tribunal while disposing of any proceedings before it.

111.2 Analysis

(i) The Appellate Tribunal is not bound by the procedure laid down under the Code of Civil Procedure. But it shall certainly be guided by the principles of natural justice.

(ii) The Appellate Tribunal is empowered to regulate its own procedure.

(iii) The Appellate Tribunal shall have the same powers as are vested in a civil court under the code of procedure 1908 in respect of certain matters such as summoning and

enforcing attendance of person, receiving evidence on affidavits, requiring production of documents, issuing commissions for the examination of witnesses or documents, dismissing a representation for default or deciding it *ex parte*, setting aside any order of dismissal of any representation for default or any order passed by it *ex parte,* etc.

(iv) All the proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of section 193, 228 & 196 of IPC.

(v) The Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and chapter XXVI of the Code of Criminal Procedure 1973

(vi) It is important to note that inherent powers of Court under section 151 of CPC will be available to self-regulate proceedings before GSTAT.

Statutory Provisions

112. Appeals to Appellate Tribunal

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order [21][within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal] [22][or the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act, whichever is later].

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion or upon request from the Commissioner of State Tax or Commissioner of Union Territory Tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or the

[21] Section 2(a) of the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 issued under CBIC Order No. 9/2019-CT-dated 3.12.2019 clarifies that the start of the three months period shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office

[22] Inserted vide the Finance (No.2) Act, 2024. Notified through Notification No. 17/2024-CT dated 27.09.2024. Applicable w.e.f. 01.08.2024.

propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal [23][within six months from the date on which the said order has been passed] [24][or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later] for the determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107, or under sub-section (1) of section 108 and the provisions of this act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within 3 months after the expiry of the period referred to in sub-section (1) [25][or permit the filing of an application within three months after the expiry of the period referred to in sub-section (3)] or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed:

(8) No appeal shall be filed under sub-section (1) unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

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[23] Section 2(b) of the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 issued under CBIC Order No. 9/2019-CT- dated 03.12.2019 clarifies that the start of the six months period shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office

[24] Inserted vide the Finance (No.2) Act, 2024. Notified through Notification No. 17/2024-CT dated 27.09.2024. Applicable w.e.f. 01.08.2024.

[25] Inserted vide the Finance (No.2) Act, 2024. Notified through Notification No. 17/2024-CT dated 27.09.2024. Applicable w.e.f. 01.11.2024.

(b) a sum equal to [26][ten per cent] of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order [27][subject to a maximum of [28][twenty crore rupees], in relation to which the appeal has been filed:

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal, —

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by such fees as may be prescribed.

Extract of the CGST Rules, 2017

[29][110. Appeal to the Appellate Tribunal

[26] *Substituted vide the Finance (No.2) Act, 2024. Notified through Notification No. 17/2024-CT dated 27.09.2024. Prior to its substitution, it read as "twenty per cent".*

[27] *Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 through Notification No. 02/2019-CT dated 29.01.2019.*

[28] *Substituted vide the Finance (No.2) Act, 2024. Notified through Notification No. 17/2024-CT dated 27.09.2024. Prior to its substitution, it read as "fifty crore rupees".*

[29] *Substituted vide Notification No. 12/2024-CT dated 10.07.2024. Prior to its substitution, it read as "*

(1) An appeal to the Appellate Tribunal under sub- section (1) of section 112 shall be filed along with the relevant documents either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-05, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112 shall be filed either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-06.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) A certified copy of the decision or order appealed against along with fees as specified in sub-rule (5) shall be submitted to the Registrar within seven days of the filing of the appeal under sub-rule (1) and a final acknowledgement, indicating the appeal number shall be issued thereafter in FORM GST APL-02 by the Registrar:

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-05, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation. – For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued.

(1) An appeal to the Appellate Tribunal under sub-section (1) of section 112 shall be filed in FORM GST APL-05, along with the relevant documents, electronically and provisional acknowledgement shall be issued to the appellant immediately.

Provided that an appeal to the Appellate Tribunal may be filed manually in FORM GST APL-05, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112, if any, shall be filed electronically in FORM GST APL-06.

Provided that the memorandum of cross-objections may be filed manually in FORM GST APL-06, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) Where the order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal under sub-rule (1).

Provided that where the order appealed against is not uploaded on the common portal, the appellant shall submit or upload, as the case may be, a self-certified copy of the said order within a period of seven days from the date of filing of FORM GST APL-05 and a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Provided further that where the said self-certified copy of the order is submitted or uploaded after a period of seven days from the date of filing of FORM GST APL-05, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

(5) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty-five thousand rupees.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112."

Explanation.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

(5) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty five thousand rupees and a minimum of five thousand rupees:

Provided that the fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be five thousand rupees.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112.]

[30][111. Application to the Appellate Tribunal.

(1) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be filed in Form GST APL-07, along with the relevant documents, electronically and a provisional acknowledgement shall be issued to the appellant immediately:

Provided that an application to the Appellate Authority may be filed manually in FORM GST APL-07, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112, if any, shall be filed electronically in FORM GST APL-06:

Provided that the memorandum of cross-objections may be filed manually in FORM GST APL-06, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order.

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[30] *Substituted vide Notification No. 12/2024-CT dated 10.07.2024. Prior to its substitution, it read as "(1) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be filed in Form GST APL-07, along with the relevant documents, electronically and a provisional acknowledgement shall be issued to the appellant immediately:*

Provided that an application to the Appellate Authority may be filed manually in FORM GST APL-07, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be made electronically or otherwise, in FORM GST APL-07, along with the relevant documents on the common portal.

(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Registrar.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) Where the order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal under sub-rule (1):

Provided that where the order appealed against is not uploaded on the common portal, the appellant shall submit or upload, as the case may be, a self-certified copy of the said order within a period of seven days from the date of filing of FORM GST APL-07 and a final acknowledgment, indicating appeal number shall be issued in Form GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the order is submitted or uploaded after a period of seven days from the date of filing of FORM GST APL-07, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

Explanation 1.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Explanation 2.—For the purposes of rule 110 and 111, 'Registrar' shall mean a Registrar appointed by the Government for this purpose, and shall include Joint Registrar, Deputy Registrar and Assistant Registrar.]

112. Production of additional evidence before the Appellate Authority or the Appellate Tribunal.

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely:-

(a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

Related provisions of the Statute

Section or Rule	Description
Section 107	Appeals to Appellate Authority
Section 108	Powers of Revisional Authority
Section 2(9)	Definition of 'Appellate Tribunal'

112.1 Introduction

(a) This section pertains to appeals to Appellate Tribunal by any person who is aggrieved against decision or order passed by Appellate Authority.

(b) This section also provides for appeal by the tax authorities against a decision or order passed by Appellate Authority.

112.2 Analysis

(a) An assessee, aggrieved by any decision or order may prefer an appeal within a period of 3 months from the date of communication of decision or order in Form GST APL-05, along with relevant documents either electronically or otherwise as notified by the Commissioner against which a provisional acknowledgement will be issued. The grounds of appeal and form of verification must be duly signed as per the requirements of Rule 26 of the CGST Rules 2017 and a certified copy of the decision or order, along with the prescribed fees is to be filed before the Registrar within 7 days of filing the appeal.

(b) Thereafter, a final acknowledgement indicating the appeal number shall be issued in Form GST APL-02 by the said authority. In such a situation, the appeal shall be deemed to be filed on the date on which the provisional acknowledgement stands issued.

In case the said certified copy is submitted after a period of 7 days, the date of filing of appeal shall be the date of submission of such copy.

The appeal shall be considered as filed only when the final acknowledgement, indicating the appeal number is issued.

(c) The Appellate Tribunal has discretion to refuse to admit such appeal in case the tax amount or input tax credit or the difference in tax or input tax credit involved or amount of fine, fees or penalty ordered against does not exceed Rs. 50,000/-.

(d) The Commissioner may, on his own motion or on request from the Commissioner of State Tax or Commissioner of Union territory Tax can call for and examine any order or decision passed by the Appellate Authority or Revisional Authority with a view to satisfy himself about the legality or propriety thereof, and direct a subordinate officer to file an application before the Appellate Tribunal within 6 months from the date of communication of decision or order in Form **GST APL-07,** along with relevant documents either electronically or otherwise as notified against issue of an acknowledgement. A certified copy of the decision or order of the appeal, along with the prescribed fees is to be filed before the Registrar within 7 days of filing the application and an appeal number shall be generated accordingly.

(e) Memorandum of Cross objection to be filed in **FORM GST APL-06** within 45 days from the receipt of notice of filing of such appeal.

(f) Appellate Tribunal is empowered to condone the delay in filing appeal by assessee for a further period of 3 months or memorandum of cross objection for a further period of 45 days if there was sufficient cause for not presenting within specified period. This again is going to be a big challenge. In the erstwhile regime the Tribunal was having no time limit up till when it can condone the delay but now under GST regime condonation is restricted to 3 months only.

(g) Appeal has to be filed in prescribed form and manner along with payment of:

- amount of tax, interest, fine, fee & penalty, as is admitted, in full; and
- pre-deposit of sum equal to 10% of the remaining amount of tax in dispute subject to a maximum of twenty crores (effective from 01.11.2024) in addition to amount deposited during filling appeal before Appellate Authority.

(h) On payment of above amount (interest, tax, fine, fee, etc), the recovery proceedings for balance amount are deemed to be stayed till the disposal of appeal.

(i) In *Kumar Ram Ranjan Singh v. State pf Bihar, 2023 (74) G.S.T.L. 210 (Pat.),* a division bench of the Hon'ble Patna High Court followed another judgment in *Angel Engicon Pvt. Ltd. v. State of Bihar, 2023 (73) G.S.T.L. 641 (Pat.)* to hold that if a petitioner makes a deposit of a sum equal to 20 per cent of the remaining amount of tax in dispute, in addition to the amount deposited earlier under sub-section (6) of Section 107 of the C.G.S.T. Act, then the petitioner must be extended the statutory benefit of stay under sub-section (9) of Section 112 of the B.G.S.T. Act. This is because the Petitioner cannot be deprived of the benefit due to the non-constitution of the Tribunal. The recovery of balance amount, and any steps that may have been taken in this regard should thus be deemed to be stayed.

(j) No pre-deposit shall be payable in case of appeal filed by the tax authorities.

(k) Every miscellaneous application shall be filed along with prescribed fees.

(l) The fees for filing and restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of twenty-five thousand rupees.

(m) There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

Production of additional evidence before the Appellate Authority or Appellate Tribunal

(a) In addition to the evidence produced by the appellant before the adjudicating authority during the course of the proceedings, he is permitted to produce before the Appellate Authority, additional evidence in the following cases:

(i) where evidence that ought to be admitted has been refused by the adjudicating authority or Appellate Authority; or

(ii) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or Appellate Authority; or

(iii) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or Appellate Authority, any evidence which is relevant to any ground of appeal; or

(iv) where the adjudicating authority or the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(b) The evidence shall be admitted only after the Appellate Authority or Appellate Tribunal records in writing the reasons for its admission.

(c) The Appellate Authority or Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the reason for its admission is not recorded in writing and the adjudicating authority has been allowed a reasonable opportunity -

(i) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(ii) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(iii) the above rules shall not affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document or the examination of any witness to enable it to dispose of the appeal.

Since the Appellate Tribunal is yet to be functional where the first appellate authority has confirmed the demand issued by the adjudicating authority, partially or fully, the taxpayers cannot file appeal against the said appellate order at present. At the same time recovery proceedings under Section 78 are being resorted to by the tax officers.

To facilitate taxpayers and to ensure uniform implementation *Circular No. 224/18/2024 GST dated 11.07.2024* has been given, wherein specifically in para 3, 4, 5 & 6, the difficulty faced by the taxpayers has been addressed. The summary of which is given below;

(a) taxpayer should make the payment of an amount equal to the amount of pre deposit by navigating to ***Services >> Ledgers>> Payment towards demand***

(b) The taxpayer also needs to file an undertaking/ declaration with the jurisdictional proper officer that he will file appeal against the said order of the appellate authority before the Appellate Tribunal, as and when it comes into operation, within the timelines mentioned in section 112

Statutory Provisions

113. Orders of Appellate Tribunal

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State Tax or the Commissioner of Union Territory Tax or the other party to the appeal within a period of three months from the date of the order:

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given opportunity of being heard.

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State Tax or the Union Territory Tax.

(6) Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

Extract of the CGST Rules, 2017

113. Order of Appellate Authority or Appellate Tribunal

(1) The Appellate Authority shall, along with its order under sub-section (11) of section 107, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.

(2) The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

[31][113A. Withdrawal of Appeal or Application filed before the Appellate Tribunal

The appellant may, at any time before the issuance of the order under sub-section (1) of section 113, in respect of any appeal filed in FORM GST APL-05 or any application filed in FORM GST APL-07, file an application for withdrawal of the said appeal or the application, as the case may be, by filing an application in FORM GST APL-05/07W:

Provided that where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal or the application, as the case may be, would be subject to the approval of the Appellate Tribunal and such application for withdrawal of the appeal or application, shall be decided by the Appellate Tribunal within fifteen days of filing of such application;

Provided further that any fresh appeal or application, as the case may be, filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (3) of section 112, as the case may be.]

Section or Rule	Description
Section 107	Appeals to Appellate Authority
Section 2(9)	Definition of 'Appellate Tribunal'

113.1 Introduction

This section pertains to the orders of the Appellate Tribunal.

113.2 Analysis

(i) The Appellate Tribunal to pass the order confirming, modifying or annulling the decision or order appealed against.

(ii) The Appellate Tribunal also has power to remand the case back to the appellate Authority or the Revisional Authority or the original adjudicating authority.

(iii) Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.

(iv) The Appellate Tribunal is empowered to amend its order to rectify any mistake apparent from record. However, tribunal may rectify its order if the mistake is brought to its notice

[31] Inserted vide Notification No. 12/2024-CT dated 10.07.2024.

by Commissioner or other party to appeal within period of 3 months of date of such order. Opportunity of being heard to be granted in case such rectification results into enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability for the other party.

(v) The Appellate Tribunal to hear and decide the appeal, as far as possible, within a period of 1 year from the date of filing.

(vi) The Appellate Tribunal to communicate the copy of order to appellate Authority / Revisional Authority / original adjudicating authority, the appellant, the jurisdictional Commissioner, Commissioner of State Tax or Union Territory Tax.

(vii) The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

(viii) Anytime before issuance of order by the tribunal, appellant may file an application for withdrawal of the said appeal or the application, as the case may be, by filing an application in FORM GST APL-05/07W. If final acknowledgement in APL-02 has been given, then such withdrawal can only be subject to approval by the Appellate Tribunal. Appellate Tribunal may decide within 15 days of such application for withdrawal.

Summary of Forms

Sl. No.	Particulars	Form no.	Time Limit
1.	Appeal to prescribed Appellate Authority by assessee	GST APL-01	Within 3 months from date of receipt of order
2.	Final Acknowledgement indicating Appeal No.	GST APL-02	• If order uploaded on the portal: date of issuance of provisional acknowledgment. • If order is not uploaded on the portal: (i) if self-certified copy of order is submitted within 7 days: date of issuance of provisional acknowledgment; (ii) if self-certified copy of order submitted after 7 days: date of submission of self-certified copy of order
3.	Application to Appellate Authority u/s 107(2)	GST APL-03	Within 6 months from date of receipt of order

4.	Summary of the Order	GST APL-04	Maximum within 1 year
5.	Appeal to Appellate Tribunal by assessee	GST APL-05	Within 3 months from the date of receipt of order
6.	Cross Objection by opposition party	GST APL-06	Within 45 days
7.	Department Appeal to Tribunal	GST APL-07	Within 6 months from the date of receipt of order
8.	Application for withdrawal of appeal or the application	GST APL-07W	Anytime before issuance of order
9.	Appeal to High Court	GST APL-08	Within 180 days from the date of receipt of order appealed against.

Summary of provisions

S. No.	Particulars	Description
1.	Date of filing appeal	a) date of filing appeal on portal when provisional acknowledgement is issued (if hard copy of order submitted within seven days from the date of filing) b) date of filing hard copy if submitted after seven days from the date of filing
2.	Refusal to admit appeal by Appellate tribunal	where tax or ITC involved or the difference between the two or the amount of fine, fee or penalty is less than ₹50,000/-.
3.	Fees for filing Appeal	₹1,000/- for every one lakh rupees of tax or ITC involved or difference in tax and ITC or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of ₹25,000/-.
4.	Condonation of delay in filing appeal	If satisfied, condone upto 3 months.
5	Pre-deposit requirement for disputed amount	Assessee paid in full/ part amount of Tax, interest, fine, fee and penalty arising from the order appealed against: 10% in case appeal to appellate authority [subject to maximum of 20 crores (effective from 01.11.2024] 10% in case of Tribunal in addition to 10%

		deposited at time of appeal to appellate Authority [subject to maximum of 20 crores (effective from 01.11.2024]
6.	Interest on refund of pre-deposit	Shall be payable from date of payment till the date of Refund
7.	Orders of Appellate Tribunal	As far as possible within one year confirming/ modifying/ annulling the order OR refer the case back to Appellate Authority

Statutory Provisions

114. Financial and administrative powers of President

[32][The President shall exercise such financial and administrative powers over the Appellate Tribunal as may be prescribed].

114.1 Introduction

This section pertains to the financial & administrative powers of the President of the GST Appellate Tribunal.

Statutory Provisions

115. Interest on refund of amount paid for admission of appeal

Where an amount paid by the appellant under sub-section (6) of section 107 or under sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Related provisions of the Statute

Section	Description
Section 56	Interest on delayed refunds
Section 107(6)	Appeal to Appellate Authority
Section 112(8)	Appeal to Appellate Tribunal

115.1 Introduction

This section provides for interest on delayed refund of pre-deposit made while filing the appeal.

[32] *Substituted vide the Finance Act, 2023. Applicable w.e.f. 01.08.2023 through Notification. No. 28/2023-CT dated 31.07.2023.*

115.2 Analysis

(i) Interest at the rates specified in section 56 (9% as specified) shall be payable on refund of pre-deposit.

(ii) Such interest to be calculated from the date of payment of such amount till the date of refund.

115.3 FAQ

Q1. What is time period for calculation of interest on refund of pre-deposit?

Ans. The interest will be calculated from the date of pre-deposit to the date of refund of the same.

Statutory Provisions

116. Appearance by authorised representative

(1) Any person who is entitled or required to appear before an Officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorized representative.

(2) For the purposes of this section, the expression "authorised representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

(a) his relative or regular employee; or

(b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or

(c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or

(d) a retired officer of the Commercial Tax Department of any State Government or Union Territory or of the Board, who, during his service under the Government, had worked in a post not below the rank than that of a Group-B gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation;

(e) any person who has been authorized to act as a Goods and Services Tax Practitioner on behalf of the concerned registered person.

(3) No person, —

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceeding under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax

Act or the Union Territory Goods and Services Tax Act or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both

(c) who is found guilty of misconduct by the prescribed authority;

(d) who has been adjudged as an insolvent,

shall be qualified to represent any person under sub-section (1) --

(i) for all times in the case of a person referred to in clause (a), (b) and (c); and

(ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).

(4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

Extract of the CGST Rules, 2017

116. Disqualification for misconduct of an authorised representative.

Where an authorised representative, other than those referred to in clause (b) or clause (c) of sub- section (2) of section 116 is found, upon an enquiry into the matter, guilty of misconduct in connection with any proceedings under the Act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorised representative.

Related provisions of the Statute

Section	Description
Section 2(23)	Definition of 'Chartered Accountant'
Section 2(28)	Definition of 'Company Secretary'
Section 2(35)	Definition of 'Cost Accountant'
Section 2(55)	Definition of 'Goods and Services Tax Practitioner'

116.1 Introduction

This section provides for appearance by authorised representative in proceedings or appeals except in circumstances where personal appearance is required for examination or oath or affirmation.

116.2 Analysis

(i) "Authorised representative" means –

— relative or regular employee

- Practising Advocate
- Practising CA, CWA or CS
- A retired government officer who had worked in the Commercial Tax Department for not less than 2 years in a post not lower in rank than Group-B gazetted officer
- Goods and Services Tax Practitioner

(ii) Any person, who has retired or resigned after serving more than 2 years in the Commercial Tax Departments of Government of India or any State Government as a gazetted officer, shall not be entitled to appear as authorised representative for a period of 1 year from the date of retirement or resignation.

(iii) Any person,

- who has been dismissed or removed from government service
- who is convicted of an offence under CGST Act, SGST Act, IGST Act, UTGST Act or under erstwhile laws
- who is found guilty of misconduct by the prescribed authority

shall not be qualified as authorised representative.

(iv) Any person, who has become insolvent, shall not be qualified as authorised representative during the period of insolvency.

(v) Any disqualification under SGST Act or UTGST Act shall be construed as disqualification under CGST Act.

116.3 MCQs

Q1. Any person who has retired/resigned after serving 2 years as gazetted officer in the Commercial Tax Departments of the Government of India or any State Government shall be entitled to appear as authorised representative after: -

(a) 1 year from date of resignation / retirement

(b) 2 years from date of resignation / retirement

(c) 3 years from date of resignation / retirement

(d) Not entitled to appear at all

Ans. (a) 1 year from date of resignation / retirement

Q2. Any person who has been dismissed or removed from government services shall be entitled to appear as authorised representative after: -

(a) 1 year from date of dismissal / removal

(b) 2 years from date of dismissal / removal

(c) 3 years from date of dismissal / removal

(d) Not entitled to appear at all

Ans. (d) Not entitled to appear at all

Q3. Any insolvent person shall not be entitled to appear as authorised representative: -

(a) Up to a period of 1 year of insolvency

(b) Up to a period of 2 years of insolvency

(c) During the period of insolvency

(d) Not entitled to appear at c) above

Ans. (c) During the period of insolvency

Q4. Any person who is disqualified to represent, being found guilty of misconduct, has no further remedy at all under the CGST Act, 2017.

(a) True

(b) False

Ans. (a) True

Statutory Provisions

117. Appeal to High Court

(1) Any person aggrieved by any order passed by the [33][State Benches] of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.

(2) An appeal under sub-section (1) shall be filed within one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form verified in such manner as may be prescribed;

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

[33] Substituted for "State or Area Benches" vide The Finance Act, 2023. Applicable w.e.f. 01.08.2023 through Notification No. 28/2023 CT dated 31.07.2023.

(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(5) The High Court may determine any issue which -

(a) has not been determined by the [33][State Benches]; or

(b) has been wrongly determined by the [33][State Benches], by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

Extract of the CGST Rules, 2017

114. Appeal to the High Court

(1) An appeal to the High Court under sub-section (1) of section 117 shall be filed in FORM GST APL-08.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-08 shall be signed in the manner specified in rule 26.

115. Demand confirmed by the Court

The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.

117.1 Introduction

(i) This section provides for appeal to High Court by any person aggrieved by an order passed by State Bench.

117.2 Analysis

(i) The High Court may admit an appeal if it is satisfied that the case involves a substantial question of law.

(ii) No appeal shall lie before a High Court if such order is passed by Principal Bench. In other words, appeal shall be filed before High Court if such order is passed by State Bench of the Appellate Tribunal.

(iii) Appeal has to be filed in the Form **GST APL 08**, precisely stating the substantial question of law involved, within 180 days from the date of receipt of order appealed against accompanied by prescribed fee.

(iv) The High Court is empowered to condone the delay in filing appeal.

(v) On being satisfied, High Court shall formulate a substantial question of law.

(vi) Appeal to be heard only on the question so formulated and the respondent shall be allowed to argue that the case does not involve such question.

(vii) The High Court may hear the appeal on any other substantial question of law not formulated by it after satisfying, for reasons to be recorded, of involvement of such question in the case.

(viii) The High Court may determine any issue which has not been determined or has been wrongly determined by the State Benches.

(ix) Appeal to be heard by a Bench of not less than 2 Judges of High Court and shall be decided in accordance with the majority opinion of such Judges.

(x) Difference of opinion on any point shall be referred to one or more of the other Judges of High Court and such point shall be decided according to the opinion of majority of Judges who have heard the case including those who first heard it.

(xi) The effect of judgment of High Court shall be given on the basis of a certified copy of the judgment.

(xii) The provisions of Code of Civil Procedure relating to appeals to High Court shall apply to appeals under this section.

(xiii) Revision petition under section 114 is not the same as judicial review under article 226/227 before the High Court.

117.3 FAQ

Q1. Any appeal filed before High Court shall be heard by a bench consisting how many judges of High Court?

Ans. An appeal filed before the Honourable High Court shall be heard by a bench consisting of not less than two judges.

117.4 MCQs

Q1. The High Court may admit an appeal if the case involves a substantial question of fact

(a) True

(b) False

Ans. (b) False

Q2. An appeal involving a matter, where two or more States or a State and Centre have a difference of views regarding eligibility of input tax credit, shall lie to High Court

(a) True

(b) False

Ans. (a) True

Q3. An appeal before High Court shall be filed within

(a) 6 months from the date of order

(b) 6 months from the date of communication of order

(c) 180 days from the date of order

(d) 180 days from the date of receipt of order

Ans. (d) 180 days from date of receipt of order

Q4. The High Court can condone the delay in filing appeal for a period up to

(a) 1 Month

(b) 2 Months

(c) Without any time limit

(d) No condonation powers

Ans. (c) Without any time limit

Statutory Provisions

118. Appeal to Supreme Court

(1) An appeal shall lie to the Supreme Court -

(a) from any order passed by the [34][Principal Bench] of the Appellate Tribunal; or

(b) from any judgment or order passed by the High Court in an appeal made under

[34] Substituted for "National Bench or the Regional Benches" vide The Finance Act, 2023. Applicable w.e.f. 01.08.2023 through Notification No.28/2023-CT dated31.07.2023.

section 117, in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) The provisions of the Code of Civil Procedure, 1908, (5 of 1908) relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

Extracts of the CGST Rules, 2017

115. Demand confirmed by the Court

The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.

Related provisions of the Statute

Section	Description
Section 117	Appeal to High Court

118.1 Introduction

This section provides for appeal to Supreme Court.

118.2 Analysis

An appeal can lie with the Supreme Court in case of:

(i) Any judgement or order passed by Principal Bench of Appellate Tribunal or High Court.

(ii) The High Court must certify the Judgement/order to be fit one for appeal to the Supreme Court. When an appeal is reversed, or varied, the effect shall be given to the order of the Supreme Court on the question of law so formulated and delivered.

(iii) The said judgement shall clearly indicate the grounds on which the decision is founded.

(iv) Apart from this, the Supreme Court is empowered to frame any substantial question of law not formulated by any lower authority if it is satisfied that the case before it involves such question of law.

Statutory Provisions

119. Sums due to be paid notwithstanding appeal etc.

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the [35][Principal Bench] of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the [36][State Benches] of the Appellate Tribunal under subsection (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

119.1 Introduction

This section provides for payment of sums due pending appeal.

119.2 Analysis

The sums due to the Government as a result of an order passed by the Appellate Tribunal or High Court shall be paid notwithstanding the fact that an appeal has been preferred before the High Court or Supreme Court, as the case may be.

Statutory Provisions

120. Appeal not to be filed in certain cases

(1) The Board may, on the recommendation of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

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[35] Substituted for "National or Regional Bench" vide The Finance Act, 2023. Applicable w.e.f. 01.08.2023 through Notification No. 28/2023-CT dated 31.07.2023.

[36] Substituted with "State Benches" vide The Finance Act, 2023. Applicable w.e.f. 01.08.2023 through Notification No. 28/2023-CT dated 31.07.2023.

120.1 Introduction

This section provides for non-filing of appeal by the tax authorities in certain cases.

120.2 Analysis

(i) On recommendation of Council, the Board may issue order or instructions or directions fixing monetary limits for the purpose of regulating the filing of appeal or application by Officer of central tax.

(ii) In case the Officer has not filed an appeal / application against any decision / order in view of such order / instruction / directions, it shall not preclude him from filing appeal / application in any other cases involving same / similar issue or question of law.

(iii) No party in appeal / application shall contend that the Officer has acquiesced (agreed / consented) in the decision on the disputed issue by not filing an appeal / application.

(iv) The Appellate Tribunal or court hearing such appeal / application shall have regard to the circumstances under which appeal / application was not filed by the Officer in pursuance of such order / instructions / directions.

In exercise of the powers under Section 120 read with Section 168 *Circular No. 207/1/2024-GST dated 26.06.2024*. This circular prescribes the monetary limit below which appeal or application or Special Leave Petition, as the case may be, shall not be filed by the Central Tax officers before Goods and Service Tax Appellate Tribunal (GSTAT), High Court and Supreme Court under the provisions of CGST Act

Appellate Forum	Monetary Limit (amount involved in Rs.)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

Further, the Circular *supra* also lays down

a. the principles for determining whether a case falls within the above monetary limit

b. Exclusions, where the decision to file appeal shall be taken on merits irrespective of the said monetary limits

Statutory Provisions

121. Non-appealable decision and orders

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters namely: -

(a) An order of the Commissioner or other authority empowered to direct transfer of proceeding from one officer to another officer; or

(b)	*An order pertaining to the seizure or retention of books of account, register and other documents; or*
(c)	*An order sanctioning prosecution under this Act; or*
(d)	*An order passed under section 80.*

Related provisions of the Statute:

Section	Description
Section 2(41)	Definition of 'Document'
Section 67	Power of inspection, search & seizure
Section 80	Payment of tax and other amount in instalments
Section 132	Punishment for certain offences

121.1 Introduction

This section prescribes decisions or orders which are non-appealable.

121.2 Analysis

No appeal shall lie against any decision / order taken / passed by Officer of central tax if such decision / order relates to any one or more of following matters –

- Transfer of proceeding from one officer to another officer
- Seizure or retention of books of account, register and other documents
- Order sanctioning prosecution under the Act
- Order passed u/s.80 related to payment of tax & other amount in instalments.

Chapter 20
Offences and Penalties

Sections	Rules
122. Penalty for certain offences 122A. Penalty for failure to register certain machines used in manufacture of goods as per special procedure 123. Penalty for failure to furnish information return 124. Fine for failure to furnish statistics 125. General penalty 126. General disciplines related to penalty 127. Power to impose penalty in certain cases 128. Power to waive penalty or fee or both 128A. Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods. 129. Detention, seizure and release of goods and conveyances in transit 130. Confiscation of goods or conveyances and levy of penalty 131. Confiscation or penalty not to interfere with other punishments 132. Punishment for certain offences 133. Liability of officers and certain other persons 134. Cognizance of offences 135. Presumption of culpable mental state 136. Relevancy of statements under certain circumstances 137. Offences by companies 138. Compounding of offences	162. Procedure for compounding of offences 163. Consent based sharing of information 164. Procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73

Statutory Provision

122. Penalty for certain offences

(1) Where a taxable person who-

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;

(xviii) supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

[1][(1A) Any Person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed or passed on.]

[2][(1B) [3][Any electronic commerce operator who is liable to collect tax at source under section 52,]—

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

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[1]Inserted vide The Finance Act, 2020 vide Notification No. 92/2020-CT dt. 22.12.2020 applicable w.e.f. 01.01.2021.

[2]Inserted vide The Finance Act, 2023 vide Notification No. 28/2023 -CT dt. 31.07.2023, applicable w.e.f. 01.10.2023.

[3] Substituted vide Section 144 of the Finance (No. 2) Act, 2024 dated 16-08-2024, [w.e.f. 01-11-2024 vide Notification No. 17/2024 CT dated 27-09-2024] before it was read as, "Any electronic commerce operator who"

(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

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

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized,-

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who-

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account,

shall be liable to a penalty which may extend to twenty-five thousand rupees.

[4][122A. Penalty for failure to register certain machines used in manufacture of goods as per special procedure

(1) Notwithstanding anything contained in this Act, where any person, who is engaged in the manufacture of goods in respect of which any special procedure relating to registration of machines has been notified under section 148, acts in contravention of the said special

[4] *Inserted vide The Finance Act, 2024 dated 15-02-2024, notified through Notification No. 16/2024 – CT dated 06.08.2024, w.e.f. 01.10.2024.*

procedure, he shall, in addition to any penalty that is paid or is payable by him under Chapter XV or any other provisions of this Chapter, be liable to pay a penalty equal to an amount of one lakh rupees for every machine not so registered.

(2) In addition to the penalty under sub-section (1), every machine not so registered shall be liable for seizure and confiscation:

Provided that such machine shall not be confiscated where—

(a) the penalty so imposed is paid; and

(b) *the registration of such machine is made in accordance with the special procedure within three days of the receipt of communication of the order of penalty.]*

Related provisions of the Statute

Section or Rule	Description
Section 2(107)	Definition of 'Taxable Person'
Section 31	Tax invoice
Section 35	Accounts and Records
Section 51	Tax deducted at source (TDS)
Section 52	Collection of tax at source (TCS)
Sections 16 to 21 and 41	Eligibility and conditions for claim of Input Tax Credit (ITC), Apportionment of Credit and Blocked Credit and Availment of ITC
Section 22 to 30	Registration
Section 54 to 58	Refunds
Rule 142	Notice and order for demand of amounts payable under the Act

122.1 Introduction

The term "Penalty," akin to "Offense," lacks a specific definition within the Act. While elucidating the distinctions between "Tax," "Interest," and "Penalty," the Supreme Court held that while "Tax" is a compulsory exaction of money by a public authority for public purposes, enforceable by law, and "Interest" is imposed on the taxpayer for delaying the remittance of such tax, calculated based on the actual amount of tax and characterized as compensatory, "Penalty" is generally levied on the taxpayer for some contumacious conduct or a deliberate violation of the provisions of the specific statute, thereby constituting a penal offense. Penalties serve as a form of punishment for violating any provision of the law. However, it is important to note that a penalty is not an automatic liability that accrues to persons who violate any provision. Such imposition of penalties requires a specific provision empowering their

imposition, as outlined within the Act itself. A Constitution bench of the Supreme Court proceeded to provide a comprehensive description of the nature of penalties:

"*Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act."*

For effective implementation of any tax-law and to do justice to tax abiding society, certain provisions to take strict action against offenders are required. The penal provisions in many cases act as a deterrent while some provisions attract the wrath of the penal provisions even for a breach, although such an infraction of law could be a minor offence and not a venial breach of law. It is for this reason that the law maker in his wisdom has laid down general disciplines relating to penalty so as to enable the person vested with such powers does not overshoot those powers that are inherently vested in him. While Courts have consistently laid down several guiding principles for the purpose of levy of penalties, it has been observed that the statutes are so drafted that several punitive penalties have now become mandatory. The discussion in the following paragraphs deal with the punitive provisions of GST law.

122.2 Analysis

At the outset, the section declares the offences that attract penalty as a consequence, apart from the requirement to pay the tax and applicable interest.

Since the imposition of a penalty is required to be specific and express, penal provisions have evolved to follow a basic structure on how they are crafted. Every statutory provision for the imposition of a penalty has two distinct components[5]: -

(i) That which lays down the conditions for imposition of penalty.

(ii) That which provides for computation of the quantum of penalty.

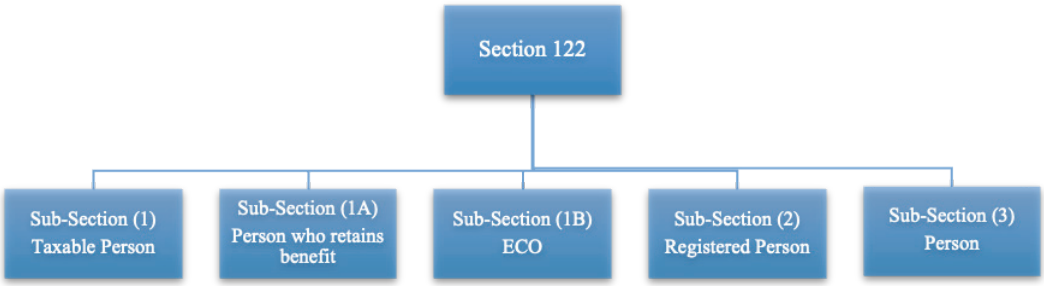
Some of the offences listed under this section may also attract prosecution under section 132 but that depends on the gravity of the offence defined in that section.

Some aspects to consider before discussing this section are:

- Admitting liability to pay tax does not amount to admission of wrongdoing that can attract penalty in all cases. That is, proceedings are independent of tax demand. It is possible that proceedings may be jointly initiated such that the non-payment of tax may prove the circumstances to impose penalty. But accepting to pay tax cannot *ipso facto* result in penalty. For e.g., RCM liability may be accepted (SCN issued but not under section 74) since continuing to dispute this liability may be revenue neutral. Accepting to pay RCM does not satisfy the ingredients to impose penalty. The benefit of resisting RCM liability may be academic when credit is available and output is also taxable. Refer various authorities under section 276 of Income-tax Act for guidance on jurisprudence applicable in the context of penalty.

[5] *M/s Virtual Soft Systems Ltd v. Commissioner of Income Tax Delhi-I (2007) 9 SCC 665*

- Government appears to be taking away discretion in imposing penalty but the grounds to impose penalty require some key ingredients, which are discussed in the later part of this chapter. Removing discretion is important but mechanical application of penalty provisions is not welcome.;
- Provisions in section 73(5) and 74(5) as well as section 73(9) and 74(8) indicate the general tendency to reduce penalty prescribed under section 122 if mitigating circumstances are brought out during the course of adjudication or appeal. Study of section 126 provides must needed insight into the considerations relevant for imposing penalties. Penalty is expected to be an area where the law will develop significantly to encourage voluntary compliance.
- Rule 142 of the CGST Rules, 2017 states the procedure for issuance of notices and orders for demand of amount payable under the act. Whenever any registered person commits any of the offences as mentioned under section 122, section 123, section 124, section 125, section 127, section 129 and section 130 of the Act, the proper officer shall serve the notice and order as per the procedure specified under rule 142 of the CGST Rules, 2017.



The section is divided into five sub-sections:

(i) The first sub-section prescribes 21 types of offences, any one of which, if committed, can attract penalty of ten thousand rupees or equal to the amount of tax involved, whichever is higher.

(ii) Sub-section (1A) prescribes that penalty can be levied in case of specified offences, on such persons satisfying both the following conditions:

a. the said person is the instance for conduct of the transaction, and

b. also retains the benefit from occurrence of the said transaction.

(iii) Sub-section (1B) prescribes the penalty which can be levied on any electronic commerce operator who:

a. allows to an unregistered person other than a person exempted from registration by a notification make such supply of goods or services or both through it;

b. allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

c. fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

(iv) The second sub-section deals with two situations, firstly, where certain offences committed are not due to either fraud or wilful misstatement or suppression of facts. In such a case, penalty will get reduced to 10% of tax involved, subject to a minimum of ten thousand rupees. Secondly, where the offence committed is due to either fraud or any wilful misstatement or suppression of facts to evade tax will result in a penalty equal to tax involved subject to a minimum of ten thousand rupees. While this section describes the offence and prescribes the penalty applicable, the procedure for adjudicating the imposition of this penalty is under section 73 and section 74 in which there is no express reference to this section.

(v) The third sub-section deals with offences where the person is not directly involved in any evasion but may aid or abet or may be a party to evasion or if he does not attend summons or produce documents. Penalty in such a cases would be up to twenty-five thousand rupees.

Persons found to have committed the offences listed in this section are liable to payment of penalty as follows:

A. Penalty equivalent to tax or Rupees 10,000/- whichever is higher in cases where - tax is evaded; tax is not deducted; or short deducted or deducted but not paid to the Government; or tax is not collected (or short collected) or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly or fraudulent claim of refund.

While examining the offences under Section 122(1) of CGST Act, penalties should align with the principle of proportionality, ensuring they correspond to the gravity of the offense committed. This principle is vital to maintain fairness in tax enforcement, distinguishing between intentional evasion and minor procedural lapses. Proportional penalties help prevent undue hardship to businesses for inadvertent errors or administrative oversights, which may not cause significant revenue loss to the government. Sections like 73 and 74 address tax shortfalls or evasion with appropriate remedies, while Section 125 provides for minimal penalties for general contraventions. Overly harsh penalties for trivial breaches not only contravene the spirit of the law but also undermine taxpayer confidence and compliance. By calibrating penalties to the seriousness of the violation, the GST framework can ensure equitable enforcement, fostering a fair and transparent tax regime, as held by the Allahabad High Court in *M/s Metenere Ltd. vs. Union of India*, which sets a precedent for proportionality in the imposition of penalties, ensuring that punitive actions are not excessively harsh. It ruled that penalties should correspond to the gravity of the offense, distinguishing between procedural non-compliance and fraudulent activities, thereby bifurcated as:

Column A	Column B
(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;	(xi) is liable to be registered under this Act but fails to obtain registration;
(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;	(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;	(xiii) obstructs or prevents any officer in discharge of his duties under this Act;
(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;	(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;	(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;	(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;
(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in	(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under

contravention of the provisions of this Act or the rules made thereunder;	this Act;
(viii) fraudulently obtains refund of tax under this Act;	(xix) issues any invoice or document by using the registration number of another registered person;
(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;	(xx) tampers with, or destroys any material evidence or document;
(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;	
(xv) suppresses his turnover leading to evasion of tax under this Act;	

The Honorable Court held that the offences in 'Column A' are linked with the intention of tax evasion, so the penalty shall be Tax amount or Rupees Ten Thousand whichever is higher whereas the offences in 'Column B' are linked only to procedural non-compliance that are subject to penalty of Rupees Ten Thousand.

Analysis of Offences Listed u/s 122(1)

1. Supplies any goods and/ or services:

   (a) Without issue of any invoice, or

   (b) Issues an incorrect/ false invoice in respect of such supply

   Comment:

   For the penalty provision to be applicable, a 'Supply' within the meaning defined in Section 7 of the Act is a prerequisite. Unless the activity or transaction undertaken by the taxable person falls within the definition of 'Supply' in the first place, this penalty provision does not apply.

   Raising of an invoice before or at the time of removal of goods is mandatory under law whereas the time limit for issue in case of services is one month. However, there can be a situation that a supplier could have supplied either goods or services or both, without issuing an invoice for any reason or for reasons that may be *bona fide*. All such cases would constitute an offence attracting the penal provisions. For instance, a supplier could have supplied the goods against a contract without an invoice accompanying the goods (since the price for such supply may not have been agreed upon) even such cases would attract the penal provisions stipulated by this section.

Interplay with "E-invoice" provisions:

The provisions of Rule 48(5) seek to discredit any invoice issued by a person who is liable to issue an e-invoice, in any other manner, and the same shall not be treated as an 'invoice' for the purposes of the Act. Thus, even when an invoice is issued, the failure to generate the IRN and make it an e-invoice makes the issuance of the original invoice non est. Thus, prima facie, the same may fall within Section 122(1)(i). The same scenario may be seen through the lens of a competing provision being Section 122(3)(e) which reads that any person who fails to issue an invoice in accordance with the provisions of this Act or the rules made thereunder shall be liable to a penalty which may extend to twenty-five thousand rupees. Comparison of Section 122(1)(i) with Section 122(3)(e) reveals that the former is related to an outward supply by a taxable person who makes a supply of goods or services or both whereas the latter is with respect to any invoice which is required to be issued by a person which by law he is liable to issue (such as an invoice under Section 31(3)(f)) or issuance of an invoice which is not in accordance with the provisions of the Act). The former is thus a general provision which deals with a violation whereas the latter is a provision covering a procedural lapse. Thus, the more specific provision should apply, and the said offence falls within the scope of Section 122(3)(e) and not this sub-section.

Incorrect invoice would take into its sweep and ambit any misclassification of goods which on the face of it is incorrect. For instance, an incorrect invoice could be a case where an invoice is issued for supply of "automobile spare" as a supply of "machinery spare".

Interplay with Anti-profiteering provisions:

Issue of incorrect invoice by not passing the benefit of GST rate reduction is also an offence. *Director General of Anti-Profiteering Delhi vs. J.P. and sons [2019(22) G.S.T.L. 473 (N.A.P.A)]*

In the above case law, it was found that the base prices of the goods were increased when there is a reduction in GST rate from 28% to 18%, so that the reduction in the GST rate was not passed on to the recipients. The respondent made the contravention the provisions of section 122(1)(i) of the CGST Act by issuing incorrect invoices.

The aspect of 'profiteering', however, does not make the supply or the tax invoice incorrect. The law was amended to insert a specific penal provision under Section 171(3A) subsequently with prospective effect, and it was subsequently accepted by the authority that the penal provisions of this sub-section cannot be made applicable treating the invoice as 'incorrect' and later on suo-moto withdrawn .

A false invoice is one which on the face of it is patently false. False in the normal course means "untrue" but in this instance the word false means something more than "untrue". For instance, supply of unit quantity 100 for Rs.10,000/- could be invoiced as unit quantity 10 for Rs.1,000/-.In jurisprudence, *'false'* or '*falsely*' are oftenest used to

characterize a wrongful or criminal act, such as involves an error or untruth, intentionally or knowingly put forward. The Supreme Court held in Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax, the context of penalty under Section 43 of the Madhya Pradesh General Sales Tax Act, 1958 where *'false'* returns were alleged to be filed, held that the assessee should have filed a *'false'* return and a return cannot be said to be *'false'* unless there is an element of deliberateness in it.

If the transaction is 'inferred' to be a supply, that is not a case of supplying goods without issuing an invoice although the result of such 'inference' is that goods have been supplied unmindful of the definition of supply and therefore invoice is not issued. For e.g., delay in tracking goods sent on-approval is a case where after the time limit specified in section 31(7) is 'deemed' to be a supply which is the result of such delay. But that does not necessarily attract imposition of penalty under this clause (i).

In each of clauses to section 122(1), such ingredients must be inquired to sustain or defend demand for penalty.

2. Issues an invoice (or bill) without supply of goods or services or both in violation of the provisions of the Act/ Rules.

Comment: In business parlance, these are termed as "bogus invoices/ bills".

Circular No. 171/03/2022-GST dated 06.07.2022 has been issued in respect of transactions involving fake invoices.

S.No.	Issues	Clarification
1.	In case where a registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both, whether such transaction will be covered as "supply" under section 7 of CGST Act and whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act. Also, whether any penal action can be taken against registered person 'A' in such cases.	Since there is only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7 of the CGST Act. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against 'A' for the said transaction, And accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74

		is required to be taken against 'A' in respect of the said transaction. The registered person 'A' shall, however, ***be liable for penal action under section 122(1)(ii)*** **of the CGST Act** for issuing tax invoices without actual supply of goods or services or both.
2.	A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above-mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.	Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be **liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74** of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. Further, as per provisions of **section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74** of CGST Act, **no penalty for the same Act,(i.e. for the said fraudulent availment or utilization of ITC), can be imposed on 'B'** under any other provisions of CGST Act, including under section 122.
3.	A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying	In this case, the input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of input tax credit by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there

	supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.	was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, **no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.** However, in such cases, **'B' shall be liable for penal action *both under section 122(1)(ii) and section 122(1)(vii)*** of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.

3. Collects any amount as tax but fails to deposit the same with the Government beyond a period of three months from due date.

Comment: Collection of taxes could either be passive or active collection. This section covers both such situations. It must be understood that the GST Law presupposes that tax is deemed to have been passed even in cases where tax has not been collected unless it is proved to the contrary (refer section 49(9)). Composition taxpayers (or even unregistered persons) selling MRP-goods also can come within the mischief of this prohibition. However, please note collection of 'input tax credit lost' (liable to be reverse

under section 17(2) of CGST Act) due to any exemption of output to a recipient may not amount to 'collection of tax'. Reference may be had to a decision of Tribunal in the context of Central Excise where section 11D of that Act was analysed in *Unison Metals Limited vs. CCE, Ahd-I (2006) 204 ELT 323 (LB).*

4. Collects any tax in contravention of law but fails to deposit the same with the Government beyond a period of three months from due date.

   Comment: One must ensure that any collection of taxes cannot be retained by the registered person. Collection of taxes in contravention of law would also mean where a registered person collects 18% as taxes but the actual tax rate is 12%. In this scenario, the difference of 6% cannot be retained by the registered person. As per the provision of section 76(1) of the CGST Act, every person who has collected from any other person, should be required to be paid to the government.

   With respect to quantification of the penalty, since the quantification limb again falls back to 'tax evaded' or Rupees Ten Thousand, whichever is higher, mere 'non-payment' will not trigger 'evaded' limb of the quantification part as held by the Allahabad High court[6].

5. Fails to -

   (a) Deduct tax/ deduct appropriate tax, as per section 51 (Section 51 is applicable to certain specific persons. The said section requires such specified persons to deduct tax at the rate of one per cent out of the payment to the supplier if the value of supply under a contract exceeds two lakh and fifty thousand rupees) or

   (b) deposit the tax deducted with the appropriate Government.

   Comment: The provisions of tax deducted at source under section 51 notified through *Notification No. 50/2018 CT dated 13.09.2018* and come into force with effect from 01.10.2018.

6. Fails to -

   (a) collect tax/ collect appropriate tax as per provisions of section 52 (Section 52 is applicable to electronic commerce operator who collects tax from the supplier of goods at the time of payment to such supplier at the rate of one per cent (CGST+SGST))

   (b) deposit the tax collected with the appropriate Government.

   Comment: The provisions of collection of tax at source under section 52 notified through *Notification No. 51/2018 CT dated 13.09.2018* have come into force with effect from 01.10.2018.

[6] *Clear Secured Services Pvt Ltd v. Commissioner, State GST (2023)*

7. Takes or utilizes input tax credit without actual receipt of goods or services either fully or partially in contravention of provisions of Act/ Rules.

   Comment: This situation covers a case where the goods or services have not been received but the invoice has been received in advance. In such a situation the registered person cannot avail the credit in terms of section 16 of the CGST Act. If he does so, the penal provisions under this clause will stand attracted.

   Circular 171 discussed earlier clarifies the penalty to be imposed for persons who takes ITC without actually receiving the goods or services or both.

   It is interesting to note that the offence triggers on mere taking of the input tax credit itself and does not require the taxable person to make use of the said input tax credit by utilizing the same towards payment of tax dues or passing on the same to another person. This is in stark contrast to interest provisions in Section 50(3) where interest applies when credit is availed and utilized. The offence crystallizes at the stage of taking the credit itself. The usage of "Or" in the term 'Taken or utilized', in the context of CENVAT Credit Rules were interpreted by the *Supreme Court in UOI v Ind-Swift Laboratories Ltd 2012* to be read as "Or" itself, and not relaxed to mean "And", holding that taxing statutes have to be read as such.

8. Fraudulently obtains refund of tax.

   Comment: In the normal course, refunds can be claimed by a registered person in case of inverted duty structure or exports or supplies to SEZ (Zero rated supplies). One must be very careful at the time of claiming such refunds including furnishing of documentation etc. Any false or incorrect claim will get covered under this section.

   It is also important to note that not all cases of refunds which are sanctioned and disbursed but which are not eligible to be paid can be termed as fraudulent refunds. Such refunds are merely 'erroneous' refunds, which may be due to any number of reasons including wrong interpretation of any provisions of the Act or Rules or may be even due to arithmetical errors. Such refunds do not become fraudulent refunds by default and are not subject to the penalty under this provision. "*Fraudulently*" means doing anything with the intention to defraud but not otherwise.

9. Takes or distributes input tax credit in contravention of section 20, or the rules made thereunder (Section 20 prescribes manner of distribution of credit by input service distributor).

   Comment: This clause covers cases relating to ISD who either avails or distributes the available credits contravening the provisions of section 20.

10. With an intention to evade payment of tax-

    (a) falsifies or substitutes financial records, or

    (b) produces fake accounts or documents, or

    (c) furnishes any false information or return

Comment: The above three situations need no further elaboration. It covers all cases of misrepresentation.

11. Fails to obtain registration.

    Comment: This clause would typically cover - for example a situation where a person is required to register since his turnovers have exceeded the threshold limits but has failed to register; or a person who is required to take compulsory registration as per section 24 but fails to obtain registration.

12. Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently.

    Comment: For example, furnishing false information with regard to address of a business premise or not declaring a warehouse that existed etc.

13. Obstructs or prevents any officer in discharge of his duties.

    Comment: A Government servant cannot be obstructed in the performance of his duties. For instance, a registered person does not allow an Officer to enter a godown.

14. Transports any taxable goods without the cover of specified documents.

    Comment: For example, taxable goods are to be transported under cover of a tax invoice and in certain cases along with an e-way bill/ delivery challan etc.

15. Suppresses his turnover leading to evasion of tax.

    Comment: Suppression and evasion are normally used or understood interchangeably. But suppression means “failure to disclose” which essentially leads to evasion of tax.

16. Fails to keep, maintain or retain books of account and other documents as specified in law.

17. Fails to furnish information or documents called for by an officer or furnishes false information or documents during any proceedings.

18. Supplies, transports or stores any goods which he has reason to believe are liable to confiscation.

19. Issues any invoice or document by using the registration number of another taxable person.

    Comment: This is a clear case of evasion. Typically, it would also cover a case of misrepresentation of registration number of another registered person.

20. Tampers with or destroys any material evidence or document.

21. Disposes off or tampers with any goods that have been detained, seized, or attached under this Act.

B. Penalty equivalent to amount of tax evaded or ITC availed or passed on will be levied on a person committing any of the following offences. This provision will apply if such person is a beneficiary and happening of such a transaction is on his request,

- Goods / services / both are supplied without issue of invoices / issue of incorrect or false invoice
- Issue of invoice / bill without supply of goods / services / both
- Takes / utilises input tax credit without actual receipt of goods / services
- Takes / distributes Input tax credit in contravention to provisions of Section 20 of CGST Act, 2017.

Although the provisions of Section 122(1A) appear to address the imposition of a penalty on "any" person, not merely a taxable person, the *Honourable Bombay High Court in Shantanu Sanjay Hundekari v UOI WPL30198_2023* analysed the context of the offenses covered under the provision and held that plain reading of section 122 clearly implies that it provides for levy of penalty for "certain offences" by taxable person. Such taxable person would render himself liable for a penalty for acts provided in clauses (*i*) to (*xxi*) of sub-section (1). Insofar as sub-section (1-A) of Section 122 is concerned, it provides that any person (who would necessarily be a taxable person), retains the benefit of the transactions covered under clauses (*i*), (*ii*), (*vii*) or clause (*ix*) of sub-section (1), and at whose instance, such transaction is conducted, "shall be liable to a penalty of an amount equal to the tax evaded or input tax credit availed of or passed on". This necessarily implies that sub-section (1-A) applies to a taxable person, as it specifically speaks about the applicability of the provisions of clauses (*i*), (*ii*), (*vii*) or clause (*ix*) of sub-section (1). The court held that this clearly depicts the intention of the legislature that a person who would fall within the purview of sub-section(1-A) of Section 122 is necessarily a taxable person as defined under section 2(107) of the CGST Act read with the provisions of section 2(94) of the CGST Act and a person who retains the benefits of transactions covered under clauses (*i*), (*ii*), (*vii*) or clause (*ix*) of sub-section (1) of Section 122. it should be interpreted to apply to a "taxable person" who is a beneficiary of the same.

C. Any electronic commerce operator who,

a. allows an unregistered person other than a person exempted from registration by a notification to make such supply of goods or services or both through it;

b. allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

c. fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

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

D. Registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of Rs.10,000/- or 10% of the tax due from such person, whichever is higher.

Registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of Rs.10,000/- or tax due from such person, whichever is higher.

E. Penalty up to Rs.25,000/- where **any person**:

1. aids or abets any of the offences specified in clause A above;

   Comment: Aiding or abetting normally means collusion with another person or to encourage or assist another person to commit an offence. It may be noted that almost all offences committed under clause A would require assistance/ collusion/ connivance.

2. acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation;

3. receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;

4. fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry.

   Comment: Before levy of penalty under this section the question of *mala-fide* intent or resistance would also need to be considered.

5. fails to issue invoice in accordance with the provisions of this Act or rules made thereunder or fails to account for an invoice in his books of account.

Special procedure to be followed by a registered person engaged in manufacturing of certain goods:

Vide *Notification No. 04/2024-CT dated 05.01.2024, w.e.f. 01.04.2024,* Central Government has specified a special procedure to be followed by a registered persons engaged in the manufacture of pan masala and certain tobacco products.

This special procedure includes furnishing of following information:

- Details of Packing Machines in Form GST SRM-I (Registration and disposal of packing machines of pan masala and tobacco products)
- Special Monthly Statement in Form GST SRM-II (Monthly Statement of inputs used and the final goods produced by the manufacturer of goods specified)
- Certificate of Chartered Engineer in Form GST SRM-III

Further vide *Notification No. 08/2024-CT dated 10.04.2024,* Central Government had extended the timeline for implementation of *Notification No. 04/2024-CT dated 05.01.2024* from 1st April, 2024 to 15th May, 2024.

Penalty for failure to register certain machines used in manufacture of goods as per special procedure.

The new section 122A had been inserted vide the Finance Act, 2024 to levy penalty on failure to register certain machines used in manufacture of goods (tobacco, pan-masala and similar items) as per special procedure notified u/s 148 of CGST Act.

In case any person engaged in the manufacture of goods in respect of which any special procedure relating to registration of machines has been notified under section 148, acts in contravention of the said special procedure, will be subject to a penalty. In addition to any penalties due under Chapter XV or other provisions of this Chapter, they will be liable to pay an additional penalty of one lakh rupees for each machine which is not registered. Further every machine not so registered shall be liable for seizure and confiscation except in case penalty imposed is paid and registration of such machine is made in accordance with the special procedure within three days of the receipt of communication of the order of penalty.

122.4 FAQs

Q1. Whether penalty becomes automatically leviable without any adjudication?

Ans. Though not specifically mentioned in section 122 relating to penalties, in the light of section 126 dealing with general disciplines related to penalty and in view of principles of natural justice, penalties cannot be imposed without affording him an adequate opportunity of being heard.

Q2. Can there be any liability even if a person is not a taxable person?

Ans. Yes, penalty under sub-section (3) of section 122 can be levied on any person even if he is not a taxable person. Under sub-section (1A) of section 122, penalty can also be levied against a beneficiary on whose instance transaction has been conducted.

122.5 MCQs

Q1. If a person has failed to obtain the registration the penalty is equivalent to:

(a) amount of tax

(b) 10% of tax

(c) upto ₹ 10,000

(d) the amount of tax or ₹ 10,000, whichever is higher

Ans. (d) the amount of tax or ₹ 10,000, whichever is higher

Q2. If a person fails to appear before GST officer, the maximum penalty that can be levied is:

(a) amount of tax

(b) 10% of tax

(c) upto ₹ 10,000

(d) none of the above

Ans. (d) none of the above

Q3. Penalty of 10% of the tax can be levied if:

(a) a person repeatedly had not appeared before GST officer for 3 times

(b) the taxable person has not filed returns for 6 consecutive months or more

(c) a taxable person has been served with show cause notice for 3 times repeatedly

(d) registered person has not paid tax under *bona fide* belief

Ans. (d) registered person has not paid tax under *bona fide* belief.

Q4. There is no penalty for not carrying specified documents during transportation of goods

(i) True

(ii) False

Ans. (ii) False

Statutory Provisions

123. Penalty for failure to furnish information return

If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

Related provisions of the Statute:

Section	Description
Section 150	Obligation to furnish information return
Rule 142	Notice and order for demand of amounts payable under the Act

123.1 Introduction

This section would be relevant where the information return as prescribed under section 150 is not filed. Section 150 requires certain class of persons to maintain records and furnish information return within the prescribed time.

123.2 Analysis

If the person who is required to file an 'information return' as prescribed under section 150 has not filed the return within the stipulated period of 30 days or such further period (please see section 150(2) and 150(3)) from the date of issue of show cause notice, a penalty of Rs. 100/- per day shall be levied for each day for which the failure continues but not exceeding Rs. 5000/- (i.e. CGST 5,000/- and SGST 5,000/- or IGST 10,000/-).

123.3 FAQs

Q1. What would be the penalty for not filing the information return?

Ans. Penalty of Rs.100 per day would be applicable for each day for which the failure continues subject to maximum of Rs.5,000/-.

Q2. Would penalty under this section be payable for defective returns?

Ans. No, the penalty for defective information returns would not be payable under this section. But the information return will be treated as not filed if the defective returns are not rectified and in such case the penalty will be leviable.

Q3. Is there any maximum ceiling on penalty payable for failure to furnish information return u/s. 150?

Ans. Yes. There is maximum ceiling of Rs. 5,000/- for failure to furnish information return u/s. 150.

Statutory Provisions

124. Fine for failure to furnish statistics

If any person required to furnish any information or return under section 151, —

(a) without reasonable cause fails to furnish such information or return as may be required under that section, or

(b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty-five thousand rupees.

Related provisions of the Statute:

Section	Description
Section 151	Power to call for information
Rule 142	Notice and order for demand of amounts payable under the Act

124.1 Introduction

This section provides for penal consequences for failure to furnish information or return as required under section 151 regarding collection of information.

124.2 Analysis

The section specifies penalty for failure to provide information or return in two circumstances *viz.*

(a) fails to furnish information or return without reasonable cause; and

(b) furnishing false information wilfully.

The penalty specified is of up to Rs. 10,000/- (i.e. INR 10,000/- under CGST and Rs. 10,000/- under SGST or Rs. 20,000 under IGST) and where the offence is continuing a further fine of up to Rs. 100/- per day subject to maximum of Rs. 25,000/- (i.e. INR 25,000/- under CGST and Rs. 25,000/- under SGST or Rs. 50,000 under IGST).

Statutory provision

125. General Penalty

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

Related provisions of the Statute:

Section	Description
Section 2(84)	Definition of 'Person'
Section 2(107)	Definition of 'Taxable Person'
Section 126	General disciplines related to penalty
Rule 142	Notice and order for demand of amounts payable under the Act

125.1 Introduction

The duty of the State is not only to recover all lawful dues from a defaulter, but to do justice towards the law-abiding populace to impose a penalty – *jus in rem*. To this end, offences are listed in section 122 along with penalty specifically applicable to each. Any offence that does not have a specific penalty prescribed cannot be let off without penal consequences.

Section 125 is a general penalty provision under the GST law for cases where no separate penalty is prescribed under the Act or rules.

The statute can, through an express provision in the language of the penal provision, provide for the quantification of the penalty. This may be a fixed penalty or a penalty that falls within two fixed limits, with the principles of discretion baked into the quantification laid out. The quantification may include the undue advantage made as a result of the offense, the repetitive nature of the default, the quantum of tax involved, and other factors that may be relevant for the administrative adjudicating authority to consider. In such cases, where the statute prescribes a fixed penalty, the concerned authority will have no discretion in quantifying the amount. However, the administrative authorities can decide upon the quantum based on various factors only if such discretionary powers are vested onto them by the statute. Section 125 is one provision where the proper officer is given a spectrum within which the penalty can be quantified.

125.2 Analysis

Penalty upto Rs. 25,000/- is imposable where any person contravenes:

(a) any of the provisions of the Act; or

(b) rules made thereunder.

for which no penalty is separately prescribed under the Act.

125.3 FAQs

Q1. Which are the cases where general penalty can be levied?

Ans. The instances where there is no specific penalty prescribed under any other section or rule made thereunder general penalty will be attracted.

Q2. What is the amount of general penalty leviable under the Act?

Ans. An amount upto Rs. 25,000/-.

125.4 MCQs

Q1. General penalty can be levied in addition to the specific penalties prescribed under the law

(i) Yes, general penalty is levied in addition to the specific penalties

(ii) No, when no specific penalty is prescribed, then only the general penalty applies.

Ans. (ii) No, when no specific penalty is prescribed, then only the general penalty applies.

Q2. If the assessee discovers any default on his own, he must pay penalty along under this section?

(i) Yes

(ii) No

Ans. (ii) No.

Statutory Provisions

126. General disciplines related to penalty

(1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation. For the purpose of this sub-section –

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees.

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

Related provisions of the Statute:

Section/ Rule	Description
Section 122	Penalty for certain offences
Section 123	Penalty for failure to furnish information return
Section 125	General penalty

126.1. Introduction

While penalties are not new in tax laws, this section lays down certain guiding principles to ensure tax administration can be held accountable to the tax paying citizen. It is salutary that such well-reasoned 'general disciplines' relating to penalty are provided in the Act.

126.2. Analysis

Guideline for imposing penalty is one of the highlights of this progressive tax legislation. Courts have, for long, addressed the presence of circumstances surrounding the instance of – non-payment of tax now admitted – for the imposition of penalty. Now, a section providing guidance on 'how' and 'when' – to impose or refrain from imposing penalty – is salutary.

The following guiding disciplines in certain circumstances apply to substantial penalties:

(a) No penalty can be imposed where the tax involved is less than Rs. 5,000/- (minor breach) or in case of documentation errors apparent on the face of record which is easily rectifiable and made without fraudulent intent or gross negligence.

(b) When penalty is still liable to be imposed, the next safety as laid down is to inquire into the degree and severity of the breach to proceed with imposition of penalty. In these cases, if the facts do not demand imposition of penalty, restraint is advised. However, no such discretion is provided in the section while providing for amount of penalty.

(c) Person liable to penalty must be given an opportunity of being heard. Further, a speaking order should be passed for imposing such penalty. The officer must provide explanation for levy of penalty and the basis on which penalty is quantified.

(d) Voluntary disclosure by a person to an officer (not merely in his own books and records) about the circumstances of the breach prior to the discovery of the breach by the officer may be considered as a mitigating factor for quantifying of penalty.

(e) Cases involving fixed sum or fixed percentage of penalty are excluded.

General notes

The nature of penalty and the principles governing imposition of penalties as held by the Courts would be a guiding factor. There are no infallible tests in law which would guide the provisions relating to levy of penalties. Penalties can or may be levied depending on the facts and circumstances of each case. The guiding principles laid down by Courts can be summarised as follows:

1. Provisions of penalty must be strictly construed and within the term and language of the statute.

2. Penalty provision should be interpreted as it stands and, in case of a doubt it should be in a manner favourable to the taxpayer. If the language of a taxing provision is ambiguous or capable of having more than one meaning, one has to adopt the interpretation favouring the assessee. *[CIT Vs Vegetable Products Ltd., (88 ITR 192 (SC)].*

3. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the person either acted deliberately in defiance of law or was guilty of conduct, dishonest or acted

in conscious disregard of his obligations. Penalty need not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judiciously and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act, or where the breach flows from the belief that the offender is not liable to act in the manner prescribed by the statute. (*Hindustan Steel Ltd., vs State of Orissa 25 STC 210).*

4. Penalty proceedings are apart and separate from assessment proceedings. A person is entitled to adduce any evidence, which he had adduced or not in the assessment proceedings and such evidence has to be duly considered by the authorities. The assessee is also entitled in the penalty proceedings to take up new pleas, which he had not taken up in the course of assessment proceedings.

5. No confiscation can be done unless Tax & Penalty is quantified [*Shree Enterprises Vs CTO 2019 (3) TR 2273 (Karnataka High Court)*].

Doctrine of *mens rea*

Non-compliance of law under a genuine belief or without a guilty mind should not generally invoke penalties. Earlier, this view was by and large accepted by the Courts. For instance, in the case of *Modi Spinning and Weaving Mills (16 STC 310)* the Supreme Court held that "as the assessee *bona fide* thought that the lift purchased by them would be included in category (b) as well as category (c) of the certificate of registration and as neither the Assessing Officer nor the Appellate Assistant Commissioner had given any finding that the assessee did not or could not have entertained any *bona fide* doubt and therefore the offence committed, would not attract any penalties. There is a clear distinction between a representation, which is negligent, and one, which is fraudulent. Normally a section requires that the representation must have been made falsely i.e., without any belief in its truth. A representation, however, negligent is not necessarily fraudulent. Although establishment of *mens-rea* is not a requirement but its absence is unmistakable, and its existence cannot be presumed. Some reference to provisions such as section 7 and 8 of Indian Evidence Act may be examined along with definition of 'evidence', 'fact', 'facts in issue', 'proved', 'disproved', 'not proved', etc, may be perused to understand the extent any of the allegations stand proved in each case.

In its discussion of civil and criminal liability in relation to Section 271(1)(a) of the Income Tax Act, 1961, as compared to Section 276C, which pertains to penalties and imprisonment, the Supreme Court noted that in most cases of criminal liability, the legislative intent is for the penalty to serve as a deterrent. The creation of an offense by statute presumes that society suffers injury due to the act or omission of the defaulter, and a deterrent must be imposed to discourage its repetition. In the context of a proceeding under Section 271(1)(a), the legislative intent is to emphasize the loss of revenue and provide a remedy for such loss. The terms used to measure the penalty are of particular significance. Whereas Section 276C

specifically addressed wilful failure on the part of the defaulter, considering the punitive nature of the penalty, a sentence for imprisonment cannot be imposed unless the element of *mens rea* is established. The court held that unless the statute explicitly indicates the need to establish *mens rea*, it is generally sufficient to demonstrate that a default in complying with the statute has occurred.

The following general principles were thus considered in *SEBI vs. Cabot International Capital Corporation, (2005) 123 Comp. Cases 841 (Bom)* that in relation to the imposition of penalty:

(i) *Mens rea* is an essential or sine qua non for criminal offence

(ii) Straitjacket formula of *mens rea* cannot be blindly followed in each and every case. Scheme of a particular statute may be diluted in a given case.

(iii) If, from the scheme, object and words used in the statute, it appears that the proceedings for the imposition of the penalty are adjudicatory in nature, in contra-distinction to criminal or quasi-criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word "penalty" by itself will not be determinative to conclude the nature of proceedings being criminal or quasi-criminal. The relevant considerations being the nature of the functions being discharged by the authority and the determination of the liability of the contravener and the delinquency.

(iv) *Mens rea* is not essential element for imposing penalty for breach of civil obligations or liabilities.

(v) There can be two distinct liabilities, civil and criminal, under the same act.

(vi) Even the administrative authority empowered by the Act to adjudicate have to act judicially and follow the principles of natural justice, to the extent applicable.

Though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach, etc.

In Hindustan Steel (Supra), the penalty in question was a quasi-criminal proceeding, and the observations made therein cannot be universally applied. The said observations would hold true only for such criminal/quasi-criminal punishment/penalty and would thus not squarely apply to mere civil liabilities. The above were distinguished in so far as it applies to monetary penalties where even bona-fide belief resulting in the technical or venial breach was held to be inconsequential by Supreme Court in State of Gujarat v. Saw Pipes Ltd Civil Appeal No.3481 of 2022. The classical view that imposition of any penalty requires Mens Rea has since eroded in Indian Jurisprudence.

126.4 Issues and Concerns

The applicability of general disciplines relating to levy of penalties prescribed under this section has limited field of operation since sub-section (6) of section 126 clearly specifies that

the general disciplines are not applicable wherever the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

126.5 FAQs

Q1. What are the discretionary powers of the officers to waive the penalties?

Ans. Section 126(2) prescribes that penalty shall be levied depending on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

Q2. What is regarded as "minor breach"?

Ans. A breach shall be considered a 'minor breach' if the amount of tax involved is less than Rs. 5,000/-.

Q3. What shall be considered as "mistake easily rectifiable"?

Ans. An omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

126.6 MCQ

Q1. For minor breaches of tax regulations or procedural requirements, the tax authority shall-

(a) not impose substantial penalties

(b) impose nominal penalty

(c) not impose any penalty

(d) none of the above

Ans. (c) not impose any penalty

Statutory Provisions

127. Power to impose penalty in certain cases

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceeding under sections 62, or section 63 or section 64 or section 73 or section 74 or [7][section 74A or] section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

Related provisions of the Statute

Section or Rule	Description
Section 2(84)	Definition of 'Person'
Section 2(107)	Definition of 'Taxable Person'

[7]. *Inserted vide Section 145 of the Finance (No. 2) Act, 2024 dated 16-08-2024, notified through Notification No. 17/2024 – CT dated 27.09.2024, w.e.f. 01-11-2024.*

Section 62	Assessment of non-filers of returns
Section 63	Assessment of unregistered persons
Section 64	Summary of assessment in certain special cases
Section 73	Determination of tax pertaining to the period upto Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts
Section 74	Determination of tax pertaining to the period upto Financial Year 2023-24 not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts
Section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards
Section 129	Detention, seizure and release of goods and conveyances in transit
Section 130	Confiscation of goods or conveyances and levy of penalty

127.1 Introduction

This section empowers the proper officer to initiate separate penalty proceedings if penalty is not leviable under any the provisions of section 62, 63, 64, 73, 74, 74A,129 or 130.

127.2 Analysis

Penalty proceedings can be initiated under this section even if the same are not covered under the following sections:

— Section 62: Assessment of non-filers of returns

— Section 63: Assessment of unregistered persons

— Section 64: Summary assessment in certain special cases

— Section 73: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts

— Section 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilfull misstatement or suppression of facts

— Section 74A: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onwards

— Section 129: Detention, seizure and release of goods and conveyances in transit

— Section 130: Confiscation of goods or conveyances and levy of penalty

In other words, penalties can be imposed by proper officer after giving due opportunity even in cases where there are no proceedings open with regard to assessment, adjudication, detention or confiscation. The proper officer may issue a penalty order after giving opportunity of being heard to such person.

Statutory Provision

128. Power to waive penalty or fee or both

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

[8][128A. Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods

(1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with,—

(a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or

(b) an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or

(c) an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,

pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:

Provided that where a notice has been issued under sub-section (1) of section 74, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75, the said notice or order shall be

[8] *Inserted vide Section 146 of the Finance (No. 2) Act, 2024 dated 16-08-2024, notified through Notification No. 17/2024-CT dated 27.09.2024, w.e.f. 01-11-2024.*

considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:

Provided further that the conclusion of the proceedings under this sub-section, in cases where an application is filed under sub-section (3) of section 107 or under sub-section (3) of section 112 or an appeal is filed by an officer of central tax under sub-section (1) of section 117 or under sub-section (1) of section 118 or where any proceedings are initiated under sub-section (1) of section 108, against an order referred to in clause (b) or clause (c) or against the directions of the Appellate Authority or the Appellate Tribunal or the court referred to in the first proviso, shall be subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order:

Provided also that where such interest and penalty has already been paid, no refund of the same shall be available.

(2) Nothing contained in sub-section (1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.

(3) Nothing contained in sub-section (1) shall be applicable in respect of cases where an appeal or writ petition filed by the said person is pending before Appellate Authority or Appellate Tribunal or a court, as the case may be, and has not been withdrawn by the said person on or before the date notified under sub-section (1).

(4) Notwithstanding anything contained in this Act, where any amount specified under sub-section (1) has been paid and the proceedings are deemed to be concluded under the said sub-section, no appeal under sub-section (1) of section 107 or sub-section (1) of section 112 shall lie against an order referred to in clause (b) or clause (c) of sub-section (1), as the case may be."]

Extract of the CGST Rules, 2017

[9][164. Procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73

(1) Any person who is eligible for waiver of interest, or penalty, or both in respect of a notice or a statement mentioned in clause (a) of sub-section (1) of section 128A, may file an application electronically in FORM GST SPL-01 on the common portal, providing the details of the said notice or the statement, as the case may be, along with the details of the payments made in FORM GST DRC-03 towards the tax demanded.

(2) Any person who is eligible for waiver of interest, or penalty, or both, in respect of orders mentioned in clauses (b) and (c) of sub-section (1) of section 128A, may file an

[9] *Inserted vide Notification No. 20/2024 – CT dated 08-10-2024 w.e.f. 01.11.2024*

application electronically in FORM GST SPL 02 on the common portal, providing the details of the said order, along with the details of the payments made towards the tax demanded:

Provided that the payment towards such tax demanded shall be made only by crediting the amount in the electronic liability register against the debit entry created by the said order:

Provided further that if the payment towards such tax demanded has been made through FORM GST DRC-03, an application in FORM GST DRC-03A, as prescribed in sub-rule (2B) of rule 142, shall be filed by the said person for credit of the said amount in the Electronic Liability Register against the debit entry created for the said demand, before filing the application in FORM GST SPL 02.

(3) Where the notice or statement or order mentioned in sub-section (1) of section 128A includes demand of tax, partially on account of erroneous refund and partially for other reasons, an application under sub-rule (1) or sub-rule (2) may be filed only after payment of the full amount of tax demanded in the said notice or statement or order, on or before the date notified under the said sub-section.

(4) Where the notice or statement or order mentioned in sub-section (1) of section 128A includes demand of tax, partially for the period mentioned in the said sub-section and partially for the period other than that mentioned in the said sub-section, an application under sub-rule (1) or sub-rule (2) may be filed only after payment of the full amount of tax demanded in the said notice or statement or order, on or before the date notified under the said sub-section.

(5) The amount payable under sub-rule (1) or sub-rule (2) shall be the amount that remains payable, after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be.

(6) Any person who wishes to file an application under sub-rule (1) or sub-rule (2), may do so within a period of three months from the date notified under sub-section (1) of section 128A:

Provided that where an application in FORM GST SPL-02 is to be filed in cases referred to in the first proviso to sub-section (1) of section 128A, the time limit for filing the said application shall be six months from the date of communication of the order of the proper officer redetermining such tax under section 73.

(7) The application under sub-rule (1) or sub-rule (2) shall be accompanied by documents evidencing withdrawal of appeal or writ petition, if any, filed before any Appellate Authority, or Tribunal or Court, as the case may be, to establish that the applicant is eligible for the waiver of interest or penalty or both, in terms of section 128A:

Provided that where the applicant has filed an application for withdrawal of an appeal or writ petition filed before the Appellate Authority or Appellate Tribunal or a court, as the

case may be, but the order for withdrawal has not been issued by the concerned authority till the date of filing of the application under sub-rule (1) or sub-rule (2), the applicant shall upload the copy of such application or document filed for withdrawal of the said appeal or writ petition along with the application under sub-rule (1) or sub-rule (2), and shall upload the copy of the order for withdrawal of the said appeal or writ petition on the common portal, within one month of the issuance of the said order for withdrawal by the concerned authority.

(8) Where the proper officer is of the view that the application made in FORM GST SPL-01 or FORM GST SPL-02 is liable to be rejected as not being eligible for waiver of interest, or penalty, or both, as per section 128A, he shall issue a notice on the common portal to the applicant in FORM GST SPL-03 within three months from the date of receipt of the said application and shall also give the applicant an opportunity of being heard.

(9) On receiving the notice under sub-rule (8), the applicant may file a reply to the said notice on the common portal in FORM GST SPL-04, within a period of one month from the date of receipt of the said notice.

(10) If the proper officer is satisfied that the applicant is eligible for waiver of interest and penalty as per section 128A, he shall issue an order in FORM GST SPL-05 on the common portal accepting the said application and concluding the proceedings under section 128A.

(11) In cases where the order in FORM GST SPL-05 is issued by the proper officer under sub-rule (10).–

(a) in respect of an application filed in FORM GST SPL-01 pertaining to a notice or statement referred to in clause (a) of sub-section (1) of section 128A, the summary of order in FORM GST DRC-07 as per sub-rule (5) of rule 142 shall not be required to be issued by the proper officer, in respect of the said notice or statement;

(b) in respect of an application filed in FORM GST SPL-02 pertaining to an order referred to in clause (b) or clause (c) of sub-section (1) of section 128A, the liability created in the part II of Electronic Liability Register, shall be modified accordingly.

(12) If the proper officer is not satisfied with the reply of the applicant, the proper officer shall issue an order in FORM GST SPL-07 rejecting the said application.

(13) (a) In cases where notice in FORM GST SPL-03 has not been issued, the proper officer shall issue the order under sub-rule (10) within a period of three months from the date of receipt of the application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be.

(b) In cases where notice in FORM GST SPL-03 has been issued, the proper officer shall issue the order in sub-rule (10) or sub-rule (12) within a period of three months from the date of receipt of reply of the applicant in FORM GST SPL-04, or within a period of four months from the date of issuance of notice in FORM GST SPL-03 where no reply is received from the applicant.

Explanation.– For the purposes of this sub-rule, in cases referred to in the proviso to sub-rule (7), the time period from the date of filing of the application under sub-rule (1) or sub-rule (2) till the date of submission of the order for withdrawal of the appeal or the writ, as the case may be, shall not be included while calculating the time period under clause (a) or clause (b) of this sub-rule.

(14) If no order is issued by the proper officer within the time limit specified in sub-rule (13), then the application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, shall be deemed to be approved and the proceedings shall be deemed to be concluded.

(15) (a) In cases where no appeal is filed against the order in FORM GST SPL-07 within the time period specified in sub-section (1) of section 107, the original appeal, if any, filed by the applicant against the order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A, and withdrawn for filing the application in FORM GST SPL-02 in accordance with sub-section (3) of section 128A, shall be restored.

(b) In cases where an appeal is filed against the order in FORM GST SPL-07 for rejection of application for waiver of interest, or penalty, or both, if—

(i) the appellate authority has held that the proper officer has wrongly rejected the application for waiver of interest, or penalty, or both, in FORM GST SPL-07, the said appellate authority shall pass an order in FORM GST SPL-06 on the common portal accepting the said application and concluding the proceedings under section 128A; or

(ii) the appellate authority has held that the proper officer has rightly rejected the application for waiver of interest, or penalty, or both, in FORM GST SPL-07, the original appeal, if any, filed by the applicant against the order mentioned in clause (b) or clause (c) of subsection (1) of section 128A, and withdrawn for filing the application in FORM GST SPL-02 in accordance with sub-section (3) of section 128A, shall be restored, subject to condition that the applicant files an undertaking electronically on the portal in FORM GST SPL-08, within a period of three months from the date of issuance of the order by the appellate authority in FORM GST APL-04, that he has neither filed nor intends to file any appeal against the said order of the Appellate Authority.

(16) In cases where the taxpayer is required to pay an additional amount of tax liability as per the second proviso to sub-section (1) of section 128A, and such additional payment is not made within the time limit specified in the said proviso, the waiver of interest, or penalty, or both, under the said section as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, if any, shall become void.

(17) In cases where the taxpayer is required to pay any amount of interest, or penalty, or both, in respect of any demand pertaining to erroneous refund or on account of demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A, and the details of such amount have been mentioned in FORM GST SPL-05 or FORM GST SPL-06, the applicant shall pay the said amount of interest, or penalty, or

both, within a period of three months from the date of issuance of the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, and where the said amount is not paid within the said time period, the waiver of interest, or penalty, or both, under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void.

Explanation.– For the purposes of this rule, the proper officer for issuance of order under this rule,–

(a) in cases where the application for waiver of interest, or penalty, or both is made with respect to a notice or statement mentioned in clause (a) of sub-section (1) of section 128A, shall be the proper officer for issuance of order as per section 73; and

(b) in cases where the application for waiver of interest, or penalty, or both, is made with respect to an order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A, shall be the proper officer referred to in section 79 of the Act.]

Related provisions of the Statute:

Section or Rule	Description
Section 47	Levy of late fee
Section 122	Penalty for certain offences
Section 123	Penalty for failure to furnish information return
Section 125	General Penalty

128.1 Introduction

This section empowers the Government to waive penalty for certain class of taxpayers or under certain circumstances.

128.2 Analysis

(i) This section provides for waiver of penalty leviable under section 122 or section 123 or section 125 or late fee payable under section 47 to those classes of taxpayers or under such mitigating factors as notified by the Government.

(ii) A series of notifications have been issued for reduction of late fee with regard to filing of Form GSTR-3B, GSTR-1, GSTR-5, GSTR-5A, and GSTR-6.

128A.1 Analysis

Considering the challenges faced by taxpayers during the early years of the Goods and Services Tax (GST), providing relief from interest and penalties was crucial to encourage compliance and support businesses in navigating the new tax regime. This was particularly pertinent due to the errors committed by taxpayers and the interpretation challenges associated with the newly introduced provisions. Section 128A of the Central Government (CGST) Act, 17, was introduced to address this issue

by waiving interest and penalties for certain demands under Section 73 of the GST Acts, 17, for the tax period from July 1, 2017, to March 31, 2020. Based on the recommendations of the GST Council's 53rd meeting, the Amnesty scheme was implemented through the insertion of Section 128A into the CGST Act, 2017, effective from July 1, 2024.

Section 146 of the Finance Act, 2024, incorporated Section 128A into the CGST Act, 2017. The accompanying column notes to Section 128A explicitly state that the waiver of interest or penalty, or both, applies to demands issued under Section 73 of the CGST Act, specifically excluding demands issued under Section 74 or 76 of any other provisions of the Act. Furthermore, the waiver is applicable to tax periods that span from July 1, 2017, to March 31, 2020.

Section 128A applies to demands pending at various stages of adjudication, appeal/ revisionary/ court forums. They are as follows:

(a) Where a notice has been issued u/s 73 but order has not yet been passed – 128A(1)(a)

(b) Where an order has been passed u/s 73 but order has not been issued u/s 107 or

(c) Where an order has been passed u/s 73 but order has not been issued u/s 108 (i.e. revisionary authority has taken up the order for suo moto revision but has not yet passed revisionary order) Where an order has been passed u/s 107 or 108 but order has not been passed u/s 113 (i.e. where the first appellate authority or revisionary authority has passed their respective orders but order has not been passed by the Tribunal (GSTAT) – i.e. appeals pending to be filed before Tribunal)

Where a notice has been issued u/s 74 and the appellate authority holds that there is no fraud, suppression or wilful mis-statement and determines tax for normal period of limitation u/s 73, as per Section 5(2) of the Act, the said notice/ order originally issued u/s 74 shall be treated as notice/ order issued u/s 73 and will be eligible for Section 128A option.

One of the main issues plaguing taxpayers pertain to demands which have attained finality by limitation wherein the taxpayer failed file statutory appeals under Section 107 within the prescribed period. Whether such demands also fall within clause (b) would determine the fate of the amounts due. While one may view that the reference to non-issuance of an appeal order as an indirect inference that an appeal is instituted and is pending, the provisions of Section 128A do not explicitly bar the such cases as it has only made reference to orders passed under Section 73 and no appeal order is passed, and the taxpayer may choose to make a claim for the benefits of Section 128A.

After the conclusion of proceedings u/s 128A, in cases where:

(a) Department filed appeal before:

  (i) first appellate authority u/s 107(3) or

  (ii) before the Tribunal i.e. GSTAT u/s 112(3) or

(iii) before the High Court u/s 117(1) or

(iv) before the Supreme Court u/s 118(1) or

(b) Suo moto proceedings are initiated by revisionary authority u/s 108, against Section 73 order for Section 107 order of first appellate authority

Then in such cases, the condition is that the applicant has to pay 'additional amount of tax payable', if any in accordance with the aforesaid orders. This additional amount has to be paid within three months from the date of the aforesaid orders.

If any interest or penalty has already been paid with respect to an order u/s 73, for which application is now made, then no refund of the same shall be available. This scheme shall not be applicable to proceedings initiated u/s 73 with respect to amount payable on account of erroneous refunds. In other words, if erroneous refunds is ultimately found to be received, then interest and penalty would be payable. This scheme will become applicable in respect of cases where appeal or writ petition pending before appellate authority or appellate tribunal or court is withdrawn by the applicant on or before date to be notified.

The time limits were duly notified by *Notification No. 21/2024- CT dated 08-10-2024*

Sl No	**Class of registered persons**	**Date up to which payment for the tax payable as per the notice or statement or the order referred to in clause (a) or clause (b) or clause (c) of section 128A of the said Act, as the case may be, can be made for waiver of interest, or penalty, or both, under the said section**
1	Registered persons to whom a notice or statement or order, referred to in clause (a) or clause (b) or clause (c) of section 128A of the said Act has been issued.	31.03.2025
2	Registered persons to whom a notice has been issued under sub-section (1) of section 74, in respect of the period referred to in sub-section (1) of section 128A of the said Act, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority, or Appellate Tribunal, or a court, in accordance with the provisions of sub-section (2) of section 75, for determination of the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73 of the said Act	Date ending on completion of six months from the date of issuance of the order by the proper officer redetermining tax under section 73 of the said Act.

It appears *Notification No.21/2024-CT* only notifies the '*date up to which payment for tax payable*' can be made. It does not notify the date within which appeal has to be withdrawn. Therefore a view may be adopted that the date of withdrawal shall be the date as eligible to apply u/s 128A(1). Further, the notification has seemingly notified the date for a "class of registered persons" alone despite the provisions of Section 128A not making distinction as to such a "class of registered persons" , like done in Section 148.

Where amount specified u/s 128A(1) has been paid and the proceedings are deemed to be concluded, then no appeal u/s 107(1) or 112(1) can be preferred by the applicant subsequently.

A perusal of S.128(4) read with 2nd proviso to S.128A(1) brings out the fact that while applicant cannot file an appeal once the proceedings are concluded under this scheme, the department can very well file appeal against the Section 73 order before any of the appellate forums or the revisionary authority can take up the Section 73 order for suo moto revisions and if any further demand becomes payable, such additional demand is also payable by applicant. The only silver lining is that interest and penalty is not payable on such additional tax liability

128A.2 Clarifications by Government on scope and applicability of Section 128A and Rule 164

To address various concerns raised by taxpayers, the Government further issued a clarificatory circular where multiple scenarios were considered.

Circular 238/32/2024 dated 15th October 2024 sets out the Government's interpretation of the provisions.

Sl No	Issue	Clarification
1.	Whether the benefit provided under Section 128A will be applicable to taxpayers who have paid the tax component in full before the date on which the said section has come into effect?	In this regard, it is to be mentioned that all such amount paid towards the said demand upto the date notified under sub-section (1) of section 128A, irrespective of whether the said payment has been done before Section 128A comes into effect, or after that, and irrespective of whether such payment was made before the issuance of the demand notice or demand order, or after that, shall be considered as paid towards the amount payable in sub-section (1) of Section 128A, as long as the said amount has been paid upto the date notified under sub-section (1) of section 128A and was intended to be paid towards the said demand.

<table>
<tr><td colspan="3">Remarks: This addresses many taxpayers' cases where entire taxes were paid prior to introduction of 128A (including amounts paid as 'under protest') but the demands were in various stages of litigation. Wherever the proceedings are not completed and existing payments were only appropriated and demand confirmed, the person would be eligible to make use of the scheme.</td></tr>
<tr><td>Sl No</td><td>Issue</td><td>Clarification</td></tr>
<tr><td>2</td><td>Whether amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer, against a particular demand can be considered as tax paid towards the same for the purpose of Section 128A?</td><td>Yes. The said amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer against a demand, shall also be considered as the tax paid towards the said demand, for the purpose of section 128A provided the same has been recovered on or before the date notified under sub-section (1) of section 128A</td></tr>
<tr><td colspan="3">Remarks: There has been many cases where appeals were filed in the condonable period whereas the proper officer proceeded to issue recovery notices immediately on expiry of period under Section 78 and recover some amounts due. Such appellants can make use of the provision of Section 128A and consider the same as payments made towards.</td></tr>
<tr><td>Sl No</td><td>Issue</td><td>Clarification</td></tr>
<tr><td>3</td><td>Whether the amount recovered by the tax officers as interest or penalty or both, pertaining to demand under Section 73 pertaining to Financial Years 2017-18, 2018-19 and 2019-20, can be adjusted against the tax amount payable towards the demand made under Section 73 pertaining to the said financial years</td><td>No. It is mentioned that as per the third proviso to sub-section (1) of section 128A, no refund of such amount of interest or penalty or both, is available. Accordingly, any amount paid by the taxpayer or recovered by the tax officers, as interest or penalty cannot be adjusted towards the amount payable as tax.</td></tr>
<tr><td colspan="3">Remarks: Once an appeal is disposed by the first appellate authorities, the stay of the demand under Section 107(7) is vacated and the appellants would need to pay the pre-deposit under Section 112 to avoid the department pressing for recoveries of interest and penalties, in case the appellant wishes to pursue 128A</td></tr>
<tr><td>Sl No</td><td>Issue</td><td>Clarification</td></tr>
<tr><td>4</td><td>Whether the benefit provided under Section 128A will be applicable in cases, where the tax due has</td><td>Where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or</td></tr>
</table>

	already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved?	penalty involved, the same shall be considered for availing the benefit of section 128A. However, the benefit of waiver of interest and penalty shall not be applicable in the cases where the interest has been demanded on account of delayed filing of returns, or delayed reporting of any supply in the return, as such interest is related to demand of interest on self-assessed liability and does not pertain to any demand of tax dues and is directly recoverable under sub-section (12) of section 75.
Remarks: Prior the amendment of the explanation, Section 75(12), Honourable High Courts have held that demand of interest also would require Show Cause Notices under Section 73. Thus, taxpayer may take a position that when the proper officer has set the course of action in motion by initiation under Section 73, the demands made therein, including those pertaining to self-assessed liability and interest thereon should be eligible for Section 128A benefits. The department through the issuance of the circular seeks to take the alternate position and thus will likely see a challenge before the courts.		
Sl No	**Issue**	**Clarification**
5	Whether the benefit under Section 128A is available, if the taxpayer intends to avail partial waiver of interest or penalty or both, on certain issues, by making part payment of the amount demanded in the notice/ statement/ order, as the case may be, and opts to litigate for the remaining issues	No. Section 128A (1) clearly provides that the waiver of interest or penalty or both is only applicable when the full amount of tax demanded in the notice/ statement/ order is paid.
Remarks: The scheme contemplates closure of the proceedings in totality and thus does not leave any option for the taxpayer to pick and choose what he wants to pay and close and what has to be litigated to higher forums.		
Sl No	**Issue**	**Clarification**
6	Where the notice/order involves multiple periods, ranging from the period for which waiver provided in Section 128A is applicable, and includes some other tax periods for	The taxpayer is eligible to apply for waiver of interest or penalty or both, in such cases where the demand notice/ order spans tax periods covered under Section 128A and those not covered under the

	which such waiver is not applicable, whether the benefit Page 10of 15of waiver of interest or penalty or both under Section 128A can be availed for the period covered under section 128A? If so, what is the tax amount payable for claiming waiver under Section 128A	said section. However, as per sub-rule (4) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/ statement / order, as the case may be, to avail the benefit of waiver of interest or penalty or both under Section 128A. Further, though the amount of tax demanded shall be required to be paid as per the notice/ statement / order, as the case may be, for whole of the period covered under the said notice/ statement / order, but the waiver of interest or penalty or both under section 128A shall only be applicable for the period specified in section 128A, and not for the period not covered under the said section. On payment of the full amount demanded in the notice/ statement/ order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both for tax periods not covered under Section 128A, remains payable by the taxpayer. The said amount shall be required to be paid by the applicant within three months from the date of issuance of order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. If the said amount is not paid within the time limit as mentioned above, the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void, as per sub-rule (17) of rule 164.

Remarks: The demands pertaining to multiple years which may span from 17-18 to periods outside 19-20 to which the scheme pertains to would be a common issue faced by taxpayers. While High Court of Madras in *Titan Company Ltd v JC CGST (2024) W.P.No.33164 of 2023* have held that bunching of tax periods in a single Show Cause Notice/Order is impermissible, the department has by and large proceeded such multiple financial year spanning notices which is enabled in GSTN as well. Taxpayers may explore approaching High Courts to obtain separate proceedings per year which will enable them to close periods up to 19-20 under Section 128A and litigate further periods if they so choose		
Sl No	**Issue**	**Clarification**
7	Where the notice/ statement/ order issued under Section 73 involves multiple issues and one of them is regarding demand of erroneous refund, whether an application can be filed for waiver of interest or penalty or both under Section 128A? If so, what is the tax amount payable for claiming waiver under Section 128A?	Yes. However, as per sub-rule (3) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/ statement / order, as the case may be, including on account of demand of erroneous refund, to avail the benefit of waiver of interest or penalty or both under Section 128A. Further, in such cases, the waiver of interest or penalty or both under section 128A shall only be available in respect of tax demand other than that pertaining to demand of erroneous refund. On payment of the full amount demanded in the notice/ statement/ order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A in respect of tax demand other than that pertaining to demand of erroneous refund, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both, that corresponds to demand of erroneous refund, remains payable by the applicant. The said amount shall be required to be paid by the applicant within three months from the date of issuance of order in FORM GST SPL-05 or FORM GST SPL-

		06, as the case may be. If the said amount is not paid within the time limit as mentioned above, the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void, as per sub-rule (17) of rule 164.
Remarks: Erroneous refunds have been specifically kept aside for the purposes of Section 128A.		
Sl No	**Issue**	**Clarification**
8	In cases where department has filed an appeal against the order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A and the Appellate Authority or the Appellate Tribunal or the court orthe Revisional Authority, has issued an order enhancing the tax liability, and in the meanwhile the proper officer has issued an order in FORM GST SPL-05 under section 128A, and the taxpayer has not paid the said additional amount of tax liability within the specified time limit, what will be the status of the conclusion of proceedings under Section 128A?	Yes, as per the second proviso to section 128A, the conclusion of proceedings in such cases is subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order Accordingly, it becomes clear that even in cases where an order in FORM GST SPL-05 or in FORM GST SPL-06has been issued the conclusion of the said proceedings will be subject to the condition that the taxpayer pays the additional tax amount as determined by the Appellate Authority or the Appellate Tribunal or the court orthe Revisional Authority by an order issued in the matter of appeal filed by the department, within a period of three months from the date of the such order enhancing the tax liability. In case such additional payment is not done within a period of three months from the date of the said order, then as per sub-rule (16)

		of Rule 164, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 shall become void.
Remarks: The taxpayer is required only to pay the additional tax amount and not the interest and penalty on the same unless the same pertains to erroneous refund.		
Sl No	**Issue**	**Clarification**
9	Sub-section (3) of section 128A refers to only appeal or writ petition. In this regard, whether matters where SLP filed by the applicant is pending before the Supreme Court, what is the procedure to be followed by the taxpayer to avail the waiver of interest or penalty or both?	Yes, in such cases also the applicant will be required to withdraw the said special leave petition and file an application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, along with proof of withdrawal of SLP or the copy of the application or any other document filed for withdrawal of SLP, where the order for withdrawal of SLP has not been issued at the time of filing application in FORM GST SPL-01 or FORM GST SPL-02. In such cases, the procedure mentioned in para 3.1.6 may be followed
Remarks: Unlike Rule 164(15) which provides that the statutory appeal is restored (which was withdrawn for filing application under this section), there is no such restoration of SLP or writ petitions and the taxpayer should take appropriate decision before choosing to withdraw.		
Sl No	**Issue**	**Clarification**
10	Whether the benefit provided under Section 128A will be available for matters involving IGST and Compensation Cess?	Yes. On joint reading of section 20 of the Integrated Goods and Services Tax Act, 2017 and section 11 of GST (Compensation to States) Act, 2017 along with section 128A of CGST Act, it becomes clear that the benefit provided under Section 128A of CGST Act will be available for matters involving IGST and compensation cess as well. In this regard, it is mentioned that in such cases, full payment of tax means payment of CGST, SGST, IGST and compensation cess demanded in the notice/ statement/ order, as the case may be

Remarks: Demands made for each head will get covered under the provision excluding those pertaining to erroneous refund.		
Sl No	**Issue**	**Clarification**
11	Whether Section 128A covers cases involving demand of irregularly availed transition credit?	The transitional credit is considered to be availed on the date on which the said credit amount is credited in the Electronic Credit Ledger. On reading Rule 121 read with sub-rule (3) of rule 117,it is clear that any demand in respect of transitional credit wrongly availed, whether wholly or partly can be made undersection 73 or, as the case may be, section 74.Therefore, it is mentioned that if the amount of transitional credit has been availed in the period covered under Section 128A and notice for demand of wrongly availed credit is issued under section 73, the same is covered under Section 128A
Remarks: Section 2 defined input tax credit contextually to mean the specifically defined items in Section 2(62) and (63). Concerns raised whether the demand of Trans-Credit will not fall within the scheme is put to rest by this clarification.		
Sl No	**Issue**	**Clarification**
12	Whether Section 128A will cover waiver of penalties under other provisions, late fee, redemption fine etc?	It is clarified that any penalty, including penalties under section 73, section 122, section 125 etc, demanded under the demand notice/ statement/ order issued under section 73, is covered under the waiver provided under Section 128A. However, late fee, redemption fine etc are not covered under the waiver provided under Section 128A.
Remarks: The proceedings under Section 73 along with imposition of penalties in the same are to abate once the scheme is adopted despite the penalty imposed not necessarily for the dispute under the said provision.		
Sl No	**Issue**	**Clarification**
13	Whether payment to avail waiver under Section 128A can be made by	Yes. The payment of tax required to be made for eligibility for waiver under

	utilizing ITC?	section 128A is the amount of tax demanded in the notice/ statement/ order. Therefore, it can be paid either by debiting from electronic cash ledger or by utilising the Input Tax Credit (ITC), by debiting the electronic credit ledger, or partly from both. However, where the demand is in respect of any amount of tax to be paid by the recipient under Reverse Charge Mechanism or by the Electronic Commerce Operator under section 9(5), then the said amount shall be required to be paid by debiting the electronic cash ledger only and not through the electronic credit ledger. Further, where the amount has to be paid for demand of erroneous refund, the demand in respect of erroneous refund paid in cash is required to be paid only by debiting the electronic cash ledger only and not through the electronic credit ledger.
Remarks: See Circular 172 on clarification of manner if utilization of Electronic Credit Ledger		
Sl No	**Issue**	**Clarification**
14	Whether the benefit of waiver under Section 128A be availed qua import IGST payable under the Customs Act, 1962?	No. In such cases, demand is not issued under section 73 of the CGST Act, but is issued under the provisions of Customs Act, 1962 and therefore, such cases are not covered under waiver of interest or penalty or both under section 128A.
Remarks: The provisions of Section 128A aim to cover short-payment and non-payment of tax, availment or utilization of ineligible ITC under the GST provisions under Section 73 alone.		
Sl No	**Issue**	**Clarification**
15	With retrospective insertion of sub-sections (5) and (6) to Section 16 of the CGST Act, the tax demanded in notice/ statement/	Sub-rule (5) of rule 164 mentions that the amount payable in order to avail the benefit under section 128A, shall be calculated after deducting the amount not

	order reduces. Whether the entire tax amount demanded in the notice/ statement/ order has to be paid in such cases, to avail the benefit under section 128A?	payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be. Therefore, the applicant is required to pay only the amount that is payable, calculated after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, before submitting the application. While calculating the amount deductible on account of not being payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, taxpayer is required to ensure that such amount is deducted only where ITC has been denied solely on account of contravention of Section 16(4) of the CGST Act and not on any other grounds. He is also advised to provide a breakup of the amount not payable by him anymore, as per sub-sections (5) and (6) of section 16, in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, to enable the officer to verify the payment easily. It is also re-iterated that where the taxpayer is deducting the amount of ITC which was denied on account of contravention of sub-section (4) of section 16 of the CGST Act, but which is now available, as per retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, he is not required to file application for rectification in respect of the same as per special

		procedure notified under Section 148 vide notification No. 22/2024-Central tax dated 8thOctober 202
Remarks: In a significant step, the Government on the recommendation of the GST council allowed relief to violation of Section 16(4) in relation to ITC made by taxpayers who filed returns belatedly and were facing demands from the authorities. Taxpayers are also allowed a rectification procedure under Section 148 by filing an application to the concerned authority.(see Circular 237/31/2024 dated 15-10-2024) Those who opt the 128A procedure need not again make an application through such special procedure again.		
Sl No	**Issue**	**Clarification**
16	In case of application in FORM GST SPL-02, where the applicant has paid full or partial amount of tax through FORM GST DRC-03, whether the said applicant is mandatorily required to file application in FORM GST DRC-03A for such tax amount which he desires to get adjusted against tax demand as per FORM GST DRC-07/ FORM GST DRC-08/ FORM GST APL-04?	Yes. In cases where order in FORM GST DRC-07, FORM GST DRC-08 or FORM GST APL-04, as the case may be, has been issued and such taxpayer has paid required amount through FORM GST DRC-03, such applicant is required to adjust the said amount towards the demand created in the Electronic Liability Register, as per the second proviso to sub-rule (2) of rule 164, before filing the application in FORM GST SPL-02
Remarks: Wherever taxpayer have paid taxes in GST DRC-03 forms, the same can be set off against demands in the Electronics Liability ledger using GST DRC-03A. It is to be noted that wrong adjustment would attract penalty for making such illegal adjudgment under Section 122(1)(x)		

Statutory provision

129. Detention, seizure and release of goods and conveyances in transit

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, -

[10][(a) on payment of penalty equal to two hundred per cent. of the tax payable on

[10] Substituted for "(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent.

such goods and in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;]

[11][(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred percent of the tax payable on such goods, whichever is higher, and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;]

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

*[12][(2) ****.]*

[13][(3) The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detention or seizure, specifying the penalty payable and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1)].

(4) [14][No penalty] shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of the amount referred to in sub-section (1), all proceedings in respect

of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty" vide Finance Act, 2021 through Notification. No. 39/2021-CT dt. 21.12.2021, applicable w.e.f. 01.01.2022.

[11] Substituted for "(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty" vide Finance Act, 2021 through Notification. No. 39/2021-CT dt. 21.12.2021, applicable w.e.f. 01.01.2022.

[12] Omitted vide Finance Act, 2021 through Notification. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022.

[13]Substituted for "(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c)" vide Finance Act, 2021 through Notification. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022.

[14]Substituted for "(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard" vide Finance Act, 2021 through Notification. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022.

of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) *[15][Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3).*

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less.

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.]

Related provisions of the Statute:

Section/ Rule	Description
Section 67	Power of inspection, search and seizure
Section 68	Inspection of goods in movement
Section 130	Confiscation of goods or conveyances and levy of penalty
Rule 140	Bond and Security for release of seized goods
Rule 142	Notice and order for demand of amounts payable under the Act
Rule 144A	Recovery of penalty by sale of goods or conveyance detained or seized in transit

129.1 Introduction

This section provides for the basis relating to the detention of goods or conveyances or both in case of certain defaults under the law. A common man would understand the meanings of the three terms detention, confiscation and seizure as follows:

✓ Detention means keeping or holding back either by force or otherwise;

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[15]Substituted for "(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130.

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fourteen days may be reduced by the proper officer" vide Finance Act, 2021. through Notification. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022.

- ✓ Confiscation means to appropriate to the Government account;
- ✓ Seizure means to take forcible possession of.

129.2 Analysis

(a) If a person contravenes any provision of the Act or Rules while transporting or storing goods during transit, then such goods and the conveyance in which such goods are carried and all the documents relating to such goods and conveyance can be detained or seized. The proper officer detaining and seizing the goods and/ or conveyance has to provide proper opportunity to the transporter or such other person to explain his case by issuing a show cause notice to him. After hearing the transporter, the officer shall pass an appropriate order.

(b) In case of default, where the owner of the goods **comes forward for the payment of** penalty, then penalty levied will be equal to 200% of the amount of tax and in case of exempted goods 2% of the value of goods or Rs. 25,000/- whichever is less. The sub-section has two limbs to it-

i. When the goods are **taxable, and the owner comes forward to pay the penalty** – then the amount payable would be equal to:

Penalty equal to 200% of tax.

For example, if the taxable goods valued at Rs. 100,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods comes forward to pay penalty, the amount payable would be equal to Penalty = Rs. 24,000/-.

ii. When the goods are **exempt, and the owner comes forward to pay the penalty** – then the amount payable would be equal to:

Penalty at 2% of value of goods or Rs. 25,000/-, whichever is lower.

For example, if the exempt goods valued at Rs. 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods comes forward to pay the penalty the amount payable would be equal to: Rs. 2,000/- or Rs. 25,000/- whichever is lower, in this case it is Rs.2,000/-.

(c) In case where owner of the goods **does not come forward for payment of penalty**, then an order shall be passed for payment of amount of penalty equal to higher of **50% of the value of goods** or 200% of the tax payable on such goods and in case of exempted goods, 5% of the value of goods or Rs.25,000/- whichever is less. The sub-section has two limbs to it:

i. **When the goods are taxable, and the owner does not come forward to pay the penalty** – then the amount payable would be equal to:

Penalty equal to 50% of the value of goods or 200% of the tax payable on such goods.

For example, if the taxable goods valued at Rs.1,00,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay tax and penalty the amount payable would be equal to: Tax Penalty is higher of [Rs.50,000/- [i.e., 50% of value of goods (Rs. 1,00,000/- *50%) or 200% of tax payable which is Rs. 24000 (i.e., 200% of 12000)] in all = Rs.50,000/-.

ii. **When the goods are exempt, and the owner does not come forward to pay the penalty** – then the amount payable would be equal to:

Penalty at 5% of value of goods or Rs.25,000/-, whichever is lower.

For example, if the exempt goods valued at Rs.1,00,000/- is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay the penalty the amount payable would be equal to:
Rs. 5,000/- or Rs.25,000/- whichever is lower, in this case it is Rs. 5,000/-.

(d) The proper officer shall release the goods upon the payment amount of penalty in the above manner or upon furnishing a security equivalent of the amount payable and all the proceedings under this particular section shall be deemed to be concluded. However, if the person (either owner of the goods or any other person) fails to discharge the amount of penalty under this section within 15 days, then the goods and/ or conveyance shall be liable for confiscation. The period of 15 days can be reduced by proper officer if goods are of perishable or hazardous nature.

(e) Penalty under section 129 is a 'penalty in action', that is, this penalty cannot be imposed after completion of movement in case goods are not intercepted during movement and found to be deficient on the prescribed documents. If subsequent evidence is collected that clearly proves that goods have been moved without issuing EWB, even then penalty under section 129 cannot be imposed if such investigation is conducted after movement has ended. Decision of Patna HC in the case of *Ram Charitra Ram Harihar Prasad vs State of Bihar (CWP 11221 of 2019)* where the HC held that if EWB generated had expired but another EWB was generated just before vehicle was intercepted which was produced to the inspecting officer. HC held that intercepting officer cannot be questioned if a valid EWB was produced even though, from the facts, the vehicle can be understood to have travelled without a valid EWB but not intercepted. Offence cannot be reconstructed 'in theory'. Penalty under section 129 will arise only when offence is 'in progress' and vide Finance Act, 2021 w.e.f. 01.01.2022, the time period to issue notice and passing of order specifying the penalty has been clarified. The notice should be issued within 7 days of such detention or seizure, and thereafter an order should be passed within 7 days of service of such notice.

(f) One of the main contentions litigants raise against the imposition of penalty under Section-129 is the lack of any intent to evadad tax when there are only technical violations in the requirement while transporting the goods. Many High courts have also

given moulded relief to petitioners who approach the court citing lack of intent to evade tax in the consignment which is now being penalized under Section 129. The provisions do not however require the authortiies to establish any Mens Rea either. In this context, taking due recognition of the rulings of the Supreme Court in *Saw Pipes* Ltd and *Shri Ram Mutual Fund & Anr,* the Honorable Calcutta High Court in Asian Switch Gear M.A.T No 32 of 2023 held that absence of requirement of Mens Rea cannot be equated with an automatic imposition of penalty either.

129.3 FAQs

Q1. Under what circumstances a conveyance can be detained?

Ans. A conveyance can be detained when the conveyance is used for –

- Transportation of any goods or
- Storage of such goods while they are in transit

in violation of the GST Act or rules made thereunder.

Q2. What is the quantum of penalties in case of detention/ seizure of goods and/ or conveyance?

Ans. The quantum of penalties in case of detention/ seizure of goods and/ or conveyance are: -

- In case owner comes forward– the quantum of penalty would be equivalent to the 200% of amount of tax in case of taxable goods and in case of exempted goods, 2% of the value of the goods or Rs.25000/- whichever is less.
- In case, the owner does not come forward, penalty shall be 50% of the value of the goods or 200% of amount of tax whichever is higher in case of taxable goods and in case of exempted goods, 5% of the value of goods or Rs.25,000/- whichever is less.

129.4 MCQs

Q1. The detained goods shall be released only after payment of –

(a) Applicable penalty

(b) Furnishing a security;

(c) Tax and Interest;

(d) Either (a) or (b).

Ans. (d) Either (a) or (b)

Q2. Number of days within which the amount of tax and penalty on seized goods should be paid-

(a) 3

(b) 14

(c) 7

(d) 15

Ans. (d) 15

Statutory Provisions

130. Confiscation of goods or conveyances and levy of penalty

(1) *[16][Where] any person –*

(i) *supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*

(ii) *does not account for any goods on which he is liable to pay tax under this Act; or*

(iii) *supplies any goods liable to tax under this Act without having applied for registration; or*

(iv) *contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*

(v) *uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,*

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) *Whenever confiscation of any goods or conveyance is authorized by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:*

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the [17][penalty equal to hundred percent of the tax payable on such goods].

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay

[16] *Substituted vide Finance Act, 2021 through Notification. No. 39/2021-CT dt. 21.12.2021. Applicable w.e.f. 01.01.2022.* Prior it was read as "*Notwithstanding anything contained in this Act, if any person".*

[17] *Substituted vide Finance Act, 2021 through Notification. No. 39/2021-CT dt. 21.12.2021, applicable w.e.f. 01.01.2022.* Prior it was read as "*amount of penalty leviable under sub-section (1) of section 129".*

in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

[18]*[(3) ***]*

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyances and deposit the sale proceeds thereof with the Government.

Related provisions of the Statute:

Section / Rule	Description
Section 122	Penalty for certain offences
Section 126	General discipline related to penalty
Section 129	Detention, seizure and release of goods and conveyances in transit
Rule 142	Notice and order for demand of amounts payable under the Act

130.1 Introduction

This section provides for specific situations or causes leading to confiscation of goods/ conveyances. The nature of authorization to confiscate and providing an opportunity to show cause and release goods/ conveyances liable for such confiscation are detailed in this section.

130.2 Analysis

There are five precise causes for confiscation of goods and/ or conveyances specified in this section, and they are:

[18] *Omitted vide Finance Act, 2021 through Notification. No. 39/2021-CT dt. 21.12.2021, applicable w.e.f. 01.01.2022. Prior it was read as . "Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance."*

Action	Consequence
Supply or receive goods in contravention of the provisions of this Act or rules made thereunder	Resulting in actual evasion of tax
Not accounting for goods	Carrying a liability for payment of tax
Supply of goods liable to tax	Without applying for registration
Contravention of the provisions of Act or rules made thereunder	With intent to evade payment of tax
Use of conveyance as a means of transport for carriage of goods	In contravention of the Act or rules made thereunder

- In all the above cases, goods or conveyance shall be liable for confiscation. However, the conveyance shall not be confiscated where the owner of the conveyance proves that it is without the connivance of owner himself, his agent or person in charge of the conveyance. Further, the person shall be liable to pay penalty under section 122 of the Act.
- If the goods or conveyance are liable to be confiscated under the provisions of this Act, the proper officer shall give the owner of the goods an option to pay fine in lieu of confiscation.
- The amount of fine shall not exceed the market value of goods as reduced by the amount of tax payable thereon. However, at the same time aggregate of fine and penalty leviable shall not be less than the amount of penalty equal to hundred percent of the tax payable on such goods.
- Where the conveyance is used for transportation of goods or passengers on hire, the owner of the conveyance shall be given an option to pay in lieu of confiscation of the conveyance a fine equal to amount of tax payable on the goods transported on his conveyance.
- The order for confiscation cannot be issued without giving the person an opportunity of being heard.
- Shankar *Shastyabdapoorthi Memorial Hospital v/s. Union of India [2017 (345) ELT 334 (ker.)]*, If the fine is not paid in respect of confiscation, the order can be passed to confiscate the goods.
- The title of the confiscated goods or conveyance shall be vested upon the Government.
- The proper officer ordering confiscation shall take and hold possession of the things confiscated on behalf of the Government and every officer of police shall assist in taking such hold and possession.

— If the proper officer is satisfied that the confiscated goods/ conveyance are not required for any other proceedings under the Act, then he shall after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation, dispose the goods and deposit the sale proceeds with the Government.

130.3 Excess Stock vis-à-vis Confiscations

One of the most prevalent scenarios where confiscation proceedings are initiated by the authorities is during inspections and searches conducted at the premises of taxpayers where excess stock is discovered. "Offending" goods are identified and isually seized and FORM INS-02 is issued to the taxpayer. The question arise whether proceedings under Section 130 can be directly issued on the taxpayer in relation to such goods. The Honourable *Allahabad High Court* in *Maa Mahamaya Alloys Pvt Ltd v State of U.P 31 of 2021* have analyzed the provisions of Section 130 and observed the following:

(i) Only clauses (ii) and (iv) of Section 130(1) can at best be invoked by the department

(ii) Even assuming (ii) is invoked, the same cannot be made applicable for excess stock for the reason that the liability to pay tax arises only at the time of point of supply and not at any point earlier than that

(iii) Plain reading of (ii) indicates that the provision is attracted only when the taxpayer who is liable to pay tax does not account for the goods , after the supply is occasioned.

(iv) Clause (iv) of the Section 130(1) should be read in conjunction with an 'intent to evade payment of tax' and penalty can be levied by invoking clause (iv) only when the department establishes that there was a contravention of the Act and Rules coupled with the 'intent to evade payment of tax'.

(v) Proceedings under Section 73/74 should be pressed into service considering the provisions of Section 35(6) of the Act and resort to Section 130 cannot be directly made by the department in *Vijay Trading Company v Addl Comm (2024) Writ No.:1278 of 2024 (Allahabad High Court).*

130.4 FAQs

Q1. Are all cases of contraventions of any of the provisions of the act or rules liable for confiscation?

Ans. No, only if the contravention of the provisions results in evasion of taxes or there lies an intent to evade the payment of tax, confiscation of goods/ conveyance is permissible.

Q2. What is the maximum amount of fine in lieu of confiscation that can be levied?

Ans. The maximum amount of fine in lieu of confiscation shall not exceed the market price of the goods confiscated, less the tax chargeable thereon.

Q3. Can the option to pay redemption fine in lieu of confiscation of goods be given to any person other than the owner of the goods?

Ans. No, in terms of section 130(2) of CGST Act, the officer adjudging confiscation of any goods shall give to the owner of the goods an option to pay in lieu of confiscation such fine as thinks fit.

Q4. Can the option to pay fine in lieu of confiscation be exercised anytime?

Ans. The option to pay fine in lieu of confiscation shall be exercised within 3 months of confiscation.

Q5. What is the minimum amount of fine and penalty in lieu of confiscation that can be levied?

Ans: The minimum amount of fine and penalty shall be at least penalty equal to 100% of the tax payable on such goods.

Statutory Provisions

131. Confiscation or penalty not to interfere with other punishments

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973 (2 of 1974), no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

131.1 Introduction

This is an administrative provision which empowers the Government to initiate other proceedings, as relevant, in addition to confiscation of goods or imposition or penalty.

131.2 Analysis

Normally, the inference is that where the goods are confiscated or where any penalty is imposed, no other proceedings which are punitive in nature should be initiated.

This section provides that in addition to confiscation of goods or penalty already imposed, all/ any other proceedings may also be initiated or continued under the GST law or any other law, as applicable. This could be prosecution, arrest, cancellation of registration etc., as applicable and provided for the relevant non-compliance. Therefore, for the same offence both penalty and punishment can be levied.

Statutory provisions

132. Punishment for certain offences

(1) *[19][Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences], namely: -*

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the

[19] Substituted "Whoever commits any of the following offences" vide The Finance Act, 2020 w.e.f. 01.01.2021 through Notification. No. 92/2020-CT dt. 22.12.2020.

intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) [20][avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill];

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, [21][***] or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

*[22][(g) ***;]*

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

*[23][(j) ***;]*

*[24][(k) ***;] or]*

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[20] Substituted vide the Finance Act, 2020 dated 27.03.2020 through Notification No. 92/2020-CT dt. 22.12.2020 w.e.f. 01.01.2021, before it was read as "(c) avails input tax credit using such invoice or bill referred to in clause (b)".

[21] Omitted vide The Finance Act, 2020 w.e.f. 01.01.2021 through Notification. No. 92/2020-CT dt. 22.12.2020. Prior it was read as "fraudulently avails input tax credit"

[22] Omitted vide The Finance Act, 2023, notified through Notification No.28/2023-CT dated 31.07.2023, w.e.f. 01.10.2023. Prior it was read as "obstructs or prevents any officer in the discharge of his duties under this Act".

[23] Omitted vide The Finance Act, 2023, notified through Notification No. 28/2023-CT dated 31.07.2023, w.e.f. 01.10.2023. Prior it was read as "tampers with or destroys any material evidence or documents".

[24] Omitted vide The Finance Act, 2023, notified through Notification No. 28/2023-CT dated 31.07.2023, w.e.f. 01.10.2023. Prior it was read as "fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of

(l) attempts to commit, or abets the commission of any of the offences mentioned in [25][clauses (a) to (f) and clauses (h) and (i)] of this section,

shall be punishable –

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of [26][an offence specified in clause (b)] where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) [27][***], he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non- cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

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proving which shall be upon him, that the information supplied by him is true) supplies false information."

[25] *Substituted "clauses (a) to (f) and clauses (h) and (i)" vide Finance Act, 2023, w.e.f. 01.10.2023 through Notification No. 28/2023-CT dt. 31.07.2023.*

[26] *Substituted with "any other offence" vide The Finance Act, 2023, notified through Notification No. 28/2023-CT dated 31.07.2023, w.e.f. 01.10.2023.*

[27] *Omitted vide The Finance Act, 2023, notified through 28/2023-CT dated 31.07.2023, w.e.f. 01.10.2023.*

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation. — For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

Related provisions of the Statute:

Section or Rule	Description
Rule 162	Procedure for compounding of offences

132.1 Introduction

This section talks about cases of tax evasion and penal actions applicable on specific events subject to the amount of tax sought to be evaded. This provision provides for prosecution of offenders and the punishment initiated on them. In the normal course, prosecution is the institution or commencement of criminal proceeding, the process of exhibiting formal charges against an offender before a legal tribunal and pursuing them to final judgement on behalf of the State or Government or by indictment or information.

132.2 Analysis

A. In this section the law makers have identified situations whereby, there can be a leakage of Government revenue and have thus, penned down 9 such situations of *mala fide* intent which are as follows:

(i) Supply of goods or services or both without the cover of invoice with an intent to evade tax;

(ii) If any person issues any invoice or bill without actual supply of goods or services or both leading to wrongful input tax credit or refund of tax;

(iii) Any person who avails input tax credit using invoice referred in point (b) above or fraudulently avails input tax credit without any invoice or bill;

(iv) Collection of taxes without payment to the Government for a period beyond 3 months of due date;

(v) Evasion of tax, or obtaining refund with intent of fraud where such offence is not covered in clause (a) to (d) above;

(vi) Falsifying financial records or production of false records/ accounts/ documents/ information with an intent to evade tax;

(vii) Acquires or transports or in any other manner deals with any goods which he knows or has reasons to believe are liable for confiscation under this Act or rules made thereunder;

(viii) Receives or in any way, deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this law;

(ix) Attempts or abets the commission of any of the offences mentioned above.

This section enables institution of prosecution proceedings both against the offenders and also against those persons who are institutional to committing such offence. Such persons who are aiding the commitment of offence punishable only if they retain the benefits arising from committing the offence.

The period of imprisonment and quantum of fine varies depending on the amount of tax evaded or seriousness of the offence as listed below.

Amount of Tax evaded/ erroneous refund/ wrong ITC availed or utilized	**Fine**	**Imprisonment**
Exceeding Rs.5 Crores	Yes	Upto 5 years
Rs. 2 Crores – Rs.5 Crores	Yes	Upto 3 years
Rs. 1 Crores – Rs.2 Crores	Yes	Upto 1 year

B. If any person commits any offence specified in clause (f) above, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

C. In case of repetitive offences without any specific/ special reason which is recorded in the judgment of the Court will entail an imprisonment term of not less than 6 months and which could extend to 5 years plus with a fine.

D. All offences mentioned in this section are non-cognizable and bailable except the following cases:

a. Where the amount exceeds Rs.5 Crores and

b. Instances covered by (a) to (d) in Point A.

E. Every prosecution proceeding initiated requires prior sanction of the Commissioner.

F. The explanation to this section states that “tax” includes which are levied under CGST, SGST, UTGST, and GST Compensation Cess Act. Basically, it includes the amount of tax evaded, amount of input tax credit wrongly availed or utilized or refund wrongly taken under the Act.

G. Reference may be had to the discussion under section 122 regarding ‘ingredients’ to impose penalty contrasted with the admission of unpaid taxes. Prosecution under section 132 proceeds as a natural consequence of establishment of the ingredients in section 122 (for the stated offences from clause (i) to (iv) in section 122(1)) and the value being above the threshold specified. Further, it is seen in *Vimal Yashwantgiri Goswami vs State of Gujarat (SCA 13679 of 2019)* where Guj. HC laid down some guidance against placing persons under arrest under section 69 in a routine manner

without first establishing whether basic ingredients of offence are not established, person cannot be detained. With the Economic Offences (Inapplicability of Limitation) Act, 1974, there is no urgency to prosecute before completion of adjudication proceedings on the basic tax demand and penalty;

H. Prosecution must be undertaken in accordance with the due process prescribed under Cr.PC before a Magistrate. Authority in *Adani Enterprises Ltd. & Ors. v. UoI & Ors. In 2019-2408-MUM-CUS* may be referred where proceedings under any special law in the absence of a 'procedure code' must fall in Cr.PC.

I. Care must be taken to briefly read section 436 and 438 of Cr.PC. To detain a person (before conclusion of trail) is to deprive a person of his 'right to lift' under article 21. So, for a person to be set free on bail is a 'right' under the Constitution. To deny this right is permitted in special circumstances. Persons may be arrested under section 41 of Cr.PC, if the offence is bailable or non-bailable. In case of bailable offences, then after arrest immediately, the arresting officer is empowered to release the arrested person on bail. In case of non-bailable offences, the person arrested must be produced within 24 hours before a Magistrate who will set the bail.

J. It is in the case of non-bailable offences that anticipatory bail is granted under section 438. It means that the person must be enlarged 'at the very moment' of arrest *(Naresh Kumar Yadav v. Ravindra Kumar (2008) 1 SCC 632)*. Conditions imposed while granting anticipatory bail may sometimes be so onerous or restricting travel movements that it may require careful consultations with legal advisors whether the apprehension of arrest is real or not and whether anticipatory bail should or should not be sought. Some States have made amendments to the Cr.PC provisions so as to render section 438 inapplicable, for eg., in the State of UP, section 438 is omitted in its implementation;

K. Reference may also be had to section 441 regarding 'bonds and sureties' and various types of 'remand'. Understanding some of these provisions will take away fear and anxiety and bring in clarity regarding the degree of proof required to (i) detain a person and (ii) prosecute a person. In India, being remanded to police custody or judicial custody is seen as a person would be social boycott or ostracize a person. And if it is resorted to in unmerited cases, it may do more harm than good. Section 57 of Cr.PC makes it clear that detention should not be for more than 24 hours and then section 167 takes over to protect the 'right' of the detainee which states that maximum duration of detention pending investigation cannot exceed 90 days.

Guidelines issued by CBIC for launching of prosecution under CGST Act, 2017 [*Instruction No. 4/2022-23 (GST- Investigation), dated 01-09-2022*]

Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. The exact guidelines have been reproduced below for ready reference:

1. *Section 132 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) codifies the offences under the Act which warrant institution of criminal proceedings and prosecution. Whoever commits any of the offences specified under sub-section (1) and sub-section (2) of section 132 of the CGST Act, 2017, can be prosecuted.*

2. *Sanction of prosecution:*

2.1 Sanction of prosecution has serious repercussions for the person involved, therefore, the nature of evidence collected during the investigation should be carefully assessed. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher than adjudication proceeding as the case has to be established beyond reasonable doubt. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the above criteria for recommending prosecution. Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of tax evaded, or ITC wrongly availed, or refund wrongly taken and the nature as well as quality of evidence collected.

2.2. Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings. Prosecution should not be launched in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law. Further, the evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens-rea for committing the offence. It follows, therefore, that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but should be restricted to only persons who oversaw day-to-day operations of the company and have taken active part in committing the tax evasion etc. or had connived at it.

3. *Decision on prosecution should normally be taken immediately on completion of the adjudication proceedings, except in cases of arrest where prosecution should be filed as early as possible. Hon'ble Supreme Court of India in the case of Radheshyam Kejriwal [2011 (266) ELT 294 (SC)] has, inter-alia, observed the following:*

(i) Adjudication proceedings and criminal proceedings can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vi) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

In view of the above observations of Hon'ble Supreme Court, prosecution complaint may even be filed before adjudication of the case, especially where offence involved is grave, or qualitative evidences are available, or it is apprehended that the concerned person may delay completion of adjudication proceedings. In cases where any offender is arrested under section 69 of the CGST Act, 2017, prosecution complaint may be filed even before issuance of the Show Cause Notice.

4. *Monetary limits:*

4.1 Monetary Limit: Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified under sub-section (1) of section 132 of the CGST Act, 2017 is more than Five Hundred Lakh rupees. However, in following cases, the said monetary limit shall not be applicable:

(i) Habitual evaders: Prosecution can be launched in the case of a company/taxpayer habitually involved in tax evasion or misusing Input Tax Credit (ITC) facility or fraudulently obtained refund. A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.

(ii) Arrest Cases: Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.

5. *Authority to sanction prosecution:*

5.1 The prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of the Pr. Commissioner/Commissioner of CGST in terms of sub-section (6) of section 132 of CGST Act, 2017.

5.2 In respect of cases investigated by DGGI, the prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of Pr. Additional Director General/Additional Director General, Directorate General of GST Intelligence (DGGI) of the concerned zonal unit/ Hqrs.

6. *Procedure for sanction of prosecution:*

6.1 In cases of arrest(s) made under section 69 of the CGST Act, 2017:

6.1.1 Where during the course of investigation, arrest(s) have been made and no bail has been granted, all efforts should be made to file prosecution complaint in the Court within sixty (60) days of arrest. In all other cases of arrest, prosecution complaint should also be filed within a definite time frame. The proposal of filing complaint in the format of investigation report prescribed in ***Annexure-I****, format of which has been provided in the Instruction, should be forwarded to the Pr. Commissioner/ Commissioner, within fifty (50) days of arrest. The Pr. Commissioner/ Commissioner shall examine the proposal and take decision as per section 132 of CGST Act, 2017. If prosecution sanction is accorded, he shall issue a sanction order along with an order authorizing the investigating officer (at the level of Superintendent) of the case to file the prosecution complaint in the competent court.*

6.1.2 In cases investigated by DGGI wherever an arrest has been made, procedure as detailed in para 7.1.1 should be followed by officers of equivalent rank of DGGI.

6.1.3 The Additional/ Joint Commissioner or Additional / Joint Director in the case of DGGI, must ensure that all the documents/ evidence and list of witnesses are kept ready before forwarding the proposal of filing complaint to Pr. Commissioner/ Commissioner or Pr. ADG/ ADG of DGGI.

6.2 In case of filing of prosecution against legal person, including natural person:

6.2.1 Section 137(1) of the Act provides that where an offence under this Act has been committed by a company, every person who, at the time offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Section 137 (2) of the Act provides that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded

against and punished accordingly. Thus, in the case of Companies, both the legal person as well as natural person are liable for prosecution under section 132 of the CGST Act. Similarly, under sub-section (3) of section 137, the provisions have been made for partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a Trust.

6.2.2 Where it is deemed fit to launch prosecution before adjudication of the case, the Additional/Joint Commissioner or Additional/Joint Director, DGGI, as the case may be, supervising the investigation, shall record the reason for the same and forward the proposal to the sanctioning authority. The decision of the sanctioning authority shall be informed to the concerned adjudicating authority so that there is no need for him to examine the case again from the perspective of prosecution.

6.2.3 In all cases (other than those mentioned at para 6.2.2 and arrests where prosecution complaint has already been filed before adjudication), the adjudicating authority should invariably indicate at the time of passing the order itself whether it considers the case fit for prosecution, so that it can be further processed and sent to the Pr. Commissioner/ Commissioner for obtaining his sanction of prosecution.

6.2.4 In cases, where show cause notice has been issued by DGGI, the recommendation of adjudicating authority for filing of prosecution shall be sent to the Pr. Additional Director General/Additional Director General, DGGI of the concerned zonal unit/ Hqrs.

6.2.5 Where at the time of passing of adjudication order, no view has been taken on prosecution by the Adjudicating Authority, the adjudication branch shall re-submit the file within 15 days from the date of issue of adjudication order to the Adjudicating authority to take view on prosecution.

6.2.6 Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General of DGGI may on his own motion also, taking into consideration inter alia, the seriousness of the offence, examine whether the case is fit for sanction of prosecution irrespective of whether the adjudicating authority has recommended prosecution or not.

*6.2.7 An investigation report for the purpose of launching prosecution should be carefully prepared in the format given in **Annexure-I**, within one month of the date of receipt of the adjudication order or receipt of recommendation of Adjudicating authority, as the case may be. Investigation report should be signed by a Deputy/Assistant Commissioner, endorsed by the jurisdictional Additional/ Joint Commissioner, and sent to the Pr. Commissioner/ Commissioner for taking a decision on sanction for launching prosecution. In respect of cases booked by DGGI, the said report shall be prepared by the officers of DGGI, signed by the Deputy/ Assistant Director, endorsed by the supervising Additional/ Joint Director and sent to the Pr. Additional Director General/ Additional Director General of DGGI for taking a decision on sanction for launching prosecution. Thereafter, the competent authority shall follow the procedure as mentioned in para 6.1.1.*

6.2.8 *Once the sanction for prosecution has been obtained, prosecution in the court of law should be filed as early as possible, but not beyond a period of sixty days by the duly authorized officer (of the level of Superintendent). In case of delay in filing complaint beyond 60 days, the reason for the same shall be brought to the notice of the sanctioning authority i.e., Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General, by the officer authorised for filing of the complaint.*

6.2.9 In the cases investigated by DGGI, except for cases pertaining to single/multiple taxpayer(s) under Central Tax administration in one Commissionerate where arrests have not been made and the prosecution is not proposed prior to issuance of show cause notice, prosecution complaints shall be filed and followed up by DGGI. In other cases, the complaint shall be filed by the officer at level of Superintendent of the jurisdictional Commissionerate, authorized by Pr. Commissioner/ Commissioner of CGST. However, in all cases investigated by DGGI, the prosecution shall continue to be sanctioned by appropriate officer of DGGI.

7. *Appeal against Court order in case of inadequate punishment/acquittal:*

7.1 The Prosecution Cell in the Commissionerate shall examine the judgment of the Court and submit their recommendations to the Pr. Commissioner/ Commissioner. Where Pr. Commissioner/ Commissioner is of the view that the accused person has been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, filing of appeal should be considered against the order within the stipulated time. Before filing of appeal in such cases, concurrence of Pr. CC/CC should be obtained. Sanction for appeal in such cases shall, however, be accorded by Pr. Commissioner/ Commissioner.

7.2 In respect of cases booked by DGGI, the Prosecution Cell in the Directorate shall examine the judgment of the court and submit their recommendations to the Pr. Additional Director General/ Additional Director General who shall take a view regarding acceptance of the order or filing of appeal. However, before filing of appeal, concurrence of DG or Pr. DG (for cases booked by HQ Unit) should be obtained.

8. *Procedure for withdrawal of prosecution:*

8.1 Procedure for withdrawal of sanction-order of prosecution:

8.1.1 In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidence have come to light necessitating review of the sanction for prosecution, the Commissionerate should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidence, the sanctioning authority, if satisfied, may recommend to the jurisdictional Pr. Chief Commissioner/ Chief Commissioner that the sanction for prosecution be withdrawn who shall then take a decision.

8.1.2 *In the cases investigated by DGGI, such withdrawal of sanction order may be made with the approval of Director General of DGGI of concerned sub-national unit. In the cases booked by DGGI, Hqrs., Pr. Director General shall be competent to approve the withdrawal of sanction order.*

8.2 Procedure for withdrawal of complaint already filed for prosecution:

8.2.1 Attention is invited to judgment of Hon'ble Supreme Court on the issue of relation between adjudication proceedings and prosecution in the case of Radheshyam Kejriwal, supra. Hon'ble Supreme Court in para 43 have observed as below:

"In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court."

The said ratio is equally applicable to GST Law. Therefore, where it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings and such order has attained finality, Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General after taking approval of Pr. Chief Commissioner/ Chief Commissioner or Pr. Director General/ Director General, as the case may be, would ensure filing of an application through Public Prosecutor in the court to allow withdrawal of prosecution in accordance with law. The withdrawal can only be affected with the approval of the court.

9. *General guidelines:*

9.1 It has been reported that delay in the Court proceedings is often due to non-availability of the records required to be produced before the Court or due to delay in drafting of the complaint, listing of the exhibits etc. It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody. Where a complaint has not been filed even after a lapse of 60 days from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of the Pr. Commissioner/ Commissioner or the Pr. Additional Director General/ Additional Director General of DGGI by the Additional/ Joint Commissioner in charge of the Commissionerate or Additional/ Joint Director of DGGI, responsible for filing of the complaint.

9.2 Filing of prosecution need not be kept in abeyance on the ground that the taxpayer has gone in appeal/ revision. However, to ensure that the proceeding in appeal/revision are not unduly delayed because the case records are required for the purpose of

prosecution, a parallel file containing copies of essential documents relating to adjudication should be maintained.

9.3 The Superintendent in-charge of adjudication section should endorse copy of all adjudication orders to the prosecution section. The Superintendent in charge of prosecution section should monitor receipt of all serially numbered adjudication orders and obtain copies of adjudication orders of missing serial numbers from the adjudication section every month. In respect of adjudication orders related to DGGI cases, Superintendent in charge of adjudication section should ensure endorsing a copy of adjudication order to DGGI. Concerned Zonal Units/ Hqrs. of DGGI shall also follow up the status of adjudication of the case from the concerned Commissionerate or adjudicating authority.

10. *Publication of names of persons convicted:*

10.1 Section 159 of the CGST Act, 2017 grants power to the Pr. Commissioner/ Commissioner or any other officer authorised by him on his behalf to publish name and other particulars of the person convicted under the Act. It is directed that in deserving cases, the department should invoke this section in respect of all persons who are convicted under the Act.

11. *Monitoring of prosecution:*

11.1 Prosecution, once launched, should be vigorously followed. The Pr. Commissioner/ Commissioner of CGST or Pr. Additional Director General/ Additional Director General of DGGI should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory. In DGGI, an Additional/ Joint Director in each zonal unit and DGGI (Hqrs) shall supervise the prosecution related work and take stock of the pending prosecution cases. For keeping a track of prosecution cases, entries of all prosecution cases should promptly be made in DIGIT/ Investigation Module, within 48 hours of sanction of prosecution and the entries must be updated from time to time. Additional/ Joint Commissioner or Additional/ Joint Director, in-charge of supervising prosecution cases shall ensure making timely entries in the database.

12*. Compounding of offence:*

12.1 Section 138 of the CGST Act, 2017 provides for compounding of offences by the Pr. Commissioner/ Commissioner on payment of compounding amount. The provisions regarding compounding of offence should be brought to the notice of person being prosecuted and such person be given an offer of compounding by Pr. Commissioner/ Commissioner or Pr. Additional Director General/Additional Director General of DGGI, as the case may be.

13. *Transitional Provisions:*

13.1 All cases where sanction for prosecution is accorded after the issue of these instructions shall be dealt in accordance with the provisions of these instructions irrespective of the date of the offence. Cases where prosecution has been sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority considering the provisions of these instructions.

14. *Inspection of prosecution work by the Directorate General of Performance Management:*

14.1 Director General, Directorate General of Performance Management and Pr. Chief Commissioners/Chief Commissioners, who are required to inspect the Commissionerates, should specifically check whether instructions in this regard are being followed scrupulously and make a mention of the implementation of the guidelines in their inspection report apart from recording of statistical data. Similarly, exercise should also be carried out in DGGI.

15. *Where a case is considered suitable for launching prosecution and where adequate evidence is forthcoming, securing conviction largely depends on the quality of investigation. It is, therefore, necessary for senior officers to take personal interest in the investigation of important cases of GST evasion and in respect of cases having money laundering angle and to provide guidance and support to the investigating officers.*

Statutory Provisions

133. Liability of officers and certain other persons

(1) Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerization thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, willfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.

(2) Any person

(a) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;

(b) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Related provisions of the Statute:

Section or Rule	Description
Section 150	Obligation to furnish information return
Section 151	Power to call for information
Section 158A	Consent based sharing of information furnished by taxable person
Rule 163	Consent based sharing of information

133.1 Introduction

This section casts duties & obligations on the officers of the Goods and Services Tax Laws to keep the information collected by the Government or from the information furnished in the returns.

133.2 Analysis

Since the officers of the department are dealing with sensitive information, the secrecy and security of such information is of utmost importance. The officers who are dealing with the data or data collected from the information returns, have to maintain utmost secrecy of the same.

If the officer willfully discloses such information or contents by any reason other than by reason of his duties cast upon him under the Act, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ₹ 25,000 or both.

Further any prosecution under this section would be carried out with the prior sanction of the Government in case of prosecution of a Government Servant and with the sanction of Commissioner in case of others.

Statutory Provisions

134. Cognizance of offences

No Court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

134.1 Introduction

This provision sets out the manner of taking cognizance of offences.

134.2 Analysis

Any offence under the Act or Rules can be tried only before a Court not lower than the Court of Judicial Magistrate of First Class. Further, previous sanction of the Commissioner is mandatory in every such case.

Statutory provisions

135. Presumption of culpable mental state

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation - For the purposes of this section, —

(i) the expression "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;

(ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

135.1 Introduction

In this section, the framers of law have cast the responsibility upon the shoulders of the one who is alleged of culpable mental state to prove otherwise.

135.2 Analysis

Now, once the law has stated that in case of any prosecution which requires the existence of a culpable mental state, the Court would presume the existence of it.

Under the old revenue laws, the burden to prove was on the one who alleges it. The Hon'ble Supreme Court in the case of *Uniworth Textiles Limited vs. Commissioner of Central Excise, Raipur [2013 (288) E.L.T. 161 (S.C)]* stated that "*Burden to prove invocation of extended period is on Department. The assessee cannot be asked to bring evidence to prove his bona fide intention. Similarly, it is a cardinal postulate of law that the burden of proving any form of mala fide intention lies on the shoulders of the one alleging it*."

The accused can prove that he had no such mental state in respect of a particular act for which he is charged. The expression "culpable mental state" is defined inclusively to cover "intent, motive, knowledge of fact, belief in or reason to believe". It also covers facts which exist beyond a reasonable doubt and not based on probabilities. However, presumption does not mean assumption of mental state to commit the offence. It is only that it is a rebuttable presumption. Presumption does not mean assumption of such mental state. Reference may be had to section 4 of Evidence Act.

Statutory Provisions

136. Relevancy of statements under certain circumstances

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the

truth of the facts which it contains, —

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

Related provisions of the Statute

Section or Rule	Description
Section 70	Power to summon persons to give evidence and produce documents

136.1 Introduction

This provision deals with relevancy of statements and documents recorded or deposed during investigation proceedings.

136.2 Analysis

A statement recorded during an investigation proceedings or inquiry will be relevant to prove the truthfulness of facts when:

(a) It is made by a person who is not available in Court on account of his death, incapacity, prevention by another party or when he absconds or when presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable or

(b) The Court consider the statement as an evidence on examination of the person as a witness.

Statutory Provisions

137. Offences by Companies

(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that

offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu undivided family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation. —For the purposes of this section, —

(i) "company" means a body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

Related provisions of the Statute:

Section or Rule	Description
Section 2(84)	Definition of 'Person'

137.1 Introduction

This section comes down heavily on the persons who take shelter on the principle of separate legal status of artificial judicial persons and back out of their responsibility of payment of dues of the Government.

137.2 Analysis

This section states that where an offence is committed by companies, every person/ director/ manager/ secretary or any other officer who at the time of commitment of the offence, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of such offence and shall be liable to proceeded against and punished accordingly.

Where such offences are committed by the person being Partnership Firm, LLP, HUF or trust, then the Partner or Karta or Managing Trustee (as the case may be) shall be deemed to be guilty and liable to be proceeded against and punished.

Further, if the accused person proves that he was in no way related to the offence being committed or he had exercised all possible measures to prevent commission of such offences, then he is not punishable under this section.

A person can include artificial legal concepts that evolved including partnership firms, associations of persons, companies, societies, government and other artificial judicial persons.

Though such entities are often seen as separate legal persons from the individuals who comprise it and law provides for them to act and be acted upon in their separate capacity, the same are ultimately driven by the individuals who compromise the said persons. Statutes often provide penalties for offences for the individuals who comprise the person in addition to the penalties imposable for their varied forms of association, be it a firm or company. Thus, it is quite logical for the *mens rea* pre-condition when the penalty is imposable for the individuals who are part of the enterprise but may appear queer to find such guilt to be made for the entity as such, for whom the human puppeteer pulled the strings. The question of imposing penalties where men rea is a necessary ingredient in relation to a company thus enters the foray of a separate legal person, the company, being penalised, by appraising the actions of its management, an individual or group of individuals at its helm. The question of criminal liability of a juristic person has troubled Legislatures and Courts for long. Though, initially, it was supposed that a corporation could not be held liable criminally for offences where *mens rea* was requisite, the current judicial thinking appears to be that the *mens rea* of the person in-charge of the affairs of the corporation, the *alter ego*, is liable to be extrapolated to the corporation, enabling even an artificial person to be prosecuted for such an offence as held by *Honorable Supreme Court in Asst. Commr Assessment-II, Bangalore v. Velliappa Textiles Limited Appeal 142 of 1994.*.

Statutory provisions

138. Compounding of offences

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to—

[28][(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132]

*[29][(b) ***;]*

[30][(c) a person who has been accused of committing an offence under clause (b) of

[28] Substituted vide The Finance Act, 2023 through Notification No. 28/2023 dt. 31.07.2023, w.e.f. 01.10.2023. Prior to its substitution it was read as "(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;"

[29] Omitted vide The Finance Act, 2023, notified through Notification No. 28/2023 dt. 31.07.2023, w.e.f. 01.10.2023. Prior it was read as "a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees."

sub-section (1) of section 132;]

(d) a person who has been convicted for an offence under this Act by a court;

*[31][(e) ***;] and*

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than [32][twenty-five per cent. of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved].

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Extract of the CGST Rules, 2017

162. Procedure for compounding of offences

(1) An applicant may, either before or after the institution of prosecution, make an application under sub-section (1) of section 138 in FORM GST CPD-01 to the Commissioner for compounding of an offence.

(2) On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.

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[30] Substituted vide The Finance Act, 2023, notified through Notification No. 28/2023 dt. 31.07.2023, w.e.f. 01.10.2023, prior to its substitution it was read as "(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;"

[31] Omitted vide The Finance Act, 2023, notified through Notification No. 28/2023 dt. 31.07.2023, w.e.f. 01.10.2023. Prior it was read as "a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132".

[32] Substituted vide The Finance Act, 2023, notified through Notification No. 28/2023 dt. 31.07.2023, w.e.f. 01.10.2023, prior to its substitution it was read as "ten thousand rupees or fifty per cent. Of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher".

(3) The Commissioner, after taking into account the contents of the said application, may, by order in FORM GST CPD-02, on being satisfied that the applicant [33][***] has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.

[34][(3A) The Commissioner shall determine the compounding amount under sub-rule (3) as per the Table below:-

TABLE

S. No.	*Offence*	*Compounding amount if offence is punishable under clause (i) of sub-section (1) of section 132*	*Compounding amount if offence is punishable under clause (ii) of sub-section (1) of section 132*
(1)	*(2)*	*(3)*	*(4)*
1	*Offence specified in clause (a) of sub-section (1) of section 132 of the Act*	*Up to seventy-five per cent of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of fifty per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.*	*Up to sixty per cent of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of forty per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.*
2	*Offence specified in clause (c) of sub-section (1) of section 132 of the Act*		
3	*Offence specified in clause (d) of sub-section (1) of section 132 of the Act*		
4	*Offence specified in clause (e) of sub-section (1) of section 132 of the Act*		
5	*Offence specified in clause (f) of sub-section (1) of section 132 of the Act*	*Amount equivalent to twenty-five per cent of tax evaded.*	*Amount equivalent to twenty-five per cent of tax evaded.*
6	*Offence specified in*		

[33] Omitted vide Notification No. 38/2023- CT dt. 04.08.2023. Prior it was read as "has co-operated in the proceedings before him and"

[34] Inserted Vide Notification No. 38/2023- CT dt. 04.08.2023.

	clause (h) of sub-section (1) of section 132 of the Act		
7	*Offence specified in clause (i) of sub-section (1) of section 132 of the Act*		
8	*Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of subsection (1) of section 132 of the Act*	*Amount equivalent to twenty-five per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.*	*Amount equivalent to twenty-five per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.*

Provided that where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.]

(4) The application shall not be decided under sub-rule (3) without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

(5) The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

(6) The applicant shall, within a period of thirty days from the date of the receipt of the order under sub-rule (3), pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.

(7) In case the applicant fails to pay the compounding amount within the time specified in sub-rule (6), the order made under sub-rule (3) shall be vitiated and be void.

(8) *Immunity granted to a person under sub-rule (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted.*

[35][163. Consent based sharing of information.

(1) Where a registered person opts to share the information furnished in—

(a) FORM GST REG-01 as amended from time to time;

(b) return in FORM GSTR-3B for certain tax periods;

(c) FORM GSTR-1 [36][,as amended in Form GSTR-1A if any,] for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time,

with a system referred to in sub-section (1) of section 158A (hereinafter referred to as "requesting system"), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.

(2) The registered person shall give his consent for sharing of information under clause © of sub-rule (1) only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.

(3) The common portal shall communicate the information referred to in sub-rule (1) with the requesting system on receipt from the said system-

(a) the consent of the said registered person, and

(b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.]

Related provisions of the Statute:

Section or Rule	Description
Section 132	Punishment for certain offences
Section 158A	Consent based sharing of information furnished by taxable person

138.1 Introduction

The option of compounding is introduced to overcome the prosecution proceedings subject to the provisions of section 138 and Rule 162 of CGST Rules 2017. Section 138 provides for compounding of offences by the Commissioner on payment of compounding amount. This provision deals with compounding of offences by payment of the prescribed compounding fees. In common parlance, compounding means a condonation for a sum of money. Compounding of an offence is understood to be, the action of taking a reward for forbearing to prosecute. It could also mean an agreement with the offender not to prosecute him.

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[35] *Inserted vide Notification No. 38/2023- CT dt. 04.08.2023 w.e.f. 01.10.2023.*

[36] *Inserted vide Notification No. 12/2024- CT dt. 10-07-2024 w.e.f. 10.07.2024.*

138.2 Analysis

(a) The term 'compounding' has not been defined under GST Act or Rules. As per Black's dictionary, compounding means to settle a matter in lieu of imprisonment by paying money to the concerned authorities. Section 320 of the code of criminal procedure defines 'compounding' as to forbear from prosecution for consideration or any private motive. In simple term the compounding means payment of fine instead of undergoing the prosecution for an offence committed.

(b) Application for compounding of an offence can be either before or after institution of the prosecution proceedings.

(c) Compounding of an offence is understood as a comparison between the offender and the tax department and is not an agreement or contract.

(d) Specified offences can be compounded only once.

(e) **Compounding is not a matter of Right**. The compounding is not the right but request should be made for compounding. Based on various parameters involved like whether accused has cooperated in proceedings or not or whether any taxes dues and other payments have been paid or not …. the compounding may be allowed "I understand that I cannot claim, as a matter of right, that the offence committed by me under the Act shall be compounded". (***Declaration by applicant in CPD-01)***

(f) As per rule 162 of the CGST Rules, the application of compounding shall be filed in FORM GST-CPD-01.

(g) On receipt of the application, the commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application or any other relevant information for the examination of such application.

After providing opportunity of being heard to the applicant and taking into account the contents of the application, if satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case. Commissioner may by order in FORM GST-CPD-02 may either allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within 90 days of the receipt of the application stating the grounds of rejection.

However, the application shall not be allowed unless the tax, interest and penalty liable to be paid, has been paid in case for which the application has been made.

(h) Immunity granted to applicant may, at any time be withdrawn by Commissioner, if he is satisfied that such person had, in the course of compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried of the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provision of the Act shall apply as if no such immunity has been granted.

(i) The applicant, within a period of 30 days from the date of receipt of order allowing compounding, shall pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him. However, if the applicant fails to pay the compounding amount within the time specified then the order of Commissioner shall be vitiated and be void.

(j) On payment, the proceedings indicated will abate and no criminal proceedings can be launched.

(k) The amount of compounding of offences under this section shall be such as may be prescribed, subject to

- The minimum amount not being less than 25 % of the tax involved and
- The maximum amount not being more than 100% of tax involved.

(l) Compounding of offences is not permissible to the following offences:

(i) A person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132.

(ii) A person who is convicted by a Court under this Act.

(iii) A person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132.

(iv) Prescribed class of persons.

(m) Sub-rule (3A) has been inserted by the Central Goods and Services Tax (Second Amendment) Rules, 2023, w.e.f. 1.10.2023 under Rule 162 which state the determination of compounding amount by Commissioner in case where offence is punishable under (i) of sub-section (1) of section 132 and where offence is punishable under clause (ii) of sub section (1) of section 132.

a. For offences specified in clause (a), clause(c), clause (d), clause (e) of sub-section (1) of section 132 of the Act and in case where offence is punishable under clause (i) of sub-section (1) of section 132, the compounding amount shall be up to
seventy-five per cent of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of fifty per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.

b. Similarly for offences specified in clause (a), clause(c), clause (d), clause (e) of sub-section (1) of section 132 of the Act and in case where offence is punishable under clause (ii) of sub-section (1) of section 132, the compounding amount shall be Up to sixty per cent of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject

to minimum of forty per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.

c. For offences specified in clause (f), clause (h), clause(i) of sub-section (1) of section 132 of the Act and in case where offence is punishable under clause (i) of sub-section (1) of section 132, the compounding amount shall be amount equivalent to twenty-five per cent of tax evaded.

d. For offences specified in clause (f), clause (h), clause(i) of sub-section (1) of section 132 of the Act and in case where offence is punishable under clause (ii) of sub-section (1) of section 132, the compounding amount shall be amount equivalent to twenty-five per cent of tax evaded.

e. If in case, any person attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of sub-section (1) of section 132 of the Act, the compounding amount shall be amount equivalent to twenty-five per cent of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken in case where offence is punishable under clause (i) or clause (ii) of sub-section (1) of section 132.

f. It is to be noted that where the offence committed by the person falls under more than one category specified in the table above under Rule 162 of the CGST Rules, 2017, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

Chapter 21
Transitional Provisions

Sections	Rules
139. Migration of existing taxpayers	117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day
140. Transitional arrangements for input tax credit	118. Declaration to be made under clause (c) of sub-section (11) of section 142
141. Transitional provisions relating to job work	119. Declaration of stock held by a principal and job-worker
142. Miscellaneous transitional provisions	120. Details of goods sent on approval basis
	120A. Revision of declaration in FORM GST TRAN-1
	121. Recovery of credit wrongly availed

Statutory provisions

139. Migration of existing Taxpayers

(1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub- section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.

(2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.

(3) The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued, if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.

Extract of the CGST Rules, 2017

24. Migration of persons registered under the existing law

(1) (a) Every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account Number issued under the provisions of the Income-tax Act, 1961 (Act 43 of 1961) shall enrol on the common portal by validating his e-mail address and

mobile number, either directly or through a Facilitation Centre notified by the Commissioner.

(b) Upon enrolment under clause (a), the said person shall be granted registration on a provisional basis and a certificate of registration in FORM GST REG-25, incorporating the Goods and Services Tax Identification Number therein, shall be made available to him on the common portal:

Provided that a taxable person who has been granted multiple registrations under the existing law on the basis of a single Permanent Account Number shall be granted only one provisional registration under the Act:

(2) (a) Every person who has been granted a provisional registration under sub-rule (1) shall submit an application electronically in FORM GST REG–26, duly signed or verified through electronic verification code, along with the information and documents specified in the said application, on the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(b) The information asked for in clause (a) shall be furnished within a period of three months or within such further period as may be extended by the Commissioner in this behalf.

(c) If the information and the particulars furnished in the application are found, by the proper officer, to be correct and complete, a certificate of registration in FORM GST REG-06 shall be made available to the registered person electronically on the common portal.

(3) Where the particulars or information specified in sub-rule (2) have either not been furnished or not found to be correct or complete, the proper officer shall, after serving a notice to show cause in FORM GST REG-27 and after affording the person concerned a reasonable opportunity of being heard, cancel the provisional registration granted under sub-rule (1) and issue an order in FORM GST REG-28:

Provided that the show cause notice issued in FORM GST REG- 27 can be withdrawn by issuing an order in FORM GST REG- 20, if it is found, after affording the person an opportunity of being heard, that no such cause exists for which the notice was issued.

[1][(3A) Where a certificate of registration has not been made available to the applicant on the common portal within a period of fifteen days from the date of the furnishing of information and particulars referred to in clause © of sub-rule (2) and no notice has been issued under sub-rule (3) within the said period, the registration shall be

[1] *Inserted vide Notification No. 7/2017-CT dt. 27.06.2017.*

deemed to have been granted and the said certificate of registration, duly signed or verified through electronic verification code, shall be made available to the registered person on the common portal.]

(4) Every person registered under any of the existing laws, who is not liable to be registered under the Act may, [2][on or before [3][31st March, 2018]], at his option, submit an application electronically in FORM GST REG-29 at the common portal for the cancellation of registration granted to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration.

Related provisions of the Statute

Section	Description	Remarks
Section 22	Registration	Persons liable for registration
Section 23	Registration	Persons not liable for registration
Section 24	Registration	Compulsory registration in certain cases irrespective of the threshold limit specified under section 22.
Section 25	Registration	Procedure for registration
Section 28	Amendment of registration	Every registered person shall inform the proper officer of any changes in the information furnished at the time of registration, or furnished subsequently, in the manner and within such period as may be prescribed. The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in the manner and within such period as may be prescribed: Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.
Section 29	Cancellation or suspension of Registration	The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed.

[2] *Substituted vide Notification No. 17/2017 – dt. 27.7. 2017, w.e.f. 22.07.2017 for "within a period of thirty days from the appointed day".*

[3] *Substituted vide Notification No. 03/2018 - CT dt. 23.01.2018 for "31st December, 2017".*

Section	Description	Remarks
Section 30	Revocation of cancellation of registration	The registered person whose registration is cancelled by the proper officer, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.
Rule 3 of CGST Rules, 2017	Intimation for Composition levy	The migrated person may file Form GST CMP-01 or CMP-02 to opt for payment of tax under section 10.
Rule 24 of CGST Rules, 2017	Migration of persons registered under the erstwhile law.	Every person registered under the erstwhile indirect tax laws shall be provided with a provisional certificate of registration after enrolling under GST.

139.1 Introduction

This transitional provision deals with migration of existing registrants into the GST regime. All existing registrants having a valid Permanent Account Number will be issued provisional registration certificate. After furnishing the required information, a final certificate of registration will be granted. If the information is not furnished, the registration is liable to be cancelled.

139.2 Analysis

As part of implementation of GST regime, the existing tax payers / registrants having a valid PAN would be granted provisional registration certificates under the GST law. The details are as follows:

(i) The existing tax payer, other than a person deducting tax or an Input Service Distributor (ISD), who were registered under various earlier Indirect Tax Laws are liable to be registered under GST Laws with effect from the appointed day, when the relevant sections of CGST Act came in to force. Such taxpayer is required to declare his Permanent Account Number (PAN), mobile number, e-mail address, State or Union territory and shall enroll himself for getting the provisional registration certificate.

(ii) On successful verification of the PAN, mobile number and e-mail address, an application reference number (ARN) shall be generated and communicated to the applicant on the said mobile number and e-mail address.

(iii) Upon enrolment, the said person will be granted a provisional registration certificate in Form GST REG-25, incorporating the Provisional ID (GSTIN) and Password, which will be available on the GST common portal. (https://www.gst.gov.in/).

(iv) A person having a single PAN in a State or UT shall be granted only one provisional registration certificate although he may hold multiple registrations under the erstwhile Central and State laws.

(v) A person who holds a provisional certificate of registration is required to furnish certain information in Form GST REG-26, within a period of 3 months or as extended by the commissioner. The date was extended till 31.12.2017 vide *Order No. 6/2017 - GST dated 28.10.2017.*

(vi) If the information furnished is correct and complete, Final Registration Certificate in Form GST REG 06 will be issued within 6 months of the appointed day.

(vii) If the information has not been furnished or not found to be correct or complete, the proper officer shall cancel the provisional registration and issue an order in Form GST REG-28 cancelling the registration after serving a show cause notice in Form GST REG-27 and affording the person concerned a reasonable opportunity of being heard.

(viii) Once the information specified in sub rule 2(c) has been furnished and no notice has been issued under sub rule 3 within a period of 15 days from the period of furnishing of the information, the registration shall be deemed to have been granted and the registration certificate will be made available on the common portal. The SCN issued in Form GST REG-27 can be withdrawn by an order in Form GST REG 20, if it is found subsequently, after affording the person an opportunity of being heard, that no cause as specified in the notice exists.

(ix) Every existing taxpayer / registrant, who is not liable to be registered under the Act, may at his option, on or before 31st March 2018, [4] file electronically an application in Form GST REG-29 at the Common Portal for cancellation of the registration granted provisionally to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said provisional registration.

(x) A person to whom provisional certificate is issued and who is eligible to pay tax under composition, may opt to do so by filing electronically an intimation, in Form GST CMP-01 within 30 days after the appointed day, or such further period as may be extended by the Commissioner in this behalf. This period was extended to 16th August, vide *Notification No. 1/2017- GST dated 21.07.2017*. In case the said person does not file Form GST CMP-01 within the said timelines and if he wants to opt for payment of taxes under the composition scheme under section 10, subsequently during the year 2017-18, he shall electronically file an intimation in Form GST CMP-02 before 31st March, 2018. He can opt to pay tax under section 10 w.e.f. the 1st day of the next month onwards. Such persons shall furnish statement of stock in Form GST ITC-03 within a period of 90 days from the day on which he commences to pay tax under section 10. The above persons who have filed the intimation and statement above shall not be allowed to file Form GST TRAN-01, after furnishing Form GST ITC-03.

(xi) It is pertinent to note here that as per Rule 5(1)(b), the person who prefers to file CMP-01 shall not hold any goods in stock on the appointed day;

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[4] *Vide Notification No. 03/2018 CT dt. 23.01.2018*

i. that have been purchased in the course of interstate trade or;

ii. imported from outside India, or

iii. received from his branch, agent or principal situated outside the State;

However, this restriction regarding the holding the stock received from outside the state is not applicable in the case of persons opting to pay tax under Section 10 by filing Form GST CMP-03

(xii) A Special Economic Zone Unit or a Special Economic Zone Developer shall make a separate application for registration as a business vertical distinct from its other units located outside the SEZ.

(xiii) Person desiring multiple business vertical registration must also follow the above steps of migrating to GST and then apply for separate registration of the other business vertical. In case one line of business is exempt and another taxable, it is not possible to obtain business vertical registration for the taxable business only and to leave the exempt business from registration and thereby from compliances requirements (including reverse charge). Business vertical registration refers to the 'subsequent' registration of a taxable person who is registered in the first place.

Pictorially, an analysis of this transitional provision can be presented as follows:

PRE GST

Existing taxpayer – i.e. registered under any of the earlier laws

POST GST

- Existing taxpayer, if liable to be registered under section 22 of the Act – then compulsorily to be registered.
- If not liable to be registered – can still apply for registration voluntarily.
- Persons specified in Sec 23 not required to be registered.
- In case of multiple business verticals in a State - Option to obtain separate registration for each business vertical.
- Mandatory to have Permanent Account Number (PAN) (if Non - Resident taxable person than any other document as may be prescribed).
- Final registration to be granted by Central Government (CG)/State Government (SG) subject to the condition that the requisite information is submitted within the time period allowed.
- "Provisional Certificate of Registration" granted deemed to not have been issued if application filed for cancellation of registration by person not liable to be registered under Section 22 of the Act and if he does not furnish the prescribed information within the prescribed time period.

139.3 Issue and Concern

Correction of incomplete/ incorrect migration process: A sizeable number of taxpayers were unable to complete the migration process due to GST portal glitches / IT related issues and some taxpayers have migrated with incorrect data (i.e., instead of Company PAN the Director PAN has been considered for migration) etc. In these cases, assesses have opted for a new registration and the same has been issued towards the end of July 2017 or in the subsequent months. On account of this, input tax credit was not available to be claimed by the assesses till the date of registration. Further, since the returns would be filed only subsequent to the date of registration, the returns would not be filed by such suppliers and the corresponding credits will not be eligible in the hands of the recipients. In such cases, refund or other remedies under earlier tax regime must be considered by taxpayers and not remedies under GST law.

139.4 FAQs

Q1. What is the criteria for issuing provisional registration?

Ans: Every person registered under any of the earlier laws and having a valid PAN will be issued a certificate of registration, provisionally.

Q2. When is the final registration certificate issued replacing the provisional one?

Ans: The holder of the provisional certificate is required to furnish application in form GST REG 26 within a period of three months, along with all documents as mentioned in form REG 26.

Q3. What happens if the prescribed documents are not furnished within the prescribed time?

Ans: If the person fails to furnish the prescribed information/documents within the specified time, the certificate of registration provisionally issued may be cancelled.

Q4. Whether the GST Registration for existing registered dealer shall be taken by submission of required documents or will it be done automatically?

Ans: Requisite data has to be submitted on GSTN portal and only then registration will be granted. A provisional registration will be granted which will be made final upon submission of additional information/documents after the appointed date. Refer Rule 24 of CGST Rules 2017

Q5. Can a person who is registered under the earlier law opt out of GST voluntarily?

Ans. Yes, by making an application in Form GST REG 29 on or before 31st March 2018, a person can opt out of GST. Refer Rule 24(4) of CGST Rules, 2017.

Q6. What will happen to the provisional registration if the person claims to be not liable for registration under GST?

Ans: The provisional certificate shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person stating that he was not liable to registration.

Q7. What will be the position of the provisional registration of a composite dealer? Will he remain as composite dealer even after the appointed day?

Ans: No. Even existing composite taxpayer has to specifically apply for composition tax within 30 days from the appointed date and the receipt of provisional certificate will not be considered as automatic transition to composite scheme.

Q8. Can a VAT dealer opt for composition scheme after the time prescribed?

Ans: If a registered taxable person does not opt to pay tax under composition scheme within the specified time, he shall be liable to pay tax under regular scheme.

Q9. What happens if the tax payer has distinct VAT registrations in the same State?

Ans: The transitional provisions will allot only one registration certificate in each state based on single PAN even though such person had multiple registrations in the state. He can have distinct registrations in the same State by way of an option only if the business units qualify as business verticals under the GST law.

Q10. What happens to the distinct registrations obtained under the Central Excise and Service Tax laws for the different business premises and units in the same state?

Ans: All business units/ premises registered either under the Central Excise or Service Tax law will be consolidated into a single CGST registration for that State, unless these units qualify as distinct business verticals under the GST law.

Q11. If a person is operating in different states, with the same PAN number, whether he can operate with single registration?

Ans: No. Every person who is liable to take a Registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of sub-section (1) of section 22 of the CGST/SGST Act.

Q.12 Will CENVAT credit (or VAT credit) carried forward in the last return prior to GST under existing law be available as ITC under GST?

Ans. A registered person, other than a person opting to pay tax under composition scheme, shall be entitled to take credit in his electronic credit ledger the amount of CENVAT (or VAT credit) credit carried forward in the return of the last period before the appointed day, subject to the conditions stated therein. (Section 140(1) of the CGST/SGST Act

139.5 MCQs

Q1. Should an existing taxpayer surrender his registration certificate for obtaining the GST registration?

(a) Yes, all registration certificates shall be surrendered;

(b) No. Provisional registration is automatic;

(c) Migrated to provisional registration only on verification of documents;

(d) No. Final registration is automatic.

Ans: (b) No. Provisional registration is automatic

Q2. Is PAN mandatory for migration to provisional GST registration?

(a) Yes

(b) No

(c) PAN application is sufficient

(d) Exempted may be given by the proper officer

Ans: (a) Yes

Q3. Should the composition dealer under the old law require to obtain final GST registration?

(a) Yes, mandatory for all composition dealers

(b) Yes, subject to his turnover crossing the threshold under GST

(c) No, the old number will continue

(d) No, will be governed by old law.

Ans: (b) Yes, subject to his turnover crossing the threshold under GST

Statutory Provisions

Section	***Particulars***
140 (1)	*Carry forward of tax credit claimed in the tax returns*
140 (2)	*Carry forward of unavailed tax credit in relation to capital goods*
140 (3)	*Carry forward of tax credit by a registered person, who was not liable to be registered under the erstwhile law like dealing in exempted goods under erstwhile law but the same has become liable under GST.*
140 (4)	*Carry forward of tax credit by a registered person, who was engaged in the manufacture of taxable as well as exempted goods or provision of taxable as well as exempted service but which are liable to tax under GST.*
140 (5)	*Tax credit in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the erstwhile law.*
140 (6)	*Carry forward of tax credit by a registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the erstwhile law.*

140 (7)	*Tax credit on account of any services received prior to the appointed day by an ISD.*
140 (8)	*Carry forward of tax credit in case of service provider registered on centralised basis*
140 (9)	*Tax credit reversed due to non-payment of the consideration within a period of three months under Finance Act, 1994*
140 (10)	*The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.*

140(1)-Amount of CENVAT credit carried forward in the return allowed as input tax credit.

A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [5][of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [6] [within such time and] in such manner as may be prescribed.

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government

[7][Explanation 1. —The expression "eligible duties" means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975

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[5] *Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018, vide Notification No. 2/2019 CT 29.01.2019, w.e.f. 01.02.2019.*

[6] *Inserted vide The Finance Act, 2020. Brought into force w.e.f. 18.05.2020 vide Notification No. 43/2020-CT dt. 16.5.2020.*

[7] *Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018, vide Notification No. 2/2019 CT 29.01.2019, w.e.f. 01.02.2019.*

(iv) [8] *[***];*

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day]

[9]*[Explanation 2. —The expression "eligible duties and taxes" means—*

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;

(iv) [10]*[***];*

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and

(viii) the service tax leviable under section 66B of the Finance Act, 1994,

in respect of inputs and input services received on or after the appointed day].

[Explanation 3 – For the removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or

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[8] *Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018, vide Notification No. 2/2019 CT 29.01.2019, w.e.f. 01.02.2019, for "the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978".*

[9] *Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 vide Notification No. 2/2019 CT 29.01.2019, w.e.f. 01.02.2019.*

[10] *Omitted w.e.f. 01st July, 2017 by section 28 of The Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. 01.02.2019, for "the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978".*

Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975)]

Extract of the CGST Rules, 2017

117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day-

(1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit [11][of eligible duties and taxes, as defined in Explanation 2 to section 140] to which he is entitled under the provisions of the said section:

Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

[12][(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond [13][31st March, 2020]], in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.]

(2) Every declaration under sub-rule (1) shall-

(a) in the case of a claim under sub-section (2) of section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-

(i) the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day; and

(ii) the amount of tax or duty yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day;

(b) in the case of a claim under sub-section (3) or clause (b) of sub-section (4) or sub-section (6) or sub-section (8) of section 140, specify separately the details of stock held on the appointed day;

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[11] Inserted vide Notification No. 15/2017-CT dt. 01.07.2017 w.e.f. 01.07.2017.

[12] Inserted vide Notification No. 48/2018-CT dt. 10.09.2018.

[13] Substituted vide Notification No. 2/2020-CT dt. 01.01.2020 for "31st March, 2019"

(c) in the case of a claim under sub-section (5) of section 140, furnish the following details, namely:-

(i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;

(ii) the description and value of the goods or services;

(iii) the quantity in case of goods and the unit or unit quantity code thereof;

(iv) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and

(v) the date on which the receipt of goods or services is entered in the books of account of the recipient.

(3) The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal.

(4) (a)(i) A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

(ii) The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent. on such goods which attract central tax at the rate of nine per cent. or more and forty per cent. for other goods of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid:

Provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of thirty per cent. and twenty per cent. respectively of the said tax;

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) The credit of central tax shall be availed subject to satisfying the following conditions, namely:-

(i) such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule;

(ii) the document for procurement of such goods is available with the registered person;

[14][(iii) *The registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN 2 by 31st March 2018, or within such period as extended by the Commissioner, on the recommendations of the Council, for each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period;]*

[15][*Provided that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by* [16][*30th April, 2020]]*

(iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal; and

(v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

[17][120A. [18] [Revision of declaration in FORM GST TRAN-1]

Every registered person who has submitted a declaration electronically in FORM GST TRAN-1 within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1 electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.]

In *Ashok Kumar Meher vs Commissioner of Sales Tax & GST, Odisha, Cuttack & Ors. [W.P.(C) No. 12763 of 2021* dt. 1st Dec 2021, the Hon'ble Orissa HC observed that on the request of the taxpayer, the Commissioner may extend time for filing revised declaration by a general or specific order. It ordered the department to either modify the portal to facilitate filing of Tran – 1 or accept returns manually.

Related provisions of the Statute

Section	Description
Section 2(107)	Meaning of 'Taxable Person'
Section 2(46)	Definition of 'Electronic Credit Ledger'
Sections 16 to 21	Input Tax Credit
Section 2(48)	Meaning of Existing law

[14] *Substituted vide Notification No. 12/2018-CT dt. 07.03.2018*
[15] *Inserted vide Notification No. 48/2018 – CT dated 10.09.2018.*
[16] *Substituted vide Notification No. 2//2020-CT dt. 01.01.2020 for "31st January, 2020".*
[17] *Inserted vide Notification No. 34/2017 – CT dt. 15.09.2017*
[18] *Inserted vide Notification No. 36/2017-CT dt. 29.09.2017*

140.1.1 Introduction

This transition provision enables a registered person to carry forward unutilized input credit under the CENVAT Credit Rules, 2004 / State Tax laws, as applicable.

140.1.2 Analysis

The amount of any input credit carried forward in a return, which is unutilized under the erstwhile tax regime may be carried forward into the GST regime except in the case of a person who opts to pay tax under composition scheme in a GST regime.

The said credit will be allowed to be carried forward to the GST regime, if the following conditions are satisfied:

(1) The said credit is admissible as input tax credit under the provisions of the CGST Act;

(2) The registered person has furnished all the returns required under the erstwhile law for the period of six months immediately preceding the appointed date.

(3) Input tax credit does not relate to goods manufactured and cleared under exemption notifications as are notified by the Government.

No such list of notifications are identified by the Government.

Note:

The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid using electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01). (*Circular No. 42/16/2018-GST dated 13/04/2018*). Pre-deposit of tax/duty under earlier laws has been permitted out of CGST balance by Hon'ble Tribunal, although experts doubt the merits of such fungibility.

Rule 117(1) prescribes the manner of claiming transition credit by filing the prescribed information on the Common Portal which is provided below:

Particulars	**CGST**
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Laws to be subsumed and the relevant credit	Central Excise Service tax
Input Tax Credit to be carried forward	— Central Excise paid on 'inputs' /capital goods — Countervailing duty paid on 'inputs'/capital goods — Special Additional Duty paid on 'inputs' /capital goods in case of manufacturers — Service tax paid on 'input services' – both direct or reverse charge

Particulars	CGST
Conditions	— The said credit is admissible as input tax credit under the provisions of the CGST Act ; — The registered person has furnished all the returns required under the erstwhile law for the period of six months immediately preceding the appointed date; — The said credit does not relate to goods manufactured and cleared under such exemption notifications as are notified by the Government; — Must have been reflected as input credit carried forward in the return filed for the last month / period under the erstwhile law, viz., last monthly return or quarterly return or the half yearly return, as the case may be.
Form in which the credit would be availed under the GST Law	Would be available as a credit in the CGST Electronic Credit Ledger of the tax payer.
Procedure for claiming the credit [Rule 117(1)]	i) Submit declaration in Form GST TRAN1 electronically; ii) Due date for filing TRAN-1 is within 90 days of the appointed day; (The Commissioner may extend the period of 90 days by a further period of not exceeding 90 days). iii) Accordingly, the Commissioner has extended date of filing Form GST TRAN-1 to 27.12.2017 vide *Order No. 9/2017-GST dated 15.11.2017*. *iv)* In respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension, the Commissioner may extend the date for submission of Form GST TRAN-1 by a further period not beyond 31.03.2019 vide *Notification No.48/2018-CT dated 10.09.2018.* v) Form GST TRAN-1 may be revised once within the prescribed time limit [Rule No. 120A]. vi) By *Order No.10/2017-GST dated 15.11.2017*, the Commissioner has extended the time limit for revision to 27.12.2017.

Note:

- Similarly, State VAT credits can also be claimed as transitional credit under this sub-section. Attention is invited to the fact that the definition of input tax credit under the various State VAT laws may vary and the reader should be cautious about the eligibility of the various State taxes paid as transitional credits. For e.g. In the State of Gujarat, entry tax paid on causing entry of goods into a local area for trading is eligible as input tax credit at the point of sale, whereas, such entry tax paid in the State of Karnataka is not eligible as input tax credit.
- The Gujarat High Court in the case of *Wilowood Chemicals Pvt. Ltd v. UOI [2018-TIOL-133-HC-AHM-GST]* held that the time limit provisions contained in sub-rule (1) of rule 117 of the CGST Rules is not *ultra vires* the Act and refused to strike down the time limit prescribed therein. While dismissing the petition, the Hon'ble HC observed when the entire tax structure of the country is being shifted from earlier framework to a new one, there has to be a degree of finality on claims, credits, transfers of such credits and all issues related thereto and such prescription of time limit cannot be stated to be either unreasonable or arbitrary and removing such time limit would have a potential to lead to utter economic chaos. Similarly, Hon'ble Mumbai HC upheld the validity of section 140(3) in *Evergreen Seamless Pipes and Tubes (P) Ltd & Ors v. UoI & Ors*. However, Hon'ble Gujarat HC struck down these provisions in *Filco Trade Centre* which has been stayed by Hon'ble SC. Care must be taken that relief, if any, allowed by Hon'ble SC will be available only to those parties who have agitated the matter before Courts and not to those who are standing by for others to pursue the matter. Fruits of litigation will flow to those who litigate only. However, if relief allowed, if any, is implemented by the Government in a liberal manner, then all parties may become eligible. Experts have expressed anguish at the rigid stand of the Government, especially in such a brand new law filled with uncertainty and in respect of taxes validly paid under earlier laws, in going ahead with the timelines through rules even though no such limits are found in the statute.
- Some taxpayers could not complete the filing of Form GST TRAN-1 as they could not digitally authenticate the Form GST TRAN-1 on account of IT related glitches. As a result, a large number of such Form GST TRAN-1s were stuck in the system. Consequentially, the taxpayers are unable to file their Form GSTR 3B monthly returns too. The GSTN has identified such taxpayers who could not file TRAN-1 on the basis of electronic audit trail and enabled them file it by 30th April 2018 and GSTR 3B returns, stuck on this account, by 31.05.2018 *(Circular No. 39/13/2018-GST dated 03.04.2018). Late fee for filling such GSTR-3B has also been waived by notification no. 22/2018 – Central Tax dated 14th May 2018.* The Bombay HC has further extended the date of filing Form GST TRAN-1 by 10 days to 10.05.2018.
- The Government has further clarified that CENVAT credit that has been credited to the Electronic Credit Ledger is not available for utilization towards GST liabilities where, the CENVAT credit is held as inadmissible vide an adjudication order or Order-in-Appeal as

on 01.07.2017 until such order is in existence. If utilized, the same liable to recovery with interest and penalty. *(Circular No. 33/07/2018-GST dated 23.02.2018)*

- Government's determination NOT TO EXTEND time limit for transition of credit, in spite of interpretation of the law by various Courts can be seen in the amendment made, yet again with effect from 1 Jul 2017 where the earlier law contained the 'in such manner as may be prescribed' by the Rules, it now reads as 'in such manner and within such time as may be prescribed'. It seems quite clear that transition of credits under earlier laws may not be extended again. However, decisions of HCs have not been exactly on the lack of power in rule 117 to lay down time limit but on equitable consideration for 'moulding relief' to the taxpayer. Reference may be had to decision of HC of P&H *in Adfert Technologies (CWP No.30949/2018 dated 4 Nov 2019)* and SLP against this decision came to be dismissed by Hon'ble SC (SLP No. 4408/2020 dated 28 Feb 2020).
- Interestingly, only select cases that came in for resubmission of TRAN1 and approved by GST Council after review by Nodal Officers, extension was granted by *Order 1/2020-GST dated 7 Feb 2020* to file TRAN1 by 31 Mar 2020. This extension was NOT in respect of all other *bona fide* cases backed by Orders of HCs including *Adfert Technologies* decision.
- **Illustration 1**: GST is applicable from 1st July, 2017 and the amount of credit as per the return for the period ending 30th June, 2017 is as follows:

Particulars of Input tax Credit	Credit amount as per return
Central Excise	200,000
Service Tax	100,000
Education Cess	10,000
Secondary and Higher Education Cess	5,000
Krishi Kalyan Cess	5,000
Swachh Bharat Cess	5,000
Additional Duty u/s 3(1) of CTA – CVD	40,000
Additional Duty u/s 3(5) of CTA – SAD	30,000
Input Tax Credit under VAT	50,000
Total	445,000

Q. What will be the amount of CGST to be brought forward as per the GST Law as on 1st July, 2017?

Ans. The amount of CGST to be brought forward on 1st July, 2017 will be calculated as follows:

A. If the taxpayer is a Manufacturer

CGST Components	CGST Value
Central Excise	200,000
Service Tax	100,000
Education Cess	-
Secondary and Higher Education Cess	-
Additional Duty u/s 3(1) of CTA	40,000
Additional Duty u/s 3(5) of CTA	30,000
Krishi Kalyan Cess	-
Total CGST	**370,000**

Note:

1. Swachh Bharat Cess and Krishi Kalyan Cess will not be allowed to be carried forward.
2. Input credit under VAT will not be allowed to be carried forward as CGST, but allowed as SGST.
3. Credit of EC and SHEC shall not be allowed to be carried forward.

Explanation:

For the purposes of this Chapter, the expressions "capital goods", "Central Value Added Tax (CENVAT) Credit", "first stage dealer", "second stage dealer" or "manufacture" shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder.

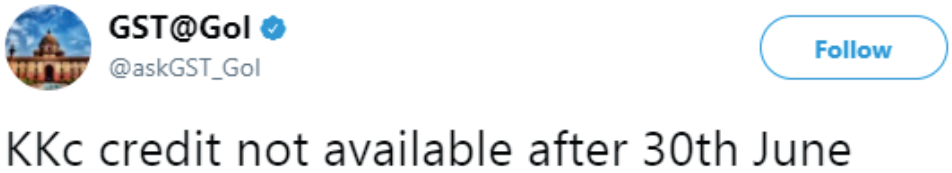
Considering the above explanation, the term CENVAT Credit shall have the same meaning as has been assigned under the provisions of Central Excise Act, 1944 or rules made thereunder. In view of Rule 3 of CENVAT Credit Rules, 2004, the term 'CENVAT Credit' also includes Krishi Kalyan Cess. Accordingly, on a combined reading of aforesaid Explanation and Rule 3 of CENVAT Credit Rules, 2004, it appears that Credit of KKC may be carried forward. However, at the same time it will be pertinent to highlight that there is a restriction that credit of KKC can be utilized for payment of KKC only and since such KKC is not being separately levied under GST, thus the availment of same can be doubtful.

The Government, it appears is inclined to take a view that since KKC, Edu. Cess and SHE Cess do not form part of "eligible duties and taxes", such credits would not be eligible as transitional credits in terms of Explanation 1 to section 140 of the CGST Act, 2017. It is relevant to note that the phrase 'eligible duties and taxes' is not applicable to

credits carried forward in the last return (Explanation 1 to Section 140 of the CGST Act, 2017).

Even Authority for Advance ruling of Maharashtra in case of *Kansai Narolac Paints Ltd*.s have held that KKC credit as on 30.06.2017 as shown in service tax return will not be considered as admissible input tax credit. (Reference: *Advance ruling No. GST-ARA-18/2017-18/B-25 Mumbai dated 05/04/2018*.)

High Court of Gujarat in *Grasim Industries Ltd. v. UoI [2019]* 108 taxmann.com 285 (Gujarat) has issued notice to the GST authorities on the issue of allowablity of Education Cess Secondary and Higher Education Cess. It remains to be seen how this matter attains finality. Nevertheless, the twitter comments and the transitional credit verification checklists shared with the taxpayers by the Government state that KKC, Edu. Cess and SHE Cess are not eligible as transitional credit. The CENVAT response on the twitter handle of Government with respect to eligibility of KKC is provided below:



Source: https://twitter.com/askGST_GoI/status/885325386715774976

Thus, in view of the aforesaid interpretations being considered by various experts, registered persons who were registered under erstwhile laws and were required to file their last returns under those laws may take note that the closing balance of credit in the said last returns will only be available to be brought forward into GST regime. It appears there is a good argument against bifurcating this brought forward balance of credit into the various sources – ED, ST, KKC, SBC, EC, SHEC – as all of them as 'CENVAT Credit' according to the last returns under the earlier laws. Caution is advisable in view of the implications of the alternate view being taken by the tax administration.

B. If the taxpayer is a Service Provider

CGST Components	CGST Value
Central Excise	200,000
Service Tax	100,000
Education Cess	-
Secondary and Higher Education Cess	-
Krishi Kalyan Cess	-
Additional Duty u/s 3(1) of CTA-CVD	40,000
Total CGST	**3,40,000**

Note:

1. Service Provider not entitled to avail credit of SAD, Swachh Bharat Cess.
2. Additional Duty u/s 3(1) of CTA – CVD will be available if it is paid on import purchase of specified goods.
3. Credit of EC and SHEC shall not be allowed to be carried forward.

Issues and Concerns:

a. Availability of credit on KKC, Edu. Cess and SHE Cess: There is certain amount of ambiguity in the law as to whether transitional credit of KKC, Edu. Cess and SHE Cess would be eligible as transition credits in the hands of the taxpayers. The twitter comments and the transitional credit verification checklists shared with the taxpayers by the Government state that KKC, Edu. Cess and SHE Cess are not eligible as transitional credit as the same are not covered under the meaning of 'Eligible duties and taxes'. This is despite the fact that the applicability of Explanation 2 to Section 140 of the CGST Act, 2017 has not been extended to transitional credits claimed under Section 140(1) of the CGST Act, 2017. Due to this ambiguity that KKC is 'in the nature of service tax', there is some agitation going on before various Courts although Government's resolve is not ambiguous in this matter.

b. Availment of credit of taxes paid after due date under earlier laws: In many cases, taxpayers have filed belated service tax returns / paid taxes belatedly along with the applicable interest and late fee. Even in such cases, the credit of taxes paid under reverse charge mechanism after 6th July, 2017 is not available to the assessees. This is highly unfair to the taxpayers, especially since the compensation to the Government by way of interest and late fee has been remitted.

c. Availment of credit of excess taxes paid under earlier laws: There is no provision under the GST law to claim credit of excess service tax paid under rule 6(3) & rule 6(4A) of the Service Tax Rules, 1994. Rule 6(3) deals with claim of credit of excess service tax paid where services have subsequently not provided wholly / partly or in case of deficiency of services. Rule 6 (4A) deals with adjustment of excess service tax paid against the liability for the succeeding month / quarter.

d. Unutilized cash balance in PLA under Central Excise Law: Many of the taxpayers registered under the Central Excise Law carry a huge amount of unutilized balance of credit in the PLA Account as on 30th June, 2017. However, currently no provision exists for utilization / carry forward of the same in the GST Law.

e. Omission to claim such Cenvat credit through TRAN-1 will left taxpayer with no option but to forgo such credit.

140.1.3 FAQ

Q1. A person who is registered under service tax as well as under Central Excise and having unavailed CENVAT credit in central excise return, has not filed his service tax returns. Whether he can carry forward the unavailed CENVAT credit as per the last central excise return to GST regime?

Ans: No. Credit cannot be taken unless he has furnished all the returns required under the erstwhile law for the period of six months immediately preceding the appointed date.

Statutory Provisions

140(2). Credit of unavailed CENVAT credit in respect of capital goods, not carried forward in a return, shall be allowed.

A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day [19][within such time and] in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation - For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

Extract of the CGST Rules, 2017 – *The extract of the relevant rules has been provided below the Statutory Provisions of section 140(1) of the CGST Act, 2017 supra.*

Related provisions of the Statute

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 – 21	Manner of taking input tax credit
Section 79	Recovery of tax
Section 2(48)	Definition of existing law
Central Tax Rules 117(1) & (2)	Tax or duty credit carried forward
Central Tax Rule 120A	Revision of declaration in TRAN-1

[19] *Inserted vide The Finance Act, 2020 through Notification No. 43/2020 dated 16.05.2020, w.e.f. 18.05.2020.*

140.2.1 Introduction

This transition provision enables a person to avail CENVAT credit of the balance amount (unavailed portion) in respect of capital goods, that has not been availed under the erstwhile laws. The unavailed portion of credit relating to capital goods under the erstwhile laws not carried forward through a return can be availed, provided such credits are admissible under the GST laws.

140.2.2 Analysis

A registered person (except person opting for payment of taxes under the composition scheme) shall be allowed to take the amount of CENVAT Credit on capital goods not carried forward in the return. However, the said credit should be admissible under the erstwhile law as well as under the provisions of the CGST Act. Rule 117(2) of CGST Rules, 2017 requires the information to be submitted in FORM GST TRAN-1 regarding the amount tax or duty availed and yet to be availed till the appointed day.

"Unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the erstwhile law from the aggregate amount of CENVAT credit to which the said person was entitled to, in respect of the said capital goods under the erstwhile law.

- Under the CENVAT Credit Rules, 2004, in respect of eligible capital goods, credit is required to be claimed in 2 parts of 50% each. Credit to the extent of 50% maximum of the central excise duty paid ought to be claimed in the same financial year in which the capital goods are received and the balance 50% can be claimed in any subsequent years.
- Further, it needs to be noted that the capital goods referred above, means the goods as defined under Clause (a) of Rule 2 of CENVAT Credit Rules, 2004 and under GST Laws.

Eg 1: A manufacturer purchased a capital asset worth ₹ 11,25,000 (including excise duty of ₹ 1,25,000) on 5th May, 2017. In the month of June, 2017, he could avail CENVAT Credit to the extent of 50% only i.e. ₹ 62,500. The unavailed CENVAT Credit on capital goods as on 1st July, 2017 (appointed day) will be ₹ 125,000 – ₹ 62,500 = ₹ 62,500, which he will be eligible to claim under section 140(2).

Eg 2: [CENVAT Credit on Capital Goods used outside the factory of manufacturer is not allowable][20]. So, it will not be admissible as input tax credit in the GST Law either.

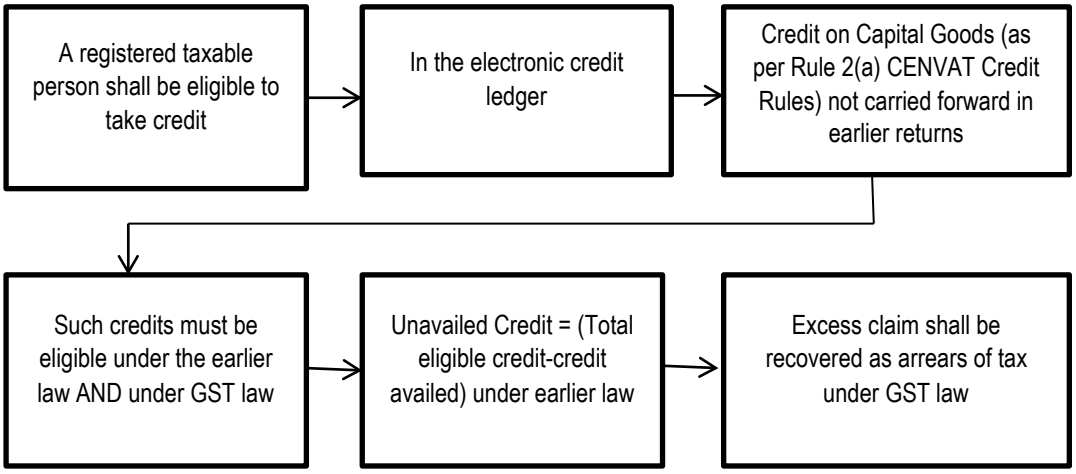
In terms of rule 117 of CGST Rules, 2017 particulars relating to every item of capital goods in respect of tax/duty availed or utilised by way of credit under the erstwhile law shall be indicated. Similar details in respect of unavailed portion under the erstwhile laws shall also be stated. The details, conditions and documentation are as follows:

[20] *Madras Cement v. CCE (2003) 158 ELT 293 = 56 RLT 978 (CESTAT 3 member bench)*

Particulars	**CGST**
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Details of credit to be carried forward	— Central Excise paid on 'capital goods' — Countervailing duty paid on 'capital goods' — Special Additional Duty paid on 'capital goods'
Conditions	— Should qualify for eligible input credit under both, the erstwhile law and the GST law — Would be in respect of input credit which is not carried forward in the return filed for the last period under the erstwhile law
Form in which the credit would be availed under the GST law	— Would be available as a balance in the CGST electronic credit ledger of the taxpayer.
Procedure for claiming the credit [Rule 117(1) & (2)]	(i) Submit declaration in Form GST TRAN-1 electronically; (ii) Due date for filing TRAN-1 is within 90 days of the appointed day; (The Commissioner may extend the period of 90 days by a further period of not exceeding 90 days). (iii) Accordingly, the Commissioner has extended date of filing Form GST TRAN-1 to 27.12.2017 *vide Order No. 9/2017-GST dated 15.11.2017*. (iv) In respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension, the Commissioner may extend the date for submission of Form GST TRAN-1 by a further period not beyond 31.03.2019 vide Notification No.48/2018-CT dated 10.09.2018. (v) Form GST TRAN-1 may be revised once within the prescribed time limit [Rule No. 120A]. (vi) By *order No.10/2017-GST dated 15.11.2017*, the Commissioner has extended the time limit for revision to 27.12.2017.

It must be clearly understood that CENVAT Credit can only be availed as CGST Credit in the respective Electronic Credit Ledger.

Pictorially this provision can be depicted as follows:



140.2.3 Issues and Concerns:

a. Traders and manufacturers availing SSI (Small Scale Industry) exemption under the earlier laws: Traders and manufacturers availing SSI exemption under the erstwhile laws were not eligible for the CENVAT credit as they were not discharging excise duty on the final products. Such persons, who are now registered persons under the GST regime would not be eligible for availment of the credit on capital goods purchased before 01st July, 2017 which will lead to credit loss for such assessees. The situation is further worsened as Section 140(3) of the CGST Act, 2017 which provides for claim of credit on goods held as on 30th June, 2017 does not provide for carry forward of credit of taxes paid on capital goods.

b. New Company incorporations: There may arise a situation wherein a Company was incorporated in May 2017 but was not granted registration by the VAT department or was unable to register with VAT department till 30.06.2017. Upon purchase of capital goods by the said Company, the credit of VAT paid on such goods would not be available as the Company is unregistered. As such, the Company would not be able to avail the credit of VAT paid on purchase of such capital goods, as the amount of VAT paid would not be reflected in the returns furnished under the earlier law and hence, cannot be carried forward as transitional credit under the GST law.

c. Omission to claim CENVAT Credit: In certain cases, taxpayers may have omitted to claim CENVAT Credit on capital goods in the year of purchase. The CENVAT Credit rules has a remedy to claim the CENVAT credit within 1 year from the date of invoice. In the absence of such a provision for transitional credit, such taxpayers would not be able to claim credits on such capital goods.

Statutory Provisions

140(3). Credit of eligible duties in respect of inputs held in stock allowed in certain situations

A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of Notification No. 26/2012-Service Tax, dated 20.06.2012 or a first stage dealer or a second stage dealer or a registered importer, or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished [21][goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely-:

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

Explanation. —The expression "eligible duties" means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975

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[21] Substituted for "goods held in stock on the appointed day subject to" vide The Finance Act, 2020 w.e.f. 18.05.2020 brought into force w.e.f. 18.05.2020 vide Notification No. 43/2020-CT. dt. 16.5.2020.

(iv) [22] *[***]*

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day

Extract of the CGST Rules, 2017 – *The extract of the relevant rules has been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 supra.*

Related provisions of the Statute

Section	Description	Remarks
Section 2(46)-CGST Act	Definition of 'Electronic Credit Ledger'	Input tax credit will be taken in this document.
Section 2(108)-CGST Act	Definition of Taxable supply	Only inputs intended to be used for taxable supplies are allowed as credit.
Section 16 to 21 - CGST Act	Input tax credit	This is for determining the admissibility of Input tax credit under the GST law
Section 79-CGST Act	Recovery of tax	For recovery of arrears of tax under GST for demand arising from proceedings under earlier law
Rule 9(1)-CENVAT Credit Rules, 2004	Documents and Accounts	Contains the list of documents on the basis of which CENVAT Credit can be availed
Rule 2(d) CENVAT Credit Rules, 2004	Definition of exempted goods	One of the possible pre-conditions in respect of category of person is engaged in manufacture/sale of exempted goods
Proviso to Rule 4(7)-CENVAT Credit Rules, 2004	Time limit for admissibility of CENVAT Credit	Similar time limit prescribed as one of the conditions for availment of credit under GST law

[22] *Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019, for "the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978".*

Rule 9-Central Excise Rules 2002	Registration under Central Excise	One of the possible preconditions in respect of category of persons is non-registration in earlier law.
Section 69(1) and Rule 4 Finance Act, 1994 & Service Tax Rules	Registration under Service Tax	One of the possible preconditions in respect of category of persons is non-registration in earlier law.

140.3.1 Introduction

This transition provision sets out the conditions and procedure for availing input credit in respect of stock held on appointed day by certain registered persons under the GST Law. Inputs which are held in stock and inputs contained in semi-finished / finished goods held in stock which were for manufacture of exempted goods under the earlier law have also been dealt with. Registration under the GST law is mandatory to claim such credits.

140.3.2 Analysis

The following persons shall be entitled to take credit of eligible duties and taxes on inputs held in stock and inputs contained in semi–finished or finished goods held in stock on the date on which this provision is made effective:

- not liable to be registered under the earlier law, or
- was engaged in the manufacture of exempted goods, or
- was engaged in the provision of exempted services, or
- was providing works contract service and was availing the benefit of *Notification No. 26/2012-Service Tax, dated 20.06.2012*, or
- a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer

The credit shall be allowed to the aforesaid taxable persons subject to the following conditions:

- Such inputs and/or goods are used or intended to be used for making taxable supplies under CGST Act.
- He is eligible for input tax credit on such inputs under CGST Act.
- He is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs,
- Which were issued not earlier than twelve months immediately preceding the date on which these provisions come into effect.
- That the supplier of services is not eligible for any abatement under the CGST Act.
- In terms of rule 117(2)(b) of the CGST Rules, 2017 the application in Form GST TRAN-01 shall specify separately the details of stock held on the appointed day.

Availability of Credit to Trader who is not in possession of invoice evidencing payment of Central Excise Duty

- As per proviso to sub section (1), credit may be allowed to a trader even if he is not in a possession of such invoice/document disclosing payment of duty/tax.
- However, in such cases the person will have to follow the conditions specified below:-
- Credit shall be allowed at the rate of 40% (when GST Rate is less than 18%)/ 60% (when GST rate is 18% or more), of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid. This situation arises when invoice is raised under the erstwhile tax regime and supply happens in a GST regime.

Type of Supply from such Stock	**Rate of Tax applicable**	**Quantum of credit* allowed**
Intra-State Outward Supply	CGST @ 9% or more CGST @ below 9%	60% of the CGST paid 40% of the CGST paid
Inter-State Outward Supply	IGST @ 18% or more IGST @ below 18%	30% of the IGST paid 20% of the IGST paid

Amount shall be credited after the CGST payable on such supply has been paid (Rule117(4)(a) of CGST)

The SGST Law of respective States also contain similar provisions, providing that a registered person, holding stock of goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State, can avail credit on goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of VAT in accordance with the proviso to sub-section (3) of section 140.

Type of Supply from such Stock	**Rate of Tax applicable**	**Quantum of credit* allowed**
Intra-State Outward Supply	SGST @ 9% or more SGST @ below 9%	60% of the SGST paid 40% of the SGST paid
Inter-State Outward Supply	IGST @ 18% or more IGST @ below 18%	30% of the IGST paid 20% of the IGST paid

**Amount shall be credited after the SGST payable on such supply has been paid (Rule117(4)(a) of SGST)*

Example:

Let us take an example of a trader 'D', who is the final dealer in the chain of supply.

(Paid VAT) (Has VAT Paid Stock)

'D' holds the duty paid stock but does not have the duty paying documents for the same

In this case, 'D' can claim credit of such duty paid goods under Rule 117(4)(a) of SGST

- Such goods were not wholly exempt from duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated.
- The registered person is in possession of documents relating to procurement of goods.
- The stock of goods on which the credit is availed must be stored in a way that it can be easily identified.
- The scheme shall be available for six tax periods from the appointed date.
- Registered person availing this scheme must furnish the details of stock held by him and submit a statement in FORM GST TRAN 2 at the end of each of the six tax periods during which the scheme is in operation indicating the details of supplies of such goods effected during the tax period. By Order No. 1/2018-CT dated 28.03.2018, the due date for filing Form GST TRAN-2 for all months (July 2017 to December 2017) is extended to 30.06.2018. In respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension, the due date for filing GST TRAN-2 is 30.04.2020 vide *Notification No. 02/2020-CT dated 01.01.202019* [earlier 30.04.2019 vide *Notification No.48/2018-CT dated 10.09.2018*.]
- The amount of credit allowed shall be credited to the electronic credit ledger.
- Eligible Duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day on which the CGST Act comes into force shall include the laws cited in the Section supra.

Explanation:

The expressions "Central Value Added Tax (CENVAT) credit" "first stage dealer", "second stage dealer", or "manufacture" shall have the same meaning assigned to them in the Central Excise Act, 1944 or the rules made there under.

Particulars	CGST
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Specified duties which would be allowed as transitional credit	— Central Excise paid on 'inputs' specified in schedules I and II of CETA, 1985 — Countervailing duty paid on 'inputs' under Customs Tariff Act — Special Additional Duty paid on 'inputs' — National Calamity Contingent Duty paid on 'inputs' — AED paid under AED (Textile &Textile Articles) Act, 1978 on 'inputs' — AED paid under AED (Goods of Special Importance) Act, 1957 on 'inputs'
Procedure for claiming the credit [Rule 117(1) (2) & (4)]	(i) Submit declaration in Form GST TRAN-1 electronically; (ii) Due date for filing TRAN-1 is within 90 days of the appointed day; (The Commissioner may extend the period of 90 days by a further period of not exceeding 90 days). (iii) Accordingly, the Commissioner has extended date of filing Form GST TRAN-1 to 27.12.2017 vide *order No. 9/2017-GST dated 15.11.2017*. (iv) In respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension, the Commissioner may extend the date for submission of Form GST TRAN-1 by a further period not beyond 31.03.2019 vide *Notification No. 48/2018-CT dated 10.09.2018*. (v) Form GST TRAN-1 may be revised once within the prescribed time limit [Rule No. 120A]. (vi) By *order No.10/2017-GST dated 15.11.2017*, the Commissioner has extended the time limit for revision to 27.12.2017.

Particulars	CGST
	(vii) Submit statement in FORM GST TRAN-2 at the end of each of the tax periods during which the scheme is in operation. (viii) By *Order No. 1/2018-CT dated 28.03.2018*, the due date for filing Form GST TRAN-2 for all months (July 2017 to December 2017) is extended to 30.06.2018. (ix) Vide *Notification No. 48/2018-CT dated 10.09.2018*, the due date for filing GST TRAN-2 in respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension is 30.04.2019. (x) Amount of credit shall be credited to Electronic Credit Ledger maintained in the common portal in FORM GST PMT-2.

It must be clearly understood that CENVAT Credit can only be availed as CGST Credit in the Electronic Credit Ledger. Details of stock held on the appointed date are required to be reported on the Common Portal.

It is important to note that use of the word 'goods' while referring to semi-finished and finished 'goods' in stock appears to restrict credit under section 140(3) only to 'movable' items of inventory. As a result, works contractors carrying WIP in the form of incomplete building or road or other immovable structure may not be allowed transition credit. There are two alternatives that may be considered (a) to pursue transition credit even in respect of such WIP citing the reference to 'goods' as being unintended error that undermines the substantive benefit sought to be allowed by the main provision or (b) accelerate the billing in respect of all WIP so as to discharge taxes under the earlier laws and pass on credit, where possible, to the customer (refer discussion under section 142(11) in respect of levy of taxes under earlier laws).

Similar provisions in the respective SGST Act may be followed in respect of credit of SGST.

140.3.3 Credit of eligible duties and taxes on input held in stock

Person eligible for input tax credit	Credit available on	Conditions
• Person not liable to be registered under the earlier law • Person engaged in manufacture/ sale of exempted goods, provision of exempted services • Person providing works contract service and availing abatement under *notification no. 26/2012* • First/ Second stage dealer, • importer or • a depot of a manufacturer	• Inputs held in stock and inputs contained in semi-finished goods or finished goods held in stock as on appointed day • Above benefit not available for input services • Such credit can be taken in the electronic credit ledger	• Goods must be used for taxable supply • Eligible to take the credit under GST law • Such person should be in possession of invoice or other prescribed document • Invoice or other document should be within 12 months from the appointed day • Excess claims will be recovered as arrears of tax under GST law

Issues and Concerns:

a. Availability of transitional credit to manufacturers / service provider: It appears that the provision is discriminatory when it seeks to deny the benefit of the above transitional credit to manufacturers/ service providers as even such taxpayers may have purchased goods from a non-excise dealer and hence, would not be in a possession of duty paying document in respect of the stock held. This would adversely impact the margins of the assessee, depending on the quantum of such stock.

For e.g.: Printing services are taxable under the GST laws as a 'supply of service'; however, no transitional credit would be available to such service provider under proviso to Section 140(3) of CGST Act, 2017 in case he has procured the goods i.e. paper for printing from the trader on which VAT /CST was charged under the erstwhile laws.

b. Credit of eligible duties and taxes in respect of inputs held in stock for a works contractor: The above provision does not contemplate a situation where a service provider engaged in providing works contract services does not avail the benefit of Notification No. 26/2012 dated. 20th June, 2012 and is discharging service tax in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 on the service portion derived under the deduction method or percentage method prescribed therein.

c. Availment of credit in relation to transitional stocks held with the branch: Suppose, ABC Ltd is a registered importer having its head office at Haryana and a branch at Odisha. The head office had sent goods to the branch office prior to the appointed day under a declaration of Form F. While filing the GST TRAN 1, for the stocks lying with the branch, whether the branch will be eligible to get the credit of all the taxes paid at the time of import on the basis of documents possessed / addressed to the Head office and the Form F. Alternatively, whether the branch will be eligible for availment of deemed credit on such transaction on the account of non-possession of duty paying documents.

d. Availment of credit on invoices not older than 12 months from the appointed day: There may arise a situation where stocks held on the appointed day (either as goods or work-in-progress) contain goods which has been purchased prior to twelve months preceding the appointed day (especially in case of long term contracts/ works contracts wherein the contracts are in progress for more than a year). Disallowance of credit paid on inputs in such cases will result in financial hardship to the assessees. The provision of deemed credit does not have any such 12 months' period but is applicable only to assesses other than manufacturers and service providers.

It is pertinent to note that Hon. Gujarat High Court in the case of *Filco Trade Centre Pvt. Ltd v. Union of India* strikes down clause (iv) of sub-section (3) of section 140 which imposes a condition on availment of transitional input tax credit in case of dealers by stipulating that invoices/other prescribed documents should not be issued earlier than 12 months immediately preceding the appointed day, as unconstitutional. Since, the due date for revision of Form GST TRAN-1 has expired and in the absence of facility being made available in GSTN portal to give effect to this judgement, it is advisable for dealers to make a written representation to concerned jurisdictional GST Authority and the GST Council for seeking ITC relief in this matter.

Circular No. 182/14/2022-GST dt. 10.11.2022

As per the directions of the Hon'ble Supreme Court in the case of *Union of India vs. Filco Trade Centre Pvt. Ltd*. dated 22.07.2022 & 02.09.2022 that the common portal be opened for filing prescribed forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months from 01.10.2022 to 30.11.2022 for the aggrieved

registered assessee (hereinafter referred to as the 'applicant'), *Circular No. 180/12/2022-GST dt. 09.09.2022* was issued specifying that the declaration in FORM GST TRAN-1/TRAN-2 filed/revised by the applicant shall be subjected to necessary verification by the concerned tax officers. The guidelines for verifying the same have been issued through *Circular No. 182/14/2022-GST dt. 10.11.2022*, few of which have been mentioned hereinunder:

1) The verification of the transitional credit shall be conducted by the jurisdictional tax officer who will pass an appropriate order regarding the veracity of the claim filed by the applicant, based on all the facts and the provisions of the law.

2) In respect of TRAN-1/TRAN-2 filed/revised by the applicant under the administrative control of the state tax authorities, the same shall be done by the jurisdictional officer of state tax.

3) Principles of natural justice shall be followed in the process of passing the order relating to allowance or disallowance of the Transitional Credit.

4) Whether the applicant had earlier filed TRAN-1/ TRAN-2 or not, needs to be checked. In case, there is no change from the earlier filed TRAN-1/ TRAN-2, then such claim of transitional credit is liable for rejection by the tax officer, through a reasoned order, after providing due reasonable opportunity to the applicant.

5) In respect of verification done by the counterpart officer, after verification, he will prepare a verification report, in the format detailed in Annexure-II of the latest Circular, specifying the amount of transitional credit which may be allowed to be credited to the electronic credit ledger of the applicant and the amount, which is liable for rejection, along with detailed reasons/ grounds on which the said amount is liable to be rejected.

6) For the purpose of verification of the claim of the transitional credit, the jurisdictional tax officer as well as the counterpart tax officer, if required, may call for relevant records including requisite documents/returns/invoices, as the case may be, from the applicant.

7) It has also been iterated that Hon'ble Supreme Court has only allowed filing of TRAN 1/TRAN-2 or revising the TRAN-1/TRAN-2 already filed by the applicant and has not allowed the applicant to file revised returns under the existing laws.

As per the Hon'ble Court's order, the said verification has to be carried out within 90 days after completion of the above window of two months, i.e., within 90 days from 01.12.2022 i.e., up to 28.02.2023.

The detailed guidelines and the modalities of coordination between central tax authorities and state tax authorities can be accessed at *Circular No. 182/14/2022-GST dated 10th November 2022.*

e. In fact, this provision would apply to the leasing industry, as well, which necessarily implies that no such credit can be availed on capital goods.

f. Input tax credit cannot be availed through TRAN-2 in case of failure to show such stocks in TRAN-1 as stock held in stock without duty paying document.

140.3.4 Introduction

This transition provision has been introduced with a view to enable the availment of credit in cases of works contract signed before the specified day, products and services provided after that date are subject to GST.

When a works contract includes both items (such as iron bars and cement) and services (such as labor), both service tax and VAT are applicable (laborers, engineers). On the portion of a supply for which VAT or service tax was paid prior to the implementation date of the GST but the delivery was made after that date, an ITC will be applicable. Within ninety days of the designated day, the taxpayer must electronically make a declaration in the form GST TRAN-1 with the necessary information.

Explanation with an Example

For the construction of a blast furnace for which it had submitted an invoice, Care Constructions received an advance payment from XYZ Ltd. on June 27. On July 5th, 2017, it provided products and services. Will GST be used in this instance? The supply was made before the introduction of the GST, hence it will not be applicable. Also, if XYZ Ltd. electronically uploads a declaration in the form GST TRAN-1 with the necessary information within 90 days of July 1st, it is permitted to claim ITC on the supply made on July 5. Also, the supply took place on June 20, which was before the application of GST (invoice date).

Periodic Supply under Goods and Service Tax

When the consideration for the supply is received before the designated day AND the tax has already been paid under the former law, GST will not be due on the supply for ongoing provision of goods or services after GST implementation. Whether the supply consideration has been paid in full or in part is irrelevant.

Example:

1. Mr. S consistently provides Mr. B with items. Mr. B gave an advance payment to Mr. S on June 27 for items worth Rs. 1,000,000 that Mr. S sent on July 15. Would GST be used? Some products are exempt from GST since payment was made before the adoption of the GST and tax was charged in accordance with the former law.

2. In June, Mr. B only provided an advance payment of Rs.50,000 based on the aforementioned scenario. As the tax was imposed in accordance with former law, GST will still not be applicable. Whether the consideration was partially paid is irrelevant.

Carried forward tax or tariff credits under any applicable law or on products that were in stock on the designated day:

Within 90 days of the appointed day, every registered person entitled to an input tax credit under section 140 shall electronically submit a declaration in Form GST TRAN1, duly signed, on the Common Portal, specifying therein, separately, the amount of input tax credit to which he is entitled under the provisions of Said Section: Provided, That the Commissioner may, on the recommendations of the Council, extend the period of 90 days by a further period.

Statutory Provisions

140(4) Credit of eligible duties and taxes in respect of inputs held in stock allowed in certain situations

A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of Finance Act, 1994, but which are liable to tax under this Act shall be entitled to take, in his electronic credit ledger,-

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

Explanation 1. —The expression "eligible duties" means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975

(iv) [23] [***]

[23] *Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019, for "the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978".*

(iv) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;

(v) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and

(vi) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day

Extract of the CGST Rules, 2017 – *The extract of the relevant rules has been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 supra.*

Relevant provisions of the Statute

Sections of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Section 79	Recovery of tax
Central Tax Rules 117(1) & (2)	Tax or duty credit carried forward
Central Tax Rule 120A	Revision of declaration in TRAN-1

140.4.1 Introduction

This transition provision permits for availment of input credit by a registered person who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or engaged in provision of taxable as well as exempted services under Chapter V of Finance Act, 1994.

140.4.2 Analysis

This provision is applicable only for inputs (not capital goods) held in stock or in respect of inputs contained in semi-finished goods or finished goods held in stock on the appointed day on 'ELIGIBLE DUTIES and the amount of CENVAT credit carried forward in a return furnished under the erstwhile law by him.

This section mirrors the provisions of section 140(1) and 140(3) in respect of goods that were not taxable under the earlier law and become taxable in GST.

The definition of 'Eligible Duties' as stated in explanation 1 to section 140 (10) cited supra is applicable here.

The claim of transitional credit under this Section is subject to the following conditions:

(i) The person must be a registered person under the GST Laws.

(ii) The taxable person must have been engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of Finance Act, 1994.

(iii) In terms of sub-rule 2(b) of the Transition Provision Rules the application in Form GST TRAN -01 shall specify separately the details of stock held on the appointed day up to 6 tax periods indicating the details of supplies effected during each tax period.

The details of credit availment are as follows:

Particulars	**CGST**
Credit to be carried forward	Amount of CENVAT credit carried forward in a return furnished under earlier law in terms of section 140(1) Amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to exempted goods or services, in terms of section 140(3). Reference may be made in Section 140(3) for better understanding.
Relevant law	CENVAT Credit Rules, 2004
Form in which the credit would be available under the GST law	Would be available as a balance in the electronic credit ledger of the tax payer.
Procedure for claiming the credit [Rule 117(1) & (2)]	(i) Submit declaration in Form GST TRAN1 electronically; (ii) Due date for filing TRAN-1 is within 90 days of the appointed day; (The Commissioner may extend the period of 90 days by a further period of not exceeding 90 days). (iii) Accordingly, the Commissioner has extended date of filing Form GST TRAN-1 to 27.12.2017 vide order No. 9/2017-GST dated 15.11.2017. (iv) In respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension, the Commissioner may extend the date for submission of Form GST TRAN-1 by a further period not beyond 31.03.2019 vide Notification No.48/2018-CT dated 10.09.2018.

Particulars	CGST
	(v) Form GST TRAN-1 may be revised once within the prescribed time limit [Rule No. 120A]. (vi) By order No.10/2017-GST dated 15.11.2017, the Commissioner has extended the time limit for revision to 27.12.2017.

Statutory Provisions

140(5) Credit of eligible duties and taxes in respect of inputs or input services during transit

A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the [24][existing law, within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the commissioner for a further period not exceeding thirty days.

Provided Further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

Explanation 2. —The expression "eligible duties and taxes" means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;

*(iv) [25][~~***~~];*

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and

(viii) the service tax leviable under section 66B of the Finance Act, 1994,

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[24] Substituted vide The Finance Act, 2020 dated 27.03.2020 for "existing law".w.e.f. 18.05.2020.

[25] Omitted w.e.f. 01st July, 2017 by s.28 of The Central Goods and Services Tax (Amendment) Act, 2018 - Brought into force w.e.f. 01st February, 2019, for "the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978".

in respect of inputs and input services received on or after the appointed day.

[26][Explanation 3. — For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975]

Extract of the CGST Rules, 2017 – *The extract of the relevant rules has been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 supra.*

Relevant provisions of the Statute

Section of CGST	Description
Section 2 (46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Section 79	Recovery of tax
Central Tax Rules 117(1), (2c),	Tax or duty credit carried forward
Central Tax Rules 120A	Revision of declaration in TRAN-1
Central Tax Rules 121	Recovery of credit wrongly availed.

140.5.1 Introduction

This transition provision sets out the 2conditions and procedure for availing input credit in case of transactions that are spread over the transition period.

140.5.2 Analysis

(i) In any given business scenario, it is possible that invoices are raised in the erstwhile tax regime and applicable taxes are also remitted under the erstwhile laws. However, inputs or input services in respect of such transactions are received in a GST regime. This provision alleviates the difficulty in availing credits in such instances. In order to avail such credits in the Electronic Credit Ledger the following conditions need to be satisfied:

(a) Invoices/duty paid documents must be recorded in the books within 30 days from the appointed date which may be extended by the commissioner for another 30 days on showing sufficient cause.

(b) The recipient of inputs or input services must furnish a statement as follows:

In terms of Rule 117(2)(c) the said taxable person shall furnish the following details, vide FORM GST TRAN-1.

(i) A statement indicating the name and address of the supplier together with invoice details.

[26] *Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.*

(ii) Description, quantity and value of goods or services.

(iii) The amount of taxes, duties, VAT, Entry tax charged by the supplier.

(iv) The date at which receipt of goods or services are entered in the books of the recipient.

The provision is a saving clause in respect of 'goods in transit'.

Issues and Concerns:

a. Transitional provision for service tax payable on receipt basis: Assume a situation where services were provided under the earlier law and an option to pay service tax on receipt basis was exercised. Owing to the aforesaid provisions, the receipts of money on / after 01st July, 2017 would be liable to service tax in the hands of the assessee as he is required to pay tax on receipt basis. If service tax is leviable on such transactions, GST will not be leviable in terms of section 142(11)(b) of CGST Act, 2017. Further, if service tax is leviable on the same, how is the assessee expected to declare the same in the ST-3 returns, as the ST-3 returns for the period of July 2017 and onwards were not operational.

b. Taxes paid under earlier laws but bill has been received after appointed day: The aforesaid provision does not cover cases where the service is provided / goods are received on / before 30th June, 2017 and the invoice is dated on / before 30th June, 2017 but the invoice is received after 01st July, 2017.

c. Capital goods in transit as on the appointed date: The aforesaid provision does not allow availment of credit of duties and taxes in respect of capital goods received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the erstwhile law i.e. capital goods-in-transit. In such a scenario, Excise Duty and VAT paid on the procurement of the capital goods will form a part of cost for the taxpayer.

Statutory Provisions

140(6) Credit of eligible duties and taxes on inputs held in stock to be allowed to a registered person switching over from composition scheme

A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished[27] [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:-

[27] *Substituted vide The Finance Act, 2020 through Notification No. 43/2020-CT., dt.16.5.2020. Brought into force w.e.f. 18.05.2020, for "goods held in stock on the appointed day subject to".*

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

Explanation 1. —The expression "eligible duties" means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975

(iv) [28] [];

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day

[28] *Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019, for "the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978".*

Extract of the CGST Rules, 2017

Rule 121 Recovery of credit wrongly availed.-

The amount credited under sub-rule (3) of rule 117 may be verified and [29][proceedings under section 73 or section 74 or section 74A,] shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

Extract of the CGST Rules, 2017 – *The extract of the relevant rules have been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 supra.*

Relevant provisions of the Statute

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 10	Composition Dealer
Section 16 to 21	Manner of taking input tax credits
Rule 117(2) (b)	Transition Provision Rules under GST Laws
Central Tax Rules 117(1)	Tax or duty credit carried forward
Central Tax Rules 120A	Revision of declaration in TRAN-1
Central Tax Rules 121	Recovery of credit wrongly availed.

140.6.1 Introduction

This transition provision sets out the conditions and procedure for availing input credit by a registered person who is switching over from composition scheme (paying tax at fixed rate or fixed amount) under the erstwhile laws to a regular scheme under the GST law.

140.6.2 Analysis

This provision is applicable only for inputs (not capital goods) held in stock or in respect of inputs contained in semi-finished goods or finished goods held in stock on the appointed day on 'ELIGIBLE DUTIES' The claim of transitional credit under this section is subject to the following conditions:

(i) The person must be a registered person under the erstwhile law as well as GST Laws.

(ii) He should have opted for payment of tax at a fixed rate or fixed amount in lieu of tax payable under the erstwhile law. Eg. Compounded Levy Scheme under central excise in case of aluminium/steel pattas/pattis, special service tax rates in case of insurers carrying on life insurance business, persons providing services in relation to purchase/ sale of foreign currency including money changers

[29] *Substituted vide Notification No. 20/2024 – CT dated 08.10.2024 w.e.f. 01.11.2024 before it was read as, "proceedings under section 73 or, as the case may be, section 74"*

(iii) Specified duties paid on 'inputs' would be allowed as input tax credit, in his Electronic Credit Ledger.

(iv) The person should opt for payment of tax under the regular scheme under the GST law (cannot be a composition taxpayer u/s 10 of CGST Law).

(v) The relevant inputs should be held in stock on the date of introduction of GST.

(vi) Inputs may take any of the following forms –

  (a) inputs as such (in the same form as it was procured / received – may be raw materials, consumables, packing materials, traded goods etc.),

  (b) may be contained in WIP or semi- finished goods or

  (c) may be contained in the finished goods.

(vii) Such inputs must be used or intended to be used for making taxable supplies under the GST Laws.

(viii) Such goods should qualify as eligible inputs under the GST law.

(ix) The registered person should be in possession of the invoice and such other documents (as may be prescribed) that shall satisfy the following conditions:

  (a) The invoice / other document should evidence the payment of duty / tax on such goods.

  (b) The invoice should not be more than 12 months prior to the date of introduction of GST.

(x) In terms of Rule 117(2) of CGST Rules, 2017 the application in FORM GST TRAN-1 shall specify separately the details of stock held on the appointed day.

Statutory provisions

140(7) Credit distribution of service tax by Input Service Distributor.

Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as [30][credit under this Act, within such time and in such manner as may be prescribed, [31][whether the invoices relating to such services are received prior to, on or after, the appointed day]]

[30] *Substituted vide The Finance Act, 2020 w.e.f. 18.05.2020 through Notification No. 43/2020-CT., dated 16.5.2020. Applicable w.e.f. 18.05.2020. Prior to its substitution, it read as: "credit under this Act even if".*

[31] *Substituted vide the Finance (No. 2) Act, 2024 dated 16.08.2024 w.e.f. 01.07.2017 vide Notification No. 17/2024 CT dated 27.09.2024 w.e.f. 01.11.2024. Before it was read as, "even if the invoices relating to such services are received on or after the appointed day".*

Extract of the CGST Rules, 2017 – *The extract of the relevant rules have been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 supra.*

Relevant provisions of the Statute

Section	Description	Remarks
Section 2(61)	Definition of Input Service Distributor	To be aware of the meaning of Input Service Distributor under the GST law
Section 2(102)	Definition of Service	It is imperative to know the meaning of service to determine as to what will be distributed under the GST law
Section 20	Manner of distribution of Input Tax Credit by ISD	Section 20 acts as an extension of section 140(7). The eligibility of the credit is discussed as per Section 140(7) whereas the manner of distribution is under section 20.

140.7.1 Introduction

(i) This provision has an overriding effect over all other provisions under the GST law.

(ii) This provision is applicable when:

  (a) The services are received by the Input Service Distributor before the date of applicability of GST and

  (b) Tax on such services have not yet been distributed by the Input Service Distributor on the date of applicability of GST.

  (c) Invoices relating to such services are received on or after the appointed date.

(iii) Such services will be eligible for distribution as credit under the GST law.

(iv) This provision will be applicable irrespective of the date of receipt of invoice by the Input Service Distributor.

140.7.2 Analysis

Input Service Distributor: This term has been defined under Section 2(61) of the CGST Law to mean "an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office."

Explanation. - For distributing the credit of CGST (SGST in State Acts) and / or IGST or UTGST, Input Service Distributor shall be deemed to be a supplier of services.

Services: This term has been defined under section 2(102) of the CGST law to mean "anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged."

Date of receipt of invoice is immaterial: In respect of the services received by the Input Service Distributor before the date of applicability of GST, the invoice can be received by the Input service distributor:

(a) either before the date of applicability of GST; or

(b) on the date of applicability of GST

(c) after the date of applicability of GST

This section seeks to cover all the cases.

Date of receipt of services is crucial: For the purposes of this section, it is important that the underlying services must have been received prior to the appointed date.

Distribution of credit under GST Law: If any input service distributor:

— receives services before the date of applicability of GST; and

— such services are yet to be distributed on the date of applicability of GST, for want of invoice

— then irrespective of the date of the receipt of invoices by the Input Service Distributor

— the distribution of credit will be as per the GST law.

Manner of distribution of credit by Input Service Distributor: Section 20 of the CGST law provides the manner in which the credit will be distributed. Following are the key points for consideration:

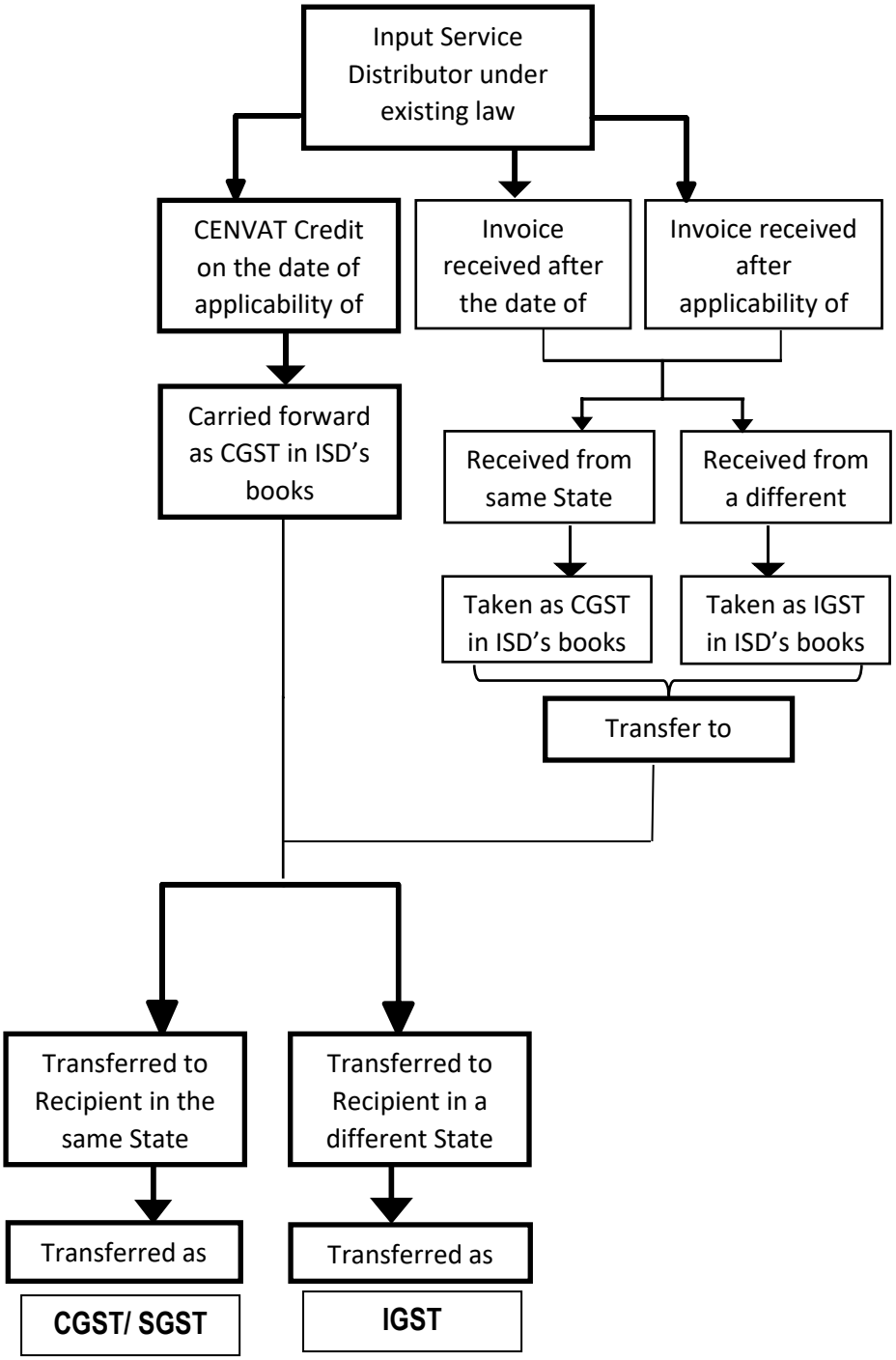
— If the invoice is received by the Input Service Distributor before the date of applicability of GST, he can distribute the CENVAT Credit under the old law and carry forward this credit as CGST on the date of applicability of GST under section 140(1) of the CGST law. If he distributes the credit on or after the applicability of GST, he can take it as CGST or IGST depending on the nature of supply being intra State or inter-state respectively.

— If the invoice is received by the Input Service Distributor on or after the date of applicability of GST, he can distribute the credit in the form of CGST or IGST depending on the nature of supply being intra State or inter-state.

— If the Input Service Distributor and the recipient of credit are located in two different States, then the input tax credit of both CGST and IGST will be distributed as IGST.

— If the Input Service Distributor and the recipient of credit are located in the same State, then the input tax credit of CGST and IGST will be distributed as such.

Analysis of this transitional provision can be presented in the following flowchart:



Statutory provisions

140(8) Provision for transfer of unutilized CENVAT Credit by a registered person having centralized registration under the earlier law

Where a registered person having centralized registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day [32][within such time and in such manner] as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralized registration was obtained under the existing law.

Relevant provisions of the Statute

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Rule 117(2)	Transition Provision Rules under GST Laws
Central Tax Rules 117(1)	Tax or duty credit carried forward
Central Tax Rules 120A	Revision of declaration in FORM GST TRAN-1
Central Tax Rules 121	Recovery of credit wrongly availed.

140.8.1 Analysis

Under the erstwhile law where centralized registration is obtained and credit is lying in balance, it is provided that:

- Credit balance may be taken and carried forward into the GST regime
- Such credit transfer will require filing of a return within 3 months under the old law

[32] *Substituted vide The Finance Act, 2020 w.e.f. 18.05.2020 vide Notification No. 43/2020-CT. dated 16.5.2020, for "in such manner".*

- Credit is required to be eligible under the GST law
- Credit is permitted to be transferred to other locations of the person which qualify as taxable persons in GST having the same PAN.

It is interesting that the provision does not lay down any criteria for such transfer of credit between various locations of the person and this is a welcome measure as part of the transition steps.

Transfer of unutilised CENVAT credit by a person having centralised registration

Note:

1. Only those credits which are admissible under GST laws will be allowed
2. Credit may be transferred to any registered person having the same PAN for which centralised registration was obtained under erstwhile law

In terms of Rule 117(2) of the CGST Rules 2017 the application in FORM GST TRAN-1 shall specify the said transactions.

Statutory Provisions

140(9). Reclaiming CENVAT credit reversed due to non-payment of consideration

Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such-[credit can be reclaimed within such time and in such manner as may be prescribed, subject to][33] the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

Extract of the CGST Rules, 2017 – *The extract of the relevant rules has been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 supra.*

140.9.1 Introduction

This transition provision has been introduced with a view to enable the availment of credit in cases where CENVAT credit has been reversed in terms of second proviso to rule 4(7) of the CENVAT Credit Rules, 2004. In terms of the said proviso, CENVAT credit is reversed in case

[33] *Substituted w.e.f. 01.07.2017 for " credit can be reclaimed subject to" by s.128 of The Finance Act, 2020 - Brought into force w.e.f. 18.05.2020 vide Notification No. 43/2020-C.T. dated 16.5.2020.*

of input services, the payment of consideration for which is not made within a period of 3 months from the date of invoice/challan etc. Subsequently, such credit is allowed as and when the payment is made.

140.9.2 Analysis

This Section would apply in the following circumstances:

(i) The CENVAT credit had been reversed by the manufacturer or the service provider in terms of second proviso to Rule 4(7) of the CENVAT Credit Rules, 2004.

(ii) Such payment is then made after the appointed day.

(iii) The payment is made within 3 months from the appointed day.

It provides that where the above conditions are fulfilled, the credit shall be allowed as CGST credit.

For the period ending with the day immediately preceding the appointed day, if the registered person files an original/revised return within 3 months of the appointed day.

Statutory Provisions

Section	Particulars
141(1)	No tax payable if input removed to a job worker for further processing, testing etc. prior to the appointed day returned within a period of 6 months or extended period for further 2 months.
141(2)	No tax payable if semi-finished goods that had been removed to any other premises for carrying out certain manufacturing processes prior to the appointed day returned within a period of 6 months or extended period for further 2 months.
141(3)	No tax payable on manufactured excisable goods removed without payment of duty for carrying out tests etc. not amounting to manufacture as per erstwhile law prior to the appointed day returned within a period of 6 months or extended period for further 2 months.
141(4)	No tax payable under sub-section (1)/ (2) or (3) if the manufacturer and the job-worker declare the details of the inputs or goods held in stock.

141. Transitional provisions relating to job work

(1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.

(2) Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

(3) Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

(4) The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job-worker declare the details of the inputs or goods held in stock by the job-worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

Extract of the CGST Rules, 2017

119. Declaration of stock held by a principal and [34][job-worker].-

*Every person to whom the provisions of section 141 apply shall, within [35] [the period specified in rule 117 or such further period as extended by the Commissioner], submit a declaration electronically in **FORM GST TRAN-1**, specifying therein, the stock of the inputs, semi-finished goods or finished goods, as applicable, held by him on the appointed day.*

Relevant provisions of the Statute

Section/Rule	Description
Section 2(68)	Definition of 'Job work'
Section 2(85)	Definition of 'Place of Business'
Section 142(8)(a)	Recovery of any amount in pursuance of assessment or adjudication proceedings under the existing laws
Section 79	Recovery of amount payable to Government
Rule 117	Time limit for filing FORM GST TRAN-1
Rule 119	Declaration of stock held by a Principal and job-worker
Rule 120A	Revision of declaration in FORM GST TRAN-1
Section 143	Job work

141.1. Inputs removed for job work and returned on or after the appointed day

141.1.1 Introduction

This transition provision is with respect to inputs removed as such or after partial processing from a place of business for the purposes of carrying out any processing, repair, reconditioning or for any other purposes under the erstwhile laws but are returned / returnable after the date of implementation of GST.

141.1.2 Analysis

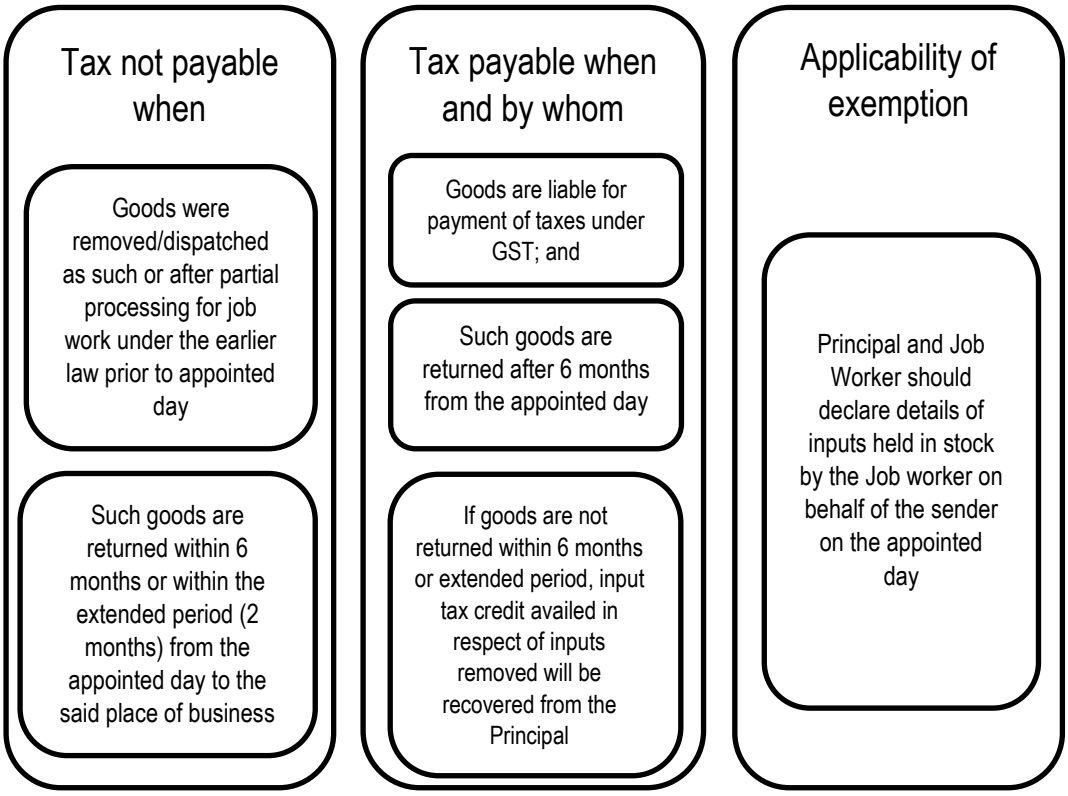
- In case inputs removed by a Principal to a Job Worker's premises that are returned to the Principal within 6 months (or within an extended period of further 2 months), no tax

[34] *Substituted (w.e.f .01.07.2017) vide Notification No. 15/2017-C.T., dated 01.07.2017, for "agent".*
[35] *Substituted vide Notification No. 36/2017-CT dt. 29.09.2017, for "ninety days of the appointed day".*

shall be payable. However, if the inputs are not returned within 6 months or such extended period of 2 months, then the input tax credit availed by the Principal shall be recovered as arrears of tax under CGST Law and no input tax credit of such tax paid shall be allowed under the CGST Law.

- Rule 119 prescribes that every Principal and the Job Worker shall file a declaration in FORM GST TRAN-1 specifying the stock held at job worker's premises. The time limit for furnishing the above declaration in TRAN-1 has been prescribed in Rule 117.
- **Eg 1:** A manufacturer had removed inputs worth ₹ 5,00,000 on 1st January, 2017 for job work. On 10th December, 2017, the inputs are returned by the job worker. Since, the inputs are returned within 6 months from the date of applicability of GST, no tax will be payable.
- **Eg 2:** In Eg 1 above, if the goods are not returned by the job worker within the period of 6 months from the applicability of GST i.e. by 31st December, 2017, then the input tax credit shall be liable to be recovered in terms of section 142 (8)(a); i.e., the input tax credit shall be liable to be recovered as an arrear of tax under the CGST Act and the amount so recovered shall not be admissible as input tax credit.

Inputs removed for Job work and returned on or after the appointed day



Issues / Concerns:

Cases where CENVAT credit already reversed under earlier law: These transitional provisions do not cover those situations where goods are received back after the appointed date in respect of which CENVAT credit is already reversed prior to appointed date.

141.2. Semi-finished goods removed for job work and returned on or after the appointed day

Extract of the CGST Rules, 2017 – ***The extract of the relevant rules have been provided below the Statutory Provisions of Section 141(1) of the CGST Act, 2017 supra.***

141.2.1 Introduction

This transitional provision is with respect to semi-finished goods which were dispatched from a place of business for job work (for the purpose of carrying out any manufacturing processes) under the erstwhile laws but are returned / returnable after the date of implementation of GST.

141.2.2 Analysis

- In case semi-finished goods removed by a Principal to a Job Worker's premises that are returned to the Principal within 6 months (or within an extended period of further 2 months), no tax shall be payable. However, if the semi-finished goods are not returned within 6 months or such extended period of an additional 2 months then the input tax credit availed by the Principal shall stand reversed under the erstwhile law or recovered as arrears under the CGST Law.
- Rule 119 prescribes that every principal and the job worker shall file a declaration in FORM GST TRAN-1 specifying the stock held at job worker's premises. The time limit for furnishing the above declaration in TRAN-1 has been prescribed in Rule 117.
- The manufacturer may, instead of bringing the said goods back to his place of business, transfer the said goods to the premises of any registered person for the purpose of supplying there from to places within India or for exports. The premises of any registered person may include premises like bonded warehouses where to goods manufactured can be removed from the place of manufacture without payment of excise duty by complying with the relevant provisions of the Central Excise Law. If the supplies from those premises are made within India, tax shall be paid on such supplies. If the said goods are exported no tax need to be paid on such supplies.

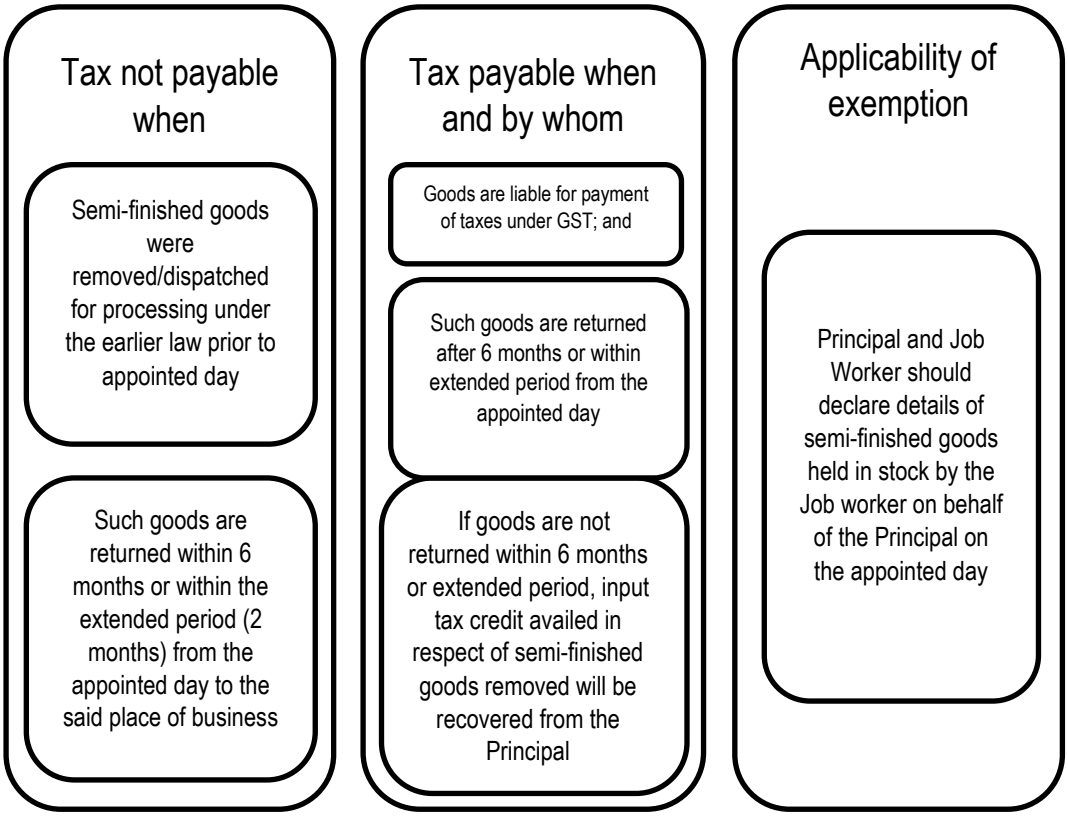
Eg 1: A manufacturer had removed semi-finished goods worth ₹ 5,00,000 on 1st January, 2017 for further processing. GST. On 10th October, 2017, these goods are returned by the job worker. Since the goods are returned within 6 months from the date of applicability of GST, no tax will be payable.

Eg 2: In Eg 1 above, if the goods are not returned by the job worker within the period of 6 months from the applicability of GST i.e. till 31st December, 2017, then the input tax credit shall be liable to be recovered in terms of section 142 (8)(a); i.e., the input tax credit shall be liable to be recovered as an arrear under the CGST Act.

Eg 3: In Eg 1 above, assume that the goods are directly transferred to a registered taxable person within 6 months from the applicability of GST i.e. till 31st December, 2017. In this case, tax will be payable under GST if the goods there from are supplied in India and tax will not be payable if the same is exported.

The analysis of above provision in a pictorial form is summarised as follows:

Semi-finished goods removed for Job work and returned on or after the appointed day



141.3: Finished goods removed for carrying out certain processes and returned on or after the appointed day

Extract of the CGST Rules, 2017 – ***The extract of the relevant rules have been provided below the Statutory Provisions of Section 141(1) of the CGST Act, 2017 supra.***

141.3.1 Introduction

This transition provision is with respect to excisable goods manufactured and removed from a place of business without payment of duty for the purposes of carrying out any tests or any other process and which are returned / returnable after the date of implementation of GST.

141.3.2 Analysis

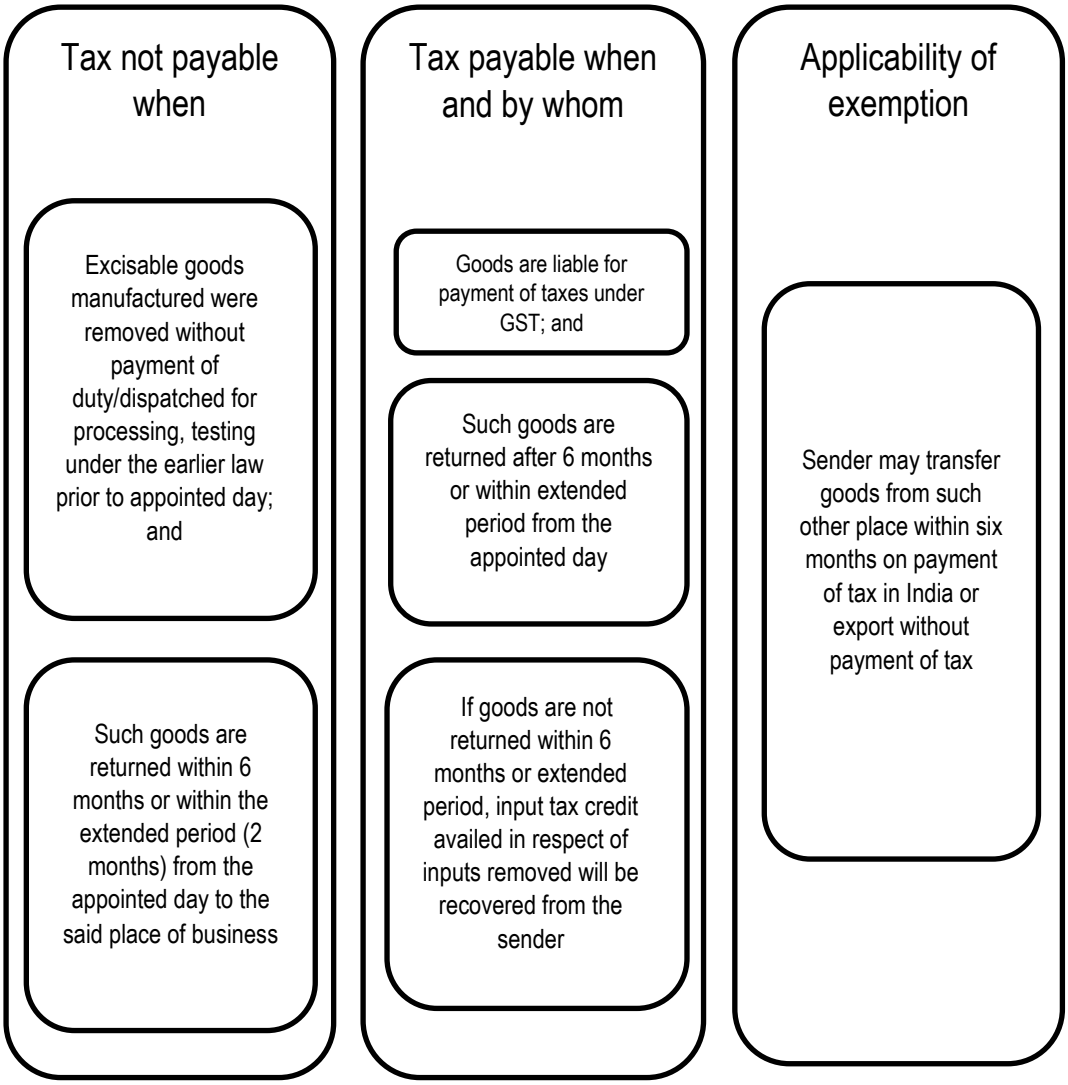
- Excisable goods are manufactured and removed from the place of business without payment of duty for carrying out tests or any other process (not amounting to manufacture), to any other premises, whether registered or not, in terms of the earlier law prior to the appointed day. Subsequently such goods, are returned to the said place of business on or after the appointed day, then no tax shall be payable if the said goods, after undergoing the process, are returned to the said place within 6 months from the appointed day.
- The period of 6 months may be extended by the Commissioner for a further period not exceeding 2 months.
- If the said goods are not returned within 6 months or extended period, from the appointed day, the input tax credit shall be liable to be recovered under the erstwhile law. If the input tax credit is not recovered under the erstwhile law, it will be recovered as an arrear under the CGST Act.
- The manufacturer may, in terms of the provisions of the earlier law, transfer the said goods from the premises of the job worker on payment of tax if the supplies are made within India or without payment of tax for exports. The premises of the same registered person refers to premises like bonded warehouses to where goods manufactured can be removed from the place of manufacture without payment of excise duty by complying with the relevant provisions of the Central Excise Law. If the transfer from those premises are made within India, tax shall be paid on such transfers. If the said goods are exported no tax need to be paid on such transfers.

Eg 1: A manufacturer removed finished goods worth ₹ 5,00,000 on 1st January, 2017 for testing. On 20th November, 2017, these goods are returned by the person after testing. Since the goods are returned within 6 months from the date of applicability of GST, no tax will be payable.

Eg 2: In Eg 1 above, assume that the goods are not returned directly from the premises of the tester within 6 months from the applicability of GST i.e., till 31st December, 2017. In this case, input tax credit shall be liable to be recovered in terms of section 142(8)(a).

The analysis of above provision in a pictorial form is summarised as follows:

Finished goods removed for carrying out certain processes and retuned on or after the appointed day:



This provision stipulates that immunity from paying tax under section 141(1), 141(2) and 141(3) is available only if both the manufacturer and the job worker declare the details of inputs or goods held in stock by the job worker on behalf of the manufacturer.

141.3.4 FAQ

Q1. Can the benefit of sub-sections 1, 2 & 3 be availed even if the date of removal of inputs, semi-finished goods or finished goods is falling beyond one year before the appointed date?

Ans. Yes. There are no restrictions in Sec 141 regarding the time period before the appointed date within which the date of removal of goods removed should fall in order to avail the benefit of Sec 141. The restriction regarding the time limit is only in respect

of receiving back of the goods to the place of business from where those goods were originally removed.

Statutory Provisions

142. Miscellaneous transitional provisions

Section	Particulars
142(1)	Refund of duty on any goods on which duty had been paid under the existing law at the time of removal thereof
142(2)(a)	The price of any goods or services or both is revised upwards on or after the appointed day, shall be deemed to be an outward supply made under this Act
142(2)(b)	The price of any goods or services or both is revised downwards on or after the appointed day, shall be deemed to be in respect of outward supply made under this Act
142(3)	Every claim for refund filed before on or after the appointed day, under the existing law, shall be disposed of in accordance with the provisions of existing law
142(4)	Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day shall be disposed of in accordance with the provisions of existing law
142(5)	Every claim of refund of tax filed after the appointed date paid under the existing law in respect of services not provided
142(6)(a)	Every proceeding of appeal, review or reference relating to a CLAIM for CENVAT credit initiated whether before, on or after the appointed day under the existing law
142(6)(b)	Every proceeding of appeal, review or reference relating to RECOVERY for CENVAT credit initiated whether before, on or after the appointed day under the existing law
142(7)(a)	Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law and if any amount becomes recoverable from the claimant
142(7)(b)	Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day

	under the existing law, and any amount found to be admissible to the claimant
142(8)(a)	In pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes RECOVERABLE from the person.
142(8)(b)	In pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes REFUNDABLE to the taxable person.
142(9)(a)	Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible
142(9)(b)	Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible
142(10)	Goods or services or both supplied (in pursuance of a contract entered into prior to the appointed day) i.e., ongoing contracts on or after the appointed day shall be liable to tax
142(11)(a)	No tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State
142(11)(b)	No tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994
142(11)(c)	Where tax was paid on any supply both under the Value Added Tax and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act to the extent of supplies made after the appointed day i.e., supply of goods or services or both supplied after the appointed day
142(12)	Any goods sent on approval basis, not earlier than six months before the appointed day, are rejected and returned to the seller on or after the appointed day
142(13)	No deduction of tax at source under section 51 shall be made by the deductor on sale made under existing law which is subject to TDS and has also issued an invoice before the appointed day – Section 142(13)

142(1) Duty paid Goods returned to the place of business on or after the appointed day

Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer.

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

142.1.1 Introduction

This transitional provision provides for refund of duties paid on goods under erstwhile law when returned to the place of business.

142.1.2. Analysis

This section provides for refund in respect of sales returns, viz., where the sale was under the erstwhile law and the return is under the GST law. The section provides that the person receiving the said goods back under the GST regime would be eligible to refund of the duty paid under the erstwhile law at the time of removal of goods, if the person returning the goods is not a registered person, return of goods by a person registered would tantamount to be a deemed supply.

This provision would be applicable in the following circumstances:

(i) **Duty was paid at the time of removal:** Central Excise duty, should have been paid when the goods were removed/sold under the erstwhile law.

(ii) **Sales return should be to any place of business:** While the law provides that the return can be to any place of business (in the same state by a person other than a registered person) and not necessarily to the same place of business from where it was removed, it is essential that the return should be to the same taxable person.

(iii) Return of goods by a registered person shall be deemed to be a supply of goods.

(iv) **Time period:** The Section provides for time lines for both, the removal and the return.

  (a) **Removal:** It should have taken place not earlier than 6 months from the date of introduction of GST.

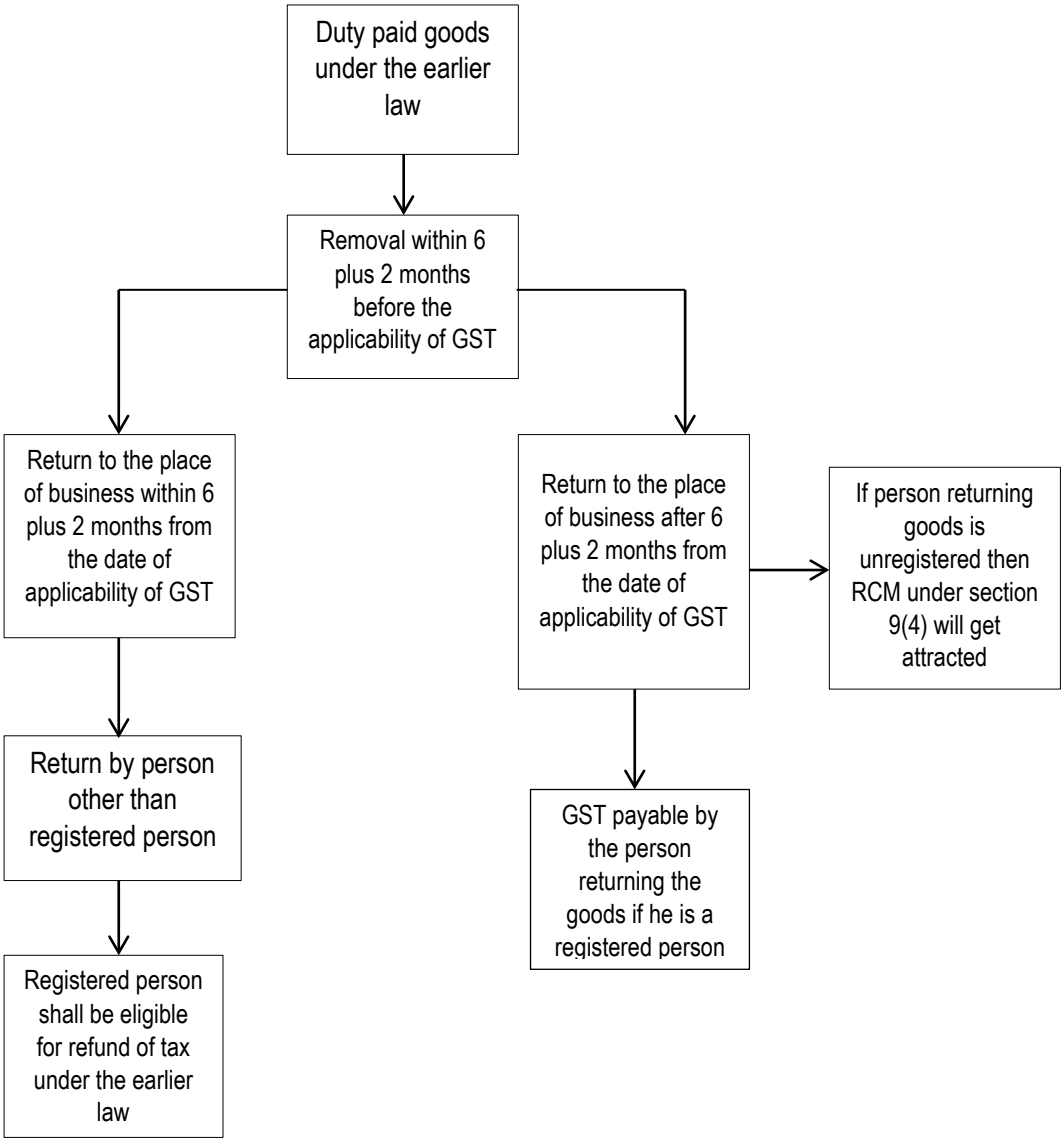
  (b) **Return:** It should be within 6 months from the date of introduction of GST.

  If the goods are not returned within the time line, the supplier shall not be eligible for the said refund.

(v) Also, please note that similar provision would find place in the SGST Act so that the full incidence of GST flows to these transaction.

Eg 1: A manufacturer had removed goods for sale worth ₹ 5,00,000 on 1st March, 2017 after paying the necessary duty under Central Excise law. These goods are also taxable under GST. GST applicable from 1st July, 2017. On 10th July, 2017, goods worth ₹ 1,00,000 are returned by the buyer. Since, the goods are returned within 6 months from the date of applicability of GST, the supplier shall be eligible for refund of Central Excise Duty paid by him.

The analysis of above provision in a pictorial form is summarised as follows:



Statutory Provisions

142(2) Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract

(a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.

(b) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

142.2.1 Introduction

This is a transition provision with respect to **goods or services or both** in respect of which there is either an upward or a downward revision of price under a contract which was entered into prior to the date of introduction of GST.

142.2.2 Analysis

In cases where there is a price revision, either upward or downward, the CGST Act provides that the amount to the extent of such revision is deemed to be an outward supply under the CGST Act. Consequently, all the CGST provisions including issue of invoices (debit or credit notes) and payment of taxes would apply to such revision. This would apply to the provisions of supply of goods and services, respectively.

This provision would apply as follows:

(i) **For upward revisions:** The taxable person shall issue a supplementary invoice or a debit note within 30 days from the date of such revision.

The amount of tax involved therein would be deemed to be the tax payable on such supplies under the CGST Act.

It would be deemed to be a supply in the month in which the supplementary invoice / debit note is issued and the provisions relating to disclosure in the return and payment of tax would apply accordingly.

The supplementary invoice / debit note would have to comply with the requirements as prescribed under the CGST Act.

Eg 1: A contract for supply of manpower was entered on 10th June, 2017 for ₹ 5,00,000. Due to certain re-negotiations, this price was revised to ₹ 5,50,000 on 15th July, 2017. The supplier should issue a supplementary invoice/debit note for ₹ 50,000 within 30 days of 15th July, 2017 i.e. 15th August, 2017. This supplementary invoice/debit note will be assumed to be for outward supply of ₹ 50,000 with GST charged on the same

(ii) **For downward revisions:** The taxable person shall issue a credit note within 30 days from the date of such revision.

In terms of the credit note, the supplier of goods would be allowed to reduce the tax liability as if the adjustment is under the CGST Act.

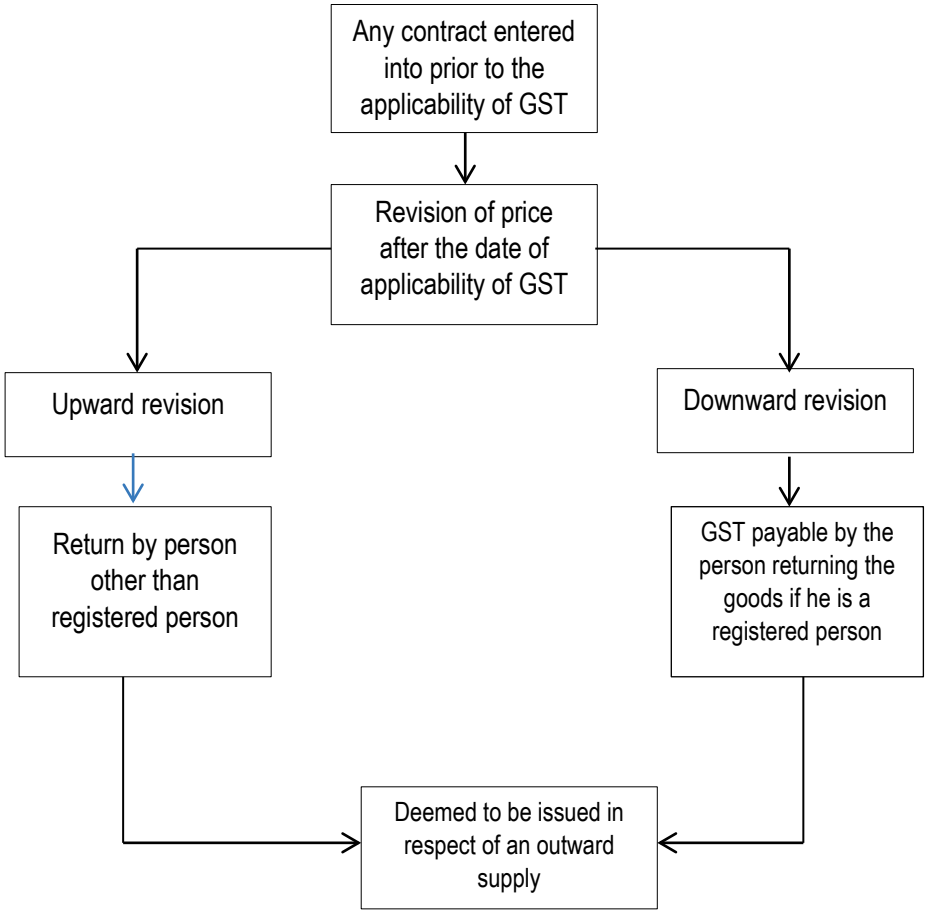
It would be deemed that the credit note is issued in respect of an outward supply made under the GST Law and the provisions relating to disclosure in the return and adjustment to tax would apply accordingly. The adjustment of reduction in the tax liability would be allowed only if the recipient of the credit note also reduces his input credit correspondingly.

The credit note would have to comply with the requirements as prescribed under the CGST Act.

Eg 2: A contract for supply of manpower was entered on 10th June, 2017 for ₹ 5,00,000. Due to certain re-negotiations, this price was revised downwards to ₹ 4,00,000 on 15th July, 2017. The supplier should issue a credit note for ₹ 100,000 within 30 days of 15th July, 2017 i.e. 15th August, 2017. This credit note will be assumed to be for outward supply of ₹ 1,00,000 and accordingly the tax liability would be reduced. However, the said reduction shall be allowed only if the recipient of the credit note has reduced his corresponding input tax credit.

Please note that in the review of 'overlapping transactions', especially in the first year of 2017-18, will be very important. There could be a tendency to charge GST where invoices are issued after Jul 2017 although the delivery of goods or receipt of advance for services may have taken place prior to Jul 2017. And the reason being, availability of GST credit to customer but not VAT or ST credit under earlier laws. Reference may be had to mandate under section 142(11) in this regard. Compliance with this provision makes it clear whether transactions up to 30 Jun 2017 have been rightly taxed. For e.g., Landowners in joint-development with Builders are made liable to pay GST on 'development rights' but service tax was not applicable on 'all forms' of immovable properties. Care in correctly taxing such transactions will ensure that there is no excessive impact of tax on such overlapping transactions. Experts advise that it not uncommon to find transactions liable to tax under earlier regime being pushed into GST regime (and vice versa) to save on some tax incidence. GST law allows earlier taxes to be demanded even now (until end of limitation prescribed under earlier laws) and use the machinery provisions of GST law to enforce and recovery such dues. Care must be taken to pay the right tax on overlapping transactions.

142.2.3. The analysis of above provision in a pictorial form is summarised as follows:



It is important to note that 'continuing obligations' under earlier laws attached to Cenvat Credit or VAT Credit will remain to be fulfilled even after transition of those credits into CGST and SGST, respectively and even if they have been utilized (before of after transition). In the event of any loss of such goods, subsequent to transition into GST, those obligations will fail and Cenvat Credit and / or VAT Credit will need to be repaid. Reference may be had to a circular 50.2018-Cus. dated 6 Dec 2018 issued by CBIC in relation to 'debonding' of duty-free goods by EOUs states that 'earlier duties' are required to be paid even when they are being debonded after transition into GST.

Statutory Provisions

142(3) Refund claims for amount paid under existing law to be disposed of under existing law

Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax or interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund claim shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

142(4) Refund claims filed after the appointed day for goods cleared or services Provided and exported before or after the appointed day to be disposed of under existing law

Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of existing law:

Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund claim shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

142.3.1. Introduction

This transition provision is with respect to

- Refund claims/applications under the erstwhile law.
- Refund claims/applications under the erstwhile laws filed after the appointed day for the goods or services exported before or after the appointed day.

It provides that the claim for such refund should be processed as prescribed under the relevant erstwhile law.

142.3.2 Analysis

The section provides that where any person has made an application for refund of CENVAT credit, duty, tax or interest paid, the same would have to be processed in terms of the

provisions contained in the respective erstwhile laws. The provisions of GST law would have no bearing on the same.

Therefore, refund application under the erstwhile laws can continue to be filed under this section, even after the introduction of GST.

It also provides the following:

(i) The refund, if allowed, would accrue in cash under the erstwhile law and would not be credited to the electronic credit ledger or electronic cash ledger.

(ii) The refund if rejected, fully or partially would lapse.

(iii) No refund claim shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Eg 1: An export manufacturer files a claim for refund of ₹ 5,00,000 on 15th June, 2017. The refund claim will be processed under the provision of the earlier law i.e. Central Excise law itself. If the refund is considered as admissible by the Department, then the same will be paid in cash subject to the Doctrine of Unjust Enrichment.

Eg 2: If the refund claim is rejected, then the amount so rejected will lapse and would not be available as credit.

142.4.1. Analysis

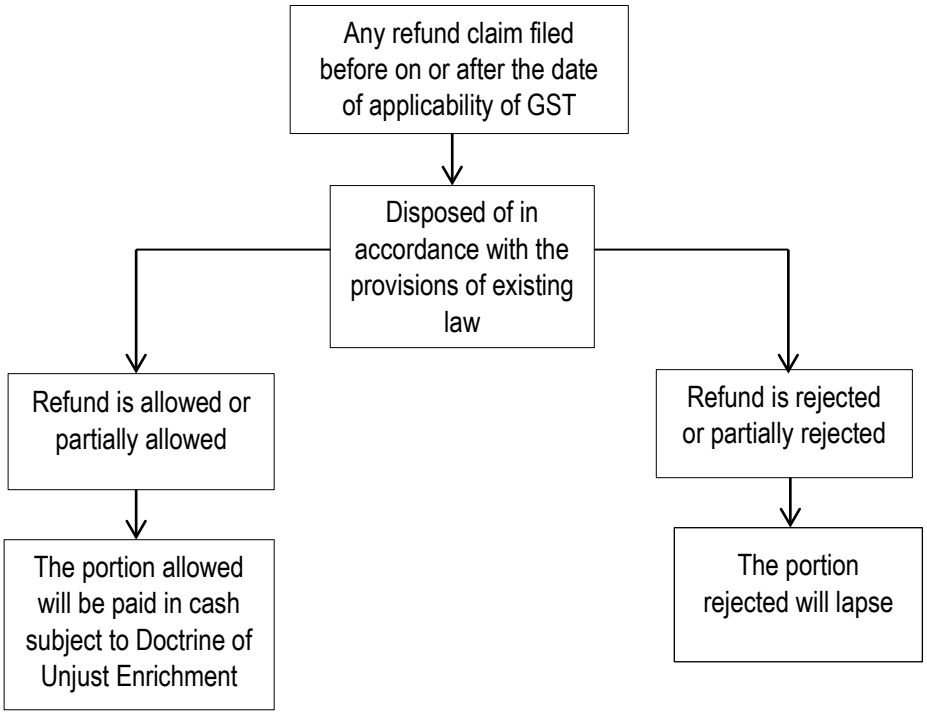
The section provides that every claim for refund of any duty or tax paid under erstwhile law, filed after the appointed day, for the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the erstwhile law.

It also provides the following:

(i) The refund, if rejected, fully or partially would lapse.

(ii) No refund claim shall be allowed of any amount of CENVAT credit / input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Analysis of this transition provision can be presented through a flowchart as under:



Issue / Concern:

Lapse of Refund claims filed and rejected under earlier law: Lapse of fully or partially rejected CENVAT Credit, will put the assessee in a financial hardship in many cases considering the quantum of refund claim on a case-to-case basis. Currently, the law does not provide for giving an opportunity of being heard and/or filing of appeal against such rejection to the assessee.

Statutory provisions

142(5). Refund claims filed after the appointed day for payments received and tax deposited before the appointed day in respect of services not provided.

Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of subsection (2) of section 11B of the Central Excise Act, 1944 (1 of 1944)

Relevant provisions of other Statute

Statute	Section	Description
Central Excise Act, 1944	Section 11B (2)	Provision for unjust enrichment

142.5.1 Introduction

This transition provision is with respect to refund claims in respect of services not provided, filed after the appointed day.

142.5.2 Analysis

The section provides that every claim for refund of any tax deposited under the erstwhile law in respect of **services not provided**, filed after the appointed day, shall be disposed of in accordance with the provisions of the erstwhile law and any amount eventually accruing to him shall be paid in cash.

Statutory provisions

142(6) Claim of CENVAT credit to be disposed of under the existing law

(a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(b) every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day, under the existing law shall be disposed of in accordance with the provisions of existing law, and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

142.6.1 Introduction

This transition provision is with respect to claim of CENVAT Credit initiated under the erstwhile law and disposal of appeals, reviews or reference proceedings pertaining thereto.

142.6.2 Analysis

The Section applies where any matter in respect of CENVAT credit is pending in an appeal or review or reference under any of the erstwhile laws.

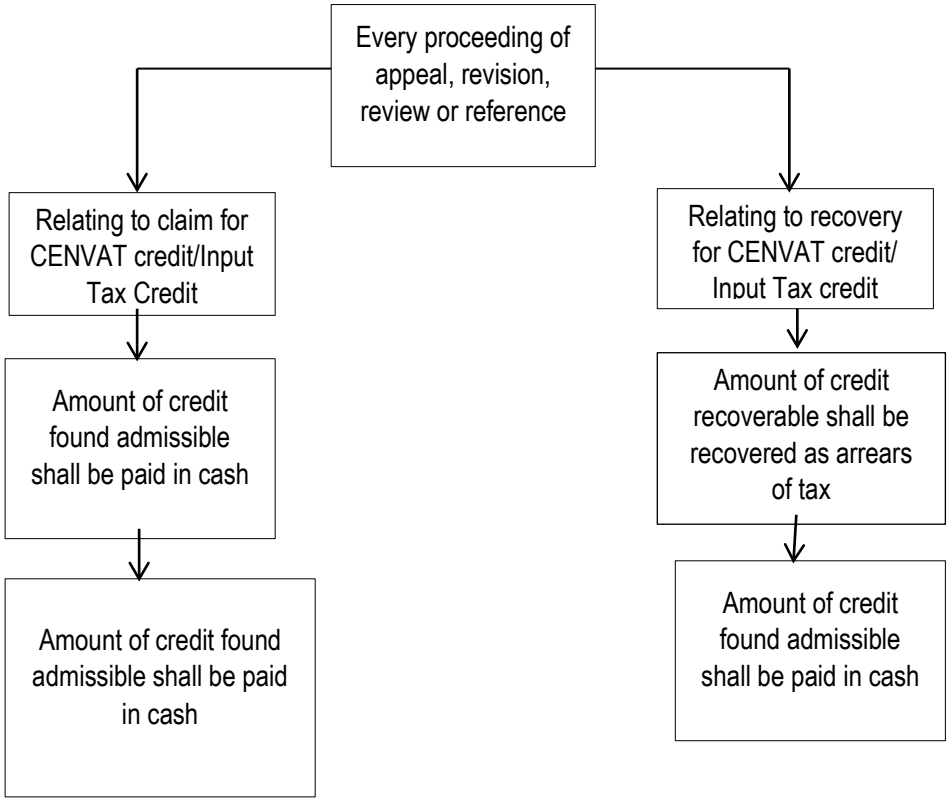
It provides that the provisions of CGST would have no bearing on the same and should be dealt with in accordance with the provisions of erstwhile laws as follows:

— **If the input credit are finally allowed:** A refund would accrue to the claimant in cash.

— **If the input credit is disallowed:** It would become recoverable as an arrear of tax under the CGST.

— The amount so recovered would not be allowed as input tax credit under the CGST law.

Analysis of this transitional provision can be presented as a flowchart as under:



Statutory Provision

142(7) Finalization of proceedings relating to output duty or tax liability

(a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

(b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and

any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

142(8) *(a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;*

(b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

142.8.1 Introduction

This transition provision is with respect to output tax / duty liabilities pending in appeal, review, or reference proceedings under any of the erstwhile law.

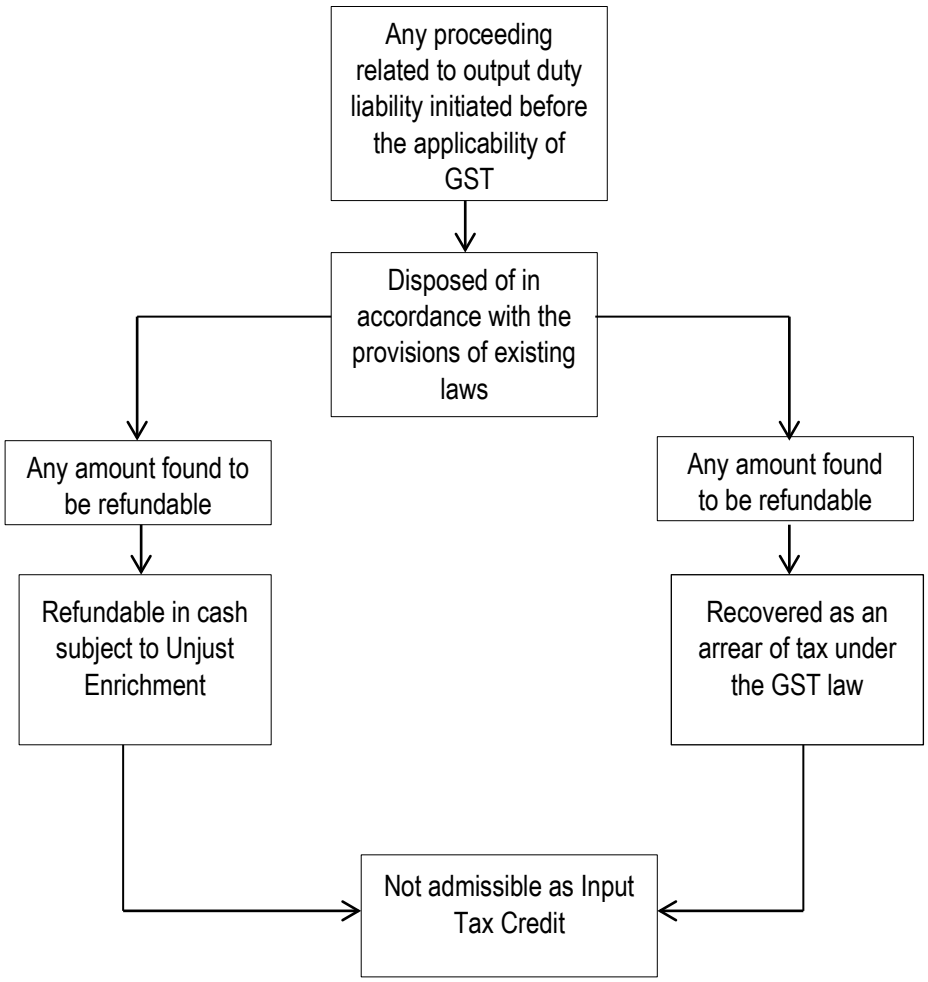
142.8.2 Analysis

The section applies where any matter in respect of output tax / duty liabilities are pending in appeal, review or reference proceedings under any of the erstwhile law.

It provides as follows:

- **If the output liability is finally payable:** It should be recovered as an arrear of tax under CGST Act. In terms of *Circular No. 42/16/2018-GST dated 13/04/2018*, Such liability is to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).
- The amount so recovered would not be allowed as input tax credit under the CGST laws.
- **If the output liability is finally allowable to the claimant:** It would accrue to the claimant as refund in cash under the erstwhile law. If any amount is rejected, the same shall not be available as input tax credit under CGST.

Analysis of this transition provision can be presented in the following flowchart:



Statutory Provisions

142(9) Treatment of the amount recovered or refunded pursuant to revision of returns

(a) Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(b) Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is

found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and amount rejected, if any, shall not be admissible as input tax credit under this act.

142.9.1 Introduction

This transition provision deals with a situation where tax becomes payable or refundable by virtue of revision of returns under erstwhile law.

142.9.2 Analysis

This Section applies where any return is revised under the erstwhile laws by virtue of which any amount becomes payable by or refundable to, the taxable person. This could arise due to any of the following reasons:

(i) Short payment of output tax liability (payable);

(ii) Excess payment of output tax liability (refundable);

(iii) Short claim of CENVAT credit (refundable);

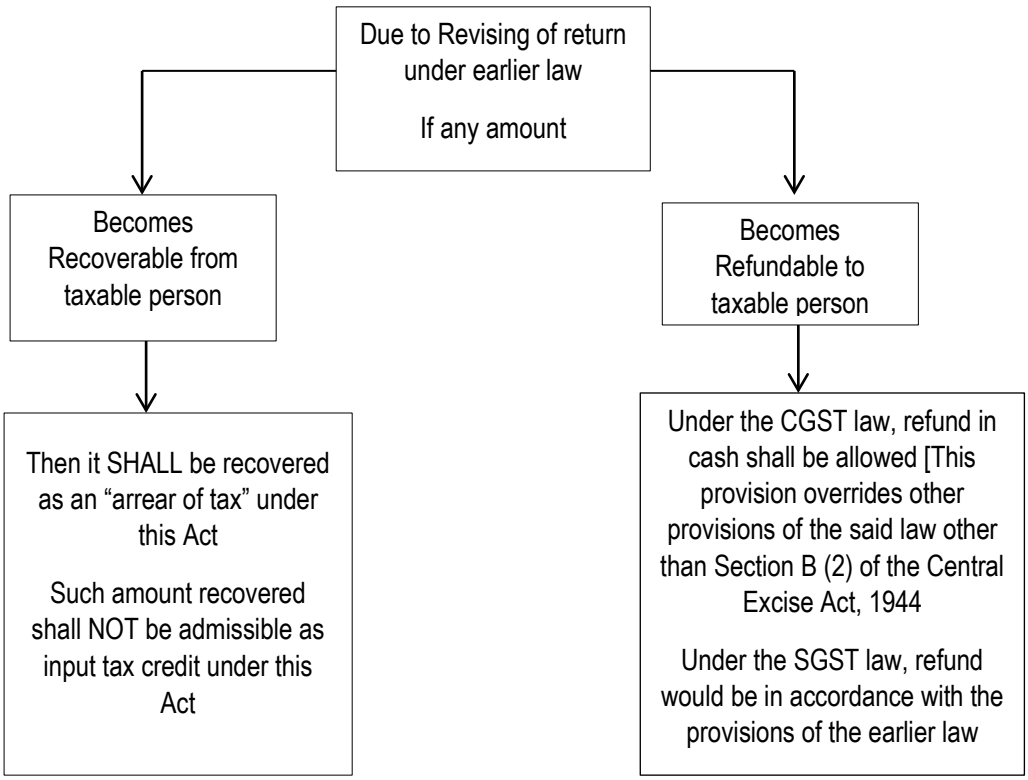
(iv) Excess claim of CENVAT credit (payable);

The Section specifies that:

— **If any amount is recoverable:** It should be recovered as an arrear of tax under the CGST Act. The amount so recovered would not be allowed as input tax credit.

— **If the amount is allowable as refund:** It would accrue to the claimant as cash refund under the erstwhile law.

Analysis of this transitional provision can be presented in the following flowchart:



Payment of central excise duty & service tax on account of returns filed for the past period (*Circular No. 42/16/2018-GST dated 13/04/2018*):

The registered person may file Central Excise / Service Tax return for the period prior to 1st July, 2017 by logging onto www.aces.gov.in and make payment relating to the same through EASIEST portal (cbec-easiest.gov.in), as per the practice prevalent for the period prior to the introduction of GST.

However, with effect from 1st of April, 2018, the return filing shall continue on www.aces.gov.in but the payment shall be made through the ICEGATE portal. As the registered person shall be automatically taken to the payment portal on filing of the return, the user interface remains the same for him.

Statutory Provisions

142(10) Treatment of long term contracts

Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

142.10.1 Introduction

This transitional provision deals with long term contracts.

142.10.2 Analysis

It provides that in respect of a contract entered into prior to GST regime, the goods or services or both which are supplied on or after the introduction of GST would be liable to tax under the GST Act to the extent the supply takes place after introduction of GST.

Even if the construction contract or works contract is entered into prior to the date of introduction of GST, the contracts would be taxable under the GST Act.

Eg 1: A contract for a painting job was entered on 19th June, 2017. The job is performed from 10th July, 2017 to 30th July, 2017. The said supply will be taxable under GST law.

Continuing contract in normal course expects 'tax substitution' due to change in law and consequential increase or decrease in tax burden on contract sum to flow to the customer. It is seen that customers, though reluctant initially, have conceded and paid the GST in place of earlier taxes. Anti-profiteering adjustment on account of savings in cost due to availability of credit in respect of taxes that were earlier not creditable is also looked into before admitting adjustment of tax-effect on overlapping contracts. Reference may be had to detailed discussion under section 171.

Statutory Provisions

142(11) Progressive or periodic supply of goods or services

(a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

Extract of the CGST Rules, 2017

118. Declaration to be made under clause (c) of sub-section (11) of section 142

*Every person to whom the provision of clause (c) of sub-section (11) of section 142 applies, shall within [36] [the period specified in rule 117 or such further period as extended by the Commissioner], submit a declaration electronically in **FORM GST TRAN-1** furnishing the proportion of supply on which Value Added Tax or service tax has been paid before the appointed day but the supply is made after the appointed day, and the Input Tax Credit admissible thereon.*

Relevant provisions of the Statute:

Section	Description
Section 2(31)	Definition of 'Consideration'
Section 12	Time of supply of goods
Section 13	Time of supply of services

142.11.1 Introduction

This transition provision deals with transactions which have suffered tax (Value Added Tax or Service Tax) because consideration was received under the earlier law, whereas the supply is made after the date of introduction of GST.

142.11.2 Analysis

I. No CGST shall be levied on:

1. Goods, to the extent tax was leviable under the Value Added Tax Act of the state; Considering the non-obstante clause, it is provided that even though any of the ingredients of supply prescribed in section 12 occur after the appointed date, if VAT was lawfully levied (even if not yet paid), VAT alone will be leviable and not GST.

2. Service, to the extent Service Tax was leviable on the said service.

In short, GST shall not be levied on a supply to the extent Value Added Tax or Service Tax, as the case may be, was leviable on the said supply.

Eg: Advance of ₹ 1,00,000/- was received on 10th June, 2017 for service to be rendered in July, 2017. The invoice for the service was raised for ₹ 1,50,000/- on 31st July, 2017. GST shall be levied only on ₹ 50,000/-.

Relying upon the salutary principles contained in section 6 of the General Clauses Act regarding the force and power of 'repeal and saving' clause in any legislation, it would

[36] *Substituted vide Notification No. 36/2017-CT dt. 29.09.2017, for "a period of ninety days of the appointed day".*

be appropriate to mention the results of application of that law in certain situations:

(i) Where services have been rendered under the earlier law and invoice has also been issued under the earlier law and tax duly levied on provision of service but the payment of this tax was required on 'receipt basis', service tax will continue to be paid as and when outstanding receivables are realized. Tax once levied cannot be levied again (as GST) merely because the service tax was 'lawfully' not payable until realization.

(ii) Where services have been reference under the earlier law but invoice for the same has not been issued and is permitted to be issued within 30 days from the date of completion of service, when the invoice is actually issued, service tax alone ought to be applied. This invoice will not be covered by section 140(5) as the invoice has not been issued before the appointed date. Also, the service tax charged will not be available to claim as a refund under 142(3) to 142(8). These reasons do not justify levy of GST on the services already provided.

(iii) Where services (liable to reverse charge or partial reverse charge) have been rendered along with invoice duly issued prior to the appointed date but the tax (on reverse charge basis) has been paid in July 2017, this tax is not available as transition credit to the recipient (making reverse charge payment of tax) as it would not be included as CENVAT credit in the last ST3 (to be filed by 15 Aug 2017) and therefore not be covered within section 140(1). Had the service tax (on reverse charge basis) been paid before the appointed date (by sufficient planning), the same would have been included in the transition credit under section 140(1). Also, refund of such taxes paid is not covered by sections 142(3) to 142(8) although it can be attempted under the earlier law itself.

To address the above issue, the CBEC has issued *Circular 207/5/2017- Service Tax dated 28th September, 2017*, clarifying that such credit arising as consequence of payment of service tax on reverse charge basis after 30th June, 2017 shall be indicated in Part I of form ST 3 in entries I3.1.2.6, I3.2.2.6 and I3.3.2.6. The circular also provided for revision of form ST 3 already filed by the assessee to include the said entries.

II. Where tax was paid under both Value Added Tax Act and under Finance Act, 1994, viz., Construction service, works contract or supply of food/beverages, Tax shall be leviable under CGST Act on the supplies effected after the appointed day and the Value Added Tax or Service Tax shall be admitted as credit to the taxable person.

Eg: Contract entered in March, 2017 for ₹ 1,00,00,000/-. Advance received till 30th June, 2017 amounts to ₹ 10,00,000/-. Value Added Tax of ₹ 40,000/- and Service Tax of ₹ 60,000/- have been paid on the said advance. GST shall be levied on ₹ 1,00,00,000/- as per Sec 13 of the CGST Act. The value added tax and service tax paid shall be allowed as credit under the erstwhile law in the manner as may be prescribed.

III. Supplies liable to both VAT as well as ST are provided for in this clause. For eg. Works contracts, Hoteliers when the time of supply under CGST Act applies. The differential tax under GST and those already paid under erstwhile law will become payable. Credit of tax already paid must not be understood as 'input tax credit' as defined u/s 2(63). This is an apparent conflict but not so u/s 140(5) of the CGST Act which needs to be reconciled. The said credit pertains to the credit under erstwhile laws and the same shall be available as credit under erstwhile laws.

Rule 118 of CGST Rules, 2017 provides for declaration of proportion of supply on which value added tax or service tax has been paid before the appointed day but the supply is made after the appointed day and the input tax credit applicable there on in FORM GST TRAN-1. It is important to note that if taxes already paid have been charged to the customer (who may have even taken credit), this provision would not apply because credit cannot be allowed to the customer as well as to the supplier under this provision.

The absence of non-obstante clause in this provision indicates that taxes paid under the earlier law must be without being leviable under those laws. This is because tax once levied and assessed under the earlier laws must only be paid and cannot be abrogated by the repeal. And most certainly not get levied again under the new law. For this reason, it is opined that, even transactions such as works contract or supply of food, would be saved by clauses (a) and (b) operating jointly if taxes were lawfully levied under the earlier laws. And clause (c) comes into operation only when taxes have been paid in advance of levy actually attracting under the earlier laws.

Issues and Concerns:

a. RCM services under the earlier laws: Where the vendor has raised the invoice for the services (such as manpower or works contract service on which reverse charge is applicable) rendered in the month of June 2017 and the payment to the vendor is made in the month of September 2017, the nature of tax to be paid is not clear i.e. whether to pay service tax or GST in the instant case, since the services were provided under the service tax law and the payment is made under the GST law.

b. Sabka Vishwas (Legacy Disputes Resolution) Scheme 2019: This scheme has permitted 'voluntary' disclosure and payment of undisputed and unknown dues. Experts advise that taxpayers carrying undischarged service tax liability, particularly, RCM liability for Apr-Jun 2017 to come forward and avail this option. With full relief from interest and penalty, paying entire unpaid tax is a welcome relief.

c. Development rights (newly taxed in GST) supplied under agreement pre-Jul 2017: Where agreement for development of land or buildings were executed prior to 1 Jul 2017 but the projects were executed later, with the introduction of *Notification No. 4/2018-CTI dated 25 Jan 2018* prescribing 'time of supply' to be the date of completion of project has attracted a lot of inquiry whether (i) no tax is payable since the agreement was prior to 1 Jul 2017 or (ii) GST is payable since time of supply occurs on date of

completion. Experts have expressed regret at the first principles of 'charging provision' of levy of tax being lost sight of and tax demanded based on 'machinery provisions' of time of supply which occur later.

d. There are several sectors where 'overlapping transactions' with lower rate of VAT or service tax may seem attractive or creditable nature of GST may seem attractive to pay the wrong tax. Tax that is properly levied alone must be made, notwithstanding the availability of events relating to computation of such tax subsequently under GST.

e. Re-opening of portal to claim transition credit is permitted vide circular 180/12/2022-GST dated 9 Sept 2022 with the exception of 'pre-scrutiny' of the claims being made now. This will now expose taxpayers who may have already claimed transition credit in GSTR3B due to risk of limitation running out on them. There is no risk of any mischief by some taxpayer as credit into Electronic Credit Ledger will flow only from this application 'after' it has been scrutinized by Proper Officer and found to be in order. Taxpayers who may have already claimed transition credit in 2017 and received these amounts automatically into their Electronic Credit Ledgers, but certain claims being omitted may now make a further claim. Scrutiny of this supplementary claim should not be extended to documents pertaining to the earlier claim as well, especially, if the earlier claim has not be subject to post-verification by any Proper Officer.

Statutory Provisions

142(12) Taxability of supply of goods sent on approval basis.

Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this subsection:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

Extract of the CGST Rules, 2017

120. Details of goods sent on approval basis

Every person having sent goods on approval under the existing law and to whom sub-section (12) of section 142 applies shall, within [37][the period specified in rule 117 or such further period as extended by the Commissioner], submit details of such goods sent on approval in ***FORM GST TRAN-1****.*

142.12.1 Introduction

This transition provision covers the goods sent on approval basis under erstwhile law returned to the supplier within a period of 6 months from the appointed day or extended period and beyond.

142.12.2 Analysis

No CGST shall be payable for goods sent on approval basis, returning to the supplier due to rejection or non-approval by the buyer within a period of 6 months or the extended period of 2 months. However, tax shall be payable by the person returning the goods as well as by the person sending the goods if the goods are returned after the period of six months and such goods are liable to tax under the CGST Law.

142.12.3 Time period:

(a) **Sending of goods:** It should have taken place not earlier than 6 months prior to the appointed day.

(b) **Return of goods:** It should be within 6 months from the appointed day or as extended by the commissioner by a period not exceeding two months on sufficient causes being shown.

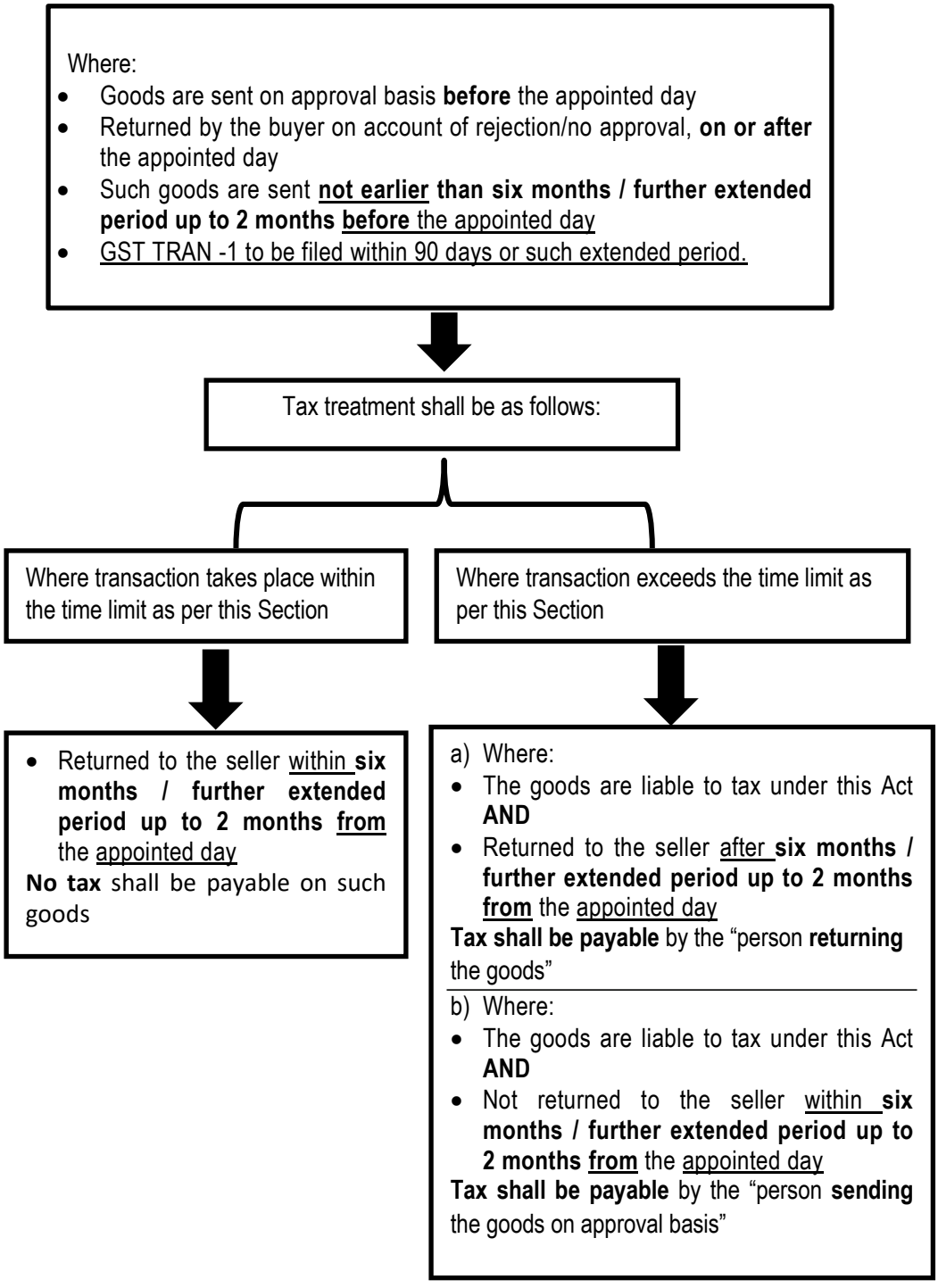
If goods are returned after the said period, CGST shall be paid by the person returning the goods.

If the goods are not returned within the period specified, the person who has sent the goods on approval shall pay GST on the said goods. This shall be available as credit to the purchaser of the goods.

In case of sale of approval prior to appointed date, the details of goods so sent on approval basis are to be declared in FORM GST TRAN -1 to be filed within time limit as prescribed. (Before 27th Dec, 2017, vide order No.9/2017-GST dt. 15/11/2017, by the Commissioner.)

[37] *Substituted vide Notification No. 36/2017-CT dt. 29.09.2017, for "ninety days of the appointed day".*

Flowchart analysing the transitional provisions in section 142(12)



Statutory Provisions

142(13) Supply of goods in respect of which tax is to be deducted at source.

Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under the any law of a State or Union Territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

Related provisions of the Statute

Statute	Section	Description
CGST	Section 51	Tax deduction at source

142.13.1 Introduction

This transition provision is in respect of TDS under section 51. It is a transitional provision to ensure that there is no double deduction of tax at source due to introduction of GST.

142.13.2 Analysis

This section would apply in the following circumstances:

(i) The supplier had sold any goods under the erstwhile law; and

(ii) TDS applies on such transactions under erstwhile law; and

(iii) The supplier had issued the invoice before the appointed day;

(iv) Payment is made to the supplier after the appointed day.

It provides that merely because payment is made to the supplier after the date of introduction of GST, the TDS provisions under section 51 of the CGST Act will not apply. In other words, no tax shall be deductible under CGST Act at the time of making payment to the supplier.

Chapter 22
Miscellaneous

Sections	Rules
143. Job work procedure	122. [Omitted][1]
144. Presumption as to documents in certain cases	123. Constitution of the Standing Committee and Screening Committee
145. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence	124. [Omitted][1]
146. Common Portal	125. [Omitted][1]
147. Deemed exports	126. Power to determine the methodology and procedure
148. Special procedure for certain processes	127. [2][Functions] of the Authority
149. Goods and services tax compliance rating	128. Examination of application by the Standing Committee and Screening Committee
150. Obligation to furnish information return	129. Initiation and conduct of proceedings
151. Power to call for information	130. Confidentiality of information
152. Bar on disclosure of information	131. Cooperation with other agencies or statutory authorities
153. Taking assistance from an expert	132. Power to summon persons to give evidence and produce documents
154. Power to take samples	133. Order of the Authority
155. Burden of proof	134. [Omitted][1]
156. Persons deemed to be public servants	135. Compliance by the registered person
157. Protection of action taken under this Act	136. Monitoring of the order
158. Disclosure of information by a public servant	137. [Omitted][1]
158A. Consent based sharing of information furnished by taxable person.	

[1] Omitted vide Notification No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022.

[2] Substituted vide Notification No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022 for "It shall be the duty of the Authority".

159. Publication of information in respect of persons in certain cases 160. Assessment proceedings, etc., not to be invalid on certain grounds 161. Rectification of errors apparent on the face of record 162. Bar on jurisdiction of Civil Courts 163. Levy of fee 164. Power of Government to make rules 165. Power to make regulations 166. Laying of rules, regulations and notifications 167. Delegation of powers 168. Power to issue instructions or directions 168A. Power of Government to extend time limit in special circumstances 169. Service of notice in certain circumstances 170. Rounding off of tax, etc. 171. Anti-profiteering measure 172. Removal of difficulties 173. Amendment of Act 32 of 1994 174. Repeal and saving	

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.

[3][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 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.

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

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 23rd 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:

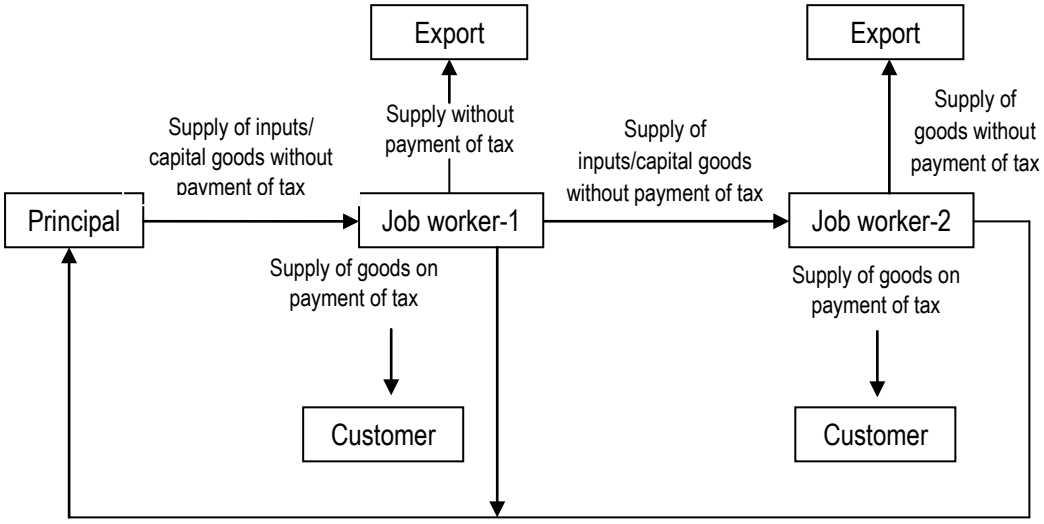
(i) If the job worker is registered under section 25; or

(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:



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-worke**r** 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 26th 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 is 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. Filling 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 such 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

(b) a facsimile copy of a document; or

(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

(d) any information stored electronically in any device or media, including any hard copies made of such information,

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.

(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, —

(a) identifying the document containing the statement and describing the manner in which it was produced;

(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,

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.

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 as the Common Goods and Services tax Electronic portal and 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. 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 24th 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 13th 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 15th 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 15th November, 2017.

Therefore, w.e.f. 15th November, 2017, no tax needs to be paid on advances received by registered persons against goods supplied. W.e.f. 13th October, 2017 to 15th 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 13th 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.

A glimpse of some section 148 related Notifications		
S. No.	**Notification/Date**	**Contents**
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 From 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, dt. 29.11.2018	Extends the due date for filing of form GSTR-1 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 From 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 01.10.20202 – 31.10.20202.
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:

Nature of persons who would be required to file the information return would be:	If the said persons are responsible for maintaining:
• Taxable Person. • Local Authority, Other Public Body or Association. • Authority responsible for collecting VAT, Sales Tax, State Excise Duty, Central Excise Duty or Customs Duty. • Authority appointed under Income Tax. • Banking Company • State Electricity Board • Registrar or Sub-Registrar of Registration Act, 1908 • Registrar of Companies • Registering authority of Motor Vehicles • Collector • Recognised Stock Exchange • Depository of Shares • Officer of Reserve Bank of India • Goods & Service Tax Network • Person to whom Unique Identity Number (UIN) is granted • Any other specified person on recommendation of the Council	• 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

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

[4][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.

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[4]Substituted vide The Finance Act, 2021 and notified through Notification 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."

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 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 [5][***] 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 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][6].

(2) [7][***]

(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

[5] Omitted 'of any individual return or part thereof' vide The Finance Act, 2021 notified through Notification No. 39/2021-C.T. dt. 21.12.2021, w.e.f. 01.01.2022.

[6] Inserted vide The Finance Act, 2021 notified through Notification No. 39/2021-C.T. dt. 21.12.2021, w.e.f. 1st January, 2022.

[7] 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 Notification No. 39/2021-C.T. dt. 21.12.2021, w.e.f. 1st January, 2022.

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.

152.3 Related provisions

Statute	Section / Rule / Form	Description
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

Statute	Section / Rule / Form	Description	Remarks
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

[8][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 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

[8] Inserted vide Finance Act, 2023. Applicable w.e.f. 01.10.2023 through Notification No. 28/2023-CT dt. 31.07.2023.

(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. 31st July, 2023,* with effect from 1st 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.

<table>
<tr><td rowspan="2">Rectification of 'apparent' errors on face of record</td><td colspan="2">Decision, Order, Notice, Certification or other document</td><td>Clerical or arithmetic error</td></tr>
<tr><td>3 months from date of order (to request rectification)</td><td>6 months (in total, to attend to and complete rectification)</td><td>No time limit</td></tr>
</table>

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 can't a civil suit 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, [9][], sub-section (6) of section 39, [10][[11][] section 44], sub-sections (4) and (5) of section 52], [12][sub-section (1) of section 143, except the second proviso thereof], [13][], 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 Act; and it is binding on all GST officers.

Thus, any Circular which is general or administrative in nature is binding on the assessing

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

[10] Inserted vide The Finance Act, 2019 notified through Notification No.01/2020-CT dt.01-01-2020 w.e.f 01.01.2020.

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

[12] Substituted vide The Finance Act, 2020 notified through Notification No. 49/2020 -C.T., dt. 24-06-2020 w.e.f. 30.06.2020)

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

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

[14][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.]

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,

[14] 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 29th September, 2020 - Brought into force w.e.f. 31st March, 2020.

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 31st 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 03rd April, 2020*, *Notification No. 40/2020 dated 05th May, 2020* and *Notification No. 46/2020 dated 09th 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 5th July, 2022* has been issued under section 168A of CGST Act prescribing 'exclusion' of the period from 1st March 2020 to 28th 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 Related Judgements

(i) Hon'ble Delhi High Court in the case of *Anant Wire Industries v. Sales Tax Officer (W.P.(C) 17867 of 2024, CM APPL. 76030 of 2024)* held that where show cause notice issued to assessee was uploaded on GST portal under 'additional notices and orders' tab and service was not effected through any other means e.g. registered email ID, order passed based on such notice was to be set aside and matter was to be remanded.

(ii) Hon'ble Madras High Court in the case of *Sakthi Steel Trading v. Assistant Commissioner (ST) ([2024] (Madras)* held that where assessee failed to give reply to notice issued by GST Authorities to email ID of assessee and an order was passed calling upon assessee to pay disputed ITC, it was incumbent upon GST authorities to serve at least another notice through other other modes if reply to notice sent on email was not received, thus said order was to be set aside and assessee was to be directed to reply to show cause notice issued by authorities.

(iii) Hon'ble Allahabad High Court in the case of *Chandani Tent Traders v. State of U.P. ([2024] (Allahabad)* held that where assessee's GST registration was cancelled, service of notice through e-mode without physical service violates principles of natural justice, requiring adjudication order to be set aside.

169.5 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.

169.6 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 taxpayers 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.

*[15][**Provided** that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.*

Explanation.—For the purposes of this sub-section, "request for examination" shall mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or

[15] Inserted vide the Finance (No.2) Act, 2024. notified through Notification No. 17/2024 - CT dated 27.09.2024.

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) [16][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 1.— 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].

[15][Explanation 2.— For the purposes of this section, the expression "Authority" shall include the "Appellate Tribunal".]

Extract of the CGST Rules, 2017

*[17]**[122. ****]***

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.

(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.

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[16] Inserted vide The Finance Act, 2019 notified through Notification No.01/2020-CT dt. 01-01-2020 w.e.f 01.01.2020.

[17] Omitted vide Notification No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022. Prior to its omission, it read as "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]@ or have held an equivalent post under the existing law, to be nominated by the Council".

@Inserted vide Notification No. 34/2017-CT dated 15.09.2017.

[18]***[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 don 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 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."]

[19]***[125. Secretary to the Authority***

[18] *Omitted vide Notification No. 24/2022 - CT dated 23.11.2022 w.e.f. 01.12.2022.*
[19] *Omitted vide Notification No. 24/2022-CT dt.23.11.2022 w.e.f. 01.12.2022.*

~~*An officer not below the rank of Additional Commissioner (working in the Directorate General of [Anti-Profiteering][20]) 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. [21][Functions] of the Authority

[33][~~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 section 57;

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

(d) cancellation of registration under the Act.

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

[20] Substituted for the word –'Safeguards' vide Notification No. 29/2018-CT dt. 06.07.2018 w.e.f 12.06.2018.
[21] Substituted vide Notification No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022. Prior to its omission, it read as "Duties".
[22] Inserted vide Notification No. 34/2017 – CT dt 15.09.2017.
[23] Inserted vide Notification No. 14/2018-CT dt. 23.03.2018.

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, [24][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 [25][or those forwarded by the Standing Committee] shall first be examined by the State level Screening Committee and the Screening Committee shall, [26][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 reduction in prices, it shall refer the matter to the [27][Directorate General of Anti-Profiteering] for a detailed investigation.

(2) The [27][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 [27][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;

[24] Inserted vide Notification No. 31/2019 – CT dt. 28.06.2019.
[25] Inserted vide Notification No. 31/2019 – CT dt. 28.06.2019
[26] Inserted vide Notification No. 31/2019 – CT dt. 28.06.2019.
[27] Substituted for the word "Safeguards" vide Notification No. 29/2018-CT dt. 06.07.2018, w.e.f. 12.06.2018.

(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 [27][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 [27][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 [27][Directorate General of Anti-Profiteering] shall complete the investigation within a period of [six][28] 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 [29][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.*

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 [30][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 [30][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 [30][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 [31][Authority,] [30][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*

[28] Substituted vide Notification No. 31/2019 – CT dt. 28.06.2019 for —'three'
[29] Substituted vide Notification No. 14/2018-CT dt. 23.03.2018 for —'as allowed by the Standing Committee'.
[30] Substituted for the word "Safeguards" vide Notification No. 29/2018-CT dt. 06.07.2018, w.e.f. 12.06.2018.
[31] Inserted vide Notification No. 31/2019 – CT dt. 28.06.2019.

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 [32][six] months from the date of the receipt of the report from the [33][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 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.

[34][(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)].

[35][(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 [36][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;

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[32] Substituted vide Notification No. 31/2019 – CT dt. 28.06.2019 for –"three"
[33] Substituted for the word "Safeguards" vide Notification No. 29/2018-CT dt. 06.07.2018, w.e.f. 12.06.2018.
[34] Inserted vide Notification No. 31/2019 – CT dt. 28.06.2019.
[35] Substituted vide Notification No. 26/2018-CT dt. 13.06.2018.
[36] Inserted vide Notification No. 31/2019 – CT dt. 28.06.2019.

(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 [37][or Union Territory] in respect of which the Authority passes an order."]

(4) [38][If the report of the [39][Directorate General of Anti-Profiteering] referred to in sub-rule (6) of rule 129 recommends that there is 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 [40][Directorate General of Anti-Profiteering] to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.]

[41][(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.]

[42][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

[37] Inserted vide Notification No. 31/2019 – CT dt. 28.06.2019.
[38] Inserted vide Notification No. 14/2018-CT dt.23.03.2018.
[39] Substituted for the word —'Safeguards' vide Notification No. 29/2018-CT dt. 06.07.2018.
[40] Substituted for the word —'Safeguards' vide Notification No. 29/2018-CT dt. 06.07.2018.
[41] Inserted vide Notification No. 31/2019 – CT dt. 28.06.2019
[42] Omitted vide Notification No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022

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.

[43]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) [44]["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. [45][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*

[43] Omitted vide Notification No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022

[44] Substituted vide Notification No. 24/2022 - CT dt. 23.11.2022 w.e.f. 01.12.2022. prior to its substitution, it read as -"Authority" means the National Anti-profiteering Authority constituted under rule 122.

[45] Inserted vide Notification No. 14/2018-CT dt. 23.03.2018

w.e.f. 1-Jul-17 provides for Powers and Functions of Anti-Profiteering Authority and Compliances of Orders passed by the Authority.

On 16th 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 15th November, 2017 after the 23rd GST Council Meeting on 6th 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 30th September 2017

On account of implementation of GST w.e.f. 1st 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. 4th 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 1st 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. 1st July 2017 to 30th 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 30th 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 1st 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~~ [46][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.

[46] *Substituted vide The Finance Act, 2020 notified through Notification No. 49 /2020-CT. dated 24-6-2020 w.e.f. 30th June, 2020*

(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) The Finance Act, 2020 had extended time limit prescribed in section 172 by 'two years', that is, upto 30th 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 13th 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 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", as the case may be) 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 particular 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 (101st 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 untilized 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,1955Central 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 (101st 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

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