PAPER

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FINAL COURSE

STUDY MATERIAL

GROUP-II

INDIRECT TAX LAWS PART I: GOODS AND SERVICES TAX

MODULE 3 OF 4

Relevant for May, 2024 and November, 2024 Examinations

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CHAPTER 14

IMPORT AND EXPORT UNDER GST

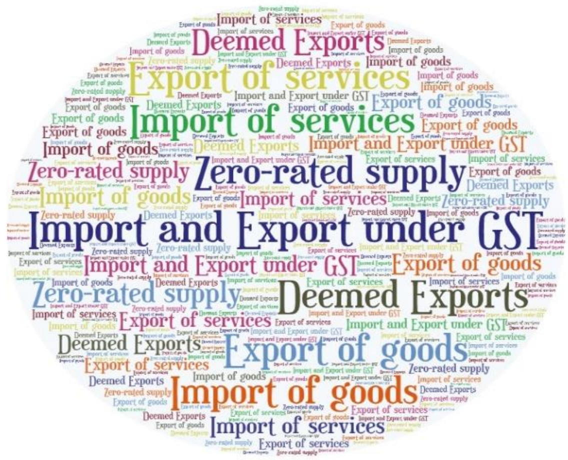
The section numbers referred to in the Chapter pertain to IGST Act, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- determine if a given transaction is an import of goods or services
- comprehend and analyse the taxability of import of goods and import of services and appreciate the difference in the mechanism of levy and collection of tax between the two
- explain and analyse the provisions relating to registration of importer of goods and services and availing of credit in case of import of goods and services
- determine if a given transaction is an export of goods or services
- comprehend and analyse the concept of zero rating and the mechanism by which it works under the GST law
- comprehend and analyse the taxability of exports and deemed exports
- explain and analyse the provisions relating to merchant exports
- apply the above concepts in problem solving

1. INTRODUCTION



India is well integrated into the web of international business transactions. There is inward as well as outward flow of goods and services between India and other countries. GST, being a business tax, impacts import and export too. Provisions in the GST laws seek to (i) provide level playing field to domestic suppliers *vis a vis* international suppliers in case of import and (ii) make export more competitive. The various provisions of GST law as applicable on import and export supplies are discussed in this Chapter in detail. First, the provisions relating to import of goods and services have been discussed followed by discussion on provisions relating to export of goods and services. The relevant statutory provisions have been extracted first followed by the analysis thereof.

2. RELEVANT DEFINITIONS

❖ **Customs frontiers of India** means the limits of a customs area as defined in section 2 of the Customs Act, 1962 [Section 2(4)].

- **Customs area** means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities [Section 2(11) of the Customs Act, 1962].
- **Customs station** means any customs port, customs airport, international courier terminal, foreign post office or land customs station [Section 2(13) of the Customs Act, 1962].
- **Deemed exports** means such supplies of goods as may be notified under section 147 [Section 2(39) of the CGST Act].
- **Export of goods** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India [Section 2(5)].
- **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 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 [Section 2(6)].
- **Fixed establishment** means a place other than the 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 [Section 2(7)].
- **Import of goods** with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India [Section 2(10)].
- **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 [Section 2(11)].

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

❖ **Input tax** in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the IGST Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy [Section 2(62) of the CGST Act].

❖ **Intermediary** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account [Section 2(13)].

❖ ***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 section 24(vi) of the CGST Act, 2017 [Section 2(16)].

- **Location of the recipient of services** means:

  (a) where a supply is received at a place of business for which 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, that is to say, 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 [Section 2(14)].

- **Location of the supplier of services** means:

  (a) where a supply is made from a place of business for which 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, that is to say, 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 [Section 2(15)].

- **Online information and database access or retrieval services** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,–

(i) advertising on the internet;

(ii) providing cloud services;

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

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

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

(vi) digital data storage; and

(vii) online gaming [Section 2(17)].

❖ **Place of business** includes-

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called [Section 2(85) of the CGST Act]

❖ **Recipient** of supply of goods or services or both, means—

- where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93) of the CGST Act].

- **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105) of the CGST Act].

3. IMPORTS UNDER GST

Under the GST regime, Article 269A constitutionally mandates that supply of goods and/or services in the course of import into the territory of India shall be deemed to be supply of goods and/or services in the course of inter-State trade or commerce.

So, import of goods or services is treated as inter-State supplies and is subject to IGST. Supply of goods and/or services to a Special Economic Zone (SEZ) unit/developer is also treated as an inter-State supply and thus, is subject to levy of IGST.

In case of goods, the importer of goods pays IGST and in case of services, the importer of services pays IGST on reverse charge basis. However, in respect of import of online information and database access or retrieval (OIDAR) services by unregistered, non-taxable recipients, the supplier located outside India is responsible for payment of IGST. Either the supplier of OIDAR services has to take registration or has to appoint a person in India for payment of taxes.

Importer Exporter Code (IEC): PAN of an entity is to be used as IEC. If importer is registered under GST, he is required to declare only GSTIN as PAN is part of GSTIN[1].

[1] *DGFT's Trade Notice No. 09 dated 12.06.2017*

A. IMPORT OF GOODS

STATUTORY PROVISIONS

Section	Particulars
	Levy of IGST on imported goods
Section 5(1) of the IGST Act	*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, 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.*
Proviso to section 5(1) of the IGST Act	*Provided that the integrated tax on goods 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.*
	Inter-State supply
Section 7(2) of the IGST Act	*Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce* .

Place of supply	
Section 11 of the IGST Act	*Place of supply of goods imported into, or exported from India* *[Refer Chapter 3: Place of Supply in Module 1 of this Study Material for discussion on these provisions]*
Levy of customs duty	
Section 12 of the Customs Act, 1962	*(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into, or exported from, India.* *(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.*
Provisions for collection of IGST on imported goods and warehoused goods sold from a customs warehouse as also for determination of their value under section 3 of the Customs Tariff Act, 1975	
Section 3(7) of the Customs Tariff Act, 1975	*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 leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like 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.*
Section 3(8) of the Customs Tariff Act, 1975	*For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of-*

	(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and *(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).*
Section 3(8A) of the Customs Tariff Act, 1975	*Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under sub-section (7) shall be,-* *(a) where the whole of the goods are sold, the value determined under sub-section (8) or the transaction value of such goods, whichever is higher; or* *(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8) or the transaction value of such goods, whichever is higher:* *Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b):* *Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8).*

	Explanation.- For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.
Section 3(11) of the Customs Tariff Act, 1975	*The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.*

ANALYSIS

(i) IGST on imported goods in addition to duty of customs [Section 7(2) read with section 5]

Import of goods means bringing goods in India [*See definition under the heading 'Relevant Definitions'*] from a place outside India [Section 2(10)]. Supply of goods imported into the territory of India till they cross the customs frontiers of India is deemed to be an inter-State supply. IGST on goods imported into India is levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975. Thus, though goods imported into India are leviable to IGST under the IGST Act, machinery of the customs law is used to levy and collect the same.

The place of supply of goods, imported into India is the location of the importer [Section 11]. Thus, if an importer say is located in Rajasthan, the State tax component of the IGST accrues to the State of Rajasthan.

IGST on imported goods is levied in addition to other customs duties levied on the imported goods but the same is not customs duty. In addition, GST Compensation Cess, may also be leviable on import of certain luxury and de-merit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

Accordingly, goods imported into India are, in addition to the applicable customs duties, liable to IGST at such rate as is leviable under the IGST Act on a like article on its supply in India.

The bill of entry filed for import of goods now looks like this, with columns for customs duty, additional duty, and IGST:

Bill of Entry For Home Consumption *[Refer Bill of Entry Regulations 1976]* Licence No.

Port Code | S = Sea, A= Air, L = Land | Prior Entry Stamp | Import Dept. S. No. and Date | Customs House Agent Code | Importer Code(IEC/ GSTIN/PAN etc as applicable) | Importer's Name and Address

Vessel's Name | Rotation No. Date | Line Number | Port of Shipment | Country of Origin and Code | Country of Consignment (if different) and Code | Bill of Lading Date

PACKAGES GOODS		QUANTITY					CUSTOMS DUTY				ADDITIONAL DUTY					IGST							
No. and Description	Marks and Numbers	Serial No.	Unit Code	Weight/ Volume /Number etc.	Description ------------- R.I.T.C. No (Give details of each class separately)	Customs Tariff heading ------------- Exemption Notification No. and year	Nature of duty code	Assessable Value under Section 14 Customs Act, 1962 (Rs.)	RATE Basic --------- Auxiliary (Rs.)	AMOUNT Basic ---- Auxiliary (Rs.)	C.E.T. Heading ---- Exemption Notification No. and year	Value under Section 3 Customs Tariff Act, 1975 (Rs.)	Rate	SAD	Total Additional Duty	GST Code	IGST Rate	Exemption Notification for claiming exemption from IGST	IGST amount (Rs.)	GST Compensation Cess Rate	Exemption Notification for claiming exemption from GST Compensation Cess	GST Compensation Cess Amount	TOTAL UTY
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)

Gross Weight TOTAL NUMER OF PACKAGES (IN WORDS)..................... TOTAL AMOUNT OF DUTY (IN WORDS)
.... Import Clerk RUPEES................ TOTAL.............
(By pin-point typewriter)

(ii) Point when IGST is levied on imported goods [Proviso to section 5(1)]

IGST on goods imported into India is levied and collected at the point when duties of customs are levied on the said goods under the Customs Act, 1962. Customs duty is leviable when importation of goods gets complete, i.e. when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed. Thus, the point of levy and collection of IGST is the point when the bill of entry for home consumption is filed.

(iii) Taxable value of imported goods for levying IGST [Section 3(8) of the Customs Tariff Act, 1975]

The value of the goods for the purpose of levying IGST is the assessable value of the imported goods determined under section 14 of the Customs Act, 1962 plus customs duty levied under that Act and any other sum chargeable on the said goods under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess (wherever applicable).

Wherever the goods are also leviable to GST Compensation Cess, the same is collected on the value taken for levying IGST. In other words, IGST paid shall not be added to the value for the purpose of calculating GST Compensation Cess.

In cases where imported goods are liable to Anti-Dumping Duty or Safeguard Duty, value for calculation of IGST as well as GST Compensation Cess also includes Anti-Dumping Duty and Safeguard duty *[Guidance Note for Importers and Exporters issued by DGFT after introduction of GST]*.

Value for levying IGST on imported goods	**=**	**Value determined under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess**

[For examples/illustrations showing calculation of IGST chargeable on imported goods, Chapters 2 & 4 of Module 4 on Customs Laws may be referred to.]

(iv) Applicability of IGST on goods supplied while being deposited in a customs bonded warehouse [Section 3(8A) of the Customs Tariff Act, 1975]

The Customs Act, 1962 permits goods that have entered India to be deposited in a bonded warehouse on filing 'into-bond' bill of entry, without payment of duty. The importer is at liberty to transfer the ownership of such goods to another person while the goods remain deposited in the warehouse.

The "transfer/sale of goods while being deposited in a customs bonded warehouse" is a common trade practice whereby the importer files an into-bond bill of entry and stores the goods in a customs bonded warehouse and thereafter, supplies such goods to another person who then files an ex-bond bill of entry for clearing the said goods from the customs bonded warehouse for home consumption.

However, supply of warehoused goods to any person before clearance for home consumption is neither a supply of goods nor a supply of services in terms of paragraph 8(a) of Schedule III to the CGST Act. Here, warehoused goods have the same meaning as assigned to it in the Customs Act, 1962.

GST is not leviable when goods deposited in customs bonded warehouse are sold before clearance; the same is leviable when ex-bond bill of entry is filed for clearing such warehoused goods for home consumption.

Further, value of such in-bond sales is included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

It is to be noted that the basic customs duty paid on the warehoused goods at the stage of ex-bonding is calculated on the value determined under section 14 of the Customs Act, 1962 at the time of filing of the into-bond bill of entry.

However, value of imported goods for levying IGST in case of supply of warehoused goods is determined as under:

Value for levying IGST in case of supply of warehoused goods	**=**	**(a)**	**Transaction value (Sale value)**
			OR
		(b)	**Value determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess**
			WHICHEVER IS HIGHER

If goods are sold more than once while being deposited in the warehouse, the last transaction value is taken as the transaction value for the purpose of determining the value for levying IGST in the manner given above.

If only a part of the goods are sold, the two values that are to be compared are – (i) transaction value of the goods sold and (ii) proportionate value (of the goods sold) determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

The remaining goods (which are not sold) are assessed on the value determined under section 14 of the Customs Act plus basic customs duty and any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

(v) Taxability of High Sea Sale

'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the high sea sale of the goods, the customs declarations, i.e. bill of entry etc. is filed by the person who buys the goods from the original importer during the said sale.

GST is not leviable on high sea sales. IGST is leviable only when the goods are cleared from customs for home consumption.

However, 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 (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

Further, value of such high sea sales is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Circular No. 33/2017 Cus dated 01.08.2017 has clarified that 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.

(vi) Third country shipments

Third country shipments or triangular trade is a common practice in international trade whereby goods move from one country to another without touching India; only invoicing is done by the registered person in India.

For example, 'A', a registered person in India, receives an order to supply goods to 'B' in USA. 'A', finds a supplier 'C' in Singapore and asks him to supply goods to 'B' in USA. Two invoices are raised here; one by 'A', the registered person in India, on 'B' in USA and the other by 'C' in Singapore on 'A' in India. The point to be noted here is that goods do not touch Indian shores; they are shipped by 'C' from Singapore to 'B' in USA.

Paragraph 7 of the Schedule III to CGST Act provides that 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 (third country shipments) is treated neither as a supply of goods nor a supply of services. Thus, there is no GST liability on such sales.

Further, value of such third country shipments is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

(vii) Taxability of goods imported by SEZ

Goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorised operations are exempted from the whole of IGST leviable under section 3(7) of the Customs Tariff Act, 1975 vide *Notification No. 64/2017 Cus dated 05.07.2017*.

(viii) Taxability of goods imported by EOU

Goods imported by Export Oriented Undertaking (EOU) attract liability to customs duty. Import of goods by 100% EOU's are governed by *Notification No. 52/2003 Cus* as amended. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications. However, exemption from IGST will be subject to fulfilment of specified conditions.

(ix) Import as baggage

Passenger baggage is exempted from IGST as well as GST Compensation Cess. The basic customs duty at the rate of 35% and the applicable social welfare surcharge is leviable on the value which is in excess of the duty-free allowances provided under the Baggage Rules, 2016.

B. IMPORT OF SERVICES

	STATUTORY PROVISIONS
	Activities to be treated as supply even if made without consideration
Paragraph (4) of Schedule I to the CGST Act	*Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.*
	Levy of IGST on importation of services
Section 5(1) of the IGST Act	*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, 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.
Reverse charge	
Section 5(3) of the IGST Act	*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.*
Services provided through electronic commerce operator (ECO)	
Section 5(5) of the IGST Act	*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.*

Inter-State supply	
Section 7(4) of the IGST Act	*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.*
Supplies in territorial waters	
Section 9 of the IGST Act	*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.*
Place of supply	
Section 13 of the IGST Act	*Place of supply of services where location of supplier or location of recipient is outside India.* *[Refer Chapter 3: Place of Supply in Module 1 for discussion on these provisions]*
Special provision for payment of tax by a supplier of online information and database access or retrieval (OIDAR) services	
Section 14(1) of the IGST Act	*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 authorise 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 authorise 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.*
Section 14(2) of the IGST Act	*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.*

ANALYSIS

(i) Taxability of import of service [Section 7 of the CGST Act read with para 4 of Schedule I to the CGST Act]

To be taxable, the transaction of import of service needs to be a "supply". While the main definition of "supply" under section 7 of the CGST Act covers supply of goods or services for a consideration in the course or furtherance of business, clause (b) thereof includes services imported for a consideration even if the import is not in the course or furtherance of business. Supply under the IGST Act has been defined to mean the same as the supply under section 7 of the CGST Act.

Significance of consideration and business test in taxability of importation of services

As per section 7(1)(b) of the CGST Act, import of services for a consideration whether or not in the course or furtherance of business, is considered as a supply. Thus, in general, import of services without consideration is not considered as supply. However, business test is not required to be fulfilled for treating import of service, made for a consideration, as supply.

Furthermore, in view of the provisions contained in Schedule I to the CGST Act, the import of services by a person from a related person or from his establishment located outside India, in the course or furtherance of business is treated as supply even if it is made without any consideration.

A conjoint reading of aforesaid provisions with the provisions of section 14 *(discussed in the subsequent paras of this Chapter)*, import of free services from Google and Facebook by all of us, without any consideration, is not considered as supply. Import (downloading) of a song for consideration for personal use would be a supply of service, even though the same is not in the course or furtherance of business. Import of some services by an Indian branch from their parent company outside India, in the course or furtherance of business, even if without consideration, will be a supply.

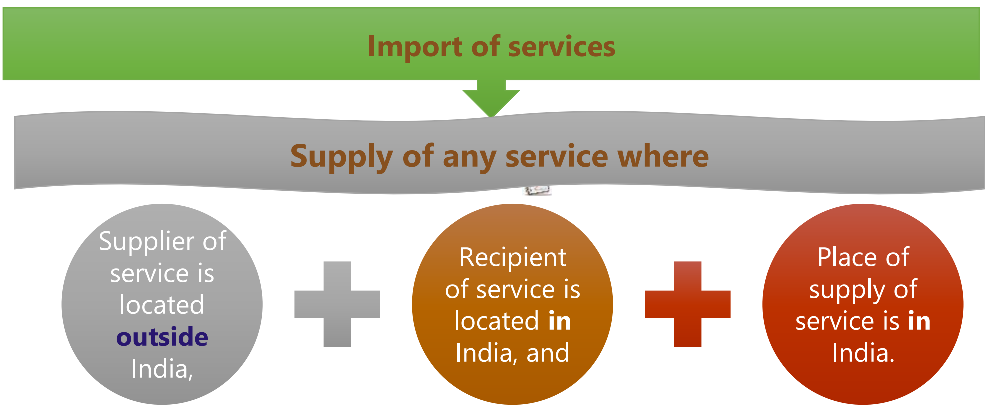
Thus, import of services can be considered as supply based on whether there is consideration or not and whether the service is supplied in the course or furtherance of business. The same has been explained in the table below:

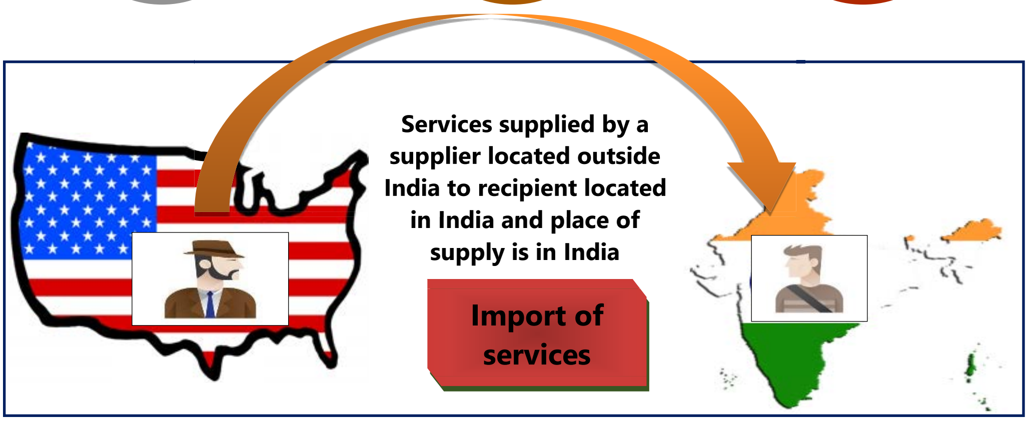
Nature of Service	Consideration	Business Test
Import of services	Necessarily Required	Not required
Import of services by a person from a related person or from his establishment outside India	Not required	Necessarily Required

Import of service into the territory of India is treated as inter-State supply in terms of section 7(4) and thus, is liable to IGST under section 5.

(ii) Meaning of import of service [Section 2(11)]

IGST Act defines import of services as supply of any service where the supplier is located outside India, the recipient is located in India, and the place of supply of service is in India.





The concept discussed above has been explained by way of following examples:

Location of Supplier	Location of Recipient	Place of Supply	Whether qualifies as import of services?
London	Delhi	Delhi	Yes
London	Paris	Paris	No
Delhi	Paris	Delhi	No
London	Delhi	London	No

Thus, only where the location of supplier is outside India but the location of recipient and the place of supply is in India, the transaction shall qualify as import of services.

'India' is the sum of the territory of its States and also includes its territorial waters and Exclusive Economic Zone. This is an extended definition of 'India' over and above the area denoted by the expression in Article 1 of the Constitution and is enabled by the rights of nations under the United Nations

Convention on the Law of the Seas. The definition enables taxation of services received from outside India into the area that is outside India as per the definition in the Constitution but within the 200 nautical miles limit of the Exclusive Economic Zone [Section 2(56) of the CGST Act].

The place of supply is to be determined in terms of section 13 of the IGST Act. Section 13 provides for determination of place of supply in cases wherein the location of the supplier of services or the recipient of services is outside India. If the place of supply of service is in the territorial waters, the place of supply is deemed to be in the coastal State/Union Territory where the nearest point of the appropriate baseline is located [Section 9]. Thus, the State tax component of the IGST accrues to such coastal State.

In addition to the place of supply being in India and the provider of service being located outside India, the location of the recipient of service must be in India for the transaction to qualify as import of service. This means that the service should be received at the recipient's place of business or fixed establishment in India. In the absence of such a place, the usual place of residence of the recipient is taken to be his location[2].

(iii) Person liable to pay tax on importation of service

- In case of importation of service, the recipient of imported service who is located in India (other than non-taxable online recipient of OIDAR service) is the person who has to pay IGST on the service under reverse charge *[Section 5(3) of the IGST Act read with Entry 1 of Notification No. 10/2017 IGST (R) dated 28.06.2017]*.
- In case of services supplied by a person located outside India by way of transportation of goods by a vessel from a place outside India upto the custom station of clearance in India, IGST is to be paid by the importer located in India. In other words, in case of foreign shipping lines providing inbound transportation of goods (from a place outside India

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[2] *Provisions relating to place of supply, location of supplier of service, location of recipient of service, fixed establishment, place of business etc. have been discussed in detail in Chapter 3 – Place of Supply in Module 1 of this Study Material.*

upto the customs station of clearance in India), IGST is to be paid by the importer *[Section 5(3) of the IGST Act read with Entry 10 of Notification No. 10/2017 IGST (R) dated 28.06.2017]*[3].

However, Supreme Court in case of Union of India vs. Mohit Minerals Pvt. Ltd. 2022 (61) G.S.T.L. 257 has held that since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of section 8 of the CGST Act, 2017 and would amount to double taxation. Hence, there cannot be a separate levy of IGST on the component of ocean freight paid by the foreign exporter to the foreign shipping line in the CIF contract.

- In case of importation of OIDAR services by a non-taxable online recipient, supplier of OIDAR services is liable to pay IGST *[Discussed in detail in subsequent paragraphs]*.
- In case of importation of notified services through ECO, ECO is liable to pay IGST *[Discussed in detail in subsequent paragraphs]*.

(iv) Exemptions related to import of service

Exemptions from IGST in context of cross border transactions relating to services are discussed in Chapter 4: Exemptions from GST in Module 1 of this Study Material. The relevant exemptions may be referred to from that Chapter.

(v) Importation of OIDAR services [Section 14]

Online Information Database Access and Retrieval services (OIDAR) is a category of services provided through the medium of internet and received by the recipient online; such services cannot be rendered in the absence of information technology *[See definition]*.

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[3] *With effect from 01.10.2023, Entry 10 of Notification No. 10/2017 has been omitted vide Notification No. 13/2023 IT (R) dated 26.09.2023, consequent to SC judgment in case of Mohit Minerals.*

(1) Download of an e-book online for a payment would amount to receipt of OIDAR services by the consumer.

❑ Taxability of OIDAR services imported by business entity and non-taxable online recipient

Importation of OIDAR services by a business entity

For any supply to be taxable under GST, the place of supply in respect of the subject supply should be in India. In case, both the supplier of OIDAR service and the recipient of such service are in India, the place of supply would be the location of the recipient of service, i.e. it would be governed by the default provision of place of supply and would be liable to GST under forward charge.

However, OIDAR services can also be provided online even from a remote location outside the taxable territory. In such cases also - where the supplier of OIDAR service is located outside India and the recipient is located in India - the place of supply[4] would be India and the transaction would be amenable to tax under reverse charge if the recipient is a business entity (excluding Government, Governmental authority or Local authority). Thus, in such cases the recipient located in India, will be liable to pay IGST under reverse charge and undertake necessary compliances.

Importation of OIDAR services by non-taxable online recipient

Now what happens if the supplier is located outside India and the recipient in India is an individual consumer! In such cases also, the place of supply would be India and the transaction would be amenable to levy of GST, but the problem would be, how such tax would be collected. It would be impractical to ask the individual in India to register and undertake the necessary compliances under GST for a one-off purchase on the internet. However, if a similar service is provided by an Indian service provider, from within the taxable territory, to individual consumer in India, the same would be taxable under forward charge. Therefore, overseas suppliers of such

[4] *Provisions relating to place of supply for OIDAR services under section 14 of the IGST Act have been discussed in detail in Chapter 3: Place of Supply in Module 1 of this Study Material.*

services would have an unfair tax advantage should the services provided by them be left out of the tax net.

For such cases, the IGST Act provides that on supply of OIDAR services by any person from a location outside India to an unregistered recipient in India [i.e. to a non-taxable online recipient *(See definition)*], the supplier who is outside India is liable to pay IGST on the supply.

Provision or facilitation of OIDAR services by intermediary located outside India: Now if an intermediary *(See definition)* located outside India arranges or facilitates supply of such service to a non-taxable online recipient in India, the intermediary would be treated as the supplier of the said service who must get registered in India and pay IGST on the supply.

However, if the intermediary has nothing to do with the payment or authorising the delivery of the service or setting of the terms and conditions of the supply, and if his invoice clearly identifies the service and its supplier, the responsibility for registration remains with the supplier.

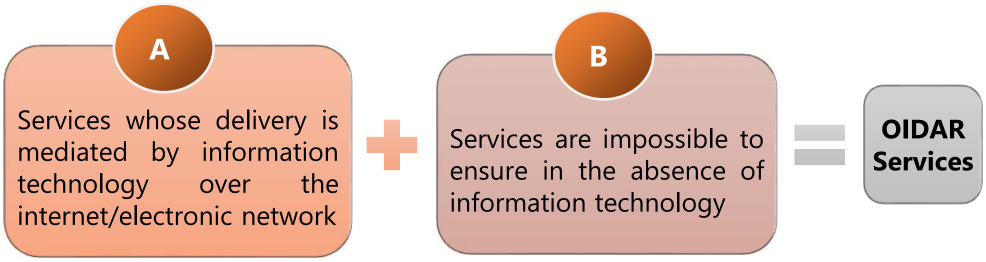
Provisions enabling supplier of OIDAR services located outside India to comply with the responsibilities entrusted under GST laws: The supplier (or intermediary) of OIDAR services shall, for payment of IGST, take a single registration under the Simplified Registration Scheme.

If the overseas supplier has a representative in India for any purpose, such person (representative in India) shall get registered and pay IGST on behalf of the supplier.

In case the overseas supplier neither has a physical presence nor has any representative for any purpose in India, it may appoint a person in India for the purpose of paying IGST.

❑ Examples of what could be or could not be OIDAR services

In order to determine whether a particular service is an OIDAR service, the following tests need to be applied:



Thus, a service qualifies as OIDAR services if above two conditions have been satisfied. The inclusive part of the definition is only indicative and not exhaustive.

Service	Whether condition 'A' is fulfilled?	Whether condition 'B' is fulfilled?	Whether it is OIDAR service or not?
PDF document automatically emailed by provider' s system	YES	YES	YES
PDF document automatically downloaded from site	YES	YES	YES
Stock photographs available for automatic download	YES	YES	YES
Online course consisting of pre-recorded videos and downloadable PDFs	YES	YES	YES

Indicative List of OIDAR Services

Website supply, web-hosting, distance maintenance of programmes and equipment

- Website hosting and webpage hosting
- Automated, online and distance maintenance of programmes
- Remote systems administration
- Online data warehousing where specific data is stored and retrieved electronically
- Online supply of on-demand disc space

Supply of software and updating thereof

- Accessing or downloading software (including procurement/ accountancy programmes and anti-virus software) plus updates
- Software to block banner adverts, otherwise known as Banner blockers
- Download drivers, such as software that interfaces computers with peripheral equipment (such as printers)
- Online automated installation of filters on websites
- Online automated installation of firewalls

Supply of images, text and information and making available of databases

- Accessing or downloading desktop themes
- Accessing or downloading photographic or pictorial images or screensavers
- The digitised content of books and other electronic publications
- Subscription to online newspapers and journals
- Weblogs and website statistics
- Online news, traffic information and weather reports
- Online information generated automatically by software from specific

data input by the customer, such as legal and financial data, (in particular, data such as continually updated stock market data, in real time)

- The provision of advertising space including banner ads on a website/web page
- Use of search engines and internet directories

Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events

- Accessing or downloading of music on to computers and mobile phones
- Accessing or downloading of jingles, excerpts, ringtones, or other sounds
- Accessing or downloading of films
- Downloading of games on to computers and mobile phones
- Accessing automated online games which are dependent on the internet or other similar electronic networks, where players are geographically remote from one another

(vi) Services provided through ECO located outside India [Section 5(5)]

An ECO is required to pay IGST on notified services if these are supplied through its portal[5].

If the ECO does not have a physical presence in India but there is a person in India representing such overseas supplier in India for any purpose, such person (representative in India) is liable to pay IGST. However, if the ECO does not have a physical presence in India and does not have a representative here either, it is required to appoint a person in India for the purpose of paying tax on such notified services.

[5] *Provisions relating to Electronic Commerce Operator are discussed in detail in Chapter 12: Electronic Commerce Transactions in Module 2 of this Study Material.*

C. REGISTRATION AND ITC IN CASE OF IMPORT OF GOODS AND SERVICES

❑ Registration

Registration for importer of goods

Reverse charge provisions do not cover importers of goods. Importers are also not listed among the categories of persons in section 24 of the CGST Act for whom registration is compulsory. It may be noted here that it is mandatory for the importers who are registered under GST to quote GSTIN in the bill of entry for the purpose of payment of IGST on import of goods as also for availing ITC of such IGST.

Registration in case of import of exempted goods

In terms of section 23 of the CGST Act, persons engaged exclusively in the supply of goods (import and export) that is either not liable to tax or is wholly exempt from tax under the CGST or IGST Acts are not required to obtain registration. In such cases, PAN (which is authorized as IEC by DGFT) of the importer and exporter would suffice *[Instruction No. 10/2017 Cus dated 06.07.2017]*.

Registration for importer of services

Section 24(iii) of the CGST Act mandates compulsory registration for persons, without any benefit of the threshold limit for registration, who are required to pay tax under reverse charge. Accordingly, importer of services who are required to pay IGST under reverse charge have to obtain compulsory registration under GST law so as to be able to pay tax on imported services under reverse charge.

Thus, recipient of imported services other than non-taxable online recipient must register compulsorily.

❑ Input Tax Credit

ITC of IGST paid on imported goods

The definition of "input tax" in relation to a registered person means *inter alia* integrated tax and includes IGST charged on import of goods [Section 2(62) of the CGST Act (*See definition)*]. Thus, ITC of IGST paid at the time of import is available to the importer subject to the conditions and restrictions provided under sections 16 and 17 of the CGST Act for availing such credit. Such ITC can be utilized by the registered person for payment of taxes on his outward supplies. GST Compensation Cess paid on import of goods is also available as ITC.

IGST and GST Compensation Cess paid at the time of import of goods thus, in essence, are a pass through to this extent. The ITC of GST Compensation Cess, however, can only be used for payment of GST Compensation Cess. Furthermore, ITC of basic customs duty and social welfare surcharge paid on the imported goods is not available.

ITC of IGST paid on importation of services

The definition of "input tax" in relation to a registered person means *inter alia* integrated tax and includes tax payable under reverse charge under sub-sections (3) and (4) of section 5 of the IGST Act [Section 2(62) of the CGST Act (*See definition)*]. Therefore, IGST paid on importation of services is available as ITC at par with IGST paid on any other supply subject to conditions and restrictions prescribed under sections 16 and 17 of the CGST Act for availing such credit.

4. EXPORTS

One of the fundamental principle to make exports competitive in the international market is that taxes should not be exported. Hence, export to destinations outside India as well as supplies to SEZ have been 'zero-rated', i.e. the goods or services exported are relieved of GST levied upon them either at the input stage or at the final product stage by way of refund of taxes paid. Thus, it can be seen that supply to SEZ unit/developer is treated at par with physical exports.

Supplies made for export through merchant exporters are taxed at 0.1% with ITC benefit. Supplies of goods from Domestic Tariff Area (DTA) to EOU/ Electronic Hardware Technology Park (EHTP) Unit/ Software Technology Park (STP) Unit/ Bio-Technology Parks (BTP) Unit are considered as 'deemed exports' and are allowed some of the benefits that actual export enjoy.

STATUTORY PROVISIONS

Inter-State supply

Section 7(5) of the IGST Act

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.

Establishments of distinct persons

Explanation 1 to section 8 of the IGST Act

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 registered within that State or Union territory,

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

Explanation 2 to section 8 of the IGST Act

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.

Place of supply	
Section 11 of the IGST Act	*Place of supply of goods imported into, or exported from India* *[Refer Chapter 3: Place of Supply in Module 1 for discussion on these provisions]*
Section 13 of the IGST Act	*Place of supply of services where location of supplier or location of recipient is outside India* *[Refer Chapter 3: Place of Supply in Module 1 for discussion on these provisions]*
Zero Rated Supply	
Section 16 of the IGST Act	*(1) "Zero rated supply" means any of the following supplies of goods or services or both, namely :-* *(a) export of goods or services or both; or* *(b) supply of goods or services or both* ***for authorised operations*** *to a Special Economic Zone developer or a Special Economic Zone unit.* *(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.* ***(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST 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 CGST Act within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed. ***(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify––*** ***(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;*** ***(ii) a 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.***
Deemed Exports	
Section 147 of the CGST Act	*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.*

ANALYSIS

A supply of goods and/or services whose place of supply is outside India and is made by a supplier in India is treated as inter-State supply under the IGST Act. Further, supply of goods and/or services to a SEZ unit/developer or supply of goods and/or services by a SEZ unit/developer are also treated as inter-State supply under the IGST Act [Section 7(5)]. The place of supply of goods and services in cross border transactions is determined in accordance with the provisions of sections 11 and 13 respectively.

Inter-State supplies of goods and/or services are liable to IGST in terms of section 5. Hence, on a strict interpretation of section 5, IGST is payable on such supplies where the supplier is located in India and the place of supply is outside India. However, at the same time it can be argued that since IGST Act extends to whole of India, IGST cannot be levied on a supply whose place of supply is outside India. Also, fundamentally GST is a consumption tax and thus, tax cannot be levied if goods and/or services are consumed outside India.

An inter-State supply under section 7(5)(a) cannot automatically be construed as export of goods and/or services; only when the conditions stipulated in the definitions of export of goods and export of services are fulfilled, will such inter-State supplies be considered as exports and, in turn, be zero rated.

A. ZERO RATED SUPPLY [SECTION 16]

(i) What is Zero Rating?

By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the outward exempt from payment of tax but there is also no bar on taking/availing credit of taxes paid on the input side for making/providing the outward supply.

Under GST Law, exports and supplies to SEZ units/developers are zero rated. Supply to SEZ units/developers ***for authorised operations*** is zero-rated in the same manner as is applicable for the physical exports.

(ii) What is the need of zero rating?

As per section 2(47) of the CGST Act, a supply is said to be exempt, when it attracts nil rate of duty or is specifically exempted by a notification or kept out of the purview of tax (i.e. a non-GST supply). But if a goods or service is exempted from payment of tax, it cannot be said that it is zero rated. The reason is not hard to find. The inputs and input services which go into the making of the goods or provision of service have already suffered tax and only the final product is exempted. Moreover, when the output is exempted, tax laws do not allow availment/utilisation of credit on the inputs and input services used for supply of the exempted output. Thus, in a true sense the entire supply is not zero rated. Though the output suffers no tax, the inputs and input services have suffered tax and since availment of tax credit on input side is not permitted, it becomes a cost for the supplier. The concept of zero rating of supplies aims to correct this anomaly

(iii) How does zero rating work?

As already seen, the concept of zero rating of outward supplies requires the outward supplies as well as the inputs or input services used in supplying the outward supplies to be free of GST. This is done by employing the following means:

a) The outward supplies which are zero rated can be made without payment of integrated tax, under bond or Letter of Undertaking or where such zero-rated supplies are exempted, they may be supplied without payment of tax;

b) The refund of unutilized credit input tax credit on supply of goods or services or both used in supplying the zero rated supply is allowed;

Thus, a registered person making zero rated supply may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC. Further, notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed. *Circular No. 01/ 2017 CC dated 26.07.2017* has clarified that the provisions of section 16 relating to zero rated supply will apply to GST Compensation Cess also. Hence, (i) exporters can claim refund of GST Compensation Cess paid on goods exported by him in case of notified class of persons making zero-rated supply or export of notified class of goods or services, or (ii) GST Compensation Cess will not be charged on goods exported under bond/LUT and he will be eligible for refund of ITC of GST Compensation Cess relating to goods exported.

Refer Chapter 15: Refunds in this Module for detailed discussion on provisions relating to refunds associated with zero rated supplies.

(iv) How do zero rated and exempt supplies differ?

The difference between zero rated supplies and exempted supplies is tabulated as below:

Exempted Supplies	Zero rated supplies
Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.	Zero-rated supply means (i) export of goods and/or services or (ii) supply of goods and/or services ***for authorised operations*** to SEZ unit/SEZ developer.
No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed	No tax on the outward supplies; Input supplies also to be tax free (by way of refund of ITC)
Credit of input tax needs to be reversed, if taken. No ITC on the exempted supplies.	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply. ITC allowed on zero rated supplies.
Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC.
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.	A person exclusively making zero rated supplies needs to register as refund of unutilized ITC or IGST paid shall have to be claimed.
A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

B. EXPORT OF GOODS/SERVICES

Taxability of Export

Export of goods or services are treated as inter-State supply and zero rated. This means that even if there is full exemption for the supply, ITC is still available to the exporter. The exporter can export under Bond/LUT without payment of IGST and claim refund of ITC. The notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed. The objective is to make Indian exports competitive in the international market.

It may be noted that since exports are inter-State supplies, the tax associated with them will always be IGST.

Export of Goods

(i) Physical exports [Section 2(5)]

Export of goods requires taking the goods from India to a place outside India. India is defined as extending to the limits of its maritime zone, which is 200 nautical miles from the coastal baseline. This is far beyond the normal definition of India, which only includes its territorial waters, which in turn extend 12 miles from the baseline. Given the extended meaning of India, export would require that the goods must travel beyond 200 miles from the baseline in order to qualify as having been exported.

Sending/ taking goods out of India for exhibition or on consignment basis for export promotion: *Circular No. 108/27/2019 GST dated 18.07.2019* has clarified that the activity of sending/ taking goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, does not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a 'supply', the same cannot be considered as "zero rated supply" as per the provisions contained in section 16 of the IGST Act.

Thus, activity of sending/ taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

(ii) Deemed exports

Deemed exports refers to supplies of goods manufactured in India **(and not services)** which are notified as deemed exports under section 147 of the CGST Act. Such supplies do not leave India and the payment for the same is received either in Indian rupees or in convertible foreign exchange.

Following categories of supply of goods have been notified as deemed exports by the Government vide *Notification No. 48/2017 CT dated 18.10.2017:*

(a) Supply of goods by a registered person against Advance Authorisation (AA)

If exports have already been made after availing ITC on inputs used in manufacture of such exports, the goods so supplied should be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a Chartered Accountant should be submitted to the jurisdictional Commissioner of GST or any other officer authorised by him within 6 months of such supply.

(b) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation (EPCG)

(c) Supply of goods by a registered person to Export Oriented Unit (EOU)

(d) Supply of gold by a bank or Public sector Undertaking specified in *Notification No. 50/2017 Cus dated 30.06.2017* (as amended) against AA

"AA" means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2023 for import or domestic procurement of inputs for physical exports.

"EPCG" means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2023 for import of capital goods for physical exports.

"EOU" means an EOU or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy, 2023.

The above have been discussed in detail in Chapter 8: Foreign Trade Policy in Module 4 of this Study Material.

Taxability of deemed exports

Deemed exports are not zero rated supplies by default, unlike the regular exports. Hence, all supplies notified as supply for deemed export are subject to levy of taxes, i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT. However, the refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the recipient. Thus, the application for refund has to be filed by the supplier or the recipient (subject to certain conditions) of deemed export supplies, as the case may be. *[Refer Chapter 15: Refunds in this Module for detailed discussion on these provisions]*.

(iii) Merchant exports

There is no specific provision in GST law for export through third parties, commonly known as merchant exports. However, a low rate of GST of 0.1% on supplies for export through third parties has been provided by way of exemption notifications. *[This is expressed as 0.1% IGST on inter-State supplies or 0.05% CGST plus 0.05% SGST on intra-State supplies]*.

Circular No. 125/44/2019 GST dated 18.11.2019 has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) will be eligible to take credit of the concessional tax so paid by him. The supplier who supplies goods at the concessional rate will be eligible for refund of ITC on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act[6]. However, it may be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of IGST.

Circular No. 08/08/2017 dated 04.10.2017 has clarified that there is no provision for issuance of CT-1 Form - which enables merchant exporters to purchase goods from a manufacturer without payment of tax - under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

Manufacturer exporter means a person who exports goods manufactured by him or intends to export such goods. Merchant exporter means a person engaged in trading activity and exporting or intending to export goods [As defined under Foreign Trade Policy 2023].

A registered supplier can supply goods to a merchant exporter at low rate of GST (0.1%) prescribed under *Notification Nos. 41/2017 IT(R) and 40/2017 CT(R) both dated 23.10.2017* if following conditions (specified in the said notifications) are fulfilled-

(a) the registered supplier (manufacturer) shall supply the goods to the registered recipient (merchant exporter) on a tax invoice;

(b) the registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier;

(c) the registered recipient shall indicate the GSTIN 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;

(d) the registered recipient shall be registered with an Export Promotion Council;

(e) 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;

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[6] *Provisions relating to refund of unutilized ITC on account of inverted duty structure have been discussed in detail in Chapter 15: Refunds in this Module of the Study Material.*

(f) the registered recipient shall move the said goods from place of registered supplier –

i. directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or

ii. directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;

Registered principal place of business or registered additional place of business are deemed to be a registered warehouse [*Circular No. 42/2017 Cus dated 07.11.2017*].

(g) 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;

(h) in case of situation referred to in condition (g), 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

(i) after goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of 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.

Merchant exporters may exclude commercially sensitive information while providing copies of shipping bills to registered suppliers *[Circular No. 42/2017 Cus dated 07.11.2017]*.

Export of Services [Section 2(6)]

Supply of service qualifies to be an 'export of service' if it fulfills the following conditions:

(a) the service is supplied from India to a recipient located outside India,

(b) the place of supply of the service is outside India,

(c) the consideration for the service is received in freely convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, and

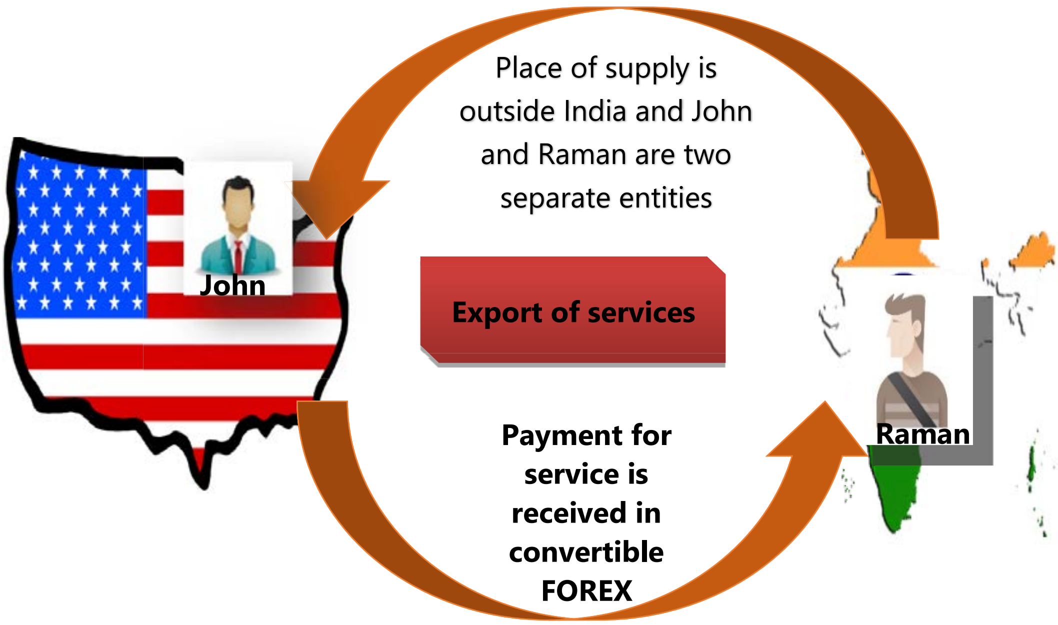
(d) the transaction is between separate entities, i.e. not merely between two establishments of an entity

Branch and Head Office of one taxable person are not treated as two separate entities for this purpose. In other words, provision of outbound services *inter se* Head Office and Branch is not construed as export of service. However, *Notification No. 9/2017 IT(R) dated 28.06.2017* exempts the services provided by an Indian establishment to its foreign establishment from IGST if the place of supply is outside India – *For details, refer Chapter 4: Exemptions from GST in Module 1 of this Study Material*.

Apparently, subsidiary and holding companies may not be treated as mere establishments of one entity since these are two separate legal persons (with different PAN). Thus, seemingly, provision of outbound services *inter se* subsidiary company and holding company can be construed as export of service if all other condition of export of services are fulfilled. Under service tax law, similar view was taken by the Gujarat High Court in the case of *Linde Engineering India Private Limited Other vs. Union of India [R/Special Civil Application No. 12626 of 2018 dated 16.01.2020]*. Service tax law had identical provisions on this aspect.

As in case of export of goods, in case of export of services also, India extends to the limits of its maritime zone, which is 200 nautical miles from the coastal baseline.

For example, Raman of Delhi has supplied services to John of USA.



In the given example, supplier of service – Raman – is located in India, recipient of service – John – is located outside India and the place of supply of service is USA. Payment for services provided by Raman has been received in convertible FOREX and Raman and John are not merely establishments of a distinct person as per explanation to section 8 of IGST Act. Since all the requisite conditions have been satisfied, such services qualify as export of services.

In this regard, following circulars have been issued:

(A) Sub-contracting of services by an exporter of services to another person located outside India - *Circular No. 78/52/2018 GST dated 31.12.2018*

If an exporter of services outsources a portion of the services contract to another person located outside India, there may be instances where the full consideration for the outsourced services is not received by the exporter in India. The tax treatment of the said portion of the contract at the hands of the exporter has been explained as under:

Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place: -

(a) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contact value;

(b) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) read with section 13(2) are satisfied.

The supplier of services located in India would be liable to pay IGST on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking ITC of the IGST so paid.

Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the:

(a) IGST has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India; and

(b) RBI by general instruction or by specific approval has allowed that part of the consideration for such exports can be retained outside India.

example

(2) ABC Ltd. India has received an order for supply of services amounting to $ 500,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value). ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay IGST on the same under reverse charge and also be eligible to take ITC of the IGST so paid.

Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided IGST on import of services has been paid on the part of services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

(B) Supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India qualifies as 'export of services' - Circular No. 161/17/2021 GST dated 20.09.2021

Generally, services are provided by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India.

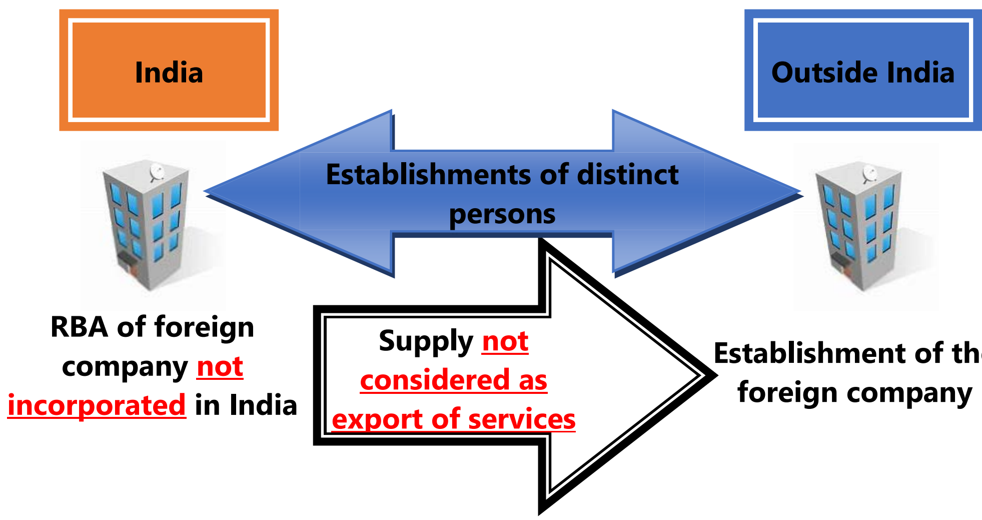
Definition of "export of services" (discussed herein), places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of the IGST Act, cannot be treated as export. Thus, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign

company outside India will not be covered under definition of export of services.

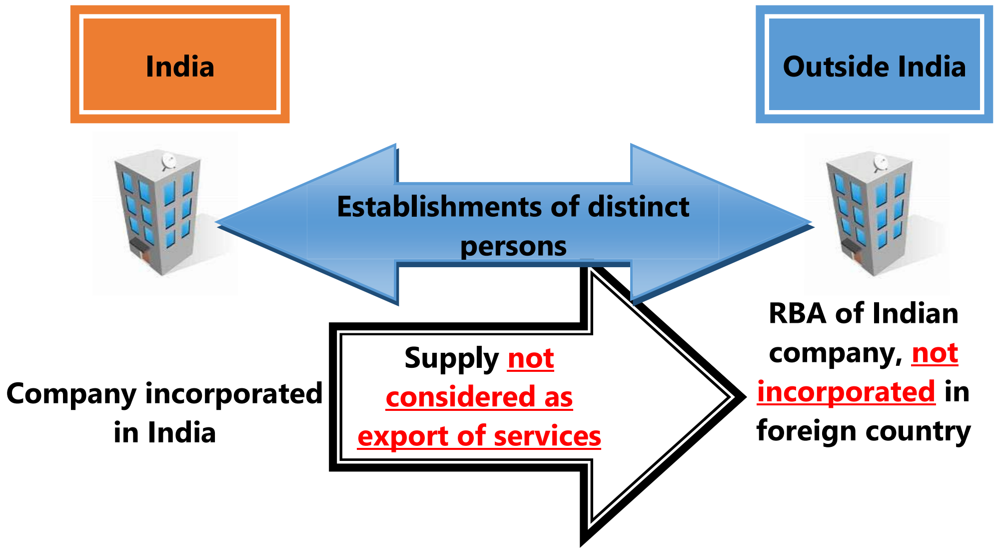
Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office (hereinafter referred to as RBA), then the said RBA of the foreign company, located in India, shall be treated as establishment of the said foreign company in India.

Similarly, if any company incorporated in India, is operating through a RBA in any country outside India, then that RBA shall be treated as the establishment of the said company in the said country.

In view of the above, it can be stated that supply of services made by a RBA of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of section 2(6) of IGST Act.



Similarly, any supply of service by a company incorporated in India to its RBA, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.



From the perusal of the definition of "person" under section 2(84) of the CGST Act and the definitions of "company" and "foreign company" under section 2 of the Companies Act, 2013[7], it is observed that a company

[7] ***Section 2(84) of the CGST Act*** *provides that* ***"person"*** *includes-*

(a) ....

(b) ....

(c) a company;

(d) ....

(e) ....

(f) ....

(g) ....

(h) any body corporate incorporated by or under the laws of a country outside India;

(i) ....

(j) ....

(k) Central Government or a State Government;

(l) ....

(m) ....

(n) ....

Definitions of company and foreign company as provided under section 2 of Companies Act 2013 are as under:

Company *means a company incorporated under this Act or under any previous company law.*

incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities.

Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

In view of the above, it is 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 the 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".

Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of section 2(6) for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8.

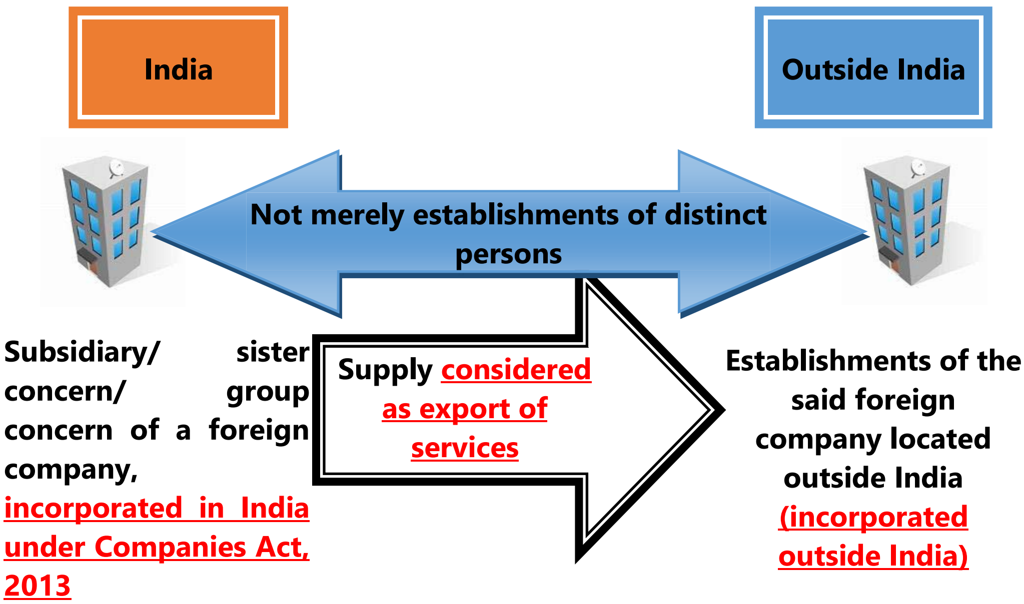
Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8.

Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under section 2(6).

Foreign company *means any company or body corporate incorporated outside India which—*

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.



Common provisions/aspects for export of goods and services

(i) Supplies to a SEZ unit or SEZ developer

Supply to a SEZ unit/developer is zero-rated but all the supplies are not zero-rated. The supplies to a SEZ unit/developer shall be zero rated and the supplier shall be eligible for refund of unutilized ITC or tax paid as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit ***for authorised operations***.

An endorsement to this effect shall have to be issued by the specified officer of the Zone. Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ unit/developer ***for authorised operations***, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit – whether to be treated as an inter-State supply or an intra-State supply

As per section 7(5)(b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply in the course of inter-State trade or commerce.

However, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located *[Please refer Chapter 3 – Place of Supply in Module 1 of this Study Material for detailed discussion of said provisions]*. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.

It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply *[Circular No. 48/22/2018 GST dated 14.06.2018]*.

(ii) Transactions with EOUs

Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter *[Circular No. 8/8/2017 GST dated 04.10.2017 as amended]*.

However, supplies to EOUs are treated as deemed exports and refund of tax paid on deemed exports is admissible either to the supplier or the recipient.

(iii) Procedure for export under bond/LUT without payment of tax

Procedure for merchant exports

Refer point (iii) under heading "Export of goods".

Procedure for direct exports [Rule 96A of the CGST Rules]

(a) Exporter has to execute the bond or LUT prior to export, binding himself to pay the tax due along with interest @ 18% within: -

Export of goods	Export of services
15 days after the expiry of 3 months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India.	15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India

These provisions are also applicable in respect of zero-rated supply of goods and/or services to a SEZ unit/developer without payment of IGST.

Proviso to section 16(3) provides that the registered person making zero rated supply of goods, without payment of tax shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under section 16(3) along with the applicable interest under section 50 of the CGST Act within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (FEMA) for receipt of foreign exchange remittances, in such manner as may be prescribed. Rule 96B prescribing the manner in relation to this, lays down that proceeds of export of goods need to be realized within the period allowed under FEMA for receipt of foreign exchange remittances. Non/partial realization of such proceeds may result in recovery of any refund paid to the taxpayer with interest under section 50 of the CGST Act. *[Provisions of rule 96B have been discussed in detail in Chapter 15 - Refunds in this Module of the Study Material.]*

(b) Failure to export goods and pay the tax due along with interest within the period specified in (a) above results in withdrawal of the facility of export without payment of IGST and recovery of the said amount under section 79 of the CGST Act. The facility, however, can be restored on payment of the said amount *[Notification No. 37/2017 CT dated 04.10.2017]*.

(c) All registered persons are eligible to furnish a LUT in place of a bond except those who have been prosecuted for cases involving an amount exceeding ₹ 250 lakh *[Notification No. 37/2017 CT dated 04.10.2017]*.

(d) The details of the export invoices should be submitted in GSTR-1. These details shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

Clarification on furnishing of bond/LUT

Circular No. 08/08/2017 GST dated 04.10.2017 as amended vide *Circular No. 40/14/2018 GST dated 06.04.2018 & Circular No. 88/07/2019 GST dated 01.02.2019* has clarified the following with regard to furnishing of bond/LUT for export without payment of tax:

(a) Validity of LUT: The LUT shall be valid for the whole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub-rule (1) of rule 96A of the CGST Rules (as given in the table above) and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee.

(b) Form for bond/LUT: The registered person (exporter) shall fill the relevant form on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online.

(c) Documents for LUT: No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

(d) Acceptance of LUT/bond: A LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish a LUT in place of bond, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected *ab initio*.

(e) Bank guarantee: Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding ₹ 250 lakh. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

(f) Clarification regarding running bond: The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit / credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

(g) Sealing by officers: Till mandatory self-sealing is operationalized, sealing of containers, wherever required to be carried out under the supervision of the officer, shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.

(h) **Realization of export proceeds in Indian Rupee:** Para A(v) Part-I of *RBI Master Circular No. 14/2015-16, dated 1st July, 2015* (updated as on 5th November, 2015) states that "there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2023), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees, but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan". Further, section 2(6) of the IGST Act, 2017 allows realization of export proceeds of services in INR, wherever allowed by the RBI.

Accordingly, it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.

(i) **Jurisdictional officer:** In exercise of the powers conferred by sub-section (3) of section 5 of the CGST Act, it is hereby stated that the LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

(iv) Export to Nepal and Bhutan

Export of goods: Export of goods to Nepal or Bhutan falls within the definition of 'export of goods' under the IGST Act as goods are taken from

India to a place outside India. India has rupee trade with Nepal and Bhutan. The RBI regulations allow receipt of payment in Indian rupees in case of exports to Nepal and Bhutan. In case of export of goods under GST law, receipt of export proceeds in convertible foreign exchange is not a pre-requisite. [However, non-realization of export proceeds within the time prescribed under FEMA may result in recovery of any refund paid to the taxpayer.] Hence, export of goods to Nepal and Bhutan will be treated as zero rated and consequently will also qualify for all the benefits available to zero rated supplies under the GST regime.

Export of services: In case of export of services, wherever permitted by the Reserve Bank of India, receipt of payment in Indian rupees is allowed in terms of section 2(6). As stated earlier, the RBI regulations allow receipt of payment in Indian rupees in case of exports to Nepal and Bhutan. Consequently, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees is considered as export of services subject to fulfillment of other conditions.

Therefore, exports of both goods and services to Nepal and Bhutan are treated as 'normal exports', i.e. goods and services can be exported to Nepal and Bhutan under LUT.

TEST YOUR KNOWLEDGE

1. *Explain how imports are taxed under GST.*
2. *Describe how exports are taxed under GST.*
3. *Is it necessary to execute a bond for effecting zero rated supplies? Elucidate.*
4. *A Ltd. enters into an agreement for sale of goods with B Ltd., a company based in UAE. B Ltd. requires the goods to be delivered by A Ltd. to C Ltd., a company based in Karnataka.*

   Whether the transaction will qualify as export of goods under GST? Analyze the scenario and offer your comments.

5. *A Ltd. is making zero rated supplies which are also specifically exempt from GST. The company has paid input tax of ₹ 2,00,000 on inputs and input services which have been used exclusively in effecting such zero rated supplies.*

   Examine if A Ltd. can avail ITC of input tax of ₹ 2,00,000 paid on inputs and input services used exclusively in effecting such zero rated supplies.

6. *Whether services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ unit/developer by a supplier located in the same State as that of the SEZ unit/developer should be treated as an inter-State supply under section 7(5)(b) or an intra-State supply in terms of section 8(2) read with section 12(3)(c)? Examine.*

7. *Mr. Amar Kant, a Chartered Accountant, being a partner in GST registered firm orders a gaming software for his son from a company located in USA. He makes the payment for the same from his personal bank account.*

   Examine whether the transaction will be liable to GST. If yes, in whose hands the tax liability will arise?

8. *'Separate LUT is to be furnished for every export supply.'*

   With reference to the provisions of the GST law, examine the veracity or otherwise of the statement.

9. *AXT Ltd. entered into a high sea sale transaction with BYU Ltd. for certain goods. AXT Ltd. is of the view that GST on such sale transaction is payable at the time of such sale and basic customs duty is payable at the time of filing the bill of entry for import of goods.*

   Examine whether the view taken by AXT Ltd. is correct.

ANSWERS/HINTS

1. All imports are deemed as inter-State supplies for the purposes of levy of GST (IGST). The incidence of tax follows the destination principle and the tax revenue accrues to the State where the imported goods and services are consumed. IGST paid on import of goods and services is available as ITC for set off against the output tax liability. IGST on import of goods is levied under the IGST Act but the machinery of the customs law is used to levy and collect the same.

2. Exports of goods and services are zero rated. The exporter can export under bond/LUT without payment of IGST and claim refund of ITC. In case of notified class of persons or notified goods or services, he may pay IGST at the time of export and claim refund thereof.

3. No. The facility to export under LUT has been extended to all zero rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of ₹ 2.5 crore) vide *Notification No. 37/2017 CT dated 4.10.2017*. The other conditions for executing LUT have been specified in *Circular No. 8/8/2017 GST dated 4.10.2017 as amended.*

4. As per the definition of export of goods provided under section 2(5), export of goods means taking goods out of India to a place outside India.

Since in the given case, the goods remain in India, i.e. with C Ltd. located in Karnataka, the transaction between A Ltd. and B Ltd. cannot be treated as export of goods under GST.

5. As per section 16(2), ITC may be availed for making zero rated supplies, notwithstanding that such supplies are exempt supplies. However, the same is subject to provisions u/s 17(5) of the CGST Act, i.e. blocked credit.

Hence, A Ltd. can take credit of ₹ 2,00,000 even if the outward zero rated supply is exempt from GST. However, the credit would not be available in respect of the inputs and input services, the credit on which is blocked under section 17(5) of the CGST Act.

6. *Circular No. 48/22/2018 GST* has clarified on this issue as under:

As per section 7(5)(b), the supply of goods and/or services to a SEZ unit/developer is treated as a supply of goods and/or services in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c), the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply are in the same State/ Union territory, it would be treated as an intra-State supply.

It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. In the instant case, section 7(5)(b) is a specific provision relating to supplies of goods and/or services made to a SEZ unit/developer, which states that such supplies shall be treated as inter-State supplies.

Further, proviso to section 8(2) also lays down that intra-State supply of services do not include supply of services to a SEZ unit/developer. It is, therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ unit/developer shall be treated as an inter-State supply.

7. The supply of gaming software is in the nature of OIDAR service in terms of section 2(17).

The transaction is for personal consumption of Mr. Amar Kant and the payment has also been made from the personal bank account of Mr. Amar Kant and not from the bank account of his GST registered firm. Therefore, being an unregistered person receiving OIDAR service in taxable territory, Mr. Amar Kant is a non-taxable online recipient in terms of section 2(16).

Services received from a provider of service located in a non- taxable territory by an individual in relation to any purpose other than commerce, industry or any other business or profession is exempt from IGST. However, such exemption is not available in case of OIDAR services *[Notification No. 9/2017 IT (R) dated 28.06.2017]*.

Therefore, being an OIDAR service provided by a supplier located outside India and received by a non-taxable online recipient, the same is liable to GST.

Tax on service supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient is payable by the recipient of such service under reverse charge. Therefore, tax on OIDAR services provided by the company located in USA to Mr. Amar Kant, a non-taxable online recipient, will be payable by such company under forward charge.

8. No, the statement is not correct.

The LUT remains valid for the whole financial year and there is no need to furnish separate LUT for each export supply.

However, in case goods are not exported within the time limit specified in rule 96A(1) of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub rule, the facility of export under LUT will be deemed to have been withdrawn. However, if the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee.

Rule 96A(1) provides *inter alia* that an exporter of goods has to execute the bond or LUT prior to export, binding himself to pay the tax due along with interest @ 18% within 15 days after the expiry of 3 months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India.

9. AXT Ltd.'s view is partially correct.

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 (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

Thus, GST is not leviable on high sea sales. Therefore, AXT Ltd.'s view that GST is payable on a high-sea sale transaction at the time of sale, is not correct.

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Therefore, AXT Ltd.'s view that basic customs duty is payable at the time of filing the bill of entry for import of goods is correct.

CHAPTER 15

REFUNDS

The section numbers referred to in the Chapter pertain to CGST Act and rule numbers referred to in the Chapter pertain to CGST Rules, unless otherwise specified. Examples/Illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- identify the situations leading to refund claim
- explain the time limit for claiming refund and concept of 'relevant date' to calculate such time limit
- identify the conditions to be satisfied and documents to be filed to claim the refund in different circumstances
- illustrate the circumstances under which refund claim may be withheld by the Department
- explain the 'principle of unjust enrichment'
- describe the provisions relating to 'Consumer Welfare Fund'.
- explain provisions relating to refund to UN Bodies, Embassies, etc.
- explain the provisions relating to refund of tax wrongfully collected and paid to Central Government or State Government
- compute the interest payable to the applicant on delayed refunds

1. INTRODUCTION

Timely refund mechanism is essential in tax administration, as it facilitates trade through the release of blocked funds for working capital, expansion and modernisation of existing business.

The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime. Under the GST regime, there is a standardised form for making any claim for refunds. The claim and sanctioning procedure is primarily online and time bound, which is a marked departure from the earlier time consuming and cumbersome procedure. Further, provisions relating to refund are more transparent as compared to provisions contained in the earlier indirect tax regime.

Chapter XI - Refunds [Sections 54 to 58] of the CGST Act, 2017 and Chapter X – Refund [Rule 89 to 97A] of the CGST Rules, 2017 stipulates the provisions relating to refunds. State GST laws also prescribe identical provisions in relation to refunds. Further, section 15 of the IGST Act, 2017 prescribes for the refund of integrated tax paid on supply of goods to tourist leaving India.

Provisions of Refunds under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Following provisions have been discussed in this Chapter:

Chapter XI of CGST Act: Refunds	
Section	**Section**
54	Refund of tax
55	Refund in certain cases
56	Interest on delayed refunds
57	Consumer Welfare Fund
58	Utilisation of fund
Chapter VI of IGST Act: Refund of integrated tax to international tourist	
Section	**Particulars**
15	Refund of integrated tax paid on supply of goods to tourist leaving India.
Chapter X of CGST Rules: Refund	
Rule	**Particulars**
89	Application for refund of tax, interest, penalty, fees or any other amount
90	Acknowledgement
91	Grant of provisional refund
92	Order sanctioning refund
93	Credit of the amount of rejected refund claim
94	Order sanctioning interest on delayed refunds
95	Refund of tax to certain persons
96	Refund of integrated tax paid on goods or services exported out of India

96A	Export of goods or services under bond or Letter of Undertaking
96B	Recovery of refund of unutilized input tax credit or integrated tax paid on export of goods where export proceeds are not realized within stipulated time
97	Consumer Welfare Fund
97A	Manual filing and processing

Before proceeding into detailed provisions of the chapter, let us first go through the relevant definitions.

2. RELEVANT DEFINITIONS

- **Drawback:** in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods; [Section 2(42)]

- **Refund:** Refund includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under section 54(3) [Explanation 1 to section 54].

- **Tourist**: "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 [Explanation to section 15].

- **Zero rated supply:** Zero-rated supply shall have the meaning assigned to it in section 16 [Section 2(23) of the IGST Act]. As per section 16(1) of IGST Act, "zero rated supply" means any of the following supplies of goods or services or both, namely:–

  (a) export of goods or services or both; or

  (b) supply of goods or services or both ***for authorised operations*** to a Special Economic Zone developer or a Special Economic Zone unit.

❖ **Recipient of goods or services:** "Recipient" of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

3. REFUND OF TAX [SECTION 54 OF THE CGST ACT]

A. Situations leading to refund claims

A claim for refund may arise in the following situations:

(i) Export/supply to SEZ developer/unit on payment of IGST

In case where notified class of goods and/or services are exported or, notified class of persons export goods and/or services or supply goods and/or services to an SEZ developer/unit, **on payment of IGST**, subject to such conditions, safeguards and procedure as may be prescribed, refund of such IGST paid on goods and/or services supplied is available [Section 16(4) of IGST Act].

(ii) Refund of unutilized ITC – In case of export/supply to SEZ developer/unit **without payment of IGST** or in case of inverted duty structure, refund of unutilized ITC is available.

(iii) Refund of tax paid on the supply of goods regarded as deemed exports may be claimed.

(iv) Refund of any balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed [Section 49(6)].

(v) Refund on account of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued (tax paid on advance payment).

(vi) Refund of tax wrongly collected and paid to the Government (i.e. CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa) [Section 77 of the CGST Act and section 19 of the IGST Act].

(vii) Refund of the IGST paid by tourist leaving India on any supply of goods taken out of India by him [Section 15 of IGST Act].

(viii) Tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court.

(ix) On finalization of provisional assessment, if any tax becomes refundable to taxpayer (on account of assessed tax on final assessment being less than the tax deposited by the taxpayer) [Section 60].

(x) Refund of taxes on purchases made by UN bodies or embassies etc. [Section 54(2)].

(xi) Refund of advance tax deposited by a casual taxable person/ Non-resident taxable person [Section 54(13)].

(xii) Refund of excess payment of tax.

The list is only indicative and not exhaustive. Detailed provisions relating to some of the sections referred above have been discussed in the other chapters at respective places.

B. Application for refund claim [Rule 89]

1. Application Form for claiming refund [Section 54(1) read with rule 89(1)]

Refund in general cases

- Any person[1] claiming refund of any tax, interest, penalty, fees or any other amount paid by him may file an application in **Form GST RFD-01** electronically through GST common portal [Section 54(1) read with rule 89(1)].

Refund in excess balance of electronic cash ledger

- ***A registered person claiming refund of any balance in the electronic cash ledger in accordance with the provisions of section 49(6), may claim such refund in Form GST RFD-01 electronically through GST common portal*** [Section 49(6) and proviso to section 54(1) read with rule 89(1)].

  It is clarified that the amount deducted/collected as TDS/TCS by TDS/ TCS deductors/collectors under the provisions of section 51 /52 and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose of discharging tax liability.

  The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers.

[1] *except the persons covered by notification issued under section 55 like UN Bodies, Embassies etc.*

Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under the CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger as above[2].

TDS/TCS credited to electronic cash ledger can also be claimed as refund

- ***Further, a registered person, who has been issued a certificate of registration under GST, shall undergo Aadhaar authentication for filing of refund application in Form RFD-01.***

- However, in case of **refund of IGST paid on goods exported out of India[3]**, there is no need for filing a separate refund application in Form GST RFD-01 since the **shipping bill filed by the exporter is itself treated as a refund claim**.

  Refund of tax paid on export of goods

  Shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India [Rule 96]. *The provisions relating to refund of IGST on export of goods outside India have been discussed in detail subsequently in this chapter.*

Filing of refund claim:

- **Supplies regarded as deemed exports**: In respect of supplies regarded as deemed exports, either recipient or supplier are allowed to file the refund application. The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the supplier can seek refund only in case where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund [Second proviso to rule 89(1)].

  Either supplier or recipient allowed to file refund application in case of deemed exports.

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[2] *Circular No. 166/22/2021 GST dated 17/12/2021*

[3] *Refund of IGST paid on goods exported out of India is available either where class of goods exported are notified or class of persons making zero-rated supply of goods are notified u/s 16(4).*

However, in a case when the refund was being claimed by the recipients, they were facing difficulties on the portal to claim refund of tax paid since the portal required them to first debit the amount so claimed from their electronic credit ledger. Considering this difficulty, it is clarified that in a case where **recipient** of deemed export supplies **claims the refund** on such supplies, there is **no restriction on** such recipient in **availing ITC** of the tax paid on such supplies because when they proceed to file refund on the portal, the system requires them to debit the amount so claimed from their electronic credit ledger[4].

However, it is important to note that the ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of section 17. This implies that entire amount paid by the recipient will be available as ITC irrespective of the fact whether it is blocked in terms of section 17(5)[5][6].

Further, there arose a question as to whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89(5) (discussed subsequently in this chapter). It is clarified that as seen above, since the ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of

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[4] *Circular No. 147/03/2021 GST dated 12.03.2021*

[5] *Circular No. 172/04/2022 GST dated 06.07.2022*

[6] *Provisions of Blocked Credit are discussed in detail in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.*

the CGST Act, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5)[7].

- **Supplies to a Special Economic Zone unit or a Special Economic Zone developer**: In respect of supplies to a SEZ unit/developer, the application for refund shall be **filed by** the -

  (a) Supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone.

  (b) Supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of SEZ [First proviso to rule 89(1)].

  Explanation - For the purposes of this sub-rule, "specified officer" means a "specified officer" (Joint/ Deputy/ Assistant Commissioner of Customs for the time being posted in SEZ) or an "authorised officer" (Inspector/ Preventive Officer/ Superintendent of Customs posted in SEZ and authorised by specified officer to discharge any of his functions) under SEZ Rules.

- **Supplies by Casual taxable person (CTP) /Non-resident taxable person (NRTP)[8]**: The amount of advance tax deposited by a casual taxable person or a non-resident taxable person under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)].

Refund to be claimed in the last return required to be furnished by CTP/NRTP.

[7] *Circular No. 172/04/2022 GST dated 06.07.2022*

[8] *The concept of casual taxable person and non-resident taxable person has been explained in detail in Chapter 8 – Registration in Module 2 of this Study Material.*

Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Third proviso to rule 89(1)].

2. Time limit within which refund claim can be filed

Any person claiming refund of any tax, interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of **2 years from the 'Relevant Date'** in prescribed form and manner [Section 54(1)].

✪ ***It has been clarified that time limit of 2 years not applicable in case of refund of excess balance in the electronic cash ledger***[9]

✪ ***In case where proper officer has issued a Deficiency Memo to the applicant requiring him to file a fresh refund claim, the time period from the date of filing of the refund claim till the date of communication of the deficiencies in the prescribed form by the proper officer, shall be excluded from the above period of '2 years' [Proviso to rule 90(3)].***

Meaning of 'Relevant Date' [Explanation 2 to section 54]

'Relevant Date' has been defined in Explanation 2 to section 54. Accordingly it **means**:-

9 *Circular No. 166/22/2021 GST dated 17/12/2021*

S.No.	Cases	Relevant Date
1	**In case of goods exported out of India** where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs/input services used in such goods and	
	(i) goods are exported by sea or air	date on which the ship or the aircraft in which such goods are loaded, leaves India
	(ii) goods are exported by land	date on which such goods pass the frontier
	(iii) goods are exported by post	date of dispatch of goods by the Post Office concerned to a place outside India
2	In case of supply of goods regarded as **deemed exports** where a refund of tax paid is available in respect of the goods	Date on which the return relating to such deemed exports is furnished, ***irrespective of the fact whether the refund claim is filed by the supplier or by the recipient. As the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier[10].***

[10] *Circular No. 166/22/2021 GST dated 17/12/2021*

3	***In case of zero-rated supply of goods or services or both to a SEZ developer or a SEZ unit where a refund of tax paid is available in respect of such supplies themselves (in case of zero-rated supply by notified class of persons), or as the case may be, the inputs or input services used in such supplies***	***Due date for furnishing of return under section 39 in respect of such supplies***
4	**In case of services exported out of India** where a refund of tax paid is available in respect of services themselves (in case of zero-rated supply by notified class of persons or supply of notified class of services), as the case may be, the inputs or input services used in such services, and	
	(i) the supply of services had been completed prior to the receipt of such payment	Date of receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India
	(ii) payment for the services had been received in advance prior to the date of issue of the invoice	Date of issue of invoice
5	Where tax becomes refundable as a consequence of **judgment, decree, order or direction** of the Appellate Authority, Appellate Tribunal/any court	Date of communication of such judgment, decree, order or direction

6	In case of refund of **unutilised ITC** on account of inverted duty structure	Due date for furnishing of return under section 39 for the period in which such claim for refund arises
7	In the case where tax is paid provisionally under this Act/rules made thereunder	Date of adjustment of tax after the final assessment thereof
8	In the case of a person, other than the supplier	Date of receipt of goods or services or both by such person
9	Any other case	Date of payment of tax

Clarification on bunching of refund claims across financial years

It has been clarified that while filing the refund claim, an applicant may, at his option, file a refund claim for a tax period or by clubbing successive tax periods. Earlier, there was a restriction on bunching of refund claims across financial years; now said restriction has also been relaxed.

For instance, a registered person opting to file Form GSTR-1 on quarterly basis can apply for refund on a quarterly basis or clubbing successive quarters and these quarters may spread across different financial year. Thus, he can file refund claim for quarters: Jan-Mar, Apr-Jun and July-Sep, while filing the refund claim[11].

3. Documentary evidences for filing refund claim

The applicant need not file elaborate documents along with the refund claim. Standardised and easy to understand documents have been prescribed. Thus, for every claim the main document prescribed is a statement of relevant invoices/shipping bills (NOT THE INVOICES THEMSELVES) pertaining to the claim.

Documentary evidences required for filing refund claim has been provided under the provisions of section 54(4) read with rule 89(2).

[11] *Circular No.135/05/2020 GST dated 31.03.2020*

Section 54(4)

Section 54(4) stipulates that the application shall be accompanied by —

(a) such documentary evidence as may be prescribed **to establish that a refund is due to the applicant**; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish **to establish that there is no unjust enrichment** (i.e. the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person).

However, where the amount claimed as refund is less than ₹ 2 lakh, it shall not be necessary for the applicant to furnish any documentary and other evidences but he **may file a declaration, based on the documentary or other evidences available with him, certifying that there is no unjust enrichment** i.e. the incidence of such tax and interest had not been passed on to any other person.

Rule 89(2)

In pursuance of said provisions, rule 89(2) has provided that the application for filing of refund claim shall be accompanied by any of the following documentary evidences as applicable, in Annexure 1 of Form GST RFD-01 for refund claim, to establish that a refund is due to the applicant:

In case where refund is on account of	Documentary evidence to be submitted
A judgment, decree, order/direction of Appellate Authority,	The reference number of the order and copy of the order passed by the proper officer or an Appellate Authority or Appellate Tribunal or Court resulting in such refund or reference number of the payment of the amount specified in section 107(6) and section 112(8) claimed as refund *(i.e. amount to be deposited*

Appellate Tribunal/any Court	*at the time of filing of appeal before Appellate Authority or Appellate Tribunal).*
export of services	statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates (BRC/FIRC), as the case may be
export of goods, ***other than electricity***	a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices. It is important to note that realization of convertible foreign exchange or Indian Rupees wherever permitted by RBI is one of the conditions for export of services whereas in case of export of goods, realization of consideration is not a pre-condition. Consequently, documentary evidence in the form of a statement containing no. and date of relevant BRCs/FIRCs are not required here[12]. However, in case of non-realization of consideration in terms of FEMA, the exporter shall deposit the amount so refunded to the extent of non-realization of sale proceed along with interest within 30 days [Rule 96B] *[discussed in detail subsequently in this chapter].*
export of electricity	***(i) a statement containing:*** ❑ ***number and date of the export invoices,*** ❑ ***details of energy exported,*** ❑ ***tariff per unit for export of electricity as per agreement,***

[12] *Circular No. 37/11/2018-GST dated 15.03.2018*

	(ii) copy of Statement of Scheduled Energy for exported electricity by Generation Plants[13] and ***(iii) the copy of agreement detailing the tariff per unit***	
supply of goods is made to a SEZ unit or a SEZ developer	statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding goods admitted in full for authorized operations as endorsed by the specified officer of SEZ.	In addition, a declaration to the effect that tax has not been collected from the SEZ unit/ SEZ developer is also required to be furnished.
supply of services made to a SEZ unit or a SEZ developer	statement containing the number and date of invoices, the evidence regarding receipt of services for authorized operations as endorsed by the specified officer of SEZ, and the details of payment, along with proof thereof, made by the recipient to the supplier for authorized operations as defined under the SEZ Act, 2005.	
deemed exports	Statement containing the number and date of invoices along with an:  (i) acknowledgment by the jurisdictional Tax officer of the Advance Authorisation (AA) holder or Export Promotion Capital Goods (EPCG) Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said AA/EPCG Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the	

[13] *This Statement is issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010.*

	recipient EOU that said deemed export supplies have been received by it. (ii) undertaking by the recipient of deemed export supplies that no ITC on such supplies has been availed of by him. (iii) 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[14].
refund of any unutilised ITC accumulated on account of inverted duty structure	a statement containing the number and the date of the invoices received and issued during a tax period
finalisation of provisional assessment	reference number of the final assessment order and a copy of the said order
tax wrongly collected and paid to the Government	Statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply
excess payment of tax	Statement showing the details of the amount of claim on account of excess payment of tax
agreement or contract for supply of service has been cancelled or terminated and the refund is claimed by an unregistered person (Please refer the detailed	***Statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or***

[14] *Notification No. 49/2017 CT dated 18.10.2017*

discussion given after the Table**)	***termination of such agreement along with proof thereof***
	A certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices

Note - Documentary evidence pertaining to passing of incidence of tax

Declaration *where refund claim ≤ ₹ 2 lakh*

Further, a declaration needs to be furnished to establish that there is no unjust enrichment in the case of the applicant[15], in a case **where the amount of refund claimed does not exceed ₹ 2 lakh**.

Certificate *where refund claim > ₹ 2 lakh*

However, **where the amount of refund claimed exceeds ₹ 2 lakh**, a Certificate in Annexure 2 of Form GST RFD-01 needs to be furnished by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment in the case of the applicant. ***However, said certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.***

No Certificate No declaration required

Further, **neither a declaration by the applicant nor a certificate by a Chartered Accountant/Cost Accountant** is required to be furnished in the following cases:

(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

[15] *Establishing that there is no unjust enrichment means establishing that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person. This concept has been discussed in detail later in this chapter.*

(b) refund of unutilised ITC in case of zero rated supplies made without payment of tax or on account of inverted duty structure;

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which *invoice* has not been issued, or where a refund voucher has been issued. *The expression* ***"invoice"*** *referred here means invoice conforming to the provisions contained in section 31*[16].

(d) refund of tax in pursuance of section 77, i.e. tax paid on a transaction treating it as an intra-State supply, but which is subsequently held to be an inter-State supply or *vice-versa*.

(e) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Further, neither a declaration by the applicant nor a certificate by a Chartered Accountant/Cost Accountant is required to be furnished in case of refund of excess balance in electronic cash ledger[17]

***** Prescribing manner of filing an application for refund by unregistered persons***

There are cases where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

[16] *Provisions relating to 'invoice' have been discussed in detail in Chapter 9 – Tax Invoice; Credit and Debit Notes in Module 2 of this Study Material.*
[17] *Circular No. 166/22/2021 GST dated 17/12/2021*

Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of section 34 may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST[18].

Section 54(1) provides that ANY PERSON can claim refund, by making an application upto 2 years from the relevant date. Further, in terms of section 54(8)(e), in cases where the unregistered person has borne the incidence of tax and has not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

Thus, in order to enable such unregistered person to file application for refund under section 54(1) in the situations discussed above, a functionality is available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person' in Form GST RFD -01. Further, rule 89(2) provides for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application, as mentioned in Table given earlier.

Moreover, it has been provided that a certificate by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment in the case of the applicant is not required to be furnished in

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[18] *Where the time period for issuance of credit note under section 34 has not expired at the time of cancellation/termination of agreement/contract for supply of services,the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 has already expired. Provisions relating to credit note have been discussed in detail in Chapter 9 – Tax Invoice, Credit and Debit Notes in Module 2 of this Study Material.*

cases where refund is claimed by an unregistered person who has borne the incidence of tax even if the amount of refund claimed exceeds ₹ 2 lakh.

Relevant date for filing of refund

As seen earlier, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person. In the given cases of refund, the date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person[19].

C. Procedure on receipt of refund claim

1. Acknowledgment of refund claim [Rule 90]

I. Where the application relates to:

(a) Claim for refund from the electronic cash ledger:

An acknowledgment in prescribed form shall be made available to the applicant[20], clearly indicating the date of filing of the claim for refund [Rule 90(1)].

Acknowledgement of refund

(b) Other refund claims:

- The application shall be forwarded to the proper officer.
- The proper officer shall, within a period of 15 days of filing of the said application, scrutinize the application for its completeness.

[19] *Circular No. 188/20/2022 GST dated 27.12.2022*

[20] *through the Common Portal electronically*

- Where the application is found to be complete in terms of rule 89, an acknowledgement in prescribed form shall be made available to the applicant through the common portal electronically [Rule 90(2)]. Refund acknowledgment clearly indicates the date of filing of the claim for refund.

II. Deficiencies in refund claim – Issuance of Deficiency Memo:

Deficiency Memo

- Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in Deficiency memo[21], requiring him **to file a fresh refund application after rectification of such deficiencies** [Rule 90(3)].

  The time period from the date of filing of the refund claim till the date of communication of the deficiencies in the prescribed form by the proper officer, shall be excluded from the period of '2 years' as specified under section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

- Where deficiencies have been communicated to applicant under the SGST Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under CGST Rules, 2017 [Rule 90(4)].

III. Withdrawal of refund claim

- ***The applicant may, at any time before issuance of provisional refund sanction order or final refund sanction order or payment order or refund withhold order or show-cause notice, in respect of any refund application filed, withdraw the said application for refund by filing an application in the prescribed form [Rule 90(5)].***

- ***On submission of such withdrawal application, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing refund***

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[21] *through the Common Portal electronically*

application, shall be credited back to the ledger from which such debit was made [Rule 90(6)].

2. Grant of provisional refund [Section 54(6) read with rule 91]

GST law provides for grant of provisional refund of 90% of the total refund claim, in case the claim relates for refund arising on account of zero-rated supplies. The provisional refund would be paid within 7 days after giving the acknowledgement. The remaining 10% can be refunded later after due verification of documents furnished by the applicant. The provisional refund would not be granted to such supplier who was, during any period of 5 years immediately preceding the refund period, was prosecuted for any offence where the amount of tax evaded exceeds ₹ 2.5 crores.

90% of the total refund claim is paid within 7 days where refund arises on account of zero-rated supplies

Detailed provisions have been outlined hereunder:

Section 54(6) stipulates that:

- The proper officer may, in the case of any claim for **refund on account of zero-rated supply of goods or services or both** made by registered persons,
- **other than** such category of registered persons as may be **notified** by the Government on the recommendations of the Council,
- **refund on a provisional basis, 90% of the total amount so claimed**,
- in such manner and subject to such conditions, limitations and safeguards as may be prescribed** and
- thereafter make an order under section 54(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

****Conditions, limitations and safeguards** have been prescribed under rule 91. It stipulates as following:

- The provisional refund shall be granted subject to the condition that the person claiming refund has, during any period of 5 years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law **where the amount of tax evaded exceeds ₹ 2.5 crores**.

- The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being *prima facie* satisfied that the amount claimed as refund is due to the applicant in accordance with the provisions of section 54(6), shall make an order in prescribed form, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement.

  However, said order shall not be required to be revalidated by the proper officer.

- The proper officer shall issue a payment order for the amount sanctioned. The same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice.

  However, the payment order shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued.

- The Central Government shall disburse the refund based on the consolidated payment advice.

3. Order of refund [Section 54(5), (7) read with rule 92]

- Section 54(5) stipulates that if, on receipt of any such application, the proper officer is satisfied that the whole/part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund *[discussed in detail subsequently]*.

- However, in certain specified circumstances, the refundable amount is to be paid to the applicant instead of being credited to the Consumer Welfare Fund [Section 54(8)] – *Discussed in detail subsequently]*.

- **Refund order:** Rule 92(1) provides that

  - ✓ where, upon examination of the application, the proper officer is satisfied that **a refund** under section 54(5) **is due and payable to the applicant**,
  - ✓ he shall **make an order sanctioning the amount of refund** to which the applicant is entitled,
  - ✓ **mentioning therein** the (i) amount, if any, refunded to him on a provisional basis, (ii) amount adjusted against any outstanding demand[22] and (iii) the balance **amount refundable**.

- **Refund to be granted both in cash and credit, based on original mode of payment:** The refund of tax shall be made proportionately, in cash and by recrediting the credit, based on original mode of payment. The amount refundable in cash shall be paid by issuance of order in prescribed from and the amount attributable to credit as ITC shall be recredited in the electronic credit ledger by issuing prescribed form.

  Where, upon examination of a refund application, the proper officer is satisfied that a refund under section 54(5) is due and payable to the applicant:

  (i) the proper officer shall make a refund order in prescribed form sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and

  (ii) for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue prescribed form re-crediting the said amount as ITC in electronic credit ledger.

[22] *under the CGST Act or under any existing law*

The above provision shall not apply to the refund of tax paid on zero-rated supplies or deemed export [Rule 92(1A)].

- **Where the proper officer is satisfied that the amount refundable under rule 92(1)/(1A)/(2)[23] is payable to the applicant[24]** instead of being credited to Consumer Welfare Fund, he shall make an refund **order** in prescribed form and issue a payment order for the amount of refund.

  Refund credited to applicant's bank account

  Amount of refund shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice.

  The refund order issued in prescribed form shall not be required to be revalidated by the proper officer.

  However, the payment order shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment order was issued [Rule 92(4)].

  The Central Government shall disburse the refund based on the consolidated payment advice [Rule 92(4A)].

- **Where the proper officer is satisfied that the amount refundable under rule 92(1)/(1A)/(2) is not payable to the applicant[25],** he shall make a refund order and issue an payment order for the amount of refund to be credited to the Consumer Welfare Fund [Rule 92(5)].

  Refund credited to Consumer Welfare Fund

- **Time-limit for issuance of refund order:** Refund order shall be issued by the proper officer within **60 days from the date of receipt of application** complete in all respects [Section 54(7)].

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[23] Rule 92(2)- withholding of refund - has been discussed subsequently
[24] under section 54(8)
[25] under section 54(8)

The time limit of 60 days shall be counted from the date of filing of the claim for refund as mentioned on the acknowledgment made available to the applicant [Section 54(7) read with rule 90(1) and 90(2)].

4. Issue of SCN and rejection of refund claim [Rule 92(3)]

In case the claim is sought to be rejected by the proper officer, a notice has to be given online to the applicant stating the ground on which the refund is sought to be rejected. The applicant needs to respond online within 15 days from the receipt of such notice. Thus, no claim can be rejected without putting the applicant to notice. The detailed provisions have been discussed hereunder:

- Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice to the applicant in prescribed form.
- Applicant will be required to furnish a reply within **15 days** of the receipt of such notice in prescribed form.
- The proper officer shall, after considering the reply furnished by applicant and after giving him an opportunity of being heard, make an order, sanctioning the amount of refund in whole or part, or rejecting the said refund claim.
- The said order shall be made available to the applicant electronically and the provisions of rule 92(1) relating to order sanctioning refund shall, *mutatis mutandis*, apply to the extent refund is allowed.
- No application for refund shall be rejected without giving the applicant an opportunity of being heard.

5. Withholding of refund claim [Section 54(10), (11) & (12)]

Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

The detailed provisions are as under:

Rule 92(2) stipulates that where the proper officer/Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10)/(11), he shall pass an order informing the applicant the reasons for withholding of such refund.

However, where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in prescribed form.

- **Section 54(10)** stipulates that where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the **specified date****, the proper officer may:

  (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

  (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

  ****Specified date** shall mean the last date for filing an appeal under this Act.

- **Section 54(11)** stipulates that where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

- However, where a refund is withheld under section 54(11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to **interest @ 6% p.a.***, if as a result of the appeal or further proceedings he becomes entitled to refund [Section 54(12)].

as notified vide* ***Notification No. 13/2017 CT dated 28.06.2017*

6. Credit of the amount of rejected refund claim [Rule 93]

- Where any deficiencies in refund claim have been communicated under rule 90(3) *[Rule 90(3) is discussed earlier]*, the amount earlier debited under rule 89(3) shall be re-credited to the electronic credit ledger [Rule 93(1)].

- Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in prescribed form [Rule 93(2)].

- For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal [Explanation to rule 93].

D. Principle of Unjust Enrichment [Section 54(8), (8A) & (9)]

1. Theory of unjust enrichment

Theory of unjust enrichment

- **'Unjust enrichment'** means retention of a benefit by a person that is unjust or inequitable. 'Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.

This principle stipulates that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of 'unjust enrichment' arises where retention of a benefit is considered contrary to justice or against equity[26].

- Theory of unjust enrichment, under GST, postulates that only the person who has **NOT** passed the incidence of tax will be eligible to claim the refund.
- Where the amount of tax has been recovered from the recipient, it shall be deemed that **'THE INCIDENCE OF TAX HAS BEEN PASSED ON TO THE ULTIMATE CONSUMER'**. [Explanation (ii) to rule 89]
- Under unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer. This is because GST is an indirect tax whose incidence is to be borne by the consumer. It is for this reason that every refund claim if sanctioned is first transferred to the Consumer Welfare Fund.
- If the claim of refund (barring specified exceptions) passes the test of unjust enrichment, it is paid to the applicant. The GST law makes this test inapplicable in case of refund of unutilized ITC, refund on account of exports, refund of payment of wrong tax (IGST instead of CGST + SGST and vice versa), refund of tax paid on a supply, which is not provided or when refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person *[These cases have been given in detail in next point]*. In all other cases, the test of unjust enrichment needs to be satisfied for the claim to be paid to applicant.

[26] *Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Customs 2005 (181) ELT 328 S.C*

- As discussed earlier, for crossing the bar of unjust enrichment, if the refund claim is upto ₹ 2 lakh, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim. For refund claims exceeding ₹ 2 lakh, a certificate from a Chartered Accountant/Cost Accountant will have to be given.

2. Cases where theory of unjust enrichment is not applicable

Section 54(8) stipulates that the refundable amount shall, instead of being credited to the **Consumer Welfare Fund**, be paid to the applicant, if such amount is relatable to —

(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

(b) refund of unutilized ITC in case of zero-rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77, i.e. tax paid on a transaction treated to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

3. Disbursement of refund of State Tax

The Government may disburse the refund of the State tax in such manner as may be prescribed [Section 54(8A)].

4. Refundable amount to be credited to Consumer Welfare Fund in all other cases

Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of section 54(8). Instead, refundable amount shall be credited to Consumer Welfare Fund [Section 54(9)]

E. Refund of unutilized ITC

The provisions relating to refund of unutilized ITC have been compiled and discussed as under:

1. Accumulation of Input Tax Credit (ITC)

Accumulation of Input Tax Credit (ITC) happens when the tax paid on inward supply is more than the tax liability on outward supply. Such accumulation can be utilized by the registered person for payment of output tax liability.

However, the GST Law permits refund of unutilised ITC at the end of a tax period in two scenarios, namely if such credit accumulation is on account of zero rated supplies or on account of inverted duty structure, subject to certain exceptions. In such cases, the Electronic Credit Ledger is to be debited by the applicant by an amount equal to the refund so claimed [Rule 89(3)].

2. Cases where refund of unutilized ITC is available

As per section 54(3), a registered person may claim refund, of any **unutilised ITC at the end of any tax period**[27], in the following cases:

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[27] *A tax period is the period for which return is required to be furnished [Section 2(106)].*

(a) Zero rated supplies without payment of tax: Zero Rated supply means supply of goods and/ or services ***for authorised operations*** to an SEZ developer/unit or export of goods and/or services. A registered person making zero rated supply may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC[28].

(b) Inverted duty structure: The term **'inverted duty structure'** has not been defined in the GST, however it refers to a situation where the rate of tax on inputs is higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except supply of goods or services as may be notified by the government.

Suppliers who supply goods to merchant exporters at the concessional rate of 0.1% [0.05% CGST and 0.05% SGST/UTGST or 0.1% IGST, as the case may be], under *Notification No. 40/2017 CT (R) dated 23.10.2017/ Notification No. 41/2017 IT (R) dated 23.10.2017*, subject to certain conditions specified in said notifications *[Discussed in detail in Chapter 14 – Import and Export under GST in this Module of the Study Material]*, are also eligible for refund on account of inverted tax structure.

Supply of specified goods/services where refund of unutilized ITC on account of inverted duty structure is NOT allowed: Government may, on the recommendations of the Council, notify supplies of certain goods or services or both where no refund of unutilized ITC on account of inverted duty structure is allowed.

For instance, supply of construction of complex services specified in para 5(b) of Schedule II of the CGST Act, rail locomotives powered from an external source of electricity or by electric accumulators, soya bean oil, olive oil, palm oil, coal, lignite, peat etc [29].

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[28] *It is important to note that notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed.*

[29] *Notification No. 15/2017 CT (R) dated 28.06.2017 and Notification No. 5/2017 CT (R) dated 28.06.2017. Examples given herein are only for information purpose.*

However, it is clarified that this restriction on refund of unutilized ITC of GST paid on inputs is not applicable in case of zero-rated supply of specified goods or services, i.e. (a) exports of said goods or services or both; or (b) supply of said goods or services or both to a SEZ developer/unit *[Circular No. 18/18/2017 GST dated 16.11.2017]*.

3. Application Form for claiming refund

The application for refund in such cases shall be filed in Form RFD-01.

4. Time-limit for claiming refund

Refund claim on account of inverted duty structure or on account of accumulated ITC in case of exports of goods/ services made against LUT/ bond without payment of IGST, the refund claim can be filed within 2 years from the relevant date; *relevant date is discussed earlier in heading B in this chapter*.

5. Doctrine of unjust enrichment not applicable

In such cases, the refundable amount shall, instead of being credited to the **Consumer Welfare Fund**, be paid to the applicant. In other words, doctrine of unjust enrichment is not applicable in these cases.

6. Amount to be claimed as refund

(i) **Rule 89(4)** stipulates that in the case of **zero-rated supply of goods or services or both** without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

where,-

A. **"Refund amount"** means the maximum refund that is admissible;

B. **"Net ITC"** means ITC availed on inputs *(see "Clarification on the term input" given subsequently)* and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both;

C. **"Turnover of zero-rated supply of goods"** means

(i) the value of zero-rated supply of goods made during the relevant period without payment of tax under bond/letter of undertaking

or

(ii) value which is **1.5 times the value of like goods domestically supplied** by the same or, similarly placed, supplier, as declared by the supplier,

whichever is less,

other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

D. **"Turnover of zero-rated supply of services"** means the value of zero-rated supply of services made without payment of tax under bond or LUT, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period.

E. **"Adjusted Total Turnover"** means the sum total of the value of:

(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding turnover of services; &

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding:

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.

F. **"Relevant period" means the period for which the claim has** been filed.

Explanation – For the purposes of this sub-rule, the value of goods exported out of India shall be taken as –

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply,

whichever is less

Clarification regarding manner of calculation of 'adjusted total turnover' under rule 89(4)

As seen above, the definition of the term **'Turnover of zero-rated supply of goods'** used in the above formula restricts the same to 1.5 times the value of like goods domestically supplied by the same/similarly placed supplier/as declared by the supplier.

Further, the term **"Adjusted Total Turnover"** includes "Turnover in a State/UT". As per section 2(112). "Turnover in a State/UT" includes turnover/ value of export/ zero-rated supplies of goods.

It is clarified that the same value of zero-rated/ export supply of goods, as calculated as per the definition of **"turnover of zero-rated supply of goods"**, needs to be taken into consideration while calculating "turnover in a State or a Union Territory", and accordingly, in "adjusted total turnover" for the purpose of this sub-rule.

Thus, the restriction of 1.5 times of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "adjusted total turnover" here.

In short, for the purpose of rule 89(4), the value of export/ zero-rated supply of goods to be included while calculating "adjusted total turnover" **WILL BE SAME** as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in this sub-rule.

The same can explained by the following example where actual value per unit of goods exported is more than 1.5 times the value of same/ similar goods in domestic market, as declared by the supplier:

example

Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

Net admissible ITC = ₹ 270

Outward Supply	Value per unit (₹)	No of units supplied	Turnover (₹)	Turnover as per amended definition (₹)
Local (Quantity 5)	200	5	1,000	1,000
Export (Quantity 5)	350	5	1,750	1,500 [1.5×(5×200)]
Total			2,750	2,500

The formula for calculation of refund as per rule 89(4) is:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷Adjusted Total Turnover

Turnover of zero-rated supply of goods (as per amended definition) = ₹ 1,500

Adjusted Total Turnover= ₹ 1,000 + ₹ 1,500 = ₹ 2,500 [and not ₹ 1,000 + ₹ 1,750]

Net ITC = ₹ 270

Refund Amount = ₹ (1,500 × 270)/2,500 = ₹ 162

Thus, the admissible refund amount in the instant case is ₹ 162.

[Circular No. 147/03/2021 GST dated 12.03.2021]

(ii) **Rule 89(4A)** stipulates that in the case of supplies received on which the supplier has availed the benefit of deemed exports[30], refund of ITC, availed in respect of other inputs/input services used in making zero-rated supply of goods or services or both, shall be granted.

(iii) **Rule 89(4B)** stipulates that where the person claiming refund of unutilised ITC on account of zero-rated supplies without payment of tax has –

(a) received supplies on which the manufacturer supplier has availed the benefit of supply of goods to merchant exporters at the concessional rate of 0.1%[31], or

(b) availed the benefit of exemption from IGST and Compensation Cess, in respect of the goods imported by EOU[32] or for the goods imported under Advance Authorisation (AA)/ EPCG[33],

the refund of ITC, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

(iv) **Rule 89(5)** stipulates that in the case of refund on account of **inverted duty structure**, maximum

[30] *under Notification No. 48/2017 CT dated 18.10.2017 [discussed in detail in Chapter 14 – Import and Export under GST in this Module of the Study Material.]*

[31] *Notification Nos. 41/2017 IT(R) or 40/2017 CT(R) both dated 23.10.2017. These export benefits have been explained in detail in Chapter 14 – Import and Export under GST in this Module of the Study Material.*

[32] *under Notification No. 78/2017 Cus dated 13.10.2017.*

[33] *under Notification No. 79/2017 Cus dated 13.10.2017.*

refund of ITC shall be granted as per the following formula –

$$= \frac{\textit{Turnover of inverted rated supply of goods \& services} \times \textit{Net ITC}}{\textit{Adjusted Total Turnover}} - \textit{Tax payable on such inverted rated supply of goods \& services} \times \frac{\textit{Net ITC}}{\textit{ITC availed on inputs \& input services}}$$

where,-

A. **"Net ITC"** means ITC availed on **inputs** during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both *(See Notes – 1 & 2 and "Clarification on the term input" given below)*; and

B. **"Adjusted Total turnover and Relevant period"** have the same meaning as assigned in sub-rule (4) above.

Note - 1: It may be noted that in rule 89(5), in 'Net ITC', ITC availed on only inputs is covered. Since the definition of inputs[34] doesn't include services or capital goods, it is apparent here that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of ITC accumulated on account of inverted duty structure[35].

Note - 2: If there are multiple inputs attracting different rates of tax, 'Net ITC' in rule 89(5) covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax. The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:

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[34] *under section 2(59)*

[35] *Circular No. 79/53/2018 GST dated 31.12.2018*

(i) Suppose a manufacturing process involves the use of an input A (attracting 5% GST) and input B (attracting 18% GST) to manufacture output Y (attracting 12% GST). No input services are being availed.

(ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) read with rule 89(5), which prescribes the formula for the maximum refund amount permissible in such situations.

(iii) Further assume that the claimant supplies the output Y having value of ₹ 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹ 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be ₹ 3,000/-.

(iv) If we assume that Input A, having value of ₹ 500/- and Input B, having value of ₹ 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹ 385/- (₹ 25/- and ₹ 360/- on Input A and Input B respectively).

(v) Therefore, maximum refund amount, as per rule 89(5) is as follows:

= [(₹ 3,000 × ₹ 385)/ ₹ 3,000] – (₹ 3,000 x 12% x 385/385)[36]

(vi) Thus, maximum refund amount is ₹ 25/-[37].

There arose an issue for consideration as to whether an applicant can seek refund of unutilized ITC on account of inverted duty structure, under section 54(3)(ii), in a case where the inversion is due to change in the GST rate on the same goods. For example, an applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%.

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[36] *Modified as per revised formula for determining refund under inverted duty structure.*

[37] *Circular No. 79/ 53/ 2018 GST dated 31.12.2018*

It has been clarified that, in such cases, the input and output being the same, though attracting different tax rates at **different points in time**, do not get covered under section 54(3)(ii).

There may, however, be cases where though inputs and output goods are same, but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs.

In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to section 54(3), other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause[38].

Suppliers who supply goods to merchant exporters at the concessional rate of 0.1% [0.05% CGST and 0.05% SGST/UTGST or 0.1% IGST, as the case may be], under Notification No. 40/2017 CT (R) dated 23.10.2017/ Notification No. 41/2017 IT (R) dated 23.10.2017, subject to certain conditions specified in said notifications [Discussed in detail in Chapter 14 – Import and Export under GST in this Module of the Study Material], are also eligible for refund on account of inverted tax structure as per above clarification.

Clarification on the term "input"

On certain occasions, ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, is not considered as part of 'Net ITC' on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input.

[38] *Circular No. 135/05/2020-GST dated 31.03.2020 as amended by Circular No. 173/05/2022 GST dated 06.07.2022*

There are also instances where stores and spares, although charged to revenue, are considered as capital goods. Consequently, the ITC availed on them is not included in 'Net ITC', even though the value of these goods has not been capitalized in his books of account by the claimant.

In this regard, it is clarified that ITC of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST law. **The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5).** Further, capital goods have been clearly defined in section 2(19) as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. **Hence, stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods**[39].

7. Refund of ITC under section 54(3) restricted to the extent of invoice details are reflected in Form GSTR-2A

In terms of sub-rule (4) to rule 36 *[discussed in detail in Chapter 7 – Input Tax Credit in Module 2 of this Study Material]*, the refund of accumulated ITC is also restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in Form GSTR-1 and are reflected in the Form GSTR-2A of the applicant[40].

However, this does not in any way impact the refund of ITC availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc. ITC availed on imports, ISD invoices, RCM etc. are not reflected in Form GSTR-2A of the applicant. Therefore, it is clarified that refund of such ITC relating to imports, ISD

[39] *Circular No. 79/53/2018 GST dated 31.12.2018*

[40] *Circular No.135/05/2020 GST dated 31.03.2020*

invoices and the inward supplies liable to Reverse Charge (RCM supplies) will not be barred by not being reflected in Form GSTR 2A[41].

8. Determination of refundable amount in case of refund of unutilised ITC on account of (i) exports without payment of tax, (ii) supplies made to SEZ Unit/SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure

In case of refund of unutilized input tax credit (ITC) on account of (i) exports without payment of tax, (ii) supplies made to SEZ Unit/SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure, the common portal calculates the refundable amount as the least of the following amounts:

a) The maximum refund amount as per the above formula specified in rule 89(4) or rule 89(5) [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax];

b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in Form GSTR-3B for the said period has been filed; and

c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

After calculating the **least of the above 3 amounts**, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

a) Integrated tax, to the extent of balance available;

b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case)[42].

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[41] *Circular No. 139/09/2020 GST dated 10.06.2020*

[42] *Master Circular on Refunds – Circular No. 125/44/2019 GST dated 18.11.2019*

9. Cases where refund of ITC is NOT allowed

(i) Refund of unutilized ITC shall not be allowed if the **goods exported** out of India are **subjected to export duty** [Second proviso to section 54(3)]. The term **'subjected to export duty'** means where the goods are actually leviable to export duty and suffering export duty at the time of export.

Therefore, goods in respect of which either **Nil rate is specified** in Second Schedule to the Customs Tariff Act, 1975 or which are **fully exempted** from payment of export duty by virtue of any customs notification or which are **not covered under Second Schedule** to the Customs Tariff Act, 1975, **cannot be subjected to any export duty** under Customs Tariff Act, 1975. Such goods would not be covered by the restriction imposed under the second proviso to section 54(3) for the purpose of availment of refund of accumulated ITC.

Accordingly, it is clarified that **only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under said restriction.**

(ii) Refund of ITC shall not be allowed if the **supplier** of goods or services or both **avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.**

Thus, no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax. It is clarified that if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for refund of unutilized input tax credit of Central tax/ State tax/ Union Territory tax / Integrated tax/ Compensation cess. It is also clarified that refund of eligible credit on account of State tax shall be available if the supplier of goods or services or both has availed of drawback in respect of Central tax[43].

[43] *Master Circular on Refunds – Circular No. 125/44/2019 GST dated 18.11.2019*

F. Minimum refund claim [Section 54(14)]

No refund shall be paid to an applicant, if the amount is less than ₹ 1,000. The limit of ₹ 1,000 shall apply for each tax head separately and not cumulatively. Further, the limit would not apply in cases of refund of excess balance in the electronic cash ledger[44].

G. Refund in case of goods or services exported out of India

As discussed in *Chapter 14 – Import and Export under GST*, exports of goods and services are zero rated. A registered person making zero rated supply may supply the goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC. Further, notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed. In the ensuing paras, refund under each of these two cases has been discussed in detail:

(I) Refund on account of export of goods or services [with payment of tax] [Rule 96]

In case where notified class of persons export goods and/or services or notified class of **goods or services are exported, on payment of IGST** and **refund of such tax paid on goods and/or services supplied is claimed**, provisions relating to refund of IGST are as follows:

Export of goods

Shipping Bill is refund application

(1) Application for refund claim: The shipping bill/ bill of export filed by the exporter of goods shall be deemed to be an application for refund and the taxpayer is not required to file separate refund application in this case.

Further, such application shall be **deemed to have been filed** only when:

(a) the **person in charge** of the conveyance carrying the export goods duly **files** a

[44] *Circular No. 59/ 33/ 2018 GST dated 04.09.2018*

departure manifest[45]; **or an export manifest or an export report** covering the number and the date of shipping bills/bills of export; and

(b) ***the applicant has furnished a valid return in Form GSTR-3B.***

If there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in Form GSTR-1, such application for refund shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter.

(c) ***the applicant has undergone Aadhaar authentication in the manner provided in rule 10B.***

GST portal shares the details of the relevant export invoices in respect of export of goods contained in Form GSTR-1 with the system designated by the Customs viz. ICEGATE. The said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

(2) **Processing of refund claim:** Upon the receipt of the information regarding the furnishing of a valid return in Form GSTR 3B from common portal, ICEGATE system designated by the Customs/ proper officer of Customs, shall process the claim of refund in respect of export of goods.

An amount equal to the IGST paid in respect of each shipping bill/ 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.

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[45] *Governed by Sea Cargo Manifest and Transhipment Regulations 2018 which has come into force on 01.08.2019 vide Notification No. 38/2018 Cus (NT) dated 11.05.2018 as amended by Notification No. 17/2019 Cus (NT) dated 27.02.2019.*

(3) Withholding of refund of IGST: The claim for refund shall be withheld where [Rule 96(4)]:

(a) a request has been received from the jurisdictional Commissioner of Central Tax, State Tax or Union Territory Tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of section 54(10)/(11); or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(c) the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

Where refund is withheld in accordance with the provisions of clause (a) or clause (c) above, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated Form GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission [Rule 96(5A)].

Where refund is withheld in accordance with the provisions of clause (b) above and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962, then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated Form GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding

anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission [Rule 96(5B)].

The application for refund in Form GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89. [Rule 96(5C)]

(4) Refund to the Government of Bhutan on the exports to Bhutan: The Central Government may pay refund of the IGST to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf. Where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

Clarification on whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back

The activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India[46].

Further, the supply would be deemed to have taken place:

(i) on the date of expiry of 6 months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or

(ii) on the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of 6 months[47].

It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) read with rule 89(4), in respect of zero-rated supply of goods after he has issued the tax invoice on the dates. It is further clarified

[46] *Discussed in detail in Chapter 14 – Import and Export under GST in this Module of the Study Material.*

[47] *Discussed in detail in Chapter 9 – Tax Invoice, Credit and Debit Notes in Module 2 of this Study Material.*

that refund claim cannot be preferred under rule 96 as supply is taking place at a time after the goods have already been sent/taken out of India earlier[48].

The above position has been explained by way of example below:

M/s. ABC sends 100 units of specified goods out of India. The activity of sending/ taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55.

If 10 units of specified goods are sold abroad say after one month of sending/ taking out and another 50 units are sold say after two months of sending/ taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 read with rule 46.

If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 read with rule 46.

Further, M/s ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in subsection (3) of section 54 read with sub-rule (4) of rule 89 in respect of zero-rated supply of 60 units.

Export of services

Refund application: Rule 96(9) provides that the application for refund of IGST paid on the services exported out of India shall be filed in **Form GST RFD-01** and shall be dealt with in accordance with the provisions of rule 89 *[as discussed earlier]*.

*Person claiming refund of IGST paid on export of **goods/ services** should not have:*

48 *Circular No. 108/27/2019 GST dated 18.07.2019*

(i) received supplies on which the benefit of deemed exports[49], except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods (EPCG) Scheme, has been availed or benefit of supply of goods to merchant exporters at the concessional rate of 0.1%[50] has been availed, or

(ii) availed the benefit of exemption from IGST and Compensation Cess, in respect of goods imported by EOU[51] or for goods imported under Advance Authorisation (AA)[52] except so far it relates to receipt of capital goods by such person against EPCG Scheme.

For the purpose of this sub-rule, the benefit of the notifications mentioned above shall not be considered to have been availed only where the registered person has paid IGST and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.

(II) Refund of ITC paid on export of goods or services under bond or Letter of Undertaking (LUT) [Rule 96A]

In case where goods/services are exported by a class of persons other than notified class of persons or where goods/services other than notified class of goods or services are exported, only option available with the exporter of goods or services or both is **to export under bond/LUT without payment of IGST and claim refund of ITC**. *The provisions relating to export of goods/services without payment of IGST under bond/LUT [Rule 96A] have already been discussed in detail in Chapter 14 – Import and Export under GST.* Further, as already discussed, in such cases, refund of unutilised ITC at the end of any tax period, of amount determined under rule 89(4), shall be granted to the applicant and the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed *[discussed earlier in detail]*.

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[49] under Notification No. 48/2017 CT dated 18.10.2017 [discussed in detail in Chapter 14 – Import and Export under GST in this Module of the Study Material.]

[50] Notification Nos. 41/2017 IT(R) or 40/2017 CT(R) both dated 23.10.2017. These export benefits have been explained in detail in Chapter 14 – Import and Export under GST in this Module of the Study Material.

[51] under Notification No. 78/2017 Cus dated 13.10.2017

[52] under Notification No. 79/2017 Cus dated 13.10.2017.

(III) Recovery of refund of unutilized input tax credit or integrated tax paid on export of GOODS where export proceeds are not realized within stipulated time [Proviso to section 16(3) read with rule 96B]

As per proviso to section 16(3), the registered person making zero rated supply of goods, without payment of tax shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under section 16(3) along with the applicable interest under section 50 within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) for receipt of foreign exchange remittances, in such manner as may be prescribed.

Rule 96B prescribes the manner in relation to this. It provides that proceeds of export of goods must be realised within the period allowed under FEMA. In case of non-realisation/ partial realisation of such proceeds, any refund paid would be subject to be recovered from the taxpayer with interest, except in those cases wherein RBI writes off the requirement of such realization on merits.

In case any refund is recovered on account of non-realisation of proceeds and the realization was made later on within the extended period permitted by the RBI, the proper officer (PO) shall refund the amount so recovered to the taxpayer.

The detailed provisions of said rule are elaborated as follows:

Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the FEMA, including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds.

The amount so refunded, to the extent of non-realisation of sale proceeds have to be deposited along with applicable interest within 30 days of the expiry of the said period or, as the case may be, the extended period. In case of failure to do so, the amount refunded shall be recovered in accordance with the provisions of sections 73 or 74, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50.

However, where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the FEMA, but the RBI writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him and the applicant produces evidence about such realisation within a period of 3 months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by RBI.

4. REFUND OF TAX WRONGLY COLLECTED AND PAID [SECTION 77 READ WITH RULE 89(1A)]

Section 77 of the CGST Act, 2017 contains the provisions regarding tax wrongfully collected and paid to Central Government or State Government. It provides that 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**.

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.

Similar provisions are contained in **section 19 of the IGST Act, 2017**. It provides that 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**.

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. *The provisions of section 77 of the CGST Act and section 19 of the IGST Act have also been discussed in Chapter 19 – Demands and Recovery in this Module of the Study Material.*

Time Limit for filing refund claim

As per rule 89(1A), any person claiming refund of any tax paid under aforesaid provisions may file an application in prescribed form, before the expiry of a period of 2 years from the date of payment of tax under correct head on said supply.

Thus, said refund can be claimed before the expiry of 2 years from the date of payment of tax under the correct head, i.e. IGST paid afterwards in respect of subsequently held inter-State supply, or CGST and SGST paid afterwards in respect of subsequently held intra-State supply, as the case may be. Refund would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 in respect of the said transaction[53].

5. REFUND TO UN BODIES, EMBASSIES, ETC. [SECTION 55 READ WITH SECTION 54(2) OF CGST ACT]

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been operationalized by way of a refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account.

However, the UN bodies and other entities notified under section 55 can claim refund of the taxes paid by them on their inward supplies. The claim has to be made before the expiry of ***two years*** from the last day of the quarter in which such supply was received. Detailed provisions have been discussed hereunder:

[53] *Circular No. 162/18/2021 GST dated 25.09.2021*

A. Who is entitled to refund under section 55?

Government may, on the recommendations of the Council, by notification, specify:

(i) any specialised agency of the United Nations Organisation; or

(ii) any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947; or

(iii) Consulate or Embassy of foreign countries; and

(iv) any other person or class of persons as may be specified in this behalf,

who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them.

In exercise of above power, following persons have been notified, subject to fulfilment of specified conditions:

(i) United Nations or a specified international organization**; and

(ii) Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein[54].

__Specified international organisation**__** means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply.

Further, in exercise of said power, Canteen Stores Department (CSD), under the Ministry of Defence, has been notified as a person who shall be entitled to claim a refund of 50% of the applicable CGST/IGST paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of

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[54] *Notification No. 16/2017 CT (R) dated 28.06.2017/ Notification No. 13/2017 IT (R) dated 28.06.2017*

such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD[55].

B. Time Limit for filing refund claim [Section 54(2) read with rule 95(1)]

Persons eligible to claim refund under section 55 *[as mentioned in point A. above]*, entitled to refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, once in every quarter, but before the expiry of ***2 years*** from the last day of the quarter in which such supply was received.

C. Form and documents for filing the refund claim [Rule 95(1)]

Persons eligible to claim refund under section 55 shall submit the application for refund:

- in a **prescribed form**[56], once in every quarter
- along with a **Statement of the Inward Supplies of goods or services or both** in **Form GSTR-11** *[discussed in detail in Chapter 13- Returns in Module 2 of this Study Material]*.

D. Acknowledgment for refund claim [Rule 95(2)]

An acknowledgement for receipt of the application for refund shall be issued in a prescribed form.

E. Conditions to be satisfied for sanction of refund [Rule 95(3) & (4)]

Refund of tax paid by the applicant shall be available if all the following conditions are satisfied-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice.

(b) name and GSTIN/UIN of the applicant is mentioned in the tax invoice**.

(c) such other restrictions or conditions as may be specified in the notification are satisfied.

[55] *Notification No. 6/2017 CT (R) dated 28.06.2017/ Notification No. 6/2017 IT (R) dated 28.06.2017*

[56] *electronically or otherwise on the common portal*

*****However, where UIN of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall still be available if the copy of the invoice, duly attested by the authorised representative of the applicant, is submitted along with the refund application in prescribed form. In other words, if UIN is not mentioned in the tax invoice, then refund shall be available to the applicant on submission of the attested copy of such invoice in the prescribed form.***

The provisions of rule 92, as discussed earlier in this chapter shall, *mutatis mutandis*, apply for the sanction and payment of refund under this rule.

F. Supremacy provision in case of inconsistency [Rule 95(5)]

Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of these rules, such treaty or international agreement shall prevail.

G. Specialized agencies notified under section 55 entitled to refund of IGST paid on import of goods

As seen above, section 55 provides refund of taxes paid on the notified supplies of goods and/or services by notified specialized agencies like United Nations or a specified international organisation. Section 3(7) of the Customs Tariff Act, 1975 provides for a parity between the integrated tax rate attracted on imported goods and the integrated tax applicable on the domestic supplies of goods. Therefore, on this principle of parity, specialised agencies ought to get the refund of the IGST paid on imported goods.

6. INTEREST ON DELAYED REFUNDS [SECTION 56 OF THE CGST ACT]

A. Interest on amount refundable consequent to order passed by Proper Officer under section 54(5)

- Where any tax ordered to be refunded under section 54(5) to any applicant is **not refunded within 60 days** from the date of receipt of application under section 54(1), interest shall be payable to the applicant.

- Interest is **payable on such refund @ 6% p.a.***.
- Interest is payable to the applicant ***for the period of delay beyond***

60 days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed [Section 56].

as notified vide **Notification No. 13/2017 CT dated 28.06.2017*

B. Interest on amount refundable consequent to order passed in an appeal or further proceedings

- Where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is **not refunded within 60 days from the date of receipt of application** filed consequent to such order, interest shall be payable on such refund.
- Interest is **payable on such refund @ 9% p.a.***.
- Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund. [Proviso to Section 56].

as notified vide **Notification No. 13/2017 CT dated 28.06.2017*

For the purpose of this section, the order of refund made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under section 54(5), shall also be deemed to be an order passed under the said section 54(5) [Explanation to section 56].

C. Order sanctioning interest on delayed refunds [Rule 94]

- Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in prescribed form.

- Such order shall specify therein:
  - the **amount of refund** which is delayed,
  - the **period of delay** for which interest is payable and
  - the **amount of interest** payable.
- Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

7. CONSUMER WELFARE FUND [SECTIONS 57 & 58 OF THE CGST ACT]

Consumer Welfare Fund was created to promote and protect the welfare of consumer, create consumer awareness and strengthen consumer movement in the country, particularly in rural areas. Amount of refund which is not payable to the applicant is credited to the Consumer Welfare Fund.

As already discussed in this chapter, amount of refund is paid to the applicant in case where there is no unjust enrichment; i.e. the incidence of tax has not been passed by the supplier to the recipient as also in the circumstances where the principle of unjust enrichment is not applicable [specified in section 54(8)]. Otherwise, the said amount is credited to the Consumer Welfare Fund.

A. Amount to be credited to Consumer Welfare Fund

Section 57 stipulates that the Government shall constitute a Fund, to be called the **Consumer Welfare Fund** and there shall be credited to the Fund:

(a) Amount of refund determined by an order passed under section 54(5),

(b) any income from investment of the amount credited to the Fund; and

(c) such other monies received by it,

in such manner as may be prescribed. Such manner has been prescribed under rule 97.

B. Amounts to be credited to/paid from Consumer Welfare Fund [Rule 97]

- All amounts of duty/ CGST/ SGST/ IGST/ UTGST/ cess and income from investment along with other monies specified in section 12C(2) of the erstwhile Central Excise Act, 1944, section 57 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017, section 21 of the UTGST Act, 2017 and section 12 of the GST (Compensation to States) Act, 2017 shall be credited to the Fund *[discussed earlier in this chapter]* [Rule 97(1)].

- An amount equivalent to 50% of the amount of IGST determined under section 54(5) of the CGST Act, read with section 20 of the IGST Act, shall be deposited in the Fund [Proviso to rule 97(1)].

- An amount equivalent to 50% of the amount of compensation cess determined under section 54(5) of the CGST Act, read with section 11 of the GST (Compensation to States) Act, shall be deposited in the Fund. [Second Proviso to rule 97(1)]
- Any amount, having been credited to the Consumer Welfare Fund, ordered or directed as payable to any claimant by orders of the proper officer, Appellate Authority or Appellate Tribunal or Court, shall be paid from the Fund [Rule 97(2)].

C. Utilisation of Consumer Welfare Fund [Section 58 read with rule 97]

- All sums credited to the Consumer Welfare Fund shall be utilized by the Government for the welfare of the consumers in such manner as may be prescribed [Section 58(1)].

- The Government shall, by an order, constitute a Standing Committee who shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers [Rule 97(4)].

8. REFUND OF INTEGRATED TAX PAID ON SUPPLY OF GOODS TO TOURIST LEAVING INDIA [SECTION 15 OF THE IGST ACT]

- 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.
- The term **"tourist"** means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.
- As of now the manner, procedure and form has not been prescribed for the refund made to the international tourist.

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 [Rule 97A].

Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws

S. No.	Issue	Clarification
1.	An advance is received by a supplier for a service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through Form GST RFD-01.
2.	An advance is received by a supplier for a Service contract which got cancelled	In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for

	subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?	which no invoice has been issued in terms of section 31(2), he is required to issue a "refund voucher" in terms of section 31(3)(e) read with rule 51. The taxpayer can apply for refund of GST paid on such advances by filing Form GST RFD-01 under the category "Refund of excess payment of tax".
3.	Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34. There is no need to file a separate refund claim in such a case. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through Form GST RFD-01.

[Circular No. 137/07/2020 GST dated 13.04.2020]

TEST YOUR KNOWLEDGE

1. *Is there any time limit for sanctioning of refund under section 54?*
2. *Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2).*
3. *In case of refund under exports of goods, whether BRC/FIRC is necessary for granting refund?*
4. *When is a deficiency memo issued in respect of a refund claim made under section 54?*
5. *State the exceptions to the principle of unjust enrichment as applicable to refund claims.*
6. *Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3) of the IGST Act, 2017.*

   The company has made the following supplies during a tax period:

S. No.	Particulars	(₹)
(i)	Export of product 'A' to UK for $ 10,000. Assessable value under customs in Indian rupees. [Export duty is payable on product 'A' at the time of exports. Further, value of like goods domestically supplied by the similarly placed supplier is ₹ 6,00,000]	7,00,000
(ii)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @18%] *not notified as a product, in respect of which refund of unutilised ITC shall not be allowed under section 54(3)(ii)	10,00,000

(iii)	*Supply of goods to Export Oriented Unit [excluding tax @ 18%]* *[ITC has been claimed by the recipient]*	*5,00,000*
(iv)	*Export of exempt supplies of goods (Value of like goods domestically supplied by the similarly placed supplier is ₹ 5,00,000)*	*6,00,000*

The ITC available for the above tax period is as follows:

S.No.	***Particulars***	***(₹)***
(i)	*On inputs*	*3,50,000*
(ii)	*On input service*	*1,50,000*
(iii)	*On capital goods*	*1,20,000*

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period.

7. *Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period:*

Products	***Turnover* (₹)***	***Output GST Rates***	***ITC availed (₹)***	***Input GST Rates***
A	*500,000*	*5%*	*54,000 (Goods)*	*18%*
B	*350,000*	*5%*	*54,000 (Goods)*	*18%*
C	*100,000*	*18%*	*10,000 (Service)*	*18%*

**excluding GST*

Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii) *provided that Product B is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.*

8. *With reference to section 54(3), mention the cases where refund of unutilised input tax credit is allowed.*

9. *State few cases where refundable amount shall be paid to the applicant, instead of being credited to Consumer Welfare Fund under CGST Act, 2017.*

ANSWERS/HINTS

1. Yes, refund has to be sanctioned within 60 days from the date of receipt of application complete in all respects. If refund is not sanctioned within the said period of 60 days, interest @ 6% p.a. will have to be paid in accordance with section 56.

However, in case where provisional refund to the extent of 90% of the amount claimed is refundable in respect of zero-rated supplies made by certain categories of registered persons in terms of sub-section (6) of section 54, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

2. The amount of advance tax deposited by a casual taxable under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)]. Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].

3. In case of refund on account of export of goods, the refund rules do not prescribe BRC/FIRC as a necessary document for filing of refund claim. However, for export of services details of BRC/FIRC is required to be submitted along with the application for refund.

However, in case of non-realization of consideration in terms of FEMA, the exporter shall deposit the amount so refunded to the extent of non realization of sale proceed along with interest within 30 days [Rule 96B].

4. Rule 90(3) provides for communication in prescribed form (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

Further the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies by the proper officer, shall be excluded from the period of two years as specified under Section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

5. The principle of unjust enrichment is applicable in all cases of refund except in the following cases:-

(a) Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.

(b) Unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued.

(d) refund of tax in pursuance of section 77 of CGST/SGST Act i.e. tax wrongfully collected and paid to Central Government or State Government.

(e) if the incidence of tax or interest paid has not been passed on to any other person.

(f) such other class of persons who has borne the incidence of tax as the Government may notify.

6. Computation of maximum amount of refund admissible to Kailash Global (P) Ltd.

Particulars	(₹)
Exports of product 'A' to UK [Note (i)]	Nil
Domestic supplies of taxable product 'B' during the period [Note (ii)]	90,000
Supply of goods to Export Oriented Unit [Note (iii)]	Nil
Export of exempt supplies [Note (iv)]	1,07,143
Total refund claim admissible	**1,97,143**

Notes:

(i) Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Fu] rther, Kailash Global (P) Ltd. exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3) of the IGST Act, 2017.

Therefore, as per clause (i) of first proviso to section 54(3), a registered person may claim refund, of any unutilised ITC in the case of zero rated supply made without payment of tax at the end of any tax period. However, second proviso to section 54(3) lays down that refund of unutilized ITC is not allowed if the goods exported out of India are subjected to export duty.

(ii) Refund of unutilised ITC is allowed in case of inverted duty structure, i.e. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except supplies of goods or services or both as may be notified by the Government on the recommendations of the GST Council [Clause (ii) of the first proviso to section 54(3)].

Rule 89(5) stipulates that in the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula –

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods \& services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods \& services} \times \frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}}$$

where-

"Net ITC" means ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

"Adjusted total turnover" means the sum total of the value of:

(a) the turnover in a State/ Union territory, as defined under section 2(112), excluding turnover of services; &

(b) the turnover of zero-rated supply of services determined in terms of specified manner and non-zero-rated supply of services,

excluding:

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.

"Relevant period" means the period for which the claim has been filed.

Tax payable on inverted rated supply of goods = ₹ 10,00,000 × 5% = ₹ 50,000

Here, Net ITC = ₹ 3,50,000,

Adjusted Total Turnover = ₹ 28,00,000 [₹ 7,00,000 + ₹ 10,00,000 + ₹ 5,00,000 + ₹ 6,00,000] and Turnover of inverted rated supply of goods = ₹ 10,00,000

Thus, maximum refund amount under rule 89(5) = ₹ 3,50,000 x 10,00,000/ ₹ 28,00,000 **–** (₹ 50,000×{₹ 3,50,000/(₹ 3,50,000+₹ 1,50,000)} = ₹ 90,000

(iii) As per section 2(39), deemed exports means such supplies of goods as may be notified under section 147. Supplies to EOU is notified as deemed export under section 147 vide *Notification No. 48/2017 CT dated 18.10.2017*. In respect of supplies regarded as deemed exports, the application of refund can be filed by the supplier of deemed export supplies only in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund [Third proviso to rule 89(1)]. Therefore, since in the given case, the recipient is claiming ITC, Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.

(iv) Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of section 17(5) of the CGST Act, ITC may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. Section 54(3) of the CGST Act, 2017 allows refund of ITC in the case of zero rated supply made without payment of tax.

Rule 89(4) stipulates that in the case of zero-rated supply of goods or services or both without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

where-

"Net ITC" means ITC availed on inputs and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond/LUT, or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

"Adjusted total turnover" means the same as explained in point ii above.

Here, Turnover of zero rated supply of goods = ₹ 6,00,000 (Lower of ₹ 6,00,000 or 1.5 times of ₹ 5,00,000 i.e. 7,50,000 whichever is lower), Net ITC = ₹ 5,00,000 and Adjusted Total Turnover = ₹ 28,00,000 (as computed in point ii above)

Thus, maximum refund amount under rule 89(4) = ₹ 5,00,000 x ₹ 6,00,000/ ₹ 28,00,000 = ₹ 1,07,143.

7. Section 54(3)(ii) allows refund of unutilized input tax credit (ITC) at the end of any tax period to a registered person where the credit has accumulated on account of inverted duty structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

In the given case, the rates of tax on inputs used in Products A and B (18% each) are higher than rates of tax on output supplies of Products A and B (5% each). However, Product B is notified as a product, in respect of which no refund of unutilised ITC shall be allowed under section 54(3)(ii). Further rate of tax on input used in the product C is carrying same rate of tax on output supplies hence it is not the case of inverted duty structure. Therefore, no refund on the Product C.

Therefore, only Product A is eligible for refund under section 54(3)(ii).

Further, rule 89(5) stipulates that in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula -

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{tax payable on such inverted rated supply of goods and services} \times \frac{\text{Net ITC}}{\text{ITC availed on inputs and input services}}$$

where,-

A. **"Net ITC"** means input tax credit availed on inputs during the relevant period;

B. Adjusted Total Turnover means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in specified manner and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under rule 89(4A) or rule 89(4B) or both, if any,

during the relevant period.

C. Relevant period means the period for which the claim has been filed.

In accordance with the aforesaid provisions, the maximum refund amount which Super Engineering Works is eligible to claim shall be computed as follows:

Tax payable on inverted rated supply of Product A = ₹ 5,00,000 × 5% = ₹ 25,000

Net ITC = ₹ 108000 (₹ 54,000 + ₹ 54,000) [Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not - *Circular No. 79/53/2018-GST dated 31.12.2018*]

Adjusted Total Turnover = ₹ 9,50,000 (₹ 5,00,000 + ₹ 3,50,000 + ₹ 1,00,000)

Turnover of inverted rated supply of Product A = ₹ 5,00,000

Maximum refund amount for Super Engineering Works is as follows:

= [(₹ 5,00,000 × ₹ 108000)/ ₹ 9,50,000] – (₹ 25,000 x 108,000/118,000)

= ₹ 33,961 (rounded off)

8. As per section 54(3), a registered person may claim refund of unutilised input tax credit at the end of any tax period in the following cases:

(i) **Zero rated supplies made without payment of tax:** Supply of goods or services or both for authorised operations to an SEZ developer/unit or export of goods or services or both qualifies as zero rated supplies.

(ii) **Accumulated ITC on account of inverted duty structure:** Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

However, refund of unutilized input tax credit shall not be allowed if:

♦ the goods exported out of India are subjected to export duty;

♦ the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

9. Section 54(8) provides that the refundable amount shall be paid to the applicant, instead of being credited to the Consumer Welfare Fund, if such amount is relatable to —

(a) refund of tax paid on export of goods and/or services or on inputs or input services used in making such exports;

(b) refund of unutilized ITC in case of zero-rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax paid on a transaction treating it to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by notified class of applicants.

CHAPTER **16**

JOB WORK

The section numbers referred to in the Chapter pertain to the CGST Act, 2017 unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

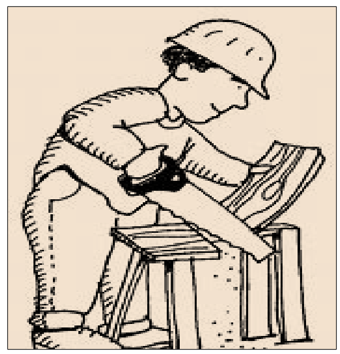
After studying this chapter, you would be able to:

- comprehend the term 'job work'.
- explain the various aspects including procedure pertaining to removal of goods for the purposes of job work.
- understand the provisions relating to removal of processed goods from job worker's premises.
- understand the provisions relating to availing input tax credits in relation to goods sent for job work.

1. INTRODUCTION

Job-work sector constitutes a significant industry in the Indian economy. It includes outsourced activities that may or may not culminate into manufacture. The term **job-work** itself explains the meaning. It is processing of goods – inputs/ semi-finished goods - supplied by the **principal**, for further processing. Further, entry 3 of Schedule II to the CGST Act, 2017 provides that any treatment or process which is applied to another person's goods is a supply of services.

Here, a Principal is a registered person who sends the inputs/capital goods to a job worker for carrying out the job work. Many facilities, procedural concessions have been given to the job workers as well as the principal supplier who sends goods for job-work. The whole idea is to make the principal responsible for meeting the compliances on behalf of the job-worker on the goods processed by him (job worker), considering the fact that typically the job-workers are small persons/processing units who are unable to comply with the discrete provisions of the law.



The GST law makes special provisions with regard to (i) removal of goods for job-work and receiving the goods back after processing from the job-worker without the payment of GST and (ii) removal of goods from the job worker's premises for supply to the ultimate customer. The benefit of these provisions shall be available both to the principal and the job worker.

Section 2(68) defines job work as '**any treatment or process undertaken by a person on goods belonging to another registered person'**. E.g. Painting, packing, fitting, etc. The person who does the said job would be termed as **'job worker'**. The job worker is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each caseIt is imperative to note that the ownership of the goods does not transfer to the job worker, and it rests with the principal only.

There may arise a doubt as to whether any inputs, other than the goods provided by the principal, can be used by the job worker for providing the services of job work. In this regard, it is clarified[2] that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

Supply of job work services

Where the principal and the job worker are located in different States, the requirement for registration flows from clause (i) of section 24 of the CGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed an amount of ₹ 20 lakh [₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland] in a financial year.

In view of the above discussion, it can be inferred that the job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the above threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

[2] *Circular No. 38/12/2018 GST dated 26.03.2018*

The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered in view of the aforesaid criteria. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31.

The value of services would be determined in terms of section 15 and would include not only the service charges, but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal.

In certain cases, the principal may provide specific items like moulds and dies, jigs and fixtures or tools along with the inputs, to the job worker for processing of inputs in a specified manner. The question may arise whether value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services?

Section 15(2)(b) *[Discussed in detail in Chapter 6 – Value of Supply in Module 1 of the Study Material]* stipulates that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply.

Accordingly, it is clarified[3] that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

The provisions relating to job work are, *inter alia*, covered in section 19 and 143 of the CGST Act. State GST laws also prescribe identical provisions in relation to job work.

Provisions of job work under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

[3] *Circular No. 38/12/2018 GST dated 26.03.2018*

2. RELEVANT DEFINITIONS

❖ **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].

❖ **Place of business:** includes [Section 2(85)]:

- a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- a place where a taxable person maintains his books of account; or
- a place where a taxable person is engaged in business through an agent, by whatever name called.

❖ **Capital goods:** means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business [Section 2(19)].

❖ **Input:** means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business [Section 2(59)].

❖ **Registered person:** means a person who is registered under section 25 but does not include a person having a Unique Identity Number [Section 2(94)].

3. JOB WORK PROCEDURE [SECTION 143]

The provisions related to job work are encapsulated under section 143 of the CGST Act. It is important to note that the provisions of said section are applicable to a registered person. Thus, a principal, who can send the goods for job work under the said provisions, must be a registered person.

However, the principal is not obligated to follow the said provisions. It is his choice whether or not to avail the benefit of these special provisions. In case the principal is not availing the benefit of provisions under section 143, the sending of inputs for processing to be undertaken by the job worker will attract the provisions relating to a normal supply on both the principal and the job worker.

The provisions of section 143 have been discussed as follows:

Principal can send goods to job worker <u>without payment of tax</u>

- A registered person (Principal) is allowed to **send inputs/ capital goods without payment of tax to a job-worker** and from there **to another job-worker** and after completion of job-work **bring back such goods without payment of tax** or **remove** the processed **goods from the job workers premises for supply to the customer**. Such goods need to be removed **under intimation to proper officer** and subject to certain prescribed conditions.

  The principal is not required to reverse the ITC availed on inputs or capital goods dispatched to the job-worker without payment of tax.

> *Goods sent without payment of tax from principal's premises to job worker's premises.*

- The principal can also send inputs/capital goods **directly to the job-worker without bringing them to his premises** and can still avail the credit of tax paid on such inputs or capital goods.

> *Goods sent without payment of tax directly to job worker's premises*

- However, inputs and/or capital goods [other than moulds and dies, jigs and fixtures, or tools] sent to a job- worker are required to be **returned to the principal within 1 year and 3 years** respectively, from the date of sending such goods to the job-worker. However, the period of 1 year and 3 years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding 1 year and 2 years respectively. Extension of time is allowed to cover the situations where the period of 1 year specified is not adequate in respect of job works such as hull construction/ fabrication of vessels (for defense purposes), since these processes complete in a period of around 14 to 16 months. The provision of return of goods is **not applicable in case of moulds and dies, jigs and fixtures or tools** supplied by the principal to job worker.

Goods must be returned within stipulated time-limit

- After processing of goods, the job-worker may clear / dispatch the goods under the instructions of the principal to-
  - another job-worker for further processing, or
  - any of the place of business of the principal without payment of tax, or
  - the ultimate customer against payment of tax by the principal as applicable for supply.

Supply of goods directly from job worker's place of business/premises

- After processing of goods, the principal also has the option to clear the goods for supply to third party, directly from job-worker's premises, on payment of tax within India or without payment of tax for export outside India on fulfilment of prescribed conditions.
- The facility of supply of goods by the principal to the third party directly from the premises of the job- worker, on payment of tax in India likewise with or without payment of tax for export, may be availed by principal after **declaring premise of the**

job-worker as his additional place of business in his GST registration. However, such declaration is not required by the principal where:

- job worker is registered under section 25; or
- principal is engaged in supply of notified goods.

- In such cases of direct supply, the supply of goods will be regarded as supply by the principal and not by the job worker. Resultantly, it is clarified that the time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/premises. Further, the invoice would have to be issued by the principal. It is also clarified[4] that in case of exports directly from the job worker's place of business/premises, the LUT or bond, as the case may be, shall be executed by the principal. These principles would apply mutatis mutandis in case of supply of waste and scrap generated during job work *[discussed subsequently in this heading]*.

(1) The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker's place of business / premises, the invoice (along with electronic way bill) will be issued by the supplier (principal) located in State A to the recipient located in State C.

Procedure for sending goods to job worker

- Before supply of goods to the job-worker, the principal would be required to send intimation the proper officer containing the details of the description of inputs intended to be sent by the principal and the nature of processing to be carried out by the job-worker. The said intimation shall also contain the details of the other job-workers, if any. The inputs or capital goods shall be sent to the job worker under the cover of a delivery challan issued by the principal. The delivery challan shall be issued even for the inputs or capital goods sent directly to the job worker. The delivery challan shall contain the specified details. Along with the delivery challan, an electronic waybill shall be issued as per the relevant provisions under GST Law and related rules[5].

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[4] *Circular No. 38/12/2018 GST dated 26.03.2018*

[5] *The documents and intimation required for movement of goods from principal to job worker have been discussed in detail subsequently in this chapter.*

Responsibility for keeping accounts for inputs/capital goods

- The responsibility for keeping proper accounts for the inputs or capital goods <u>**lies with the principal**</u>.

Goods not received within the stipulated time <u>deemed as supply</u>

- In case the inputs/capital goods are not received back or not supplied from the job worker's premises, within specified time limit [1 year/3 years/extended time period], it shall be deemed to be a supply from Principal to the Job worker from the day when it was sent for job work. Accordingly, the principal would be liable to tax along with interest as applicable.
- Thus, goods sent for job work acquire the character of supply when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/premises of the job worker within 1 year/3 years/extended time-period, of being sent out. It may be noted that the responsibility for sending the goods for job work in accordance with the prescribed procedure as well as bringing them back or supplying them has been cast on the principal.
- In such cases where the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) are neither returned nor supplied from the job worker's place of business/ premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of 1 year/3 years or extended time period has expired.
- **Date of supply**: The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker. Further, interest for the intervening period shall also be payable on the tax by the principal.
- If such goods are returned by the job worker after the stipulated time-period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder.

- Further, it may be reiterated that there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

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.

4. TAKING INPUT TAX CREDIT IN RESPECT OF INPUTS AND CAPITAL GOODS SENT FOR JOB WORK [SECTION 19]

STATUTORY PROVISIONS

Section 19	***Taking input tax credit in respect of inputs and capital goods sent for job work***
Sub-section	***Particulars***
(1)	*The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job-worker for job-work.*
(2)	*Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job-work without being first brought to his place of business.*
(3)	*Where the inputs sent for job work are not received back by the principal after completion of job-work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out:*

	Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.
(4)	*The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.*
(5)	*Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job-work without being first brought to his place of business.*
(6)	*Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:*
	Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.
(7)	*Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.*
Explanation.––*For the purpose of this section, "principal" means the person referred to in section 143.*	
Chapter V: Input Tax Credit of CGST Rules	
Rule 45	***Conditions and restrictions in respect of inputs and capital goods sent to the job worker***
Sub-rule	***Particulars***
(1)	*The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal,*

	including where such goods are sent directly to a job-worker, and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:
	Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:
	Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.
(2)	*The challan issued by the principal to the job worker shall contain the details specified in rule 55.*
(3)	*The details of challans in respect of goods dispatched to a job worker or received from a job worker during* ***the specified period*** *shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding the said* ***period*** *or within such further period as may be extended by the Commissioner by a notification in this behalf:*
	Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Explanation.- - For the purposes of this sub-rule, the expression "specified period" shall mean. -

	(a)	***the period of six consecutive moths commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and***
	(b)	***a financial year in any other case***

(4)	*Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in* ***FORM GSTR-1*** *and the principal shall be liable to pay the tax along with applicable interest.*	
Explanation.*- For the purposes of this Chapter,-*		
(1)	*the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;*	
(2)	*for determining the value of an exempt supply as referred to in sub-section (3) of section 17-*	
	(a)	*the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and*
	(b)	*the value of security shall be taken as one per cent. of the sale value of such security.*

ANALYSIS

Section 19 deals with ITC on inputs and capital goods sent for job work.

(i) Credit on inputs and/or capital goods sent for job work [Sub-sections (1), (2), (4) and (5) of section 19]

- A principal is entitled to take the credit of input tax paid on inputs and/or capital goods sent to the job-worker for the job work.
- The principal can also take ITC even when the inputs and/or capital goods have been directly sent to the job worker without being brought into his premises. The principal need not wait till the inputs and/or capital goods are first brought to his place of business *[See definition of place of business]*.

Job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered[6].

(ii) Time limits for the return of inputs/capital goods sent for job-work or supply from job worker's place of business after required processing or treatment [Sub-sections (3), (6) and (7) read with rule 45 of CGST Rules]

- Inputs and capital goods sent for job work should either be returned to the principal or must be supplied from the job worker's premises within 1 year and 3 years[7] respectively **from the date of sending them to the job worker***.

  **Where inputs/capital goods are sent directly to a job worker, said period shall be computed from the date of receipt of inputs/ capital goods by the job worker.*

- As discussed earlier, if the above time-lines are not met, it is deemed that the inputs and capital goods were supplied by the principal to the job worker (in other words, tax will be payable on them by the principal along with interest) on the day they were sent out to the job worker.

  The said supply is required to be declared in GSTR-1 [Details of Outward Supplies] and the principal is liable to pay tax along with applicable interest.

  In such a case, return of the inputs and capital goods by the job worker, after the stipulated time, will be treated as a separate supply on which tax shall be paid by the job worker as per normal provisions under the GST Law.

[6] *Circular No. 38/12/2018 GST dated 26.03.2018*

[7] *Extendible by further period not exceeding 1 year and 2 years respectively.*

(2) A supplier of notebooks for schools sends the paper of required dimensions and GSM to a job worker for making the notebooks as per the design given by him.

However, the Government changes the specifications of notebooks for supply to its schools. The supplier sends a fresh stock of paper with fresh instructions to the job worker and instructs him to hold the earlier consignment in stock till a buyer is found. The new notebooks are easily sold, but the paper and semi-finished notebooks of the old design lie in the godown of the job worker for over a year and an extension from the proper officer is not sought. Here, sending of paper by the notebook supplier to the job worker in the first lot will be deemed as a supply and thus, tax would be payable on the same.

(iii) Special procedure for sending goods for job work [Rule 45 of CGST Rules]

The procedure for sending the goods for job work, in accordance with rule 45 read with *Circular No. 38/12/2018 dated 26.03.2018*, has been discussed below:

(a) Where goods are sent by principal to only one job worker: Principal has to send the inputs and/or capital goods to the job worker under the cover of a delivery **challan** issued by him. Such delivery challan should contain the details specified in rule 55 namely, date & number of delivery challan, name, address & GSTIN of consignor & consignee, HSN code & description of goods, quantity, taxable value, tax rate and tax amount, place of supply and signature. [*Refer Chapter 9: Tax Invoice, Credit and Debit Notes in Module 2 of the Study Material, for detailed discussion on rule 55*].

The principal shall prepare **in triplicate**, the delivery challan in terms of rules 45 and 55, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said delivery challan along with the goods, while returning them to the principal.

Further, the principal would be required to send an intimation the Jurisdictional Officer. Form GST ITC-04 will serve as the intimation. The intimation will contain the details of the description of inputs intended to be sent by the principal and the nature of processing to be carried out by the job-worker.

(b) Where goods are sent from one job worker to another job worker: In such cases, the goods may move under the cover of a delivery challan issued either by the principal or the job worker. Alternatively, the delivery challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers, indicating therein the quantity and description of goods.

(c) Where the goods are returned to the principal by the job worker: The job worker should send one copy of the delivery challan [as received by him from the principal] while returning the goods to the principal after carrying out the job work.

(d) Where the goods are sent directly by the supplier of the principal to the job worker: In this case, the goods may move from the place of business of the supplier to the place of business/premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (i.e., the principal). Job worker's name and address should also be mentioned as the consignee in such invoice.

Further, the buyer (i.e., the principal) shall issue the delivery challan[8] and send the same to the job worker directly.

In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/premises of the job worker with a copy of the Bill of Entry and the principal shall issue the delivery challan under rule 45 and send the same to the job worker directly.

(e) Where goods are returned in piecemeal by the job worker: In case the goods after carrying out the job work, are sent in piecemeal quantities by a

[8] *required to be issued under rule 45*

job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh delivery challan is required to be issued by the job worker.

(f) Submission of intimation: It is clarified that it is the responsibility of the principal to include the details of all the delivery challans relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom during ***the specified period*** in Form GST ITC-04 by the 25th day of the month succeeding the ***said period***. This period can be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST. The Form GST ITC-04 will serve as the intimation as envisaged under section 143.

Aggregate turnover of principal during preceding F.Y.	***Form GST ITC-04 to be filed on***	***Due date(s) for filing Form GST ITC-04***
upto ₹ 5 crore	***annual basis***	***25th April***
greater than ₹ 5 crore	***half yearly basis***	***25th October & 25th April***

(g) Requirement to generate E-way Bill: In case of job work, e-way bill[9] shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/Union territory to a job worker located in any other State/ Union territory.

Further, the e-way bill shall be generated by the principal, wherever required, in case the job worker is unregistered[10].

[9] *Rule 138, inter alia, stipulates that an e-way bill is required to be generated by every registered person who causes movement of goods of consignment value exceeding ₹ 50,000 even in cases where such movement is for reasons other than for supply (e.g. in case of movement for job work). However, in case of goods sent by a principal located in one State/UT to a job worker located in any other State/UT, the e-way bill needs to be generated irrespective of the value of the consignment. Provisions of e-way bill have been discussed in detail in Chapter 10 – Accounts and Records; E-way Bill in Module 2 of the Study Material.*

[10] *Since where the goods are supplied by an unregistered supplier to a registered recipient, 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 [Rule 138].*

5. REGISTRATION REQUIREMENTS

(i) Registration requirements when both the principal and the job worker are located in the same State: The job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit (i.e., ₹ 20 lakh or ₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) in case both the principal and the job worker are located in the same State [Section 22(1)].

(ii) Registration requirements when the job worker is located in a State different from that of the principal: Where the principal and the job worker are located in different States, the requirement for registration flows from section 24(i) of the CGST Act, which provides for compulsory registration of suppliers making any inter-State supplies. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed ₹ 20 lakh or ₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland in a financial year vide *Notification No. 10/2017 IT dated 13.10.2017 as amended*.

Therefore, it is clarified that a job worker, being a supplier of service, is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States[11].

(iii) Value of goods, after completion of job work, supplied directly from the premises of the registered job worker not to be included in its aggregate turnover: As discussed earlier in this chapter, principal can supply the goods directly from the premises of the job worker without bringing it back to his own premises. It is clarified that the supply of goods by the principal from the place of business/premises of the job worker will be regarded as supply by the principal and not by the job worker[12].

[11] *Circular No. 38/12/2018 GST dated 26.03.2018*

[12] *Circular No. 38/12/2018 GST dated 26.03.2018*

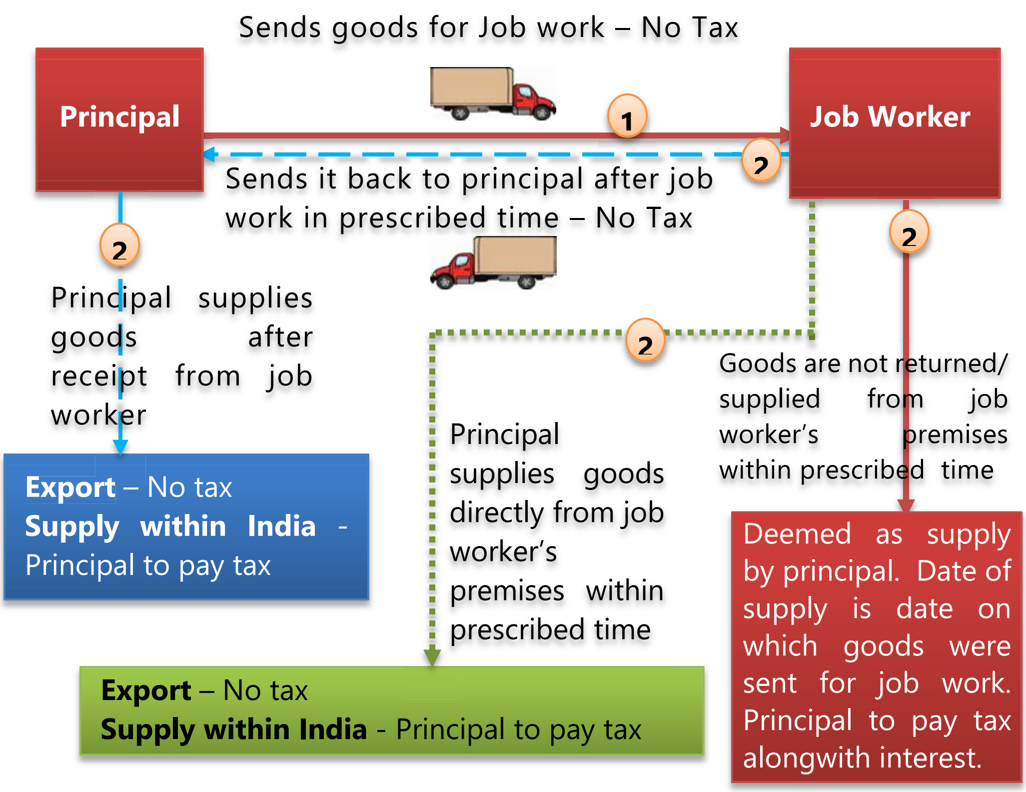
Therefore, the value of such goods supplied will be included in the aggregate turnover of the principal and not job worker [Explanation (ii) to section 22].

6. SUPPLY OF WASTE & SCRAP [SECTION 143(5)]

Notwithstanding anything contained in aforesaid provisions, 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.

LET US RECAPITULATE

Job work Procedure



Time limits for the return of inputs/capital goods sent for job-work or supply from job worker's place of business after required processing or treatment

- Principal can take credit on goods (inputs and capital goods) sent for job work.
- Credit can be taken even if the said goods are sent directly to job worker without being first brought to the principal's place of business.

Time limit for return of goods sent for job work/supply from job worker's place of business ♦ **Inputs -** 1 year (extendable by another 1 year) ♦ **Capital goods** - 3 years (extendable by another 2 years) from the date of sending the same for job work or from the date of receipt of the same by the job worker.	❑ On failing to comply with the timelines, the goods will be deemed to have been supplied to the job worker on the day they were sent out. ❑ Principal is liable to pay tax along with applicable interest on such supply. ❑ Subsequent return of the goods by the job worker will be treated as a separate supply.	**Time-lines do not apply to moulds and dies, jigs and fixtures or tools sent out for job work.**

TEST YOUR KNOWLEDGE

1. *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?*

2. *What happens when the inputs or capital goods are not received back or supplied from the place of business of job worker within prescribed time period?*

3. *Who is responsible for the maintenance of proper accounts related to job work?*

4. *Genie Engineers had a mould delivered directly to a job worker from the supplier for making certain precision parts for use in the factory of Genie Engineers. As per agreement, the mould was to remain with the job worker as*

long as work was being sent to him.

After four years a departmental audit team that visited the job worker noticed the mould and traced it to Genie Engineers. GST was demanded from Genie Engineers for taking ITC without receiving the mould and furthermore for not bringing the mould back after three years of delivery to the job worker.

How should they respond to this?

5. *Sudama Industries Ltd., registered in the State of Jammu & Kashmir, manufactures plastic pipes for other suppliers on job-work basis.*

   On 10th January, Plasto Manufacturers (registered in the State of Himachal Pradesh) sent plastic worth ₹ 4 lakh and moulds worth ₹ 50,000, free of cost, to Sudama Industries Ltd. to make plastic pipes. Sudama Industries Ltd. also used its own material - a special type of lamination material for coating the pipes - worth ₹ 1 lakh in the manufacture of pipes. It raised an invoice of ₹ 2 lakh as job charges for making pipes and returned the manufactured pipes through delivery challan to Plasto Manufacturers on 20th October in the same financial year.

   The same quality and quantity of plastic pipes, as was made for Plasto Manufacturers, were made by Sudama Industries Ltd. from its own raw material and sold to Solid Pipes (registered in Jammu and Kashmir) for ₹ 7.5 lakh on 20th October.

   Examine the scenario and offer your views on the following issues with reference to the provisions relating to job work under the GST laws:

   (i) *Is there any difference between the manufacture of plastic pipes by Sudama Industries Ltd. for Plasto Manufacturers and for Solid Pipes?*

   (ii) *Whether Sudama Industries can use its own material even when it is manufacturing the plastic pipes on job-work basis?*

   (iii) *Whether sending the plastic and moulds to Sudama Industries Ltd. by Plasto Manufacturers is a supply and a taxable invoice needs to be issued for the same?*

   (iv) *Whether Sudama Industries should include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges?*

6. *Alok Pvt. Ltd., a registered manufacturer, sent steel cabinets worth ₹ 50 lakh under a delivery challan to M/s Prem Tools, a registered job worker, for job*

work on 28th January. The scope of job work included mounting the steel cabinets on a metal frame and sending the mounted panels back to Alok Pvt. Ltd. The metal frame is to be supplied by M/s Prem Tools. M/s Prem Tools has agreed to a consideration of ₹ 5 lakh for the entire mounting activity including the supply of metal frame. During the course of mounting activity, metal waste is generated which is sold by M/s. Prem Tools for ₹ 45,000. M/s Prem Tools sent the steel cabinets mounted on the metal frame to Alok Pvt. Ltd. on 3rd December in the same financial year.

Assuming GST rate for metal frame as 28%, for metal waste as 12% and standard rate for services as 18%, you are required to compute the GST liability of M/s Prem Tools. Also, give reason(s) for inclusion or exclusion of the value of cabinets in the job charges for the purpose of payment of GST by M/s Prem Tools.

7. *Bedi Manufacturers, a registered person, instructs its supplier to send the capital goods directly to Rajesh Enterprises, who is a job worker, outside its factory premises for carrying out certain operations on the goods. The goods were sent by the supplier on 10th April and were received by the job worker on 15th April. Rajesh Enterprises carried out the job work, but did not return the capital goods to their principal - Bedi Manufacturers. Discuss whether Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods. What action under the GST Act is required to be taken by Bedi Manufacturers.*

   What would be your answer if in place of capital goods, jigs and fixtures are supplied to the job worker and the same has not been returned to the principal?

8. *Nandeeshwar Manufacturers, a registered person, sends certain category of yarn for processing to the job worker in January. The job worker undertakes the processing work on the yarn as per the requirement of Nandeeshwar Manufacturers. During the process, the job worker uses his own material also. The processed yarn is sold by Nandeeshwar Manufacturers directly from the job worker's premises in the month of March. The balance quantity of yarn and waste material is sent back by the job worker to Nandeeshwar Manufacturers in April.*

   The accountant of job worker is of the opinion that since the job worker is using his own material also in the processing, the supply being made by it to Nandeeshwar Manufacturers is in the nature of supply of goods as well as services. Do you agree with the opinion of accountant of the job worker?

ANSWERS/HINTS

1. 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 (i) where the job worker is a registered taxable person or (ii) where the principal is engaged in supply of such goods as may be notified by the Commissioner.

2. If the inputs or capital goods are not received back by the principal or are not supplied from the place of business of job worker within the prescribed time limit, it would be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out by the principal (or on the date of receipt by the job worker where the inputs or capital goods were sent directly to the place of business of job worker). Thus, the principal would be liable to pay tax accordingly along with interest. Further, if the job worker is registered, when the processed goods are sent back by it to the principal, the same shall also be considered as a supply over and above the charges for job work.

3. It is completely the responsibility of the principal to maintain proper accounts of job work related inputs and capital goods.

4. Genie Engineers should reply on the following lines:

Under section 19(6), the principal may take ITC on capital goods sent to a job worker for job work without being first brought to his place of business.

The capital goods sent for job work should either be returned to the principal or must be supplied from the job worker's premises within 3 years [extendible by another 2 years] from sending them to the job worker or direct receipt by the job worker from the supplier. If the above time-lines are not met, it is deemed that the capital goods were supplied by the principal to the job worker (in other words, tax will be payable on them) on the day they were sent out to the job worker [Section 19(6)].

However, sub-section (7) of section 19 provides that the time-limit of three years in sub-section (6) for bringing back the capital goods from the job worker does not apply to moulds.

Accordingly, Genie Engineers have correctly availed the ITC in respect of the moulds delivered to their job worker and not brought back even after completion of four years.

5. **(i)** As per section 2(68), job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the principal. Thus, the job worker is expected to work on the goods sent by the principal.

Therefore, when the goods are manufactured by Sudama Industries Ltd. for Plasto Manufacturers, it is job work as the process is undertaken on inputs (plastic and moulds) supplied by the principal (Plasto Manufacturers). However, when goods are manufactured for Solid Pipes, it is manufacture by Sudama Industries Ltd on own account as the pipes are manufactured from their own raw material. Further, processing or treatment on job work basis is a supply of service in terms of para 3 of Schedule II to the CGST Act, 2017 and manufacture and selling of pipes on own account is a supply of goods.

(ii) It has been clarified vide *Circular No. 38/12/2018 GST dated 26.03.2018* that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

(iii) Section 143 provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work. Subsequently, on completion of the job work, the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/ premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools). Thus, the provision relating to return of goods is not applicable in case of moulds, dies, jigs, fixtures and tools.

If the time frame of one year/ three years for bringing back or further supplying the inputs/ capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/ capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/ capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/ premises of the job worker within one/ three years of being sent out.

Therefore, the activity of sending of plastic and moulds by Plasto Manufacturers to Sudama Industries Ltd. (job worker) is not supply as the manufactured pipes are received back within the stipulated time and the provisions relating to return of goods are not applicable in case of moulds.

Rule 45 provides that the inputs, semi-finished goods or capital goods being sent for job work shall be sent under the cover of a delivery challan issued by the principal.

Therefore, Plasto Manufacturers need not issue a taxable invoice for sending the inputs to Sudama Industries Ltd. but should send the inputs under the cover of a challan.

(iv) As per section 15(2)(b), any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both, is includible in the value of supply. However, Sudama Industries Ltd. should not include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges as Sudama Industries Ltd. is manufacturing the plastic pipes on job work basis. The scope of supply of Sudama Industries Ltd. is to manufacture plastic pipes from the raw material supplied by the Plasto Manufacturers. Thus, at no point of time was Sudama Industries Ltd. (supplier of job work service) is liable to pay for the raw material and therefore, the value thereof should not be included in its job charges even though the same has been incurred by Plasto Manufacturers (recipient of job work service).

6. As per para 3 of Schedule II to the CGST Act, any treatment or process which is applied to another person's goods is a supply of services and accordingly is subject to GST rate applicable for services.

In the given case, M/s Prem Tools (job worker) undertakes the process of mounting the steel cabinets of Alok Pvt. Ltd. (principal) on metal frames. In view of para 3 of Schedule II to the CGST Act cited above, the mounting activity classifies as a service even though the metal frames are also supplied as a part of the mounting activity. Accordingly, the job charges will be chargeable to GST at a rate of 18%, which is the applicable rate for services.

Further, the value of steel cabinets will not be included in the value of taxable supply made by M/s Prem Tools as the supply of cabinets does not fall within the scope of supply to be made by M/s Prem Tools. M/s Prem Tools is only required to mount the steel cabinets, which are to be supplied by Alok Pvt. Ltd., on metal frames, which are to be supplied by it.

As regards sale of waste generated during the job work, since M/s Prem Tools is registered, the tax leviable on the supply will have to be paid by it in terms of section 143(5). Such supply will be treated as supply of goods and subject to GST rate applicable for metal waste.

Accordingly, the GST liability of M/s Prem Tools will be computed as under:

Particulars	Amount (₹)
Job charges	5,00,000
GST @ 18% (A)	90,000
Sale of metal waste	45,000
GST @ 12% (B)	5,400
Total GST payable (A) + (B)	**95,400**

7. As per section 19(5), the principal is entitled to take input tax credit of capital goods sent for job work even if the said goods are directly sent to job worker.

Further, section 19(6) stipulates that where the capital goods sent directly to a job worker are not received back by the principal within a period of 3 years of the date of receipt of capital goods by the job worker, 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 received by the job worker.

In view of aforementioned provisions, Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods.

However, if the capital goods are not returned by Rajesh Enterprises within 3 years from 15th April (date of receipt of capital goods by job worker), it shall be deemed that such capital goods had been supplied by Bedi Manufacturers to Rajesh Enterprises on 15th April and Bedi Manufacturers shall be liable to pay the tax along with applicable interest.

However, there is no time limit for return of moulds and dies, jigs and fixtures or tools sent out to a job worker for job work [Section 19(7)].

However, if Rajesh Enterprises does not return the jigs and fixtures to Bedi Manufacturers, it shall not be considered as a supply of jigs and fixtures to Rajesh Enterprises by Bedi Manufacturers. In this case also, Bedi Manufacturers will be eligible to retain the input tax credit availed by them.

8. No, the opinion of the accountant of the job worker is not correct. Section 7(1A) provides that when certain activities or transactions constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as a supply of goods or supply of services as referred to in Schedule II. Any processing activity carried on any other person's goods is treated as supply of service in terms of Schedule II. *Circular No. 38/12/2018 GST dated 26.03.2018* has also clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work. These goods are not supply *per se*, but are being used in the processing activity carried out by it.

Thus, the activity undertaken by the job worker, in the given case, squarely falls within the purview of Schedule II and shall be considered as supply of service by the job worker to Nandeeshwar Manufacturers.

CHAPTER 17

ASSESSMENT AND AUDIT

The section numbers referred to in the Chapter pertain to the CGST Act, 2017 unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After reading this chapter, you shall be equipped to:

- understand and explain the different types of assessment which a registered or unregistered person may be subjected to.
- describe the concept of self-assessment and provisional assessment.
- identify and appreciate the different types of audit which may be conducted against the registered person.
- gain knowledge pertaining to circumstances under which special audit can be conducted.

1. INTRODUCTION

Assessment means determination of tax liability. There are several types of assessments in the GST regime i.e., self-assessment, provisional assessment, summary assessment and best judgment assessment.

GST is a trust-based taxation regime wherein the assessee is first required to self-assess his tax liability and furnish returns for declaring the taxable turnover, tax payable or refundable, input tax credit availed etc. (i.e., self-assessment). At this stage, there is no intervention by the tax officials.

Since the tax regime relies on self-assessment, there is a need to put in place a robust 'audit' mechanism in order to measure and ensure proper compliances of the provisions of law by the taxable person.

Chapter XII – Assessment [Sections 59 to 64] and Chapter XIII-Audit [Section 65 and 66] of the CGST Act contain the provisions relating to assessment and audit respectively. State GST laws also contain identical provisions in relation to assessment and audit.

Section 59 of the CGST Act requires each registered person to self-assess the tax payable. Section 60 stands for provisional assessment. Sections 61 provides for scrutiny of returns. Sections 62 to 64 give power to departmental officer for carrying out assessment in different situations. Sections 65 and 66 pertain to audit by tax authorities and by CA/CWA nominated by Commissioner, respectively.

Before going through the detailed study of Assessment and Audit provisions, let us first go through few relevant definitions.

Provisions of assessment and audit under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

2. RELEVANT DEFINITIONS

- **Assessment** means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. [Section 2(11)]
- **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. [Section 2(13)]
- **Chartered Accountant** means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949; [Section 2(23)]
- **Cost Accountant** means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959; [Section 2(35]
- **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council. [Section 2(87)]
- **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 in the Board; [Section 2(91)]

3. SELF ASSESSMENT [SECTION 59]

Every person registered under the Act shall himself assess the tax payable by him for a tax period and after such self-assessment, he shall file the return required under section 39.

4. PROVISIONAL ASSESSMENT [SECTION 60]

Situations demanding Provisional Assessment

Provisional assessment provides a method for determining the tax liability in case the taxable person is unable to

(a) determine the value of taxable goods and/or services; or

(b) determine the rate of tax applicable thereto at the time of supply.

There might be situations when these two determinants might not be readily possible and may be subject to the outcome of a process that requires deliberation and time.

Thus, where the taxable person is unable to determine—

(a) value of goods or services or both to be supplied by him; or

(b) the rate of tax applicable to the goods or services or both to be supplied by him,

he may furnish an application in prescribed form stating therein the reasons for payment of the tax on a provisional basis along with the documents in support of his request, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The proper officer may, on receipt of the application, issue a notice in the prescribed form 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, and may appear in person before the said officer if he so desires.

The proper officer shall issue an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of the tax on a provisional basis indicating -

(a) the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis, and

(b) the amount* for which the bond is to be executed and security to be furnished. The value of security cannot exceed 25% of the amount* covered under the bond.

Furnishing of Bond and Security

The payment of tax on a provisional basis may be allowed, if the taxable person executes a bond in the prescribed form along with the security.

The bond is a document whereby the taxpayer binds himself (i.e., agrees) to pay the differential tax, if any, payable on finalization of the provisional assessment. The security is required to be furnished in the form of a bank guarantee for an amount* as the proper officer may deem fit (subject to 25% of the amount* covered under the bond).

In order to save a taxpayer from the requirement of submitting separate bonds for different taxes, the GST law provides that the bond furnished to the proper officer under the Central/State Goods and Services Tax Act/Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the other Acts and the rules made thereunder.

*the term "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of such transaction.

Finalization of Provisional Assessment

The final assessment order has to be passed by the proper officer within a period of 6 months from the date of the communication of the order of provisional assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the above period of 6 months may be extended:

(a) by the Joint/Additional Commissioner for a further period not exceeding 6 months, and

(b) by the Commissioner for such further period as he may deem fit not exceeding 4 years

For finalization of assessment, proper officer shall issue a notice in prescribed form, calling for such information and records, as may be required and shall issue a final assessment order specifying the amount payable by the registered person or the amount refundable, if any.

☞ **Where the tax liability as per the final assessment is higher than the provisional assessment,** i.e. the tax becomes due consequent to the order of final assessment: The registered person in addition to the differential tax shall be liable to pay interest on the tax due but not paid, at the rate specified under section 50(1) from the date the tax was due to be paid originally till the date of actual payment.

In simple words, in case any tax amount becomes payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the taxable person from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

☞ **Where the tax liability as per the final assessment is less than in provisional assessment** i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 for any period exceeding 60 days from the date of receipt of application moved in accordance with the provisions of Section 54(1), till the date of refund of such tax.

In simple words, in case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) is payable at the specified rate for the period of delay (i.e., beyond 60 days from the date of the final assessment order).

Release of Security

The applicant may file an application for release of the security furnished after issue of the final assessment order.

The proper officer shall release the security after ensuring that applicant has paid the amount specified in the final assessment order and issue an order within a period of 7 working days from the date of receipt of the application.

Illustration 1

ABC Limited is a supplier of medical equipment to various hospitals. While supplying the equipment ABC Limited is not sure about the rate of IGST *applicable on such supplies, i.e. 18% or 28%. You are required to advise ABC Ltd. in this situation.*

Answer

In such an event, ABC Limited can move an application for provisional assessment for seeking permission to discharge the tax liability provisionally @ 18% upon the submission of bond and security and subject to finalization of the assessment.

Upon finalization of the assessment, ABC Limited would be liable to pay the differential tax liability along with applicable interest if it is found that the applicable rate was 28% whereas ABC Limited paid the tax @ 18% pursuant to the order passed initially on its application for seeking provisional assessment.

5. SCRUTINY OF RETURNS [SECTION 61]

Verifying the correctness of return

The return furnished by a registered person may be selected for scrutiny by proper officer to verify its correctness. Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same with reference to the information available with him.

Issue of notice

In case any discrepancy is found during scrutiny of return, proper officer shall issue a notice to the said person informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding 30 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.

Reply to notice

The registered person to whom notice is issued within a period of 30 days from the date of service of the notice or such further period as may be permitted by the proper officer may–

- accept the discrepancy as mentioned in the notice and pay the tax, interest and any other amount arising from such discrepancy and inform the same; or
- furnish an explanation for the discrepancy to the proper officer regarding non-acceptance of discrepancy.

Action by Proper Officer

Where the explanation furnished by the registered person or the information submitted is found to be acceptable, the proper officer shall inform him accordingly and no further action shall be taken in this regard.

In case no satisfactory explanation is furnished by registered person or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may take recourse to any of the following provisions, namely:

(a) proceed to conduct audit under section 65 of the Act;

(b) direct the conduct of a special audit under section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or

(c) undertake procedures of inspection, search and seizure under section 67 of the Act; or

(d) initiate proceeding for determination of tax and other dues under Section 73 or 74 of the Act.

6. ASSESSMENT OF NON-FILERS OF RETURNS [SECTION 62]

Best Judgment Assessment

Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person–

- fails to furnish the return under section 39 (monthly/quarterly) or under section 45 (final return), and

- a notice under section 46 has been issued by proper officer to the defaulting taxable person requiring him to furnish the return within a period of 15 days and taxable person fails to file return within the given time;

the proper officer may proceed to assess the tax liability of said person (i.e. Return Defaulter) to the best of his judgement taking into account all the relevant material which is available or which he has gathered.

Time Limit for Assessment Order

The order of best judgment assessment shall be issued by proper officer in the prescribed form and a summary thereof shall be uploaded electronically in the prescribed form.

The Assessment Order shall be issued by Proper Officer within a period of 5 years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates (When the due date is extended, the extended due date becomes the said date for calculation of 5 years period).

example

1. Let's assume that the due date of filing of Annual Return for F/Y 2022-23 is 31.12.2023. If a person defaults in filing of return for any tax period falling in F/Y 2022-23, period of 5 years shall be reckoned from the due date of filing of Annual Return for F/Y 2022-23 i.e. 31.12.2023. Accordingly, the best judgment assessment can be made by Proper Officer on or before 31.12.2028.

Withdrawal of Assessment Order

Where the registered person furnishes a valid return for the default period within ***60 days*** of the service of the assessment order passed on best judgment basis, 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 payment of late fee under section 47 shall continue.

However, where the registered person fails to furnish a 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 an additional late fee of ₹ 100 for each day of delay beyond 60 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 section 50(1) or to pay late fee under section 47 shall continue.

Guidelines to ensure uniformity in the implementation of the provisions of law in relation to non-filers of returns

(i) System generated message would be sent to all the registered persons 3 days before the due date to nudge them about the filing of return by the due date.

(ii) Once the due date for furnishing return under section 39 is over, a system generated mail/ message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/ message is to be sent to the authorized signatory as well as the proprietor/ partner/ director/ karta, etc.

(iii) After 5 days of due date of furnishing the return, notice under section 46 shall be issued electronically to the defaulters requiring then to furnish return within 15 days.

(iv) If the return is not filed within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said defaulter under section 62, to the best of his judgment taking into account all the relevant material which is available or which he has gathered and would issue assessment order. The proper officer would upload the summary of such order in the prescribed form.

(v) For the purpose of assessment of tax liability under section 62, the proper officer may take into account the following:

- Details of outward supplies available in GSTR-1
- Details of inward supplies auto-populated in GSTR-2A
- Information available from e-way bills
- Any other information available from any other source including inspection under section 71 of the CGST Act

(vi) If the defaulter furnishes a valid return within ***60 days*** of the service of assessment order under section 62, the said assessment will be deemed to have been withdrawn.

(vii) If the said return remains unfurnished within the statutory period of ***60 days*** from the service of assessment order under section 62, the proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act.

Based on facts available, in some cases, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of assessment order under section 62. Further, proper officer would initiate action under section 29(2) of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29

[Circular No. 129/48/2019 GST dated 24.12.2019]

7. ASSESSMENT OF UNREGISTERED PERSONS [SECTION 63]

Best Judgment Assessment

Notwithstanding anything to the contrary contained in section 73 or section 74, 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, for any of the following reason, namely—
  - (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
  - (b) a person paying tax under composition levy under section 10 has not furnished ***the return for a financial year beyond three months from the due date of furnishing the said return;*** or
  - (c) any registered person, other than a person specified in clause (*b*), has not furnished returns for ***such continuous tax period as may be prescribed; or***
  - (d) any person who has taken voluntary registration under sub-section (*3*) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

but who was liable to pay tax, the proper officer may proceed to assess the tax liability of said unregistered person to the best of his judgement for the relevant tax periods.

Issue of Notice

Before making the assessment, proper officer shall issue a notice to a taxable person 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 the prescribed form. The taxable person shall be given 15 days' time to furnish his reply, if any. Thereafter, an order shall be passed and summary thereof shall be uploaded electronically in the prescribed form.

However, no such assessment order shall be passed without giving the person an opportunity of being heard.

Time Limit for Assessment Order

The assessment order shall be issued by proper officer within a period of 5 years from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.

example

2. Let's assume that the due date of filing of Annual Return for F/Y 2022-23 is 31.12.2023. If the liability of a person to take registration arises at any time in the F/Y 2022-23 for the reason that his turnover crosses the prescribed threshold limit, period of 5 years shall be reckoned from the due date of filing of Annual Return for F/Y 2022-23 i.e. 31.12.2023. Accordingly, best judgment assessment can be made by proper officer on or before 31.12.2028.

8. SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES [SECTION 64]

When Summary Assessment can be made

Summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional Commissioner/Joint Commissioner when:

- the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and
- the proper officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue.

The summary assessment order and a summary thereof shall be uploaded electronically in the prescribed form.

Withdrawal of Assessment Order

The Summary Assessment Order may be withdrawn by Additional Commissioner/Joint Commissioner, –

(a) on an application filed by taxable person for withdrawal of the summary assessment order within 30 days from the date of receipt of order; or

(b) on his own motion, where he finds such order to be erroneous and may instead follow the procedures laid down in section 73 or section 74 to determine the tax liability of such taxable person.

Deemed taxable person in case of supply of goods

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.

example

3. When tax evaded goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax.

9. AUDIT BY TAX AUTHORITIES [SECTION 65]

Who may conduct the audit?

Audit of any registered person may be undertaken by:

- the Commissioner; or
- any officer authorized by him, by way of a general or a specific order,

Audit may be carried out at the place of business of the registered person or in their office. The period of audit could be for a financial year or part thereof or multiples thereof.

Thus, the Commissioner or any officer authorized by him, by way of a general or special order, may undertake audit of any registered person even for a part of financial year or for multiple financial years.

Where it is decided to undertake the audit of a registered person, the proper officer shall issue a notice not less than 15 working days prior to the conduct of audit.

What is meant by commencement of audit?

The term 'commencement of audit' is important because audit has to be completed within a given time frame in reference to this date of commencement. Commencement of audit means the later of the following:

a) the date on which the records/accounts called for by the audit authorities are made available to them, or

b) the actual institution of audit at the place of business of the taxpayer.

Time limit for completion of audit

The audit is required to be completed within 3 months from the date of commencement of audit. The period is extendable for a further period of a maximum of 6 months by the Commissioner.

How to conduct audit

The proper officer authorised to conduct audit of the records and books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him may verify the following and record the observations in his audit notes:

- documents on the basis of which the books of account are maintained and the returns and statements furnished under the Act and the rules made thereunder;
- the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilized, refund claimed, and other relevant issues.

During the course of audit, the authorised officer may require the registered person,—

a) to facilitate the verification of accounts/records available or requisitioned by the authorities,

b) to provide such information as the authorities may require for the conduct of the audit, and

c) to render assistance for timely completion of the audit.

Finalisation of Audit

The proper officer may inform the registered person of the discrepancies noticed, if any, as observations of the audit and the said person may file his reply.

The proper officer shall finalize the findings of the audit after due consideration of the reply furnished by registered person to the audit observations.

On conclusion of audit, the proper officer shall within 30 days inform the registered person whose records are audited, about the audit findings and the reasons for such findings. The proper officer shall also inform the said person his rights and obligations against such observations.

Where the audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Practical points for reference:

(a) Unlike direct taxes regime, in the GST regime separate assessment order is not passed by the tax authorities for each financial year. In the GST regime the tax authorities may conduct audit of a taxpayer involving one or more financial year (including a part thereof). At the end of the audit, the tax authorities are required to communicate the findings of the audit for the entire audit period along with the reasons of such finding to the registered person whose audit is undertaken.

(b) Further, in the GST regime audit exercise may be carried out at the place of business of the office of the registered person. In such cases, a team of department's officials visits the premises of the registered person and carries out the audit as per the audit schedule communicated to the registered person.

10. SPECIAL AUDIT [SECTION 66]

When Special Audit may be directed and from whom?

If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that –

- the value (of goods and/or services) has not been correctly declared; or
- the credit availed is not within the normal limits,

he may, with the prior approval of the Commissioner, issue a direction to the registered person 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 and specified in the said direction.

The provisions of special audit shall have effect even if the accounts of the registered person have been audited under any other provisions of the GST Act or any other law for the time being in force.

Time limit within which audit to be completed

The Chartered Accountant or cost accountant as nominated by Commissioner shall submit a report of such audit duly signed and certified by him within the period of 90 days to the said Assistant Commissioner mentioning there in such other particulars as may be specified:

The Assistant Commissioner may extend the said period 90 days by a further period of 90 days –

- 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.

Who will bear the expenses of audit?

The expenses of the examination and audit of records including the remuneration of such Chartered Accountant or Cost Accountant, shall be determined and paid by the Commissioner and such determination shall be final.

How Special Audit Report to be dealt with?

The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

On conclusion of special audit, the registered person shall be informed of the findings of special audit.

Where the special audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the process of demand and recovery will be initiated against the registered person under section 73 or section 74.

Practical points for reference:

(a) Upon the conclusion of an audit under section 65 or special audit under section 66, the registered person is communicated the proposed tax, interest and other liabilities, if any, along with the audit findings and the registered person is called upon to discharge the liabilities.

(b) In case the registered person discharges the liabilities as proposed, no further action is taken. Otherwise, the authorities may initiate the proceedings against the registered person under sections 73 or 74 for determination of the tax liability of the person audited.

(c) Thus, non-payment of the liability proposed on the culmination of audit or special audit does not automatically results in initiation of the recovery proceedings under the law. In the case of such non-payment, further proceedings are required to be initiated under section 73 or 74 for determination of the tax liability.

LET US RECAPITULATE

The discussion under this chapter are summarised by way of diagrams to help students remember and retain the key provisions in a better and effective manner:

Different ways to assess the tax liability by a registered person

A registered person may assess his tax liability in two different ways depending upon the circumstances warranting such an assessment.

Provisional Assessment

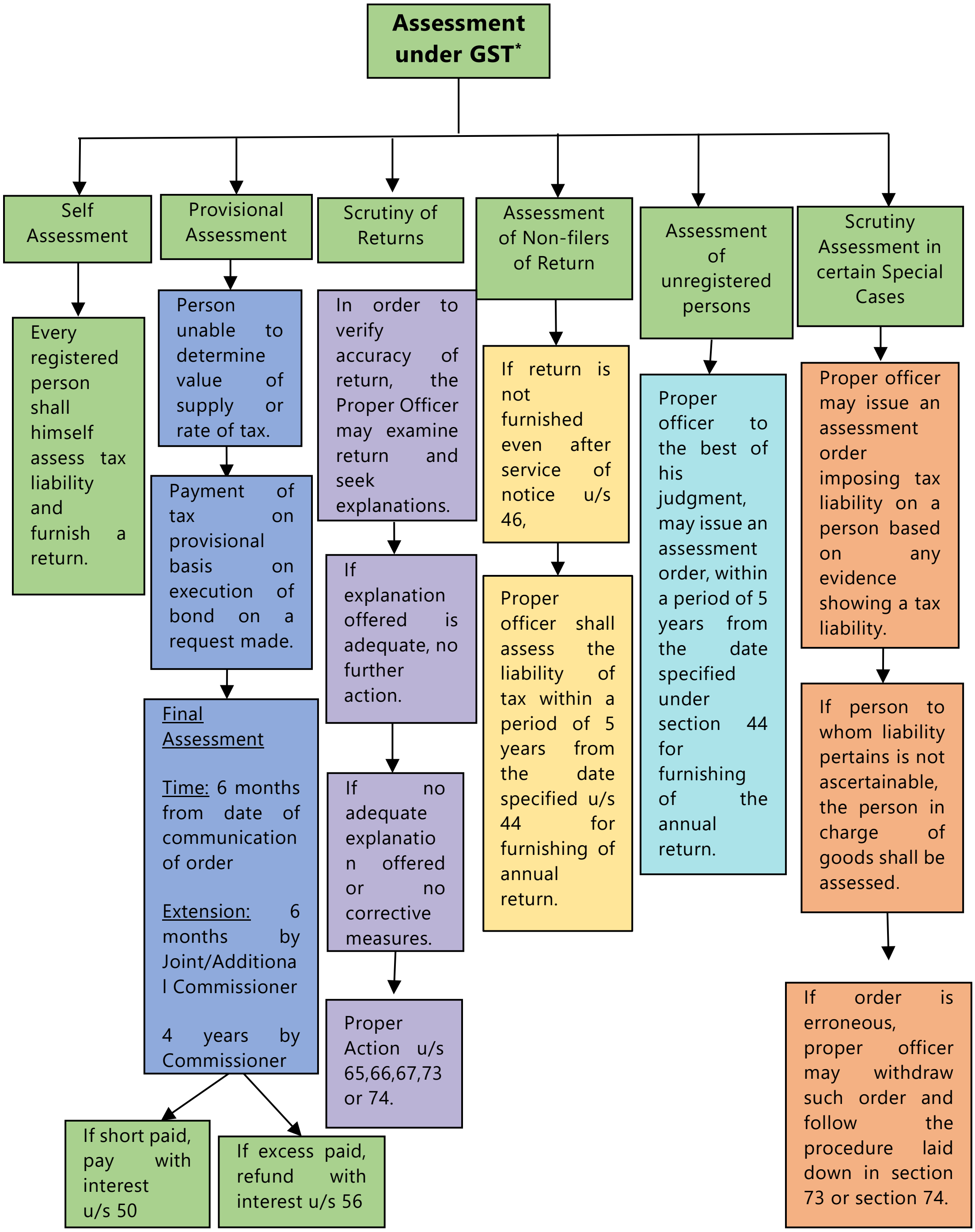
Where the taxable person is unable to determine value; or rate of tax applicable to the goods or services or both to be supplied by him

For this –

- Taxable person shall furnish an application along with the documents in support of his request.
- The proper officer after calling for additional information and documents, if required, issue an order indicating therein-
    - value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis;
    - amount for which the bond is to be executed and security to be furnished

Self-Assessment

In all other cases



*This is not an exhaustive list of assessments under the GST law. In addition to the types of assessments listed herein above, determination of the liability of a taxpayer can be made under Sections 73 or 74 of the CGST Act (discussed in detail separately).

Audit

Audit by Tax Authorities

- Commissioner or any officer authorized by him may undertake audit of any registered person
- Audit may be conducted at the place of business or in their office
- At least 15 days prior notice should be given
- Time Period : 3 months from the date of conduct of audit
- Extension : not exceeding six months
- On conclusion, registered person shall be informed about findings, rights and obligations
- If results in demand of tax, proceedings may be initiated under section 73 or 74.

Special Audit

- At any stage of scrutiny, inquiry or investigation
- Assistant Commissioner is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits
- May nominate a Chartered Accountant or Cost Accountant
- Time period : 90 days
- Extension : further 90 days
- Audit will be conducted even if accounts have already been audited
- If results in demand of tax, proceedings may be initiated under section 73 or 74.

TEST YOUR KNOWLEDGE

1. *Is summary assessment order to be necessarily passed against the registered person?*

2. *Whether principal of natural justice is must to be followed before passing assessment order against the unregistered person?*

3. *Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017?*

4. *Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017.*

5. *Explain the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017.*

6. *Write a brief note on Summary Assessment in certain special cases as per section 64 of the CGST Act, 2017.*

7. *Kulbhushan & Sons has entered into a contract to supply a consignment of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.*

   On 12th January, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

   Kulbhushan & Sons complies with the same and supplies the goods on 25th January thereafter paying the tax on provisional basis in respect of said consignment on 19th February.

   Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21st March, a tax of ₹ 1,80,000 becomes due on the consignment.

   Kulbhushan & Sons pays the tax due on 9th April. Determine the interest payable, if any, by Kulbhushan & Sons in the above case.

Assuming all the other facts remaining the same, if consequent to the final assessment order passed on 21st March, a tax of ₹4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9th April and tax was refunded to it on 5th June, determine the interest receivable, if any, by Kulbhushan & Sons in the given case.

ANSWERS/HINTS

1. No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the registered person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the registered person and will be assessed to tax.

2. Yes, principal of natural justice is must to be followed before passing assessment order against an unregistered person seeking to impose any financial burden on him.

3. Assessment order passed by the proper officer may be withdrawn in following cases:-

(i) **Assessment of non-filers of returns**-The best judgement order passed by the proper officer under section 62 of the CGST Act shall automatically stand withdrawn where a registered person files a valid return within ***60 days*** of the service of the best judgment assessment order. However, the liability for payment of interest under section 50(1) of the CGST Act, 2017or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.

However, where the registered person fails to furnish a 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 an additional late fee of ₹100 for each day of delay beyond 60 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 section 50(1) or to pay late fee under section 47 shall continue.

(ii) **Summary assessment-**As per section 64(2) of the CGST Act, 2017,a taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/ Joint Commissioner within 30 days of the date of receipt of the order.

If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of the CGST Act. The Additional/ Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

4. Audit by Tax authorities under section 65 of the CGST Act, 2017:-

1 The Commissioner or any officer authorized by him can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

2 The audit shall be completed within a period of 3 months from the date of commencement of audit. However, the Commissioner can extend this period by a further period upto maximum 6 months.

Special Audit under section 66 of the CGST Act, 2017:-

1 The registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. Any officer not below the rank of Assistant Commissioner may order special audit, with the prior approval of the Commissioner, if he is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.

2 Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.

5. If proper explanation is not furnished for the discrepancy detected in return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017 of a registered person, the proper officer may:

(i) conduct audit of the registered person; or

(ii) direct the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or.

(iii) exercise the powers of inspection, search and seizure with respect to the registered person, or

(iv) proceed to determine the tax and other dues of the registered person under Sections 73 or 74 of the Act.

6. As per section 64 of the CGST Act, 2017, summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional/Joint Commissioner when the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and any delay by him in passing an assessment order may adversely affect the interest of revenue.

Additional/Joint Commissioner may withdraw summary assessment order on an application filed by taxable person within 30 days from the date of receipt of order or on his own motion, if he finds such order to be erroneous and may instead follow the procedures laid down in section 73 or section 74 to determine the tax liability of such taxable person.

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.

7. Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25th January under provisional assessment is 20th February.

In view of the provisions of section 60(4), in the given case, Kulbhushan & Sons is liable to pay following interest in respect of the consignment of goods supplied:

= ₹ 1,80,000 × 18% × 48/365

= ₹ 4,261 (rounded off)

If, in the given case, it is assumed that consequent to the final assessment order passed on 21st March, a tax of ₹ 4,20,000 becomes refundable to Kulbhushan & Sons, answer would be as follows:

Section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05th June) within 60 days from the date of receipt of application of refund (09th April), interest is not payable to Kulbhushan& Sons on tax refunded.

CHAPTER 18

INSPECTION, SEARCH, SEIZURE AND ARREST

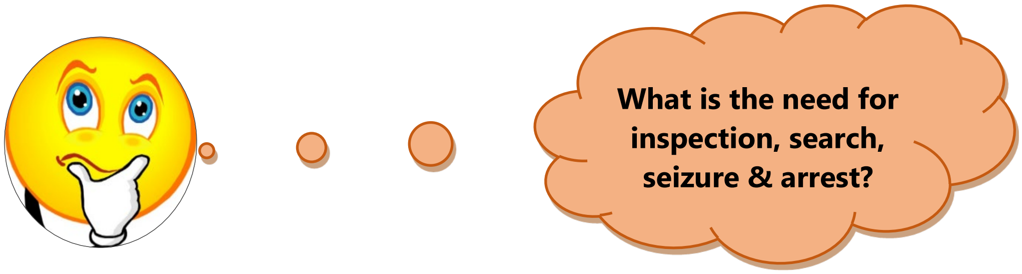
The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- understand and explain the meaning of inspection, search, seizure and summons.
- understand and describe the legislative power to arrest.
- identify and appreciate the rights and duties of persons against such actions.
- gain knowledge pertaining to the procedural requirements to be complied in this regard.

1. INTRODUCTION



The provisions related to Inspection, Search, Seizure and Arrest are provided in tax laws in order to protect the interest of genuine taxpayers (as the Tax evaders, by evading the tax, get an unfair advantage over the genuine tax payers). These provisions are also required to safeguard the Government's legitimate dues. Wherein , these provisions act as a deterrent and by checking evasion provide a level playing field to all genuine taxpayers.

It may be mentioned that the options of Inspection, Search, Seizure and Arrest are exercised only in exceptional circumstances and as a last resort, to protect the Government revenue.

Chapter XIV – Inspection, Search, Seizure and Arrest [Sections 67 to 71] of the CGST Act stipulates the provisions relating to inspection, search, seizure and arrest. State GST laws also prescribe identical provisions in relation to inspection, search, seizure and arrest.

Provisions of inspection, search, seizure and arrest under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

2. POWER OF INSPECTION, SEARCH AND SEIZURE [SECTION 67]

The power of 'Inspection' enables officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

As per section 67, inspection can be carried out by a proper officer only upon a written authorization given by an officer of the rank of Joint Commissioner or above.

Circumstances for carrying out inspection

An inspection can be carried out only after a Joint Commissioner or an officer higher in rank gives such authorization to the proper officer. Such authorization can be given by the Joint Commissioner or an officer higher in rank, only if he has **reasons to believe** that:

(a) taxable person has done one of the following:-

   i. suppressed any transaction of supply of goods or services;

   ii. suppressed stock of goods in hand;

   iii. claimed input tax credit in excess of his entitlement;

   iv. contravened any provision of the Act to evade tax;

(b) any person engaged in transporting of goods or an owner or operator of a warehouse or a godown or any other place has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

Reason to believe means having knowledge of the facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. As per Section 26 of the IPC, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise." 'Reason to believe' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. 'Reason to believe' is more than a mere suspicion but less than evidence in possession about the violation of law. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.

Meaning of Search

Either pursuant to an inspection or otherwise, if it is felt that any goods which are liable for confiscation *(discussed below)* under the Act , or any documents or books or things are secretly stored are found or any documents/books of accounts are found, which may be useful for the department in the proceedings for demand of tax, the department could search and seize such goods/documents and books.

Any tax law should provide powers to the enforcing officers, to check the evasion of tax. As per the dictionary meanings and as noted in different judicial pronouncements, the term 'search', in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under proper and valid authority of law.

As per Section 67, a search and seizure can be carried out by a Joint Commissioner or an officer higher in rank or by an officer authorized by such person not below the rank of a Joint Commissioner only if he 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.

Meaning of Seizure

The term 'seizure' has not been specifically defined in the GST Law. In the Law Lexicon Dictionary, 'seizure' is defined as the act of taking physical custody (actual or constructive) of property by an officer under legal process. It generally implies taking custody forcibly / contrary to the wishes of the owner of the property or who has lawful possession and who was unwilling to part with the possession. Not only inputs and capital goods may be seized but all offending property (movable and immovable), books and records, computer and database and everything that aids and assists in the proceedings under the Act and in protection of Government revenue including furthering investigation may be seized.

The person from whom documents and books of accounts are seized, shall have the right to take copies of such documents and books of accounts, subject to the approval of the proper officer.

Confiscation of goods

As per section 130, goods become liable to confiscation when any person does the following:

(i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder with an intent to evade payment of tax;

(ii) does not account for any goods on which he is liable to pay tax under this Act;

(iii) supplies any goods liable to tax under this Act without having applied for the registration;

(iv) contravenes any of the provisions of the CGST Act or rules made thereunder with an intent to evade payment of tax.

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made 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,

Powers of officer during search

An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents/books/things (relevant for any proceedings under the Act) from the premises searched. However, if it is not practicable to seize any such goods then the same may be detained i.e. he may order the owner or the custodian to not remove or part with the goods except with the permission of the officer. The person from whom these are seized shall be entitled to take copies/extracts of seized records in the presence of any authorized officer at a place and time indicated by the proper officer. Taking copies / extract may be denied where in the opinion of the officer making such copies or taking such extracts may prejudicially affect the investigation. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied.

Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied.

The seized documents/books/things shall be retained only till the time the same are required for examination/enquiry/proceedings and if these are not relied on for the case then the same shall be returned within 30 days from the issuance of show cause notice.

Manner of release of confiscated goods, documents

- **Provisional basis:-**The seized goods shall be released on a provisional basis, on execution of bond and furnishing of prescribed amount of security or on payment of applicable tax, interest and penalty.
- **Actual return of goods:-** In case of seizure of goods, a notice has to be issued within six months, if no notice is issued within a period of six months then all such goods shall be returned. However, this period of six months can be extended by the proper officer for another six months on sufficient cause.
- **Disposal of goods:-**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, notify the goods which shall be disposed by the proper officer in the prescribed manner. If, during a search, such specified goods have been seized, the proper officer shall prepare an inventory of such goods in the prescribed manner.

Procedure for conducting search

To ensure that the provisions for search and seizure are implemented in a proper and transparent manner, the Act stipulates that the searches and seizures shall be carried out in accordance with the provisions of Criminal Procedure Code, 1973. Section 100 of the Code of Criminal Procedure describes the procedure for search.

Basic requirements to be observed during search operations

The following principles should be observed during Search:

- No search of premises should be carried out without a valid search warrant issued by the proper officer.
- There should invariably be a lady officer accompanying the search team to a residence.

- The officers before starting the search should disclose their identity by showing their identity cards to the person in-charge of the premises.
- The search warrant should be executed before the start of the search by showing the same to the person in-charge of the premises and his signature should be taken on the body of the search warrant in token of having seen the same. The signatures of at least two witnesses should also be taken on the body of the search warrant.
- The search should be made in the presence of at least two independent witnesses from the locality. If no such inhabitants are available /willing, the inhabitants of any other locality should be asked to be witness to the search. The witnesses should be briefed about the purpose of the search.
- Before the start of the search proceedings, the team of officers conducting the search and the accompanying witnesses should offer for their personal search to the person in-charge of the premises being searched. Similarly, after the completion of the search all the officers and the witnesses should again offer themselves for their personal search.
- A Panchnama / Mahazar of the proceedings of the search should necessarily be prepared on the spot. A list of all goods, documents recovered and seized/detained should be prepared and annexed to the Panchnama/Mahazar. The Panchnama / Mahazar and the list of goods/ documents seized/detained should invariably be signed by the witnesses, the in-charge/ owner of the premises before whom the search is conducted and also by the officer(s) duly authorized for conducting the search.
- After the search is over, the search warrant duly executed should be returned in original to the issuing officer with a report regarding the outcome of the search. The names of the officers who participated in the search may also be written on the reverse of the search warrant.
- The issuing authority of search warrant should maintain register of records of search warrant issued and returned and used search warrants should be kept in records.
- A copy of the Panchnama / Mahazar along with its annexure should be given to the person incharge/owner of the premises being searched under acknowledgement.

Search Warrant and its contents.

The written authority to conduct a search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search. Search Warrant should contain the following details:

- the violation under the Act,
- the premise to be searched,
- the name and designation of the person authorized for search,
- the name of the issuing officer with full designation along with his round seal,
- date and place of issue,
- serial number of the search warrant,
- period of validity i.e. a day or two days etc.

Safeguards provided for in respect of Search or Seizure

Certain safeguards are provided in section 67 of CGST Act in respect of the power of search or seizure. These are as follows:

- Seized goods or documents should not be retained beyond the period necessary for their examination;
- Photocopies of the documents can be taken by the person from whose custody documents are seized;
- For seized goods, if a notice is not issued within six months of its seizure, goods shall be returned to the person from whose possession it was seized. This period of six months can be extended on justified grounds up to a further period of maximum six months;
- Certain specified categories of goods such as perishable, hazardous etc. can be disposed of immediately after seizure. For instance, newspapers and periodicals, menthol, camphor, saffron, petroleum products, red sander, cells, batteries and rechargeable batteries, Re-fills for ball-point pens, etc. An inventory of such goods, if seized, shall be made by the seizing officer.
- The provisions of Code of Criminal Procedure 1973 relating to search and

seizure shall apply. However, one important modification is in relation to sub-section (5) of section 165 of Code of Criminal Procedure – instead of sending copies of any record made in course of search to the nearest Magistrate empowered to take cognizance of the offence, it has to be sent to the Principal Commissioner/ Commissioner of CGST.

3. INSPECTION OF GOODS IN MOVEMENT [SECTION 68]

Inspection can also be carried out of a conveyance, carrying a consignment of value exceeding specified limit. The person-in-charge of the conveyance has to produce prescribed documents/devices for verification and allow inspection. E-way Bill has been prescribed for the said purpose. *The same has already been discussed in detail in Chapter-10: Accounts and Records; E-way Bill.* Inspection during transit can be carried out even without authorization of Joint Commissioner.

4. POWER TO ARREST [SECTION 69]

The term 'arrest' has not been defined in the GST Law. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of a lawful warrant.

Arrests can be carried out only where the person is accused of offences specified for this purpose and the tax amount involved is more than specified limit. Further, the arrests under GST Law can be made only under authorization from the Commissioner. Whenever the Commissioner has reason to believe that any person has committed any specified offence, he can authorize any other officer subordinate to him, to arrest such person.

Various offences committed in connection with evasion of tax are also punishable with imprisonment. For some offences liable to more number of years of imprisonment, the offender has to be prosecuted before appropriate

Court. The nature of offences which are thus punishable with imprisonment are prescribed in section 132.

Authorization of arrest by the proper officer

The Commissioner can authorize an officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1)(a)/(b)/(c)/(d) or under section 132(2). The detailed provisions relating to section 132 have been discussed in detail in *Chapter-21: Offences and Penalties and Ethical aspects under GST*. This essentially means that a person can be arrested only where the tax evasion is more than ₹ 2 crore. However, the monetary limit shall not be applicable if the offences are committed again (even after being convicted earlier), i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

Safeguards for a person who is placed under arrest

There are certain safeguards provided under section 69 for a person who is placed under arrest. These are:

- If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest;
- If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner can release him on bail and he will be subject to the same provisions as an officer in-charge of a police station under section 436 of the Code of Criminal Procedure, 1973;
- All arrest must be in accordance with the provisions of the Code of Criminal Procedure,1973 relating to arrest.

Section 132 of the Act also prescribes which types of offences are cognizable and non-bailable and which types of offences are non-cognizable and bailable.

Meaning of cognizable offence.

Generally, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court.

Meaning of non-cognizable offence.

Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order.

Cognizable and non-cognizable offences under CGST Act.

Section 132 provides that the offences relating to taxable goods and /or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken exceeds ₹ 5 crore shall be cognizable and non-bailable and in such cases the bail can be considered by a Judicial Magistrate only.

Other offences under the Act are non-cognizable and bailable and all arrested persons shall be released on bail by Deputy/ Assistant Commissioner.

Precaution taken during arrest

The provisions of the Code of Criminal Procedure, 1973 relating to arrest and the procedure thereof must be adhered to in all situations amounting to arrest. It is therefore necessary that all field officers of CGST be fully familiar with the provisions of the Code of Criminal Procedure, 1973.

One important provision to be taken note of is Section 57 of Cr.P.C., 1973 which provides that a person arrested without warrant shall not be detained for a period longer than, under the circumstances of the case, is reasonable, but this shall not exceed 24 hours (excluding the journey time from place of arrest to the Magistrate's court). Within this period, as provided under section 56 of Cr.P.C., the person making the arrest shall send the person so arrested without warrant, before a Magistrate having jurisdiction in the case.

Guidelines for arrest

The decision to arrest needs to be taken on case-to case basis considering various factors, such as, nature and gravity of offence, quantum of duty evaded or credit wrongfully availed, nature and quality of evidence, possibility of evidence being tampered with or witnesses being influenced, cooperation with the investigation, etc. The power to arrest has to be exercised after careful consideration of the facts of the case which may include:

- to ensure proper investigation of the offence;

- to prevent such person from absconding;
- master minds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc;
- master minds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc.;
- where the intent to evade duty is evident and element of mens rea/guilty mind is palpable;
- prevention of the possibility of tampering with evidence;
- intimidating or influencing witnesses; and
- large amounts of evasion of tax.

5. POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS [SECTION 70]

During the course of any enquiry under this Act, the proper officer may summon any person to appear before him and give evidence or produce documents. The person to whom such summons has been issued is duty bound to appear before the officer and bound to tender evidence / give statement on oath. He is also bound to produce all documents which were required to be furnished.

Asking for 'evidence' or requiring 'to produce a document' does not permit calling for entire set of books of accounts. It is important to call for specific evidence or documents. Recording a statement on oath is not the conclusion of investigation but to further the investigation that the evidence or document obtained in summons proceedings will help in supporting charges against a person. Statements made in summons proceedings are inherently unreliable for the reason that the person may be anxious due to the nature of the proceedings. Such statements are also not free from doubt due to any inimical relations between the person recording the statement and the person or entity charged with offence. It is also important to note that a person who has made a statement may modify or even withdraw the statement made. However, such modification or withdrawal cannot be done with an inordinate delay. .

Reliability of statements is discussed in section 136 where 5 circumstances are stated wherein the statements 'may be' accepted by a Court as reliable *[Section 136 has been discussed in detail in Chapter 21: Offences and Penalties and Ethical aspects under GST]*. In all other circumstances, the Court will administer oath again and record evidence. Documents not otherwise available may be summoned and collected such as contracts and other documents. Annual accounts which are anyway available on MCA website should not be called for in summons proceedings.

Responsibilities of the person so summoned

A person who is issued summons is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summons upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.

Consequences of non-appearance to summons

The proceeding before the official who has issued summons is deemed to be a judicial proceeding. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case he gives false evidence, he can be prosecuted under section 193 of the IPC. In addition, if a person does not appear before a CGST/ SGST officer who has issued the summons, he is liable to a penalty upto ₹ 25,000 under section 122(3)(d) of the Act.

Guidelines for issuance of summons

The Central Board of Indirect taxes and Customs (CBIC) in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

- summons are to be issued as a last resort where assesses are not co-operating and this section should not be used for summoning the top management;

- the language of the summons should not be harsh and legally worded in such manner which causes unnecessary mental stress and embarrassment to the receiver;
- summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;
- where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;
- in all cases, where summons is issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;
- senior management officials such as CEO, CFO, General Managers of a large companies or a Public Sector Undertakings should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision-making process which has led to loss of revenue.

Precautions to be observed while issuing summons

The following precautions should generally be observed when summoning a person: -

(i) A summons should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.

(ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.

(iii) The time of appearance given in the summons should be respected and no person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.

(iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding the time and place of recording statement having regard to the facts in the case.

6. ACCESS TO BUSINESS PREMISES [SECTION 71]

An officer duly authorized by the Joint Commissioner or an officer higher in rank can have access to any business premises which may be required for the purpose of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons-in-charge of such premises to furnish the required documents within fifteen working days from the day when such demand is made. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit under section 66. The following records are covered by this provision and are to be produced, if called for.

(i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.

(ii) trial balance or its equivalent.

(iii) statements of annual financial accounts, duly audited.

(iv) cost audit report, if any.

(v) the income-tax audit report, if any.

(vi) any other relevant record.

The powers under section 71 may be contrasted with powers under section 67 to inspect premises. It may be noted that circumstances when each of these sections are applicable are not similar. Section 71 is more general in its scope and extent which predominantly gives access to the place of business of a registered person to inspect books of accounts, documents etc. for carrying out any audit, scrutiny, verification and checks, whereas section 67 is applicable in specific instances and applies to specific persons/places where the Government has reasons to believe that there is an intent to evade taxes.

7. OFFICERS TO ASSIST PROPER OFFICERS [SECTION 72]

Under section 72, the following officers have been empowered and are required to assist CGST officers in the execution of CGST Act. The categories specified are as follows:

i. Police;

ii. Railways

iii. Customs;

iv. Officers of State/UT/ Central Government engaged in collection of GST;

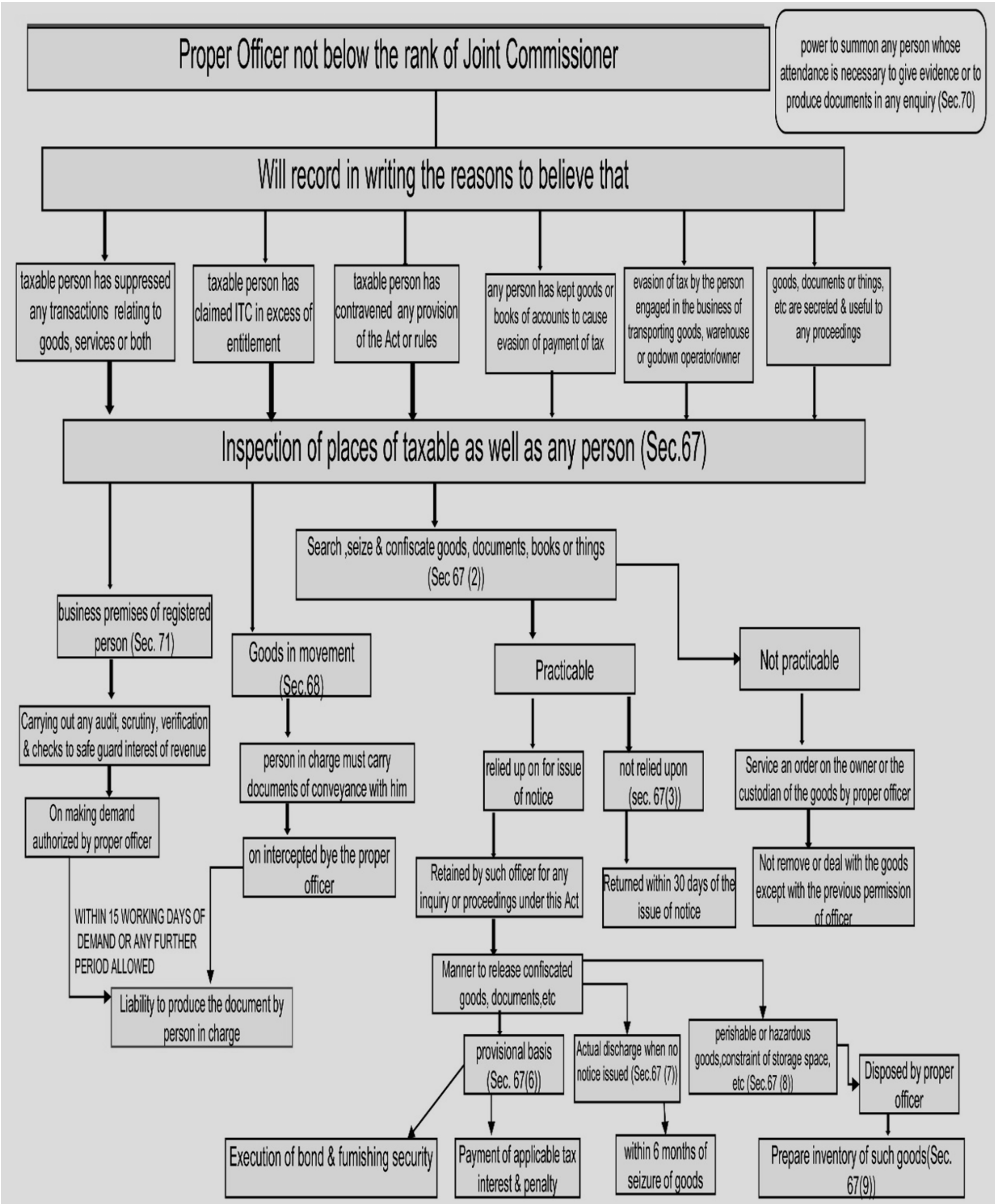
v. Officers of State/UT/ Central Government engaged in collection of land revenue;

vi. All village officers;

vii. Any other class of officers as may be notified by the Central/State Government.

LET US RECAPITULATE

Summary of provisions relating to inspection, search and seizure



TEST YOUR KNOWLEDGE

1. *Explain the situation in which access to business premises is allowed under section 71. Also, list the records which are to be produced during access to business premises.*
2. *Explain the safeguards provided under section 69 to a person who is placed under arrest.*
3. *Who can order for carrying out 'inspection' and under what circumstances?*
4. *Who can order for search and seizure under the provisions of the CGST Act?*
5. *Describe the powers that can be exercised by an officer during a valid search.*
6. *Discuss the responsibilities of the person to whom summons has been issued.*
7. *Explain the meaning of 'arrest'.*
8. *State the circumstances when the proper officer can authorize 'arrest' of any person under the CGST Act.*

ANSWERS/HINTS

1. The access to any place of business of a registered person is allowed to a proper officer who authorized by an officer of the rank of Joint Commissioner or higher for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons in charge of such premises to furnish the required documents within fifteen working days from the day when such demand is made. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit. The following records are covered by this provision and are to be produced, if called for.

(i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.

(ii) trial balance or its equivalent.

(iii) statements of annual financial accounts, duly audited.

(iv) cost audit report, if any.

(v) the income-tax audit report, if any.

(vi) any other relevant record.

2. Section 69 provides following safeguards to a person who is placed under arrest:

(a) If a person is arrested for a cognizable offence, he must be informed of the grounds of arrest and be produced before a magistrate within 24 hours.

(b) If a person is arrested for a non-cognizable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.

(c) All arrest must be in accordance with the provisions of the Code of Criminal Procedure relating to arrest in terms of section 69(3).

3. As per section 67, an inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following to evade tax:

i. suppressed any transaction of supply;

ii. suppressed stock of goods in hand;

iii. claimed excess input tax credit;

iv. contravened any provision of the CGST Act to evade tax;

v. a transporter or an owner/operator of a warehouse/godown/any other place has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

4. An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner/an officer above his rank has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place. The Joint Commissioner/an officer above his rank empowered to authorize any officer to carry out search and seizure can himself also carry out search and seize such goods, documents or books or things.

5. An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents, books or things (relevant for any proceedings under the CGST Act) from the premises searched. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied. In case where it is not practicable to seize any such goods, the officer can issue an order restricting the owner of the goods to not remove / part / deal with the goods except with his prior permission. The officer can also dispose of goods seized which are specified by the Government in a notification having regard to the nature of such goods.

6. A person who is issued summons is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summons upon any matter which is the subject matter of examination and to produce such documents and other things as may be required.

7. The term 'arrest' has not been defined in the CGST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of a lawful warrant.

8. The Commissioner can authorize an officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or section 132(2) and the tax evaded / input tax credit wrongly availed or utilized or refund wrongly taken exceeds ₹ 2 crore. This essentially means that a person can be arrested only where the tax evasion is more than ₹ 2 crore and the offences are specified offences namely, making supply without any invoice; issue of invoice without any supply; amount collected as tax but not paid to the Government beyond a period of 3 months and taking input tax credit without receiving goods and services. However, the monetary limit shall not be applicable if the offences are committed again (even after being convicted earlier), i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

CHAPTER 19

DEMANDS AND RECOVERY

The section numbers referred to in the chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- understand the provisions relating to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised whether for any reason other than fraud or wilful-misstatement or suppression of facts, or otherwise.
- explain the consequences in case where tax is collected but not paid to Government.
- describe the provisions of tax wrongfully collected and paid to the Government.
- explain the recovery proceedings.
- elaborate the facility of payment of tax and other amount in instalments.
- identify the cases where the transfer of property is void.
- explain provisions relating to provisional attachment to protect revenue.

1. INTRODUCTION

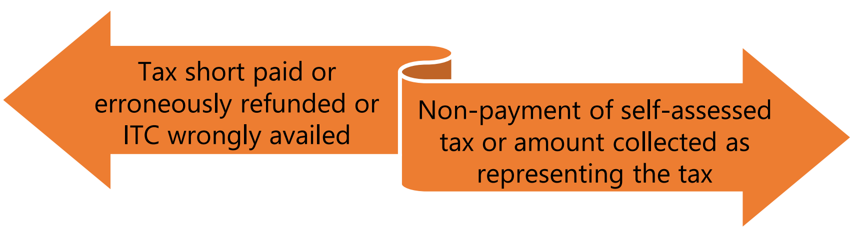
Though it is the duty of every taxable person to assess and pay his GST liabilities voluntarily, tax administration occasionally comes across situations where the tax dues are not paid correctly by the taxpayers. While in most of these cases, such non-payment is due to the bonafide belief of the person that his activities do not attract any tax liability under the GST law; or he is entitled to certain exemption, etc., in some cases, such non-payment is deliberate with an intention to evade payment of such tax by way of short payment of tax, excess availment of input tax credit, etc.

As per the relevant provisions, the self-assessed tax has to be paid by the due date prescribed under the GST law and any non-compliance may affect the Input Tax Credit (ITC) eligibility of the customers and also the tax payer will not be able to file any return for further period in certain circumstances. Effectually, these provisions work as a self-policing system and take care of any mismatch in the payment of taxes.

However, despite these provisions, there may arise some instances where the tax was not paid correctly. To deal with such situations, Revenue must be empowered to demand the tax liability and recover such tax from the defaulter.

On one hand, there is a dire need to have a robust demand and recovery mechanism in place in order to empower the Revenue to exercise said powers, at the same time, care must also be taken that there should not be arbitrary exercise of such powers by the Revenue and same should be appropriately regulated.

Accordingly, the GST law contains elaborate provisions for the recovery of tax under various situations, which can be broadly classified into following two categories:



Chapter XV of the CGST Act 2017 [Sections 73 to 84] and Chapter XVIII [Rules 142 to 161] of the CGST Rules, 2017 contains various provisions relating to demands and recovery. There are parallel provisions in SGST laws of various States. The demand and recovery proceedings will be made either by Central GST Officer or State GST Officer depending on their jurisdiction over particular taxable person.

Provisions of demands and recovery under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the demands and recovery provisions, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

- **Appellate Authority:** means an authority appointed or authorised to hear appeals as referred to in section 107 [Section 2(8)].
- **Appellate Tribunal:** means the Goods and Services Tax Appellate Tribunal constituted under section 109 [Section 2(9)].
- **Commissioner:** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act [Section 2(24)].
- **Market value:** shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related [Section 2(73)].
- **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 in the Board [Section 2(91)].

3. DETERMINATION OF TAX NOT PAID/ SHORT PAID/ ERRONEOUSLY REFUNDED/ ITC WRONGLY AVAILED/ UTILISED [SECTION 73 & SECTION 74]

- Section 73 and section 74 deal with the manner in which the tax liability of a person should be determined in case of short payment/ non-payment of tax/ erroneous refund/ wrong availment/ utlisation of ITC.

- The incidence of short payment/non-payment of tax or erroneous refund or wrong availment/utilisation of ITC may be because of an inadvertent bonafide mistake (**Normal Cases**) or it may be a deliberate attempt (**Fraud and Suppression Cases**) to evade the tax. Since the nature of offence is totally different in both the incidences, hence, under GST law, separate provisions for recovery of the tax and the amount of penalty have been made to deal with such type of cases. Besides these, there are provisions to encourage voluntary compliance such as no penalty or lesser penalty if the tax dues along with interest, are paid within the specified time limit/ incidence.

- **Limitation period:** One of the fundamental legal principles is that an element of certainty must be brought to the legal proceedings. The law of limitation is based on this principle. Any action under any law has to be taken within the limitation period prescribed otherwise uncertainty would prevail eternally.

  The provisions of limitation period gain all the more importance in the legislation dealing with indirect taxes, where the tax burden is to be passed on to the next level at every stage.

  Therefore, a tax law must have a limitation period, beyond which demands cannot be raised. Further, while a lesser time limit is available to the Revenue to raise the demand in normal cases, it would have a longer limitation period available to raise the demand in fraud or suppression cases.

- **Show Cause Notice (SCN):** In order to adhere to the principles of natural justice, before raising any tax demand, a notice has to be issued (generally referred to as Show Cause Notice), asking the person chargeable with tax to show cause as to why the specified amount of tax, interest and penalty should not be demanded from him. The proper officer may, before serving of such SCN, communicate to said person, the details of any tax, interest and penalty as ascertained by him.

- The issuance of SCN grants an opportunity to such person to defend himself before adjudication. The person to whom such notice has been issued can contest the demand by filing a reply to the show cause notice and also by appearing before the adjudicating authority personally. After considering the reply filed by the person as well as the submissions made during the personal hearing, the adjudicating authority shall pass a speaking order, either confirming the tax demand or dropping the same.

The provisions contained in section 73 and section 74 have been discussed in detail below.

I. Non-payment/short payment etc. on account of reasons other than fraud, wilful misstatement or suppression of facts [Section 73]

A. Issue of SCN [Section 73(1)]

- In a case, where the non-payment/ short payment/ erroneous refund/ wrong availment/ utilisation of ITC is on account of reasons other than fraud, wilful misstatement or suppression of facts by the person chargeable with tax, the proper officer shall issue a notice, on the person chargeable such tax, requiring him to show cause as to why he should not pay the amount specified in the notice.

- The proper officer may, before serving of such SCN, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty under section 73.

- The show cause notice would specify the amount of tax along with interest payable thereon under section 50 **[@ 18% p.a.*]** and a penalty leviable under the provisions of this Act or the rules made thereunder, liable to be paid by him. Needless to say, the notice should state the grounds based on which such demand is raised, so that the person against whom the notice is served is made aware of the basis of the demand.

** as notified by Notification No. 13/2017 CT dated 28.06.2017*

B. Time limit to issue SCN [Section 73(2), (3) & (4) read with section 73(10)]

- The notice should be issued at least **3 months** prior to the time limit specified for passing the order determining the amount of tax, interest and any penalty payable by defaulter.
- The order referred herein has to be passed within **3 years** from the due date for furnishing the Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to or within **3 years** from the date of erroneous refund.

> Thus, the **time-limit for issuance of SCN in non-fraud or non - suppression cases is 2 years and 9 months** from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

- Where a notice has been issued for any period on a person chargeable with tax, if such person commits such default in some other period also, instead of issuing a detailed notice, a mere statement containing the details of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilized for such periods, can be issued. This would expedite the adjudication process by avoiding duplication and reducing repetitive paperwork.
- The Service of such Statement shall be deemed to be Service of SCN on such person, subject to the condition that the grounds relied upon for such tax periods [as covered in the Statement] are the same as are mentioned in the earlier notice.

C. Payment of tax before issuance of SCN [Section 73(5), (6) & (7)]

The law provides an opportunity to the person chargeable with tax to pay tax and interest before the issuance of notice. It emphatically stipulates that in such cases, no notice shall be issued and there shall be no other consequences (including penalty) for the default. The detailed provisions are as under:

- The person who is chargeable with tax, but has not paid the tax, or short paid the tax or wrongly availed/utilized the credit, or been granted an erroneous refund, may voluntarily come forward to pay such tax alongwith interest before the issue of SCN/Statement, as the case may be.
- In such case, he has to pay the amount of tax along with interest payable thereon under section 50, either on the basis of his own ascertainment of such tax or the tax as communicated by the proper officer. Further, he needs to inform the proper officer in writing of such payment. The proper officer shall issue an acknowledgement, accepting the payment made by the said person in prescribed form.
- Where such person 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 prescribed form.
- Such voluntary payment can be made even if the mistake is pointed out by the Department, before issue of SCN.
- Where such voluntary payment is made, Department shall not serve any SCN/Statement. The matter closes at this stage itself and no penalty is imposed on the person.
- The **option of paying tax and interest before issuance of SCN** so as to avoid the issuance of SCN and penalty is available in only those cases where any tax has not been paid/short paid/erroneously refunded/ITC wrongly availed/utilized **for reasons other than fraud or any wilful misstatement or suppression of facts to evade tax**.

- After the person has voluntarily paid the tax along with interest, if the proper officer is of the opinion that the amount voluntarily paid falls short of the amount actually payable, he can issue a SCN in respect of the amount which falls short of the amount actually payable.

D. Payment of tax after issuance of SCN [Section 73(8)]

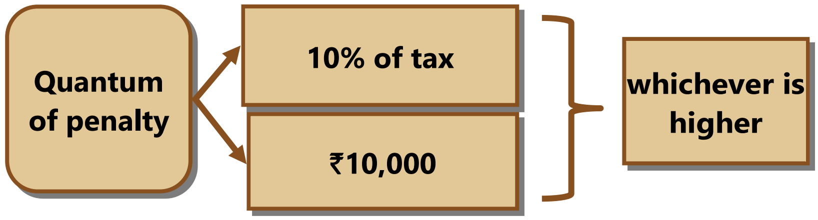
- Where a person is chargeable with tax not paid/short paid etc. and is issued a notice/statement under this section, misses the opportunity to pay the tax along with interest before the issue of SCN resulting in SCN not being issued thereafter and no penalty being imposed, he has another chance to discharge the tax with interest payable under section 50 with nil penalty within 30 days of issuance of SCN. All proceedings in respect of the said SCN shall be deemed to be concluded.
- In other words, where such person pays the tax demanded along with interest payable under section 50 within 30 days of issue of SCN, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

E. Adjudication order [Section 73(9) & (11)]

- Where an SCN/Statement is issued to a person chargeable with tax, he may furnish a representation to the proper officer in his defense, if he is the view that he is not so liable to pay whole/part of the amount mentioned in the SCN.

- The proper officer after considering the representation made by the person, if any, pass an order, determining the amount of tax, interest and penalty** due from such person.

****Quantum of penalty**



- ❑ The quantum of penalty will remain same whether the tax amount, alongwith interest is paid within 30 days of the communication of the order or after 30 days.

****Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax [Section 73(11)].**

From section 73(11), it is clear that the non-payment of self-assessed tax or the amount collected as representing the tax has been treated differently than the other non/short payments as referred in section 73(1) [non payment/ short payment of tax/ erroneous refund of tax/ wrong availment/ utilization of input tax credit] where penalty can be reduced or waived. However, in case of non-payment of self-assessed tax or the amount collected as representing the tax within 30 days, penalty is mandatory and there is no waiver.

Amount collected as representing tax refers to an amount shown as GST in tax invoice even if no tax was payable on that transaction. Thus, if tax was collected in tax invoice, it is to be deposited with the Government even if no tax was actually payable on that transaction.

In case of non-payment of self-assessed tax and the amount collected as representing the tax, the only opportunity for paying the same without incurring any penalty is, if it is paid, with interest, within 30 days from the due date of payment. The option to pay such tax before issuance of SCN or within 30 days of issuance of SCN and avoid penalty consequences is not available. Penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

Clarification on levy of penalty under section 73 in case of delayed filing of return

Issue: Whether penalty in accordance with section 73(11) should be levied in cases where the return in Form GSTR-3B has been filed after the due date of filing such return?

Clarification: The provisions of section 73(11) can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid.

It is accordingly clarified that penalty under the provisions of section 73(11) is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act a general penalty under section 125 may be imposed after following the due process of law *[Circular No. 76/50/2018 GST dated 31.12.2018]*.

F. Time limit for passing adjudication order [Section 73(10)]

- The proper officer shall issue the adjudication order within 3 years from the due date for furnishing of Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilized relates to. In case of erroneously granted refunds, such order should be passed within 3 years from the date of erroneous refund.

- Section 44(1) stipulates that annual return for a financial year needs to be filed by 31st December of the next financial year unless otherwise extended.

II. Non-payment/short payment etc. on account of fraud, wilful misstatement or suppression of facts [Section 74]

A. Issue of SCN [Section 74(1)]

- In a case, where the non-payment /short payment/erroneous refund /wrong availment/utilisation of ITC is **on account of any fraud, wilful misstatement or suppression of facts** by the person chargeable to tax, proper officer shall issue a notice, on the person chargeable with such tax, requiring him to show cause as to why he should not pay the amount of tax, interest and penalty equivalent to tax specified in the notice.

- The proper officer may, before serving of such SCN, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty under section 74.

- The notice would specify the amount of tax along with interest payable thereon under section 50 and **a penalty equivalent to the tax specified in the notice**, liable to be paid by him. Needless to say, the notice should state the grounds based on which such demand is raised, so that the person against whom the notice is served is made aware of the basis of the demand.

B. Time limit to issue SCN [Section 74(2), (3) & (4) read with section 74(10)]

- The notice should be issued at least **6 months** prior to the time limit for passing the order determining the amount of tax, interest and penalty payable by defaulter.

- The said order has to be passed within **5 years** from the due date for furnishing the Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to or within **5 years** from the date of erroneous refund.

Thus, the **time-limit for issuance of SCN is 4 years and 6 months** from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

- Where a notice has been issued for any period on a person chargeable with tax, if such person commits such default in some other period also, instead of issuing a detailed notice, a mere statement containing the details of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilised for such periods, can be issued.
- The Service of such Statement shall be deemed to be Service of Notice on such person, 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 such tax periods [as covered in the Statement] are the same as are mentioned in the earlier notice.

C. Payment of tax before issuance of SCN [Section 74(5), (6) & (7)]

The law provides an opportunity to the person chargeable with tax to pay tax, interest and penalty equivalent to 15% of such tax, before the issuance of notice. It emphatically stipulates that in such cases, no notice shall be issued and there shall be no other consequences for the default. The detailed provisions are as under:

- The person who is chargeable with tax, but has not paid the tax/short paid the tax/wrongly availed/utilised the credit/been granted an erroneous refund by reason of fraud etc., may voluntarily come forward to pay such tax alongwith interest and specified penalty before the issue of SCN/Statement, as the case may be.
- In such case, he has to pay the amount of tax along with interest payable thereon under section 50 and a penalty equivalent to 15% of such tax either on the basis of his own ascertainment of such tax or the tax as communicated by the proper officer. Further, he needs to inform the proper officer in writing of such payment.

- Where such person 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 prescribed form.
- Such voluntary payment can be made even if the mistake is pointed out by the Department, before issue of SCN.
- Where such voluntary payment is made, Department shall not serve any SCN/Statement. The matter closes at this stage itself.
- After such person has voluntarily paid the tax along with interest and penalty, if the proper officer is of the opinion that the amount voluntarily paid falls short of the amount actually payable, he can issue a SCN in respect of the amount which falls short of the amount actually payable.

D. Payment of tax after issuance of SCN [Section 74(8)]

- Where a person is chargeable with tax not paid/short paid etc. and is issued a notice/statement under this section for reasons of fraud etc., misses the opportunity to pay the tax along with interest and penalty equivalent to 15% of tax, before the issue of SCN resulting in no SCN being issued thereafter, he has another chance to discharge tax alongwith interest payable under section 50 and **penalty equivalent to 25%** of tax within 30 days of issuance of SCN. All proceedings in respect of the said SCN shall be deemed to be concluded.
- In other words, where such person pays the tax demanded along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 30 days of issue of SCN, all proceedings in respect of the said notice shall be deemed to be concluded.

E. Adjudication order [Section 74(9) & (11)]

- Where an SCN/Statement is issued to a person chargeable with tax, he may furnish a representation to the proper officer in his defense, if he is the view that he is not so liable to pay whole/part of the amount mentioned in the SCN.

- The proper officer after considering the representation made by the person, if any, pass an order, determining the amount of tax, interest and penalty due from such person.
- Where any person served with an adjudication order pays the tax along with interest payable thereon under section 50 and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

F. Time limit for passing adjudication order [Section 74(10)]

- The proper officer shall issue the adjudication order within 5 years from the due date for furnishing of Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to. In case of erroneously granted refunds, such order should be passed within 5 years from the date of erroneous refund.

Section 44(1) stipulates that annual return for a financial year needs to be filed by 31st December of the next financial year.

I. For the purposes of section 73 and section 74:

(i) the expression **"all proceedings in respect of the said notice"** shall not include proceedings under section 132. *Section 132 is in relation to prosecution. Thus, the person can be prosecuted under GST law even if no further demand can be raised for tax, interest or penalty. Prosecution in criminal court is independent of and can be in addition to, penalty imposed under GST law.*

(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***[1] are deemed to be concluded. *Sometimes, if a notice is*

[1] *Provisions relating to sections 122 & 125) have been discussed in detail in Chapter 21 – Offences and Penalties and Ethics under GST in this Module of the Study Material.*

issued to a company, notice may be also issued to its executive director, employees, transporter etc. for same cause of action. These are termed as 'co-noticees', while company is the 'main noticee'. Conclusion of proceedings against main noticee would be deemed to be conclusion of proceedings against all co-noticees also and the entire case will stand closed.

II. **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. *Thus, definition of 'suppression' is very clear that only if information that was required to be disclosed under the GST law (e.g. in return, statement or report or when specific query was raised) is not disclosed, that would amount to 'suppression'. It is not duty of a taxable person to disclose each material fact to the Department, if it is not asked for.*

The above provisions have been summarized in the following tables:

Table A:

S. No.	Action by tax payer	Amount of penalty payable	
		Normal Cases	Fraud Cases
1.	Tax amount, along with the interest, paid before issuance of notice	No penalty and no notice shall be issued	15% of the tax amount payable as penalty and no notice shall be not be issued
2.	Tax amount, along with the interest, paid within 30 days of issuance of notice	No penalty. All proceedings deemed to be concluded	25% of the tax amount payable as penalty. All proceedings deemed to be concluded.
3.	Tax amount, along with the interest, paid within 30 days of communication of order	10% of the tax amount or ₹ 10,000, whichever is higher	50% of the tax amount payable as penalty. All proceedings deemed to be concluded.

4.	Tax amount, along with the interest, paid after 30 days of communication of order	10% of the tax amount or ₹ 10,000, whichever is higher	100% of the tax amount

Table B:

S. No.	Nature of case	Time for issuance of notice	Time for issuance of order
1.	Normal Cases	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.
2.	Fraud Cases	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund
3.	Any amount collected as tax but not paid	No time limit	Within 1 year from the date of issue of notice *[to be discussed subsequently in this chapter]*
4.	Non- payment of self-assessed tax	No need to issue a SCN	Recovery proceedings can be started directly *[to be discussed subsequently in this chapter]*

Monetary limits prescribed for issuance of SCNs by different level of officers

Board has assigned the officers mentioned in table below, the functions as the proper officers in relation to issue of SCNs and orders under sections 73 and 74[2], up to the prescribed monetary limits of tax (including cess) not paid/ short paid/ erroneously refunded/ ITC of CGST wrongly availed/utilized for issuance of SCNs and passing of orders under sections 73 and 74:

CGST Officer	Monetary limit of CGST	Monetary limit of IGST	Monetary limit of CGST and IGST
Superintendent of Central Tax	Not exceeding ₹ 10 lakh	Not exceeding ₹ 20 lakh	Not exceeding ₹ 20 lakh
Deputy or Assistant Commissioner of Central Tax	Above ₹ 10 lakh and not exceeding ₹ 1 crore	Above ₹ 20 lakh and not exceeding ₹ 2 crores	Above ₹ 20 lakh and not exceeding ₹ 2 crores
Additional or Joint Commissioner of Central Tax	Above ₹ 1 crore without any limit	Above ₹ 2 crores without any limit	Above ₹ 2 crores without any limit

The central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers only to issue SCNs. An SCN issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered.

In case SCNs have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such SCNs should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess) *[Circular No. 31/05/2018 GST dated 09.02.2018]*

[2] *made applicable to matters in relation to IGST vide section 20 of the IGST Act*

4. GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX [SECTION 75]

General provisions relating to determination of tax are contained in section 75 of CGST Act. These provisions are applicable both in case of determination of tax not paid/short paid/ erroneously refunded/ITC wrongly availed/ utilised whether by reason of fraud/any wilful misstatement/suppression of facts or otherwise.

These provisions have been discussed are as follows:

A. Period of stay order to be excluded in computing the limitation period [Section 75(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 for issuance of notice and issuance of adjudication order***, as the case may be.

***period as specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74*

B. In case charges of fraud/any wilful misstatement/suppression of facts are not established for a notice issued in a fraud case, tax to be determined deeming the demand notice to be issued in normal case [Section 75(2)]

Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under section 74(1) 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 section 73(1).

C. Adjudication order issued in pursuance of Appellate Authority/ Appellate Tribunal/ Court's direction be issued with 2 years [Section 75(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 2 years from the date of communication of the said direction.

D. Opportunity of being heard [Section 75(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.

Adjournment of hearing to grant time to person chargeable with tax [Section 75(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.

However, such adjournment shall be granted for a **maximum of 3 times** to a person during the proceedings.

E. Adjudication order should be a speaking order [Section 75(6)]

The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

F. Tax, interest and penalty demanded in order not to exceed amount specified in notice [Section 75(7)]

The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

G. In case of modification of tax by the Appellate Authority/Tribunal/Court, penalty and interest to be modified accordingly [Section 75(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.

H. Payment of interest mandatory even if not specified in the adjudication order [Section 75(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.

I. Adjudication order to be passed mandatorily within stipulated time [Section 75(10)]

The GST law ensures timely disposal of cases by providing that if the adjudication order is not issued within the stipulated time limit of 3 years in normal cases or 5 years in fraud cases, as the case may be, the adjudication proceedings shall be deemed to be concluded.

J. In case of appeal filed by Department against prejudicial decision of the Appellate Authority/Appellate Tribunal/High Court, period between the date of decision of the higher authority and that of the lower authority to be excluded [Section 75(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 time limit for passing adjudication order, where proceedings are initiated by way of issue of a SCN under the sections 73 and 74.

K. Amount of self-assessed tax or interest remaining unpaid to be recovered under section 79 [Section 75(12)]

Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be directly recovered under the provisions of section 79 *[discussed subsequently in this chapter]*.

The expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

The scope of the term "self-assessed tax" is wide enough and hence the recovery proceedings can straight away be initiated by the proper officer for the outward supplies shown in the Form GSTR-1, if not reflecting in Form GSTR-3B. In other words, where the tax payable in respect of details of outward supplies furnished in Form GSTR-1, has not been paid through Form GSTR-3B, either wholly/partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability, and the interest thereon, are liable to be recovered under section 79.

However, the difference/mismatch between details of Form GSTR-1 and Form GSTR-3B may arise due genuine reasons:

For instance,

- ***a typographical error/wrongly reported details in GSTR-1 or GSTR-3B which may be rectified in subsequent GSTR-1 or GSTR-3B, or***
- ***where a supply could not be declared in GSTR-1 of an earlier tax period, though the tax on the same was paid by correctly reporting the same in GSTR-3B of said tax period; details may now be reported in the GSTR-1 of the current tax period.***

Therefore, Instruction No. 01/2022 GST dated 07/01/2022 provides that in case of mismatch between GSTR-1 and GSTR-3B, the proper officer may first send a communication to the registered person to pay the self-assessed tax short paid/not paid, or to explain the reasons for the same, within a reasonable time prescribed in the communication.

Recovery proceedings under section 79 will be initiated by the proper officer only when the said person either (i) fails to reply to the proper officer, or (ii) fails to make the payment of such amount short paid/not paid within the prescribed time or (iii) fails to explain the reasons for such amount short paid/not paid.

L. In case of penalty being imposed under section 73/74, no other penalty to be imposed for the same act/omission [Section 75(13)]

Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Clarifications

I. Clarification pertaining to cases where it is concluded that the notice issued under section 74(1) not sustainable for reason that the charges of fraud etc. not been established against the notice and tax payable being determined deeming as if the notice was issued under section 73(1)

In this regard, Circular No. 185/17/2022 GST dated 27.12.2022 clarifies following issues:

Issues	*Clarification*
In some of the cases where the show cause notice (SCN) has been issued by the proper officer to a noticee under section 74(1) for demand of tax not paid/ short paid or erroneous refund or ITC wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under section 74(1) for the reason that the charges of fraud or any willful-misstatement or suppression of facts to	• *Section 75(3) provides that an order, required to be issued inpursuance of the directions of the appellate authority or appellate tribunal or the court, hasto be issued within 2 years from the date of communication of the said direction.* • *Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under section 73(1) in accordance with the provisions of section 75(2), the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in section 75(3), i.e.*

evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under section 73(1), in accordance with the provisions of section 75(2). What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	***within a period of 2 years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.***
How the amount payable by the noticee, deeming the notice to have been issued under section 73(1), shall be re-computed/re-determined by the proper officer as per provisions of section 75(2)?	• ***In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of section 75(2), the demand would have to be re-determined keeping in consideration the provisions of section 73(2) read with section 73(10)[3].*** • ***Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty***

[3] *A combined reading of provisions of section 73(1), 73(2), 73(9) and 73(10) transpires that in cases which do not involve fraud or willful-misstatement or suppression of facts to evade payment of tax, the SCN in terms of section 73(1) has to be issued within **2 years and 9 months,** from the due date of furnishing of annual return for the FY to which such tax not paid or short paid or ITC wrongly availed or utilized relates, or from the date of erroneous refund.*

	payable deeming the notice to have been issued under section 73(1) in terms of section 75(2), the same can be re-determined for so much amount of tax short paid or not paid, or ITC wrongly availed or utilized or that of erroneous refund, in respect of which SCN was issued within the time limit as specified under section 73(2) read section 73(10). Thus, only the amount of tax short paid or not paid, or ITC wrongly availed or utilized or tax payable on account of erroneous refund, along with interest and penalty payable, in terms of section 73 can be re-determined, where SCN was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective FY or from the date of erroneous refund. ***In case, where the SCN under section 74(1) was issued for tax short paid or tax not paid or wrongly availed or utilized ITC or for erroneous refund beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the FY to which such demand relates to or from the date of erroneous refund, and the appellate authority concludes that the notice is not sustainable under section 74(1) thereby deeming the notice to have been issued under section 73(1), the***

	entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. • *In cases, where the SCN in terms of section 74 was issued for tax short paid or not paid tax or wrongly availed or utilized ITC oron account of erroneous refund within 2 yearsand 9 months from the due date of furnishing of the annual return for the said FY to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the SCN would be covered under re-determined amount.* • *Where the SCN under section 74(1) was issued for multiple FYs, and where notice had been issued before the expiry of the time period as per section 73(2) for one FY but after the expiry of the said due date for the other FYs, then the amount payable in terms of section 73 shall be re-determined only in respect of that FY for which SCN was issued before the expiry of the time period as specified in section 73(2).*

II *Clarification on various issues relating to applicability of demand and penalty provisions under CGST Act in respect of transactions involving fake invoices*

A number of cases have been noticed where the registered persons are found to be involved in issuing tax invoice (fake invoices), without actual

supply of goods or services or both, in order to enable the recipients of such invoices to avail and utilize ITC fraudulently.

Circular No. 171/03/2022 GST dated 06.07.2022 clarifies the applicability of demand and penalty provisions under the CGST Act, in respect of such transactions involving fake invoices as follows:

Sl. 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, (i) whether such transaction will be covered as supply under section 7? (ii) 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? (iii) whether any penal action can be taken against registered person 'A' in such cases?	Since there has 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. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7, 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/section 74 in respect of the same. Besides, no penal action under the provisions of section 73/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) 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 ITC 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/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), he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74, along with applicable interest under provisions of section 50.*** ***Further, as per provisions of section 75(13), if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74, 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 the 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 ITC on the basis of the said tax invoice and further passes on the said ITC to another registered person 'C' by issuing invoices without underlying 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.***	***In this case, the ITC 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 ITC by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The ITC 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). 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/section 74. ***However, in such cases, 'B' shall be liable for penal action both under section 122(1)((ii) and section 122(1)(vii), 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.***

The fundamental principles that have been outlined in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve a complex mixture of above scenarios or even may not be covered by any of the above scenarios.

Any person who has retained the benefit of transactions specified under section 122(1A), and at whose instance such transactions are conducted, shall also be liable for penal action under section 122(1A).

It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of ITC, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of ITC or refund of tax, provisions of section 132 may also be invokable, subject to conditions specified therein, based on facts and circumstances of each case.

5. TAX COLLECTED BUT NOT DEPOSITED [SECTION 76]

The provisions of this section are based on the principle that nobody should be unjustly enriched in the name of Revenue. If any amount is collected in the name of tax, the same must be deposited with the Government.

Such situation may arise in case where tax is collected on supplies on which the tax is leviable, but such tax is not deposited with the Government or where tax is collected on supplies on which tax is not leviable at all, and thus, tax collected is not deposited with the Government.

The detailed provisions of this section have been discussed hereunder:

A. Amount representing tax collected from any person to be paid to the Central Government [Section 76(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.

B. Issue of SCN [Section 76(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.

C. Determination of amount due [Section 76(3)]

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

D. Interest payable on the amount [Section 76(4)]

- The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon.
- Interest is payable at the rate specified under section 50.
- Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

E. Opportunity of being heard [Section 76(5)]

An opportunity of hearing shall be granted where a request is received in writing from the person to whom SCN was issued.

F. Time limit for issuance of order [Section 76(6) & (7)]

The proper officer shall issue an order within **1 year** from the date of issue of the notice.

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 **1 year**.

G. Order must be a speaking order [Section 76(8)]

The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

H. Adjustment of amount payable under section 76(1) and (3) [Section 76(9), (10) & (11)]

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).

Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Consumer Welfare Fund or refunded to the person who has borne the incidence of such amount.

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.

6. TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT [SECTION 77]

A registered person who has paid the CGST and SGST or, as the case may be, the CGST and the UTGST 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.

A registered person who has paid IGST on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of CGST and SGST or, as the case may be, the CGST and the UTGST tax payable.

Similar provisions are contained in section 19 of the IGST Act, 2017.

Section 19 provides that a registered person who has paid IGST 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 IGST so paid in such manner and subject to such conditions as may be prescribed. A registered person who has paid CGST and SGST or, as the case may be, the CGST and the UTGST, 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 IGST payable.

Clarification in respect of refund of tax specified in section 77 of the CGST Act and section 19 of the IGST Act

It is clarified that the term "subsequently held" in said sections 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 <u>subsequently found/ held</u> as intra-State or inter-State respectively <u>by the tax officer in any proceeding,</u> for instance, scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above-mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

(1) Ram Associates, a registered person, pays IGST on a transaction treating the same as inter-State supply by mistake, though it was an intra-state supply. In this case, Ram Associates has to pay CGST and SGST/UTGST, without any interest. He can thereafter claim refund of IGST which was erroneously paid.

7. RECOVERY PROCEEDINGS [SECTIONS 78 & 79]

The recovery proceedings are final steps towards the realisation of any tax or any other amount, which has been confirmed as payable after following the due process of adjudication by the proper officer. These recovery provisions under the CGST Act, 2017 lay down a well-defined procedure which is as follows:

A. Initiation of recovery proceedings [Section 78]

Any amount payable by a taxable person in pursuance of an order passed under this Act must be paid by such person within a period of **3 months** from the date of service of such order. If a taxable person fails to dos so, recovery proceedings are initiated against him.

However, 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 3 months** as may be specified by him.

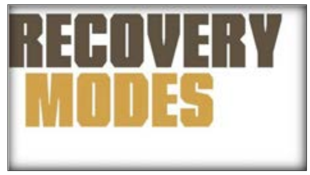
B. Recovery of tax [Section 79]

If the payable amount is not paid by a person within the specified time limit of 3 months, recovery proceedings shall be initiated and various actions may be taken by the recovery officer, for realisation of Government dues.

Recovery of taxes can also be made from distinct persons [referred to in section 25(4) & (5)[4]] present in different States/ UTs.

The options for recovery of Government dues include deduction of money from any amount payable to such tax payer, detaining and selling any goods, directing any other person from whom the money is due to such person, attaching any property belonging to the defaulter etc.

MODES OF RECOVERY OF TAX [SECTION 79(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:

(i) Recovery by deduction from any money owed [Section 79(1)(a) read with rule 143]

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 [referred as 'defaulter'] which may be under the control of the proper officer or such other specified officer.

> **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.

(ii) Recovery by sale of goods under the control of proper officer [Section 79(1)(b) read with rule 144]

- The proper officer may recover or may require any other specified officer to recover the amount so payable from a defaulter by detaining and selling any goods [through a process of auction, including e-auction] belonging to such person which are under the control of the proper officer or such other specified officer.

[4] *Concept of distinct persons has been explained in detail in Chapter 1 – Supply under GST in Module 1 of the Study Material.*

- 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.
- Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.

(iii) Garnishee proceedings - Recovery from a third person [Section 79(1)(c) read with rule 145]

- The proper officer may, by a notice in prescribed form, in writing, require any other person:
  - from whom money is due/may become due to such person or
  - who holds/may subsequently hold money for/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.
- Every person to whom the notice is issued hereunder shall be bound to comply with such notice.
- 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.

- In case the person to whom notice is issued hereunder, 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.
- The officer issuing such notice may, at any time, amend or revoke the notice or extend the time for making any payment in pursuance of the notice.
- Any person making any payment in compliance with the notice issued hereunder shall be deemed to have made the payment under the authority of the person in default.
- Further, 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.
- Any person discharging any liability to the person in default after service on him of the notice 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.
- Where a person on whom a notice is served hereunder proves to the satisfaction of the officer issuing the notice that:
  - the money demanded/any part thereof was not due to the person in default or
  - he did not hold any money for/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/be held for/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.

- Where the third person makes the payment of the amount specified in the notice, the proper officer shall issue a certificate in prescribed form to the third person clearly indicating the details of the liability so discharged.

(iv) Recovery by sale of movable/immovable property [Section 79(1)(d) read with rules 147, 148, 149, 150 and 154]

- The proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of 30 days next after any such distress, may cause the said property to be sold [through auction including e-auction] 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 [Section 79(1)(d)].

- 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 prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due.

In case of attachment/distraint of	
an immovable property	order shall be affixed on the property till the confirmation of sale
a movable property	proper officer shall seize the property and take its custody.

- Stamp duty/any other tax/fee payable on transfer of such property shall be paid by the transferee to the Government.

- 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/in the custody of any Court shall be attached in the manner provided in rule 151 *[discussed subsequently in this chapter]*.
- Where any claim is preferred/any objection is raised with regard to the attachment/distraint of any property by a person claiming that he had some interest in/was in possession of, the property in question, proper officer shall investigate the same and postpone the sale till such time.
- If proper officer finds merit in his claims/objection upon investigation, proper officer will release the property, wholly or partly. Otherwise, the proper officer will reject the claim and proceed with the process of sale through auction.
- Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.
- ***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 section 129(3) 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 section 129(3), as the case may be;

  (c) next, be appropriated against any other amount due from the defaulter under the CGST Act/IGST Act/UTGST Act/any of the SGST Act 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 under the GST law, and where the said person is not required to be registered under the GST law, the said amount shall be credited to the bank account of the person concerned;

- ***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 6 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.***
- 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.
- Any officer/other person who has a duty to perform in connection with such sale will not acquire any interest in property sold.
- No such sale will take place on Sundays/other general holidays recognized by Government.
- Proper officer may seek assistance from jurisdictional police station.

(v) Recovery as arrears of land revenue [Section 79(1)(e) read with rule 155]

- The proper officer may prepare a certificate in prescribed form 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.

(vi) Recovery as fine imposed by Magistrate [Section 79(1)(f) read with rule 156]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate in prescribed form to recover from the person concerned the amount specified thereunder and such Magistrate shall proceed to recover from such person amount specified thereunder as if it were a fine imposed by him.

(vii) Recovery through execution of a decree, etc. [Rule 146]

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 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.

(viii) Recovery through surety [Rule 157]

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.

(ix) Recovery from company in liquidation [Rule 160]

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 prescribed form.

Other provisions governing recovery of tax [Section 79(2), (3) & (4)]

- 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 [Section 79(2)].

- 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 [Section 79(3)].
- 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 [Section 79(4)].

Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation

During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial/full GST liability arising out of the issue pointed out by the Department during the course of such search, inspection or investigation. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability have alleged use of force and coercion by the officers for making recovery during the course of search, inspection or investigation.

Consequently, the legal position of voluntary payment of taxes has been clarified for ensuring correct application of law and for protecting the interest of the taxpayers.

Under the CGST Act, the taxpayers have an option to make voluntary payment of tax. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5). 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 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order.

Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings.

However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should however, inform the taxpayers regarding the provisions of voluntary tax payments.

[Instruction No. 01/2022-23 [GST-Investigation] dated 25.05.2022]

8. PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS [SECTION 80]

Considering various business aspects, the provisions for payment of all such amounts, other than self-assessed tax, in instalments have also been made in the Act.

A person can avail this benefit of payment in instalments, by making an application to the Commissioner by specifying reasons for such request.

On receipt of application, the Commissioner may allow the payment of amount in instalments, subject to maximum 24 monthly instalments and on payment of applicable interest.

If there is default in payment of any one instalment then the whole outstanding balance shall become due and payable immediately.

Provisions of section 80 read alongwith rule 158 of the CGST Rules, 2017 have been explained in detail as under:

- ❑ A taxable person, 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, shall furnish an application for the same in prescribed form.
- ❑ Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.

- Commissioner may, upon consideration of the same, 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 24, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed.
- However, 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.
- **Facility of payment in instalments not allowed in certain cases:** The facility of payment in instalments shall not be allowed where -

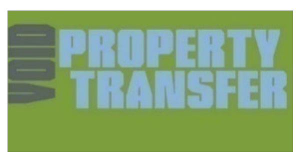
  (a) the taxable person has already defaulted on the payment of any amount under the CGST Act or IGST Act or UTGST Act or any of the SGST Act, for which the recovery process is on;

  (b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the IGST Act or UTGST Act or any of the SGST Act;

  (c) the amount for which instalment facility is sought is less than ₹ 25,000.

9. TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES [SECTION 81]

- 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.



- However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such 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.

10. TAX TO BE FIRST CHARGE ON PROPERTY [SECTION 82]

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.

11. PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES [SECTION 83]

- 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 [Section 83(1)].
- 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) [Section 83(2)].

The related provisions contained in CGST Rules are as follows:

(i) Provisional attachment of property [Rule 159]

- Where the Commissioner decides to attach any property, including bank account in accordance with aforesaid provisions, he shall pass an order to that effect mentioning therein, the details of property which is attached.

- The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.
- ***A copy of the order of provisional attachment of the property including bank account shall also be sent to the person whose property is being attached.***
- Where the property attached is of perishable or hazardous nature, and if the taxable person pays:

  (i) an amount equivalent to the market price of such property

  or

  (ii) the amount that is or may become payable by the taxable person

  whichever is lower

  then such property shall be released forthwith, by an order in prescribed form, on proof of payment.
- However, where the taxable person fails to pay the amount referred above in respect of the said property of perishable/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 the taxable person.
- Any person whose property is attached may ***at any time*** of the attachment, file an objection 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.
- The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order.

(ii) Attachment of debts and shares, etc. [Rule 151]

- 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 prescribed form 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.

- 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.
- A debtor, prohibited hereunder, may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

(iii) Attachment of property in custody of courts or Public Officer [Rule 152]

- 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.

(iv) Attachment of interest in partnership [Rule 153]

- 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.
- 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.

12. CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS [SECTION 84]

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.

Proceedings conducted under IBC covered under the term 'other proceedings' in section 84

The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an

adjudicating authority for 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.

[Circular No. 187/19/2022 GST dated 27.12.2022]

TEST YOUR KNOWLEDGE

1. *Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth ₹ 50,000 in the month of August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76.*

2. *Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74.*

3. *Is there any time limit prescribed for adjudication of the cases under CGST Act, 2017? If yes, discuss the same.*

4. *A person is chargeable with tax in case of fraud. He decides to pay the amount of demand alongwith interest before issue of notice. Is there any immunity available to such person?*

5. *Briefly discuss the modes of recovery of tax available to the proper officer.*

6. *Enlist the circumstances for which a show cause notice can be issued by the proper officer under section 73. Specify the time limit for issuance of such show cause notice as also the time period for issuance of order by the proper officer under section 73.*

7. *Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.*

The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions.

8. *Anant & Co. self-assessed its CGST liability as ₹ 90,000 for the month of April, but failed to make the payment.*

   Subsequently the Department initiated penal proceedings against Anant & Co. for recovery of penalty under section 73 for failure to pay GST and issued show cause notice on 10th August which was received by Anant & Co. on 14th August.

   Anant & Co. deposited the tax along with interest on 25th August and informed the department on the same day.

   Department is contending that he is liable to pay a penalty of ₹ 45,000 (i.e. 50% of ₹ 90,000) under the CGST Act.

   Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act. Explain the relevant provisions in brief.

ANSWERS/HINTS

1. It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, 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.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined alongwith interest 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.

2. The provisions relating to 'relevant date' as contained in CGST Act, 2017 are as under:

(i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or within 2 years and 9 months from the date of erroneous refund.

(ii) In case of section 74 (cases involving fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or within 4 years and 6 months from the date of erroneous refund.

3. The provisions relating to time-limit for adjudication of cases as contained in section 73 and 74 are as under:

(i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time limit for adjudication of cases is 3 years from the due date for filing of annual return for the financial year to which demand relates to or within 3 years from the date of erroneous refund. [Section 73(10)].

(ii) In case of section 74 (cases of fraud/suppression of facts/willful misstatement), the time limit for adjudication is 5 years from the due date for filing of annual return for the financial year to which demand relates to or within 5 years from the date of erroneous refund. [Section 74(10)].

4. Yes. Person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% per cent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid [Section 74(6)].

5. The proper officer may recover the dues in following manner:

(a) Deduction of dues from the amount owned by the tax authorities payable to such person.

(b) Recovery by way of detaining and selling any goods belonging to such person;

(c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;

(d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.

(e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.

(f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.

(g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.

(h) CGST arrears can be recovered as an arrear of SGST and vice versa [Section 79].

6. As per section 73, a show cause notice can be issued by the proper officer if it appears to him that:

- tax has not been paid; or
- tax has been short paid; or
- tax has been erroneously refunded; or
- input tax credit has been wrongly availed or utilized,

for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax.

The notice should be issued at least 3 months prior to the time limit specified for passing the order determining the amount of tax, interest and any penalty payable by defaulter [Sub-section (2) of section 73].

The order referred herein has to be passed within three years from the due date for furnishing the 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 [Sub-section (10) of section 73].

Thus, the time-limit for issuance of show cause notice is 2 years and 9 months from the due date of filing annual return for the financial year to which the demand pertains or within 2 years and 9 months from the date of erroneous refund. As per section 44(1), the due date of filing annual return for a financial year is 31st day of December following the end of such financial year.

7. The provisions of section 76 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 stipulates that 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 the CGST 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.

Where any amount is required to be paid to the Government as mentioned above, 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.

The proper officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon. Interest is payable at the rate specified under section 50. Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

8. Due date for payment of tax for the month of April is 20th May.

As per section 73, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Anant & Co. has not paid the self-assessed tax within 30 days of due date [i.e. 20th May], penalty equivalent to:

(i) 10% of tax, viz., ₹ 9,000 (10% of ₹ 90,000) or

(ii) ₹ 10,000,

whichever is higher, is payable by him under CGST Act. Equivalent amount of penalty is payable under SGST/UTGST Act.

Hence, the stand taken by the Department that penalty will be levied on Anant & Co. is correct, but the amount of penalty of ₹ 45,000 under CGST Act is not correct.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 came into force from 01.08.2019. However, the amendments made in section 2(4) of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the date of printing of this material. Therefore, the applicability or otherwise of such amendment for May 2024 and/or November 2024 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions of section 2(4) are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
Section 2(4) "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;	**Section 2(4)** "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, ***National Appellate Authority for Advance Ruling,*** the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;	The definition of adjudicating authority proposed to be amended to exclude the proposed National Appellate Authority for Advance Ruling from the purview of adjudicating authority.

CHAPTER 20

LIABILITY TO PAY IN CERTAIN CASES

The section numbers referred to in the chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- understand the liability to pay in case of transfer of business.
- determine the liability of agent and principal.
- explain the liability in case of amalgamation or merger of companies.
- describe the liability in case of company in liquidation.
- understand the liability of directors of private company.
- explain the liability of partners of firm to pay tax.
- identify the liability of guardians, trustees, etc.
- explain the liability of Court of Wards, etc.
- explain the special provisions regarding liability to pay tax, interest or penalty in certain cases

1. INTRODUCTION

✓ For certain transactions like liquidation, business transfer, partition of HUF, amalgamation or merger of companies, etc., it is difficult to determine the liability to pay outstanding tax, interest,penalty and any other dues.

✓ Chapter XVI – Liability to pay in certain cases [Sections 85 to 94] of the CGST Act, 2017 determines person liable to pay tax under certain specified transactions (like liquidation, transfer, etc). State GST laws also prescribe identical provisions.

Provisions relating to liability to pay in certain cases under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the aforesaid provisions, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

❖ **Agent:** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

❖ **Principal:** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88)].

❖ **Commissioner:** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act [Section 2(24)].

❖ **Business:** includes –

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

[Section 2(17)].

3. LIABILITY TO PAY IN CASE OF TRANSFER OF BUSINESS [SECTION 85 OF THE CGST ACT]

❑ Where a taxable person, liable to pay tax under CGST Act, transfers his business [this includes transfer or change in the ownership of business due to death of the sole proprietor[1]] 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

[1] *Circular No. 96/15/2019 GST dated 28.03.2019*

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 [Section 85(1)].

- Where the transferee of a business referred to in sub-section (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 [Section 85(2)].

- Further, if he is a registered person under this Act, he shall apply within the prescribed time for amendment of his certificate of registration [Section 85(2)].

- The transferee shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor[2].

4. LIABILITY OF AGENT AND PRINCIPAL [SECTION 86 OF THE CGST ACT]

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.

[2] *Circular No. 96/15/2019 GST dated 28.03.2019*

5. LIABILITY TO PAY IN CASE OF AN AMALGAMATION/MERGER OF COMPANIES [SECTION 87 OF THE CGST ACT]

- 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 pay tax accordingly [Section 87(1)].
- For the 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 [Section 87(2)].
- The registration certificates of the said companies shall be cancelled with effect from the date of the said order [Section 87(2)].

6. LIABILITY IN CASE OF COMPANY IN LIQUIDATION [SECTION 88 OF THE CGST ACT]

- **Initiation by liquidator of a company of his appointment to Commissioner:** 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 (hereafter referred to as the "liquidator"), shall, **within 30 days after his appointment**, give intimation of his appointment to the Commissioner [Section 88(1)].

- **Estimation of any tax, interest or penalty payable/likely to become payable by the company in liquidation by Commissioner:** The Commissioner shall,
  - after making such inquiry or calling for such information as he may deem fit,
  - notify the liquidator within 3 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 [Section 88(2)].
- **Director of a private company to be jointly and severally liable for the payment of such tax, interest or penalty not recovered:** When any private company is wound up and any tax, interest or penalty determined under CGST 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.

However, director shall not be so liable if 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 [Section 88(3)].

Summary of above discussion

LIABILITY IN CASE OF COMPANY IN LIQUIDATION

Liquidator shall give the intimation of his appointment to the Commissioner within 30 days of his appointment

↓

The Commissioner may make such inquiry or call for such information as he may deem fit.

↓

Commissioner shall notify the liquidator the amount sufficient to provide for any tax, interest or penalty payable or likely to be payable by the company, within 3 months of receipt of intimation of liquidator.

↓

If such tax, interest or penalty cannot be recovered from the company, every director during the period is jointly and severely liable to pay it unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part

7. LIABILITY OF DIRECTORS OF PRIVATE COMPANY [SECTION 89 OF THE CGST ACT]

- **Director of a private company to be jointly and severally liable for the payment of any tax, interest or penalty due from the company & not recovered:** Notwithstanding anything contained in the Companies Act, 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 [Section 89(1)].

- **Director not jointly and severally liable for the payment of any tax, interest or penalty due from a private company & not recovered, if such private company gets converted into a public company:** 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.

  However, nothing contained in this sub-section shall apply to any personal penalty imposed on such director [Section 89(2)].

8. LIABILITY OF PARTNERS OF FIRM TO PAY TAX [SECTION 90 OF THE CGST ACT]

- **Partners of the firm jointly and severally liable to pay any tax, interest or penalty of the firm:** Notwithstanding any contract to the contrary and any other law for the 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.

- **Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement:** 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.

  However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

9. LIABILITY OF GUARDIANS, TRUSTEES ETC. [SECTION 91 OF THE CGST ACT]

- 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.
- Tax, interest or penalty shall be levied and recoverable 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.

10. LIABILITY OF COURT OF WARDS ETC. [SECTION 92 OF THE CGST ACT]

- 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.
- Tax, interest or penalty shall be levied and recoverable 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.

11. SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES [SECTION 93 OF THE CGST ACT]

Special provision regarding liability to pay tax, interest or penalty in certain cases have been discussed as under:

A. On death of a person liable to pay tax, interest or penalty [Section 93(1)]:

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, **where a person, liable to pay tax, interest or penalty under CGST Act, dies**, then:

- **business is continued after his death**: 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.
- **business is discontinued after his death**: 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.

The successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor[3].

[3] *Circular No. 96/15/2019 GST dated 28.03.2019*

B. On partition of HUF or AOP [Section 93(2)]:

- Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016,
- where a taxable person, liable to pay tax, interest or penalty under CGST Act, is a Hindu Undivided Family (HUF) or an association of persons (AOP) and
- **property of the HUF or AOP is partitioned** amongst the various members or groups of members,
- then, **each member/group of members shall, jointly and severally, be liable** to pay the tax, interest or penalty due from the taxable person under said Act.
- up to 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.

C. On dissolution of a firm [Section 93(3)]:

- Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016,
- where a taxable person, liable to pay tax, interest or penalty under CGST Act, is a firm, and
- such 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 said 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.

D. On termination of guardianship or trust [Section 93(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, —
  - is the guardian of a ward on whose behalf the business is carried on by the guardian; or
  - 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.

12. LIABILITY IN OTHER CASES [SECTION 94 OF THE CGST ACT]

A. Discontinuation of business by a firm/AOP/HUF [Section 94(1)]:

Where a taxable person is a firm/AOP/HUF and such firm, association or family has **discontinued business** —

- 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**
- 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.

B. Change in the constitution of the firm or AOP [Section 94(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 or penalty due from such firm or association for any period before its reconstitution.

C. Dissolution of firm/AOP or partition of HUF [Section 94(3)]:

- The provisions of section 94(1) shall, so far as may be, apply where the taxable person, being a firm/AOP is dissolved or where the taxable person, being an HUF, 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 purposes of this Chapter, —

(i) **A Limited Liability Partnership** formed and registered under the provisions of the Limited Liability Partnership Act, 2008 **shall also be considered as a firm.**

(ii) **Court:** means the District Court, High Court or Supreme Court.

TEST YOUR KNOWLEDGE

1. *Avataar Industries, a registered person under GST, has sold whole of its business to Rolex Manufacturers. Determine the person liable to pay GST, interest or any penalty under GST law [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.*

2. *ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. Raghav & Sons sells goods to Swami Associates on behalf of ABC Manufacturers Ltd. Determine the liability to pay GST payable on such goods as per the provisions of section 86.*

3. *A person, liable to pay GST, interest and penalty under GST law, dies. Determine the person liable to pay the GST, interest and penalty due from such person under GST law determined after his death if the business carried on by such person is continued after his death by his legal representative.*

4. *In the question 3. above, would your answer be different if the business carried on by the person who has died, is discontinued after his death.*

5. *What happens to the GST liability when the estate of a taxable person is under the control of Court of Wards?*

6. *Discuss the liability to pay tax in case of an amalgamation/merger, under section 87.*

7. *Discuss the liability to pay tax, interest or penalty on death of a person liable to pay tax, interest or penalty as per the provisions of section 93(1).*

8. *With reference to the provisions of CGST Act, 2017, explain the liability of partners of firm to pay tax?*

9. *Explain the provisions relating to liability for GST in case of company in liquidation (section 88).*

10. *Discuss the liability of the retiring partner of a firm to pay any tax, interest or penalty, if any, leviable on the firm under CGST/ IGST/ SGST Act.*

ANSWERS/HINTS

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.

Thus, in the given case, Avataar Industries and Rolex Manufacturers shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay

GST, interest or any penalty [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.

2. As per provisions of Section 86, 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.

Thus, in the given case, ABC Manufacturers Ltd. and Raghav & Sons shall, jointly and severally, be liable to pay GST payable on such goods.

3. 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 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, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

4. 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 if a 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.

5. Where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is under the control of the Court of Wards/Administrator General/Official Trustee/Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/Administrator General/Official Trustee/Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person.

6. Section 87 stipulates that when two or more companies are amalgamated/ merged in pursuance of an order of court or 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/ received any goods and/or services 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 pay tax accordingly.

For the purposes of the CGST Act, 2017, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order. The registration certificates of the said companies shall be cancelled with effect from the date of the said order.

7. As per provision of Section 93(1), save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, **where a person, liable to pay tax, interest or penalty under CGST Act, dies**, then:

- **Business is continued after his death**: 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.
- **Business is discontinued after his death**: 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.

8. Section 90 explains the liability of partners of firm to pay tax as under:-

Partners of the firm jointly and severally liable to pay any tax, interest or penalty of the firm: Notwithstanding any contract to the contrary and any other law for the 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.

Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement: 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.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

9. The provisions relating to liability for GST in case of company in liquidation provided under section 88 are:-

- Where any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as a liquidator/receiver of assets of a company shall give the intimation of his appointment to the Commissioner within 30 days of his appointment.
- The Commissioner shall ascertain 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.
- He shall communicate the details of amount to the liquidator within 3 months of the receipt of intimation of appointment of liquidator.
- When any private company is wound up and any tax, interest or penalty determined under the CGST 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.

However, director shall not be liable if he proves to the satisfaction of the Commissioner 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.

10. 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. 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.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner [Section 90].

CHAPTER 21

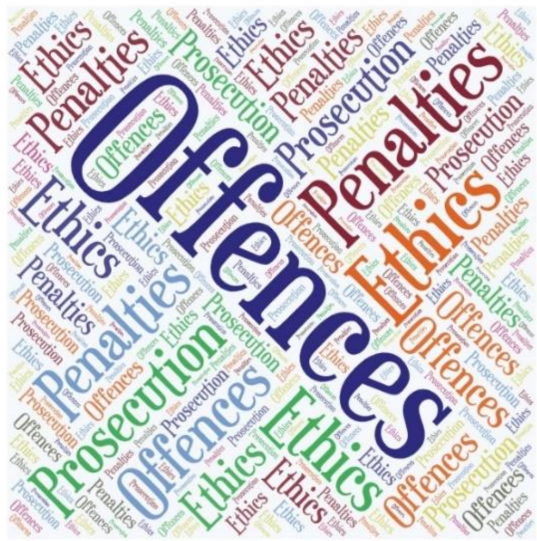
OFFENCES AND PENALTIES AND ETHICAL ASPECTS UNDER GST

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- understand and explain what will constitute the offence and the quantum of penalty for different types of offences in different circumstances.
- identify and appreciate general disciplines to be followed for imposing penalty.
- analyse and apply the circumstances in which penalty may be waived
- examine the circumstances in which detention, seizure and release of goods and conveyances in transit may be initiated.
- comprehend the circumstances in which confiscation of goods or conveyances and levy of penalty may be initiated.
- list offences for enforcing prosecution provisions.
- categorize the offences within cognizable and non-bailable and non-cognizable and bailable offences.
- understand and describe the meaning of 'culpable mental state' and its significance in enforcing prosecution provisions.
- identify the person who is liable in case of offences by companies, firm/LLP/HUF/trust and association of individuals.
- analyse and apply the offences that may be compounded and provisions relating thereto.
- discuss the ethical aspects under GST law.

1. INTRODUCTION



Penal provisions are important aspects of any legal framework to ensure efficient enforcement of laws and to motivate the genuine taxpayers to make the required compliances. The word **"penalty"** has not been defined in the CGST Act, but judicial pronouncements and principles of jurisprudence have laid down the nature of a penalty as:

- a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
- a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.

'Offence' in general means a violation/breach of law that is punishable under law by way of penalties, fines, imprisonment, or other legal actions based on the severity of the violation.

Generally, the quantum of penalty to be levied depends upon the intention of person committing the offence. A person with a fraudulent intention to evade payment of taxes will be subjected to higher amount of penalty whereas a relatively less amount of penalty will be levied for non-fraudulent offences. It is important to note that in certain specified cases of levy of penalty, the presence of *mens rea* is a pre-requisite. The term **"*mens rea*"** is a Latin legal phrase that means "guilty mind" or culpable mental state. "Mens" means "mind," and "rea" means "guilty" or "crime". It refers to a mental state, intention, or knowledge of a person when he commits an offence. While committing an act, a **"culpable mental state"** is a state of mind wherein-

- the act is intentional;
- the act and its implications are understood and controllable;
- the person committing the act was not coerced and even overcomes hurdles to the act committed;
- the person believes or has reasons to believe that the act is contrary to law

'Prosecution' is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines "prosecution" as the institution and carrying on of the legal proceedings against a person.

Further, to institute the prosecution, offences are classified into cognizable (serious category of offences) and non-cognizable offences (relatively less serious category of offences). Cognizable offences are non-bailable offences and non-cognizable offences are bailable offences.

Chapter XIX – Offences and Penalties [Sections 122 to 138 of the CGST Act] contains the provisions relating to offences and penalties, detention, seizure and confiscation of goods and compounding of offences. State GST laws also prescribe identical provisions in relation to offences and penalties. In this chapter, we would first discuss the offences and penalties prescribed under GST law. Thereafter, ethical aspects to be considered by a Chartered Accountant while undertaking compliance functions, advisory functions and furnishing certifications/reports, under GST law have been discussed in detail followed by few case studies which give the small scenarios explaining the significance of ethics under GST law.

Provisions of offences and penalties under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Further, in cases where the penalty is leviable under the CGST Act and the SGST Act/ UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties.

It may be noted that the penalties payable by a registered person for the specified offences are with reference to the CGST Act only. An equal amount of penalty would be payable by such person under the respective SGST/ UTGST Act as well.

However, before proceeding to understand the provisions, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

❖ **Conveyance** includes a vessel, an aircraft and a vehicle; [Section 2(34)].

❖ **Person** includes —

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

(h) any body corporate incorporated by or under the laws of a country outside India;

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act, 1860;

(m) trust; and

(n) every artificial juridical person, not falling within any of the above;

[Section 2(84)]

- **Registered Person** means a person who is registered under section 25 but does not include a person having a Unique Identity Number. [Section 2(94)]
- **Taxable person** means a person who is registered or liable to be registered under section 22 or section 24 [Section 2(107)];
- **Regulations** means the regulations made by the Board under this Act on the recommendations of the Council [Section 2(95)].
- **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 in the Board [Section 2(91)].

3. PENALTY FOR CERTAIN OFFENCES [SECTION 122 OF CGST ACT]

STATUTORY PROVISIONS	
Section 122	***Penalty for certain offences***
Sub-section	***Particulars***
(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 utilises 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 reasons 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	
(1A)	*Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.*	
(1B)	***Any electronic commerce operator who—***	
	(i)	***allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;***
	(ii)	***allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or***
	(iii)	***fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a***

		person exempted from obtaining registration under this Act,
	shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.	
(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 utilised, —*	
	(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 reasons 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.	

ANALYSIS

Section 122 levies penalty on following persons:

Section	**Penalty leviable on**
Section 122(1)	Taxable Person
Section 122(1A)	Any Person
Section 122(1B)	Electronic Commerce Operator
Section 122(2)	Registered Person
Section 122(3)	Any Person

(i) Penalty under section 122(1)

Penalty under section 122(1) is leviable on a taxable person. Taxable person means a person who is registered or liable to take registration. Registered Person means the person who is registered in the GST law.

Section 122(1) illustrates **21 offences** which are punishable under law. First, we would analyse the quantum of penalty and then will analyse the offences –

(A) Quantum of Penalty

CGST/SGST/UTGST law	IGST law
(i) ` 10,000/-; or (ii) Amount equivalent to, any of the following (applicable as the case may be): ❑ Tax evaded; or ❑ 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 ❑ Refund claimed fraudulently whichever is higher.	(iii) ` 20,000/-; or (iv) Amount equivalent to, any of the following (applicable as the case may be): ❑ Tax evaded; or ❑ 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 ❑ Refund claimed fraudulently whichever is higher.

It may be noted that the penalty payable under section 122 is with reference to only the CGST Act. An equal amount of penalty is payable under the respective SGST/UTGST Act as well.

Similarly, under IGST Act, penalty payable will be sum of penalty payable under the CGST Act and penalty payable under SGST/UTGST Act.

(B) Specified Offences

Section 122(1) gives the list of 21 different offences which can be divided in the following broad categories to have the better understanding –

(A) Offences related to invoice

(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;*
(xix)	*issues any invoice or document by using the registration number of another registered person;*

(B) Offences related to tax evasion / relating to TCS / TDS

(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;*
(xv)	*suppresses his turnover leading to evasion of tax under this Act;*

(C) Offences related to ITC

(vii)	*takes or utilises 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;*
(ix)	*takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*

(D) Offence related to refund

(viii)	*fraudulently obtains refund of tax under this Act;*

(E) Offences related to records, documents, books of accounts etc.

(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;*
(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;*

(F) Offences related to registration

(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;*

(G) Offence related to transportation and storage

(xiv)	*transports any taxable goods without the cover of documents as may be specified in this behalf;*
(xviii)	*supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;*

(H) Other offences

(xiii)	*obstructs or prevents any officer in discharge of his duties under this Act;*
(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,*

(ii) Penalty under section 122(1A)

Section 122(1A) enables the levy of penalty on a taxable person as well as any other person who retains the benefit arising out of the following offences or at whose instance such offences are conducted:

- Supply of goods or services without invoice or incorrect/false invoice
- Invoice with supply of goods or services
- ITC taken or utilised without receipt of goods or services, fully or partially
- Irregular distribution of credit by ISD

Therefore, it makes the beneficiary of the above transactions to penalty, similar to penalty leviable on the taxable person who commits such offences under sub-section (1).

It is important to note that the Commissioner may provisionally attached any property, including bank account, belonging to the beneficiary of the transactions specified above in accordance with section 83. *The provisions relating to provisional attachment under section 83 are discussed in detail in Chapter 19 – Demands and Recovery in this Module of the Study Material.*

Quantum of Penalty

Penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

(iii) Penalty under section 122(1B)

This sub-section makes an E-commerce operator (ECO) liable to penalty if it permits the supply through it by an unregistered person (other than notified persons, making supply through ECO, exempted from registration), allows inter-State supply through it by a person not so eligible or fails to furnish the correct details in Form GSTR-8 with respect to any outward supply of goods through it by a person exempted from registration under CGST Act.

Quantum of Penalty

CGST/SGST/UTGST law	***IGST law***
(i) `10,000/-; or ***(ii) Amount equivalent to, amount of tax involved had such supply been made by a registered person other than composition supplier*** ***whichever is higher.***	***(i) `20,000/-; or*** ***(ii) Amount equivalent to, amount of tax involved had such supply been made by a registered person other than composition supplier*** ***whichever is higher.***

(iv) Penalty under section 122(2)

Section 122(2) levies penalty on a registered person person –

(i) who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or

(ii) where the input tax credit has been wrongly availed or utilised,

Quantum of Penalty

		CGST/SGST/UTGST law	IGST law
(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 for an amount equal to– (a) ` 10,000/-; or (b) 10% of the tax due from such person **whichever is higher**	Shall be liable to a penalty for an amount equal to– (c) ` 20,000/-; or (d) 10% 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 for an amount equal to– (a) ` 10,000/-; or (b) Tax due from such person **whichever is higher**	Shall be liable to a penalty for an amount equal to– (c) ` 20,000/-; or (d) Tax due from such person **whichever is higher**

(v) Penalty under section 122(3)

Section 122(3) levies penalty on any person who commits any of the below mentioned offences. Thus, a person is liable to penalty under this sub-section if he:

1. aids or abets any of the 21 offences specified in sub-section (1) of section 122;
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 reasons to believe are liable to confiscation under this Act or the rules made thereunder;
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 reasons 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;

5. 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.

Quantum of Penalty

Penalty is leviable for an amount which may extend to ` 25,000/- (each under CGST and SGST/UTGST) or `50,000 (under IGST).

4. PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN [SECTION 123]

The provisions relating to information return and penalty for failure to furnish information return have already been discussed in Chapter 13 – Returns in Module 2 of this Study Material.

5. FINE FOR FAILURE TO FURNISH STATISTICS [SECTION 124]

If any person required to furnish any information or return under section 151**,

- fails to furnish such information or return as may be required under that section without reasonable cause; or
- willfully 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 ` 10,000.

In case of **a continuing offence**, he shall also be punishable to a further fine which may extend to:

(i) ` 100 for each day after the first day during which the offence continues

or

(ii) ` 25,000

whichever is lower.

An equal amount of fie is payable under the respective SGST/UTGST Act as well.

** Section 151 provides that the Commissioner/officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with CGST Act, in prescribed time, form, and manner.

Provision of section 124 has been tabulated as under:

Particulars	CGST/SGST/UTGST law	IGST law
	Fine may extend to	
Offence committed first time	` 10,000/-	` 20,000/-
In case of continuing offence	(i) ` 100 for each day after the first day during which the offence continues or (ii) ` 25,000 whichever is lower	(i) ` 200 for each day after the first day during which the offence continues or (ii) ` 50,000 whichever is lower

6. GENERAL PENALTY [SECTION 125]

General Penalty
` 25,000

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 ` 25,000.

Penalty amount is discretionary in nature and hence it depends upon the nature of the offence and its severity. Mere contravention of any of the provision of the law will not result into the penalty of ` 25,000 always; the gravity of the offences should be considered. General disciplines related to penalty as given in section 126 are to be considered by the proper officer while imposing the penalty under section 125.

7. GENERAL DISCIPLINES RELATED TO PENALTY [SECTION 126]

The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. According to which –

(1) No penalty shall be imposed by any officer under this Act for –

- Minor breaches of tax regulations, or
- procedural requirements of the law, or
- any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence,

As per Explanation to section 126(1),

(a) a breach shall be considered a **'minor breach'** if the amount of tax involved is less than ` 5,000;

(b) an omission or mistake in documentation shall be considered to be **easily rectifiable** if the same is an error apparent on the face of record.

> A breach shall be considered a 'minor breach' if the amount of tax involved is **less than** ` 5,000

(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 i.e. issue of SCN and proper hearing in the matter, affording an opportunity to the person proceeded against is must to rebut the allegations levelled against him.

(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. For instance, penalty under section 125 is being prescribed as upto ` 25,000 means neither as a fixed sum nor as a fixed percentage hence general disciplines given under section 126, should be considered while imposing any penalty.

8. POWER TO IMPOSE PENALTY IN CERTAIN CASES [SECTION 127]

This section empowers the proper officer to impose penalty even if the penalty is not covered under any of the following proceedings-

(i) Assessment of non-filers of Returns, under section 62

(ii) Assessment of unregistered persons, under section 63

(iii) Summary Assessment in certain special cases under section 64

(iv) Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts under section 73

(v) Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts under section 74

(vi) Detention, seizure and release of goods and conveyances in transit under section 129

(vii) Confiscation of goods or conveyances and levy of penalty under section 130

If proper officer is of the view that such person is liable to a penalty, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

9. POWER TO WAIVE PENALTY OR FEE OR BOTH [SECTION 128]

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.

10. DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT [SECTION 129]

STATUTORY PROVIDIONS

Section 129	***Detention, seizure and release of goods and conveyances in transit***	
Sub-section	***Particulars***	
(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,—*	
	(a)	***on payment of penalty equal to two 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 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;***

	(b)	***on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent 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.	
(3)	***The proper officer detaining or seizing goods or conveyance 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)	***No penalty** shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*	
(5)	*On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.*	
(6)	***Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within 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.

ANALYSIS

Section 129 provides for detention, seizure and release of goods and conveyances in transit. The provision starts with a **non-obstante clause**. It provides as follows:

(i) Detention/seizure of goods, conveyance and/or documents [Section 129(1) and proviso to section 129(1)]

It provides that if any person transports any goods or stores any goods while they are in transit in contravention of the provisions of GST law, then:

- 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**.

Thus, it covers the situations where a person transports any goods or stores any such goods while in transit without the documents prescribed under GST law (i.e. invoice and a declaration) or supplies or stores any goods that have not been recorded in the books or accounts maintained by him.

Distinction between 'Seizure' and 'Detention'

The term 'seizure' has not been specifically defined in the GST Law. In Law Lexicon Dictionary, 'seizure' is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

The difference between 'Seizure' and 'Detention' is as follows:

(i) Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called **detention**. **Seizure** is taking over of actual possession of the goods by the department.

(ii) Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

Release of goods, conveyance and/or documents on payment of specified penalty [Section 129(1)]

After detention or seizure, the above goods, conveyance and/or documents shall be released on payment of specified amount of penalty. The penalty amount is given in the table below.

When owner of goods COMES FORWARD for payment of penalty [Section 129(1)(a)]:		
Taxable goods	**CGST/SGST/UTGST law**	**IGST law**
	Penalty equal to 200% of tax payable	Penalty equal to 200% of IGST payable
Exempted goods	Lower of the following: ✓ 2% of the value of goods or ✓ ` 25,000	Lower of the following: ✓ 4% of the value of goods or ✓ ` 50,000

When owner of goods DOES NOT COME FORWARD for payment of penalty [Section 129(1)(b)]:		
Taxable goods	Penalty equal to higher of the following ✓ 50% of value of goods or ✓ 200% of the tax payable on such goods	Penalty equal to higher of the following ✓ 100% of value of goods or ✓ 200% of the **IGST** payable on such goods
Exempted goods	Lower of ✓ 5% of the value of goods or ✓ ` 25,000	Lower of ✓ 10% of the value of goods or ✓ ` 50,000

It is important to note that the goods, conveyance and/or documents may also be released on furnishing security equivalent to amount payable in the above table.

It may be noted that the penalty payable under section 129 is with reference to only the CGST Act. An equal amount of penalty is payable under the respective SGST/UTGST Act as well.

Similarly, under IGST Act, penalty payable will be sum of penalty payable under the CGST Act and penalty payable under SGST/UTGST Act.

(ii) Issuance of notice as well as passing of order for payment of penalty [Section 129(3) & (4)]

The proper officer detaining/seizing goods or conveyance shall issue a **notice within 7 days of such detention/seizure**, specifying the penalty payable. Thereafter, the proper officer shall pass an **order within a period of 7 days from the date of service of such notice**, for payment of penalty given in above table.

Thus, time-limit of 7 days each has been prescribed for issue of notice and passing of order for payment of penalty after detention/seizure of goods/conveyances.

An opportunity of being heard must be given to the person concerned before determining the penalty payable.

(iii) Conclusion of proceedings on payment of penalty payable [Section 129(5)]

All proceedings in respect of the notice issued shall be deemed to be concluded on payment of prescribed penalty.

(iv) Non-payment of penalty amount [Section 129(6)]

Where the person transporting any goods/ owner of such goods fails to pay the specified amount of penalty **within 15 days from the date of receipt of the copy of the order levying penalty**, the goods or conveyance so detained/seized shall be **liable to be sold or disposed of otherwise**, in the prescribed time and manner, to recover the penalty so payable[1].

However, where the detained/seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of **15 days** may be reduced by the proper officer.

Further, now, the **transporter can get the conveyance released** on payment of:

✓ penalty under sub-section (3)

or

✓ ` 1 lakh (each under CGST and SGST/UTGST law and ` 2 lakh under IGST law)

whichever is **less**.

(v) Procedure for interception of conveyances for inspection of goods in movement, and detention and release of such goods and conveyances

During the movement of goods, the proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of

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[1] *The manner of sale/disposal of the goods or conveyance so detained/seized for recovery of penalty has been prescribed in* ***rule 144A****.*

documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents.

Where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further.

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 and shall issue an order for physical verification/inspection of the conveyance, goods and documents, 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 conclude the inspection proceedings, either by himself or through any authorised proper officer within a period of 3 days (or extended time) from the date of issue of the order for inspection.

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** and upload on common portal and serve a copy of the said report to the person in charge.

Where no discrepancies are found, the proper officer shall issue forthwith a **release order** and allow the conveyance to move further. However, where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129, he shall issue an **order of detention** and serve a notice under section 129(3) on the person in charge, specifying the penalty payable.

On payment of the penalty under section 129(1) or upon furnishing of security equivalent to the said amount, the goods and conveyance shall be released forthwith by a release order. Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under section 129(1) within **15 days** from the date of receipt of the copy of the order for detention, the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise[2].

[2] *Circular No. 41/15/2018 GST dated 13.04.2018*

(vi) Cases where detention/seizure may not be initiated

In case where a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 may not be initiated, 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 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

f) Error in one or two digits/characters of the vehicle number.

In above situations, penalty to the tune of ` 500/- each under section 125 and the respective SGST Act should be imposed (`1,000/- under the IGST Act)[3].

11. CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY [SECTION 130]

STATUTORY PROVISIONS	
Section 130	***Confiscation of goods or conveyances and levy of penalty***
Sub-section	***Particulars***
(1)	***Where*** *any person,—*

[3] *Circular 64/38/2018 GST dated 14.09.2018*

	(i)	*supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*
	(ii)	*does not account for any goods on which he is liable to pay tax under this Act; or*
	(iii)	*supplies any goods liable to tax under this Act without having applied for registration; or*
	(iv)	*contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*
	(v)	*uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,*
	then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.	
(2)	*Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:* *Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:* *Provided further that the aggregate of such fine and penalty leviable shall not be less than the* ***penalty equal to hundred per cent 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 in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.*	

(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 conveyance and deposit the sale proceeds thereof with the Government.*

ANALYSIS

Section 130 stipulates **5 scenarios** in which the goods or conveyances carrying such goods can be confiscated. However, before going through these scenarios, let us first understand what is 'confiscation'.

Confiscation

The word **'confiscation'** has not been defined in the CGST Act. The concept is derived from Roman law wherein it meant seizing or taking into the hands of emperor and transferring to Imperial "fiscus" or Treasury. The word "confiscate" has been defined in Aiyar's Law Lexicon as to "appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State."

In short, it means transfer of the title to the goods to the Government.

(i) Scenarios where goods or conveyances are liable to confiscation [Section 130(1)]

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;

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(ii) Redemption fine [Section 130(2)]

In case of confiscation of any goods or conveyance, 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. This fine shall be in addition to the tax and other charges payable in respect of such goods.

Fine leviable ≤ **Market value of goods confiscated Less: Tax chargeable thereon**

Fine + **Penalty** ≥ ***Penalty equal to 100% of the tax payable on such goods***

Where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(iii) Opportunity of being heard [Section 130(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.

(iv) Title and possession of confiscated goods [Section 130(5) & (6)]

The title of confiscated goods or conveyance shall thereupon vest in the Government. Further, 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.

(v) Disposal of confiscated goods [Section 130(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 3 months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

12. CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS [SECTION 131]

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, 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. Such other punishment can be arrest, prosecution, cancellation of registration, etc.

13. PUNISHMENTS FOR CERTAIN OFFENCES [SECTION 132]

STATUTORY PROVISIONS

Section 132	Punishment for certain offences	
Sub-section	**Clause/sub clause**	**Particulars**
(1)	*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;*
	(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 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;*

	(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;*
	(l)	*attempts to commit, or abets the commission of any of the offences mentioned in* ***clauses (a) to (f) and clauses (h) and (i)*** *of this section,*
	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* ***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),** 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, 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.*	
(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.*	

ANALYSIS

Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines "prosecution" as the institution and carrying on of the legal proceedings against a person. ***'Mens rea'*** or culpable mental state is necessary for prosecution under GST law.

(i) Cases where prosecution can be initiated and punishment thereof [Section 132(1), (2), (3) & (6)]

Cases where prosecution can be initiated

- Supply without invoice
- Issuance of invoice without supply
- Wrongful/fraudulent availment of ITC
- Tax collected but not paid beyond 3 months
- Tax evasion/fraudulent refund
- False information/records etc. with an intention to evade tax
- Dealing in goods liable to confiscation
- Dealing in services in contravention of GST law
- Attempts to commit or abets any offence mentioned above

Anyone who commits or causes to commit and retain the benefits arising out of, any of the above offences can be prosecuted as under:

Offence	Amount Involved (AI) (in `)	Punishment	
Tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken	AI > 5 crores	with imprisonment upto 5 Years and with fine	Imprisonment shall be for a minimum period of 6 months in the absence of
	2 crores < AI ≤ 5 crores	with imprisonment upto 3 Years and with fine	

Issuance of invoice without supply in violation of GST law leading to wrongful availment/utilisation of ITC/refund of tax	***1 crores < AI ≤ 2 crores***	***with imprisonment upto 1 year and with fine***	special and adequate reasons to the contrary to be recorded in the judgment of the Court
Falsification of information or records etc. with an intention to evade tax or abetting the commission of said offence		with imprisonment upto 6 months or with fine or with both	
For second and every subsequent offence under section 132	No limit	with imprisonment upto 5 Years and with fine	Imprisonment shall be for a minimum period of 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court.

Thus, generally, **arrests can be made under GST law** only where the amount involved exceeds ` 2 crores or where a person commits any of the offences second time or subsequently thereafter. ***However, whoever issues, or causes to issue and retain the benefits arising out of issuance of any invoice/bill without supply of goods and/or services in violation of the provisions of GST law leading to wrongful availment or utilisation of ITC or refund of tax and amount of such tax evaded/ITC wrongly availed or utilised or refund wrongly taken exceeds ` 1 crore but does not exceed `2 crore, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine.***

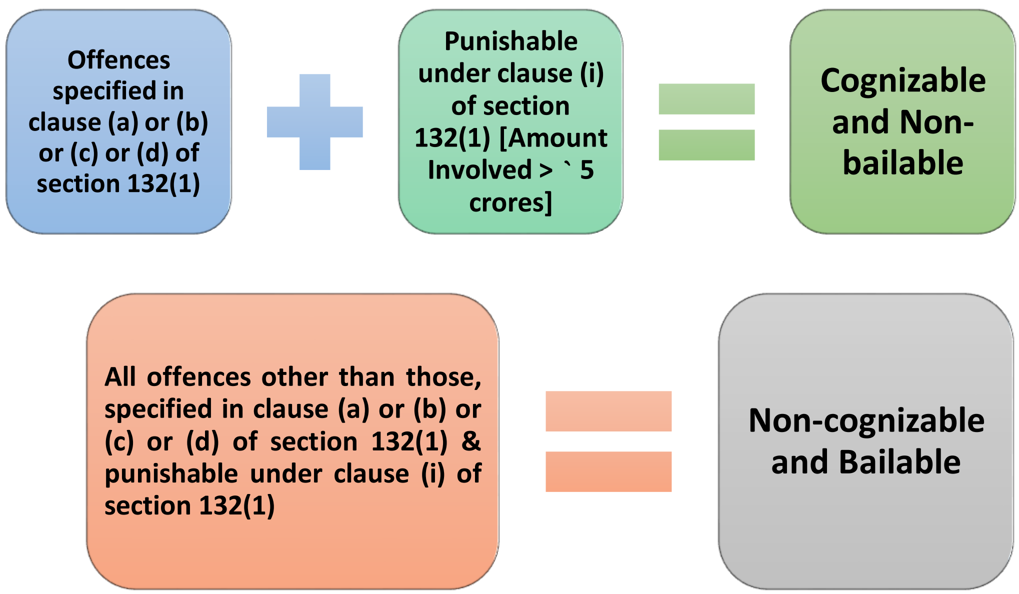
A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

(ii) Offences classified as cognizable offences and non- cognizable offences [Section 132(4) & (5)]

Let us first understand the meaning of the terms, cognizable offences and non- cognizable offences.

- **Cognizable Offences** - Cognizable offences means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a Court.
- **Non-cognizable offences** - Non cognizable offences means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a Court order, except as may be authorized under special legislation.

Let us see which offences under GST law are classified as cognizable and non-bailable and which offences are classified as non-cognizable and bailable:



Just to reiterate, offences specified in clause (a) or (b) or (c) or (d) of section 132(1) are as follows-

(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

(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;

(ii) Meaning of 'Tax' for the purpose of section 132 [Explanation to section 132]

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 SGST Act, IGST Act or the UTGST Act and cess levied under the GST (Compensation to States) Act.

14. LIABILITY OF OFFICERS AND CERTAIN OTHER PERSONS [SECTION 133]

- Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation 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 **6 months** or with fine which may extend to ` **25,000**, or with both.

- A Person shall be prosecuted for any offence under this section –
  - **In case of Government Servant** – With the previous sanction of Government only;
  - **In case of person other than Government Servant** - With the previous sanction of Commissioner only.

15. COGNIZANCE OF OFFENCES [SECTION 134]

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.

16. PRESUMPTION OF CULPABLE MENTAL STATE [SECTION 135]

- 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. As per Explanation (i) to section 135, the expression **"culpable mental state"** includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.
- It shall, however, be a defense 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. As per explanation (ii) to section 135, 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.

17. RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES [SECTION 136]

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 the truth of the facts which it contains, in any prosecution for an offence under this Act,–

(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.

18. OFFENCES BY COMPANIES [SECTION 137]

- Where an offence under this Act has been committed by a person being a company (means a body corporate and includes a firm or other association of individuals), 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 [Sub-section (1) of section 137].

  However, where an offence that has been committed by the 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 [Sub-section (2) of section 137]

- 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. [Sub-section (3) of section 137].
- As per Explanation (ii) to Section 137 **"director"**, in relation to a firm means a partner in the firm.
- 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. [Sub-section (4) of section 137].

19. COMPOUNDING OF OFFENCES [SECTION 138 READ WITH RULE 162]

STATUTORY PROVISIONS

Section 138	***Compounding of offences***	
Sub-section	***Particulars***	
(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 may be, of such compounding amount in such manner as may be prescribed:*	
	Provided that nothing contained in this section shall apply to—	
	(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***

	(c)	***a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132***
	(d)	*a person who has been convicted for an offence under this Act by a court;*
	(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* ***twenty-five percent 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.*	

ANALYSIS

- As per the provisions of section 138(1), any offence may be compounded by the Commissioner, either before or after the institution of prosecution, upon payment of such compounding amount in such manner as may be prescribed, by the person accused of the offence, to the Central Government or the State Government, as the case be.
- On receipt of the application from the applicant, the commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, which may be considered relevant for the examination of such application.

- On being satisfied that the applicant has cooperated in the proceedings before him and has made full and true disclosure of facts relating to the case, the commissioner may, by order, 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.
- The application shall not be decided without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.
- 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.
- The applicant shall, within a period of 30 days from the date of the receipt of the order, pay the compounding amount as ordered by the commissioner and shall furnish the proof of such payment to him.
- In case the applicant fails to pay the compounding amount within 30 days, the order of compounding shall be vitiated and be void.
- However, the following offences shall not be compounded-

  (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 ;***

  (c) ***a person who has been accused of committing an offence under section 132(1)(b)***;

  (d) a person who has been convicted for an offence under this Act by a court;

  (f) any other class of persons or offences as may be prescribed:
- Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences. Further, any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law [Proviso to Section 138(1)].
- The amount for compounding of offences under this section shall be such as may be prescribed, subject to –

  (i) The minimum limit for compounding amount is ***25% of tax involved***.

(ii) The upper limit for compounding amount is ***100% of tax involved*** [Sub-section (2) of section 138].

- 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 [Sub-section (3) of section 138].

- Immunity granted to a person may, at any time, be withdrawn by the commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. 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 of the Act shall apply as if no such immunity had been granted.

20. ETHICS UNDER GST

(i) Meaning of Ethics

The Oxford Dictionary defines the term **"Ethics"** as the moral principle that governs a person's behavior or how an activity is conducted. Ethics provides a framework for distinguishing between right and wrong, guiding decision-making, and determining what is considered morally acceptable in a given context.

Ethics are fundamental to the effective functioning of any taxation system; this also holds true for the Goods and Services Tax (GST) regime in India. Ethical conduct contributes to increased regulatory compliance and reduced tax evasion which in turn leads to increased Government revenue collection. This tax revenue can be used for public welfare and development projects. It also helps in creating a fair, transparent, and trustworthy tax environment and reduces uncertainty that supports economic growth and development. Unethical practices like issuing bogus invoice without underlying supply, wrongful availment of ITC, etc. not only undermine the tax revenues, but also create an uneven playing field for honest taxpayers. Ethical behavior may also reduce tax-related disputes and litigations.

(ii) Role of Chartered Accountant in ensuring ethics under GST

The professional behaviour of a Chartered Accountant is governed by a set of ethical guidelines and principles - known as Code of Ethics - laid down by the ICAI. Every Chartered Accountant has to abide by this code of ethics. It encourages the Chartered Accountants to be honest, fair, and professional in their working and advocates to follow the rules to ensure that they are doing the right thing for their clients and the public at large.

The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

The Chartered Accountants Act, 1949 prescribes the disciplinary action if a Chartered Accountant is found guilty of any Professional or Other Misconduct (as defined in Schedules to the Chartered Accountants Act). *The same have been discussed in detail in Chapter 19 - Professional Ethics & Liabilities of Auditors in Paper 3 - Advanced Auditing, Assurance and Professional Ethics at Final level.*

A Chartered Accountant in practice would be deemed to be guilty of professional misconduct under **clause (7) of Part I of the Second Schedule** to the Chartered Accountant Act, 1949, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties. Further, as per **clause (8) of Part I of the Second Schedule** to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

A Chartered Accountant needs to follow ethical conduct while discharging his professional duties under the Goods and Services Tax (GST) law, namely, compliance functions, furnishing certifications/reports and advisory roles, by adhering to a set of principles and practices that promote integrity, transparency, and compliance.

He should maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on latest applicable positions of GST law. In case of any violation of law in performing the compliance, certifications/reporting and advisory functions, he shall also be liable to applicable penalty and prosecution (in some cases) under GST law.

Chartered Accountants play a crucial role in ensuring GST compliance within their clients' organizations. This involves assisting in the process of obtaining registration, structuring the transactions and conditions stipulated in agreements for making /receiving supply, optimizing tax positions, ensuring the necessary GST compliances including e-way bill, payment of taxes, TDS/TCS compliances, compliances with anti-profiteering provisions and timely filing of periodic returns.

Generally, Chartered Accountants are responsible for ensuring the maintenance of accurate and detailed records of all GST-related transactions. This includes invoices, receipts, and other relevant documents. Such meticulous record-keeping is a legal requirement as well as an ethical duty of the Chartered Accountant.

Another major responsibility of a Chartered Accountant in the realm of GST is to act as a tax advisor to their clients. This entails a comprehensive understanding of the client's business operations and goals.

Chartered Accountants must assess the impact of GST on various aspects of the business, including supply chain, pricing strategies and financial reporting.

A Chartered Accountant, who holds a certificate of practice and who has not been debarred from practice, can also appear on behalf of his client before a GST officer, GST Appellate Authority or GST Appellate Tribunal in connection with any proceedings under GST law, as an authorised representative of the client.

Furthermore, Chartered Accountants play a vital role in the GST ecosystem by providing certifications that affirm compliance with GST laws and regulations. These certifications are mandatory in specific situations and are required to ensure compliance with GST regulations.

They primarily aim at curbing the unethical practices and preventing the leakage of revenue. Thus, it is the duty of every Chartered Accountant to exercise utmost care and due diligence while granting these certifications.

While providing said certification, the Chartered Accountant has to comply with the ethical requirements of the Code of Ethics issued by the ICAI, the relevant applicable requirements of the Standard on Quality Control (SQC - 1), Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

The certifications/reports required to be furnished by a Chartered Accountant under GST law have been explained in detail hereunder:

(iii) Certifications/reports to be furnished by a Chartered Accountant required under the GST law

1. Certification of the amount of ITC claimed at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Sub-section (1) of section 18 read with rule 40]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or coming into regular tax/tax-paying status is available in the following manner:

Section No.	Persons eligible to take credit	Goods entitled to ITC	
		Inputs held in stock/ capital goods	as on
(1)	(2)	(3)	(4)
Section 18(1)(a)	Person who has applied for **registration within 30 days from the date on which he**	**Inputs** held in stock and inputs contained in semi-finished or finished goods held	The day immediately preceding the date from which he becomes liable to pay tax

	becomes liable to registration and has been granted such registration	in stock	
Section 18(1)(b)	Person who is not required to register, but obtains **voluntary registration**	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration
Section 18(1)(c)	Registered person **who ceases to pay composition tax and switches to regular scheme**	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock **and capital goods**	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme
Section 18(1)(d)	Registered person whose exempt supplies become taxable supplies	**Inputs** held in stock and inputs contained in semi-finished or finished goods held	The day immediately preceding the date from which such supply becomes taxable

		in stock relatable to such exempt supply **and capital goods exclusively used for such exempt supply**	

In all the above cases, the registered person has to make an electronic **declaration in Form ITC-01** on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above. The declaration is to be filed within 30 days (extendable by Commissioner/Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ` 2,00,000, the declaration needs **to be certified by a practicing Chartered Accountant** or Cost Accountant.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the amounts declared in the Form GST ITC-01 have been accurately drawn from the books of accounts and other relevant documents / records of the taxpayer and is claimed as ITC.

2. Certification that the sale, merger, demerger, amalgamation, lease or transfer of business done with a specific provision for the transfer of liabilities [Section 18(3) read with rule 41]

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. The registered person should furnish the details of change in constitution in Form ITC - 02 on the common portal. Further, he needs to submit **a certificate from practicing Chartered Accountant** or Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the sale, merger, demerger, amalgamation, lease or transfer or business has been done with a specific provision for the transfer of liabilities.

3. Certification that in case of refund claim exceeding ` 2 lakh by the applicant, there is no unjust enrichment [Section 54 read with rule 89(2)(m)]

A certificate in **Annexure 2 of Form GST RFD-01** is to be issued by a Chartered accountant or Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person (i.e., there is no unjust enrichment in the case of the applicant) in a case where the amount of refund claimed exceeds ` 2 lakh.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records supporting the refund claim thereby providing a reasonable assurance that the incidence of tax, interest or any other amount claimed as refund, has not been passed on to any other person.

4. Certification of the amount of ITC to be reversed on cancellation of registration or on switching to composition levy/exit from tax-paying status, in respect of inputs for which tax invoices are not available [Section 29(5)/section 18(4) read with rule 44(5)]

Section 29(5) requires reversal of ITC on cancellation of registration of a registered person. Similarly, section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.

ITC on inputs should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption/cancellation of registration. The details so furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant or Cost Accountant.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records of the taxpayer thereby providing a reasonable assurance as regards the correctness of the quantum of the amount of ITC to be reversed in case where the tax invoices related to the inputs held in stock are not available.

5. Audit report under section 66

Section 66 provides that if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that –

- the value (of goods and/or services) has not been correctly declared; or
- the credit availed is not within the normal limits,

he may, with the prior approval of the Commissioner, issue a direction to the registered person 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 and specified in the said direction.

The Chartered Accountant or Cost Accountant shall submit a report of such audit duly signed and certified by him within the period of 90 days to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

The Assistant Commissioner may extend the said period 90 days by a further period of 90 days –

- 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.

The expenses of the examination and audit of records including the remuneration of such Chartered Accountant or Cost Accountant, shall be determined and paid by the Commissioner and such determination shall be final. On conclusion of special audit, the registered person shall be informed of the findings of special audit.

Upon the conclusion of special audit under section 66, the registered person is communicated the proposed tax, interest and other liabilities, if any, along with the audit findings and the registered person is called upon to discharge the liabilities.

In case the registered person discharges the liabilities as proposed, no further action is taken. Otherwise, the authorities may initiate the proceedings against the registered person under sections 73 or 74 for determination of the tax liability of the person audited.

A Chartered Accountant must approach the Special Audit with an unbiased and impartial mindset, free from any external influences or conflicts of interest. This ensures that the audit findings are based on factual evidence and professional judgment, rather than personal biases. He should first go through the terms of reference provided by the GST authorities to understand the scope and objectives of the special audit. This document outlines the specific areas and tax periods to be audited. He should conduct a comprehensive review of all relevant documents, including financial statements, invoices, transaction records, and any other documentation provided by the taxpayer. This ensures that the audit findings are based on accurate and reliable information. He should take steps to identify and mitigate any potential conflicts of interest that may arise during the special audit. This includes refraining from engaging in any activities or relationships that could compromise their objectivity or independence. If a conflict of interest does arise, it should be promptly disclosed to the relevant parties.

Apart from the aforesaid specific roles defined in the GST Law for Chartered Accountants, there may be specific scenarios where the attested documents, certificates issued by the Chartered Accountants are relied during the proceedings under GST Law by the tax authorities and also judicial forums, as a general practice while dealing with the GST Law related disputes.

CASE STUDIES

Case Studies have been incorporated to exemplify some of the ethical considerations that a Chartered Accountant should bear in mind when issuing various certificates/reports under relevant GST provisions as well as while giving GST related advise to the client, ensuring GST compliances at the same time. This is intended to encourage the students to act ethically while discharging any GST related function and abstain themselves from inadvertently indulging in any unethical practices. We have discussed the significant implications that would arise under the GST law in such cases[4]. Students may also refer the relevant provisions of demands and recovery, offences, penalties and prosecution under the GST law for ascertaining the consequences of the unethical practices being followed. Further, a Chartered Accountant in practice may be deemed to be guilty of the professional misconduct in such cases, primarily under clause (7)/ clause (8) of Part I of the Second Schedule to the Chartered Accountant Act, 1949, in such cases.

Case Study 1

Facts of the case

M/s L and Co., a partnership firm with two partners – Mr. X and Mr. Y, is registered under GST in Kolkata, West Bengal. It is engaged in supplying the materials used for construction related activity. Mr. X and Mr. Y are friends and each of them also have their own separate sole proprietorship firms engaged in supplying construction material; these firms are registered under GST. Mr. A[5] is the tax consultant of the firm - M/s L and Co.

Mr. X gets an offer from a customer - M/s W Pvt. Ltd., (hereinafter referred to as WPL) - to issue some supply related bills to meet the budget allocated to WPL by

[4] *Based on view taken in Circular No. 171/03/2022 GST dated 06.07.2022*

[5] *Mr. A is not a Chartered Accountant.*

their management in relation to civil works. Mr. X shall earn a commission of 20% of the value of supply charged in the supply bills accepted by WPL. Mr. X agrees to share 50% of his earnings with Mr. Y for undertaking the above project. M/s L and Co. needs a bank loan for expanding its business operations and the supply bills issued to WPL will inflate the turnover of M/s L and Co. Mr. X and Mr. Y sought advice from their tax consultant Mr. A as to how to execute the above project for the supply bills to be issued to WPL. Based on the guidance provided by Mr. A, it is executed as follows:

- M/s L and Co. shall issue supply related bills for steel, jelly stone and cement for ` 280 lakh to Mr. X wherein the delivery site shall be of WPL (Bill to Ship to Model).
- Mr. X shall avail and utilise the input tax credit (ITC) on the bill of ` 280 lakh and shall separately enter into a contract with WPL for supply of steel, jelly stone and cement (to be used for construction of foundation of Plant and Machinery) for ` 280 lakh. Further, Mr. X, in his individual capacity, shall issue labour work related bills for ` 40 lakh for the assembly and erection work relating to construction of foundation of Plant and Machinery undertaken at the site of WPL, without actually providing any service. WPL will avail and utilise the ITC on the bills of ` 280 lakh and ` 40 lakh used for underlying supply of goods.
- All inventory registers are updated duly by M/s L and Co. without any actual movement/supply of the material and some e-way bills are also generated on behalf of Mr. X for the supplies made to the work site of WPL.

Mr. A assures Mr. X and Mr. Y that:

- Inventory registers are up to date for material movement.
- Compliances pertaining to e-way bill have been taken care of.
- Money shall be duly realised as per the bills issued.

Mr. X approached his friend - Mr. P, a practicing Chartered Accountant, for seeking his help in above arrangement. However, Mr. P makes Mr. X conversant with the following GST implications that may arise in above arrangement:

GST implications

1. **Issue of invoice by M/s L and Co. to Mr. X:** Since there has only been an issuance of tax invoice by the registered person - M/s L and Co. - to registered person 'Mr. X' without the underlying supply of steel, jelly stone and cement, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7. As there is no supply by M/s L and Co. to Mr. X in respect of such tax invoice in terms of the provisions of section 7, no tax liability arises against M/s L and Co. for the said transaction, and accordingly, no demand and recovery is required to be made against M/s L and Co. under the provisions of section 74 in respect of the same. The registered person - M/s L and Co. - shall, however, be liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii).

2. **Issue of invoice by Mr. X to WPL:** The registered person - Mr. X has availed and utilized fraudulent ITC on the basis of the tax invoice issued in contravention of the provisions of section 16(2)(b), without receiving the supply of steel, jelly stone and cement. Further, there was no supply of steel, jelly stone and cement and labour work related services by Mr. X to WPL. Thus, in respect of the said transactions, no tax was required to be paid. In these specific cases, no demand and recovery of either ITC wrongly/ fraudulently availed by Mr. X in such case or tax liability in respect of the said outward transaction by Mr. X to WPL is required to be made from Mr. X under the provisions of section 74. However, in such cases, Mr. X shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), 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. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii) subject to specified conditions.

   WPL will be liable for the demand and recovery of the ITC availed and utilised by it, along with penal action under section 74 along with applicable interest under provisions of section 50, for taking/ utilizing ITC without actual receipt of steel, jelly stone and cement and without receiving the assembly and erection services, used for underlying supply of goods. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii) subject to specified conditions.

3. **GST implications on Mr. A:** Mr. A who advised for designing the above business practice shall also be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence is also punishable with imprisonment subject to specified conditions.

Mr. P apprised Mr. X that if any Chartered Accountant advises Mr. X on above arrangement, then he will also be punishable with penalty in terms of the provisions of 122(3) for aiding/abetting the offences specified above and may also be punishable with imprisonment subject to specified conditions. Further, he may also be held guilty of professional misconduct.

Case Study 2

Facts of the case

Doodle LLC is an entity registered in Germany and is engaged in providing online services across multiple countries including India. The service offerings include certain services which are covered within the purview of online information and database access or retrieval services i.e. OIDAR services liable to GST in India. Since Doodle LLC does not have any place of business in India, it appointed one of its employee - Mr. X[6] as its authorized representative for all the purposes in India which includes undertaking GST compliances and also as an authorized signatory for any other regulatory compliances in India. Mr. X is a partner in XYZ & Associates LLP. Post appointment of Mr. X, following chain of events unfolded:

1. Mr. X, being an authorized representative of Doodle LLC, made an application for registration as an OIDAR service provider in India and undertook other GST compliances. Subsequently, Mr. X started filing the monthly GST returns and made payment of applicable GST in India on behalf of Doodle LLC. In lieu of such services, Mr. X was being remunerated a fixed sum on monthly basis as professional fee. The appointment of Mr. X was in his personal capacity and not a professional service contract with his partnership firm - XYZ & Associates LLP. However, for recovery of amount of fixed monthly

[6] *Mr. X is not a Chartered Accountant.*

remuneration from Doodle LLC, the invoices as 'export of services' were issued by Mr. X in the name of his partnership firm. The corresponding refund benefit was claimed by the partnership firm of Mr. X for input tax credit against such export of service invoices.

2. Doodle LLC appointed influencers in India to promote its services in India. The tax invoices of such influencers were received by Mr. X in name of XYZ & Associates LLP and input tax credit was availed by the partnership firm for such services. Said ITC was utilised for further supply of services. However, the actual service recipient in such case was Doodle LLC.

3. Subsequently, Doodle LLC was required to submit certain affidavits and accounting records before the office of the Enforcement Directorate. Being an authorized representative/ signatory of Doodle LLC, Mr. X approached Mr. P, a practicing Chartered Accountant, to prepare the affidavits and accounting records which included critical financial information and data of Doodle LLC. He elaborated the entire arrangement among Doodle LLC, Mr. X and XYZ & Associates LLP to Mr. P. He further requested Mr. P to certify and attest such records, which would be prepared and compiled by Mr. P in capacity of a practicing Chartered Accountant for submission before Enforcement Directorate.

Mr. P apprised Mr. X of the following GST implications:

GST implications

1. Incorrect issuance of invoice for export of services and claim of refund of input tax credit on the basis of such export of service related invoices

Mr. X was appointed as authorized representative and signatory of Doodle LLC in his personal capacity to undertake the compliances enumerated under the GST law in India. However, the consideration for such services was received at the behest of invoices issued in the name of his partnership firm. Further, such invoices were issued as 'export of service' invoices and corresponding refund of input tax credit was claimed by the firm of Mr. X. This act of Mr. X alongwith his firm is punishable as follows:

- Since Mr. X supplied services to Doodle LLC without any invoice, he shall also be liable for the demand and recovery of tax on said supply, along with penal action under section 74. Even if the contention is made that invoice was issued for such services by the firm of Mr. X, the same shall be treated as an incorrect invoice or false invoice as both, Mr. X and XYZ & Associates LLP are separate persons as per GST Law.

- Since both, Mr. X and XYZ & Associates LLP are different persons, the invoice issued by the firm shall be construed as issuance of invoice without supply of services viz. an offence punishable under section 122(1)(ii).
- Incorrect refund was claimed by XYZ & Associates LLP for input tax credit on the basis of incorrect invoice for export of services to Doodle LLC. This is an offence under section 122(1)(viii).
- All the above offences may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

2. Availment of input tax credit without actual receipt of services

XYZ & Associates LLP received invoices from the influencers who were actually providing services to Doodle LLC. Further, the input tax credit related to such invoices was availed by XYZ & Associates LLP in contravention of the provisions of section 16. Accordingly, the input tax credit availed and utilised by XYZ & Associates LLP for further supply of services is incorrect. Thus, XYZ & Associates LLP will be liable for the demand and recovery of the said ITC, along with penal action under section 74 alongwith interest under section 50 as the actual service recipient was Doodle LLC and not XYZ & Associates LLP.

This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

3. GST implications on Mr. X

Mr. X was fully involved in wrongdoings in terms of the business transactions of Doodle LLC in India. Further, he was the authorized representative and signatory of Doodle LLC in India. Mr. X is liable to penalty under section 122(1A) and section 122(3) since he is involved in aiding and abetting the offences committed hereunder at his instance and has also derived monetary benefits from such practices. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant takes up the assignment offered by Mr. X and also attests/certifies the Doodle LLC's accounting records that would be prepared by him, for submission before the Enforcement Directorate in India, he may be held guilty of professional misconduct.

Case Study 3

Facts of the Case:

ABC & Associates LLP (ABC), a firm of Chartered Accountants, was empanelled with the Commissioner of GST for appointment as Special Auditor under section 66. X Ltd., a registered person under GST, was selected by the Office of the Commissioner for special audit under section 66 for a financial year on account of irregularities noticed during scrutiny of returns. ABC was nominated by the Office of the Commissioner for special audit of X Ltd. Assume that the following events unfolded in relation to the appointment and audit procedure:

1. The appointment of special auditor was based on the undertaking furnished by the firm that the partners of the firm or any of their relatives are not directly or indirectly related to the auditee. However, while submitting the declaration in relation to such appointment, if ABC fails to disclose the fact that spouse of one of the partners of ABC is working under full time employment as a Head of Tax Department of the auditee i.e. X Ltd., what will be its implications?

2. Material discrepancies in the valuation of stock transfer to related parties by the auditee were noticed by ABC. If ABC fails to disclose these material discrepancies in the audit report submitted to the Office of Commissioner, what will be its implications?

3. The input tax credit claim by X Ltd. i.e. the auditee, under Form GST ITC- 01, was certified by one of the associate firms of ABC in favour of X Ltd. Such certificate was based on incorrect facts and against the eligibility criteria for input tax credit as per section 18. However, if ABC fails to exercise the due diligence and the certificate is taken on record by ABC as an audit procedure and is relied upon at the time of finalization of audit report and submission of findings, what will be its implications?

4. ABC receives a consideration of ` 5 lakh from X Ltd. in the name of special audit conducted.

GST implications

Following implications may arise in the above cases:

1. False undertaking submitted before the Office of Commissioner GST and the audit engagement undertaken on the basis of such undertaking

The essential terms of the appointment as special auditor included that the partners or any of the relatives of the partners are not directly or indirectly linked to X Ltd. i.e. the auditee. If the spouse of one of the partners of ABC is working as Head of Tax Department of the auditee. Non-disclosure of said fact in the undertaking and other engagement documents and accepting such engagement tantamount to submission of false undertaking by a Chartered Accountant firm to the Government Authorities. Further, a question may be raised about the independence of the audit team considering the fact that spouse of one of the partners of the firm is holding a key position in X Ltd. i.e. the auditee.

2. Non-reporting of material discrepancies noticed during the audit procedure and reliance upon incorrect certificates and information

ABC audit team did not exercise due diligence to ascertain that the input tax credit availed by X Ltd. is not in compliance with the GST provisions. Instead, ABC relied on the certificate issued by its own associate firm which justified the incorrect input tax credit claim by X Ltd. In such a scenario both ABC and the associate firm, which issued the certificate to justify the input tax credit claim, were aiding and abetting X Ltd. in wrongful availment of credit, which is an offence punishable with penalty under 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions. Further, ABC as well as its associate firm may be held guilty of professional misconduct.

3. Receiving consideration for special audit from the auditee

The consideration for special audit under section 66 is payable by the Office of Commissioner and cannot be directly recovered from the auditee. In the present case the receipt of ` 5 lakh from the X Ltd., i.e. the auditee by ABC is an offence under GST provisions. The same is liable to penalty under general penalty under section 125 apart from other penal provisions under the GST Law. Further, this will also have an impact on the independence of the auditor – ABC.

Case Study 4

Facts of the Case:

A Ltd. is engaged in the business of manufacturing cotton yarn, wherein cotton is the principal raw material in the manufacturing process. The price of cotton varies depending upon the market conditions and is dependent on various external factors. Mr. X[7] is tax consultant of A Ltd. Mr. X advises A Ltd. on GST compliances.

In order to meet expansion related expenditure, A Ltd. sought a term loan and working capital loan from banks. As per the bank, the turnover and profitability criteria of A Ltd. were not meeting the benchmarks of bank for sanction of any loan facility. Accordingly, following actions were undertaken by Mr. X being the tax consultant of A Ltd.:

1. A separate entity i.e. B Ltd. was incorporated and the Directors of A Ltd. were appointed as Directors in B Ltd. This ensured that the control of B Ltd. remains with the Directors of A Ltd. Further, B Ltd. obtained GST registration as a manufacturer of yarn wherein Mr. X assisted B Ltd. in obtaining such GST registration. Mr. X obtained registration providing fake documents for registration.

2. Subsequently, A Ltd. started issuing tax invoices for supply of yarn to B Ltd. However, there was no actual movement of goods by A Ltd. to B Ltd. The tax invoices were issued and the same were reported in the GST returns by A Ltd. Further, B Ltd. availed the input tax credit of all such tax invoices reported by A Ltd. The finished goods related to such tax invoices were sold in the local market by A Ltd. in cash without charging any GST and without issuance of tax invoice.

3. B Ltd. issued tax invoices for provision of certain services to A Ltd. in form of testing of cotton, repairs and maintenance of machinery installed at A Ltd. apart from other services. However, no such services were actually provided

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[7] *Mr. X is not a Chartered Accountant.*

by B Ltd. to A Ltd. The input tax credit appearing in the books of B Ltd. (which was availed on the basis of fake yarn invoices) was utilized by B Ltd. at the time of discharging GST liability in relation to the alleged tax invoices issued against provision of services to A Ltd.

4. Further, B Ltd. issued tax invoices for sale of yarn (allegedly purchased from A Ltd.) to other group entities to ensure that the stock of yarn becomes zero in the books of accounts at the year end. The tax invoices were issued at a rate lowered by 90% of the actual tax invoice received from A Ltd. contending that the quality of yarn had deteriorated during the storage.

5. Mr. X was aware of the aforesaid actions of A Ltd. and B Ltd. Further, the GST returns were filed by Mr. X for both the companies.

6. A Ltd. approached Mr. P, a practicing Chartered Accountant to issue relevant certificates to the bank certifying the turnover of A Ltd. and B Ltd. as genuine turnover to ensure that the required loan amount is sanctioned to A Ltd. A Ltd. elaborated the entire arrangement made by it with regard to B Ltd.

Mr. P apprised A Ltd. of the following GST implications that may arise in the given case:

GST implications

1. GST registration of B Ltd. sought on the basis of fake documents

As per section 122(1)(xii), furnishing of false information with regard to registration particulars is an offence liable to penalty under GST Law. Thus, B Ltd is liable to penalty under section 122(1)(xii).

2. Issuance of tax invoice without actual supply of goods or services

Following instances happened wherein there was no actual supply of goods or services, however, tax invoice was issued:

- Fake issuance of tax invoice for supply of yarn by A Ltd. to B Ltd. (Para 2)
- Fake issuance of tax invoice for supply of services by B Ltd. to A Ltd. (Para 3)
- Fake issuance of tax invoice for supply of goods by B Ltd to group entities (Para 4)

The aforesaid actions are liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods and services. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

3. Fraudulent input tax credit availment

B Ltd. availed fraudulent input tax credit of the goods (yarn) which were not at all received by B Ltd. and the same was used in discharge of the tax liability related to invoices issued without any underlying supply of goods or services.

B Ltd. has availed and utilized fraudulent ITC on the basis of the said tax invoice, in contravention of the provisions of section 16(2)(b), without receiving the supply of goods and accordingly. In this case, there was no supply of by B Ltd. to A Ltd. 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 Ltd. in such case or tax liability in respect of the said outward transaction by B Ltd. to A Ltd. is required to be made from B Ltd. under the provisions of section 74. However, in such cases, B Ltd. shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), 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.

This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

4. Incorrect information in GST returns and falsification of books of accounts

The GST returns filed by A Ltd. and B Ltd. were not backed by correct information in terms of supply of goods and services. Knowing that there was no supply of goods or services and input tax credit is not available, the returns were filed by both the companies. The books of accounts and financial records were also falsified in terms of information related to sales and inventory. This act of furnishing incorrect information in GST return and falsifying financial records is an offence under section 122(1)(x). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

5. GST implications on Mr. X

Mr. X, being a consultant of A Ltd., had adequate knowledge of the fraud and wilful misrepresentation of the facts in terms of maintaining the financial records and submission of information in GST returns. In fact, Mr. X himself was filing the GST returns and was aware of the fake invoices and ineligible input tax credit availment by the companies. Mr. X shall be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant undertakes the assignment of issuing relevant certificates to the bank thereby certifying the turnover of A Ltd. and B Ltd., he may be held guilty of professional misconduct. Further, he shall also be liable to a penalty in terms of the provisions of 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

TEST YOUR KNOWLEDGE

1. *What is the quantum of penalty for an offence mentioned under section 122(1), 122(1A) and section 122(2)?*

2. *Mr. X, an unregistered person under GST, purchases the goods supplied by Mr. Y who is a registered person without receiving a tax invoice from Mr. Y and thus helps in tax evasion by Mr. Y. A disciplinary action is taken against Mr. X and an adhoc penalty of ` 20,000/- is imposed by passing an order without describing contravention for which penalty is going to be imposed and without mentioning the provisions under which penalty is going to be imposed. Should Mr. X proceed to pay for penalty or challenge the order passed by Department?*

4. *Examine the implications as regards the bailability and quantum of punishment*

on prosecution, in respect of the following cases pertaining to the month of December under CGST Act, 2017-

(i) 'X' collects `245 lakh as tax from its clients and deposits `241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.

(ii) 'Y' collects ` 550 lakh as tax from its clients but deposits only `30 lakh with the Central Government.

What will be the implications with regard to punishment on prosecution of 'X' and 'Y' for the offences? What would be the position, if 'X' and 'Y' repeat the offences?

It may be assumed that offences are proved in the Court.

5. *Discuss the cognizable and non-cognizable offences under section 132?*

6. *Bindusar CEO of Ashoka Solution Ltd is issued a summon to appear before the central tax officer to produce the books of accounts of Ashoka Solution Ltd in an enquiry conducted on said company. Determine the amount of penalty if any that may be imposed on Bindusar under the CGST Act, 2017 if he fails to appear before the central tax officer.*

ANSWERS/HINTS

1. Section 122(1) provides that any taxable person who has committed any of the specified offences mentioned thereunder, shall be liable to a penalty which shall be higher of the following amounts:

(a) ` 10,000/-; or

(b) An amount equivalent to, any of the following (Applicable as the case may be) **–**

(i) Tax evaded; or

(ii) Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or

(iii) Tax not collected under section 52 or short collected or collected but not paid to the Government; or

(iv) Input tax credit availed of or passed on or distributed irregularly; or

(v) Refund claimed fraudulently

Further, section 122(1A) provides that any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of section 122(1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

Moreover, section 122(2) provides that if any registered person who supplies any goods and/or services on which any tax has not been paid or short paid or erroneously refunded or where the ITC has been wrongly availed or utilized:-

(i) for any reason other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall be liable to a penalty of ` 10,000 or 10% of the tax due from such person, whichever is higher.

(ii) for reason of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to ` 10,000 or the tax due from such person, whichever is higher.

2. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126. Accordingly—

- no penalty is to be imposed without affording an opportunity of being heard to the person proceeded against to rebut the allegations levelled against him,
- the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,

- the nature of the breach is to be specified clearly in the order imposing the penalty,
- the provisions of the law under which the penalty has been imposed is to be specified.

Since the order suffers from lack of clarity about nature of breach which has taken place and about applicable law under which penalty has been imposed, such order passed by the department should be challenged.

4. **(i)** Failure to pay any amount collected as tax beyond 3 months from due date of payment is a specified offence as per clause (d) of Section 132(1).

In the present case, failure to deposit the tax ` 4 lakh (` 245 lakh – ` 241 lakh)**.** As the amount of failure does not exceed ` 200 lakh therefore, failure to deposit ` 4 lakh collected as tax by 'X' will not be punishable with imprisonment as per section 132(1).

Further, falsification of financial records by 'X' is a specified offence as per section 132(1)(d) and punishable with imprisonment upto 6 months or with fine or both as per clause (iv) of section 132(1) assuming that falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017 and the said offence is bailable in terms of section 132(4).

(ii) Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds ` 500 lakh in terms of section 132(1)(d) read with clause (i) of section 132(1).

Since the amount of tax evaded by 'Y' exceeds ` 500 lakh (` 550 lakh -` 30 lakh), 'Y' is punishable with an imprisonment for a term which may extend to 5 years and with fine. It has been assumed that amount of ` 520 lakh collected as tax is not paid to the Government beyond 3 months from the due date of payment of tax.

Such offence is non-bailable in terms of section 132(5).

If 'X 'and 'Y' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017.

Such imprisonment shall also be of at least 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court.

5. As per section 132(5), following offences are cognizable offences, provided amount of tax evaded or input tax credit wrongly availed/ utilised or refund wrongly taken exceeds ` 5 crores, namely:

(a) Supply without issuance of invoice with the intention to evade tax

(b) Issuance of any invoice/ bill without supply leading to wrongful availment/ utilisation of ITC or refund of tax

(c) Availment of ITC using invoice/ bill against which no supplies have been made or fraudulent availment of ITC without any invoice or bill.

(d) Failure to pay the amount collected as tax to the Government beyond a period of 3 months from the due date of payment.

Further, section 132(4) provides that all offences specified under section 132 are non-cognizable offences except the cognizable offences specified as aforesaid.

6. Sec 122(3)(d) of the CGST Act stipulates that any person who fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry is liable to a penalty which may extend to ` 25,000. Therefore, penalty upto ` 25,000 can be imposed on Bindusar under the CGST Act, 2017 in the given case.

CHAPTER 22

APPEALS AND REVISION

For the sake of brevity, the terms 'Appellate Authority', 'Revisional Authority', 'input tax credit' have been referred to as 'AA', 'RA' and 'ITC' respectively in this Chapter. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- ❑ identify the various kinds of appellate forum available under the CGST Act and their hierarchy
- ❑ explain the various aspects relating to filing of an appeal before the Appellate Authority by the taxpayer as well as by the Department and the provisions relating to revision of orders by the Revisional Authority
- ❑ appreciate and explain the provisions relating to constitution and structure of Appellate Tribunal as also the various aspects relating to filing of an appeal before it by the taxpayer as well as by the Department
- ❑ comprehend and explain the concept of mandatory pre-deposit for filing appeals
- ❑ explain the various aspects relating to filing of an appeal before the High Court and the Supreme Court
- ❑ apply the above and other provisions relating to appeals and revision in problem solving

1. INTRODUCTION

Tax laws impose various obligations on taxpayers. Such obligations are broadly of two kinds: levy-related (e.g. scope of levy, taxable value, tax rate etc.) and procedure-related (e.g., obtaining registration, filing of returns, manner of depositing tax etc.). The taxpayer's compliance with these obligations is verified by tax authorities (by exercising various powers such as undertaking scrutiny, audit, anti-evasion proceedings, etc.). As a result of which, sometimes there are situations of actual or perceived non-compliances. If the difference in the views persists, it results into a dispute, which is then required to be resolved.

Under tax laws, on any given set of facts and legal provisions there can be different opinions or viewpoints. Hence, it is likely that the taxpayer may not agree with the "adjudication order" passed by a tax authority. It is equally possible that the Tax Department may itself not agree with the adjudication order. It is for this reason that the tax statutes provide for an appellate mechanism to both the sides. In legal parlance, **appeal** is a timely resort for review by a higher authority, where aggrieved party request a formal change to an existing decision.

Since the right to appeal is a statutory right (i.e. a right conferred by the statute), the statute also places fetters on the exercise of this right. The time limits prescribed by the statute for filing of appeals, the requirement of making pre-deposit of a certain sum before the appeal can be heard by the competent authority are the examples of such fetters on the statutory right.

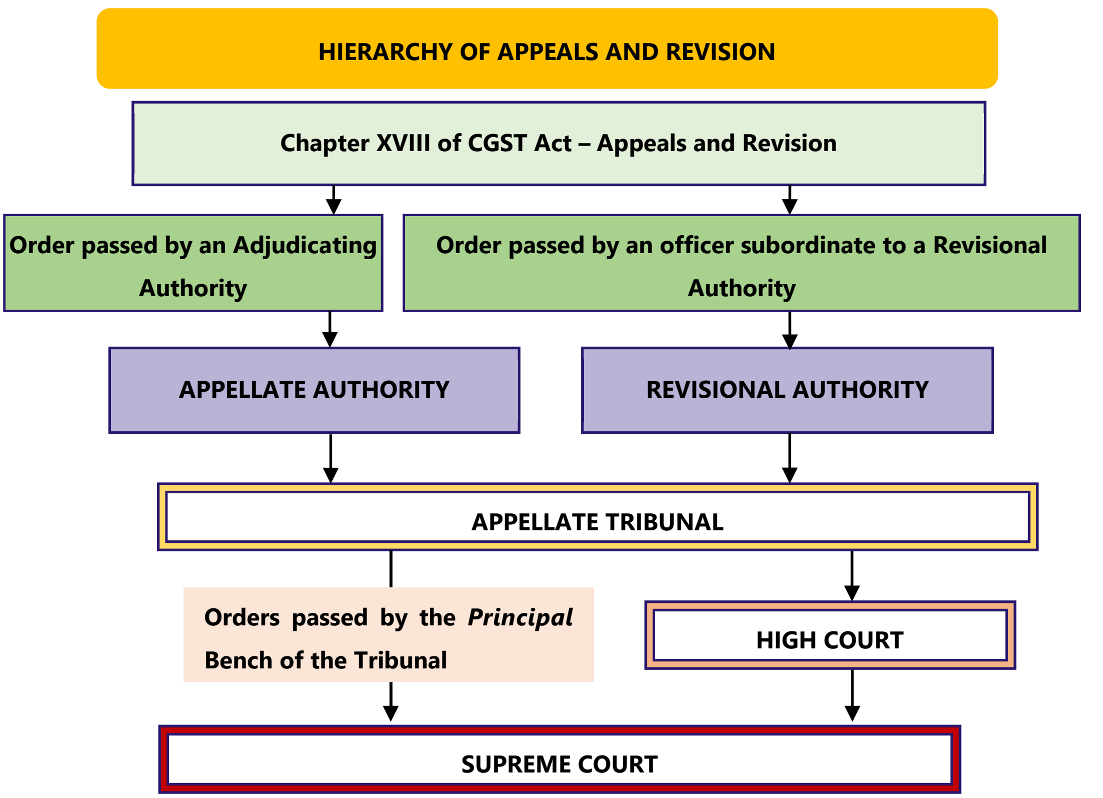
India has adopted a dual GST, i.e. GST is levied by both Centre and State Governments concurrently on a transaction. Does this mean that if a taxpayer is aggrieved by any proceedings, he will have to approach both the authorities separately for exercising his right of appeal? The answer is 'no'.

GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and *vice versa*. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws. GST law also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/ revision/rectification against the said order will lie only with the proper officers of that Act (CGST Act). Accordingly, if any order is passed by the proper officer under, say Haryana SGST Act, any appeal/review/revision/rectification against the said order will lie only with the proper officer under the Haryana SGST Act.

Chapter XVIII [Sections 107 to 121] of the CGST Act supplemented with Chapter XIII [Rules 108 to 116] of the CGST Rules prescribe the provisions relating to appeals and revision. State GST laws also prescribe identical provisions.

Provisions of appeals and revision under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

A brief overview of the provisions covered under the aforesaid sections 107 to 121, are outlined in this chapter.



2. RELEVANT DEFINITIONS

- **Adjudicating authority** means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171 [Section 2(4)].
- **Appellate Authority** means an authority appointed or authorised to hear appeals as referred to in section 107 [Section 2(8)].
- **Appellate Tribunal** means the Goods and Services Tax Appellate Tribunal constituted under section 109 [Section 2(9)].
- **Authorised representative** means the representative as referred to in section 116 [Section 2(15)].
- **Board** means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 [Section 2(16)].
- **Commissioner** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act [Section 2(24)].
- **Revisional Authority** means an authority appointed or authorised for revision of decision or orders as referred to in section 108 [Section 2(99)].

3. APPEALS TO APPELLATE AUTHORITY [SECTION 107]

A. Appeal to Appellate Authority (AA) by aggrieved person (taxpayer)

(i) Orders appealable to AA

An appeal against any decision/order passed by any adjudicating authority under the CGST Act or SGST Act/UTGST Act lies before the AA.

It is important to note that it is only the aggrieved person who can file the appeal. Also, the appeal must be against a decision or order passed under the Act.

(ii) Time limit for filing appeal

A person aggrieved by any decision/order of an adjudicating authority can file an appeal to the AA within 3 months from the date of communication of such decision/order.

(1) The adjudicating authority issued the adjudication order on 23rd September and the same is communicated to the taxpayer on 28th September. The relevant date for computing the period of 3 months (for filing the appeal to AA) is 28th September (date of communication of order) and not 23rd September.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

(iii) Form for appeal to AA by the aggrieved person (taxpayer) and date of filing appeal

An appeal is to be filed by aggrieved person to the Appellate Authority in Form GST APL-01 along with the relevant documents. A provisional acknowledgement is issued to the appellant immediately.

Subsequently, where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

However, where the decision/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 7 days from the date of filing of Form GST APL-01. The final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Further, where the said self-certified copy of the decision/order is not submitted within a period of 7 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.

The appeal shall be treated as filed only when the final acknowledgement is issued.

(2) The appeal is filed and provisional acknowledgement issued on 10^{th} September. The taxpayer submits the certified copy of the order sought to be appealed against on 15^{th} September (within 7 days). The date of filing appeal is 10^{th} September.

(3) The appeal is filed and provisional acknowledgement issued on 10^{th} September. The taxpayer submits the certified copy of the order sought to be appealed against on 25^{th} September (after seven days). The date of filing appeal is 25^{th} September.

(iv) Mandatory pre-deposit for filing appeal

No appeal can be filed before the AA unless a specified amount of pre-deposit is made by the appellant. *The concept of pre-deposit is discussed separately under Heading No. 7.*

B. Application before the AA by the Department

At times, the Department itself may not agree with the decision or order passed by the adjudicating authority. Section 107(2) provides that in such cases, the Department can also file an appeal (referred to as 'review application') before the AA.

(i) Orders against which the application can be filed before the AA

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order under the CGST Act or SGST Act/UTGST Act to satisfy himself about the legality or propriety of such decision/order [Section 107(2)].

(ii) Time limit for filing the application

The Commissioner may, by order, direct any officer subordinate to him to apply to the AA within 6 months from the date of communication of the decision/order for the determination of such points arising out of the said decision/order as may be specified by him.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay.

(4) The adjudicating authority passed the order on 23rd January (communicated same day to the Commissioner). The Commissioner directs his subordinate officer to file a review application with the AA till 23rd July (within 6 months from the date of communication of order). However, the application could be filed only on 3rd August. The AA can condone the delay in filing of appeal upto 23rd August (up to 1 month) if it is satisfied that there was sufficient cause for such delay.

(iii) Form for application

An application to the AA shall be filed in Form GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgment shall be issued to the appellant immediately.

Where the decision/order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

However, 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 7 days from the date of filing of Form GST APL-03.

The final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Further, where the said self-certified copy of the decision or order is not submitted within a period of 7 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.

(iv) Application to be treated as appeal

Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority [Section 107(3)].

There is no requirement of making a pre-deposit in the case of departmental appeal.

C. Appeal process followed by AA

(i) Duties of the AA

The AA has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (not more than 3), permitting additional grounds of appeal (if found reasonable), etc.

(ii) Orders of the AA

- The AA can make further inquiry and pass its order (i.e. Order-in-Appeal) which may **confirm, modify or annul** the decision/order appealed against. However, the AA cannot refer the case back to the adjudicating authority that passed the said decision/order.

- The AA can also increase the "rigour" of the order appealed against by enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or ITC, but this can only be done after the AA has given to the appellant a reasonable opportunity of showing cause against the proposed order.

- If the AA is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where ITC has been wrongly availed or utilized, no order requiring the appellant to pay such tax or ITC 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.

- ***The appellant may, at any time before issuance of said show cause notice or before issuance of the order (i.e. Order-in-Appeal), 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 APL-01/03W.***

- ***However, where the final acknowledgment has been issued in Form GST APL-02, the withdrawal of the said appeal would be subject to the approval of the AA and such application for withdrawal of the appeal shall be decided by the AA within 7 days of filing of such application.***

- ***Further, any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in (A) and (B) points above, as the case may be.***

- The Order-in-appeal shall be a **"speaking order"** i.e., it shall state the points for determination, the decision thereon and the reasons for the decision.

- The law provides an advisory time limit of 1 year from date of filing of appeal for the AA to decide the appeal. The period of stay ordered by any Court or Tribunal shall be excluded in computing the period of 1 year.

(5) The adjudicating authority passed the order on 23rd January 2023 and it was communicated to the taxpayer on the same day. The taxpayer filed the appeal against the order with the AA on 16th February 2023. The AA should decide the appeal by 16th February 2024, where it is possible to do so.

(6) The adjudicating authority passed the order on 23rd January 2023 and it was communicated to the taxpayer on the same day. The taxpayer filed the appeal against the order with the AA on 16th February 2023. The appeal proceedings before the AA are stayed by an order of a Court for the period between 1st May 2023 and 30th June 2023. The period of 61 days during which the stay was in operation will be excluded for computing the period of 1 year within which the AA should decide the appeal. Thus, the AA can pass the order by 17th April 2024 (2024 being a leap year).

- On disposal of the appeal, the AA shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.
- A copy of the order passed by the AA shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional SGST/UTGST Commissioner or an authority designated by him in this behalf.
- Every order passed by the AA shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

D. Appointment of Appellate Authority

Any person aggrieved by any decision/order passed under GST law or an officer directed to appeal against any decision/order passed under said law, may appeal within 3 months (6 months in case of appeal by the Department) from the date of communication of said decision/order as follows:

If the decision/order against which the appeal is to be filed, is passed by the Additional or Joint Commissioner	**Appellate Authority** →	Commissioner (Appeals)
If the decision/order against which the appeal is to be filed, is passed by the Deputy or Assistant Commissioner or Superintendent	**Appellate Authority** →	Any officer not below the rank of Joint Commissioner (Appeals)

A summary of the provisions of section 107 is given at next page.

Summary of the provisions of Section 107

APPEALS TO APPELLATE AUTHORITY [SECTION 107]

The Commissioner may direct any Officer subordinate to him to apply to the AA to determine specified points relating to legality and propriety of an order of any adjudicating authority passed under the GST laws

<u>Time limit</u> - Within 6 months from the date of communication of the said decision/order. Delay of 1 month can be condoned by the AA

<u>Form of Application</u> – GST APL 03

Any person aggrieved by any decision/order passed by an adjudicating authority passed under the GST laws

<u>Time limit</u> - Within 3 months from the date of communication of the said decision/order to the appellant. Delay of 1 month can be condoned by the AA

<u>Form of Appeal</u> – GST APL 01

Pre-deposit of tax, interest, fine, fee, and penalty arising from the impugned order, as admitted by the appellant along with 10% of the "tax in dispute"

The AA will give the appellant a chance to be heard.

The AA may allow the appellant during the hearing to add any ground of appeal not specified in the grounds of appeal and can grant up to 3 adjournments.

The AA may confirm, modify, annul the decision or order appealed against after making further inquiry, as necessary.

4. POWERS OF REVISIONAL AUTHORITY [SECTION 108]

A. Orders which can be revised

(i) The GST laws also provide a mechanism of revision by the Revisional Authority (RA) of the orders passed by its subordinate officers.

(ii) The RA may, on his own motion, or upon information received by him or on request from the SGST/ UTGST Commissioner, call for and examine the record of any proceedings. Here, 'record' includes all records relating to any proceedings under the CGST Act available at the time of examination by the RA.

(iii) On examination of the case records, if RA is of the view that the decision or order passed under the CGST Act/ SGST Act/ UTGST Act by any officer subordinate to him

- is erroneous, in so far as it is prejudicial to the interest of the revenue and is illegal or improper;
- has not taken into account material facts, whether available at the time of issuance of the said order or not;
- 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.

(iv) Thereafter, the RA 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. Here, 'decision' includes intimation given by any officer lower in rank than the RA.

Along with the order, the RA shall also issue a summary of the order clearly indicating the final amount of demand confirmed.

(v) If the RA decides to pass an order which is likely to affect the person adversely, he shall serve a notice on such person and give him a reasonable opportunity of being heard.

(vi) Every revision order, subject to further appeal to the Tribunal, High Court or Supreme Court, be final and binding on the parties.

B. Fetters to the powers of revision

The power of revision is subject to the condition that non-appealable orders and decisions under section 121 cannot be revised *[Section 121 which provides for such orders/decisions is discussed under Heading 15 of this Chapter].*

The RA shall not exercise the power of revision if:

(a) the order sought to be revised has been subject to an appeal before AA or Tribunal or High Court or Supreme Court*****; or

(b) the period of 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision/order sought to be revised; or

(c) the order has already been taken for revision at an earlier stage; or

(d) the order sought to be revised is itself a revisional order.

*****The RA may still pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/High Court/Supreme Court, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

(7) A taxpayer is served with an adjudication order on 25th May 2023. The RA can revise the order during the period between 26th November 2023 (after expiry of 6 months) and 25th May 2026.

(8) ABC Pvt. Ltd. manufactures product 'P' and 'Q'. The company avails benefit of exemption notification in respect of product 'P' and pays tax on product 'Q' @ 12%. Show cause notice was issued to the company alleging that product 'P' was not eligible for exemption and product 'Q' was liable to tax @ 18%. The adjudicating authority concluded that the rate of tax in respect of product 'Q' was correct but the exemption on product 'P' was being availed wrongly. Consequently, an order confirming demand of ₹ 10 lakh was passed by the adjudicating authority on 15th January 2023.

The company filed an appeal against the order before the AA on 16th February 2023. The AA passed the order in favour of the company in respect of product 'P' on 31st October 2023.

The RA can pass the revised order in respect of tax rate on product 'Q' before 31st October 2024 (1 year from the date of order passed by the AA) or 15th January 2026 (3 years from the date of adjudication order), whichever is later. Thus, the RA can pass the revised order by 15th January 2026.

C. Period to be excluded in computing limitation period of 3 years

(i) If the decision/order sought to be revised 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 the decision of the High Court and the date of the decision of the Supreme Court

shall be excluded in computing the period of limitation of 3 years where proceedings for revision have been initiated by way of issue of a notice under section 108 [Section 108(4)].

(ii) When the issuance of a revision order is stayed by the order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of limitation of 3 years [Section 108(5)].

(9) The adjudicating authority passed the order on 23rd January 2023 and it was communicated to the taxpayer on the same day. The RA calls for the records of the proceedings on 1st August 2023 (after expiry of 6 months) and started examining the same. The revision order to be passed by the RA is stayed by an order of the High Court for the period between 1st September 2023 and 31st October 2023. The period of 61 days during which the stay was in operation will be excluded for computing the period of 3 years within which the RA should pass the revision order. Thus, the RA can pass the order by 25th March 2026.

✪ ***The provisions related to revision empower the superior authorities to revise the orders or decisions passed by their sub-ordinate officers which are found to be improper.***

✪ ***Since AA also has the power to annual, enhance etc. (as discussed in Heading 3), in order to avoid any duplication of proceedings, an order which is subject to appeal cannot be revised. However, the revisional order can be passed on the points that are not raised or decided in an appeal. Accordingly, the law provides for extension of the time limit for revising the orders that are subject matter of an appeal. Extension to the prescribed limitation also applies where the revision proceedings are stayed.***

✪ ***Revision proceedings can only be taken once with respect to an order and a revision order cannot be revised.***

D. Officers authorized as Revisional Authority

The CBIC has authorized the following officers as Revisional Authority:

For decisions/orders passed by the Additional/Joint Commissioner	**Revisional Authority** →	Principal Commissioner/ Commissioner
For decisions/orders passed by the Deputy Commissioner /Assistant Commissioner/ Superintendent	**Revisional Authority** →	Additional/Joint Commissioner

5. APPELLATE TRIBUNAL UNDER GST LAWS [SECTIONS 109-111]

The Tribunal is the second level of appeal, where appeals can be filed against the orders-in-appeal passed by the AA or order in revision passed by RA, by any person aggrieved by such an Order-in-Appeal/ Order-in-Revision.

A. *Constitution of Appellate Tribunal and Benches thereof [Section 109]*[1]

Constitution

The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

- ***The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches.***
- ***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).***
- ***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).***

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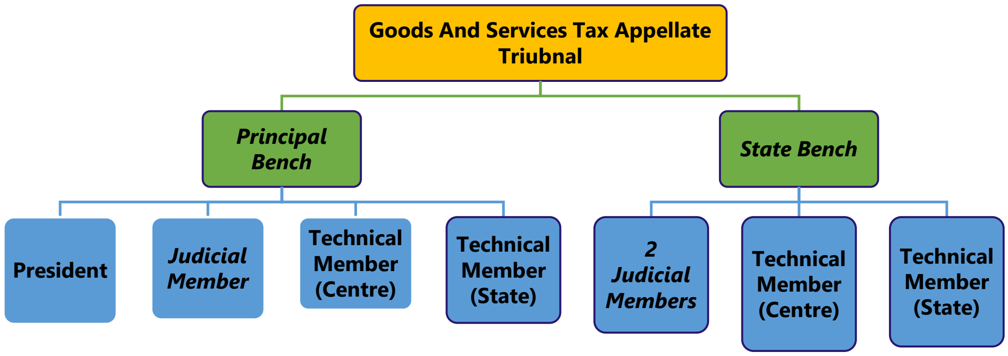
[1] [1] *Earlier, the Division Bench of Madras High Court in the case of Revenue Bar Association v. Union of India (2019 SCC Online Mad 8910) had struck down the composition of the Appellate Tribunal as it comprised of more number of technical members than judicial members. Consequently, the Appellate Tribunal was not constituted so far.*

A diagrammatic representation of the composition of the Appellate Tribunal is shown below.



<u>Jurisdiction:</u>

- ***The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority.***
- ***However, the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.***

<u>Single member bench:</u>

Appeals, where the tax or ITC involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed ₹ 50,00,000 and which does not involve any question of law may, with the approval of the President, and subject to prescribed conditions 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.

Accordingly, the cases can be heard by a bench consisting of a single member, if following conditions are fulfilled:

- ***Amount of tax or ITC involved or the amount of fine, fee or penalty determined does not exceed ₹ 50,00,000***
- ***Matter does not* involve any question of law**
- ***Prior* approval of the President has been obtained**
- ***Any other prescribed conditions.***

Majority rule in case of difference of opinion

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,—

- ***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;***
- ***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.

Transfer of members/cases for administration efficiency

- ***The President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.***
- ***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.***
- ***The Government may, in consultation with the President, for the administrative efficiency, transfer Members from one Bench to another Bench:***
- ***However, 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.***

Defect in constitution not to render proceedings invalid

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.

The President and members of Appellate Tribunal their qualification, appointment, conditions of service, etc. shall be in the manner prescribed under section 110 of the CGST Act.

B. Procedure before Appellate Tribunal [Section 111]

(i) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908. However, it shall be guided by the principles of natural justice and shall have power to regulate its own procedure.

(ii) The Appellate Tribunal shall 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.

(iii) Order of the Appellate Tribunal may be enforced in the same manner as if it were a decree made by a court in a suit pending therein. The Appellate Tribunal can 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.

(iv) 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. 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.

6. APPEAL TO APPELLATE TRIBUNAL [SECTIONS 112 & 113]

A. Appeal by the aggrieved person (taxpayer)

(i) Orders appealable to Appellate Tribunal

Any person aggrieved by an order passed against him by an AA or RA under CGST Act/SGST Act/ UTGST Act may appeal to the Appellate Tribunal.

(ii) Time limit for filing appeal

The appeal can be filed before the Appellate Tribunal within 3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

The Tribunal can condone the delay of up to 3 months beyond the specified time period of 3 months, if it is satisfied that there was sufficient cause for the delay.

(iii) Form for filing appeal

The appeal shall be filed in Form GST APL-05 either electronically or otherwise as may be notified by the Registrar on the common portal and a provisional acknowledgement shall be issued to the appellant immediately. A certified copy of the decision/order appealed against shall be submitted to the Registrar within 7 days of filing the appeal and a final acknowledgement shall be issued thereafter.

(iv) Date of filing appeal

If the certified copy of the decision/order is submitted within 7 days from the date of filing appeal in GST APL-05, the date of filing the appeal shall be the date of the issue of the provisional acknowledgement. However, if the said copy is submitted after 7 days, the date of filing the appeal shall be the date of the submission of such copy.

The appeal shall be treated as filed only when the final acknowledgement is issued.

(v) Power of Tribunal to refuse to admit an appeal

The Appellate Tribunal can refuse to admit an appeal if

- the tax or ITC involved or
- the difference in tax or ITC involved or
- the amount of fine, fee or penalty determined by such order

does not exceed ₹ 50,000.

(vi) Memorandum of cross objections

The law also provides for filing of cross-objections by the respondent against such part of the order against which the respondent may initially not have chosen to file an appeal.

It is provided that on receipt of notice that an appeal has been filed (by the appellant), the party against whom the appeal has been preferred (i.e. the respondent) may, notwithstanding, that he may not have appealed against such order or any part thereof, file within 45 days a memorandum of cross-objections in GST APL-06 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 for filing the initial appeal.

The Tribunal can condone the delay of up to 45 days beyond the specified time period of 45 days, if it is satisfied that there was sufficient cause for the delay.

(vii) Fees for filing appeal

The fees for filing of appeal or restoration of appeal shall be ₹ 1,000 for every ₹ 1,00,000 of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against. However, the fee shall not exceed ₹ 25,000.

There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

(viii) Mandatory pre-deposit for filing appeal

No appeal can be filed before the Appellate Tribunal unless a specified amount of pre-deposit is made by the appellant. *The concept of pre-deposit is discussed separately under Heading No. 7.*

B. Departmental appeal

(i) The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any order passed by the AA or RA under the CGST Act/SGST Act/ UTGST Act for the purpose of satisfying himself as to the legality or propriety of such order.

(ii) The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within 6 months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified him

(iii) The application shall be made in GST APL-07 either electronically or otherwise on the common portal.

(iv) Such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order of the AA or RA.

There is no requirement of making a pre-deposit in the case of departmental appeal.

C. Orders of the Appellate Tribunal [Section 113]

(i) The Tribunal, after hearing both sides may

- pass such orders thereon as it thinks fit, **confirming, modifying or annulling** the decision or order appealed against or

- refer the case back to the AA or to the RA, 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.

(ii) For reasons of natural justice (reasonable opportunity), it is also provided that the Tribunal may, if sufficient cause is shown, grant up to 3 adjournments to hearing of appeal to either side.

(iii) The law provides an advisory time limit of 1 year from the date of filing of appeal for the Tribunal to decide the appeal.

(iv) The Tibunal shall send a copy of its order to

- AA/RA/Original adjudicating authority
- Appellant
- Jurisdictional Commissioner or the SGST/UTGST Commissioner

(v) Every order passed by the Tribunal shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

Rectification of errors [Section 113(3)]

- The Tribunal can correct its own order for any apparent mistakes, but it has no power of review.
- The Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record if such error is noticed in the order by its own accord, or is brought to its notice by the Commissioner or SGST/UTGST Commissioner or the other party to the appeal within a period of 3 months from the date of the order.
- No amendment which has the effect of enhancing an assessment or reducing a refund or ITC or otherwise increasing the liability of the other party, shall be made, unless the party has been given an opportunity of being heard.

7. MANDATORY PRE-DEPOSIT

The right to appeal is a statutory right which operates within the limitation placed on it by the law. One such limitation that is generally applied basis this principle in tax statutes is that an appellant must first deposit the adjudged dues before his appeal can be heard.

However, an appellant may succeed in his appeal, and hence it would (in retrospect) be unfair to saddle him with this financial burden. To balance these factors, tax laws generally mandate "pre-deposits" so as to discourage frivolous appeals and also safeguard the interest of revenue.

Section 107(6) provides that no appeal shall be filed before the AA, unless the appellant has paid—

(a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him; **and**

(b) a sum equal to 10% of the remaining amount of **tax in dispute** arising from the impugned order in relation to which the appeal has been filed, subject to a maximum of ₹ 25 crore (₹ 50 crore in case of IGST*****).

** As per section 20 of the IGST Act.*

However, no appeal shall be filed before (AA) against an order under section 129(3)[2], unless a sum equal to 25% of the penalty has been paid by the appellant.

The payment of pre-deposit ensures staying of the recovery proceedings for the balance amount of demand in dispute.

example

(10) ABC Pvt. Ltd. received a show cause notice demanding tax of ₹ 10 lakh, penalty of ₹ 10 lakh and interest of ₹ 2 lakh. The adjudicating authority passed the order confirming the entire demand. While ABC Pvt. Ltd. admits the tax liability of ₹ 5 lakh and interest of ₹ 50,000, it wishes to file an appeal to litigate the balance demand amount. The amount of pre-deposit to be made by ABC Pvt. Ltd. for filing the appeal to the AA is computed as under-

[2] *Provisions relating to section 129(3) have been discussed in detail in Chapter 21 – Offences and Penalties and Ethical aspects under GST in this Module of the Study Material.*

(i) Full amount of tax, interest and penalty as admitted by the company, i.e. ₹ 5.5 lakh

(ii) 10% of the tax in dispute, i.e. ₹ 50,000 (10% of ₹ 5 lakh)

Therefore, total pre-deposit to be made by the company is ₹ 6 lakh. Till the time of final disposal of appeal, there shall be no recovery of demand in dispute from Appellant.

(11) ABC Pvt. Ltd. received a show cause notice demanding IGST of ₹ 600 crore, penalty of ₹ 100 crore and interest of ₹ 10 crore. The adjudicating authority passed the order confirming the entire demand. While ABC Pvt. Ltd. admits the tax liability, penalty and interest of ₹ 50 crore, ₹ 10 crore and ₹ 1 crore respectively, it wishes to file an appeal to litigate the balance demand amount. The amount of pre-deposit to be made by ABC Pvt. Ltd. for filing the appeal to the AA is computed as under-

(i) Full amount of tax, interest and penalty as admitted by the company, i.e. ₹ 61 crore

(ii) 10% of the tax in dispute, i.e. ₹ 55 crore (10% of ₹ 550 crore) subject to a maximum of ₹ 50 crore.

Therefore, total pre-deposit to be made by the company is ₹ 61 crore (total liability admitted by the company) plus ₹ 50 crore, i.e. ₹ 111 crore. Till the time of final disposal of appeal, there shall be no recovery of demand in dispute from Appellant.

Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits

(a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him, **and**

(b) 20% of the remaining amount of **tax in dispute**, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of ₹ 50 crore (₹ 100 crore in case of IGST), in relation to which appeal has been filed.

** As per section 20 of the IGST Act*

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount of demand in dispute shall be deemed to be stayed till the disposal of the appeal.

Authority	Pre-deposit	
	When the tax involved is CGST	**When the tax involved is IGST**
AA	Admitted CGST liability in full + 10% of the CGST in dispute, subject to a maximum of 25 crore rupees*	Admitted IGST liability in full + 10% of the IGST in dispute, subject to a maximum of 50 crore rupees
Appellate Tribunal	Admitted CGST liability in full + 20% of the CGST in dispute, in addition to the amount deposited before AA as pre-deposit, subject to a maximum of 50 crore rupees*	Admitted IGST liability in full + 20% of the IGST in dispute, in addition to the amount deposited before AA as pre-deposit, subject to a maximum of 100 crore rupees

*Equivalent amount of SGST is also required to be deposited. Therefore, whether the appeal involves CGST+SGST or IGST, in both the cases, the aggregate amount of tax to be deposited or maximum amount (excluding the admitted liability) is the same. For example, for the appeal before AA involving intra-state supplies, the maximum amount of pre-deposit (excluding the admitted liability) would be ₹25 crore for CGST + ₹25 crore for SGST (i.e. total ₹50 crore); whereas for the appeal involving inter-state supplies it would be ₹50 crore for IGST.

(12) ABC Pvt. Ltd. received an adjudication order demanding CGST and SGST of ₹ 200 crore each. ABC Pvt. Ltd. filed an appeal to AA contesting the entire demand. The amount of pre-deposit made by the company for filing the appeal to the AA is ₹ 20 crore [10% of ₹ 200 crore (tax in dispute)]. Equivalent amount has been paid for SGST too. Thus, a total of ₹ 40 crore has been paid by the company as pre-deposit for filing the appeal to the AA. The AA heard the appeal and decided in favour of the department confirming the entire demand. The company filed an appeal to the Appellate Tribunal. The amount of pre-deposit made by the company for filing the appeal before the Tribunal is ₹ 40 crore [20% of ₹ 200 crore (tax in dispute)]. Equivalent amount has been paid for SGST too. Thus, a total of ₹ 80 crore has been paid by the company as pre-deposit for filing the appeal to the Appellate Tribunal.

(13) ABC Pvt. Ltd. wishes to file an appeal with the Appellate Tribunal against an order of the AA demanding IGST of ₹ 1,200 crore. The company admits the liability of ₹ 100 crore but wishes to litigate the balance demand amount and thus, files an appeal with the Appellate Tribunal. The amount of pre-deposit to be made by ABC Pvt. Ltd. for filing the appeal to the Appellate Tribunal is computed as under-

(i) Full amount of tax, interest and penalty as admitted by the company, i.e. ₹ 100 crore

(ii) 20% of the tax in dispute, i.e. ₹ 220 crore (20% of ₹ 1,100 crore) subject to a maximum of ₹ 100 crore

Therefore, total pre-deposit to be made by the company before filing an appeal in the Appellate Tribunal is ₹ 100 crore (total liability admitted by the company) plus ₹ 100 crore, i.e. ₹ 200 crore.

Interest on refund of pre-deposit [Section 115]

If the pre-deposit made by the appellant before the AA or the Tribunal is required to be refunded consequent to any order of the AA or of the Tribunal, as the case may be, interest as provided under section 56 shall be payable from the date of payment of the amount (and not from the date of the order of the AA or of the Tribunal) till the date of refund of such amount.

8. PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE APPELLATE AUTHORITY OR THE APPELLATE TRIBUNAL

(i) Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the AA or the 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 AA.

(ii) Exceptions

However, the rule provides the following exceptional circumstances where the production of additional evidence before the AA or the Tribunal could be allowed:

(a) where the adjudicating authority or, as the case may be, the AA 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 AA; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the AA any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(iii) No additional evidence shall be admitted unless the AA or the Appellate Tribunal records in writing the reasons for its admission.

(iv) The AA or the Appellate Tribunal shall not take any additional evidence 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 additional evidence produced by the appellant.

(v) The provisions of this rule shall not affect the power of the AA 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.

9. APPEARANCE BY AUTHORISED REPRESENTATIVE [SECTION 116]

Any person who is entitled or required to appear before a GST Officer or the AA or the Tribunal, in connection with any proceedings under the CGST Act, may appear through authorised representative (except when he is required under the Act to appear personally for examination on oath or affirmation)

(i) Who can be authorized representative?

Broadly an authorised representative can be a relative, a regular employee, an advocate, a chartered accountant, a cost accountant, a company secretary, or a GST Practitioner. It is also provided that specified indirect tax gazetted officers having served for atleast 2 years, can appear as authorised representative after one year from the date of their retirement/resignation.

(ii) Disqualifications for authorized representative

The GST law also provides some disqualifications for an authorised representative. Section 116(3) lays down that no person,—

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceedings under the CGST Act/ SGST Act/ UTGST Act/IGST Act or under the earlier 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 and/or services; or

(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—

(i) for all times in case of persons referred to in clauses (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).

(iii) Any person who has been disqualified under the provisions of the SGST Act/ UTGST Act shall be deemed to be disqualified under the CGST Act also.

10. *FINANCIAL AND ADMINISTRATIVE POWERS OF PRESIDENT [SECTION 114]*

The president shall exercise the prescribed financial and administrative powers over the appellate tribunal.

11. APPEAL TO THE HIGH COURT [SECTION 117]

(i) Appealable orders

The law provides that any person (whether department or other person), aggrieved by any order passed by the ***State Benches*** of the Tribunal, may file an appeal to the High Court.

The Appellate Tribunal is the final fact finding authority.

The High Court may admit such appeal if it is satisfied that the case involves a **substantial question of law.**

> ***✪ Substantial question generally mean question that must be answered by applying relevant legal principles to interpretation of law. This is distinct from a question of fact that must be answered by evaluating the relevant facts or evidences as well as inferences arising from those facts.***
>
> ***✪ Unlike answer to question of facts which are dependent on particular circumstances or factual situations, answers to questions of law being based on legal principles, can be applied to many situations.***

Recently, the Supreme Court, in the matter of *Nazir Mohamed v. J. Kamala And Ors. on 27 August, 2020* pronounced that to be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

For instance, the question as regards applicability of an exemption notification to a taxpayer due to two possible interpretations of the notification could be a question of law. Conversely, determination of the quantum of the exemption available to a taxpayer could be a question of fact.

(ii) Time limit for filing appeal

Appeals to the High Court are to be filed within 180 days from the date on which the order appealed against is received by the aggrieved person. However, the High Court has the power to condone the delay on being satisfied of sufficient cause for the same.

(iii) Form of appeal

The appeal shall be filed in form GST APL 08.

(iv) Decision of the High Court

On being satisfied that a substantial question of law is involved, the High Court shall formulate that question, and the appeal shall be heard only on the question so formulated. However, the High Court has the power to hear the appeal on any other substantial question of law, if it is satisfied that the case involves such question.

The High Court shall decide the questions 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. The High Court may determine any issue which has not been determined by the Tribunal ***(State Benches)*** or has been wrongly determined by the ***State Benches***, by reason of a decision on such question of law.

The Code of Civil Procedure relating to appeals to High Court shall apply to the appeals before the High Court under this section.

The appeal shall be heard by a bench of not less than two judges, and the points on which they differ, if any, shall, then, be heard, upon that point only by one or more judges of the High Court. The final judgment on the point shall be decided by majority of all Judges who heard the case, including those first heard it.

Deposit of all tax dues is required to be made; otherwise the inherent powers of the High Court have to be invoked for obtaining a stay pending disposal of the appeal.

12. APPEAL TO THE SUPREME COURT [SECTION 118]

The law provides for appeals to the Supreme Court from any **judgment or order passed by the High Court**, 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.

A (direct) appeal shall also lie to the Supreme Court from any orders passed by the ***Principal Bench*** **of the Tribunal.**

> **The *Principal* Bench of the Tribunal has jurisdiction to entertain appeal if the dispute or one of the issues in dispute involves place of supply.**

The provision of the Code of Civil Procedure relating to appeals to the Supreme Court shall apply to appeals before the Supreme Court under this section. Deposit of all tax dues will be required unless stay is obtained from the Supreme Court pending the disposal of the appeal.

The Supreme Court can vary, confirm or reverse the judgement of the High Court or the Tribunal as the case may be and may award costs. It can also remand the matter for fresh consideration.

13. SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL ETC. [SECTION 119]

Sums due to the Government as a result of an order passed by the ***Principal Bench/State Benches of the*** Appellate Tribunal or the High Court, notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, shall be payable in accordance with the order so passed.

14. APPEAL NOT TO BE FILED IN CERTAIN CASES [SECTION 120]

In tax disputes, the tax department is always an opposite party. From a practical standpoint, many appeals at the tribunal, High Court, Supreme Court levels are instituted by the tax department.

This section contains provisions that aim at limiting the filing of appeals by the CGST officers in non-complex matters or the matters involving small tax amount. While providing for non-filing of appeal by the CGST officers in certain cases, this section also provides that such steps should not stop the tax department to file appeal in other similar cases.

(i) The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.

(ii) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

(iii) No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).

(iv) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

15. NON APPEALABLE DECISIONS AND ORDERS [SECTION 121]

Section 121 lays down that no appeals whatsoever can be filed against the following orders:-

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under the Act; or

(d) an order passed under section 80 (payment of tax in instalments).

TEST YOUR KNOWLEDGE

1. *Does CGST law provide for any appeal to a person aggrieved by any order or decision passed against him by an adjudicating authority under the CGST Act? Explain the related provisions under the CGST Act.*

2. *Describe the provisions relating to Departmental appeal to Appellate Authority under section 107.*

3. *With reference to sections 107(6) and 112(8), specify the amount of mandatory pre-deposit which should be made along with every appeal made before the Appellate Authority and the Appellate Tribunal. Does making the pre-deposit have any impact on recovery proceedings?*

4. *With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.*

5. *The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement.*

6. *In an order dated 20th August issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed IGST demand of ₹ 280 crore. The company is disputing the entire demand of IGST and wants to know the amount of pre-deposit it has to make under the IGST Act for filing an appeal before the Appellate Authority against the order of the Joint Commissioner.*

   Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, determine the amount of pre-deposit to be made by the company for filing the said appeal.

7. *With reference to the provisions of section 121, specify the orders against which no appeals can be filed.*

8. *Mr. A had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved relates to place of supply. The order of Appellate Tribunal is also in favour of the Department. Mr. A now wants to file an appeal against the decision of the Appellate Authority as he feels the stand taken by him is correct.*

   You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal.

9. *Pursuant to audit conducted by the tax authorities under section 65, a show cause notice was issued u/s 74 of the CGST Act to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20th August (received by Home Furnishers on 22nd August) confirming a tax demand of ₹ 50,00,000 (i.e., CGST 25,00,000 and SGST 25,00,000) and imposing a penalty of equal amount under relevant provisions of CGST Law.*

   Home Furnishers does not agree with the order passed by the Joint Commissioner. It decides to file an appeal with the Appellate Authority against the said adjudication order. It has approached you for seeking advice on the following issues in this regard:

   (1) Can Home Furnishers file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax? If yes, till what date can the appeal be filed?

   (2) Does Home Furnishers need to approach both the Central and State Appellate Authorities for exercising its right of appeal?

   (3) Home Furnishers is of the view that there is no requirement of paying pre-deposit of any kind before filing an appeal with the Appellate Authority. Give your opinion on the issue.

10. *With reference to the provisions of section 120, list the cases in which appeal is not to be filed and also specify other relevant provisions in this respect.*

11. *XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 1st November under section 73 wherein it was decided as follows:*

CGST+SGST due	*₹ 6,00,000*
Interest	*@ 18% p.a. for number of delayed days*
Penalty	*₹ 60,000*

The taxpayer filed an appeal before the Appellate Authority on 26th November.

Determine the amount of pre-deposit to be made by the company for filing the appeal if it disagrees with the entire tax demanded.

Whether your answer would be different, if the taxpayer appeals only against part of the demanded amount say ₹ 4,00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 and proportionate penalty arising from the said order?

ANSWERS/HINTS

1. Yes, any person aggrieved by any order or decision passed by an adjudicating authority under the CGST Act has the right to appeal to the Appellate Authority under section 107. The appeal should be filed within 3 months from the date of communication of such order or decision. However, the Appellate Authority has the power to condone the delay of up to 1 month in filing the appeal if there is sufficient cause for the delay. The appeal can be filed only when the admitted liability and 10% of the disputed tax amount, subject to a maximum of ₹ 25 crore. (₹ 50 crore in case of IGST) is paid as pre-deposit by the appellant.

However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Further, no appeal can be filed against the following orders in terms of section 121:-

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under the Act; or

(d) an order passed under section 80 (payment of tax in installments).

2. Section 107(2) provides that Department can file a "review application/appeal" with the Appellate Authority.

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order to satisfy himself as to the legality or propriety of the said decision /order. The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the said decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority [Section 107(3)]. There is no requirement of making a pre-deposit in case of departmental appeal.

3. Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—

(a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order, subject to a maximum of ₹ 25 crore. (₹ 50 crore in case of IGST)

However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Section 112(8) lays down that no appeal can be filed before the Appellate Tribunal, unless the appellant deposits

(a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) 20% of the remaining amount of tax in dispute, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of ₹ 50 crore (₹ 100 crore in case of IGST), in relation to which appeal has been filed.

The above limits are applicable for the pre-deposits to be made under the CGST Act. Equal amount of pre-deposit is payable under the respective SGST Act as well.

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

4. Section 2(99) defines "Revisional Authority" as an authority appointed or authorised under the CGST Act for revision of decision or orders referred to in section 108.

Section 108 of the Act authorizes such "revisional authority" to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving opportunity of being heard to the person concerned. The "revisional authority" can also stay the operation of any order passed by his subordinates pending such revision.

The "revisional authority" shall not revise any order 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 section 107(2) has not yet expired or more than 3 years have expired after the passing of the decision or order sought to be revised.

(c) the order has already been taken up for revision under this section at any earlier stage.

(d) the order is a revisional order

5. The statement is incorrect.

Though the Appellate Tribunal does have the power to refuse to admit an appeal, it cannot refuse to admit ANY appeal. It can refuse to admit an appeal where –

- the tax or input tax credit involved or
- the difference in tax or the difference in input tax credit involved or
- the amount of fine, fees or penalty determined by such order,

does not exceed ₹ 50,000.

6. Section 107(6) read with section 20 of the IGST Act provides that no appeal shall be filed with the Appellate Authority unless the applicant has paid 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 a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹ 50 crore. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed ₹ 50 crore (for tax in dispute) where IGST demand is involved.

In the given case, the amount of pre-deposit for filing an appeal with the Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is:

(i) ₹ 28 crore [10% of the amount of tax in dispute, viz. ₹ 280 crore]

or

(ii) ₹ 50 crore,

whichever is less.

= ₹ 28 crore.

Further, section 112(8) provides that no appeal shall be filed with the Appellate Tribunal unless the applicant has paid 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 a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid as pre-deposit while filing appeal to the Appellate Authority, arising from the said order subject to a maximum of ₹ 100 crores.

Thus, in the given case, the amount of pre-deposit for filing an appeal with the Appellate Tribunal against the order of the Appellate Authority, where entire amount of tax is in dispute, is:

(i) ₹ 56 crores [20% of the amount of tax in dispute, viz. 280 crores]

or

(ii) ₹ 100 crores,

whichever is less.

= ₹ 56 crores.

7. As per section 121, no appeal shall lie against any decision taken or order passed by a CGST officer 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 proceedings from one officer to another officer; or

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under the CGST Act; or

(d) an order passed under section 80 (payment of tax in instalments).

8. As per section 117(1), an appeal against orders passed by the ***State Benches*** of the Tribunal would lie to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the ***Principal*** Bench of the Tribunal would lie to the Supreme Court and not High Court. As per section 109(5) of the Act, only the ***Principal*** Bench of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Mr. A's case relates to place of supply, the appeal in his case would have been decided by the ***Principal*** Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

9. (1) An appeal against a decision/order passed by any adjudicating authority under the CGST Act or SGST Act/ UTGST Act is appealable before the Appellate Authority [Section 107(1)]. Thus, Home Furnishers can file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax.

Further, such appeal can be filed within 3 months from the date of communication of such decision/order [Section 107(1)]. Thus, Home Furnishers can file the appeal to Appellate Authority on or before 22nd November. Further, the Appellate Authority can also condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

(2) GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and *vice versa*. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws.

GST law also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/ revision/rectification against the said order will lie only with the proper officers of that Act (CGST Act). Accordingly, if any order is passed by the proper officer under a SGST Act, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officer under that SGST Act. Thus, Home Furnishers is required to file an appeal only with the Central Tax Appellate Authority [Section 6 of CGST Act].

(3) Home Furnishers' view is not correct in law. Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—

(a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order subject to a maximum of ₹ 25 crore*.

**Equivalent amount is required to be deposited with respect to SGST liability.*

Since in the given case, Home Furnishers disagrees with the entire tax demanded, it has to make a pre-deposit of 10% of the amount of tax in dispute arising from the impugned order, i.e., 10% of ₹ 50,00,000 which is ₹ 5,00,000 (i.e. ₹ CGST 2,50,000 and SGST ₹ 2,50,000).

10. (1) The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.

(2) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).

(4) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

11. Section 107(6) provides that no appeal shall be filed before Appellate Authority, unless the appellant pays*:-

(a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and

(b) 10% of remaining tax in dispute arising from the impugned order subject to a maximum of ₹ 25 crore, in relation to which the appeal has been filed.

**Equivalent amount is required to be deposited with respect to SGST liability.*

Thus, in Case-I, XY Company has to make a pre-deposit of 10% of ₹ 6,00,000, which is ₹ 60,000 (i.e. CGST ₹ 30,000 and SGST ₹ 30,000).

However, when XY Company admits the liability of only ₹ 2,00,000 (CGST + SGST) and disputes the balance tax demanded of ₹ 4,00,000, it has to make a pre-deposit of:

(i) ₹ 2,00,000 + ₹ 20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and

(ii) 10% of ₹ 4,00,000 which is ₹ 40,000.

It may be noted that the Appellate Tribunal was not constituted till 30.04.2023. This aspect needs to be borne in mind while reading the examples and questions and answers relating to Appellate Tribunal given in the Chapter.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has come into force from 01.08.2019. However, the amendments made in section 2(4) of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the date of printing of this material. Therefore, the applicability or otherwise of such amendment for May 2024 and/or November 2024 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions of section 2(4) are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
Section 2(4) **"adjudicating authority"** means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;	**Section 2(4)** **"adjudicating authority"** means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, ***National Appellate Authority for Advance Ruling,*** the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;	The definition of adjudicating authority proposed to be amended to exclude the proposed National Appellate Authority for Advance Ruling from the purview of adjudicating authority.

CHAPTER 23

ADVANCE RULING

For the sake of brevity, the terms "Authority for Advanced Ruling", "Appellate Authority for Advance Ruling", have been referred to as AAR and AAAR respectively in this Chapter. The section numbers referred to in the chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend and explain the terms-advance ruling, applicant, application, authority and appellate authority for the purpose of advance ruling with reference to the statutory definitions of such terms.
- understand and describe the various aspects relating to procedure to be followed for filing an application for advance ruling and apply it in practical scenario.
- list the matters on which advance ruling can be sought.
- gain knowledge regarding the applicability of advance ruling.
- identify and appreciate the powers of Authority and Appellate Authority.

1. INTRODUCTION

An advance ruling helps the applicant in planning his activities which are liable for payment of GST, well in advance. It also brings certainty in determining the tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as concerned Officer or the Jurisdictional Officer in respect of the applicant. Further, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious.

It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration. A legally constituted body called Authority for Advance Ruling (AAR) can give a binding ruling to an applicant who is a registered under GST or is desirous to be registered. The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR). There are time lines prescribed for passing an order by AAR and by AAAR.

The broad objectives for setting up a mechanism of Advance Ruling are:

- provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- attract Foreign Direct Investment (FDI) by ensuring certainty in taxation aspects of transactions
- reduce litigation
- pronounce ruling expeditiously in a transparent and inexpensive manner

Chapter XVII – Advance Ruling [Sections 95 to 106] of the CGST Act and Chapter XII – Advance Ruling [Rules 103 to 107A], stipulate the provisions relating to advance ruling. State GST laws also prescribe identical provisions in relation to advance ruling.

Provisions of advance ruling under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

2. RELEVANT DEFINITIONS

❖ **Advance ruling** means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (*2*) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; [Section 95(a)].

❖ **Appellate Authority** means the Appellate Authority for Advance Ruling referred to in section 99. [Section 95(b)].

❖ **Applicant** means any person registered or desirous of obtaining registration under this Act; [Section 95(c)].

❖ **Application** means an application made to the Authority under sub-section (*1*) of section 97; [Section 95(d)].

❖ **Authority** means the Authority for Advance Ruling referred to in section 96; [Section 95(e)].

3. QUESTIONS FOR WHICH ADVANCE RULING CAN BE SOUGHT [SECTION 97]

The definition of advance ruling given under the Act is a broad one. Under GST, advance ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the appellant.

Advance Ruling can be sought for the following questions:-

(a) classification of any goods or services or both

(b) applicability of a notification issued under the provisions of CGST 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.

Note: Matters which cannot be questioned before AAR are:-

- Question already pending in any proceedings in the case of an applicant under any of the provisions of the Act
- Question already decided in any proceedings in the case of an applicant under any of the provisions of the Act

4. AUTHORITY FOR ADVANCE RULING (AAR) AND APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR) [SECTION 96 AND 99]

- The Authority for advance ruling constituted under the provisions of 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 under the CGST Act, 2017 also.
- The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. [Rule 103]
- 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 under the CGST Act, 2017 also.
- Thus, it can be seen that both the Authority for Advance Ruling (AAR) & the Appellate Authority for Advance Ruling (AAAR) is constituted under the respective State/Union Territory Act and not the Central Act. This would mean that the ruling given by the AAR & AAAR will be applicable only within the jurisdiction of the concerned state or union territory. It is also for this reason that questions on determination of place of supply cannot be raised with the AAR or AAAR.

5. PROCEDURE FOR OBTAINING ADVANCE RULING [SECTION 98]

- The applicant desirous of obtaining advance ruling should make an application to the AAR in a prescribed form and manner (on the common Portal) and shall be accompanied by a fee of five thousand rupees (₹ 5,000 each towards CGST and SGST)
- The application, verification contained therein and all relevant documents accompanying such application needs to be signed in the prescribed manner.
- Upon receipt of an application, the AAR shall send a copy of application to the concerned officer and, if necessary, call for all relevant records from the concerned officer. The relevant records called for by AAR shall be returned to the concerned Officer, as soon as possible
- The AAR may then examine the application along with the records called for and after hearing the applicant or his authorized representative will pass an order either admitting or rejecting the application.
- Application for advance ruling will not be admitted in the cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.
- If the application is rejected, it should be by way of a speaking order giving the reasons for rejection and the application shall not be rejected unless an opportunity of hearing has been given to the applicant.
- The copy of Order admitting or rejecting the application shall be sent to the applicant and to the concerned officer.
- On admission of the application, the AAR shall pronounce its ruling within 90 days of receipt of the application. Before giving its ruling, it shall examine the application and any further material placed before it by the applicant or obtained by the Authority.
- Before pronouncing the Ruling, the AAR provides an opportunity of being heard to the applicant or his authorized representative as well as the concerned officer or his authorized representative.

- If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.
- A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

6. APPEALS AGAINST ORDER OF AAR TO THE APPELLATE AUTHORITY [SECTION 100 AND 101]

- If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the concerned or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with the AAAR.
- Any appeal must be filed within 30 days from the receipt of the Order of the Advance Ruling Authority. The Appellate Authority may allow for an additional 30 days for filing an appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.
- The appeal has to be in the prescribed form and has to be verified in the prescribed manner. An appeal has to be filed by the applicant along with fee of ₹ 10,000/- each under CGST and SGST Act. However, if the concerned officer or jurisdictional officer is aggrieved by the decision of AAR, then no fee is required to be paid.
- The appeal, 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 specified manner.

- The Appellate Authority shall pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
- If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question under appeal.
- The said authority can pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to by the Advance Ruling Authority in the case of the difference of opinion.
- A copy of the advance ruling pronounced by the Appellate Authority should be signed by the members, certified in the prescribed manner, and communicated to the applicant, the concerned officer, the jurisdictional officers and to the Authority.

7. RECTIFICATION OF MISTAKES [SECTION 102]

- The law gives power to AAR and AAAR to amend their order to rectify any mistake apparent from the record within a period of 6 months from the date of the order.
- Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the concerned or the jurisdictional officer.
- If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed.

8. APPLICABILITY OF ADVANCE RULING [SECTION 103]

- An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

- The law does not provide for a fixed time period for which the ruling shall apply. Instead, it has been provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have not changed.

9. ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 104]

- Section 104 states the circumstances under which the ruling would be considered as void and hence would lose its binding value.
- If the Authorities (AAR and Appellate Authority) finds that the advance ruling pronounced has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.
- Consequently, all the provisions of the CGST Act shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued).
- An order declaring advance ruling to be void can be passed only after hearing the applicant / appellant.
- A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.

10. POWERS AND PROCEDURE OF AAR AND AAAR [SECTION 105 AND 106]

- Both the AAR and AAAR are vested with the powers of a civil court under Code of Civil Procedure, 1908, for discovery and inspection, enforcing the attendance of a person and examining him on oath, issuing commissions and compelling production of books of account and other records.
- Both the authorities are deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973. Both the authorities are

however not treated as civil court for the purpose of Chapter XXVI of the Code of Criminal Procedure, 1973.

- Any proceeding before the authority shall be deemed to be judicial proceeding under section 193 and 228 and for the purpose of section 196, of the Indian Penal Code, 1860. The AAR and AAAR also have the power to regulate their own procedure.

TEST YOUR KNOWLEDGE

1. *Which are the questions for which advance ruling can be sought?*
2. *What is the objective of having a mechanism of Advance Ruling?*
3. *To whom will the Advance Ruling be applicable?*
4. *What is the time period for applicability of Advance Ruling?*
5. *Can an advance ruling given be nullified?*
6. *Ranjan intends to start selling certain goods in Delhi. However, he is not able to determine (i) the classification of the goods proposed to be supplied by him [as the classification of said goods has been contentious] and (ii) the place of supply if he supplies said goods from Delhi to buyers in U.S.*

   Ranjan's tax advisor has advised him to apply for the advance ruling in respect of these issues. He told Ranjan that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Ranjan agreed with his view, but has some apprehensions.

   In view of the information given above, you are required to advise Ranjan with respect to following:

   (i) The tax advisor asks Ranjan to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Ranjan needs to get registered?

   (ii) Ranjan is apprehensive that if at all advance ruling is permitted to be sought, he has to seek it every year. Whether Ranjan's apprehension is correct?

(iii) The tax advisor is of the view that the order of Authority for Advance Ruling (AAR) is final and is not appealable. Whether the tax advisor's view is correct?

(iv) Sambhav - Ranjan's friend - is a supplier registered in Delhi. He is engaged in supply of the goods, which Ranjan proposes to supply at the same commercial level that Ranjan proposes to adopt.

He intends to apply the classification of the goods as decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi. Whether Sambhav can do so?

7. *Briefly explain the procedure to be followed by the Authority for Advance Ruling on receipt of the application for Advance Ruling under section 98.*

8. *Briefly explain whether an appeal could be filed before the Appellate Authority against order of Authority for Advance Ruling (AAR), with reference to sections 100 and 101.*

9. *Discuss briefly provisions of CGST Act, 2017 regarding questions for which advance ruling can be sought.*

ANSWERS/HINTS

1. Advance Ruling can be sought for the following questions:

(a) classification of any goods or services or both;

(b) applicability of a notification issued under provisions of the GST Act(s);

(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 under the Act;

(f) whether applicant is required to be registered under the Act;

(g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

2. The broad objective for setting up such an authority is to:

(i) provide certainty in tax liability in advance in relation to an activity being undertaken or proposed to be undertaken by the applicant;

(ii) helps taxpayer in financial planning and making new investments

(iii) attract Foreign Direct Investment (FDI);

(iv) reduce litigation;

(v) pronounce ruling expeditiously in transparent and inexpensive manner

3. The advance rulings are given in personem and not in rem, that is, not to the whole world and therefore, rulings cannot apply to other similar cases. Section 103 provides that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who sought it in respect of any matter referred to in section 97(2) and on the jurisdictional tax authority of the applicant. This clearly means that an advance ruling is not applicable to similarly placed taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

4. The law does not provide for a fixed time period for which the ruling shall apply. Instead, in section 103(2), it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed. Thus, a ruling shall continue to be in force so long as the transaction continues and so long as there is no change in law, facts or circumstances.

5. Section 104(1) provides that an advance ruling shall be held to be ab initio void if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, all the provisions of the GST Act(s) shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued). An order declaring advance ruling to be void can be passed only after hearing the applicant.

6. (i) Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c)]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.

(ii) Section 103(2) stipulates that the advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. Therefore, once Ranjan has sought the advance ruling with respect to an eligible matter/question, it will be binding till the time the law, facts and circumstances supporting the original advance ruling remain same.

(iii) No, the tax advisor's view is not correct. As per section 100, if the applicant is aggrieved with the finding of the AAR, he can file an appeal with Appellate Authority for Advance Ruling (AAAR). Similarly, if the concerned/ jurisdictional officer of CGST/SGST does not agree with the findings of AAR, he can also file an appeal with AAAR.

Such appeal must be filed within 30 days from the date on which the ruling sought to be appealed against is communicated. The Appellate Authority may allow additional 30 days for filing the appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.

(iv) Section 103 provides that an advance ruling pronounced by AAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. This implies that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Thus, Sambhav will not be able to apply the classification of the goods that will be decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi.

7. The procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of the application for advance ruling under section 98 is as under:-

1. Upon receipt of an application, the AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records.

2. The AAR may then examine the application along with the records and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.

3. Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

4. If the application is rejected, it should be by way of a speaking order giving the reasons for rejection and only after giving an opportunity of being heard to the applicant.

5. If the application is admitted, the AAR shall pronounce its ruling on the question specified in the application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.

6. Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/ SGST.

7. If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the Appellate Authority for hearing the issue

8. The Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.

9. A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

8. Yes, the concerned officer, jurisdictional officer or applicant aggrieved by any advance ruling may appeal to the Appellate Authority for Advance Ruling (AAAR) within 30 days [extendible by another 30 days] from the date on which such ruling is communicated to him in the prescribed form and manner.

The AAAR must pass an order confirming or modifying the ruling appealed against within a period of 90 days of the filing of an appeal, after hearing the parties to the appeal.

If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question under appeal. A copy of the advance ruling pronounced by the AAAR is sent to applicant, concerned officer, jurisdictional officer and to the Authority.

9. As per section 97(2), advance ruling can be sought for the following questions:-

(a) classification of any goods or services or both

(b) applicability of a notification issued under the CGST 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 activity with respect to any goods and/or services, amounts to/results in a supply of goods and/or services, within the meaning of that term.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 had come into force from 01.08.2019. However, the amendments made in the advance ruling provisions of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the date of printing of this material. Therefore, the applicability or otherwise of such amendment for May 2024 and/or November 2024 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the relevant existing provisions of the advance ruling are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
Section 95(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;	**Section 95(a)** "advance ruling" means a decision provided by the Authority or the Appellate Authority **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 **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;	New clause (f) is being inserted in section 95 of the CGST Act to define the "National Appellate Authority for Advance Ruling". Definition of advance ruling is being amended to provide that the decision given by the National

New clause (f) in section 95	Appellate Authority will also be an advance ruling.
National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A.	
New section 101A: Constitution of National Appellate Authority for Advance Ruling	New sections 101A, 101B and 101C are being inserted in the CGST Act so as to provide for constitution, qualification, appointment, tenure, conditions of services of the National Appellate Authority for Advance Ruling; to provide for procedures to be followed for hearing appeals against conflicting advance rulings pronounced on the same question by the Appellate Authorities of two or more States or Union territories in case of distinct persons; and to provide that the
(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.** **(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.**	National Appellate Authority shall pass order within a period of ninety days from the date of filing of the appeal respectively.

(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.

<u>New section 101B: Appeal to National Appellate Authority</u>

(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.

New section 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

<table>
<tr><td colspan="2">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.</td><td></td></tr>
<tr><td><u>Section 102</u>
The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:</td><td><u>Section 102</u>
The Authority or the Appellate Authority or the National Appellate Authority may amend any order passed by it under section 98 or section 101 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 or the National Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant, appellant, the Authority or the Appellate Authority within a period of six months from the date of the order:</td><td>Section 102 of the CGST Act is being amended so as to allow the National Appellate Authority to amend any order passed by it so as to rectify any error apparent on the face of the record, within a period of six months from the date of the order, except under certain specified circumstances.</td></tr>
<tr><td colspan="2"><u>New sub-section (1A) of section 103</u></td><td></td></tr>
<tr><td colspan="2">(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</td><td>Section 103 of the CGST Act is being amended so as to provide that the advance ruling pronounced by the National Appellate Authority shall be binding, unless</td></tr>
</table>

the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.		there is a change in law or facts, on the applicants, being distinct person and all registered persons having the same Permanent Account Number and on the concerned officers or the jurisdictional officers in respect of the said applicants and the registered persons having the same Permanent Account Number.
Section 103(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.	**Section 103(2)** The advance ruling referred to in sub-section (1) **and sub-section (1A)** shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.	
Section 104(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and	**Section 104(1)** Where the Authority or the Appellate Authority **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 **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	Section 104 of the CGST Act is being amended so as to provide that advance ruling pronounced by the National Appellate Authority shall be void where the ruling has been obtained by fraud or suppression of material facts or

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:	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:	misrepresentation of facts.
Section 105: Powers of Authority and Appellate Authority (1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding— (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908. (2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of	**Section 105: Powers of Authority, Appellate Authority and National Appellate Authority** (1) The Authority or the Appellate Authority **or the National Appellate Authority** shall, for the purpose of exercising its powers regarding— (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908. (2) The Authority or the Appellate Authority **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	Section 105 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of exercising its powers under the Act.

sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.	Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.	
Section 106: Procedure of Authority and Appellate Authority. The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.	**Section 106: Procedure of Authority, Appellate Authority and National Appellate Authority.** The Authority or the Appellate Authority **or the National Appellate Authority** shall, subject to the provisions of this Chapter, have power to regulate its own procedure.	Section 106 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have power to regulate its own procedure.

CHAPTER 24

MISCELLANEOUS PROVISIONS

The words 'the Act' wherever used in the Chapter refer to the CGST Act, unless otherwise specified. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2023.

LEARNING OUTCOMES

After studying this Chapter, you will be able to–

- understand and explain the miscellaneous provisions relating to documents namely, presumption as to documents in certain cases, admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence etc.
- understand and explain the miscellaneous provisions relating to furnishing, collection and publication of information namely, bar on disclosure of information, disclosure of information by a public servant, publication of information in respect of person in certain cases etc.
- understand and explain the miscellaneous provisions relating to removal of difficulties, delegation of powers, omission repeal and saving and other provisions
- appreciate and explain the provisions relating to administration of CGST and IGST.

1. INTRODUCTION

Chapter XXI of the CGST Act and Chapter IX of the IGST Act contain the miscellaneous provisions. State GST laws also prescribe identical miscellaneous provisions. Following provisions of said chapters have been discussed in this Chapter:

Chapter XXI of the CGST Act: Miscellaneous		
Category	**Section**	**Particulars**
Documents	144	Presumption as to documents in certain cases
	145	Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence
Furnishing, collection and publication of information	150	Obligation to furnish information return[1]
	151	***Power to call for information***
	152	Bar on disclosure of information
	158	Disclosure of information by a public servant
	158A	***Consent based sharing of information furnished by taxable person***
	159	Publication of information in respect of persons in certain cases
Removal of difficulties	153	Taking assistance from an expert
	160	Assessment proceedings, etc., not to be invalid on certain grounds
	161	Rectification of errors apparent on the face of record

[1] *Section 150 is discussed in Chapter 13: Returns in Module 2 of this Study Material.*

	170	Rounding off of tax, etc.
	172	Removal of difficulties
Delegation of powers	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
Omission and repeal of earlier laws	173	Amendment of Act 32 of 1994
	174	Repeal and saving
Other provisions	143	Job work procedure[2]
	146	Common Portal
	147	Deemed Exports[3]
	148	Special procedure for certain processes
	149	Goods and services tax compliance rating
	154	Power to take samples
	155	Burden of proof
	156	Persons deemed to be public servants
	157	Protection of action taken under this Act
	162	Bar on jurisdiction of civil courts

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[2] *Section 143 is discussed in Chapter 16: Job Work in this Module of the Study Material.*

[3] *Section 147 is discussed in Chapter 14: Import and Export under GST in this Module of the Study Material.*

	163	Levy of fee
	169	Service of notice in certain circumstances
	171	Anti-profiteering measure
Chapter VIII of the IGST Act: Apportionment of Tax and Settlement of Funds & Chapter IX of the IGST Act: Miscellaneous		
Apportionment and settlement	17	Apportionments of tax and settlement of funds
	18	Transfer of input tax credit
	19	Tax wrongfully collected and paid to Central Government or State Government
Removal of difficulties	20	Application of provisions of Central Goods and Services tax Act
	25	Removal of difficulties
Delegation of powers	22	Power to make rules
	23	Power to make regulations
	24	Laying of rules, regulations and notifications
Other provisions	21	Import of services made on or after the appointed day

Apart from the above provisions, provisions of Chapter II: Administration [Sections 3-6] of the CGST Act and the manner of determination of commencement and termination of time as per section 9 of the General Clauses Act, have also been discussed in this Chapter.

Miscellaneous provisions under Chapter XXI of the CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Documents

2. PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES [SECTION 144]

Presumption generally means 'an act of accepting that something is true until it is proved not true'. Section 144 lays down presumptions that are taken cognizance of by the Court when certain documents (given below in the diagram) are submitted as evidence by the prosecution in a proceeding under the GST law against any person.

Documents

- **Produced** by any person under the CGST Act or any other law
- **Seized** from the custody or control of any person under the CGST Act or any other law
- **Received** from any place outside India in the course of any proceedings

Tendered by the prosecution in evidence against such person or any other person who is tried jointly with such person.

As per the Evidence Act, 1872, the contents of a document must be proved by evidence and signature or handwriting of a person on the document must be proved to be of the person of whom it is alleged to be. Further, a document which is required by law to be attested shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, except in certain cases.

Section 144 enables the court of law to make departure from the above general principles, in respect of the documents given in the diagram above, and presume:

- truth of the contents of the document
- that the signature which purports to be in the handwriting of any particular person is in that person's handwriting

- execution or attestation in the document has been made by the person by whom it purports to have been so executed or attested

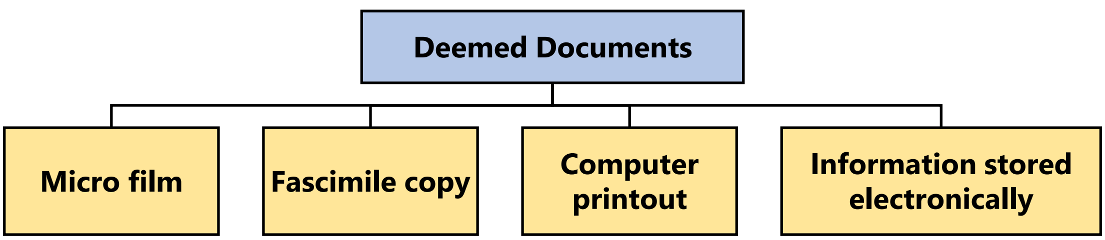
This implies that in case of such documents, if the said person claims that the document is not true or not signed or handwritten by him or not attested or executed by him, the burden of proof in respect of the same shall lie on him.

Further, the Stamp Act, 1899 provides that a document which is not duly stamped shall be inadmissible in evidence. However, section 144 allows the Court to depart from such general provision by providing that a document shall be admissible in evidence even if it is not duly stamped.

3. ADMISSIBILITY OF MICRO FILMS, FACSIMILE COPIES OF DOCUMENTS AND COMPUTER PRINTOUTS AS DOCUMENTS AND AS EVIDENCE [SECTION 145]

'Document' has been defined in section 2(41) of the CGST Act to include written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000.

Deemed documents



As per section 145(1), the following shall be deemed as 'documents':

- **A micro film** of a document or the reproduction of the image(s) embodied in such micro film, whether enlarged or not;

  Microfilms are films containing microphotographs of a document. Such images are generally provided as negatives.

- **A facsimile copy** of a document;

  A facsimile is a copy or reproduction of a document that is as true to the original source as possible. An exact copy of a document is a facsimile.

- **A statement** contained in a document and included in a printed material **produced by a computer**;

- **Information stored electronically** in any device or media, including any hard copies made of such information.

  It refers to the information stored in digital form, which requires the use of computer hardware and software. Also, such information is normally created and altered in the digital form. This category would include the information stored in ERP systems that are employed by most businesses presently. It also includes printouts of such digital information.

Such documents shall be admissible in any proceedings under the Act, 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.

Certification

As per section 145(2), 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,

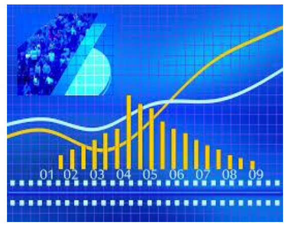
shall constitute evidence of any matter stated in the certificate.

It may be noted that it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

Furnishing, Collection and Publication of Information

4. POWER TO CALL FOR INFORMATION & BAR ON DISCLOSURE OF INFORMATION [SECTIONS 151 & 152]

Section 151 lays down as under:



- ***The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information.***
- ***Information may be sought 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.***

Bar on disclosure of information [Section 152]

- No information with respect to any matter given for the purposes of sections 150 or 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner as to enable any particulars to be identified as referring to a particular person ***without giving an opportunity of being heard to the person concerned.***
- No such information shall be used for the purpose of any proceedings under the Act ***without giving an opportunity of being heard to the person concerned.***

Exception reporting

No restriction 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.

5. DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT [SECTION 158]

Section 158 lays down the provisions for disclosure of information by a public servant as also maintaining the confidentiality of the same and related penal provisions in the event of contravention of the same.

(i) Information/ documents to be treated as confidential [Section 158(1)]

The following shall be treated as confidential:

(i) all particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or

(ii) all particulars contained in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or

(iii) all particulars contained in any record of any proceedings under the Act.

(ii) Exceptions to section 158(1) - Particulars that can be disclosed [Section 158(3)]

Section 158(3) lays down that notwithstanding anything contained in section 158, the following information may be disclosed:

- **For prosecution**: Any particulars in respect of any such 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 the Act, or any other law for the time being in force; or

- **For carrying out the objects of the Act**: Any particulars to the Central Government or the State Government or to any person acting in the implementation of the Act, for the purpose of carrying out the object of the Act; or

- **For service of notice or recovery of demand**: Any particulars when such disclosure is occasioned by the lawful exercise under the Act of any process for the service of any notice or the recovery of any demand; or

- **For furnishing information to Court in a proceeding where Government is a party:** Any particulars to a Civil Court in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of any proceeding under the Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- **For audit of tax receipts or refunds**: Any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or
- **For inquiry into the conduct of GST officer**: Any particulars where such particulars are relevant the purposes of any inquiry into the conduct of any GST officer, to any person or persons appointed as an inquiry officer under any relevant law; or
- **For enabling levy/realisation of any tax or duty**: Any such particulars to an officer of the Central Government/ by a public servant/ statutory authority/ State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
- **By lawful exercise of powers**: 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
- **For inquiry into a charge of misconduct by any professional**: Any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the 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
- **For data entry on automated system**: 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

- **For any other law**: Any particulars to an officer of the Government as may be necessary for the purposes of any other law in force in India; and
- **In public interest**: Any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

(iii) Restriction on Courts [Section 158(2)]

Section 158(2) overrides the provisions contained in the Indian Evidence Act, 1872. It states that Court shall not require any GST officer to produce before it or to give evidence before it in respect of the particulars referred to in section 158(1). However, this restriction will not apply in respect of disclosures mentioned under sub-section (3).

6. CONSENT BASED SHARING OF INFORMATION FURNISHED BY TAXABLE PERSON. [SECTION 158A]

- ***The following details furnished by a registered person may, be shared by the common portal with such other systems as may be notified by the Government, in the prescribed manner and subject to prescribed conditions namely:—***

(a)	***particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44 [Annual Return];***
(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 [Inspection of goods in movement];***
(c)	***such other details as may be prescribed.***

- ***For the purposes of sharing details, the consent shall be obtained, of—***

(a)	*the supplier, in respect of details furnished above and*
(b)	*the recipient, in respect of details furnished under (b), and under (c) only where such details include identity information of the recipient,*

in the prescribed form and manner.

- ***No action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section.***

- ***There shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.***

- ***This section overrides the following sections:-***

Section No.	
133	Liability of officers and certain other persons
152	Bar on disclosure of information
158	Disclosure of information by a public servant

This provision can be helpful in many cases as follows –

(a) *where the recipient of goods or services wants to confirm whether supplier of goods or services has filed returns and has paid the tax. This is because if the supplier does not pay tax, recovery can be made from recipient. In such cases, after obtaining consent from supplier, the recipient can check whether supplier as filed returns and paid taxes, before releasing his payment. At present, there is no mechanism by which recipient can know whether supplier has paid the taxes and filed returns*

(b) *This provision will also be helpful to buyer for vendor registration, rating of vendors and verifying credentials of vendors*

(c) ***Suppliers of goods and services can judge credit worthiness of recipient, before extending him credit.***

(d) ***Bankers can use this provision while making assessment of loan applications.***

7. PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES [SECTION 159]

Section 159 confers powers on the Commissioner for publishing names and other particulars of persons in certain cases.

What type of information can be published?	The name of any person and any other particulars relating to any proceedings or prosecutions under the Act in respect of such person.
Who can publish such information?	Commissioner, or any other officer authorised by him in this behalf
What is the manner of publication of information?	The information shall be published in such manner as the Commissioner/authorised officer thinks fit.
When can the information be published?	Such information shall be published if Commissioner/any other officer authorised by him in this behalf is of the opinion that it is necessary/expedient in public interest to do so.
Is there any additional information which can be published?	In cases of firm, company or association of persons, names of the partners of the firm, directors, managing agents, secretaries and treasures 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/authorised officer, circumstances of the case justify it.
What is the limitation on publication of	No publication under this section shall be made in relation to any penalty imposed under the Act: • until the time for presenting an appeal to the

information relating to penalty?	Appellate Authority under section 107 has expired (three months extendable to further one month) without an appeal having been presented; or • the appeal, if presented, has been disposed of.

8. TAKING ASSISTANCE FROM AN EXPERT [SECTION 153]

Section 153 enables an officer, not below the rank of Assistant commissioner, to take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him. It may be noted that such decision shall be taken having regard to the nature and complexity of the case and the interest of revenue.

example

(1) An IT professional's assistance may be sought where the officer is of the view that information pertaining to a taxable person stored on a computer system does not reveal correct details.

9. ASSESSMENT PROCEEDINGS, ETC. NOT TO BE INVALID ON CERTAIN GROUNDS [SECTION 160]

Sometimes, proceedings are challenged for their validity merely for reasons of mistakes etc. This provision aims at saving the proceedings from such challenges.

Which proceedings are covered under this provision?	The following proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any provisions of the Act are covered: • Assessment • Re-assessment • Adjudication • Review • Revision • Appeal

	• Rectification • Notice • Summons • Other proceedings
On which grounds, will such proceedings be not held as invalid?	Such proceedings shall not be held invalid for mere reason of: • Mistake • Defect • Omission if such proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.
When will the service of any notice, order, or communication be not called in question?	The service of any • Notice • Order • Communication shall not be called in question if: • the notice, order or communication 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 earliest proceedings commenced, continued or finalised pursuant to such notice, communication or order.

10. RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD [SECTION 161]

Section 161 provides for rectification of mistakes/errors apparent on the face of record by any authority. It may be noted that this section overrides the entire Act, except for the provisions of section 160 (discussed above).

Which documents are covered under section 161?	• Decision • Order • Any notice • Certificate

	• Any other document
Who can rectify the errors apparent on the face of record?	• 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 documents.
What type of mistakes or errors can be rectified?	Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.
When does the Authority rectify the mistakes/errors?	The authority may rectify the mistake/error: • *suo moto* • when such error or mistake is brought to its notice by a GST officer • when such error or mistake is brought to notice by the affected person within a period of 3 months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be
What is the time limit for rectification?	No rectification can be made after a period of six months from the date of issue of such decision /order/notice/certificate/any other document. However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.
What type of precautions should be taken at the time of rectification?	Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person.

11. ROUNDING OFF OF TAX ETC. [SECTION 170]

Amounts covered

The principle of rounding off laid out in section 170 applies to:

- tax
- interest
- penalty
- fine
- any other sum payable under the provisions of the Act
- refund
- any other sum due under the provisions of the Act.

It may be noted that this provision does not apply to tax invoices. Thus, it is not required to round up figures in tax invoices. Only consolidated payment to Government has to be rounded off.

Rounding off principle

Amount contains part of a rupee consisting of paise, and such part is fifty paise or more	Increase to one rupee
Amount contains part of a rupee consisting of paise, and such part is less than fifty paise	Ignore such part

Delegation of Powers

12. POWER OF GOVERNMENT TO MAKE RULES & REGULATIONS [SECTIONS 164 & 165]

Section 164 empowers the Government to make rules on the recommendations of the GST Council for carrying out the provisions of the Act.

The following are noteworthy in this regard:

- The Government may make rules for all or any of the matters which by the 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 rules may also be issued with retrospective effect but not from a date earlier than the date on which the provisions of the Act have come into force.
- The rules may provide for a penalty not exceeding ₹ 10,000 for committing breach of any rule.

Section 165 empowers the Board to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of the Act.

Thus, while the rule making power lies with the Government, the regulation making power has been delegated to the CBIC (Board).

The Central Government and the Board have been vested with the similar powers of making rules and regulations respectively under sections 22 & 23 of the IGST Act also.

13. LAYING OF RULES, REGULATIONS AND NOTIFICATIONS [SECTION 166]

Section 166 provides that the following delegated legislation under the Act shall be laid before each house of the Parliament, while it is in session, for a total period of 30 days which may be comprised in one session, or in two or more successive sessions:

- every rule made by the Government
- every regulation made by the Board
- every notification issued by the Government

If both the Houses agree that

- any modification be made in the rule / regulation / notification; or
- rule or regulation or notification should not be made,

the rule or regulation or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification.

Similar provisions relating to laying of rules, regulations and notification etc. have also been prescribed under section 24 of the IGST Act.

14. DELEGATION OF POWERS [SECTION 167]

Section 167 prescribes that the powers conferred on any authority/officer can also be exercised by another authority/officer, if the Commissioner so directs by way of notification, subject to such conditions as may be specified in the notification.

Many notifications have been issued under this provision to delegate powers to lower officers, officers of State Government (by Central Government) and officers of Central Government (by State Government).

15. POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS [SECTION 168]

Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the Act.

All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.

The meaning of Commissioner for the purposes of following provisions is Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in these said sections with the approval of the Board:

Section	Particulars
Section 2(91)	Meaning of 'proper officer'
Section 5(3)	Delegation of powers by Commissioner
Section 25(9)(b)	Notification of person or class of persons for grant of Unique Identity Number
Section 35(3)	Notification of class of taxable persons required to maintain additional accounts or documents
Section 35(4)	Notification of class of taxable persons permitted to maintain accounts in a prescribed manner where the Commissioner considers that such persons are not in a position to keep and maintain accounts in accordance with the general provisions
Section 37(1)	Details of outward supplies (extension of time limit)
Section 39(6)	Return (extension of time limit)
Section 44	***Annual return***
Sub-sections (4) and (5) of section 52	Statement for tax collection at source and Annual Statement by Electronic Commerce Operator (extension of time limit)
Section 143(1) except second proviso thereof	Job-work procedure (except extension of time limits of 1 year and 3 years)
Section 158(3)(l)	Exceptions to bar on disclosure of information by public servant
Section 167	Delegation of powers

16. POWER OF GOVERNMENT TO EXTEND TIME LIMIT IN SPECIAL CIRCUMSTANCES [SECTION 168A]

The Government is empowered to extend the time limits provided under the CGST Act in respect of actions which cannot be completed or complied with due to force majeure. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively.

Omission, Repeal and Saving

17. OMISSION AND REPEAL OF EARLIER LAWS [SECTIONS 173 AND 174]

Amendment of Act 32 of 1994 [Section 173]

Chapter V of the Finance Act, 1994 laid down the provisions for service tax. Since service tax has been subsumed in GST, such provisions are no more required and hence have been omitted and are not in force.

Repeal and saving [Section 174]

The following legislations stand repealed from July 1, 2017, i.e. the date of commencement of the CGST Act:

- The Central Excise Act, 1944 (except in respect of goods included in Entry 84 of Union List – petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, tobacco and tobacco products)
- 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
- The Central Excise Tariff Act, 1985

The repeal under section 174 or amendment under section 173 shall not:

- revive anything not in force or existing at the time of such amendment or repeal - **No new effect**
- affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder - **No effect on previous position**
- affect any right, privilege, obligation, or liability acquired, accrued or incurred under the previous law - **No effect on rights or liabilities under previous law**

  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.
- 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 previous law - **No effect on tax etc. due under previous law**
- affect any investigation inquiry, verification, adjudication and assessment proceedings, recovery proceedings, other legal proceedings or tax, penalty etc. and any such proceedings that may be instituted, continued or enforced and tax, penalty etc. that may be levied or imposed as if these Acts had not been so amended or repealed - **No effect on legal proceedings and tax, penalty etc. under previous law**
- affect any proceedings including that relating to an appeal, review or reference, instituted before, on or after the appointed day under the previous law - **No effect on any appellate proceeding under previous law.**
- The provisions of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal will apply for repeal provided under section 174.

Section 6 of the General Clauses Act, 1897 is given hereunder:

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.*

Other Provisions

18. COMMON PORTAL [SECTION 146]

Section 146 enables the Government to notify the GST Common Portal on recommendation of the GST Council for facilitating the following:

- Registration
- Payment of Tax
- Furnishing of returns
- Computation and settlement of integrated tax
- Electronic way bill
- Other functions and prescribed purposes

CBIC has notified www.gst.gov.in as the GST common portal to carry out the above stated functions. However, the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in. Further, Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices by the notified persons for whom e-invoicing is mandatory.

19. SPECIAL PROCEDURE FOR CERTAIN PROCESSES [SECTION 148]

Section 148 is an enabling provision for prescribing special procedures for certain processes. The following are noteworthy in this regard:

- Such procedures shall be prescribed by way of a notification issued by the Government, on recommendations of the GST Council.
- The conditions and safeguards and the classes of registered persons to whom such procedures will be applicable shall be stated in the notification itself.
- The special procedures may be prescribed with regard to the following matters:
    - Registration
    - Filing of returns
    - Payment of tax
    - Administration

Some notifications issued by the Government under this section are:

Notification No.	**Description**
Notification No. 66/2017 CT dated 15.11.2017	Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods
Notification No. 04/2018 CT dated 25.01.2018	Seeks to provide special procedure with respect to payment of tax by registered person supplying service by way of construction against transfer of development rights and *vice versa*.

Note: The above list is illustrative and not exhaustive.

20. GOODS AND SERVICES TAX COMPLIANCE RATING [SECTION 149]

As per section 149, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall not be permanent and will be revised from time to time. The ratings shall be intimated to the taxable person and will also be placed in the public domain.

A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

21. POWER TO TAKE SAMPLES [SECTION 154]

Section 154 authorizes the Commissioner, or an officer authorized by him to take samples of goods from the possession of any taxable person, where he considers it necessary. Such officer shall provide a receipt for any samples so taken.

22. BURDEN OF PROOF [SECTION 155]

'Burden of proof' normally refers to the obligation to prove one's assertion. Section 155 lays down that 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.

Thus, where a presumption is raised that a person is not eligible for input tax credit then the onus shall be on such person to rebut the same.

23. PERSONS DEEMED TO BE PUBLIC SERVANTS [SECTION 156]

Section 156 deems all persons discharging functions under the Act as public servants within the meaning of section 21 of the Indian Penal Code, 1860. This means that such persons shall qualify as public servants for the purpose of Indian Penal Code, wherever applicable.

24. PROTECTION OF ACTION TAKEN UNDER THIS ACT [SECTION 157]

Section 157 grants immunity to the following persons against legal proceedings for anything done or intended to be done in good faith:

- President of the Appellate Tribunal
- State President of the Appellate Tribunal
- Members of the Appellate Tribunal
- Officers or other employees of the Appellate Tribunal
- Any other person authorised by the Appellate Tribunal
- Any officer appointed or authorised under the Act

It provides immunity from personal liability for decisions, acts, or omissions that are made within the scope of their official duties, and not made in a wanton or reckless manner.

25. BAR ON JURISDICTION OF CIVIL COURTS [SECTION 162]

Taxes are a civil liability. The basic rule is that every dispute which is civil in nature can be tried by the Civil Court. However, since tax laws generally provide a specific machinery for assessment, appeals and recovery etc, in terms of a special legislation, the jurisdiction of civil courts is barred in matters relating to tax laws.

Therefore, as per section 162, 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 the Act. However, this bar does not apply in case of appeals to High Court and Supreme Court as provided under sections 117 and 118 respectively.

26. LEVY OF FEE [SECTION 163]

Section 163 provides that a copy of any order or document can be provided to any person on an application made by him for that purpose after paying a prescribed fee.

27. SERVICE OF NOTICE IN CERTAIN CIRCUMSTANCES [SECTION 169]

Any notice, decision, order, summons, or any other communication under the Act and the related rules are to be served on the assessee in accordance with the provisions of section 169.

Modes of service [Section 169(1)]

Sub-section (1) of section 169 provides that a notice, decision, order, summons, or any other communication can be served by any one of the following methods:

(a) **Giving/tendering directly:** 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) **Registered post/speed post/courier:** 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) **Email:** By sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) **At common portal:** By making it available on the common portal; or

(e) **Publication in newspaper:** 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) **Affixing at place of business etc:** 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.

Deemed date of serving [Section 169(2)]

Every decision/order/summons/notice/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).

Deemed date of receipt [Section 169(3)]

When a 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.

28. ANTI-PROFITEERING MEASURE [SECTION 171]

The burden of indirect taxation ultimately falls on the consumers. It is expected that the GST regime will result in an increased flow of input tax credit. In such a scenario, the concern that benefit of such increased input tax credit may not be passed on by certain entities to the consumers is not unreasonable.

Section 171 makes it mandatory that 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.

Anti-profiteering Authority

Authority" means the Authority notified under sub-section (2) of section 171 of the Act. Thus, anti-profiteering Authority[4] has been constituted by the Central

[4] *National Anti-profiteering Authority (NAA) was constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate had actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him, this was to ensure that the consumer was protected from arbitrary price increase in the name of GST. The authority was established under section 171. The term of the authority came to an end on 30.11.2022. With effect from 01.12.2022, rule 137 has been omitted vide Notification No. 24/2022 CT dated 23.11.2022. Resultantly, NAA ceased to exist from 01.12.2022.*

Government 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 and/or services supplied by him.

Chapter XV: Anti-profiteering of CGST Rules, 2017 prescribe the provisions relating to functions of the authority, orders of the authority etc. The same are discussed hereunder.

The Government has empowered the Competition Commission of India established under Section 7(1) of the Competition Act, 2002 as an authority under Section 171(2) of the CGST Act, 2017 w.e.f. 1.12.2022 [Notification No. 23/2022 CT dated 23.11.2022].

Earlier, National Anti Profiteering Authority was constituted. Now, that authority has been abolished w.e.f. 1.12.2022.

Functions of the Authority

The authority shall discharge the following functions, namely:-

(i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices

(ii) to identify the taxpayer who has not passed on the benefit

(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 @ 18% 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

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Henceforth, all investigations, based on complaints filed by consumers, will be done by the Directorate General of Anti-profiteering (DGAP) which will then submit a report to Competition Commission of India (CCI).

amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;

(c) imposition of penalty

(d) cancellation of registration

(iv) to furnish a performance report to the GST Council by the 10th day of the month succeeding each quarter.

Process followed by the Authority

Application to the Authority: All applications from interested parties on issues of local nature or those forwarded by Standing Committee shall first be examined by the State Level Screening Committee. On being satisfied that the supplier has not passed on the benefit, the Screening Committee within 2 months from the date of receipt of a written application (further extendable up to 1 month for reasons to be recorded in writing as may be allowed by the Authority) will forward the application with its recommendations to the Standing Committee on Anti-profiteering.

If the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Anti-Profiteering (DGAP) for a detailed investigation within 2 months from the date of receipt of a written application (further extendable up to 1 month for reasons to be recorded in writing as may be allowed by the Authority).

Investigation: The DGAP shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter).

The evidence or information presented to the DGAP by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005, shall apply *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis.

The DGAP can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Authority, DGAP, or an officer authorised by him will have the power to summon any person either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

The DGAP will complete the investigation within a period of 6 months or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing as allowed by the Authority. Upon completion of the investigation, the DGAP will furnish to the Authority, a report of its findings along with the relevant records.

Order of the Authority

Where the Authority determines that a registered person has not passed on the benefit, 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 @ 18% 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 50% of the amount determined under the above clause along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount in the Consumer Welfare Fund of Centre and the remaining 50% of the amount in the Consumer Welfare Fund of the concerned State*, where the eligible person does not claim return of the amount or is not identifiable

*State or Union Territory in respect of which the authority passes an order

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

(e) cancellation of registration under the Act.

If the report of the DGAP 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 DGAP to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

Where upon receipt of the report of the DGAP, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods and/or services other than those covered in the said report, it may, for reasons to be recorded in writing, within a period of six months, direct the DGAP to cause investigation or inquiry with regard to such other goods and/or services.

Such investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.

The following are noteworthy in this regard:

- Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount.
- The Authority will pass order within 6 months from the date of the receipt of the report from the DGAP.
- An opportunity of being heard will be given, if the interested parties request for it in writing.
- Authority can now seek a clarification from DGAP on the Investigation report submitted by it during the process of determining as to whether the benefit has been passed on to the recipient by way of commensurate reduction in prices.
- Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount.
- If the eligible person (i.e. the buyer) does not claim the return of the amount or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.

Penalty for profiteering

A registered person who is found to have profiteered is liable to pay a penalty of 10% of such profiteered amount if the profiteered amount is not deposited within 30 days of the date of passing of the order by the Authority.

Here, "profiteered" means the amount determined on account of not passing the benefit to the recipient by way of commensurate reduction in the price of the goods or services or both.

Application by the Consumer

State Screening Committee

Confirm *prima facie* evidence of profiteering

Standing Committee

Confirm *prima facie* evidence of profiteering

Director General of Anti-Profiteering

For investigation into profiteering

Anti-Profiteering Authority

For determining the quantum of profiteering and passing appropriate order to ensure consumers benefit from the reduced prices.

29. APPLICATION OF PROVISIONS OF CENTRAL GOODS AND SERVICES TAX ACT [SECTION 20 OF THE IGST ACT]

The following provisions of CGST Act apply to IGST Act also-

(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 [TDS rate under IGST – 2%];

(xi) collection of tax at source [TCS rate under IGST – not exceeding 2%];

(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

When the tax involved is IGST, the rate of TDS shall be 2% and the rate of TCS shall not exceed 2%. Presently, the notified rate for TCS in case of IGST is 1%.

Where the penalty is leviable under the CGST Act and the SGST/UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties.

The words and expressions used and not defined in the IGST Act but defined in the CGST Act shall have the same meaning as assigned to them in the said Act. Similarly, the words and expressions used and not defined in the CGST Act but defined in the IGST Act shall have the same meaning as assigned to them in the said Act.

30. APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS [CHAPTER VIII OF THE IGST ACT]

Since central tax (CGST) and state tax (SGST) are separate taxes levied concurrently on a transaction, the same are identifiable and can be transferred to the CGST account and SGST account of the concerned State Governments respectively. However, this is not possible in case of integrated tax (IGST). Therefore, it becomes necessary to apportion IGST into components that can be transferred to CGST account and SGST account of the State Governments concerned.

Apportionment of tax and settlement of funds [Section 17 of the IGST Act]

Section 17 of the IGST Act prescribes the provisions for such apportionment of IGST and settlement of funds between the Central Government and the State Governments.

A. Apportionment of IGST paid on supplies where ITC cannot be availed [Section 17(1)]

Sub-section (1) of section 17 lays down that in respect of the IGST paid on the following supplies of goods and/or services, the IGST shall be apportioned:

(a) inter-State supply to an unregistered person or to a registered person paying tax under composition scheme;

(b) inter-State supply where the registered person is not eligible for input tax credit;

(c) inter-State supply 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 the tax 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) import by an unregistered person or by a registered person paying tax under composition scheme;

(e) import where the registered person is not eligible for input tax credit;

(f) import made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus the tax 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.

Methodology of apportionment [Section 17(2)]

The IGST paid on the supplies mentioned above shall be apportioned as under:

I. The amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

II. The balance amount of IGST remaining in the integrated tax account shall be apportioned to the State where such supply takes place and to the Central Government if such supply takes place in a Union territory.

III. If the place of such supply made by any taxable person cannot be determined separately, the balance amount shall be apportioned to each of the States/Central Government (in relation to Union territories) in proportion to the total supplies made by such taxable person to each of such States/Union territories in a financial year.

IV. If 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 SGST/UTGST by the respective State/ the Central Government during the immediately preceding financial year.

Apportionment of interest, penalty and compounding amount realised in connection with the IGST [Section 17(3)]

The interest, penalty and compounding amount realised in connection with the IGST shall also be apportioned in the similar manner.

Transfer of apportioned tax to the accounts of Central/State Governments [Section 17(4)]

The Central Government shall transfer the amount apportioned to it to the CGST account or UTGST account, as the case may be, and the amount apportioned to the State Government(s) to the SGST account of the respective States.

B. Apportionment of IGST in respect of B2B supplies wherein ITC is taken by the recipients [Section 17(2A)]

Amount of IGST in respect of B2B supplies wherein ITC is taken by the recipients [i.e. IGST not apportioned above] may, for the time being, on the recommendations of the GST Council, be apportioned at the rate of 50% to the Central Government and 50% to the State Governments/Union territories on ad hoc basis. Such amount shall be adjusted against the amount apportioned under sub-sections (2) and (3).

IGST apportioned to a State/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 apportioned under this section, to such State/ Central Government on account of such Union territory.

31. ADMINISTRATION UNDER GST

The provisions regarding administrative set up under CGST and IGST laws, are contained in Chapter II – Administration [Sections 3 to 6] of the CGST Act, 2017 and Chapter II - Administration [Sections 3 and 4] of the IGST Act, 2017 respectively. State GST laws also prescribe identical provisions in relation to administration. These provisions have been discussed below:

A. Officers under CGST Act [Section 3 of the CGST Act]

The Government has appointed the following classes of officers and the officers subordinate to them for the purposes of CGST Act, namely:

- (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax
- (b) Chief Commissioners of Central Tax or Directors General of Central Tax
- (c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax
- (d) Commissioners of Central Tax or Additional Directors General of Central Tax
- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax
- (f) Joint Commissioners of Central Tax or Joint Directors of Central Tax
- (g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax
- (h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax
- (i) Commissioner of Central Tax (Audit)
- (j) Commissioner of Central Tax (Appeals)
- (k) Additional Commissioner of Central Tax (Appeals)
- (l) Joint Commissioner of Central Tax (Appeals)

Further, the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of CGST Act.

B. Appointment of officers under CGST Act [Section 4 of the CGST Act]

The Board may, in addition to the officers as may be notified by the Government under section 3 above, appoint such persons as it may think fit to be the officers under CGST Act [Section 4(1)].

Without prejudice to the provisions of section 4(1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of CGST Act [Section 4(2)].

C. Powers of officers under CGST Act [Section 5 of the CGST Act]

Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under CGST Act [Section 5(1)].

An officer of central tax may exercise the powers and discharge the duties conferred or imposed under CGST Act on any other officer of central tax who is subordinate to him [Section 5(2)].

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 who is subordinate to him [Section 5(3)].

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 central tax [Section 5(4)].

D. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances [Section 6 of the CGST Act]

Without prejudice to the provisions of CGST Act, the officers appointed under the SGST Act or the UTGST Act are authorised to be the proper officers for the purposes of CGST Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify [Section 6(1)].

Subject to the conditions specified in the notification issued under section 6(1):

(a) where any proper officer issues an order under CGST Act, he shall also issue an order under the SGST Act or the UTGST Act, as authorised by the SGST Act or the UTGST Act, as the case may be, under intimation to the jurisdictional officer of SGST or UTGST;

(b) where a proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under CGST Act on the same subject matter [Section 6(2)].

Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under CGST Act shall not lie before an officer appointed under the SGST Act or the UTGST Act [Section 6(3)].

E. Appointment of officers under IGST Act [Section 3 of the IGST Act]

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

F. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances [Section 4 of the IGST Act]

Without prejudice to the provisions of IGST Act, the officers appointed under the SGST Act or the UTGST Act are authorised to be the proper officers for the purposes of IGST Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

32. SPECIAL PROCEDURE FOR CORPORATE DEBTORS UNDERGOING THE CORPORATE INSOLVENCY RESOLUTION PROCESS

As per Insolvency Bankruptcy Code (IBC), 2016, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (CIRP) gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (IRP) or resolution professional (RP). The IRP/RP continues to run the business and operations of the said entity as a going concern and is responsible for compliance with all the laws till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (NCLT). The definitions of the terms, corporate debtor, CIRP, IRP and RP can be referred from IBC, 2016.

The Government has prescribed special procedure under section 148 of the CGST Act for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP. *Notification No. 11/2020 CT dated 21.03.2020* as amended issued under section 148 read with *Circular No. 138/08/2020 GST* provides as under:

The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. However, corporate debtors who have not defaulted in furnishing statements (GSTR-1) and returns under GST would not be required to obtain a separate registration with effect from the date of appointment of IRP/RP.

The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment.

The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period.

33. MANNER OF DETERMINATION OF COMMENCEMENT AND TERMINATION OF TIME [SECTION 9 OF THE GENERAL CLAUSES ACT, 1897]

Section 9 of the General Clauses Act, 1897 lays down the provision relating to commencement and termination of time. It stipulates that in any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word from, and, for the purpose of including the last in a series of days or any other period of time, to use the word to.

In simple words, while computing time, the rule is to exclude the first day and to include the last day. Courts have held that the word "from" is akin to "after" and that the word "from" if used for the purpose of and in reference to the computation of time, as for example, from a stated date, that stated date is *prima facie* excluded from computation. Although on some occasions, Courts have a taken a view that the question as to whether the stated date should or should not be so excluded, should be decided according to the context in which the word "from" occurs.

It is worthwhile to mention here that the Supreme Court, in case of *M/s. Econ Antri Ltd v. M/s. Rom Industries Ltd. & Anr*, had also taken a similar view on this point and decided that while computing the period of limitation, the day on which the offence is committed/ date of cause of action has to be excluded.

Another point which needs a mention here is that section 3(35) of the General Clauses Act, 1897 defines the expression "month" to mean a month reckoned according to the British calendar. Further, *Allahabad High Court in case of CCus &*

CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.) has held that where the legislature has stipulated the period of limitation in terms of months, such a stipulation can only mean a calendar month and not 30 days.

TEST YOUR KNOWLEDGE

1. *Briefly explain how the GST compliance rating score is determined.*
2. *When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions.*
3. *Explain the provisions relating to rectification of errors apparent on the face of record under section 161.*
4. *Write a short note on Anti-profiteering measure.*
5. *Elaborate the functions of Anti-profiteering Authority.*
6. *State the various modes of service of a notice, decision, order, summons, or any other communication under the CGST Act, on the taxable person or any other person to whom it is intended.*
7. *Section 158(1) lays down that the information obtained by a public servant from the record of any proceeding under the CGST Act is confidential and cannot be disclosed.*

   Is there any exception to this rule? Discuss in brief.
8. *Explain the scope of circulars and instructions issued by the Board.*
9. *'The time limits provided under the CGST Act cannot be extended.'*

   Do you agree with the statement? Give your views with reference to section 168A.

ANSWERS/HINTS

1. As per section 149(2), the GST compliance rating is determined on a scale of ten on the basis of prescribed parameters.

2. When the Commissioner/authorised officer is of 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 the CGST Act in respect of such person, it may cause to be published such name and particulars [Section 159(1)].

   No publication under this section shall be made in relation to any penalty imposed under the CGST 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 [Section 159(2)].

3. Section 161 lays down that 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 GST officer 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.

   However, no such rectification shall be made after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, 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.

   Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

4. As per section 171, 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. ***Competition Commission of India (CCI)*** may 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. ***Henceforth, all investigations, based on complaints filed by consumers, will be done by the Directorate General of Anti-profiteering (DGAP) which will then submit a report to CCI.***

5. ***The authority shall discharge the following functions, namely:-***

(i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices

(ii) to identify the taxpayer who has not passed on the benefit

(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 18% 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.

If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund;

(c) imposition of penalty

(d) cancellation of registration

(iv) to furnish a performance report to the GST Council by the 10th of the month succeeding each quarter [Rule 127 of the CGST Rules, 2017]

6. Section 169(1) provides that any decision, order, summons, notice or other communication under the CGST Act and the rules made thereunder can be served by any one of the following methods:

(a) Giving/tendering directly including by a courier to the addressee or authorised representative or to any adult member of family residing with the taxable person; or

(b) By Registered post/speed post/courier with acknowledgement due at the last known place of business or residence; or

(c) By Email to the e-mail address provided at the time of registration or as amended from time to time; or

(d) By making the same available at common portal; or

(e) Publication in newspaper circulating in the locality in which the addressee is last known to have resided, carried on business or personally worked for gain; or

(f) If none of the above modes is practicable then by Affixing at 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 concerned.

7. Yes, the confidential information can be disclosed by the public servant for certain specific purposes in terms of section 158(3). Such specific purposes are given in brief hereunder:

(i) For prosecution

(ii) For carrying out the objects of the CGST Act

(iii) For service of notice or recovery of demand

(iv) For furnishing information to Court in a proceeding where Government is a party

(v) For audit of tax receipts or refunds

(vi) For inquiry into the conduct of a GST officer

(vii) For enabling levy, realisation of any tax or duty

(viii) In lawful exercise of powers

(ix) For enquiry into a charge of misconduct by any professional

(x) For data entry on automated system

(xi) For fulfilling the requirement under any other law and in public interest.

8. Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the CGST Act. All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.

9. The statement is not correct.

The Government has power to extend the time limits provided under the CGST Act. However, such powers are not unbridled powers. Section 168A empowers the Government to extend the time limits only when the actions cannot be completed or complied with due to *force majeure*. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively.

Note

The discussion on the GST law in Modules 1-3 of this Study Material incorporates the content and images made available by the CBIC on its website www.cbic.gov.in namely, FAQs on GST, e-fliers issued on various aspects of GST, sectoral FAQs as also the user manuals and FAQs available on the GST common portal www.gst.gov.in, to the extent relevant to such discussion.